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## FINANCIAL ADMINISTRATION AND AUDIT BILL, 2010

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## **FINANCIAL ADMINISTRATION AND AUDIT BILL, 2010**

### **A BILL FOR AN ACT TO PROVIDE FOR THE ADMINISTRATION, CONTROL AND AUDIT OF THE PUBLIC FINANCES; TO REPEAL THE FINANCIAL ADMINISTRATION AND AUDIT ACT, CHAPTER 359 AND FOR CONNECTED MATTERS**

**Enacted by the Parliament of The Bahamas**

#### **PART I – PRELIMINARY**

##### **1. Short title and commencement.**

- (1) This Act may be cited as the Financial Administration and Audit Act, 2010.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

##### **2. Interpretation.**

- (1) In this Act, unless the context otherwise requires —
  - “**Appropriation Act**” means any Act appropriating revenue in relation to a financial year for such services as are specified in such Act;
  - “**Consolidated Fund**” means the Consolidated Fund established by Article 128 of the Constitution;
  - “**Director of Internal Audit**” means the person appointed by the Minister pursuant to section 35;
  - “**Financial Secretary**” means the principal financial officer of the Government;
  - “**Government**” means the Government of The Bahamas;

“**Minister**” means the Minister of Finance;

“**officer**” means any person employed in the service of the Government;

“**principal accounting officer**” means any officer designated as such under section 22 and charged with or deemed to be charged with the duty of controlling expenditure and or collecting revenue, and accounting for such expenditure and revenue, under this Act or under any other Act;

“**public moneys**” includes —

- (a) revenue;
- (b) any trust or other moneys held, whether temporarily or otherwise, by an officer in his official capacity either alone or jointly with any other person whether an officer or not;

“**public sector entity**” includes public corporations, including those not financed from the Consolidated Fund, companies owned by the Government or in which Government has a majority or significant holding of more than twenty-five per cent and all other bodies for which Government is responsible;

“**public stores**” means property of any description, other than money, belonging to or in possession or under the control of the Government;

“**revenue**” means all tolls, taxes, imposts, rates, duties, fees, penalties, forfeitures, rents and dues, proceeds of sale, proceeds of all loans raised, and all other receipts of the Government from whatever sources arising over which Parliament has the power of appropriation.

(2) References in this Act —

- (a) to a department shall include references to a Ministry; and
- (b) to “hardcopy” shall include references to data held in electronic form, including ledgers and cash books held electronically in a database file.

## **PART II – CONSOLIDATED FUND**

### **3. Functions of the Minister.**

The Minister shall, subject to the Constitution and this Act, have the management of the Consolidated Fund and the supervision, control and direction of matters relating to the financial affairs of The Bahamas which are not assigned to any other Ministry by any other law.

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#### **4. Duties of Financial Secretary and senior officials.**

- (1) The primary responsibility of the Financial Secretary shall be the care and management of the Government's financial resources, including but not limited to —
  - (a) the development and management of the budget;
  - (b) providing support and advice on the most appropriate fiscal, tax and economic policies; and
  - (c) ensuring that the policies referred to in (b) maximise sustainable economic growth and development having regard to equity and social policies.
- (2) The Financial Secretary shall, in discharging the responsibilities referred to in subsection (1), report to the Minister.
- (3) All senior officials of Government with direct responsibilities in the areas specified in subsection (1), including but not limited to —
  - (a) senior officials of the Ministry of Finance;
  - (b) the Treasurer;
  - (c) the Comptroller of Customs; and
  - (d) the Controller of Inland Revenue,shall report to the Financial Secretary.
- (4) The primary responsibility of the Treasurer shall be accounting for all payments and revenues on behalf of the Government and for keeping a set of accounts for Government in accordance with international accounting standards, including all account re-conciliations.

#### **5. Consolidated Fund Account.**

- (1) Money at the credit of the Consolidated Fund shall be kept in an account styled the “Treasurer for the Consolidated Fund” (hereafter in this Act referred to as “the Consolidated Fund Account”) with such bank or banks as the Minister may from time to time direct.
- (2) The Minister may authorise the temporary investment of sums at the credit of the Consolidated Fund at call or subject to notice not exceeding twelve months.

#### **6. Consolidated Fund to be kept in two accounts.**

The Treasurer shall continue to keep, in respect of the Consolidated Fund, two separate accounts —

- (a) an account called “the Consolidated Fund Current Account” in which shall continue to be recorded all deposits into and

withdrawals from the Consolidated Fund for application towards defraying current expenditure; and

- (b) an account called "the Consolidated Fund Capital Account" in which shall continue to be recorded all deposits into and withdrawals from the Consolidated Fund for application towards defraying capital expenditure.

**7. Reserve Fund.**

The Minister may establish a Reserve Fund by issues from the Consolidated Fund of such sums as the House of Assembly may by resolution approve for the purpose and the said sums may be invested in such securities as the Minister may approve.

**8. Revenues to be paid into Consolidated Fund Account.**

- (1) Subject to subsections (2) and (3), principal accounting officers shall cause the gross revenue collected by their departments to be paid into the Consolidated Fund Account at such times and in such manner as the Minister may direct.
- (2) Where the Minister so directs, principal accounting officers may deduct such sums as may be required for drawbacks, repayments or discounts before paying the gross revenues of their departments into the Consolidated Fund Account.
- (3) Revenues, where collected in offices in foreign territories, may be utilised to defray the expenses of such offices.

**9. Money received in error.**

- (1) All moneys received in error into the Consolidated Fund shall, where possible, be refunded by the Treasurer before the end of the financial year in which they were received and shall not be accounted as revenue.
- (2) The repayment of sums received in error in previous years, or of any moneys refundable under any law, shall be a charge on the Consolidated Fund.

**10. Contingency Fund.**

- (1) Pursuant to Article 133 of the Constitution, there is hereby continued a Contingency Fund consisting of issues from the Consolidated Fund not exceeding in the aggregate five per cent of recurrent expenditure, or such greater sum as the House of Assembly may by resolution approve, to defray unforeseen expenditure.
- (2) The Minister may authorise expenditure to be met by an advance from the Contingency Fund whenever the Minister is satisfied that —

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- (a) certain expenditure is likely to be incurred in a financial year upon a service —
    - (i) thereby causing an excess on the sum provided for that service by the Appropriation Act for that year; or
    - (ii) which, being in respect of a new service, was not provided for by the Appropriation Act relating to that year; and
  - (b) the circumstances are such that the expenditure cannot without injury to the public interest be postponed until adequate provision is made by Parliament.
- (3) Supplementary estimates of expenditure to be met by advances from the Contingency Fund shall be submitted for the approval of the House of Assembly as soon as possible.
  - (4) Issues from the Consolidated Fund may be made and the sums advanced from the Contingency Fund repaid out of the said issues upon the approval by the House of Assembly of the supplementary estimates and pending the provision for the relevant services under appropriate heads by an Appropriation Act.
  - (5) The balance of the Contingency Fund, unless the Minister otherwise determines, shall not be paid into the Consolidated Fund at the close of each financial year.

**11. Authorising of withdrawals from the Consolidated Fund.**

- (1) The Treasurer may, by direct order, requisition the withdrawal of funds for services from the Consolidated Fund Account in sums that do not in the aggregate exceed the respective sums authorised for those services.
- (2) A direct order by the Treasurer shall be in such form as the Minister may direct and shall be the necessary authority to the bank designated in the order to issue from the Consolidated Fund Account the amount specified to be paid to such other bank account as the order may direct and the Treasurer shall forward a copy of each direct order issued to a bank to the Auditor-General.

**12. Issues from Consolidated Fund Account Account to be paid into bank account.**

All moneys withdrawn from the Consolidated Fund Account shall be paid into such other bank account or accounts as the Minister may direct.

**13. Bank returns.**

Statements showing payments into and issues from the Consolidated Fund Account shall be rendered by every bank at which such an account is maintained

to the Treasurer and to the Auditor-General at such intervals and in such form as the Minister may direct.

**14. Issue of moneys before promulgation of Appropriation Act.**

- (1) The Minister may issue warrants for the withdrawal of such sums from the Consolidated Fund as the House of Assembly may by resolution approve for the carrying on of the Government for any period not exceeding four months between the end of a financial year and the coming into force of the Act authorising the appropriation for the ensuing financial year.
- (2) The Minister may, where the Governor-General dissolves Parliament before provision has been made for carrying on the Government, authorise by warrant the withdrawal from the Consolidated Fund of such sums as he may consider necessary for the public services until the expiry of a period of three months from the date on which the House of Assembly first meets after that dissolution.
- (3) Subject to the provisions of Article 132 of the Constitution —
  - (a) all sums withdrawn pursuant to warrants issued under subsections (1) and (2) shall be deemed to have been issued in anticipation of grants of Parliament in an Appropriation Act for the financial year in which the sums were issued;
  - (b) upon the commencement of an Appropriation Act referred to in paragraph (a), a warrant issued under subsections (1) and (2) shall cease to have effect and issues made under it shall be —
    - (i) deemed to have been made for the purposes of such Appropriation Act; and
    - (ii) accounted for in accordance with the provisions of such warrant.

**15. Treasury deposits.**

- (1) There shall be continued a Deposits Fund into which shall, pending repayment or application to the purposes for which they were deposited, be paid —
  - (a) the balances held on deposit in respect of any funds established by law or otherwise or any other deposits not being either trust funds or the balances of the Consolidated Fund;
  - (b) notwithstanding the provisions of paragraph (a), such amounts not exceeding the sums not required for early withdrawal as the Minister authorises to be issued from the Consolidated Fund.
- (2) The Minister may authorise the making of advances from the Deposits Fund not exceeding in the aggregate five million dollars or such greater sum as the House of Assembly may by resolution direct —



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- (a) on behalf of, and recoverable from, other Governments;
  - (b) to officers, where such advances are in the public interest and are made in accordance with the regulations made under section 25;
  - (c) subject to subsection 3, to any Ministry for the purpose of facilitating the purchase of public stores;
  - (d) to or on account of trusts or other funds administered by the Government or to, or on behalf of, statutory corporations, institutions, or individuals, where such advances are in the public interest and are recoverable within a period not exceeding twelve months after the close of the financial year in which such advances were made.
- (3) The Minister shall ensure that advances made to a Ministry pursuant to paragraph (c) of subsection (2) shall not exceed in the aggregate the sum of five hundred thousand dollars or such greater sum as the House of Assembly may by resolution direct.
  - (4) The Minister shall, where any advance or overpayment or any portion of such made to any officer pursuant to paragraph (b) of subsection (2) has not been repaid, accounted for or recovered in accordance with the prescribed regulations, recover such advance, overpayment or portion —
    - (a) out of any moneys, including salaries, payable by the Government to the officer to whom the advance, overpayment or portion was made; or
    - (b) where the officer is deceased, out of any moneys payable by the Government to the estate of that officer.

**16. Deposits Fund Account.**

Money at the credit of the Deposits Fund shall continue to be kept in an account styled “the Deposits Fund Account” with such bank or banks as the Minister may from time to time direct.

**17. Advances to the Government.**

- (1) The Minister may, for the purpose of meeting the current requirements of the Consolidated Fund, borrow by means of advances from any bank, insurance company or money lending institution money to an amount not exceeding fifteen per centum of the average ordinary revenue of the Government or fifteen per centum of the estimated ordinary revenue of the Government, whichever is the less.
- (2) The principal and interest of all such advances referred to in subsection (1) shall be charged on and payable out of the Consolidated Fund.
- (3) For the purposes of this section, the following words and phrases have the following definitions —

**“ordinary revenue”** means all income or contributions to the revenue of the Government, not being loans, capital grants or other receipts of a capital nature, as are classified for the financial year under the Headings Tax and Non-Tax Revenue —

- (a) in respect of estimated ordinary revenue, in the annual Estimates of Revenue; or
- (b) in respect of average ordinary revenue, in the respective audited accounts laid before Parliament;

**“average ordinary revenue”** means the annual average of the ordinary revenue for which audited accounts of revenue and expenditure of the Government have been laid before Parliament over the last three years preceding the year for whose current requirements of the Consolidated Fund the advance is required;

**“estimated ordinary revenue”** means the ordinary revenue as estimated in the annual Estimates of Revenue laid before Parliament for the year for whose current requirements of the Consolidated Fund the advance is required.

**18. Loans and guarantees.**

Subject to section 17 and to the provisions of the Public Treasury Bills Act (*Ch. 361*), no loans shall be raised by the Government and no guarantees involving a financial liability shall be binding upon the Government unless entered into with the prior approval, signified by resolution, of the House of Assembly.

**19. Audit of Government pension plans.**

There shall be undertaken every three years an audit by independent external auditors of the liabilities of the various Government pension plans.

### **PART III – ADMINISTRATION**

**20. Timing and contents of budget communication.**

- (1) Subject to subsection (2), the annual budget communication together with the annual forecast of revenues and estimates of expenditure mandated by Article 129 of the Constitution shall be laid before the House of Assembly on the last Wednesday of May.
- (2) The annual budget communication shall include —
  - (a) fiscal policy objectives for the period of the budget and the following two years;
  - (b) macroeconomic developments, including the forecasts and assumptions for three years ahead used to prepare the budget and a

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- description of any significant differences from the forecasts and assumptions used for the previous budget;
- (c) estimates of revenues and expenditures for the period of the budget and the following two years;
  - (d) a discussion of the risks that may have a material impact on the economy and the public finances;
  - (e) a description of the intended effect of the budget plan on the country;
  - (f) if a deficit is anticipated in the recurrent budget, the details of the plan to eliminate it;
  - (g) information on contingent liabilities; and
  - (h) the potential impact of a variation in the macroeconomic forecast.
- (3) The estimates of revenues and expenditures shall be referred to Committees of Parliament for review.

**21. Laying of mid-term budget statement.**

- (1) The Government shall lay before the House of Assembly each year in February a mid-term budget statement setting out any changes required to be made to the current annual budget.
- (2) The mid-term budget statement may contain amendments to the annual Appropriation Act and annual forecast of revenue to increase selected expenditures and or revenues or to reduce selected expenditures and or revenues.
- (3) Subject to subsections (4) and (5), the amendments referred to in subsection (2) shall take the form of supplementary estimates of expenditure and or revenue.
- (4) Supplementary estimates of expenditure shall, where they result in a net increase in overall expenditure, indicate the source of financing of the net increase.
- (5) Supplementary estimates of revenue shall, where they result in a net reduction in overall revenue, state the means by which the shortfall shall be met.

**22. Designation of principal accounting officers.**

- (1) The Minister shall from time to time, after consultation with the Financial Secretary, designate in writing —
  - (a) the appointment of officers as principal accounting officers; and
  - (b) where necessary, the revocation of the appointment of officers as principal accounting officers.

- (2) Subject to subsection (3), an officer designated as the principal accounting officer in respect of any head or part thereof in the forecast of revenue and estimates of expenditure laid before the House of Assembly shall be deemed to be the officer responsible for the collection of revenues and its payment into the Consolidated Fund Account and or for the control of such expenditure, as the case may be.
- (3) The principal accounting officer shall be responsible for the financial administration of the agency specified in a designation and shall be accountable to the Minister for —
  - (a) the assessment and collection of, and accounting for, all moneys lawfully receivable by the agency;
  - (b) ensuring that the purpose for which an appropriation is approved by Parliament is accomplished;
  - (c) processing any claim required to be processed in relation to an appropriation;
  - (d) the custody and proper use of all materials, equipment or other public property administered by him;
  - (e) the administration of any fund for which he has been assigned responsibility; and
  - (f) the discharge of any other financial responsibility assigned to him under this or any other enactment.
- (4) A principal accounting officer shall, where in relation to an area for which he has responsibility a difference of opinion with the Minister responsible arises, inform the Minister responsible in writing of his view and of the reasons for it and shall recommend a consultation with the Minister of Finance.
- (5) A principal accounting officer who has complied with subsection (4) shall, where the Minister responsible gives contrary directions in writing that are lawful, comply with such directions and inform the Minister of Finance in writing.
- (6) A principal accounting officer shall, once the directions referred to in subsection (5) have been carried out, forward copies of all correspondence arising out of subsections (4) and (5) to the Auditor-General.
- (7) Where a difference of opinion under subsection (4) arises between the Financial Secretary and the Minister, the matter shall be referred to the Prime Minister.

### **23. Control of expenditure and revenue.**

- (1) Save as may otherwise be provided by this or any other Act, no expenditure involving a charge on the Consolidated Fund shall be incurred

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and no sums due to the Consolidated Fund shall be remitted without the general or specific authority of the Minister.

- (2) The Minister may, in his discretion, limit or suspend any expenditure charged under any Appropriation Act, or authorised by any resolution of the House of Assembly or by virtue of the provisions of section 10, if in the opinion of the Minister the exigencies of the financial situation render such limitation or suspension necessary.

**24. Banking accounts.**

No person shall open an account in respect of public moneys with any bank without the written approval of the Minister and no bank shall permit an overdraft on any such account unless such overdraft has been authorised in writing by the Minister.

**25. Power of Minister to make regulations.**

The Minister may make regulations providing for —

- (a) the collection, receipt, custody, issue expenditure, due accounting for, care and management, of all public moneys and public stores;
- (b) the keeping of records, examination, inspection and checking of all receipts and payments, and the keeping of all necessary books and accounts;
- (c) the forms of accounts, books, records and other documents required pursuant to this Act;
- (d) the purchase, safe custody, issue, sale or other disposal or writing off, of public stores and the proper accounting for and stock-taking of such public stores;
- (e) the procedure to be followed in the procurement of all supplies, works or services required by the Government and for the establishment of a Board to be responsible for the awarding of contracts for such supplies, works or services;
- (f) the making of advances to officers and the rates and limits of, and rates of interest payable on, such advances;
- (g) the preparation of estimates;
- (h) any other purpose necessary for the efficient administration of the financial business of the Government.

**26. Removals from General Ledger.**

The Minister may present to Parliament a resolution dealing with the removal from the General Ledger of dormant book accounts of the Government and the writing off, in whole or in part, of any debt or obligation due to the Government or any claim made by the Government.

**27. Surcharge by Financial Secretary.**

- (1) The Financial Secretary may make a surcharge against any person in the relevant amount, or such lesser amount as the Financial Secretary may determine, if —
- (a) it appears to the Financial Secretary upon a report by the Treasurer that such person who is or was an officer falls within one or more of the following sub-paragraphs —
    - (i) has failed to collect any moneys owing to the Government for the collection of which such person is or was at the time of such employment responsible;
    - (ii) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched;
    - (iii) is or was responsible for any deficiency in, or for the loss or destruction of, any public money, public stores or other Government property; and
  - (b) within a period specified by the Financial Secretary, such person has not furnished an explanation satisfactory to the Financial Secretary with regard to his failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be.
- (2) For the purposes of subsection (1), the relevant amount shall be the amount not collected or such improper payment, payment not duly vouched, deficiency, loss or the value of the property destroyed, as the case may be.
- (3) No surcharge shall be made under this section after the expiration of a period of seven years from the date of the failure to collect, improper payment, payment not duly vouched, deficiency, loss or destruction, as the case may be.

**28. Notification of surcharge.**

- (1) The Financial Secretary shall cause the Auditor-General and the principal accounting officer of the department concerned to be notified of any surcharge made under section 27.
- (2) The principal accounting officer, on being notified pursuant to subsection (1), shall notify the person surcharged and, subject to the provisions of sections 29 and 30, recover the amount surcharged from such person.

**29. Withdrawal of surcharge.**

The Financial Secretary may at any time withdraw a surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that

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such surcharge should not have been made and, in any such event, the Financial Secretary shall notify the Auditor-General and the principal accounting officer of the department concerned of such withdrawal.

**30. Remedy of person aggrieved by surcharge.**

- (1) Any person dissatisfied with a surcharge made against him under section 28 may appeal in writing to the appropriate authority within a period of twenty-eight days after the receipt of the notice of the surcharge.
- (2) The appropriate authority may, after such further investigation, if any, as it may consider desirable, make such order confirming the surcharge or directing that the appellant be released wholly or in part from the surcharge as may appear just and reasonable.
- (3) The Financial Secretary shall act in accordance with the order of the appropriate authority.
- (4) For the purposes of this section, the “appropriate authority” means —
  - (a) where the appellant was appointed under Article 117 of the Constitution, the Judicial and Legal Service Commission;
  - (b) where the appellant was appointed under Article 119 of the Constitution, the Police Service Commission; and
  - (c) in every other case, the Public Service Commission.

**31. Recovery of surcharge.**

- (1) Subject to sections 29 and 30, the amount of any surcharge made under section 28 may be sued for and recovered as a debt due to the Government by action at the suit of the Attorney-General in the Supreme Court, or in a magistrate's court, as may be appropriate having regard to the amount of the surcharge.
- (2) Notwithstanding the power of recovery pursuant to subsection (1), the Financial Secretary may direct that the amount of any such surcharge which may be due from an officer shall be recovered by monthly deductions from the salary of such officer in such amounts, not exceeding one-sixth of the amount payable to such officer in respect of salary, as the Financial Secretary shall authorise.

**PART IV – ACCOUNTS AND AUDIT**

**32. Statements of account to be sent to Auditor-General.**

- (1) The Treasurer shall, in respect of each financial year and within a period of three months after the close of such financial year, prepare, sign and

- transmit to the Financial Secretary the statements of account specified in subsection (4).
- (2) The Financial Secretary shall transmit the said statements of account, together with his report thereon, to the Auditor-General.
  - (3) The statements referred to in subsection (1) are —
    - (a) an abstract account of receipts and payments on the Consolidated Fund showing, separately, the Consolidated Fund Current Account and the Consolidated Fund Capital Account, including the balance at the beginning and end of the financial year;
    - (b) an abstract of receipts and payments on the Deposits Fund, including the balance at the beginning and end of the financial year;
    - (c) detailed statements of revenue and expenditure arranged according to sub-heads on the Consolidated Fund Account showing the excess or saving on each sub-head and the net excess or saving on each head;
    - (d) a statement of the current assets and liabilities of the Government at the end of the financial year;
    - (e) a statement of fixed assets of the Government acquired during the financial year;
    - (f) a statement of the public debt showing the several amounts of the loans issued and of their respective sinking funds;
    - (g) a statement of investments of the Government at the end of the financial year showing the market value at that date;
    - (h) a summary of advances and deposits at the end of the financial year;
    - (i) a statement of all loans made by the Government outstanding at the end of the financial year;
    - (j) a statement of contingent liabilities of the Government in respect of guarantees given for moneys borrowed by statutory corporations or any other person.
  - (4) Each principal accounting officer shall within a period of two months after the close of the financial year present a written report to the Financial Secretary and the Financial Secretary shall submit such report to the Auditor-General.
  - (5) The Treasurer shall for the purposes of this Act —
    - (a) prepare and submit the statements referred to in subsection (3) to the Financial Secretary periodically as may be determined by the Minister;
    - (b) report to the Minister, Financial Secretary and the Auditor-General any apparent lapses in financial administration; and



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- (c) prepare and issue directions for the improvement of financial administration to the Financial Secretary.
  - (6) The Financial Secretary shall advise the Minister with respect to any directions issued by the Treasurer pursuant to paragraph (c) of subsection (5).

**33. Statements to be laid before House of Assembly.**

- (1) The statements of account specified in section 32 when examined and certified by the Auditor-General under section 42 shall be laid by the Minister on the table of the House of Assembly on or before December 31 next following the end of the financial year or, if the House of Assembly is not sitting, on any of the first fifteen days after the House next sits.
- (2) The statements referred to in subsection (1) shall be accompanied by a report by the Financial Secretary confirming that financial administration in relation to expenditure and revenue has been conducted in accordance with this Act and that there are no adverse or exceptional matters that need to be brought to the attention of the Minister of Finance.

**34. Public sector entities to submit annual reports and accounts.**

Every public sector entity shall, within a period of six months after the close of its financial year, present an annual report and audited accounts together with unaudited quarterly financial reports to the Minister of Finance for tabling in Parliament.

**35. Establishment of internal audit department in Ministry of Finance.**

- (1) There is established for the purposes of enhancing efficiency, accountability and transparency in the management of Government resources an internal audit department within the Ministry of Finance.
- (2) The duties and functions of the internal audit department are to —
  - (a) provide assurance to Permanent Secretaries and or Head of Departments in Government ministries and departments on the adequacy of various systems and procedures employed to achieve sound financial management and economic, efficient and effective utilisation of Government resources;
  - (b) provide Permanent Secretaries and or Head of Departments with professional and impartial opinions on systems of risk management, control and governance and to furnish them with analyses, practical advice, recommendations and pertinent and timely comments concerning activities reviewed; and
  - (c) monitor compliance with recommendations arising out of audit reports.

- (3) Officers assigned to the internal audit department shall have free unrestricted access to records, property and personnel as may be necessary for the performance of their duties.
- (4) The internal audit department shall be headed by a Director of Internal Audit, appointed by the Minister, who shall report to the Financial Secretary;
- (5) The Director of Internal Audit shall —
  - (a) send copies of audit reports to the Financial Secretary, Permanent Secretaries and or Head of Departments; and
  - (b) report any apparent lapses in financial administration to the Minister, the Financial Secretary and the Auditor-General.
- (6) The Financial Secretary shall, as he determines to be necessary, direct the establishment of internal audit units within Ministries and departments.
- (7) Internal audit units established pursuant to subsection (6) shall —
  - (a) form part of the internal audit department;
  - (b) report to the Director of Internal Audit;
  - (c) compile audit reports in a format provided by the Director of Internal Audit; and
  - (d) submit audit reports to the principal accounting officer and to the Director of Internal Audit.

**36. Public departments, etc.**

- (1) The Auditor-General shall carry out examinations into the economy, efficiency and effectiveness with which any department, authority or other body to which this section applies, has used its resources in discharging its functions.
- (2) Subsection (1) shall not be construed as entitling the Auditor-General to question the merits of the policy objectives of any department, authority or body in respect of which an examination is carried out.
- (3) Subject to subsections (4) and (5), this section applies to —
  - (a) any department in respect of which appropriation accounts are required to be prepared under paragraph (1) of Article 130 of the Constitution;
  - (b) any company the majority of whose issued shares are held by or on behalf of the Government and any public corporation or unincorporated body established for a public purpose by or in accordance with a written law; and
  - (c) any authority or body which does not fall within section 37 and whose accounts are required to be examined and certified by, or are open to the inspection of, the Auditor-General by virtue of any

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agreement made, whether before or after the coming into operation of this section, between that authority or body and a Minister of the Crown.

- (4) Any examination under this section by the Auditor-General in respect of an authority or body falling within paragraphs (b) or (c) of subsection (3) shall, where the functions of the Auditor-General are by the relevant law or agreement restricted to particular activities of the authority or body, be correspondingly restricted to such particular activities.
- (5) Subject to subsection (6), no examination shall be carried out under this section by the Auditor-General in respect of an authority or body falling within paragraph (c) of subsection (3) unless the carrying out of such an examination is included, expressly or by implication, in the functions exercisable by him under the agreement in question.
- (6) Subject to subsection (7), the Minister shall use his best endeavours to secure from a relevant authority or body such rights as will enable examinations under this section to be carried out in respect of that authority or body in any case where —
  - (a) an agreement was made by a Minister before the coming into force of this section and the agreement does not expressly or by implication allow such an examination; or
  - (b) a Minister makes an agreement after the coming into force of this section for the exercise by the Auditor-General in respect of the relevant authority or body any of the functions as are mentioned in paragraph (c) of subsection (3).
- (7) Subsection (6) shall not oblige a Minister to seek to obtain any rights except at the request of the Auditor-General and the obligations of a Minister under that subsection do not apply to any organisation which is the subject of an Order under section 3 of the International Organisations (Immunities and Privileges) Act (*Ch. 14*).
- (8) In this section —
  - (a) the following words and phrases have the following definitions —
    - “authority” includes any person holding a public office;
    - “Minister” or “Minister of the Crown” includes any department falling within paragraph (a) of subsection (3) and includes any Ministry;
    - “policy” in relation to a department includes any policy of the Government so far as relating to the functions of that department; and
  - (b) references to an agreement made by a Minister include references to conditions imposed by him in pursuance of any statutory power

in that behalf, whether in connection with the provision of financial assistance or otherwise.

**37. Other bodies mainly supported by public funds.**

- (1) The Auditor-General may, where he has reasonable cause to believe that any authority or body to which this section applies has in any of its financial years received more than half its income from public funds, carry out an examination into the economy, efficiency and effectiveness with which it has in that year used its resources in discharging its functions.
- (2) Subsection (1) shall not be construed as entitling the Auditor-General to question the merits of the policy objectives of any authority or body in respect of which an examination is carried out.
- (3) The Auditor-General shall, in determining for the purposes of subsection (1) whether the income of an authority or body is such as to bring it within that subsection, consult that authority or body and the Treasurer.
- (4) This section applies to any authority or body appointed, or whose members are required to be appointed, by or on behalf of the Government.
- (5) Subject to subsection (6), for the purposes of this section money is received from public funds if it is paid —
  - (a) by a Ministry or Department of Government out of moneys provided by Parliament; or
  - (b) by an authority or body which itself falls within subsection (1) including an authority or body falling within that subsection by virtue of this paragraph.
- (6) There shall be disregarded in any determination made under subsection (5) any money paid as consideration for the acquisition of property or the supply of goods or services, or as remuneration, expenses, pensions, allowances or similar benefits for or in respect of a person as the holder of an office.
- (7) In this section, “income” includes capital receipts and “authority” has the same meaning as in section 36.

**38. Further duties of Auditor-General.**

- (1) Subject to section 39, the Auditor-General shall satisfy himself that —
  - (a) all reasonable precautions have been taken to safeguard the collection of public moneys and all related laws, directions and instructions have been duly observed;

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- (b) all issues and payments are made in accordance with proper authority and all payments are properly chargeable and supported by sufficient vouchers or proof of payment;
  - (c) all public moneys expended or charged to an appropriation account are applied to the purpose or purposes for which the grants made by the House of Assembly are intended to provide and the expenditure conforms to the authority which governs it.
- (2) The Auditor-General shall forthwith bring to the notice of the Minister any irregularity, loss or damage which at any time appears to him to have occurred and which does not appear to him to have been reported to the Minister, including the occurrence of —
- (a) any irregularity in the collection, custody or expenditure of public moneys or in accounting for the same;
  - (b) any irregularity in the receipt, custody, issue, sale, transfer or delivery of any public stores or in accounting for the same; or
  - (c) any loss of or damage to Government property.

**39. Discretionary powers of Auditor-General.**

The Auditor-General may, in his discretion —

- (a) make a test audit in any particular case but he shall state in his annual report the cases in which he has made test audits;
- (b) after satisfying himself that the vouchers relating to any sum have been examined and certified as correct by the accounting department, and after having had regard to the character of the departmental examination, admit and allow the sum to which the vouchers so certified relate without further examination;
- (c) in the examination of any account, admit and allow in cases where it appears to him to be reasonable and expedient vouchers for any moneys expressed therein although such vouchers are not stamped according to law;
- (d) at any time consult with the auditors of any statutory corporation regarding its financial affairs and, if not satisfied with the result of such consultation, report to the Minister the nature of his dissatisfaction;
- (e) audit all accounts on a current basis in order to expedite the finalisation of his audit at the end of the financial year; and
- (f) initiate audits without prior notification.

**40. Auditor-General may dispense with vouchers.**

The Auditor-General may, where a voucher has been lost or destroyed or where an existing voucher is defective in any respect, dispense with the production of a

voucher or accept a defective voucher if he is satisfied with the explanation given by the officer responsible and with any other evidence of the transaction.

**41. Auditor-General to have access to books, etc.**

- (1) The Auditor-General, or any person authorised by him, shall be entitled for the purpose of the examination of any accounts at all reasonable times to —
  - (a) have access to all books, records, vouchers, documents, returns, cash, stamps, securities, stores, or other Government property, in the custody of any officer;
  - (b) require production to him of any books, accounts, vouchers or papers, under the control of any officer relating to or in any way concerning the public accounts and to keep such books, accounts, vouchers and papers for such time as he may require them;
  - (c) call upon any officer for any explanation and information he may require in order to enable him to discharge his duty;
  - (d) raise any audit query addressed to the appropriate principal accounting officer, and copied to the Financial Secretary and Treasurer, and require the principal accounting officer to respond in writing within seven working days of receipt of the communication;
  - (e) require any department concerned to furnish him from time to time or at regular periods with accounts of the transactions of such department up to such date as he may specify;
  - (f) without payment of any fee cause a search to be made in, and extracts to be taken from, any book, document or record in any department;
  - (g) summon and examine upon oath, declaration or affirmation, whenever necessary for the due performance and exercise of powers vested in him, all persons whom he thinks fit to examine respecting the receipt or expenditure of money, the receipt or issue of any stores, or all other matters and things, to which this Act applies;
  - (h) lay before the Attorney-General a case in writing as to any question regarding the interpretation of any Act or regulation concerning the powers of the Auditor-General, or the discharge of his duties, and to require from the Attorney-General a written opinion on such case.
- (2) Any person summoned under the provisions of paragraph (g) of subsection (1) —
  - (a) who is not an officer, shall be entitled to payment for his attendance as if he were a witness attending a legal proceeding in obedience to a summons issued by the Supreme Court;

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- (b) who without reasonable excuse makes default in obeying such summons, shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars or to a term of imprisonment not exceeding three months.

**42. Power of Auditor-General to administer oaths, etc.**

The Auditor-General may, in the exercise of his duties under section 41, administer oaths, declarations or affirmations.

**43. Auditor-General to certify statements and accounts.**

- (1) The Auditor-General shall —
  - (a) examine and certify, in accordance with the outcome of his examinations, the several statements and accounts which are required to be submitted to him in accordance with this Act;
  - (b) submit his reports on the said statements and accounts without undue delay —
    - (i) to the Speaker of the House of Assembly; or
    - (ii) if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker.
- (2) The Speaker or Deputy Speaker, as the case may be, shall cause the said statements and accounts to be laid before the House of Assembly without undue delay.

**44. Power of Minister to call for external audits.**

The Minister may in his discretion instruct independent external auditors to undertake, as directed by the Minister, audits of any public body.

**45. Meaning of financial year.**

For the purpose of paragraph (7) of Article 130 of the Constitution, “financial year” means any period of twelve months beginning on 1<sup>st</sup> July in any year.

**46. Repeal of Chapter 359.**

The Financial Administration and Audit Act (*Ch. 359*) is repealed.

### OBJECTS AND REASONS

The purpose of the amendment is to clarify and detail requirements for the annual and mid-term budget communications and to enhance the regulatory functions of the Ministry of Finance.

Clause 1 provides for the Minister to appoint a date for the amendment to come into force.

Clause 2 amends section 2 of the principal Act to provide for the definition of additional key words and phrases.

Clause 3 creates a new section 3A to provide for the duties of the Financial Secretary and senior officials.

Clause 4 repeals and replaces section 7 of the principal Act and replaces references to principal receivers of revenue with principal accounting officers.

Clause 5 amends section 9 of the principal Act to vary the sums that may be issued and transferred from the Consolidated Fund to the Contingency Fund.

Clause 6 repeals and replaces section 10 of the principal Act and provides for the Treasurer to issue standing orders for the withdrawal of funds for services from the Consolidated Fund.

Clause 7 amends section 14 of the principal Act to empower the Minister to recover advances and overpayments made to persons from any moneys due to such persons by the Government.

Clause 8 creates a new section 17A to provide for the audit of Government pension plans by independent external auditors.

Clause 9 repeals and replaces section 18 of the principal Act to provide for the timing and contents of the annual budget communication, the laying of a mid-term budget statement and the designation and duties of principal accounting officers.

Clause 10 amends section 19 of the principal Act to limit the value of contracts entered into by Family Island Administrators.

Clause 11 inserts section 21A into the principal Act to empower the Minister to present a resolution to Parliament for the removal from the General Ledger of dormant book accounts of the Government.

Clause 12 amends section 22 of the principal Act to increase from three to seven years the period within which the Financial Secretary may impose a surcharge.

Clauses 13 and 14 amend sections 23 and 24 respectively of the principal Act to replace the role and functions of the accounting officer with that of the principal accounting officer.

Clause 15 amends section 27 of the principal Act to provide for written reports to be



made by principal accounting officers and for the preparation of statements, reports and directions by the Treasurer.

Clause 16 repeals and replaces section 28 of the principal Act to clarify and expand the statements to be laid before the House of Assembly, to provide for public sector entities to submit annual reports and for the establishment of an internal audit section.

Clause 17 amends section 34 of the principal Act to empower the Auditor-General to raise audit queries addressed to principal accounting officers.

Clause 18 inserts new sections 37A and 37B into the principal Act to, respectively, empower the Auditor-General to audit accounts on a current basis and to initiate audits without prior notification and the Minister to call for external independent audits of any public body.

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**FINANCIAL ADMINISTRATION AND AUDIT (AMENDMENT) BILL,  
2013**

**Arrangement of Sections**

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