

JAMAICA

No. 9-2009

I assent,

[L.S.]

(Sgd.) P. L. Allen
Governor-General.

24th August, 2009

AN ACT to Amend the Financial Administration and Audit Act.

[25th August, 2009]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Financial Administration and Audit (Amendment) Act, 2009, and shall be read and construed as one with the Financial Administration and Audit Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title and construction.

2. Section 2 of the principal Act is amended—

(a) in subsection (1), by inserting in the appropriate alphabetical sequence the following definitions—

Amendment of section 2 of principal Act.

““Audit Commission” means the Audit Commission established under section 33C;

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“audit committee” means an audit committee established under section 33;

“charter” means the documented terms of reference prepared by the audit committee pursuant to paragraph 9 of the First Schedule, as approved by the Audit Commission;” and

First
Schedule.

(b) by deleting subsection (2) and substituting therefor the following—

“(2) Reference in this Act to a department includes a Ministry and, except where the context otherwise requires, a public body which is designated as an Executive Agency pursuant to the Executive Agencies Act.”.

Amendment
of section
19B of
principal Act.

3. Section 19B of the principal Act is amended by inserting next after subsection (2) the following as subsections (3) and (4)—

“(3) Notwithstanding section 29 of the Interpretation Act, regulations made under this section may provide for the imposition of penalties on summary conviction in a Resident Magistrate’s Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or of both such fine and imprisonment.

(4) Regulations made under this section shall be subject to affirmative resolution.”.

Repeal and
replacement
of section 33
and insertion
of new
sections 33A
to 33T in
principal Act.

4. Section 33 of the principal Act is repealed and the following substituted therefor—

Audit Committees

“Establish-
ment of
audit
commit-
tee.

33.—(1) The provisions of this section and sections 33A to 33T—

- (a) apply to an audit committee established in a department; but
- (b) do not apply to an audit committee established in a statutory body or authority

or any government company under section 8 of the Public Bodies Management and Accountability Act.

(2) There shall be established in each department an audit committee in accordance with the provisions of this Act.

(3) Every accounting officer shall ensure that there is in operation an audit committee for each department specified in his designation under section 16(1).

First
Schedule.

(4) The provisions of the First Schedule shall have effect as to the constitution and procedure of audit committees and otherwise in relation thereto.

Functions of
Audit
Committee.

33A.—(1) An audit committee established under section 33(1) shall—

- (a) advise the Audit Commission on—
- (i) practices and procedures which will promote efficiency and quality of service in the department;
 - (ii) the extent to which the objects of the department are being achieved; and
 - (iii) the adequacy, efficiency and effectiveness of the accounting and internal control structures and systems of the department;
- (b) in the case of a special audit or examination of the department, review, investigate and advise the Audit Commission with respect to the report on that audit or examination;
- (c) review the internal audit charter of the department and make recommendations to the officer who is in charge of internal audit in the department;
- (d) ensure that the department's internal audit is conducted in accordance with established standards and requirements;

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- (e) review the department's audit reports, analyze audit issues and evaluate the adequacy of recommendations in audit reports;
- (f) review and advise the accounting officer on annual audit plans, budgets and schedules to ensure sufficient audit coverage;
- (g) request the investigation of audit related matters, where necessary; and
- (h) perform such other functions as may be assigned to it by the Audit Commission.

(2) In the performance of its functions under subsection (1), an audit committee may, as it considers appropriate—

- (a) subject to such modification as may be necessary, exercise the functions conferred upon the Auditor-General under section 25(3);
- (b) seek and obtain any information it requires from internal auditors, any other officer of the department and external auditors; and
- (c) invite officers of the department and any other person who can assist the committee in the performance of its functions to its meetings.

(3) 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 the department during any external audit or examination.

Relationship
with Auditor-
General.

33B. Any member of an audit committee or the Audit Commission may, at any time, consult with the Auditor-General on any matter relating to its functions.

Audit Commission

Establish-
ment of Audit
Commission.

33C.—(1) There is hereby established, for the purposes of this Act, a body to be called the Audit Commission which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

Second
Schedule.

(2) The provisions of the Second Schedule shall have effect as to the constitution and procedure of the Commission and otherwise in relation thereto.

Functions of
Audit
Commission.

33D.—(1) The Audit Commission shall—

- (a) evaluate the performance of audit committees in order to ensure their continued effectiveness;
- (b) promote best practices in the operation of audit committees;
- (c) monitor the performance of each audit committee against its charter;
- (d) keep copies of the charters of audit committees and perform annual reviews to determine their relevance;
- (e) review the annual reports of each audit committee to identify and resolve outstanding issues;
- (f) be the temporary custodian of audit committee records during the transition of an audit committee; and
- (g) perform such other functions as are assigned to it by the Minister.

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(2) The Audit Commission may—

- (a) seek and obtain information from departments to resolve outstanding issues presented by audit committees;
- (b) summon officers of the department or other persons as it deems necessary, to appear before the Commission;
- (c) subject to paragraph 7 of the First Schedule, remove members of audit committees.

First
Schedule.

Policy
directions.

33E. The Minister may, after consultation with the chairman, give to the Audit Commission such directions of a general character as to the policy to be followed by the Audit Commission in the performance of its functions and the Audit Commission shall give effect thereto.

Pensions,
gratuities and
other retiring
benefits.

33F. The Audit Commission, with the approval of the Minister may—

- (a) enter into arrangements respecting schemes, whether by way of insurance policies or otherwise; and
- (b) make regulations,

for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits, relating to employees of the Commission and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such employees.

Financial Provisions, Accounts and Reports

Funds and
resources of
Audit
Commission.

33G.—(1) The funds and resources of the Audit Commission shall consist of—

- (a) sums which may, from time to time, be placed at the disposal of the Commission by Parliament; and
- (b) all other moneys and other property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions.

(2) The expenses of the Audit Commission, including the remuneration of members and employees, shall be paid out of the funds of the Commission.

Power to
invest moneys.

33H. All moneys of the Audit Commission not immediately required to be expended for the purpose of meeting any of the obligations or discharging any of the functions of the Commission may be invested in such securities as may be approved either generally or specifically, by the Minister and the Commission may, with the approval of the Minister, sell all or any of such securities.

Accounts and
audit.

33I.—(1) The Audit Commission shall keep proper accounts and other records in relation to its functions and shall prepare annually a statement of accounts in a form satisfactory to the Minister and conforming to established accounting principles.

(2) The accounts of the Audit Commission shall be audited annually by the Auditor-General.

Annual report
and estimates.

33J.—(1) The Audit Commission shall, within six months after the end of each financial year or within such longer period as the Minister may in special circumstances approve, cause to be made

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and transmitted to the Minister a report dealing generally with the activities of the Audit Commission during the preceding financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the Auditor-General's report thereon to be laid in the House of Representatives and the Senate.

(3) The Audit Commission shall, in each financial year, before a date specified by the Minister, submit to the Minister for his approval, estimates of income and expenditure for the ensuing financial year.

Operating plan.

33K. The Audit Commission shall submit to the Minister for his approval, by the 28th day of February in each year, an operating plan for that year as to projects to be promoted or sponsored, or both, by the Audit Commission, the operational framework within which the Audit Commission shall carry out its functions and such other matters as the Minister may require.

Power of Minister
to require return.

33L. The Audit Commission shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Audit Commission, and shall afford him facilities for verifying such information in such manner and at such times as he may reasonably require.

Exemption
from taxes
and duty.

33M.—(1) The income of the Audit Commission shall be exempt from income tax.

(2) The Audit Commission shall be exempt from liability to stamp duty in respect of any instrument executed by it or on its behalf.

(3) Any transfer by the Audit Commission of any property belonging to it or of any right or interest created in, over or otherwise with respect to, any such property shall be exempt from transfer tax.

(4) No customs duty, general consumption tax or other similar impost shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by the Audit Commission and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Audit Commission in the performance of its functions.

Recovery of debts.

33N. Without prejudice or any other method of recovery, all debts due to the Audit Commission may be recovered, without limit of amount, in a Resident Magistrate's Court as a civil debt.

General

Register.

33O. The Audit Commission shall cause to be kept a register of the names, addresses and qualifications of members and such other particulars as may be prescribed, of all audit committees.

Right to information.

33P. The directors or former directors, officers, employees or agents of a department shall furnish to the audit committee and the Audit Commission such information and explanation and records, documents, books of accounts and vouchers of the department or any public body or any of its subsidiaries as the audit committee or Audit Commission may require in order to enable it to prepare any report required by this Act or any other enactment.

Duty of care.

33Q. A member of an audit committee or the Audit Commission 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 department; 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 member.

Reliance on
statement.

33R. A member of an audit committee or the Audit Commission shall not be liable for a breach of duty under section 33Q 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.

Special
reports to
Commission.

33S. The audit committee shall report in writing to the Audit Commission whenever it—

- (a) becomes aware of an occurrence or transaction that affects or might reasonably be expected to affect the department; or
- (b) reasonably suspects that the department or any officer of the department has contravened a provision of this Act, any regulations made hereunder or any other enactment.

Minister may
amend
Schedules.

First and
Second
Schedules.

33T. The Minister may, after consultation with the Audit Commission, subject to affirmative resolution, amend the First or Second Schedule.”

5. Subsection (1) of section 34 of the principal Act is amended by deleting the words “the financial transactions and accounts” and substituting therefor the words “accounting systems, internal controls, risk management and governance processes”.

Amendment
of section 34
of principal
Act.

6. Section 50 of the principal Act is amended by inserting next after subsection (3) the following as subsections (4) and (5)—

Amendment
of section 50
of principal
Act.

“ (4) Notwithstanding section 29 of the Interpretation Act, regulations made under subsection (1) may provide for the imposition of penalties on summary conviction in a Resident Magistrate’s Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or of both such fine and imprisonment.

(5) Regulations made under subsection (1) shall be subject to affirmative resolution.”.

7. The principal Act is amended by inserting next after section 52 the following as the First and Second Schedules—

Insertion of
new Schedules
in principal
Act.

FIRST SCHEDULE

(Sections 2, 33B
and 33T)

Audit Committees

Composition
of
committee
and appoint-
ment of
members.

1. Subject to the provisions of this Schedule, an audit committee shall consist of not less than five nor more than seven members who shall be appointed by the Audit Commission from among persons who appear to the Commission to exhibit adequate analytical, accounting, financial or managerial expertise for appointment under this paragraph.

Eligibility for
appoint-
ment.

2.—(1) Subject to subparagraph (2) and paragraph (4), a minimum of two-thirds of the members of the audit committee shall be independent, that is to say, persons who are not employees of the department or any other person having a relationship with the department that, in the opinion of the Audit Commission, interferes or may reasonably be seen as interfering in the committee's impartial exercise of judgment in carrying out its functions.

(2) The following persons shall not be eligible for appointment to the audit committee—

- (a) the accounting officer;
- (b) the principal finance officer or the chief financial officer of the department; and
- (c) the chief internal auditor or the head of internal audit in the department.

(3) A member of an audit committee who becomes disqualified by virtue of this paragraph shall resign forthwith upon becoming aware of the disqualification, failing which he shall be deemed to have vacated his office.

Chairman and
deputy
chairman.

3.—(1) Subject to paragraph 4, the Audit Commission shall appoint a chairman and deputy chairman from among the members of each audit committee.

(2) In case of the chairman's inability to act, the deputy chairman shall perform the functions of the chairman and in the absence of both the chairman and the deputy chairman from any meeting, the members of the audit committee present shall elect one of their number to preside at that meeting and when so presiding the chairman, the deputy chairman or the member elected as aforesaid, as the case may be, shall have, in addition to an original vote, a casting vote in the event of an equality of votes.

4. An employee or an independent contractor of the department shall not be eligible to be appointed as the chairman of an audit committee of the department.

Officers not eligible for appointment as chairman of committee.

5.—(1) Subject to the provisions of this Schedule, a member of an audit committee shall hold office for such period, not being less than five nor more than seven years, as may be specified in the instrument of appointment (hereinafter referred to as the initial period), and shall be eligible for re-appointment.

Tenure of audit committee.

(2) Subject to subparagraph (3), at the end of the initial period, a member of an audit committee who indicates, in writing to the accounting officer of the department and the Audit Commission, his willingness to continue in office may be appointed for a further period as may be specified in the instrument of appointment not exceeding seven consecutive years.

(3) If any vacancy occurs in the membership of an audit committee the vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed so, however, that this shall not bar the member from further service on an audit committee.

6.—(1) The chairman may, at any time, resign his office by instrument in writing addressed to the Audit Commission and such resignation shall take effect as from the date of receipt by the Audit Commission of the instrument.

Resignation of member.

(2) A member of an audit committee (other than the chairman) may, at any time, resign his office by instrument in writing addressed to the Audit Commission and transmitted through the chairman and, from the date of the receipt by the Audit Commission of such instrument, the member shall cease to be a member of the audit committee.

7. The Audit Commission may, at any time, revoke the appointment of any member of an audit committee if such member—

Revocation of appointment.

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with, or suspends payment to his creditors;

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- (c) is convicted and sentenced to a term of imprisonment or to death;
- (d) is convicted of an offence involving dishonesty or moral turpitude;
- (e) becomes disqualified for appointment by virtue of paragraph 2;
- (f) fails to carry out any of the functions conferred or imposed on him under this Act;
- (g) fails to attend three consecutive meetings without reasonable excuse;
- (h) engages in any activity which, in the opinion of the Audit Commission, is in actual or perceived conflict with the interests of the department; or
- (i) engages in such activities as are reasonably considered by the Audit Commission to be prejudicial to the interests of the committee.

Procedure of meetings.

8.—(1) The audit committee shall meet at such times as may be necessary or expedient for the transaction of business, at least quarterly, and such meeting shall be held at such places and times and on such days as the committee may determine.

(2) The chairman may, at any time, call a special meeting of the audit committee and shall cause a special meeting to be held within seven days of a written request for that purpose addressed to him by any three members of the audit committee.

(3) The validity of any proceedings of the audit committee shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(4) Subject to the provisions of this Schedule, the audit committee may regulate its proceedings.

Management of Audit Committee

Charter.

9.—(1) The audit committee shall prepare documented terms of reference (hereinafter referred to as the charter) which shall be submitted to the Audit Commission for approval.

(2) The performance of the audit committee shall be assessed against the charter periodically.

(3) The charter shall be reviewed annually by the audit committee and any changes thereto submitted to the Audit Commission for approval.

10.—(1) The chairman of every audit committee shall prepare an annual report within four months of the end of the financial year, on all major activities for the year including—

- (a) details of attendance at meetings;
- (b) conclusion on the adequacy and effectiveness of internal controls in the department;
- (c) general comments on the quality of internal audit reports submitted; and
- (d) the results of the evaluation of financial and other data.

(2) The annual report shall be submitted, where appropriate, to—

- (a) the Audit Commission;
- (b) the accounting officer;
- (c) the Financial Secretary;
- (d) the Chief Executive Officer of the Executive Agency;
- (e) the Chairman of the Advisory Board appointed under section 2 of the Executive Agencies Act; and
- (f) the officer who is in charge of internal audit in the department.

11. A member of an audit committee who is directly or indirectly interested in any matter which is being dealt with by the audit committee shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the audit committee and shall not be present during the deliberation of the audit committee on the matter or take part in the decision of the audit committee with respect thereto.

12.—(1) Every member of an audit committee shall demonstrate due professional care and proficiency at all times.

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(2) The members of an audit committee shall be, and make every effort to operate in a manner that is, independent of the audit functions of the department.

(3) If there is a change in circumstances that causes a member's independence to be impaired, then that member shall resign in accordance with paragraph 6 of this Schedule.

(4) Where the independence of a member is impaired, but he is not willing to resign, the majority of the committee members may indicate in writing their concerns to the chairman and make recommendations for the member's removal in accordance with paragraph 7 of this Schedule.

Protection of
members.

13. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of an audit committee in respect of any act done *bona fide* in pursuance of, in execution or intended execution of this Act.

Authentica-
tion of seal
and
documents.

14.—(1) The seal of the audit committee shall be authenticated by the signature of the chairman or any other member of the audit committee authorized to act in that behalf or any officer of the audit committee so authorized and shall be judicially and officially noticed.

(2) All documents, other than those required by law to be under seal made by, and all decisions of, the audit committee may be signified under the hand of the chairman or other member or officer of the audit committee authorized in that behalf.

Remunera-
tion of
members.

15. There shall be paid to the chairman and other members of an audit committee such remuneration, whether by way of honorarium, salary or fees, and such allowances, as the Minister may determine.

Membership
not public
office.

16. The office of the chairman, deputy chairman or a member of an audit committee shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

SECOND SCHEDULE

(Sections 2, 33B
and 33T)

Audit Commission

1.—(1) The Audit Commission shall consist of not less than five nor more than seven members, with at least one member from each of the following category of persons—

Constitution
of Audit
Commission.

- (a) senior Directors in the Office of Cabinet;
- (b) senior members of the Institute of Chartered Accountants of Jamaica;
- (c) senior members of the Institute of Internal Auditors;
- (d) senior directors in the Ministry responsible for finance; and
- (e) the Senior Director in the Auditor-General's Department.

(2) The Solicitor-General or his nominee shall be an *ex officio* member of the Audit Commission.

2. The Audit Commission shall be appointed by the Governor-General on the recommendation of the Minister responsible for finance.

Appointments
of Audit
Commission.

3.—(1) Members of audit committees are not eligible for appointment to the Audit Commission.

Officers not
eligible for
membership.

(2) The provisions of paragraph 2 of the First Schedule shall apply, with such modifications as may be necessary, to the Audit Commission.

4. Members of the Audit Commission shall hold office for a maximum period of five consecutive years.

Tenure.

5.—(1) The Audit Commission shall meet at least every three months to discuss issues raised in the committee reports as well as assess the effectiveness of the audit committees.

Operation.

(2) The quorum of the Audit Commission shall be three members.

(3) Except as provided in this Act, the Audit Commission shall regulate its own proceedings.

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Appointments
of com-
mittees.

6.—(1) The Audit Commission may, with the approval of the Minister, appoint committees for special purposes connected with the functions of the Commission and which in the opinion of the Commission would be better regulated and managed by means of committees.

(2) The number of members of a committee appointed under subparagraph (1), the terms of appointment of such members, the quorum of the committee and the area within which the committees is to exercise authority shall be determined by the Audit Commission.

(3) A committee appointed pursuant to this paragraph may include persons who are not members of the Audit Commission but at least one of the members of any such committee shall be a member of the Audit Commission.

(4) The provisions of paragraph 9 shall apply to a member of a committee who is not a member of the Audit Commission in like manner as they apply to a member of the Audit Commission.

(5) The validity of the proceedings of a committee appointed pursuant to this paragraph shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

Authentication
of seals and
documents.

7.—(1) The seal of the Audit Commission shall be authenticated by the signature of the chairman or any other member of the Commission authorized to act in that behalf or any officer of the Commission so authorized and shall be judicially and officially noticed.

(2) All documents (other than those required by law to be under seal) made by, and all decisions of, the Commission may be signified under the hand of the chairman or any member or officer of the Commission authorized to act in that behalf.

Appointment
of officers
and other
employees.

8.—(1) The Audit Commission shall appoint and employ, at such remuneration and on such terms and conditions as it thinks fit, an Executive Director, a Secretary and such other officers and employees as the Audit Commission deems necessary for the proper carrying out of its functions:

Provided that—

- (a) no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister and

(b) no appointment shall be made to any post to which a salary in excess of the prescribed rate is assigned without the prior approval of the Minister.

(2) For the purposes of subsection (1) the "prescribed rate" means a rate of four million dollars per annum or such other rate as the Minister may, by order, prescribe.

(3) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of the Government to any office within the Audit Commission, and any public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Government.

9.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Audit Commission in respect of any act done *bona fide* in pursuance of, in execution or intended execution of this Act. Protection of members.

(2) Where any member of the Audit Commission is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would be if the said member were an employee or an agent of the Commission,

10. The office of the chairman, deputy chairman or a member of the Audit Commission shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica. Membership not public office.

11.—(1) Any member (other than the chairman) may, at any time, resign his office by instrument in writing addressed to the Governor-General and transmitted through the chairman; and from the date of receipt by the Governor-General of such instrument such member shall cease to be a member. Resignation of members.

(2) The chairman may, at any time, resign his office by instrument in writing addressed to the Governor-General; and such resignation shall take effect as from the date of the receipt by the Governor-General of the instrument."

Passed in the Honourable House of Representatives this 31st day of March, 2009.

DELROY CHUCK
Speaker.

Passed in the Senate this 19th day of June, 2009 with thirteen (13) amendments.

OSWALD G. HARDING, O.J., C.D., Q.C.
President.

On the 22nd day of July, 2009 the House of Representatives agreed to the amendments made by the Senate.

DELROY CHUCK
Speaker.

This printed impression has been carefully compared by me with the Bill which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Bill.

Clerk to the Houses of Parliament.