

15/2/15

A BILL

ENTITLED

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

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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.—(1) This Act may be cited as the Public Bodies Management and Accountability (Amendment) Act, 2015, 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) Subject to subsection (3), this Act shall come into operation on the 1st day of April, 2017.

(3) Sections 2, 5 and 21 of this Act shall come into operation on the day of the publication of the notification of assent in the *Gazette*.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended—

- (a) in the definition of “public investment” by deleting the words “any public entity on its own or by one or more public entities” and substituting the words “any public entity within the specified public sector on its own or by one or more such public entities”; and
- (b) by inserting the following definitions in the appropriate alphabetical sequence—

“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 sector” means the Government and all public bodies;”;

“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;”.

Amendment
of section 2A
of principal
Act.

3. Section 2A(2) of the principal Act is amended—

- (a) in paragraph (a), by inserting immediately after the word “approval” the words “, except that the estimates of a public body that is not part of the specified public sector shall be tabled for information only”; and

- (b) in paragraph (b), by deleting the words “the Minister shall”.
4. Section 4 of the principal Act is amended—
- Amendment
of section 4
of principal
Act.
- (a) in subsection (4), by deleting the words “a self-financed statutory body or authority” and substituting the words “a public body”; and
- (b) in subsection (5), by inserting immediately after the words “public body” the words “within the specified public sector”.
5. Section 5 of the principal Act is amended, in subsection (4), by deleting the words “or (4)”.
- Amendment
of section 5
of principal
Act.
6. Section 5A(1) of the principal Act is amended by inserting immediately after the words “any public body” the words “within the specified public sector”.
- Amendment
of section
5A of principal
Act.
7. Section 5B(2) of the principal Act is amended by deleting the word “principal”.
- Amendment
of section 5B
of principal
Act.
8. Section 5C of the principal Act is amended—
- Amendment
of section 5C
of principal
Act.
- (a) in subsection (1), by inserting immediately after the words “by a public body” the words “within the specified public sector”;
- (b) in subsection (2), by deleting the word “principal”.
9. Section 6 of the principal Act is amended in subsection (1)(e) by deleting the words “approved by the responsible Minister and the Minister.” and substituting the following—
- Amendment
of section 6
of principal
Act.
- “approved—
- (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.”.
10. Section 6A of the principal Act is amended by inserting immediately after the words “public body” the words “within the specified public sector”.
- Amendment
of section 6A
of principal
Act.

Amendment
of section 6B
of principal
Act.

11. Section 6B(10) of the principal Act is amended by deleting the definitions of “public sector” and “specified public sector”.

Amendment
of section 6C
of principal
Act.

12. Section 6C of the principal Act is amended by inserting immediately after the words “public entity” the words “, except a public body that is not part of the specified public sector,”.

Amendment
of section 7
of principal
Act.

13. Section 7 of the principal Act is amended—

- (a) in subsection (3), by inserting immediately after the words “The board” the words “of a public body that is within the specified public sector”;
- (b) in subsection (4), by inserting immediately after the words “the board” the words “of a public body that is within the specified public sector”;
- (c) in subsection (5), by deleting the words “a board” and substituting the words “the board of a public body that is within the specified public sector”;
- (d) in subsection (6), by deleting the words “The Minister” and substituting the words “In the case of a public body that is within the specified public sector, the Minister”; and
- (e) by inserting the following next after subsection (6) as subsection (7)—

“ (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.”.

Amendment
of section 12
of principal
Act.

14. Section 12(1) of the principal Act is amended by deleting the words “in any particular case” and substituting the words “in the case of a public body within the specified public sector”.

15. The principal Act is amended by inserting the following next after section 12 as section 12A—

Insertion of
new sec-
tion 12A into
principal Act.

“ Minister
may direct
special
audit.

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.

(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.”.

Amendment
of section 14
of principal
Act.

16. Section 14(3) of the principal Act is amended by deleting the full stop at the end of paragraph (c) and substituting the words “; or”, and by inserting the following next after paragraph (c) as paragraph (d)—

“(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.”.

Amendment
of section 20
of principal
Act.

17. Section 20 of the principal Act is amended by renumbering the section as subsection (1) and by inserting next after the renumbered subsection (1) the following as subsection (2)—

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

Insertion of
new section
20A in
principal Act.

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

“ Public
Bodies
Human
Resources
Committee.

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.”.

19. Section 21(1) of the principal Act is amended by inserting immediately after the words “public body” the words “within the specified public sector”.

Amendment of section 21 of principal Act.

20. The principal Act is amended by inserting next after section 21 the following as section 21A—

Insertion of new section 21A in principal Act.

“ New company formed by public body not part of specified public sector.

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

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

- (a) by deleting paragraph (iii); and
- (b) by re-lettering paragraphs (i), (ii), (iv) and (v) as paragraphs (a), (b), (c) and (d), respectively.

22. The principal Act is amended by inserting next after the Second Schedule the following as the Third Schedule—

“ **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.
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 to the Human Resources Committee.”

23. Section 6B(5), (6)(b), (7) and (9) and section 6C of the principal Act shall be deemed not to have come into operation on the 1st day of April, 2014 and shall come into operation on the 1st day of April, 2017. Deferred
commencement
provision.

Passed in the House of Representatives this 27th day of January, 2015 with three (3) amendments.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 5th day of February, 2015 with one (1) amendment.

FLOYD E. MORRIS
President.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to make a number of amendments to the Public Bodies Management and Accountability Act (the "Act") so as to differentiate between the application of various provisions of the Act to public bodies that are within the specified public sector and public bodies that are not part of the specified public sector (that is, public bodies that carry out functions of a commercial nature).

The Bill also seeks to defer the coming into operation of certain amendments made to section 6B(5), (6)(b), (7) and (9) and section 6C of the Act by the Public Bodies Management and Accountability (Amendment) Act, 2014. It is proposed that those amendments come into operation on April 1, 2017.

PETER D. PHILLIPS, Ph.D., M.P.
Minister of Finance and Planning

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A BILL

ENTITLED

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

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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**SECTION 2 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

2. In this Act unless the context otherwise requires—

“board” means the board of directors of a public body;

...

...

...

“public investment” means non-recurrent expenditure on goods, works and services carried out by any public entity on its own or by one or more 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;

**SECTION 2A OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

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—

- (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 the public body; and**
- (c) other data and information pertaining to those public bodies, as the Minister considers appropriate.**

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

- (a) cause those Estimates to be tabled in the House of Representatives and the Senate for approval.**
- (b) the Minister shall 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; and**

**SECTION 4 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

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

(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.

**SECTION 5 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

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.

(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.

**SECTIONS 5A, 5B AND 5C OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

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.

...

...

...

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.

...

...

...

(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-

...

...

...

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.

SECTIONS 6 and 6A OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

6.—(1) 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.

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

SECTIONS 6B AND 6C OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

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

...
(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.

“public sector” means the Government and all public bodies;

“specified public sector” means the public sector not including any public body certified by the Auditor-General, in the prescribed manner, as primarily carrying out functions that are of a commercial nature that satisfy such criteria as may be prescribed.

6C.—Every public entity shall adhere to the Public Investment Management System.”.

SECTION 7 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

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.

**SECTIONS 12 AND 14 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

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.

14.—(1) In auditing the accounts of a public body, an auditor shall ascertain and thereafter shall report to the Aboard 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 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.

(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 any regulations made hereunder.

**SECTION 20 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND**

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.

SECTIONS 21 AND 24 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

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.

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—

- (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.

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