

JAMAICA

No. 20--2011

I assent,

[L.S.]

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

16th day of September, 2011

AN ACT to Amend the Public Bodies Management and
Accountability Act.

The date notified by the Minister
[bringing the Act into operation]

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 Public Bodies Management and
Accountability (Amendment) Act, 2011, and shall be read and
construed as one with the Public Bodies Management and
Accountability Act (hereinafter referred to as the principal Act)
and all amendments thereto.

Short title,
construction
and
commence-
ment.

(2) This Act shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Amendment of section 2 of principal Act.

2. Section 2 of the principal Act is amended—

- (a) in the definition of “government company”, by deleting the words “by the holding of shares”;
- (b) in the definition of “public body”, by inserting immediately after the words “government company” the words “, but does not include an executive agency designated under the *Executive Agencies Act*”;
- (c) by inserting the following definitions in the appropriate alphabetical sequence—

“financial distribution” means a distribution made from profits, surpluses or equity;

“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;

“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.

Amendment of section 2A of principal Act.

3. Section 2A of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

“ (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—

- (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, as the Minister considers appropriate.”.

4. The principal Act is amended by inserting next after section 2A the following as section 2B—

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

Insertion of new section 2B in principal Act.

5.—(1) Section 3 of the principal Act is repealed and the following substituted therefor—

“ Accounts of public bodies. 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.

Repeal and replacement of section 3 of principal Act.

(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.”.

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 Section 4 of the principal Act is repealed and the following substituted therefor—

“ Share-holdings and distributions. 4.—(1) In acquiring any shares, a public body shall act in accordance with regulations made under section 24.

Repeal and replacement of section 4 of principal Act.

(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 self-financed statutory body or authority to the Consolidated Fund shall be in accordance with regulations made under section 24.

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

(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.”.

Amendment of section 5 of principal Act.

7. Section 5 of the principal Act is amended by inserting next after subsection (4) the following as subsection (5)—

“ (5) The Minister shall not 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*.”.

8. The principal Act is amended by inserting next after section 5, the following as sections 5A to 5C—

Insertion of new sections 5A, 5B, and 5C in principal Act.

“ Payments to public body.

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

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 Minister and to the responsible Minister.

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

Powers of
Minister in
cases of
default.

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

- (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 principal 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.”.

Amendment of section 6 of principal Act.

9. Section 6 of the principal Act is amended by renumbering the section as subsection (1) and inserting the following as subsection (2)—

“ (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.”.

Insertion of new 6A in principal Act.

10. The principal Act is amended by inserting next after section 6 the following as section 6A—

“Public bodies and the Government’s procurement rules. **6A.** Every public body shall adhere to the Government’s procurement rules and guidelines made under any enactment.”.

Amendment of section 8 of principal Act.

11. Section 8 of the principal Act is amended—

- (a) in the marginal note by inserting next after the word “committees”, the words “and auditors” ;
- (b) by inserting next after subsection (4) the following subsections—

“ (5) The auditor of a public body shall be entitled to—

- (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; and

- (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.

(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.

(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.”.

12.—(1) Section 9 of the principal Act is amended in subsection 1(a), by inserting next after sub-paragraph (iii) the following as sub-paragraph (iv)—

Amendment of
section 9
of principal
Act.

“ (iv) the independence of the auditors auditing the public body;”.

13. Section 13 of the principal Act is amended—

Amendment of
section 13
of principal
Act.

- (a) in subsection (1), by deleting the words “The Minister” and substituting therefor the words “Subject to subsection (2), the Minister”;
- (b) by renumbering subsections (2) to (5) as subsections (3) to (6);
- (c) by inserting next after subsection (1) the following as subsection (2)—

“ (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*”;

- (d) delete from subsection (6), as renumbered, the numeral “(4)” and substitute therefor the word and numerals “(1)” “or (5)”.

Insertion of new sections 13A, 13B and 13C in principal Act.

14. The principal Act is amended by inserting next after section 13 the following as sections 13A, 13B and 13C—

“Audit of accounts of public body by Auditor General .

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.

(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 the 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.

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.

Auditor General to be informed re termination of auditor's services.

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
- (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.”.

Amendment of section 14 of principal Act.

15. Subsection (1) of section 14 of the principal Act is amended by inserting next after the words “shall ascertain” the words “and thereafter shall report to the board.”.

Amendment of section 19 of principal Act.

16. Section 19 of the principal Act is amended by—

- (a) re-numbering the section as subsection (1);
- (b) inserting immediately after the words “by him” the words, “including any director or officer who has provided such report in his professional capacity”; and
- (c) inserting the following as subsections (2) and (3)—

“ (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.”.

“ Insertion of new sections 19A, 19B and 19C in principal Act.

17. The principal Act is amended by inserting next after section 19 the following as sections 19A, 19B and 19C—

“Indemnification of directors, etc.

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, had reasonable grounds for believing that his conduct was lawful.

Indemnity for derivative action.

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

- (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.

Right to indemnity.

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 idemnity—

- (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.”.

Amendment of section 20 of principal Act.

18. Section 20 of the principal Act is deleted and the following substituted therefor—

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

- (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.”.

19. Section 23 of the principal Act is deleted and the following substituted therefor—

Amendment of section 23 of principal Act.

“ 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.”.

20. The principal Act is amended by inserting next after section 23 the following as section 23A—

Amendment of section 23A of principal Act.

“ 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—

- (a) a list of any subsidiaries 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.”.

21. Section 24 of the principal Act is amended in subsection (1) by—

Amendment of section 24 of principal Act.

- (a) inserting next after the words “this Act” the words “and without prejudice to the generality of the foregoing, may in particular—
 - (i) specify criteria for the creation of public bodies;

- (ii) specify criteria for the evaluation of the viability of public bodies, using cost benefit analysis;
- (iii) in respect of loans guaranteed to public bodies under the *Approved Organizations and Authorities Loans (Government Guarantee) Act*, prescribe a scale for commissions which may be imposed under section 3(2) of that Act, based on specified economic criteria and risk analysis, so as to ensure that such commissions are commensurate with the potential cost and risk, to the Government, of such guarantees;
- (iv) specify criteria for the appointment of boards of public bodies;
- (v) specify criteria for the making of financial distributions to the Consolidated Fund by public bodies”.

Amendment of section 25 of principal Act.

22.—(1) Section 25 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

“ (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) Subsection (4) of section 25 is repealed.

23. The principal Act is amended by deleting section 27 and substituting therefor the following—

Repeal and replacement of section 27 of principal Act.

“Supremacy of this Act in relation to public bodies.

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.”.

24. The Second Schedule to the principal Act is amended by inserting next after Part III the following as Part IV—

Amendment of Second Schedule to principal Act.

“ 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.”.

25. *The Approved Organizations and Authorities Loans (Government Guarantee) Act* is amended—

(a) in section 2 by—

(i) deleting from subsection (2) the full stop appearing at the end of paragraph (b) and substituting therefor a semi-colon; and

(ii) inserting the following as paragraph (c)—

“ (c) in respect of a public body, unless the guarantee is consistent with the fiscal targets for total debt specified in section 48C(1)(b) of the *Financial Administration and Audit Act*.”; and

(iii) by inserting next after subsection (2) the following subsection—

“ (3) In this section and section 3, “public body” has the meaning assigned to it by section 2 of the *Public Bodies Management and Accountability Act*.”;

(b) in section 3, by deleting subsection (2) and substituting therefor the following—

“ (2) Where any loan is guaranteed under this Act—

(a) after the 30th of December, 1969, the borrower shall pay to the Government as a commission such sum not exceeding one percent of the amount borrowed, as the Minister may determine; or

(b) after the date of commencement of the *Public Bodies Management and Accountability (Amendment) Act, 2011*,

if the borrower is a public body, the borrower shall pay to the Government as a commission such sum as may be prescribed by regulations made under section 24 of the *Public Bodies Management and Accountability Act*.”.

Passed in the House of Representatives this 7th day of June, 2011 with four (4) amendments.

DELROY H. CHUCK
Speaker.

Passed in the Senate this 24th day of June, 2011 with seven (7) amendments.

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

On the 20th day of August, 2011 the House of Representatives agreed to the amendments made by the Senate.

MARISA DALRYMPLE PHILIBERT
Speaker.

This printed impression has been carefully compared by me with the Act 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 Act.

Clerk to the Houses of Parliament.

