

Public Bodies Management and Accountability Act Amendment 2010

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Act 30 of 2001| Act 12 of 2003

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First Schedule

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1. Short title.

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

PART I. Preliminary

2. Interpretation.

2. In this Act unless the context otherwise requires-

"board" means the board of directors of a public body;

"constituent documents" means the documents of incorporation of a government company;

"government company" means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, by the holding of shares, is in a position to direct the policy of that company;

"public body" means a statutory body or authority or any government company;

"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.

PART II. Corporate Governance and Accountability

2A. Estimates of revenue and expenditure.

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

(a) the corporate plans of all public bodies, including their total budgetary requirements; and

(b) such other data and information pertaining to public bodies as the Minister may require.

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

3. Accounts of public bodies.

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

4. Acquisition of shares by public bodies.

4. (1) No shares shall be acquired by a public body without prior consultation with the Minister.

(2) Subsection (1) shall not apply to a public body the primary business of which involves the acquisition of shares.

(3) Except in such circumstances as may be prescribed, any shares acquired by a public body shall be vested in the Accountant-General in accordance with section 7(2) of the Crown Property (Vesting) Act.

(4) Notwithstanding the provisions of section 24 of the Companies Act (which relate to filing of accounts by private companies) a public body which is a government company shall be obliged to file accounts in accordance with that section.

(5) 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.

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

5. Exercise of borrowing powers.

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

(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, the terms and conditions under which such borrowing will be effected.

(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.

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

6. Corporate governance.

6. Every board shall-

(a) take such steps as are necessary-

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

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

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

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

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

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

7. Corporate plan.

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

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

(3) The board shall-

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

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

(i) the responsible Minister; and

(ii) the Minister for his endorsement

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

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

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

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

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

7A. Power to request information.

7A. The Financial Secretary may, from time to time, request the board of a public body to supply information on its financial operations, and the board shall comply with the request within such time as may be specified in the request by the Financial Secretary.

8. Audit committees.

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 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.

9. Duties of audit committees.

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

(a) advise the board on-

(i) practices and procedures which will promote productivity and the quality and volume of service;

(ii) the extent to which the objects of the public body are being achieved; and

(iii) the adequacy, efficiency and effectiveness of the accounting and internal control structure and systems of the public body;

(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.

10. 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. Consultation with Auditor-General.

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.

12. Special audit or examination of public body.

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

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

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

(b) such other examination of the public body as, in the responsible Minister's opinion, is necessary in the public interest.

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

13. Appointment of auditors.

13. (1) The Minister may, by order, prescribe the criteria for appointment of an auditor for a public body.

(2) 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.

(3) 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.

(4) 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.

(5) An auditor of a public body who becomes disqualified by virtue of subsection (4) shall resign forthwith upon becoming aware of the disqualification.

14. General duties of auditors.

14. (1) In auditing the accounts of a public body, an auditor shall ascertain whether in his opinion

(a) the provisions of this Act, the relevant enactment or any other enactment relating to the administration of money and property of the public body have been complied with;

(b) the rules and procedures framed and applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue and other receipts of the public body; and

(c) essential records have been made and proper practices have been observed in the compilation of the accounts.

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

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

(a) has reasonable grounds for believing that the public body's circumstances have changed, are changing or are likely to change in such a manner as to-

(i) materially and adversely affect the viability of that body; or

(ii) otherwise impair its ability to carry out its functions;

(b) becomes aware of an occurrence or transaction that affects or might reasonably be expected to affect the public body as described in paragraph (a);

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

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

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

15. 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 require by this Act or any relevant enactment.

16. 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 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. Duty of care.

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

(a) act honestly and in good faith in the best interests of the public body; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.

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

(a) shall disclose the nature of his interest at a board meeting;

(b) shall not take part in any deliberation of the board with respect to that matter.

18. Dissent of absent director.

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

(a) causes written notice of his dissent to be appended to the minutes of the meeting; or

(b) delivers such notice to the registered office of the body or sends such notice by registered mail addressed to that office.

19. Reliance on statement.

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

20. Levels of emoluments.

20. In the exercise of any powers conferred on a board by a relevant enactment or any constituent documents in relation to emoluments payable to the staff of a public body, the board shall act in accordance with such guidelines as are issued from time to time by the Minister responsible for the public service.

PART IV. General

21. Restriction on formation of new companies.

21. (1) A public body 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.

22. Contents of annual reports.

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.

(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. Other reports by public bodies.

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

24. Regulations.

24. (1) The Minister may make regulations generally for giving effect to the provisions and purposes of this Act.

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

25. Enforcement.

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 4 (acquisition of shares and payment of dividends);
- (b) section 5 (exercise of borrowing powers);
- (c) section 6 (corporate governance);
- (d) section 14 (general duties of auditors);
- (e) section 15 (failure to furnish information to auditor);
- (f) section 20 (levels of emoluments);
- (g) section 21 (restriction on formation of new companies),

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) If in the opinion of the Attorney General there is a contravention of section 7, 7A, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto.

26. Amendment of Schedules.

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

27. Effect of Act on relevant enactments.

27. If any provisions of a relevant enactment are inconsistent with any provisions of this Act in relation to matters provided for in sections 3 to 5, 11, 13 to 15, 20 and 21 to 23, the provisions of this Act shall prevail.

28. Repeal of sections 46 and 47 of Financial Administration and Audit Act.

28. Sections 46 and 47 of the Financial Administration and Audit Act are repealed.

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 after 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.

SECOND SCHEDULE(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 abridged, 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-

- (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.