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THE PUBLIC FINANCE AND AUDIT LAW (23 OF 1985)

(1997 Revision)

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PUBLIC FINANCE AND AUDIT LAW

(1997 Revision)

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PUBLIC FINANCE AND AUDIT LAW

(1997 Revision)

Part I-Introductory

1. This Law may be cited as the Public Finance and Audit Law (1997 Revision). Short title

2. In this Law- Definitions

“Accountant General” means the Accountant General of the Government;

“accounting officer” means -

- (a) any public officer who is entrusted with -
 - (i) the collection, receipt, custody, issue or payment of public moneys;
 - (ii) the receipt, custody, issue, sale, transfer or disposal of, or the accounting for, any stamps, securities, stores or any other public property; or
 - (iii) any monetary or financial responsibilities connected with or arising from his official duties; and
- (b) the head of the Government department or office in which any such public officer is employed;

“Appropriation Bill” and “Appropriation Law” mean a Bill or Law, as the case may be, which provides for appropriation from the revenue in respect of the approved estimates of expenditure on the services of the Government for a financial year;

“approved estimates of expenditure” means the estimates of expenditure deemed to be approved under section 7;

“Auditor-General” means the Auditor-General appointed under section 33;

“controlling officer”, in relation to a head or sub-head, means the officer designated as controlling officer of that head or subhead under section 13;

“expenditure” includes expenditure on the services of the Government required to be met under any law;

“Finance Committee” means the Finance Committee of the Legislative Assembly established under the Standing Orders of the Legislative Assembly;

“head” means a head of expenditure;

“imprest” means a sum of money given to a public officer to enable him to make payments and disbursements for official purposes without prior charge to an expenditure vote;

“public moneys” means -

- (a) the revenue of the Government;
- (b) any moneys which are accounted for in whole or in part in the books or records of account of the Accountant General; and
- (c) any other moneys which the Financial Secretary, with the concurrence of the Finance Committee, shall declare in writing to be public moneys for the purpose of this Law;

“public officer” means any person so defined in section 50(1) of the Constitution;

“public property” means any assets of any description other than moneys belonging to, in the 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 and all other receipts of the Government from whatever sources arising, over which the Legislative Assembly has the power of appropriation, including the proceeds of all loans raised;

“Secretary of State” means Her Majesty’s Principal Secretary of State for Foreign and Commonwealth Affairs;

“sub-head” means a sub-head of expenditure; and

“Supplementary Appropriation Bill” and “Supplementary Appropriation Law” mean a Bill or Law, as the case may be, which provides for appropriation from revenue in supplementation of the appropriation already made by an Appropriation Law.

Application to statutory
authorities

3. (1) The Governor may, by order, declare that all or any provisions of this Law shall apply to a statutory authority specified in the order.

(2) An order made under subsection (1) may provide that a provision of this Law that is to apply to a statutory authority by virtue of the order shall apply to that authority as amended as specified in the order.

(3) Where a provision of this Law that is applied to a statutory authority by virtue of an order made under subsection (1) is inconsistent with a provision of any other law applying to that authority, the provision of that other law ceases to have effect in so far as it is inconsistent with the provision of this Law as applied to the authority.

(4) In this section-

“statutory authority” means a body, whether or not incorporated, established by a law.

4. (1) Except where otherwise provided by or under this or any other law any moneys raised or received for the purposes of the Government shall form part of revenue. Revenue

(2) Any refund or drawback may be made from revenue in accordance with regulations made under section 12.

(3) The reference in subsection (1) to moneys raised or received for the purposes of the Government does not include moneys held on trust.

5. No expenditure shall be charged on revenue except as provided by or under this or any other law. Charges on revenue

Part II-The Estimates of Revenue and Expenditure and Appropriation

6. (1) The Financial Secretary shall cause to be prepared in each financial year estimates of the revenue and expenditure of the Government for the next following financial year, and shall cause such estimates to be laid before the Legislative Assembly before or as soon as practicable after the commencement of the financial year to which they relate. Annual estimates

(2) Subject to subsection (3), the estimates of revenue and expenditure shall be in such form as the Financial Secretary may, from time to time, direct.

(3) The estimates of expenditure shall-

- (a) classify expenditure under heads and sub-heads with the ambit of each head described;
- (b) in respect of each head, show the estimated total expenditure, the provision sought in respect of each sub-head, the establishment of posts, if any, and the limit, if any, of the commitments which may

be entered into in respect of expenditure which is not annually recurrent; and

- (c) specify the controlling officer so designated by the Financial Secretary in respect of each head and sub-head under section 13.

(4) Where there is a requirement under any law that expenditure be met from revenue, provision for such expenditure shall be included in the estimates of expenditure for the purposes of this Part, but, without prejudice to the validity or effect of any such requirement.

Approval of estimates of expenditure and appropriation

7. (1) The heads contained in the estimates of expenditure for a financial year shall be included in an Appropriation Bill which shall be introduced into the Legislative Assembly at the same time as the estimates.

(2) Upon the enactment of the Appropriation Law the estimates of expenditure for the financial year to which the Law relates shall be deemed to be approved to the extent that they are provided for in the Law and shall have effect from the first day of such financial year.

(3) Expenditure for the financial year on the services of the Government shall, subject to this Law, be arranged in accordance with the heads and sub-heads and be limited by the provision in each sub-head shown in the estimates of expenditure as approved or as may subsequently be changed from time to time in accordance with section 9.

Authorisation of expenditure in advance of appropriation

8. (1) The Legislative Assembly may, in advance of an Appropriation Law, by resolution, authorise expenditure for the services of the Government in respect of a financial year to be charged on revenue, in accordance with this Law and subject to such limitation and conditions as may be specified in the resolution.

(2) Expenditure charged on revenue pursuant to a resolution under this section shall be arranged in accordance with the heads and sub-heads shown in the estimates of expenditure laid under section 6, and this Law shall, for the purposes of this subsection and subject to such conditions and limitations as may be specified in the resolution, apply to such estimates as though they were the approved estimates of expenditure.

(3) Where the Legislative Assembly is dissolved before provision has been made for carrying on the services of the Government, the Financial Secretary may, by appropriation warrant, authorise the payment out of revenue of such sums as he may consider necessary for those services until the expiry of three months from the date on which the Legislative Assembly next meets following that dissolution.

(4) Expenditure charged on revenue pursuant to a resolution or warrant under this section shall be subsumed by the amounts respectively provided in the Appropriation Law upon the same coming into operation.

9. (1) Subject to this section, no changes shall be made to the approved estimates of expenditure except with the approval of the Finance Committee upon a proposal of the Financial Secretary.

Changes to approved estimates of expenditure

(2) Without limiting the generality of subsection (1) such changes may provide for-

- (a) the creation of new heads or sub-heads;
- (b) supplementary provision in approved or new subheads;
- (c) variations in the establishments of posts; and
- (d) increases in the limit to the commitments which may be entered into in respect of expenditure which is not annually recurrent.

(3) The Finance Committee may delegate to the Financial Secretary the power to approve changes subject to such conditions, exceptions and limitations as are specified in the delegation.

(4) The Financial Secretary, where a delegation by the Finance Committee under subsection (3) so provides, and subject to such conditions, exceptions and limitations as are specified in the delegation, may further delegate his power to approve changes to any public officer.

(5) A delegation to any public office under subsection (4) shall be subject to such further conditions, exceptions and limitations as the Financial Secretary may specify.

(6) Nothing in subsection (1) shall be construed as limiting or affecting -

- (a) the power of the Governor to make any proposal, or to allow or direct any proposal to be made, to the Legislative Assembly, the object or effect of which is to require a change to the approved estimates of expenditure; or
- (b) a requirement under any law that expenditure be met from revenue.

(7) The Financial Secretary shall cause such changes to be made to the approved estimates of expenditure as are necessary in respect of any -

- (a) approval given under subsection (1), (3) or (4);
- (b) expenditure pursuant to a proposal referred to in subsection (6)(a); or

(c) requirement referred to in subsection (6)(b) not otherwise provided for by approval under this section.

(8) The Financial Secretary shall, at the end of each quarter of the financial year or as soon as practicable thereafter, report to the Finance Committee changes made to the approved estimates of expenditure in that quarter upon approval by him or by any public officer pursuant to a delegation under subsection (3) or (4) as the case may be.

(9) The Finance Committee shall, as soon as may be, table in the Legislative Assembly a summary of all changes to the approved estimates of expenditure made by or reported to them under this section.

(10) Without prejudice to section 10, expenditure in respect of which a change to the approved estimates is made under this section shall be charged on revenue notwithstanding that there has been no appropriation in respect thereof by an Appropriation Law.

Supplementary appropriation

10. If, at the close of account for any financial year, it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Law, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Assembly as soon as practicable after the close of the financial year to which the excess expenditure relates.

Part III-Control and Management

General powers and duties of Financial Secretary

11. The Financial Secretary shall, subject to this and any other law, have the management of the finances of the Government and the supervision, control and direction of all matters relating to the financial affairs of the Government.

Power to make regulations and give directions, etc.

12. (1) Without prejudice to any other provision of this Law, the Financial Secretary may make such administrative regulations and give such administrative directions and instructions not inconsistent with this Law as may appear to him to be necessary or expedient for the better carrying out of the provisions and purposes of this Law and for the safety, economy and advantage of public moneys and public property.

(2) Any regulations made or directions and instructions given by the Governor or by any person authorised by him, for the purposes similar to those in respect of which regulations, directions and instructions may be made or given under subsection (1), and which are in force on the 1st March, 1987 shall, insofar as they are not inconsistent with this Law, remain in force and shall be deemed for

all purposes to have been made or given under this section and to be liable to revocation or amendment hereunder.

13. (1) Estimates of expenditure laid before the Legislative Assembly shall designate the controlling officer in respect of each head and sub-head. Controlling officers

(2) Subject to section 15(5), a controlling officer shall be responsible and accountable for all expenditure from any head or sub-head for which he is the controlling officer, and for all public moneys and public property in respect of the Government department, office or service for which he is responsible.

14. Every controlling officer shall obey all regulations made and directions or instructions given by the Financial Secretary under section 12 and shall, if so required, account to the Financial Secretary for the performance of his duties as controlling officer. Controlling officers to obey regulations and directions, etc.

15. (1) Subject to any regulations made or directions or instructions given by the Financial Secretary under subsection (3), a controlling officer may, in accordance with this Law, incur expenditure and authorise expenditure to be incurred against any provision shown in any sub-head for which he is the controlling officer. Authority of controlling officers to incur expenditure

(2) No expenditure shall be incurred against any provision shown in any sub-head except by or under the authority of the controlling officer.

(3) The Financial Secretary may, in writing, reserve the whole or any part of any provision shown in any sub-head and for so long as such reservation remains in force no expenditure shall be incurred against the provision reserved.

(4) A controlling officer may, in respect of any sub-head for which he is the controlling officer, by allocation warrant signed by him or a public officer authorised generally or specifically by him, authorise any other controlling officer to incur expenditure or authorise expenditure to be incurred against any provision shown in that sub-head -

- (a) for any purpose within the ambit of that sub-head; and
- (b) in accordance with the terms of the allocation warrant.

(5) The controlling officer to whom an allocation warrant is issued under subsection (4) shall be responsible and accountable for any expenditure incurred under the warrant as if he were the controlling officer designated in respect thereof under section 13.

Further authority of
controlling officers in
respect of urgent
expenditure

16. (1) Where an urgent need has arisen for expenditure to be incurred which-
- (a) requires a change to the approved estimates of expenditure in respect of matters referred to in section 9(2)(b) or (d); and
 - (b) in the opinion of a controlling officer cannot be deferred until the necessary change is made in accordance with section 9 without serious detriment to the public interest,

the controlling officer may, on his personal responsibility, incur the expenditure in anticipation of such change.

(2) As soon as practicable after incurring expenditure under subsection (1) the controlling officer shall report the matter to the Financial Secretary for the purpose of having the necessary change made to the approved estimates of expenditure.

(3) Where the necessary change to the approved estimates of expenditure is not made in accordance with section 9, the expenditure incurred shall not be charged on revenue but shall remain the personal responsibility of the controlling officer who incurred the expenditure.

Part IV-Receipt, Payment and Custody of Public Moneys

Duties of Accountant
General

17. (1) The Accountant General shall be responsible for the compilation and supervision of the accounts of the Government, for the management of accounting operations and procedures and for ensuring that all regulations directions or instructions made or given under this Law relating thereto and in respect of the safe custody of public moneys and its accounting are complied with.

(2) Without prejudice to the generality of his duties under subsection (1) and the powers conferred on the Financial Secretary by section 12, the Accountant General shall -

- (a) ensure that adequate arrangements are made for bringing promptly and properly to account all public moneys received and paid by the Government;
- (b) pay such sums from public moneys as he is authorised to pay under this or any other law;
- (c) ensure, insofar as it practicable, that adequate arrangements are made for the safe custody of public moneys and public property; and
- (d) bring to the notice of the Financial Secretary and the Auditor-General, in writing, any material defect in departmental control of

revenue, expenditure, cash, stamps, securities, stores and other public property which may come to his notice and any persistent breaches of regulations, directions or instructions made or given under this Law.

(3) Subject to any other law, in the exercise of his duties the Accountant General shall be entitled to inspect all offices and shall have access to all records, books, vouchers, documents and receipts relating to public moneys and to all cash, stamps, securities, stores and any other public property in the possession of any public officer.

(4) The Accountant General may, in writing, delegate to any public officer any of the powers conferred upon him by subsection (3).

18. Any public officer responsible for the collection of moneys due to the Government shall collect such moneys promptly and in full unless authorised by the Accountant General or under any law to defer collection or to arrange collection by instalments.

Prompt collection of moneys

19. No public officer shall make any payment of public moneys unless he is authorised to do so -

Payment of public moneys

- (a) by warrant issued under section 8 (3), 20, 21, 22, 23 or 30 or by regulations, directions or instructions made or given under this Law; or
- (b) by any other law.

20. (1) Upon the coming into operation of an Appropriation Law, the Financial Secretary shall authorise the Accountant General by general warrant under his hand to pay from revenue such sums as may be required to meet expenditure in accordance with that law.

Payment of certain moneys to be authorised by warrant

(2) Upon the making by the Legislative Assembly of a resolution under section 8, the Financial Secretary shall authorise the Accountant General by vote on account warrant under his hand to pay from revenue such sums as may be required to meet expenditure in accordance with the resolution.

(3) Upon the making of a change to the approved estimate of expenditure in accordance with section 9, the Financial Secretary shall authorise the Accountant General by supplementary warrant under his hand to pay from revenue, in accordance with the change made, such sums as may be required to meet expenditure from any head in excess of the sum appropriated by the Appropriation Law for that head.

Recoverable advances 21. Subject to any other law, the Financial Secretary may, by advances warrant under his hand, authorise the Accountant General to pay from public moneys such sums as may be necessary for the purposes of making advances which are recoverable, and the amount recovered in each case shall be set off against the sum advanced.

Advances to meet urgent need for payment 22. (1) Subject to subsections (2) to (4), where the Financial Secretary is satisfied that due to exceptional circumstances an urgent need has arisen for payment -

- (a) to meet expenditure -
 - (i) for which no provision or insufficient provision is shown in the approved estimates of expenditure, whether or not such expenditure has been improperly incurred; or
 - (ii) not being expenditure referred to in subparagraph (i), which appears to the Financial Secretary to have been improperly incurred; and
- (b) which cannot be deferred without detriment to the public interest,

he may, by contingencies warrant under his hand, authorise the Accountant General to pay from public moneys an advance of moneys to meet that need.

(2) Without prejudice to section 32, a contingencies warrant issued under subsection (1) shall cease to have effect if-

- (a) being a warrant issued in respect of expenditure referred to in subsection (1)(a)(i), the necessary change is made to the approved estimates of expenditure; or
- (b) being a warrant issued in respect of expenditure referred to in subsection (1)(a)(ii), such expenditure is authorised by the Financial Secretary.

(3) Where, under subsection (2), a contingencies warrant ceases to have effect, the advance to which it relates shall be deemed to have been made for the purpose of a charge on revenue and shall be accounted for accordingly.

(4) A contingencies warrant issued under subsection (1) shall specify a controlling officer who shall be personally responsible for the advance to which such warrant relates, unless such advance is charged on revenue in accordance with this Law.

Imprests 23. (1) The Financial Secretary may, by imprest warrant under his hand, and subject to such conditions as he may specify, authorise the Accountant General to issue imprests from public moneys to public officers.

(2) Any public officer in receipt of an imprest shall be personally liable for such imprest in accordance with such conditions as the Accountant General may specify and shall retire the imprest when required to do so by the Accountant General.

(3) Where an imprest is not duly retired, the Accountant General may, notwithstanding any other law, deduct the amount or any part thereof from any moneys of any description, including salary, wages, pension or other emoluments payable, or which may become payable, by the Government to the public officer to whom the imprest was issued.

(4) Nothing in this section shall affect the right of the Government, to-

- (a) sue the person to whom the imprest was issued for the recovery of the amount of any imprest not duly retired, or any part thereof, as a civil debt due to the Government; or
- (b) sue any person for the recovery of any amount as a civil debt notwithstanding that a person may be personally liable for part or all of the amount under this section.

24. (1) Except where otherwise provided under any law or authorised by the Accountant General, any moneys raised or received by the Government, not being moneys raised or received for the purposes of the Government and not being a donation or grant referred to in section 25, shall be deposited with the Accountant General. Deposits

(2) Except where otherwise provided under any law or authorised by the Accountant General, any moneys deposited under subsection (1) (hereinafter in this section referred to as a deposit) shall not form part of revenue and shall not be applied in any way for the purposes of the Government, but shall in all other respects be received and accounted for and otherwise dealt with as public moneys.

(3) Notwithstanding anything in subsection (2), the Financial Secretary, in his discretion, may authorise the investment of any deposit in such manner as he may determine, and any interest or dividend received in respect of any deposit so invested shall form part of revenue.

(4) A deposit which is unclaimed for five years may be treated as moneys received for the purposes of the Government and, if so treated, shall form part of revenue.

(5) Where, under subsection (4), a deposit forms part of revenue any person entitled thereto may, within six years after the date on which the moneys become part of revenue, claim for a refund.

Donations and grants 25. (1) Without prejudice to any other law, any donation or grant of moneys received by any public officer in the course of his duties or by virtue of his being a public officer, not being public moneys and not being received pursuant to any other law, shall be reported to the Financial Secretary.

(2) Every donation or grant referred to in subsection (1) shall be accounted for and expended in accordance with such instructions as the Financial Secretary may give.

Banking 26. Except where otherwise provided under any law, no public officer in the course of his duties shall open an account or otherwise deposit any moneys at any bank or other financial institution without the authority in writing of the Financial Secretary or an officer authorised by him in writing for the purposes of this section.

Investment of moneys 27. (1) Subject to any law, the Financial Secretary, in his discretion, may authorise the investment of moneys forming part of revenue in such manner as he may determine.

(2) All investments made under this section together with any interest or other sums received therefrom shall form part of revenue.

(3) Subject to any law, all investments held by or on behalf of the Government at the 1st March, 1987 and forming part of revenue shall be deemed to have been made under this section.

Borrowing powers and loans 28. (1) Subject to subsection (2), the Government shall not borrow money except in accordance with a law.

(2) Notwithstanding any other law, the Financial Secretary may borrow by means of advances from the Crown Agents or from any bank, by means of a fluctuating overdraft or otherwise, such sums as may be required to meet day to day payments and any interest or service charges in respect of such sums shall be charged on revenue.

Guarantees 29. (1) No public officer shall give a guarantee involving any financial liability upon the Government unless such guarantee is given -

- (a) for the purposes of and in accordance with a law or a resolution of the Legislative Assembly; or
- (b) with the prior approval of the Finance Committee.

(2) No guarantee given in contravention of subsection (1) shall be binding on the Government.

30. (1) The Legislative Assembly may, by resolution, provide for the establishment of funds to which moneys appropriated for the purpose may be credited and from which moneys may, under the authority of a funds warrant issued by the Financial Secretary, be expended for the purposes for which the funds were established subject to such conditions, exceptions and limitations as may be specified in the resolution.

Establishment of funds

(2) Unless a law or a resolution made under subsection (1) otherwise provides, the earnings from interest or dividends on investments of funds established under this section shall not be retained for the purposes of such funds, but shall form part of revenue.

31. (1) The Legislative Assembly may, by resolution, approve the establishment of a suspense account (in this section referred to as a special suspense account) for the purposes of any commercial or industrial activity carried on by or on behalf of the Government and specified in the resolution, subject to such conditions and limitations as may be specified in the resolution.

Special suspense accounts

(2) Unless a resolution made under subsection (1) otherwise provides, any moneys in a special suspense account which, in the opinion of the Financial Secretary, are in excess of the amount reasonably required for the purposes of the account, shall not be retained therein but shall form part of revenue.

32. Every appropriation by the Legislative Assembly from revenue for the service of any financial year and every warrant issued under this Law shall lapse and cease to have effect at the close of that financial year.

Appropriations and warrants to lapse at close of financial year

Part V-Audit

33. (1) The Governor, with the prior approval of the Secretary of State, shall, in accordance with section 55B of the Constitution, appoint a person to be the Auditor-General.

Appointment of Auditor-General

(2) No person who is appointed as the Auditor-General shall, whilst he holds that office, hold any other office of emolument under the Crown in right of the Government.

Tenure of office of Auditor-General

34. (1) A person who is appointed as the Auditor-General shall hold that office in accordance with section 50B of the Constitution.

(2) Where the Auditor-General has been removed from office under section 55B of the Constitution, a full statement of the circumstances shall be made at the first opportunity to the Legislative Assembly.

Salary of Auditor-General

35. (1) The Governor shall specify in writing the rate of the salary of the Auditor-General, and thereafter the Governor may, from time to time, by order in writing, increase the rate with effect from such date as shall be specified in the order

(2) The Auditor-General shall be entitled to a salary at the rate from time to time specified under subsection (1).

(3) The salary payable to the Auditor-General by virtue of this section shall be charged on and paid out of revenue.

Auditor-General's employment as public officer

36. Subject to section 34(1), the Auditor-General shall be employed subject to such laws, Colonial Regulations, administrative rules and conditions of service as apply generally to public officers.

Filling of vacancy in office of Auditor-General

37. When a vacancy occurs in the office of Auditor-General for any reason the Governor, with the prior approval of the Secretary of State, shall appoint another person under section 33 to hold that office.

Acting appointment to office of Auditor-General

38. If, in the opinion of the Governor, the Auditor-General is unable to exercise his powers or perform the duties of his office during any period for any reason, the Governor shall appoint another person to act as the Auditor-General during that period.

Duties of Auditor-General

39. (1) The Auditor-General shall examine, inquire into and audit the accounts of all accounting officers in respect of public moneys, stamps, securities, stores and any other public property.

(2) The Auditor-General shall, so far as practicable, satisfy himself that -

(a) adequate directions and instructions have been given to ensure that due collection of public moneys and that the laws relating

thereto and such directions and instructions have been duly observed by the public officers concerned therewith;

- (b) all issues and payments of public moneys were made in accordance with proper authority;
- (c) all payments were properly chargeable and are supported by sufficient vouchers or proof of payment or otherwise properly accounted for;
- (d) the rules and procedures applied to the issue and payment of public moneys are sufficient to secure an effective control over expenditure and that such rules and procedures have been duly observed by the public officers concerned therewith;
- (e) any public moneys appropriated by the Legislative Assembly for a specified purpose and expended by a public officer have been expended in the due application of that purpose and with due regard to securing value for money and the avoidance of waste and extravagance and in accordance with the authority under which the appropriation was made; and
- (f) adequate rules and procedures have been made to ensure the proper receipt, custody, issue, sale, transfer and disposal of, or the accounting for, any stamps, securities, stores and other public property and that such rules and procedures have been duly observed by the public officers concerned therewith.

(3) The Auditor-General shall not be required to undertake any duty which is, in his opinion, incompatible with the duties imposed on him by this or any other law.

40. (1) In the performance of his duties and the exercise of his powers under this Law the Auditor-General may -

Powers of Auditor-General

- (a) authorise in writing any public officer on his behalf to conduct any inquiry, examination or audit and require such public officer to report thereon to him:
Provided that any such authority shall be subject to the concurrence of the head of the Government department or office in which the public officer is employed;
- (b) require any public officer to give such explanation, or to furnish such information, as the Auditor-General may think fit in order to enable the Auditor-General to discharge his duties;
- (c) without payment of any fee, cause search to be made in, and extracts to be taken from, any book, document or record in any Government department or office;
- (d) require any person whom he thinks fit to explain any matter relating to -

- (i) the receipt, expenditure or custody of public moneys;
- (ii) the receipt, custody, issue, sale, transfer or disposal of, or the accounting for, any stamps, securities, stores or other public property; or
- (iii) anything else which is, in the opinion of the Auditor-General, necessary for him to know for the due performance of his duties and the exercise of his powers under this Law; and

(e) report to the Attorney-General any matter which he thinks fit.

(2) In the performance of his duties and the exercise of his powers under this Law the Auditor-General and any public officer or other person authorised in writing by him shall have access to all records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other public property in the possession of any public officer.

(3) In the performance of his duties and the exercise of his powers under this Law the Auditor-General shall not be subject to the direction or control of any other person or authority.

Appointment of staff of Auditor-General.

41. (1) The Governor may appoint other public officers to assist the Auditor-General in the performance of his duties and the exercise of his powers under this Law.

(2) All members of the Auditor-General's staff shall be employed subject to such Colonial Regulations, administrative rules and conditions of service as apply generally to public officers.

(3) The Auditor-General may delegate any of his duties or powers under this Law, other than the certifying and reporting of accounts, to any public officer.

Submission of annual accounts by Accountant General to Auditor-General

42. The Accountant General shall, within the period of four months, or such longer period as the Governor may determine, after the close of each financial year, transmit to the Auditor-General -

- (a) a statement of the assets and liabilities of the Government;
- (b) an annual statement of the receipts and payments by the Government; and
- (c) such other statements as the Governor may, from time to time, specify.

Examination and audit of annual statements by Auditor-General and submission of report

43. (1) On receipt of the statements referred to in section 42, the Auditor-General -

- (a) shall examine and audit the statements; and
- (b) shall, within the period of seven months after the close of the financial year, or such longer period as the Governor may determine, prepare and submit to the person presiding at a sitting of the Legislative Assembly a report in respect of his examination and audit of the statements and on any matter relating to the performance of his duties and the exercise of his powers under this Law, together with -
 - (i) a copy of the statement of assets and liabilities of the Government, duly certified by him; and
 - (ii) a copy of the annual statement of the receipts and payments by the Government, duly certified by him.

(2) Within the period of three months, or such longer period as the Governor may determine, after the receipt of the report and certified statements from the Auditor-General under subsection (1), a copy of the report and certified statements, together with a copy of the report of the Public Accounts Committee of the Legislative Assembly shall be-

- (a) laid before the Legislative Assembly; and
- (b) submitted to the Secretary of State.

(3) Without prejudice to subsections (1) and (2) -

- (a) the Auditor-General may, at any time, submit to the person presiding at a sitting of the Legislative Assembly a special report on any matter incidental to the performance of his duties or the exercise of his powers under this Law; and
- (b) any such report shall be dealt with in accordance with subsection (2) as if it were a report submitted under subsection (1).

44. (1) The Auditor-General shall report to the person presiding at a sitting of the Legislative Assembly any matter which -

Auditor-General's report of serious irregularities.

- (a) constitutes, in the opinion of the Auditor-General, a serious irregularity in the accounting for -
 - (i) the receipt, expenditure or custody of public moneys; or
 - (ii) the receipt, issue, custody, sale, transfer or delivery of any stamps, securities, stores or any other public property; and
- (b) comes to his notice in the performance of his duties or the exercise of his powers under this Law.

(2) Any such report shall be dealt with in accordance with section 43(2) as if it were a report submitted under section 43(1).

Audit examination or inquiry into accounts of bodies corporate, etc., authorised by laws

45. (1) Where any law empowers the Auditor-General to audit, examine or inquire into the accounts of any person, body corporate or other body, the Auditor-General -

- (a) shall have in relation to such person, body corporate or other body, its members, officers and employees, the same discretion and powers as are conferred on him by sections 39 and 40 in relation to public moneys, stamps, securities, stores and any other public property; and
- (b) may authorise in writing any qualified accountant or any public officer to audit, examine or inquire into the records and accounts of such person, body corporate or other body and require the authorised accountant or public officer to report thereon to the Auditor-General in such manner as the Auditor-General may specify:

Provided that any such authority to a public officer shall be subject to the concurrence of the head of the Government department or office in which the public officer is employed.

(2) Any person, body corporate or other body whose accounts have been audited, examined or inquired into under subsection (1) may be charged such fee, if any, as may be determined under section 48(1).

Audit, examination or inquiry into accounts of persons, bodies corporate, etc., under Governor's authority

46. (1) Notwithstanding that he is not empowered by any law to audit, examine or inquire into the accounts of a person, body corporate or other body, the Auditor-General may audit, examine or inquire into the records and accounts of any person, body corporate or other body if -

- (a) he is authorised in writing to do so by the Governor in the public interest; and
- (b) in the opinion of the Auditor-General, such audit, examination or inquiry will not interfere with the due performance of his duties and the due exercise of his powers under this Law.

(2) Where the Auditor-General undertakes, under subsection (1), the audit, examination of, or inquiry into the records and accounts of any person, body corporate or other body, he -

- (a) shall have in relation to such person, body corporate or other body, its members, officers and employees the same discretion and powers as are conferred on him by sections 39 and 40 in relation to public moneys, stamps, securities, stores and any other public property; and
- (b) may authorise in writing any qualified accountant or any public officer to audit, examine or inquire into the records and accounts

of such person, body corporate or other body and require the authorised accountant or public officer to report thereon to the Auditor-General in such manner as the Auditor-General may determine:

Provided that any such authority to a public officer shall be subject to the concurrence of the head of the Government department or office in which the public officer is employed.

(3) Any person, body corporate or other body whose records and accounts have been audited, examined or inquired into under subsection (1) may be charged such fee, if any, as may be determined under section 48(1).

47. (1) Subject to any other law, where the Auditor-General has audited, examined or inquired into the accounts of any person, body corporate or other body under section 45 or 46 he shall -

Auditor-General's certification of accounts and report of accounts of bodies corporate, etc.

- (a) if he has audited the accounts of such person, body corporate or other body, submit to the Governor a statement of such accounts, duly certified by him; and
- (b) prepare such a report, if any, as he may think fit in respect of his audit, examination or inquiry into the accounts and submit such report, if any, to the Governor.

(2) If the Auditor-General so requests, any certified statement of accounts or report submitted to the Governor under subsection (1) shall be dealt with in accordance with section 43(2) as if it were a statement or report submitted under section 43(1).

48. (1) Subject to any other law, the fee, if any, charged for the audit, examination or inquiry into the accounts of any person, body corporate or other body undertaken by the Auditor-General under section 45 or 46 shall be-

Fees to be determined by Financial Secretary

- (a) determined by the Financial Secretary;
- (b) payable by such person, body corporate or other body; and
- (c) paid into revenue.

(2) Subject to any other law, the fee, if any, payable to an authorised person for the audit, examination or inquiry into the accounts of any person, body corporate or other body under section 45(1)(b) or 46(2)(b) shall be-

- (a) determined by the Financial Secretary; and
- (b) paid from revenue.

Part VI-Surcharge

Power to surcharge

49. (1) If, at any time, it appears to the Financial Secretary that any person who is or was employed as a public officer -

- (a) has failed to collect any moneys owing to the Government for the collection of which he is or was at the time of such employment responsible;
- (b) is or was at the time of such employment responsible for any improper payment of public moneys or for any payment of public moneys which is not duly vouched;
- (c) has improperly incurred expenditure at the time of such employment;
- (d) is or was at the time of such employment responsible for any deficiency in or loss or destruction of or damage to any public moneys, stamps, securities, stores or other public property; or
- (e) is or was at the time of such employment responsible for any loss or destruction of or damage to any property as a result of which the Government is liable for the cost of replacement or repair or for the payment of compensation,

and if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, expenditure improperly incurred, deficiency, loss, destruction or damage, as the case may be, the Financial Secretary may, without prejudice to any other law relating to the surcharge (however called) of a public officer, but subject to subsections (2) and (3), surcharge the person such sum as he may determine.

(2) Notwithstanding subsection (1), the Financial Secretary shall not surcharge a person under subsection (1) unless he is satisfied, in all the circumstances of the case including, without limiting the generality of the foregoing, the nature of any disciplinary proceedings which may have been or may be taken against such person, that it is fair and reasonable to do so.

(3) In determining the sum to be surcharged under subsection (1) -

- (a) the Financial Secretary shall take due account of the ability of the person surcharged to pay the surcharge without undue financial hardship; and
- (b) the sum of the surcharge shall not in any case exceed the amount of the moneys not collected, or of the improper payment, or the payment not duly vouched, or of the expenditure improperly incurred or of the deficiency, or the value of the loss, destruction or damage, or the cost of replacement, repair or compensation, as the case may be.

50. The Financial Secretary shall cause the person surcharged, the head of his department or office, the Accountant General and the Auditor-General to be notified in writing of the surcharge made under section 49 and shall at the same time cause the person surcharged to be notified in writing of his right to appeal under section 51.

Notification of surcharge
and right of appeal

51. (1) Any person aggrieved by any surcharge made against him under section 49 shall have the right to appeal to the Governor within a period of thirty days (or such longer period as the Governor, after consultation with the Financial Secretary, may allow) after the date on which he is notified of the surcharge.

Appeal against surcharge

(2) The Governor, in his discretion, after making or causing to be made such investigation as he may deem to be necessary, may confirm the surcharge or direct that the person surcharged be released wholly or in part from the surcharge as may appear to him to be fair and reasonable.

52. The Financial Secretary may, at any time, withdraw any surcharge in respect of which a satisfactory explanation is received or if it otherwise appears to him that no surcharge should have been made, and in any such event the Financial Secretary shall notify in writing the person concerned, the head of his department or office, the Accountant General and the Auditor-General of such withdrawal.

Withdrawal of surcharge

53. (1) Subject to subsections (2) and (3), the Accountant General, on being notified of a surcharge made under section 49, shall cause the amount of the surcharge to be collected from the person surcharged in accordance with such directions as the Financial Secretary may give.

Collection of surcharge

(2) Notwithstanding any other law, where moneys of any description including salary, wages, pension or other emoluments, are payable or may become payable by the Government to the person surcharged, the Financial Secretary may require the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he considers fair and reasonable.

(3) Notwithstanding subsections (1) and (2) -

- (a) the total amount of any deduction from the monthly salary, wages or pension of the person surcharged in any month shall not exceed one half of the gross amount of the salary, wages or pension payable for that month;
- (b) no collection of a surcharge shall be made until after the expiration of the period allowed by section 51 for the lodging of an appeal; and

- (c) where the person surcharged appeals under section 51, no collection of the surcharge shall be made until and unless the amount of the surcharge has been confirmed or otherwise determined in accordance with that section.

(4) Nothing in subsections (1) to (3) shall affect the right of the Government to -

- (a) sue the person surcharged for the recovery of the amount of any surcharge as a civil debt due to the Government; or
- (b) sue any person for the recovery of any amount as a civil debt notwithstanding that a person may be subject to a surcharge in respect of part or all of that amount.

Surcharge in respect of deceased persons

53. (1) Where a person referred to in section 49 dies at any time before or after he is surcharged under that section, the Financial Secretary may surcharge the personal representative of such person and this Part shall thereupon apply to the personal representative as respects the estate of the deceased person as they would have applied to the deceased person if he were alive.

(2) In this section-

“personal representative” means the executor or administrator for the time being of a deceased person.

Part VII-Miscellaneous Provisions

Abandonment of claims, etc., and write-off of public moneys and stores

55. (1) Except in the case involving fraud by any person or theft or negligence by a public officer, in which case the approval of the Finance Committee shall be required, and subject to any conditions, exceptions or limitations specified by the Finance Committee, the Financial Secretary may-

- (a) abandon, remit or waive any claims by or on behalf of the Government;
- (b) write off arrears of revenue;
- (c) write off losses or deficiencies of public moneys, stamps, securities or stores; and
- (d) write off condemned, unserviceable or obsolete stores or other moveable property belonging to or provided by the Government.

(2) The Financial Secretary may, in writing, delegate to any public officer any of the powers conferred upon by him subsection (1) subject to such conditions, exceptions and limitations as are specified in the delegation.

56. (1) Subject to any other law and to any conditions, exceptions or limitations specified by the Finance Committee, the Financial Secretary may authorise the gift of serviceable Government stores or other moveable property to any institution or organisation where it is in the public interest to do so.

Disposal of serviceable stores, etc.

(2) The Financial Secretary may, in writing, delegate to any public officer any power conferred upon him by subsection (1) subject to such conditions exceptions and limitations as are specified in the delegation.

57. (1) The Governor may give to the Financial Secretary, Accountant General and all public officers, other than the Auditor-General, such directions as he thinks fit with respect to the exercise or performance of their respective powers, functions and duties under this Law either generally or in any particular case.

Power of Governor to give directions

(2) The Financial Secretary, the Accountant General and all public officers, other than the Auditor-General, shall, in the exercise or performance of their respective powers, functions and duties under this Law, comply with directions given by the Governor under subsection (1).

58. Nothing in this Law shall extend to, abridge or alter the terms of any trust or shall be construed as authorising the making of any regulations or the giving of any directions or instructions requiring any person to obey such regulations, directions or instructions in relation to moneys held on trust which contravene or are inconsistent with the terms of such trust.

Trusts

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Carmena H. Parsons
Clerk of Executive Council