

THE PUBLIC BODIES MANAGEMENT AND ACCOUNTABILITY ACT

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THE PUBLIC BODIES MANAGEMENT AND ACCOUNTABILITY ACT

Acts
30 of 2001,
12 of 2003,
7 of 2010,
20 of 2011,
1 of 2014,
3 of 2015.

[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— Interpreta-
tion.
- “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;
- “Government—pays public private partnership” means a public private partnership under which a public entity has an obligation to pay for an asset or the use thereof, or for a service supplied in connection therewith, without which payments the project undertaken by the public private partnership is not likely to be economically viable; 1/2014
S. 2.

1/2014
S. 2.

“local authority” means—

- (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation as constituted under the Kingston and St. Andrew Corporation Act;
- (b) in relation to any other parish, the Parish Council of that parish as constituted under the Parish Councils Act; or
- (c) in relation to a municipality, a Municipal Council established under the Municipalities Act;

12/2003
S. 2(b).
20/2011
S. 2(b).

“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*;

1/2014
S. 2.

“public entity” means the Government or a department or an agency of the Government, a local authority or a public body;

1/2014
S. 2.
3/2015
S. 2(a).

“public investment” means non-recurrent expenditure on goods, works and services carried out by any public entity within the specified public sector on its own or by one or more such public entities in conjunction with one or more non-public entities through public private partnerships, and which is aimed at accumulating new physical or intangible assets or enhancing human resource capacities, or improving or rehabilitating existing physical or intangible assets or human resource capacities, to achieve development objectives;

1/2014
S. 2.

“Public Investment Management System” means the common framework for the preparation, appraisal, approval and management of public investments in Jamaica (irrespective of source of funding or procurement and implementation modalities) which is constituted under the Financial Administration and Audit Act.

3/2015
S. 2(b).

“public investment project”, means public investment requiring planning, execution, monitoring and evaluation

carried out as an integrated set of activities aimed at meeting a development objective, at a specific cost and within a defined timeframe;

“public private partnership” means an arrangement governed by a long-term procurement contract between one or more public entities and one or more non-public entities, involving the designing, financing, building and operating of an infrastructure project or the provision of a service, through the appropriate sharing of resources, risks and rewards; 1/2014 S. 2.

“public sector” means the Government and all public bodies; 3/2015 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;

“specified public sector” means the public sector not including any public body certified by the Auditor-General, in the manner specified in regulations made under section 50(1) of the Financial Administration and Audit Act, as primarily carrying out functions that are of a commercial nature that satisfy such criteria as may be specified in such regulations; 3/2015 S. 2(b).

“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; and 20/2011 S. 2(c).

“user-pays public private partnership” means any public private partnership that is not a Government-pays public private partnership. 1/2014 S. 2.

PART II. *Corporate Governance and Accountability*

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

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

- (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, including information pertaining to the Public Sector Investment Programme, as the Minister considers appropriate.

1/2014
S. 3(a).

(2) The Minister shall, in relation to the Estimates referred to in subsection (1)—

3/2015
S. 3(a).

- (a) cause those Estimates to be tabled in the House of Representatives and the Senate for approval, except that the estimates of a public body that is not part of the specified public sector shall be tabled for information only;

3/2015
S. 3(b).

- (b) take appropriate measures to ensure that, commencing with the financial year beginning on April 1, 2015, the Estimates are tabled in time for their approval by both Houses of Parliament no later than March 31 of the year preceding that to which the Estimates relate.

1/2014
S. 3(c).

(3) In this section, “Public Sector Investment Programme” means the rolling five-year plan of Cabinet-approved, new and ongoing prioritized public investment projects, that is reviewed on a regular basis against—

- (a) the strategic objectives of the Government;
- (b) the fiscal and debt sustainability agenda;
- (c) prevailing socio-economic and environmental conditions; and
- (d) the implementation status and technical capacity of executing agencies.

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

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

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.

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

(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 public body to the Consolidated Fund shall be in accordance with regulations made under section 24.

3/2015
S. 4(a).

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

3/2015
S. 4(b).

(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.

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

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—

- (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.

7/2010
S. (b).

(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(c).

(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).

(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), the status of that application.

3/2015
S. 5.

20/2011
S. 7.

(5) The Minister shall 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.
3/2015
S. 6.

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

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

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.

3/2015
S.7.

(2) Any such guarantee agreement may provide for the inspection on a regular basis, by the 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.

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

Powers of
Minister.
20/2011
S. 8.
3/2015
S. 8(a).

- (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 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.

3/2015
S. 8(b).

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—

7/2010
S. 4.

3/2015
S. 9.

- (i) in the case of a public body that is within the specified public sector, by the responsible Minister and by the Minister; and
- (ii) in the case of a public body that is not part of the specified public sector, by the board of that public body.

20/2011
S. 9.

(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.

Public bodies
and the
Govern-
ment's
procurement
rules.
20/2011
S.10.
3/2015
S. 10.

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

Public
private
partnerships.
1/2014
S. 4.

6B.—(1) All contingent liabilities in relation to public private partnerships, whether in relation to any Government-pays public private partnerships, or user-pays public private partnerships, shall be continually assessed by the Minister.

(2) The Minister shall ensure that there is full disclosure and regular reporting on contingent liabilities, including the matters referred to in subsections (6) and (9), in each Fiscal Policy Paper to be tabled pursuant to the Financial Administration and Audit Act.

(3) All public private partnerships shall be included in the Public Sector Investment Programme provided for under the Financial Administration and Audit Act, and be subject to the standards set out in the Public Investment System.

(4) A public private partnership shall not be entered into by a public entity, except with the approval of the Cabinet on the recommendation of the Public Investment Management

Committee established under the Financial Administration and Audit Act.

(5) For the purposes of section 48C(1)(b) of the Financial Administration and Audit Act—

- (a) the indebtedness of a public body within the specified public sector, arising from a Government-pays private public partnership, shall comprise part of the public debt;
- (b) the indebtedness of user-pays public private partnerships shall not comprise part of the public debt;

(6) Subject to subsection (7), the aggregate contingent liabilities of public bodies within the specified public sector arising in respect of user-pays public private partnerships shall not exceed—

- (a) during the three financial years comprising the period beginning on April 1, 2014 and ending on March 31, 2017, three *per cent* of the gross domestic product;
- (b) during the nine financial years comprising the period beginning on April 1, 2017 and ending on March 31, 2026, eight *per cent* of the gross domestic product.

(7) Notwithstanding paragraph (b) of subsection (6), if at any time during the period specified in that paragraph there is a reduction in public debt below sixty per cent of gross domestic product, then the percentage of gross domestic product, referred to in that paragraph may be increased to an amount equivalent to but not exceeding the percentage by which the public debt has been reduced below sixty *per cent* of the gross domestic product.

(8) Subsection (6) shall not apply to contingent liabilities that—

- (a) as regards any user-pays public private partnership, are in existence in connection with that public private partnership on March 31, 2014; or
- (b) are referred to in section 48B(6)(d) of the Financial Administration and Audit Act.

(9) Where the likelihood of a contingent liability that—

- (a) accrues to a public body within the specified public sector; and
- (b) arises from a public private partnership,

becomes probable, the quantified amount of the contingent liability shall thereupon form part of the public debt, for the purposes of section 48C(1)(b) of the Financial Administration and Audit Act.

(10) In this section—

“contingent liability” in relation to an obligation of an entity means—

- (a) a possible obligation that arises from past events and whose existence will have to be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity;
- (b) an existing obligation that arises from past events but is not recognised because—
 - (i) it is not probable that an outflow of resources will be required to settle the obligation; or
 - (ii) the amount of the obligation cannot be measured with sufficient reliability.

and includes debt guarantees, demand or price guarantees, and termination clauses or any other default provisions that could imply a transfer of liabilities to the Government.

6C. Every public entity, except a public body that is not part of the specified public sector, shall adhere to the Public Investment Management System.

Public bodies
to adhere to
the Public
Investment
Management
System.
1/2014
S. 4.
3/2015
S. 12.

7.—(1) The Board of Directors of a public body shall, not later than November 30 in each financial year of the public body, deliver to the Minister and to the responsible Minister, respectively, a draft corporate plan, which shall be in such form (if any) as may be prescribed.

Corporate
plan.
1/2014
S. 5.

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

First Schedule.

(3) The board of a public body that is within the specified public sector shall—

3/2015
S. 13(a).

(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—

7/2010
S. 3(b).

(i) the responsible Minister; and

(ii) the Minister for his endorsement.

(4) Subject to subsection (5), the board of a public body that is within the specified public sector may modify a corporate plan and shall deliver the modification to the Minister for his endorsement.

3/2015
S. 13(b).
7/2010
S. 5(b).

(5) Where the board of a public body that is within the specified public sector intends to modify a corporate plan it shall—

3/2015
S. 13(c).

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

7/2010
S. 5(d).

7/2010
S. 5(e).

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

3/2015
S. 13(d).
7/2010
S. 5(f).

(6) In the case of a public body that is within the specified public sector, 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.

3/2015
S. 13(e).

(7) In the case of a public body that is not part of the specified public sector, 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 summary of the corporate plan, or the modification of the corporate plan (as the case may be), to be tabled in the House of Representatives and the Senate for information purposes.

Power to
request
information.
3/2010
S. 6.

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.

Audit com-
mittees and
auditors.
20/2011
S. 11(a).

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.

(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).

(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.

20/2011
S. 11(b).

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

Duties of
audit
committees.

- (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 the case of a public body within the specified public sector, 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.
3/2015
S. 14.

(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.

12A.—(1) Where, in the case of a public body that is not part of the specified public sector, the responsible Minister has reasonable cause to believe that a special audit of the public body should be conducted by an auditor other than the public body's auditor, the responsible Minister may, in writing, direct the board of that public body to appoint an auditor to conduct such audit.

Minister
may direct
special
audit.
3/2015
S. 15.

(2) Upon receiving a direction under subsection (1), the board shall appoint an auditor to conduct the special audit.

(3) The auditor appointed shall carry out—

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

(4) The auditor responsible for conducting the audit shall submit a written report on the audit to the board of the public body concerned and to the responsible Minister.

(5) The expenses of an audit conducted under this section shall be paid by the public body concerned.

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

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

(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.

20/2011
S. 14.

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.

Audit of
accounts of
public body
by Auditor-
General.
20/2011
S. 14.

(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 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.

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

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.

(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.

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—

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

- (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);

3/2015
S. 16.
3/2015
S. 16.

- (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; or
- (d) becomes aware, in the case of a public body that is not part of the specified public sector, that the Auditor-General has, in accordance with regulations made under the Financial Administration and Audit Act, determined that the public body is no longer primarily carrying out functions that are of a commercial nature and has withdrawn the certification of that public body as a self-financing body under the regulations.

(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

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.

Errors and
omissions.

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.

(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*

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

- (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.

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—

Dissent of
absent direc-
tor.

- (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.

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

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

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.

(2) A director or officer of a public body shall not be in breach of his duty under section 17(1) if, he believed in the existence of information which, if true, would render the director's or officer's exercise of care, diligence and skill in the performance of his duty to be reasonably prudent.

(3) For the purposes of this section, a director or officer shall be deemed to have acted with due care, diligence and skill where, in the absence of fraud or bad faith, the director or officer reasonably relied, in good faith, on documents relating to the affairs of the public body, including financial statements, reports of experts or on information presented by other directors or, where appropriate, other officers and professionals.

19A.—(1) Except in respect of an action by or on behalf of a public body to obtain a judgment in its favour, the public body may indemnify—

- (a) a director or officer of the public body;
- (b) a former director or officer of the public body; or a person who acts or acted at the request of the public body as a director or officer of a public company of which the public body is or was a member or creditor, and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding, to which he is made a party by reason of being, or having been, a director or officer of that public body.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified—

- (a) acted honestly and in good faith, with a view to the best interests of the public body; and
- (b) in the case of a criminal or administrative action or proceeding that was enforced by a monetary penalty,

Indemnifi-
cation of
directors,
etc.
20/2011
S.17.

had reasonable grounds for believing that his conduct was lawful.

19B. A public body may with the approval of the Court, indemnify a person referred to in section 19A in respect of an action—

Indemnity
for
derivative
action.
20/2011
S.17.

- (a) by or on behalf of the public body to obtain a judgment in its favour; and
- (b) to which he is made a party by reason of being or having been a director or an officer of the public body,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfills the conditions set out in subsection (2) of section 19A.

19C. Notwithstanding anything in section 19A or 19B, a person described in section 19A is entitled to indemnity from the public body in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the public body, if the person seeking indemnity—

Right to
indemnity.
20/2011
S.17.

- (a) was substantially successful on the merits in his defence of the action or proceeding;
- (b) qualified in accordance with standards set out in section 19A or 19B; and
- (c) is fairly and reasonably entitled to indemnity.

20.—(1) In the exercise of any powers conferred on a board by a relevant enactment or any constituent documents in relation to—

Levels of
emoluments.
20/2011
S. 18.
3/2015
S. 17.

- (a) emoluments payable to the staff of a public body;
- (b) any other policies and guidelines applicable,

the board shall act in accordance with such guidelines as are issued from time to time by the Minister responsible for the public service and the Minister, respectively.

3/2015
S. 17.

(2) Subsection (1) does not apply in the case of a public body that is not part of the specified public sector.

Public Bodies
Human
Resources
Committee.
3/2015
S. 18.

20A.—(1) The Minister may appoint a committee, to be known as the Public Bodies Human Resources Committee (hereinafter called the “Human Resources Committee”) to perform the functions set out in subsection (3) with respect to public bodies that are not part of the specified public sector.

Third
Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution and procedure of the Human Resources Committee and otherwise in relation thereto.

(3) The functions of the Human Resources Committee shall include the following—

- (a) providing advice to public bodies that are not part of the specified public sector with regard to human resource matters;
- (b) monitoring the performance of such public bodies with regard to human resource matters;
- (c) providing reports to the Minister with regard to human resource matters relating to such public bodies;
- (d) promoting best practices with regard to human resource matters relating to such public bodies; and
- (e) performing such other functions, with regard to human resource matters relating to such public bodies, as may be assigned to the Committee by the Minister.

(4) In this section, “human resource matters” includes matters concerning hiring, separation, salaries and other terms and conditions of employment.

PART IV. *General*

Restriction
on forma-
tion of new
companies.
3/2015
S. 19.

21.—(1) A public body within the specified public sector shall not form a new company without the prior written approval of the responsible Minister given after consultation with the Minister.

(2) An application for approval under subsection (1) shall—

- (a) state the reasons for the proposed formation of the new company;
- (b) contain particulars relating to the financing of the operations of the proposed company, the corporate plan and employment of staff.

21A. If a public body that is not part of the specified public sector (hereinafter called the “holding company”) forms a new company, the new company shall be deemed to be a public body that is not part of the specified public sector for so long as the holding company remains a public body that is not part of the specified public sector, except that the new company shall not be required to be certified under the Financial Administration and Audit (Fiscal Responsibility Framework) Regulations, 2012, as a public body that is not part of the specified public sector.

New company formed by public body not part of specified public sector.
3/2015
S. 20.

22.—(1) Without prejudice to the provisions of any relevant enactment or constituent documents in relation to the preparation of annual reports by a public body, such reports shall be prepared in the prescribed form and in accordance with Part I of the Second Schedule.

Contents of annual reports.

7/2010
S. 7.
Second Schedule.

(2) A report under subsection (1) shall not contain any information of a commercial value which would be or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

23. Every public body shall prepare in the prescribed form and submit to the responsible Minister and the Minister, the half-yearly, quarterly and other reports in accordance with Parts II, III and IV of the Second Schedule.

Other reports by public bodies.
23/2011
S. 19.

23A.—(1) The Registrar of Companies shall, within four months after the end of each financial year, prepare and submit to the Minister a report on all government companies containing—

Registrar’s report on government companies.
23/2011
S. 20.

- (a) a list on any subsidies of such companies, specifying any additions thereto, or deletions therefrom during the financial year; and

- (b) information on any default by such companies in complying with the relevant provisions of the Companies Act.

(2) The Minister shall cause a copy of the report submitted under subsection (1) to be laid on the Table of the House of Representatives.

Regulations.
20/2011
S. 21.
3/2015
S. 21(a),(b).

24.—(1) The Minister may make regulations generally for giving effect to the provisions and purposes of this Act and without prejudice to the generality of the foregoing, may in particular—

- (a) specify criteria for the creation of public bodies;
- (b) specify criteria for the evaluation of the viability of public bodies, using cost benefit analysis;
- (c) specify criteria for the appointment of boards of public bodies;
- (d) specify criteria for the making of financial distributions to the Consolidated Fund by public bodies.

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

Enforce-
ment.
20/2011
S. 22.

25.—(1) If the Court is satisfied, on an application by the Attorney-General, that any person has contravened any of the provisions of—

- (a) section 3(3) (submission of annual report and audited financial statements);
- (b) section 4 (acquisition of shares and payment of dividends or annual financial distribution to the Government under regulations made under section 24);
- (c) section 5(1) and (2) (exercise of borrowing powers);
- (d) section 6 (corporate governance);

- (e) section 7 (corporate plan);
- (f) section 7A (power to request information);
- (g) section 8 (audit committees);
- (h) section 9 (duties of audit committees);
- (i) section 14 (general duties of auditors);
- (j) section 15 (failure to furnish information to auditors);
- (k) section 17 (fiduciary duties);
- (l) section 20 (levels of emoluments);
- (m) section 21 (restriction on formation of new companies);
- (n) section 23 (other reports by public bodies),

the Court may exercise any of the powers referred to in subsection (2).

(2) The Court may—

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or
- (b) grant an injunction restraining that person from engaging in conduct described in subsection (1).

(3) In exercising its powers under this section the Court shall have regard to—

- (a) the nature and extent of the default;
- (b) the nature and extent of any loss suffered by any person as a result of the default;
- (c) the circumstances of the default;
- (d) any previous determination against the person concerned.

(4) [*Deleted by 23 of 2011, S. 22(2).*]

26. The Minister may amend the Schedules by order subject to negative resolution.

Amendment
of Schedules.

Supremacy
of this
Act in
relation
to public
bodies.
20/2011
S. 23.

27. Notwithstanding any provision of any other law or enactment to the contrary, where that other law or enactment raises any inconsistency between this Act and that provision in relation to the operations of any public body, the provisions of this Act shall prevail.

FIRST SCHEDULE

(Section 7)

Information to be included in Corporate Plan

Each corporate plan shall contain the following information—

1. A statement of the objectives of the public body.
2. The nature and scope of the activities to be undertaken, differentiating between commercial, social and regulatory activities.
3. An operating budget.
4. Capital budgets and their justification.
5. The public body's accounting policies.
6. The performance targets and other measures by which the performance of the body may be judged in relation to its objectives.
7. A statement of the principles adopted in determining the annual dividend or surplus, together with an estimate of the amount or proportion of annual tax earnings (from both capital and revenue sources) that is intended to be distributed to the government.
8. The kind of information to be submitted to the responsible Minister by the public body during the course of the financial year, including the information to be included in each half-yearly report.
9. The procedures to be followed before the public body or any of its affiliates subscribes for, purchases, or otherwise acquires shares in any company or other organization.
10. Any activity for which the board of directors seeks compensation, such as agency fees, from the Government (whether or not the Government has agreed to provide such compensation).
11. Such other information as is agreed by the responsible Minister and the board of directors.
12. An estimate of the current commercial value of the Government's investment in the public body and its affiliates and a statement of the manner in which that value was assessed.

FIRST SCHEDULE, *contd.* (Sections 22 and 23)PART I. *Contents of Annual Reports*

The following matters shall be included in the annual reports of public bodies—

1. Audited financial statements, including—
 - (a) explanatory notes; and
 - (b) notes to the financial statements, including accounting policies.
2. A statement of the emoluments of every chairman, director, chief executive officer and senior official, for that year.
3. A report of the board of directors which shall include—
 - (a) a review of all operations;
 - (b) a statement on any proposed change in the nature and scope of the activities of the body;
 - (c) any modification or proposed modifications to the corporate plan;
 - (d) a summary of the achievement of the body measured against appropriate performance targets;
 - (e) forecasts and projections of key financial and operating measures for the next twelve months;
 - (f) where applicable, notification of payment of dividends.

PART II. *Half-yearly Reports*

Half-yearly reports shall be submitted within two months of the end of each half of a financial year, and such reports shall contain—

- (a) an bridged, unaudited statement of the financial position of the body, with explanatory notes;
- (b) a quantitative report from the board of directors on the performance of the public body compared with the objectives and targets set out in the corporate plan and operating budget;
- (c) important changes in intent and scope during the half year; and
- (d) the outlook for the next half year.

PART III. *Quarterly Reports*

Quarterly reports shall be submitted within one month of the end of each quarter, and such reports shall contain—

FIRST SCHEDULE, *contd.* (Sections 22 and 23)PART III. *Quarterly Reports, contd.*

- (a) a summary commentary and summary financial statistics indicating—
- (i) a summary of the achievements of the public body measured against appropriate performance targets;
 - (ii) the forecast and projection of key financial and operating performance measures for the remaining quarters of the financial year;
 - (iii) the reasons for any significant changes in performance targets both from the previous targets and from the annual targets set out in the corporate plan; and
- (b) a report on any special examinations carried out pursuant to section 12.

PART IV. *Other Reports*

Other reports shall be submitted as may be required, from time to time by the Minister, and such reports shall contain such information as may be specified by the Minister.

THIRD SCHEDULE (Section 20A)

The Public Bodies Human Resources Committee

1. The Minister shall determine the number of members of the Public Bodies Human Resources Committee.
2. The members of the Human Resources Committee shall be persons who are, in the opinion, of the Minister, representative of the public sector and the private sector.
3. The members of the Human Resources Committee shall be appointed by the Minister by instrument in writing.
4. The members of the Human Resources Committee shall, subject to the provisions of this Schedule, hold office for such a period as may be specified in the instrument of appointment and shall be eligible for re-appointment.
5. The Minister shall appoint a chairperson and vice-chairperson of the Human Resources Committee from the members of the Committee.

THIRD SCHEDULE, *contd.*

The Public Bodies Human Resources Committee, contd.

6. The Minister may, at any time, revoke the appointment of a person as member of the Human Resources Committee or as chairperson or vice-chairperson.

7. Subject to the provisions of this Act, the Human Resources Committee may make rules regulating its own proceedings.

8. The Minister shall assign technical and administrative support the Human Resources Committee.

