THE PUBLIC BODIES MANAGEMENT AND ACCOUNTABILITY ACT

REGULATIONS
(*under section 24*)

The Public Bodies Regulations, 2015 L.N. 66/2015

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(*Made by the Minister on the 16th day of January, 2015*) L.N. 66/2015

Citation.

1. These Regulations may be cited as the Public Bodies Regulations, 2015.

Financial Distributions

Interpretation.

2. In Regulations 2 to 18 unless the context otherwise requires—

"profit or surplus", in relation to a self-financing public body, means audited after-tax net profit or surplus;

"self-financing public body" means a public body that generates adequate revenues to sustain its operations, and is not, under normal circumstances, financed from the Consolidated Fund;

"normal financial distributions" are payments from audited profits or surpluses, which are expected to be maintained in the future;

"special financial distributions" are separate one-off contributions, which are made from retained earnings or windfall profits.

Application.

3.—(1) Subject to paragraph (2), these Regulations apply to self-financing public bodies, regardless of their mode of formation, source of financing or function.

(2) The Minister may exempt a self-financing public body from regulations 2 to 18 of these Regulations, either indefinitely or for a limited period.

Distribution to be in accordance with Regulations.

4. Public bodies shall distribute profit or surplus for subsidiaries in accordance with the provisions of these Regulations.

Financial Secretary may require payments to Consolidated Fund.

5. Notwithstanding any other enactment, the Financial Secretary may, at any time, require a self-financing public body to pay to the credit of the Consolidated Fund, at such times and in such manner as the Financial Secretary directs, such amount by way of a special financial distribution as the Financial Secretary may determine and notify to the public body.

Regular payments to Consolidated Fund

6. Every self-financing public body shall manage its financial performance in a manner that will enable it to make regular payments from profits or surpluses into the Consolidated Fund, either directly or indirectly through its parent company, in the case of a subsidiary.

Financial distribution targets

7.—(1) Financial distribution targets for each self-financing public body shall be based on its profits or surpluses for the financial year ending on the 31st day of March in each financial year.

(2) A self-financing public body formed after the date of commencement of these Regulations, may be allowed a grace period for compliance with these Regulations in order to build up profitability, capital base and cash flow, as the Financial Secretary may determine.

Estimates of distributions to be included in corporate plan.

8. Estimates of annual normal financial distribution shall be included in the corporate plan for each planning period of a self-financing public body.

Minimum payment of five per cent to be allocated for Consolidated Fund

9. The Board of Directors of a self-financing public body shall seek to allocate a minimum of five per cent of profit or surplus for transfer to the Consolidated Fund, no later than six months after the close of each financial year.

Additional payments

10. Additional payments over and above the minimum shall be considered, based on the financial performance of the self-financing public body.

Normal distributions.

11. Normal financial distribution shall be recommended by the Board of Directors of each self-financing public body with the agreement of the Financial Secretary.

Management of funding requirements.

12. The Minister shall ensure that the funding requirements of every self-financing public body are managed in a manner that will balance the funding needs of the self-financing public body and the Government's revenue requirements.

Government's preference for regular transfers.

13. In determining financial distribution targets, account shall be taken of the Government's preference for regular transfers from surplus, rather than capital gains and for a reasonably stable stream of income from self-financing public bodies.

Considerations when setting targets.

14. In setting targets, consideration shall be given to the amount of excess cash available to the self-financing public body after allowing for—

(*a*) adequate working capital;

(*b*) funding of approved capital investments (to be included in the corporate plan for the self-financing public body);

(*c*) foreign currency exposure (where applicable);

(*d*) an appropriate contingency for financial flexibility; and

(*e*) an appropriate debt to equity ratio.

15. Public bodies shall not retain large amounts of cash or financial investments in excess of requirement— Limitations on retention of excess cash or investments

(*a*) for working capital;

(*b*) for the funding of an approved capital expenditure programme;

(*c*) to provide for contingencies; and

(*d*) to maintain an appropriate level of financial flexibility.

16. Financial distribution targets may make allowance for any extraordinary provision for development projects approved by the Cabinet so, however, that every effort shall be made to manage capital needs so as not to affect the approved levels. Allowance for development projects approved by Cabinet

17. Calculations of distributable profit or surplus shall be based on audited net profit or surplus, after taking account of provisions for losses in previous years, to the extent that such losses have not been made good from profits earned subsequently. Distributions to be based on audited net profit or surplus

18. Where there are significant variations in revenues or capital expenditures, adjustments may, with the approval of the Minister, be made to vary the amount of agreed contribution to the Consolidated Fund. Adjustment of contributions for significant variation in expenditures.

Formation of New Company—Provision of Particulars

19. An Application seeking approval for the formation of a new application to company under section 21(1) of the Act shall contain the following particulars— Particulars for application to form new company.

(*a*) a financial forecast covering at least the ensuing five years commencing from the expected start-up date that sets out projected—

(i) cash flow;

(ii) profit and loss;

(iii) transfers from the Consolidated Fund; and

(iv) estimates of borrowing, specifying—

(A) amounts from private sources;

(B) expected maturity;

(C) expected currency composition;

(D) the amount that will be guaranteed by the Government; and

(E) the cost, if any, to the Government; and

(v) asset accumulation;

(*b*) a corporate plan, including cost-benefit or similar financial analysis, to demonstrate the need to create the public body, which shall—

(i) relate to a period covering at least the ensuing four years; and

(ii) take account of factors other than particulars required under paragraph (*a*) and which do not have a market value or cost; and

(*c*) the details of any externality or public benefit that is likely to accrue as a result of the creation of the public body or the market failure that the public body is meant to address.

Fiscal Responsibility Framework

Information for Fiscal Policy Paper.

20. For the purposes of compilation of the Fiscal Policy Paper referred to in section 2A(1)(*b*) of the Act, a Public body shall, by the last day of December in each year commencing with the year 2015, prepare and submit to the Minister—

(*a*) information on—

(i) the performance of the public body for the current financial year and the three previous financial years, and the projected performance of the public body for the three ensuing financial years; and

(ii) any change in policy direction of the public body that has been made during the current financial year;

(*b*) an explanation for—

(i) any substantial deviations from the budgets for the current financial year and the previous two financial years; and

(ii) the policy changes and the estimated fiscal and economic effects of these changes.