

CAYMAN ISLANDS



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**THE PUBLIC MANAGEMENT AND FINANCE LAW, 2001**

**(LAW 25 OF 2001)**



**THE PUBLIC MANAGEMENT AND FINANCE LAW, 2001**

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CAYMAN ISLANDS

Law 25 of 2001.

I Assent

B. H. Dinwiddy

Governor.

4 November, 2002

**A LAW TO REPEAL AND REPLACE THE PUBLIC FINANCE AND  
AUDIT LAW (1997 REVISION) AND REGULATIONS MADE UNDER  
THAT LAW; TO REPEAL SECTION 74 OF THE CUSTOMS LAW (1998  
REVISION); TO IMPLEMENT A NEW SYSTEM OF GOVERNMENT  
ACCOUNTING; TO ESTABLISH A NEW FINANCIAL REGIME OF  
FINANCIAL ACCOUNTABILITY AND RESPONSIBILITY FOR  
MINISTRIES, PORTFOLIOS, GOVERNMENT COMPANIES AND  
STATUTORY AUTHORITIES; TO RE-ESTABLISH THE POST,  
FUNCTIONS AND POWERS OF THE AUDITOR-GENERAL; AND FOR  
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART I - Introductory**

1. This Law may be cited as the Public Management and Finance Law, 2001. Short title
2. (1) Subject to subsections (2), (3) and (4), this Law shall come into force on 1 January, 2002. Commencement
  - (2) Parts II, III, IV, V, VI and VII (other than sections 59(e), 63(3), 64, 67(1)(a)(ii), 67(1)(c), 67(2) and 67(3)), and sections 69, 70, 71, 72 and 73 do not apply to, or require any action by the Legislative Assembly, Executive Council, a minister or official member, the Financial Secretary, a ministry or portfolio or its chief officer, a statutory authority or government company or its board, the

Portfolio of Finance and Economic Development or its chief officer, the Auditor-General or the Audit Office, or any other person in respect of any financial year commencing before 1 July, 2004.

(3) Sections 39, 41(3) and (4), and 53(i) shall come into force on 1 July, 2005.

(4) Sections 59(e), 63(3), 64, 67(1)(a)(ii), 67(1)(c), 67(2) and 67(3) shall come into force on the date that this Law is passed by the Legislative Assembly.

Definitions

3. In this Law, unless the context otherwise requires -

“appropriation” means a power given by an Appropriation Law to the Executive Council to incur executive expenses, make an equity investment, acquire or create executive assets, or lend or borrow money on behalf of the Government for a particular purpose;

“Appropriation Law” and “Appropriation Bill”, respectively, mean a Law or Bill which provides or would provide for appropriation in respect of the annual plan and estimates for a financial year;

“Audit Office” means the department, including all of its staff and physical resources, of which the chief officer is the Auditor-General;

“borrowing” means any borrowing of money or other receipt of credit, whether secured or unsecured, and includes any hire purchase agreement or finance lease, but does not include the purchase of goods or services on credit for a period of ninety days or less;

“capital withdrawal” means the withdrawal of equity investment from an entity;

“centralised accounting information system” means the accounting information system operated by the Portfolio of Finance and Economic Development under section 53;

“centralised banking system” means the system of bank accounts consisting of the executive bank account and the bank accounts of ministries and portfolios and the Audit Office operated by the Portfolio of Finance and Economic Development under section 53;

“chief officer” means-

- (a) in the case of a ministry, the Permanent Secretary of that ministry;



- (b) (i) in the case of the Portfolio of Internal and External Affairs, the Deputy Chief Secretary;
- (ii) in the case of the Portfolio of Legal Affairs, the Solicitor General; and
- (iii) in the case of the Portfolio of Finance and Economic Development, the Deputy Financial Secretary;
- (c) in the case of a statutory authority or a government company, the person appointed as chief officer (by whatever name called) by the board of that authority or company;
- (d) in the case of the Audit Office, the Auditor-General; and
- (e) in the case of the judicial department, the person so designated by the Governor;

“coercive revenue” means revenue earned by the Government using the coercive power of the state and for which no direct exchange of service occurs;

“Constitution” means the Cayman Islands (Constitution) Order 1972;

“entire public sector” means the Legislative Assembly, the Executive Council, ministries, portfolios, statutory authorities, government companies and the Audit Office;

“entity” means any body and includes a ministry, portfolio, statutory authority, and government company;

“entity assets”, in relation to a ministry, portfolio, statutory authority or government company, means all assets controlled by that entity for the purpose of producing its outputs, but does not include any assets of the Government declared by the Financial Secretary not to be assets of that entity or allocated or transferred by him to another entity by regulations made under section 35;

“entity expenses”, in relation to a ministry, portfolio, statutory authority or government company, means expenses incurred by the entity in producing its outputs or in carrying out any other of its activities, but does not include any expenses of the Government declared by the Financial Secretary not to be expenses of that entity or allocated or transferred by him to another entity by regulations made under section 35;

“entity liabilities”, in relation to a ministry, portfolio, statutory authority or government company, means all liabilities incurred by the entity in respect of its own activities, but does not include any liabilities of the Government declared by the Financial Secretary not to be liabilities of that entity or allocated or transferred by him to another entity by regulations made under section 35;

“entity financial transaction” means any financial transaction relating to entity revenue, entity expenses, entity assets, or entity liabilities;

“entity revenue”, in relation to a ministry, portfolio, statutory authority or government company, means revenue earned by the entity from the production of outputs (including those purchased by the Executive Council) or any other of its own activities, but does not include any revenue of the Government declared by the Financial Secretary not to be revenue of that entity or allocated or transferred by him to another entity by regulations made under section 35;

“equity investment” means an amount invested in a ministry, portfolio, statutory authority or government company by the Executive Council on behalf of the Government;

“executive assets” means all assets of the Government other than entity assets, and-

- (a) includes the equity investments of the Government in ministries, portfolios, statutory authorities and government companies; but
- (b) does not include assets held by the Government as trustee for another person;

“executive expenses” means all expenses incurred by the Government other than entity expenses, and includes expenses incurred by the Executive Council in purchasing outputs from ministries, portfolios and other suppliers but does not include expenses incurred by the Government as trustee for another person;

“executive financial transaction” means any financial transaction relating to executive revenue, executive expenses, executive assets or executive liabilities;

“executive liabilities” means all liabilities of the Government other than entity liabilities but does not include liabilities of the Government as trustee for another person;

“executive revenue” means all revenue earned by the Government other than entity revenue, but does not include revenue earned by the Government as trustee for another person;

“financial year” means, in relation to any entity required to report under this Law, a year ending on 30 June or, in the case of a statutory authority or government company, such other date as the Executive Council may determine;

“generally accepted accounting practice” means-

- (a) International Public Sector Accounting Standards issued by the International Federation of Accountants; or
- (b) where no guidance is provided by those standards, International Accounting Standards issued by the International Accounting Standards Committee; or
- (c) where no guidance is provided by the standards referred to in paragraphs (a) and (b), accounting practice that is generally accepted within the accounting profession in the United Kingdom as appropriate for reporting by the entire public sector, or ministries, portfolios, statutory authorities or government companies;

“government company” means-

- (a) a company in which the Government has a controlling interest; and
- (b) in respect of each such company, includes all subsidiary entities of the company;

“input” means any labour, capital or other resource used to produce outputs;

“judicial department” means the Government department, including all of its staff and physical resources, which provides administrative support for the courts;

“loan” means any loan of money or other provision of credit, whether secured or unsecured, but does not include the sale of goods or services on credit for a period of ninety days or less;

“minister” means a member of the Legislative Assembly who has been elected to the Executive Council in accordance with section 5 of the Constitution;

“ministry” means the whole of the division of government administration for the actions of which a minister is accountable to the Legislative Assembly and includes a departmental section or unit which forms part thereof, but does not include a statutory authority or government company;

“nature and scope of the activities” means the broad categories of the outputs produced and of the markets to which they are provided;

“net worth” means total assets less total liabilities;

“non-governmental output supplier” means a person or entity that is supplying outputs to the Executive Council and that is not a ministry, portfolio, statutory authority or government company;

“official member” means a member of the Executive Council who is not a minister;

“outcomes” means the impacts on, or the consequences for, the community of the outputs or activities of the Government, an entity or other person;

“outputs” means the goods or services that are produced by an entity or other person;

“output group” means a grouping of outputs having a similar nature;

“ownership performance” means, in relation to an entity, the performance that an ordinary person who was the owner of that entity would expect of that entity;

“person” means an entity or individual;

“portfolio” means the whole of a division of government administration for the actions of which an official member is accountable to the Legislative Assembly, and includes a departmental section or unit which forms part thereof, but does not include a statutory authority or government company; and “portfolio” includes the Governor’s office and the judicial department;

“public officer” means any person employed in the civil service but does not include any member of the Executive Council or Legislative Assembly;

“statutory authority” means an entity established by a law to carry out functions which are capable under that law, of being funded, partly or entirely, by money provided by the Government, and for which the Governor, the Governor in Council or the Government has the power to appoint or dismiss the majority of the Board or other governing body;

“subsidiary entity”, in relation to an entity, means an entity in which the first mentioned entity has a controlling interest;

“transfer payment” means a benefit or similar payment for which no output or consideration is provided; and

“trust assets” means assets (including money, but not money belonging to the Government) transferred or paid to the Government or a ministry, portfolio, or the Audit Office in trust for any purpose or to hold for or on behalf of any person, and includes any such assets-

- (a) to be held pending the completion of a transaction or dispute; or

- (b) that belong or are due to any person and are collected under any agreement with that person.

4. In this Law, unless the context otherwise requires, the terms “asset”, “liability”, “revenue” and “expense” have the meanings accorded to them by generally accepted accounting practice. Meaning of accounting terms

5. All financial information required by this Law shall be prepared on an accrual accounting basis and in accordance with generally accepted accounting practice. Accrual accounting

6. For the purposes of this Law, the Government has a controlling interest in a company if it has power by the exercise of voting rights to carry a resolution at a general meeting of the company; and an entity has a controlling interest in a subsidiary entity if it is able, by virtue of its ownership interest, to control the subsidiary entity. Meaning of controlling interest

## **PART II - The Legislative Assembly**

### **Appropriation Functions of the Legislative Assembly**

7. (1) No coercive revenue may be collected and no changes to rates of coercive revenue may be made except by authority of a Law. Law required for changes to coercive revenue

(2) Where the Legislative Assembly passes a resolution which-

- (a) provides for the collection of coercive revenue or for the variation of the rate (with or without modification) or abolition of any coercive revenue; and
- (b) contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under this Law,

the resolution, subject to subsection (3), shall for a period expiring at the end of twenty-eight days after the date on which it is passed, have statutory effect as if contained in a law.

(3) A resolution shall cease to have statutory effect under subsection (2) if the provisions giving effect to it are rejected during the passage of the Bill containing them through the Legislative Assembly or if all Bills relating to the measures in the resolution have not had their first reading within the next fifteen days on which the Legislative Assembly sits after the vote on the resolution.

(4) Where a resolution ceases to have statutory effect by virtue of subsection (3) or where the period of twenty-eight days terminates before a law comes into operation providing for the collection of coercive revenue or varying or abolishing any coercive revenue, any money paid in pursuance of the resolution shall be paid or made good, and any deduction made in pursuance of the resolution shall be deemed for all purposes to be an unauthorised deduction.

(5) Where the rate of any customs duty is altered by any resolution under subsection (2), and any Bill which has been introduced into the Legislative Assembly to give effect to that resolution provides for an alteration of the rate of drawback to be allowed in respect of that rate of customs duty then, so long as the resolution continues to have statutory effect, drawback under section 44 of the Customs Law (1998 Revision) shall be allowed in accordance with the rate provided in the Bill, subject to any necessary adjustment in case the rate of drawback as enacted by the Legislative Assembly differs from the rate provided in the Bill.

Appropriations required for various transactions

8. Except as provided in sections 12 and 13 -

- (a) no executive expenses may be incurred;
- (b) no executive assets may be acquired or created, or loan made, by the Government;
- (c) no equity investment may be made; and
- (d) no borrowing may be undertaken by the Government,

unless authorised by an appropriation.

Resolution required for guarantees

9. Except as provided in section 13, no guarantee may be given by or on behalf of the Government unless it has been authorised by a resolution of the Legislative Assembly.

Appropriations

10. (1) All appropriations granted by the Legislative Assembly shall be granted on an accrual accounting basis.

(2) Except as provided in section 11, the Legislative Assembly may grant appropriations only to the Executive Council.

(3) Appropriations may be granted only in respect of-

- (a) the executive expense which may be incurred for each output group to be purchased by the Executive Council from ministries, portfolios, statutory authorities, government companies or non-governmental output suppliers;

- (b) the executive expense which may be incurred for each category of transfer payment to be made by the Executive Council;
- (c) each category of executive expense relating to borrowings or loans which may be authorised by the Executive Council;
- (d) each category of any other executive expenses which may be authorised by the Executive Council;
- (e) the amount of each equity investment which may be authorised by the Executive Council;
- (f) the capital cost of each acquisition or creation of executive assets (other than equity investments) which may be authorised by the Executive Council;
- (g) the amount of each category of loan which may be authorised by the Executive Council on behalf of the Government; and
- (h) the amount which may be borrowed by the Financial Secretary on behalf of the Government.

(4) An amount appropriated in respect of an output group, category, equity investment or executive asset referred to in subsection (3) may be used only for that output group, category, equity investment, or executive asset.

(5) Except to the extent otherwise provided by a Law, an appropriation lapses at the end of the financial year to which the Law by which the appropriation is granted relates.

11. (1) By virtue of this section, the items specified in subsection (2) are appropriated.

Permanent  
appropriations

- (2) The items referred to in subsection (1) are -
  - (a) the salary, emoluments and allowances of the Auditor-General;
  - (b) the employees' and employer's contributions to-
    - (i) the Public Service Pensions Fund established under the Public Service Pensions Law (2001 Revision); and
    - (ii) a pension fund established in accordance with an Order made by the Governor under the Judges' Emoluments and Allowances Law, 1997;
  - (c) the Government's contributions to-
    - (i) the Public Service Pensions Fund established under the Public Service Pensions Law (2001 Revision); and
    - (ii) a pension fund established in accordance with an Order made by the Governor under the Judges' Emoluments and Allowances Law, 1997,  
for past service liability;
  - (d) pension payments in accordance with-

- (i) the pension plan established by the Public Service Pensions Law (2001 Revision);
- (ii) the Parliamentary Pensions Law (1995 Revision);
- (iii) the provisions for ex-gratia allowances in regulations made under the Public Service Pensions Law (2001 Revision); and
- (iv) an Order made by the Governor under the Judges' Emoluments and Allowances Law, 1997; and
- (e) the executive expense relating to borrowings authorised by Executive Council in accordance with this Law.

(3) The estimated amount of executive expense for each of the items referred to in subsection (2) for each financial year shall be reported in the annual plan and estimates for that financial year in accordance with the appropriation types specified in section 10(3).

Authorisation in advance of appropriation

12. (1) Subject to section 13 the executive financial transactions in respect of a financial year may be authorised by a resolution of the Legislative Assembly in advance of a law making appropriations for those transactions if-

- (a) the resolution is arranged according to each of the appropriation types specified in section 10(3); and
- (b) the resolution provides that it shall lapse after a period of four months from the date of the resolution.

(2) A resolution referred to in subsection (1) may contain conditions and limitations subject to which the authorisation is made.

(3) All financial transactions authorised under a resolution referred to in subsection (1) shall be subsumed by the amounts respectively provided in the Law making the appropriations in respect of the transactions when the Law comes into operation.

(4) Where the Legislative Assembly is dissolved before provision has been made for carrying on the business of government, the Financial Secretary may authorise such of the executive financial transactions as he may consider necessary for that purpose until the expiry of three months from the date on which the Legislative Assembly next meets following that dissolution.

### **PART III - Executive Council**

#### **Powers and Duties of the Executive Council**



13. (1) Notwithstanding any other provision of this Law, where a state of emergency is proclaimed under the Emergency Powers Law (1997 Revision) the Governor in Council may approve such executive financial transactions to meet the emergency as it thinks fit, whether or not those transactions have been authorised by an appropriation, and those transactions may be entered into accordingly. Emergency expenditure

(2) Without affecting the validity of any executive financial transactions entered into under this section, a statement of such of those transactions that have not been appropriated but (apart from this section) are required to be appropriated, shall be included-

- (a) in the first entire public sector quarterly report under section 28 after those transactions have been entered into; and
- (b) in the first entire public sector annual report under section 29 after those transactions have been entered into,

and the cost of those transactions shall be included in the first Appropriation Bill introduced to the Legislative Assembly, after those transactions have been entered into.

14. (1) The Executive Council shall manage the financial performance and financial position of the entire public sector in accordance with the principles set out in this section. Responsible financial management

(2) The policies and decisions of the Executive Council shall be consistent with the principles of responsible financial management set out in subsection (3) and the impact of those decisions on the Government's financial performance and position shall be measured using accrual accounting.

(3) The principles of responsible financial management referred to in subsection (2) are-

- (a) total entire public sector revenue less total entire public sector expenses (measured using generally accepted accounting practice) should be positive;
- (b) total entire public sector assets less total entire public sector liabilities (measured using generally accepted accounting practice) should be positive;
- (c) entire public sector borrowing should not exceed an amount for which the sum of interest, other debt servicing expenses, and principal repayments for a financial year are more than ten percent of entire public sector revenue (calculated using generally accepted accounting practice) for that financial year;

- (d) cash reserves should be maintained at a level no less than the estimated executive expenses (measured using generally accepted accounting practice) for the following ninety days; and
- (e) the financial risks, including contingent liabilities, facing the entire public sector should be managed prudently so as to minimise the likelihood of any such risk resulting in an expense or liability.

(4) Executive Council decisions may depart from the principles of responsible financial management for a limited period if the Executive Council specifies in a paper laid before the Legislative Assembly for its information (which may be included in a relevant document required by this Law)-

- (a) the reasons for the departure;
- (b) the approach that the Executive Council intends to take in order to return to those principles; and
- (c) the period of time that the Executive Council expects to take to return to those principles.

Shareholding  
arrangements for  
government companies

15. (1) All shares held in a government company by the Government shall be held in the name "the Government of the Cayman Islands".

(2) All the rights and powers attaching to the shares in a government company, including the power of sale or disposition, held by the Government may be exercised, on behalf of the Government by a minister or official member appointed for the purpose by the Executive Council.

(3) The minister or official member may only sell or otherwise dispose of the shares referred to in subsection (2) if authorised to do so by the Governor in Council and by a resolution of the Legislative Assembly.

Executive Council's  
power to direct

16. (1) Subject to subsection (3), the Executive Council may, by written notice to the board of a statutory authority or government company, direct the authority or company to-

- (a) pay a dividend for an amount, and at a time, specified in the notice; or
- (b) provide, at a time and in a manner specified in the notice, such information as is specified in the notice,

and the authority or company shall comply with the direction.

(2) Before giving a direction under subsection (1), the Executive Council shall consult the authority or company as to the matters to which the direction is to relate.

(3) In the event of any inconsistency between the provisions of subsection (1) and the operation of any other law, the provisions of subsection (1) shall prevail to the extent of the inconsistency.

### **Entire Public Sector Budgeting**

17. (1) No later than 1 October in each year, the Executive Council, in accordance with the advice of the Financial Secretary given under section 32(c), shall establish the exact timing and process for preparing the budget for the next financial year, including the timing of the phases referred to in subsection (2), and shall cause the timetable to be gazetted immediately after 1 October. Budget process

(2) The budget process shall include a “strategic phase”, a “detailed planning and budgeting phase”, an “Executive Council collective review phase”, a “Legislative Assembly review phase”, and a “documentation phase”.

18. During the strategic phase the Executive Council shall- Strategic phase

- (a) determine for the next financial year and the following two financial years-
  - (i) its broad outcome objectives;
  - (ii) its specific outcome objectives;
  - (iii) the forecast total amount of executive revenue and expenses for each financial year;
  - (iv) the forecast amount of executive expenses for each ministry and portfolio for each financial year;
  - (v) the forecast total amount of equity investments, acquisition of other executive assets, and loans for each financial year; and
  - (vi) the forecast total amount of entire public sector revenue, expenses, borrowing and net worth; and
- (b) prepare a strategic policy statement in accordance with section 23 incorporating the information determined under paragraph (a).

19. During the detailed planning and budgeting phase each minister and official member shall- Detailed planning and budgeting phase

- (a) in conjunction with the ministry or portfolio for which he is responsible, determine the outputs, transfer payments, equity investments, changes to fees for Government services and legislative measures that he proposes to influence the specific outcomes agreed by the Executive Council;

- (b) have due regard to the resolution of the Legislative Assembly on the strategic policy statement under section 23; and
- (c) ensure that-
  - (i) a draft performance agreement has been prepared for his ministry or portfolio in accordance with section 42;
  - (ii) a draft purchase agreement has been prepared for each statutory authority, government company, or non-governmental output supplier from which the minister or official member intends to purchase outputs in accordance with sections 30(2) and 48; and
  - (iii) a draft ownership agreement has been prepared for each statutory authority and each government company for which the minister or official member is responsible in accordance with section 49.

Executive Council  
collective review phase

20. During the Executive Council collective review phase, the Executive Council shall-

- (a) review and either agree or amend, the outputs, transfer payments, equity investments and legislative measures that each minister or official member proposes to pursue in the next financial year;
- (b) review the draft performance agreements, purchase agreements and ownership agreements prepared in accordance with sections 30, 42 and 48 and ensure that they are consistent with the decisions made under paragraph (a);
- (c) arrange for the preparation of the annual plan and estimates in accordance with section 24 incorporating the information determined under paragraph (a) and ensure that they are consistent with the decisions made under paragraph (a); and
- (d) ensure that the annual plan and estimates prepared under paragraph (c) are consistent with the strategic policy statement that has been approved under section 23.

Legislative Assembly  
review phase

21. During the Legislative Assembly review phase-

- (a) the Financial Secretary on behalf of the Executive Council shall outline the annual plan and estimates to the Legislative Assembly; and
- (b) the Legislative Assembly shall review the annual plan and estimates and authorise the Executive Council to give effect to that plan (amended as required by the Legislative Assembly) by-
  - (i) authorising, by law, changes to types of coercive revenue or rates of coercive revenue;
  - (ii) authorising, by an Appropriation Law and in accordance with section 10, the executive expenses,

- borrowing and other executive financial transactions referred to in section 10; and
- (iii) authorising by resolution, the giving of guarantees by the Government.

22. During the documentation phase the Executive Council shall agree-

Documentation phase

- (a) a finalised performance agreement with each chief officer of a ministry or portfolio in accordance with section 42;
- (b) a finalised purchase agreement with each statutory authority, government company, or non-governmental output supplier from which the Executive Council will purchase outputs, in accordance with sections 30(2) and 48;
- (c) a finalised ownership agreement with each statutory authority and government company in accordance with section 49; and
- (d) a final annual plan and estimates in accordance with section 24,

taking into account the authorities provided by the Legislative Assembly in accordance with section 21.

23. (1) The strategic policy statement for the next financial year shall be presented to the Legislative Assembly by a member of the Executive Council appointed by the Executive Council to do so on their behalf not later than 1 December in each year for approval within two months and if the Legislative Assembly has not within that period resolved to approve, amend or reject the statement it shall be deemed to be approved.

Strategic policy statement

(2) The strategic policy statement shall include-

- (a) a summary of the broad outcomes, the specific outcomes, and the links between them, that the Executive Council intends to achieve in the next financial year and for at least the following two financial years;
- (b) economic forecasts for that financial year and for the next two financial years, which shall contain the information set out in Schedule 1;
- (c) the date on which the economic forecasts referred to in paragraph (b) were made;
- (d) a total financial target for the entire public sector for the next financial year and for each of the following two financial years, for each of-
  - (i) operating revenue;
  - (ii) operating expenses;
  - (iii) surplus or deficit, being the difference between total operating revenue and total operating expenses;

- (iv) borrowings;
  - (v) net worth; and
  - (vi) net cash flows for each of its operating, investing and financing activities;
- (e) an explanation of how the financial targets referred to in paragraph (d) accord with the principles of responsible financial management set out in section 14(3) and, if those targets depart from those principles, the information required by section 14(4);
- (f) the total amount of executive expenses for each financial year;
- (g) the approximate amount of executive expenses of each ministry and portfolio for each financial year; and
- (h) the total amount of equity investments, acquisition of other executive assets, and loans for each financial year.

(3) As soon as the strategic policy statement is presented to the Legislative Assembly it shall be a public document and the Financial Secretary shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

Annual plan and estimates

24. (1) Unless authorisation has been provided in advance of appropriation in accordance with section 12, the annual plan and estimates for the next financial year shall be presented by the Financial Secretary on behalf of the Executive Council to the Legislative Assembly not later than 1 May in each year for review.

(2) The annual plan and estimates shall-

- (a) summarise the specific outcomes that the Executive Council is seeking to influence in the financial year to which the annual plan and estimates relate and the manner in which it intends to achieve those specific outcomes;
- (b) specify the output groups, transfer payment categories, other executive expenses, equity investments, capital withdrawals, capital expenditure on executive assets, disposals of executive assets, loans, and legislative measures that the Executive Council intends to pursue during the budget year;
- (c) explain how the specific outcomes referred to in paragraph (a) and the matters referred to in paragraph (b), accord with the Legislative Assembly resolution approving the strategic policy statement made under section 23;
- (d) provide forecast financial statements for the entire public sector for the budget year which shall contain the statements and information set out in Schedule 2;
- (e) explain how those forecast financial statements accord with-

- (i) the financial targets contained in the most recently published strategic policy statement and the Legislative Assembly resolution on that strategic policy statement made under section 23; and
  - (ii) the principles of responsible financial management and, if those forecasts depart from those principles, the information required by section 14; and
- (f) provide a schedule of appropriations requested of the Legislative Assembly.

(3) Where there is a requirement in any Law that expenditure be met from executive revenue the annual plan and estimates shall incorporate such expenditure, categorised appropriately.

(4) The Financial Secretary shall introduce an Appropriation Bill providing for appropriations in accordance with section 10 consistent with the contents of the annual plan and estimates at the same time as the annual plan and estimates are presented to the Legislative Assembly.

(5) At the same time that he introduces the Bill under subsection (4) the Financial Secretary shall, where relevant-

- (a) introduce a Bill to authorise changes to types or rates of coercive revenue; and
- (b) move a resolution to authorise the giving of guarantees by the Government.

(6) As soon as the annual plan and estimates are presented to the Legislative Assembly they shall be public documents and the Financial Secretary shall provide copies to any person requesting them on payment of a copying charge prescribed by regulations made by the Financial Secretary.

25. (1) Before the Executive Council requests changes to appropriations already granted for a financial year, it shall prepare a supplementary annual plan and estimates for that year.

Supplementary annual  
plan and estimates

(2) A supplementary annual plan and estimates shall be presented to the Legislative Assembly by the Financial Secretary together with a supplementary Appropriation Bill.

(3) A supplementary annual plan and estimates for a financial year shall include-

- (a) the information referred to in section 24 insofar as it differs from that in the annual plan and estimates for that year, together with an explanation of the differences; and
- (b) in respect of each changed appropriation, the amount of the original appropriation, the adjustment, and the new total amount of that appropriation.

(4) As soon as the supplementary annual plan and estimates are presented to the Legislative Assembly they shall be public documents and the Financial Secretary shall provide copies to any person requesting them on payment of a copying charge prescribed by regulations made by the Financial Secretary.

Pre-election economic  
and financial update

26. (1) Subject to subsection (4), not more than forty-two days, nor less than twenty-eight days before the day specified in a writ issued by the Governor under the Elections Law (2000 Revision) as the date for a general election, the Financial Secretary shall gazette a pre-election economic and financial update.

(2) A pre-election economic and financial update shall include-

- (a) economic forecasts for the current financial year and for the next two financial years, which shall contain the information set out in Schedule 1;
- (b) forecast financial statements for the entire public sector for the current financial year and for the next two financial years which shall contain the statements and information set out in Schedule 2;
- (c) a statement specifying the date on which those economic forecasts and forecast financial statements were prepared; and
- (d) an explanation of how those forecast financial statements accord with the principles of responsible financial management and, if those forecasts depart from those principles, the information required by section 14.

(3) As soon as the pre-election economic and financial update is published it shall be a public document and the Financial Secretary shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

(4) A pre-election economic and financial update shall not be required if an annual plan and estimates has been presented to the Legislative Assembly less than three months before the date specified for a general election in a writ issued by the Governor under the Elections Law (2000 Revision).

Information to be  
included in forecasts



27. (1) Subject to subsection (2), the economic forecasts required by section 26 and the forecast financial statements required by sections 24 and 26 shall include the economic and financial impact of all Executive Council decisions that may have a material effect on the forecasts.

(2) Subsection (1) does not apply to the extent that the Financial Secretary determines that compliance with that subsection will be likely to-

- (a) significantly prejudice the economic interests of the Islands;
- (b) significantly compromise the Government in any negotiation, litigation, or commercial activity; or
- (c) result in a significant financial loss to the Government.

### **Entire Public Sector Reporting**

28. (1) No later than eight weeks after the end of each of the first three quarters in each financial year, the Executive Council shall gazette a quarterly report for the entire public sector for the quarter just ended and for any preceding quarters in that financial year on a cumulative basis.

Entire public sector  
quarterly report

(2) The entire public sector quarterly report shall report the performance of the entire public sector for the period covered by the report and compare it with that proposed in the annual plan and estimates for that financial year and shall include-

- (a) a summary of the output groups, transfer payment categories, other executive expenses, equity investments, capital withdrawals, capital expenditure on executive assets, disposals of executive assets, loans, and legislative measures that the Executive Council has sought to implement during that quarter and any preceding quarters in that financial year on a cumulative basis;
- (b) financial statements for the entire public sector which shall-
  - (i) be prepared on a basis consistent with the forecast financial statements in the annual plan and estimates for that year; and
  - (ii) contain the statements and information set out in Schedule 3; and
- (c) a schedule of appropriations used for that quarter and for any preceding quarters in that financial year on a cumulative basis compared with the appropriations granted under the Appropriation Law for the financial year.

(3) At the earliest possible date after the gazettal of a quarterly report under subsection (1) a member of the Executive Council appointed by the Executive Council to do so on their behalf shall present the quarterly report to the Legislative Assembly to review.

(4) As soon as the entire public sector quarterly report is published it shall be a public document and the Financial Secretary shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

Entire public sector  
annual report

29. (1) No later than five months and two weeks after the end of each financial year, the Executive Council shall gazette an annual report for the entire public sector for that financial year.

(2) The entire public sector annual report shall report the performance of the entire public sector and compare it with that proposed in the annual plan and estimates for that financial year and shall include-

- (a) a summary of the specific outcomes that the Executive Council was seeking to achieve in that year;
- (b) an audited summary of the output groups, transfer payments groups, other executive expenses, equity investments, capital withdrawals, capital expenditure on executive assets, disposals of executive assets, loans, and legislative measures that the Executive Council has implemented during the year;
- (c) audited financial statements for the entire public sector for that year which shall-
  - (i) be prepared on a basis consistent with the forecast financial statements in the annual plan and estimates for that year; and
  - (ii) contain the statements and information set out in Schedule 4; and
- (d) an audited schedule of appropriations used for the year compared with the appropriations granted under the Appropriation Law (together with any supplementary Appropriation Law) for the financial year.

(3) The summary, the financial statements and the schedule referred to in subsection (2)(b), (c) and (d) shall be prepared within four months of the end of the financial year and submitted to the Auditor-General for auditing, and the Auditor-General shall express an opinion within one month of receipt of the financial statements.

(4) At the earliest possible date after the gazettal of an annual report under subsection (1) a member of the Executive Council appointed by the Executive Council to do so on their behalf shall present the annual report to the Legislative Assembly to review.

(5) As soon as the entire public sector annual report is published it shall be a public document and the Financial Secretary shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

### **Agreeing Output and Ownership Performance**

30. (1) Each financial year the Executive Council shall, by way of a performance agreement under section 42 or a purchase agreement under section 48, agree with each ministry, portfolio, statutory authority or government company, the outputs it wishes the entity to deliver in that financial year.

Agreement and  
monitoring of output  
delivery

(2) Where the Executive Council wishes a non-governmental output supplier to deliver an output, the Executive Council shall enter into a written purchase agreement with the non-governmental output supplier for the supply of that output.

(3) A purchase agreement with a non-governmental output supplier entered into under subsection (2) shall contain the information specified in section 48(2)(a) to (h) and shall be -

- (a) prepared in accordance with the timetable established by the Executive Council in accordance with section 17;
- (b) available for review by the Executive Council as part of the Executive Council collective review phase of the budget process in accordance with section 20;
- (c) presented to the Legislative Assembly by the relevant minister or official member at the same time as the annual plan and estimates for the financial year are presented in accordance with section 24(1);
- (d) finalised immediately the Legislative Assembly review phase of the budget process has been completed in accordance with section 21;
- (e) signed by a member of the Executive Council on behalf of the Executive Council and by an authorised officer of the non-governmental output supplier no later than the beginning of the financial year; and

- (f) presented to the Legislative Assembly, for the information of the Legislative Assembly, by the relevant minister or official member on the next sitting day after it has been signed.

(4) A purchase agreement with a non-governmental output supplier entered into under subsection (2) may be amended at any time by agreement between the non-governmental output supplier and the Executive Council.

(5) All amendments to a purchase agreement shall be in writing and presented, within a period of sixty days after it has been signed, to the Legislative Assembly for its information.

(6) The Executive Council shall monitor the delivery of outputs during the financial year against the relevant performance agreement or purchase agreement and may only authorise payment for those outputs when it is satisfied that the specified outputs have been satisfactorily delivered.

Agreement and monitoring of ownership performance

31. (1) Each financial year the Executive Council shall, by way of a performance agreement under section 42 or annual ownership agreement under section 49, agree with each ministry, portfolio, statutory authority or government company the ownership performance it wishes the entity to achieve during that financial year.

(2) The Executive Council shall monitor the ownership performance of the entity during the financial year against the relevant performance agreement or annual ownership agreement and shall take appropriate action if at any time it appears the ownership performance specified in the relevant document will not be achieved.

### **Powers and Duties of the Financial Secretary**

Duties of the Financial Secretary

32. The Financial Secretary shall-

- (a) oversee the management of the finances of the entire public sector;
- (b) undertake the financial transactions specified in section 34 on behalf of the Government;
- (c) advise the Executive Council on the budget process for the following financial year to be established in accordance with section 17;
- (d) ensure that the forecast financial statements required by sections 24 and 26 are prepared by the Portfolio of Finance and

Development under section 53 and ready for presentation in accordance with those sections;

- (e) bring to the Legislative Assembly's attention any divergence between the fiscal policy of the Government and the principles of responsible financial management specified in section 14;
- (f) ensure that the reporting requirements for the entire public sector established by sections 28 and 29 are complied with; and
- (g) prior to the commencement of the detailed planning and budgeting phase of the budget process required by section 17, set the capital charge rate for the next financial year.

33. (1) Where a power or duty is expressed or imposed on the Financial Secretary under this Law, the Financial Secretary may authorise a member of the Executive Council or a public officer, by signed instrument in writing, to exercise or perform on his behalf all or part of that power or duty.

Delegation by the  
Financial Secretary

(2) The Financial Secretary may revoke or amend an authorisation given under subsection (1).

(3) The giving of an authorisation does not prevent the exercise of a power or the performance of a duty by the Financial Secretary personally.

34. (1) Subject to subsection (3) the Financial Secretary may, on behalf of the Government-

Powers relating to  
specific financial  
transactions

- (a) borrow money;
- (b) make a loan;
- (c) give a guarantee; and
- (d) enter into any financial transaction or financial obligation for the purpose of avoiding or reducing an adverse impact on executive assets, executive liabilities, executive revenue, or executive expenses, that may be caused by currency or interest rate fluctuations, or by credit, liquidity or funding risks,

on such terms and conditions as the Governor in Council may determine.

(2) Subject to section 33 no person other than the Financial Secretary may enter into any transaction of a kind referred to in subsection (1).

(3) The Financial Secretary shall not-

- (a) borrow money on behalf of the Government, unless the borrowing-
  - (i) has been authorised by an appropriation; and

- (ii) is consistent with the statement of borrowings included in the annual plan and estimates for that financial year;
- (b) make a loan, unless the loan-
  - (i) has been authorised by an appropriation; and
  - (ii) is consistent with the statement of loans included in the annual plan and estimates for that financial year; or
- (c) give a guarantee, unless the guarantee has been authorised by resolution of the Legislative Assembly.

Power to make regulations

35. The Financial Secretary may make regulations-

- (a) requiring such information to be supplied to him as he considers necessary to enable the preparation of a report which he, his portfolio, or the Executive Council is required by this Law to prepare;
- (b) prescribing accounting policies to be applied in preparing financial information for the purposes of this Law;
- (c) governing the operation of the centralised accounting information system established under section 53(h);
- (d) governing the operation of the centralised banking system established under section 53(i);
- (e) regulating the operation of bank accounts of ministries, portfolios and the Audit Office;
- (f) governing the calculation and payment of the capital charge required to be paid by ministries and portfolios under section 41(5);
- (g) regulating the financial management practices of ministries, portfolios and the Audit Office;
- (h) providing for competitive tendering in connection with contracts to be entered into by or on behalf of the Government, statutory authorities or government companies;
- (i) prescribing and regulating the functions of the Director of Internal Audit;
- (j) allocating or transferring entity assets, liabilities or revenue of the Government from, to or between entities; and
- (k) prescribing matters-
  - (i) required or permitted by this Law to be prescribed by the Financial Secretary; or
  - (ii) necessary or convenient to be prescribed by the Financial Secretary for carrying out or giving effect to this Law.

Power to direct over ownership matters

36. (1) Subject to subsection (2), the chief officer of a ministry, portfolio or the Audit Office shall comply with any direction given by the Financial Secretary,

expressed to be under this section, which he considers necessary to protect the Government's financial interests.

(2) The Financial Secretary shall not give a direction under subsection (1) that prevents the chief officer of a ministry or portfolio or the Audit Office from exercising their powers under section 39 unless-

- (a) he considers it necessary to avoid or reduce either a serious loss to the Government or criminal activity; or
- (b) he is satisfied that the entity has consistently failed to comply with the requirements of section 39 or section 41, for three months after he has given notice to the entity-
  - (i) specifying the respects in which the entity has failed to so comply; and
  - (ii) stating that he intends to give such a direction if the entity continues to fail to so comply during the next three months.

(3) Before giving a direction under subsection (1) the Financial Secretary shall consult the entity concerned.

#### **PART IV-Ministries and Portfolios**

##### **Duties of Ministries, Portfolios and Chief Officers**

37. (1) Subject to subsection (2) a ministry or portfolio shall-

Duties of ministries and portfolios

- (a) supply the outputs that it has agreed in the performance agreement with the Executive Council under section 42 that it will deliver during the year, including-
  - (i) policy advice on the specific outcomes and the mix of outputs, transfer payments, other executive expenses, equity investments, capital withdrawals, capital expenditure on executive assets, disposals of executive assets and other legislative measures to best achieve those outcomes;
  - (ii) the provision of administrative services to the Executive Council or individual members of the Executive Council;
  - (iii) negotiating, agreeing and monitoring of purchase agreements with statutory authorities, government companies or non-governmental output suppliers;
  - (iv) negotiating, agreeing and monitoring of ownership agreements with statutory authorities and government companies; and
  - (v) other outputs agreed with the Executive Council;

- (b) supply outputs to entities or individuals other than the Executive Council for payment and in accordance with agreements with those entities or individuals under section 39; and
- (c) achieve the ownership performance that it has agreed in its performance agreement under section 42 that it will achieve during the financial year.

(2) A ministry or portfolio shall not produce an output during a financial year unless-

- (a) those outputs are within the nature and scope of the activities that are set out in its performance agreement under section 42; and
- (b) the Executive Council, or another entity or person has, by way of formal agreement, agreed to pay for the full cost of the output to be produced.

(3) In the event of any inconsistency between the provisions of subsection (2) and the operation of any other law, the provisions of subsection (2) shall prevail to the extent of the inconsistency.

Duties of chief officer of a ministry or portfolio

38. (1) The chief officer of a ministry or portfolio shall ensure that his ministry or portfolio-

- (a) complies with its duties under section 37;
- (b) delivers the outputs specified in his performance agreement prepared in accordance with section 42;
- (c) achieves the ownership performance specified in his performance agreement prepared in accordance with section 42; and
- (d) complies with this Law.

(2) A chief officer of a ministry or portfolio shall work with the chief officers of the other ministries or portfolios to-

- (a) provide co-ordinated and integrated policy advice to the Executive Council; and
- (b) assist the Executive Council to prepare the reports and documents required to be prepared by the Executive Council under this Law.

### **Powers of Ministries, Portfolios and Chief Officers**

Powers of chief officer of a ministry or portfolio

39. (1) Subject to section 40, no decision or action may be made or taken by or on behalf of a ministry or portfolio for the purposes of this Law unless that decision or action has been made, taken, or approved by the chief officer of the ministry or portfolio.



(2) For the purpose of providing outputs or carrying on other activities that are within its nature and scope of activities and that it is authorised to provide or carry on, a ministry or portfolio may-

- (a) earn entity revenue by providing outputs;
- (b) enter into agreements with entities or individuals other than the Executive Council for the supply of specified outputs for amounts to be specified in the agreements;
- (c) subject to regulations made by the Financial Secretary under section 35, purchase, and incur entity expenses in relation to, inputs on such terms and conditions as its chief officer may authorise;
- (d) acquire entity assets on such terms and conditions as its chief officer may authorise provided that those assets are to be used in the production of existing outputs;
- (e) dispose of its entity assets on such terms and conditions as its chief officer may authorise;
- (f) retain such part of its net operating surplus as is determined by the Financial Secretary; and
- (g) determine and operate its own management and production systems.

40. (1) The chief officer of a ministry or portfolio may only delegate his duties and powers under this Law to another public officer in his ministry or portfolio, in accordance with the provisions of this section.

Delegation by chief officer

(2) Unless the terms and conditions of the delegation otherwise provide, a person to whom duties or powers are delegated by a chief officer under this section may in turn delegate those duties or powers to any person to whom those duties or powers could have been delegated under subsection (1).

(3) A delegation under this section may be made to a specified person or person of a specified group or to the holder or holders for the time being of a specified office or offices.

(4) A delegation under this section-

- (a) shall be in writing;
- (b) may be made on such terms and conditions as the delegant thinks fit; and
- (c) may be revoked at any time by written notice from the delegant to the delegate.

(5) Except to the extent that the terms and conditions of the delegation otherwise provide, a person to whom any duties and powers are delegated under

this section may perform those duties and powers in the same manner and with the same effect as if they have been conferred on the person directly and not by delegation.

(6) No delegation under this section shall affect or prevent the performance of any of the duties and powers of the delegant nor shall any such delegation affect the responsibility of that person for the actions of the delegate.

(7) Any delegation under this section, until it is revoked, shall continue in force, notwithstanding that the delegant has ceased to hold office as such, and shall continue to have effect as if made by the successor or successors of the delegant.

41. (1) A ministry or portfolio shall not-
- (a) do anything that is inconsistent with its annual performance agreement under section 42 or any direction given to it by the Financial Secretary under section 36;
  - (b) incur in any financial year entity expenses exceeding in total its entity revenue in that year, unless otherwise agreed in writing by the Financial Secretary;
  - (c) borrow or lend money;
  - (d) permit any of its bank accounts to be overdrawn;
  - (e) give any mortgage or other security or any guarantee; or
  - (f) invest in an equity or debt security.
- (2) A ministry or portfolio shall only use the centralised accounting information system to record its entity financial transactions and shall not use any other accounting information system except with the written permission of the Financial Secretary.
- (3) A ministry or portfolio-
- (a) subject to paragraph (c), may only use the centralised banking system;
  - (b) as part of the centralised banking system, may establish and operate one or more accounts-
    - (i) at such bank or banks; and
    - (ii) on such terms and conditions, as the chief officer of the Portfolio of Finance and Economic Development may agree, or specify, in writing; and
  - (c) shall not establish or operate any bank accounts outside the centralised banking system without the written approval of the Financial Secretary.
- (4) All money relating to an entity financial transaction shall be paid into or out of a bank account established and operated by it in accordance with subsection (3).
- (5) A ministry or portfolio shall pay to the Portfolio of Finance and Economic Development for each financial year a charge for the use of the equity invested by the Government in the entity.
- (6) The capital charge shall be the amount arrived at by applying the capital charge rate determined by the Financial Secretary under section 32(g) to the net worth of the entity reported in the balance sheet of the entity.

Further duties and powers of, and prohibitions on, ministries and portfolios

(7) A ministry or portfolio shall pay the capital charge twice yearly and in accordance with the dates and process established in any regulations made by the Financial Secretary under section 35(f).

(8) A ministry or portfolio shall allocate the capital charge to the cost of its outputs along with other input costs.

(9) In subsections (6), (7) and (8), “the capital charge” means the charge referred to in subsection (5).

### **Performance Specification and Reporting**

Performance agreement

42. (1) The chief officer of a ministry or portfolio shall prepare and execute a performance agreement with the Executive Council in respect of each financial year in accordance with the provisions of this section.

(2) Every performance agreement shall contain-

- (a) a specification of all the outputs the Executive Council is to purchase from the ministry or portfolio including for each output-
  - (i) a description of the output to be purchased;
  - (ii) the quantity of each output to be purchased;
  - (iii) the quality of each output to be purchased;
  - (iv) the delivery dates for each output to be purchased;
  - (v) the place of delivery of each output to be purchased;
  - (vi) the price to be paid for each output to be purchased;
  - (vii) the evidence of delivery to be provided for each output to be purchased; and
  - (viii) the payment schedule;
- (b) details of the ownership performance to be achieved during the year including-
  - (i) a description of the nature and scope of the activities of the ministry or portfolio during that year;
  - (ii) the strategic goals and objectives of the ministry or portfolio for that year and the following two years;
  - (iii) ownership performance targets of the ministry or portfolio for the year, including the targets for those aspects of ownership performance set out in Schedule 5;
  - (iv) forecast financial statements of the ministry or portfolio for the year, which shall-
    - (I) be consistent with the forecast financial statements in the annual plan and estimates; and

- (II) contain the statements and information set out in Schedule 2;
  - (c) the amount of any equity investment by the Government in the ministry or portfolio planned for the year; and
  - (d) the amount of any withdrawal of any equity investment in the ministry or portfolio by the Government planned for the year.
- (3) The draft performance agreement for a financial year shall be-
- (a) prepared in accordance with the timetable established each year by the Executive Council in accordance with section 17;
  - (b) available for review by the Executive Council as part of the Executive Council collective review phase of the budget process in accordance with section 20; and
  - (c) presented to the Legislative Assembly by the relevant minister or official member at the same time as the annual plan and estimates for that financial year are presented in accordance with section 24(1).
- (4) The finalised performance agreement -
- (a) shall be prepared immediately the legislative review phase of the budget process has been completed in accordance with section 21;
  - (b) shall be signed by the chief officer and by the following persons on behalf of the Executive Council -
    - (i) in the case of the performance agreement for the chief officer of a ministry or the Portfolio of Internal and External Affairs, the Chief Secretary;
    - (ii) in the case of the performance agreement for the chief officer of the Portfolio of Legal Affairs, the Attorney-General; and
    - (iii) in the case of the performance agreement for the chief officer of the Portfolio of Finance and Economic Development, the Financial Secretary; and
  - (c) shall be presented to the Legislative Assembly by the relevant minister or official member on the next sitting day after it has been signed.
- (5) As soon as the draft performance agreement or the finalised performance agreement is presented to the Legislative Assembly it shall be a public document and the relevant chief officer shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

(6) A performance agreement may be amended during the financial year to which it relates with the agreement of the parties to it.

(7) All amendments to a performance agreement made under subsection (6) shall be in writing and presented to the Legislative Assembly, and subsection (5) shall apply to the amended agreement.

Ministry or portfolio  
quarterly report

43. (1) Not later than four weeks after the end of each of the first three quarters in each financial year, a ministry or portfolio shall produce a quarterly report on a cumulative basis for the quarter just ended and for any preceding quarters in that financial year.

(2) The quarterly report shall report the performance of the ministry or portfolio for the period covered by the report and compare it with that proposed in the performance agreement for that financial year and shall include-

- (a) a summary of the outputs purchased by the Executive Council and delivered by the ministry or portfolio during that quarter and any preceding quarters in that financial year on a cumulative basis, including for each output-
  - (i) a description of the output;
  - (ii) the quantity of the output;
  - (iii) the quality of the output;
  - (iv) the delivery dates for the output;
  - (v) the place of delivery of the output; and
  - (vi) the price paid for the output;
- (b) a summary of the ownership performance achieved during that quarter and any preceding quarters in that financial year on a cumulative basis including the extent to which the targets set out in the performance agreement for each aspect of ownership performance set out in Schedule 5 have been achieved; and
- (c) financial statements for that quarter and any preceding quarters in that financial year on a cumulative basis which shall-
  - (i) be prepared on a basis consistent with the forecast financial statements in the performance agreement for that financial year; and
  - (ii) contain the statements and information set out in Schedule 3.

(3) The quarterly report shall be presented to the Executive Council for review no later than four weeks after the end of each quarter.

(4) The quarterly report of each ministry or portfolio shall be presented to the Legislative Assembly by the relevant minister or official member to review at

the same time as the entire public sector quarterly report is presented in accordance with section 28.

(5) As soon as the ministry or portfolio quarterly report is presented to the Legislative Assembly it shall be a public document and the relevant chief officer shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

44. (1) An annual report of a ministry or portfolio shall be presented to the Executive Council for review within four calendar months after the end of each financial year.

Ministry or portfolio  
annual report

(2) The annual report shall set out the performance of the ministry or portfolio and compare it with that set out in the performance agreement (including any amendments thereto) for that financial year and shall include-

- (a) an audited statement of outputs delivered, which summarises the outputs purchased by the Executive Council and delivered by the ministry or portfolio during the financial year, including for each output-
  - (i) a description of the output;
  - (ii) the quantity of the output;
  - (iii) the quality of the output;
  - (iv) the delivery dates for the output;
  - (v) the place of delivery of the output; and
  - (vi) the price paid for the output;
- (b) a summary of the nature and scope of the activities of the ministry or portfolio during the financial year;
- (c) a summary of the extent to which the strategic goals and objectives of the entity for the financial year described in the performance agreement were achieved;
- (d) a summary of the ownership performance achieved during the financial year for each aspect of ownership performance set out in Schedule 5; and
- (e) audited financial statements for the financial year which shall-
  - (i) be prepared on a basis consistent with the forecast financial statements in the performance agreement for that financial year; and
  - (ii) contain the statements and information set out in Schedule 4.

(3) The statement of outputs delivered and the financial statements referred to in subsection (2)(a) and (e) shall be prepared within two months of the end of the financial year and submitted to the Auditor-General for auditing, and

the Auditor-General shall express an opinion within two months of receipt of the financial statements.

(4) A ministry or portfolio shall prepare a statement reporting all executive financial transactions administered by the ministry or portfolio and submit this to the Auditor-General for auditing at the same time as it provides the financial statements for audit in accordance with subsection (3).

(5) The annual report of each ministry or portfolio shall be presented by the relevant minister or official member to the Legislative Assembly to review at the same time as the entire public sector annual report is presented in accordance with section 29.

(6) As soon as the ministry or portfolio annual report has been presented to the Legislative Assembly it shall be a public document and the relevant chief officer shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

## **PART V - Statutory Authorities and Government Companies**

### **Duties and Powers of Statutory Authorities and Government Companies**

Duties of statutory  
authorities and  
government companies

45. (1) Subject to subsection (2), a statutory authority or government company shall-

- (a) supply outputs that the Executive Council has agreed that it will purchase from the statutory authority or government company;
- (b) supply outputs to entities or individuals other than the Executive Council for payment and in accordance with agreements with those entities or individuals; and
- (c) achieve the ownership performance that it has agreed with the Executive Council that it will achieve during the year.

(2) A statutory authority or government company shall not produce an output during a financial year unless-

- (a) the output is within the nature and scope of the activities that are set out in the annual ownership agreement of the authority or company; and
- (b) the Executive Council, or another entity or person has, by way of formal agreement, agreed to pay for the full cost of the output to be produced.



(3) In the event of any inconsistency between the provisions of subsection (2) and the operation of any other law, the provisions of subsection (2) shall prevail to the extent of the inconsistency.

46. (1) The board of a statutory authority or government company shall be responsible for the performance of the authority or company including all its subsidiary entities, including for ensuring that the authority or company-

Duties of board

- (a) delivers the outputs specified in the purchase agreement prepared in accordance with section 48; and
- (b) achieves the ownership performance specified in the ownership agreement prepared in accordance with section 49.

(2) The board shall be responsible for appointing, and monitoring the performance of, a chief officer.

(3) The board shall delegate to the chief officer, on such terms and conditions as it thinks fit, the power to manage the statutory authority or government company.

47. A government company or a subsidiary of a government company may not form, acquire shares in, or participate in any other transaction that will result in, a body corporate becoming a subsidiary of the company, unless it has been authorised to do so in writing by the Executive Council.

Acquisition and disposal of subsidiaries

### **Performance Specification and Reporting**

48. (1) A statutory authority or government company that is delivering outputs that are being purchased by the Executive Council shall prepare and execute an annual purchase agreement for the authority or company with the Executive Council for each financial year in accordance with the provisions of this section.

Annual purchase agreement

(2) A purchase agreement executed under subsection (1) shall specify all the outputs the Executive Council is to purchase from the authority or government company, including for each output-

- (a) a description of the output to be purchased;
- (b) the quantity of the output to be purchased;
- (c) the quality of the output to be purchased;
- (d) the delivery dates for the output to be purchased;
- (e) the place of delivery of the output to be purchased;
- (f) the price to be paid for the output to be purchased;

- (g) the evidence of delivery to be provided for the output to be purchased; and
- (h) the payment schedule.

- (3) The draft purchase agreement for a financial year shall be-
  - (a) prepared in accordance with the timetable established each year by the Executive Council in accordance with section 17;
  - (b) available for review by the Executive Council as part of the Executive Council collective review phase of the budget process in accordance with section 20; and
  - (c) presented to the Legislative Assembly by the relevant minister or official member at the same time as the annual plan and estimates for that financial year are presented in accordance with section 24(1).
- (4) A finalised purchase agreement shall be-
  - (a) prepared immediately the legislative review phase of the budget process has been completed in accordance with section 21;
  - (b) signed by a member of the Executive Council on behalf of the Executive Council and by the chairman on behalf of the board, no later than the beginning of the financial year; and
  - (c) presented to the Legislative Assembly by the relevant minister or official member on the next sitting day after it has been signed.

(5) As soon as the draft purchase agreement or the finalised purchase agreement is presented to the Legislative Assembly it shall be a public document and the relevant authority or company shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

(6) A purchase agreement for an authority or company may be modified at any time by agreement between the authority or company and the Executive Council.

(7) All amendments to a purchase agreement made under subsection (6) shall be in writing and presented to the Legislative Assembly, and subsection (5) shall apply to the amended agreement.

Annual ownership agreement

49. (1) Each statutory authority and government company shall prepare an annual ownership agreement for the authority or company for each financial year.

- (2) An annual ownership agreement shall contain-

- (a) a description of the nature and scope of the activities of the authority or company during that financial year;
  - (b) the strategic goals and objectives of the authority or company for that financial year and the following two financial years;
  - (c) ownership performance targets of the authority or company for the financial year, including the targets for those aspects of ownership performance set out in Schedule 5;
  - (d) forecast financial statements of the company for the financial year, which shall-
    - (i) be consistent with the forecast financial statements in the annual plan and estimates for that financial year; and
    - (ii) contain the statements and information set out in Schedule 2;
  - (e) details of any equity investment to be made by the Government in the authority or company planned for the financial year;
  - (f) details of any capital withdrawals to be made by the Government from the authority or company planned for the financial year;
  - (g) details of any dividends or profit distributions forecast to be paid by the authority or company during the financial year;
  - (h) details of any loans to the authority or company proposed to be made by the Government during the financial year; and
  - (i) details of any guarantees relating to the authority or company proposed to be made by the Government during the financial year.
- (3) A draft ownership agreement for a financial year shall be-
- (a) prepared in accordance with the timetable established each year by the Executive Council in accordance with section 17;
  - (b) available for review by the Executive Council as part of the Executive Council collective review phase of the budget process in accordance with section 20; and
  - (c) presented to the Legislative Assembly by the relevant minister or official member at the same time as the annual plan and estimates for that financial year is presented in accordance with section 24(1).
- (4) A finalised ownership agreement shall be-
- (a) prepared immediately the legislative review phase of the budget process has been completed in accordance with section 21;
  - (b) signed by a member of the Executive Council on behalf of the Executive Council and by the chairman on behalf of the board, no later than the beginning of the financial year; and

- (c) presented to the Legislative Assembly the relevant minister or official member on the next sitting day after it has been signed.

(5) As soon as the draft ownership agreement or the finalised ownership agreement is presented to the Legislative Assembly it shall be a public document and the relevant authority or company shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

(6) An annual ownership agreement for an authority or company may be modified at any time by agreement between the authority or company and the Executive Council.

(7) All amendments to an annual ownership agreement made under subsection (6) shall be in writing and presented to the Legislative Assembly, and subsection (5) shall apply to the amended plan.

Half -yearly report

50. (1) Not later than four weeks after the end of the first half of each financial year, a statutory authority and government company shall produce a half-yearly report.

(2) The half-yearly report shall report the performance of the authority or company and shall compare it with that proposed in the ownership agreement for that financial year and shall include-

- (a) a summary of the nature and scope of the activities of the authority or company during that financial half-year;
- (b) a summary of the extent to which the ownership performance targets set out in the authority's or company's annual ownership agreement for that financial year have been achieved in that financial half-year;
- (c) financial statements of the authority or company for the financial half-year, which shall-
  - (i) be prepared on a basis consistent with the forecast financial statements in the authority's or company's annual ownership agreement for that financial year; and
  - (ii) contain the statements and information set out in Schedule 3;
- (d) the amount of any equity investment made by the Government into the authority or company during the financial half-year;
- (e) the amount of any capital withdrawals made by the Government from the authority or company during the financial half-year;
- (f) the amount of any dividends or profit distributions paid by the authority or company during the financial half-year;

- (g) the amount of any loans to the authority or company by the Government during the financial half-year; and
- (h) details of any guarantees relating to the authority or company made by the Government during the financial half-year.

(3) The half-yearly report shall be presented to the Executive Council for review no later than four weeks after the end of the half-year.

(4) The half-yearly report of each authority or company shall be presented for review to the Legislative Assembly by the relevant minister or official member at the same time as the next entire public sector quarterly report is presented in accordance with section 28.

(5) As soon as the half-yearly report is tabled it shall be a public document and the relevant authority or company shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

51. (1) In respect of each financial year, each statutory authority and government company shall prepare an annual report.

Statutory authority or  
government company  
annual report

(2) An annual report shall report the performance of the authority or company and compare it with that proposed in the ownership agreement for that financial year and shall include-

- (a) a summary of the nature and scope of the activities of the authority or company during that financial year;
- (b) a summary of the extent to which the strategic goals and objectives of the authority or company described in the annual ownership agreement were achieved;
- (c) a summary of the extent to which the ownership performance targets set out in the authority's or company's annual ownership agreement for that financial year have been achieved in that financial year;
- (d) audited financial statements of the authority or company for the financial year, which shall-
  - (i) be prepared on a basis consistent with the forecast financial statements in the authority's or company's annual ownership agreement for that financial year; and
  - (ii) contain the statements and information set out in Schedule 4;
- (e) the amount of any equity investment made by the Government in the authority or company during the financial year;

- (f) the amount of any capital withdrawals made by the Government from the authority or company during the financial year;
- (g) the amount of any dividends or profit distributions paid by the authority or company during the financial year;
- (h) the amount of any loans to the authority or company by the Government during the financial year; and
- (i) details of any guarantees relating to the authority or company made by the Government during the financial year.

(3) The financial statements referred to in subsection (2) shall be prepared within two months of the end of the financial year and submitted to the Auditor-General for auditing, and the Auditor-General shall express an opinion within two months of receipt of the financial statements.

(4) The annual report shall be presented to the Executive Council by the relevant minister or official member no later than four months after the end of the financial year.

(5) The annual report of each authority or company shall be presented to the Legislative Assembly four months and two weeks after the end of the financial year or on the first sitting day thereafter by the relevant minister or official member.

(6) As soon as the annual report is tabled it shall be a public document and the relevant authority or company shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

Exclusion of  
commercially sensitive  
matters

52. An annual ownership agreement, half-yearly report, or annual report for a statutory authority or government company need not include a matter that is of a commercially sensitive nature to the extent that the Financial Secretary so agrees.

#### **PART VI - Portfolio of Finance and Economic Development**

Duties of the Portfolio of  
Finance and Economic  
Development

53. The Portfolio of Finance and Economic Development shall-

- (a) prepare the economic forecasts required by sections 23 and 26;
- (b) co-ordinate the Government's budget process established under section 17;
- (c) co-ordinate the preparation of the strategic policy statement which is to be prepared in accordance with section 18;
- (d) co-ordinate the preparation of the annual plan and estimates required by section 20;

- (e) prepare the pre-election economic and financial update required by section 26;
- (f) prepare the forecast financial statements for the entire public sector required by sections 24(2) and 26(2);
- (g) prepare the quarterly financial statements and annual financial statements for the entire public sector required by sections 28(2)(b) and 29(2)(c);
- (h) establish and operate a centralised accounting information system for the entire public sector, ministries and portfolios;
- (i) establish and operate the centralised banking system;
- (j) operate the executive bank account;
- (k) set accounting policies, which shall be consistent with generally accepted accounting practice, for all financial information required by this Law;
- (l) collect the capital charge required to be paid by ministries and portfolios under section 41(5);
- (m) monitor the output delivery and the ownership performance of ministries, portfolios, statutory authorities and government companies;
- (n) review the management systems operated by ministries, portfolios, statutory authorities and government companies for compliance with the requirements of this Law and regulations; and
- (o) if requested to do so by a ministry or portfolio, provide accounting and financial services to the ministry or portfolio and shall recover the actual cost of provision of those services from the ministry or portfolio to which they are provided.

54. (1) There shall be an executive bank account, which shall be operated in accordance with section 53(j) and the provisions of this section. Executive bank account

(2) Money received or paid in respect of executive financial transactions shall be paid into or out of the executive bank account.

(3) Trust assets consisting of money, and money received or paid in respect of entity financial transactions, may not be paid into or out of the executive bank account.

(4) The executive bank account shall be operated-

- (a) as part of the centralised banking system but separately from the bank accounts of ministries, portfolios and the Audit Office; and
- (b) at such bank, whether within or outside the Islands, and on such terms and conditions, as the Financial Secretary may approve.

Power to request  
information for entire  
public sector reporting

55. (1) For the purposes of preparing the entire public sector reports required by this Law, the Financial Secretary may request from members of the Executive Council, ministries, portfolios, statutory authorities, government companies or any non-government entity receiving money from the Government, such relevant information as the chief officer of the Portfolio of Finance and Economic Development may need to prepare those reports, and the person or entity concerned shall supply the information requested by the date and in the format required by him.

(2) For the purposes of this section, whether information is relevant or not shall be determined by the Governor.

Powers of the Internal  
Audit Group

56. (1) For the purposes of reviewing the financial management systems operated by ministries, portfolios, statutory authorities and government companies under section 53(n), the Director of Internal Audit shall have the right-

- (a) of access to all information held by any ministry, portfolio, statutory authority or government company;
- (b) to take copies of any information referred to in paragraph (a);
- (c) to require explanations from officers or employees of entities subject to review; and
- (d) of access to all premises occupied by any ministry, portfolio, statutory authority or government company.

(2) The Director of Internal Audit may direct in writing a public officer or an employee of a statutory authority or government company that is subject to review to provide information to the Director of Internal Audit within the time and in the manner specified in the direction.

## **PART VII - Audit Office**

### **Auditor-General**

Independence of  
Auditor-General

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

(2) 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.

(3) The Auditor-General shall not, whilst he holds that office, hold any other paid office or employment.



(4) If the Auditor-General is 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 and the Auditor-General shall have the right of reply which shall be exercised by way of written statement which shall be tabled in the Legislative Assembly by the Speaker.

(5) The Governor shall specify in writing the amount of the annual salary of the Auditor-General and the Auditor-General shall be entitled to the salary so specified.

58. If in the opinion of the Governor, the Auditor-General is unable to 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.

Appointment of acting Auditor-General

### **Powers and Duties of the Auditor-General**

59. The Auditor-General shall-

- (a) conduct audits of the annual financial statements in respect of-
  - (i) the entire public sector referred to in section 29(2)(c); and
  - (ii) every ministry, portfolio, statutory authority and government company referred to in sections 44(2)(e) and 51(2)(d);
- (b) conduct audits of the summary referred to in section 29(2)(b), the schedule referred to in section 29(2)(d) and the statement referred to in section 44(2)(a);
- (c) on his own initiative or at the request of the Legislative Assembly or of any of its committees or subcommittees, conduct investigations into-
  - (i) the management of executive financial transactions;
  - (ii) the financial management of any ministry, portfolio, statutory authority or government company; and
  - (iii) the economy, efficiency and effectiveness with which any ministry, portfolio, statutory authority or government company has used its resources in discharging its functions;
- (d) at the request of the Legislative Assembly or of one of its committees or subcommittees, provide advice and assistance to the Legislative Assembly or to any of its committees or subcommittees; and
- (e) if he is authorised in writing to do so by the Governor in the public interest, conduct investigations into the financial management or affairs of persons, companies and bodies other than those referred to in paragraphs (a) to (d).

Powers and duties of the Auditor-General

- Reporting by Auditor-General
60. (1) The Auditor-General shall prepare and-
- (a) deliver to the entity whose financial statements, summary, schedule or statement have been audited-
    - (i) an audit opinion in relation to each audit referred to in section 59(a) and (b); and
    - (ii) in relation to each audit referred to in subparagraph (i) a summary of the issues resulting from each audit that he wishes to bring to the attention of the entity whose financial statements, summary, schedule or statement have been audited; and
  - (b) present to the Legislative Assembly-
    - (i) at least one general report in each financial year on-
      - (I) the results of audits referred to in paragraph (a); and
      - (II) matters that he wishes to bring to the attention of the Legislative Assembly; and
    - (ii) a report on each investigation requested by the Legislative Assembly or any of its committees or subcommittees and undertaken in accordance with section 59(c).

(2) As soon as a report specified in subsection (1)(b) is delivered to the Clerk of the Legislative Assembly for presentation to the Legislative Assembly it shall be a public document and the Auditor-General shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Financial Secretary.

- Reporting sensitive information
61. The Auditor-General may omit particular information from a report to the Legislative Assembly if-
- (a) he is of the opinion that its disclosure in the report would be contrary to the public interest because it could-
    - (i) have a serious adverse impact on the commercial interests of any person;
    - (ii) reveal trade secrets of any person;
    - (iii) prejudice the investigation of an alleged contravention of a law;
    - (iv) prejudice the fair trial of a person; or
    - (v) prejudice relations between the Islands and another country;or
  - (b) the Governor has certified that the disclosure of the information would be contrary to the public interest.

- Obligations of the Auditor-General
62. The Auditor-General shall ensure that-

- (a) all audits and investigations carried out by him, or on his behalf, are carried out-
  - (i) in a competent fashion and with due care; and
  - (ii) in accordance with the International Standards on Auditing; and
- (b) the persons carrying out such an audit or investigation are independent of the entity being audited or investigated.

63. (1) For the purposes of carrying out an audit or an investigation other than under section 59(e), the Auditor-General or any person authorised by him for that purpose has -

Investigatory powers of the Auditor-General

- (a) (i) the right of access to all relevant information held by the Executive Council or any member of the Executive Council, where the relevance of information shall be determined by the Governor; and
- (ii) the right of access to all information held by any public officer or employee of a statutory authority or government company;
- (b) the right to take copies of any information referred to in paragraph (a);
- (c) the right to require explanations from officers or employees of entities subject to audit or investigation; and
- (d) the right of access to all premises occupied by any ministry, portfolio, statutory authority or government company.

(2) The Auditor-General may direct in writing a public officer or an employee of a statutory authority or government company subject to audit or to an investigation other than under section 59(e), to-

- (a) provide information to the Auditor-General within the time and in the manner specified in the direction;
- (b) attend before the Auditor-General at a specified time and place and answer questions; and
- (c) grant access to the Auditor-General or to any person authorised by the Auditor-General, to any premises occupied by the entity.

(3) For the purposes of carrying out any investigation under section 59(e), the Auditor-General shall in relation to the investigation have the powers provided by subsections (1) and (2) and those powers shall also apply to all relevant persons, companies and bodies.

64. (1) The Auditor-General may engage a person under contract to carry out, or assist in the carrying out of, any audit or investigation that the Auditor-General is required to or may carry out.

Appointment of contractors

(2) With the agreement of the Auditor-General, a statutory authority or government company may engage a person under subsection (1) to carry out the audit of its annual financial statements.

(3) Any person who is currently engaged, or who has within the previous twelve months been engaged, under section 68 as the auditor of the Auditor-General may not be engaged under subsection (1).

(4) The Auditor-General may delegate in writing all or any of the Auditor-General's powers to a person engaged under this section, and section 40 applies, with all necessary modifications, to any such delegation as if every reference in those subsections to a chief officer were a reference to the Auditor-General.

### **Accountability Arrangements in Relation to the Audit Office**

Audit Office

65. (1) The Auditor-General shall be the chief officer of the Audit Office.

(2) The Auditor-General shall be accountable to the Legislative Assembly for the performance of the Audit Office.

Application of Part IV to the Audit Office

66. (1) Unless the context otherwise requires, Part IV shall apply in respect of the Audit Office as if-

- (a) every reference to the Executive Council or a minister were a reference to the Public Accounts Committee; and
- (b) every reference to a ministry were a reference to the Audit Office.

(2) Notwithstanding sections 10, 19, 20, 22, 30 and 31 the Public Accounts Committee shall-

- (a) be granted the appropriations relating to the Audit Office;
- (b) in respect of the Audit Office, undertake the duties assigned to the Executive Council or a minister under sections 19, 20(a) and (b), 22(a), 30 and 31;
- (c) provide the Financial Secretary with the necessary information in relation to the Audit Office to be included in the annual plan and estimates and the Appropriation Bill to be presented in accordance with section 24; and
- (d) provide the Financial Secretary with the necessary information in relation to the Audit Office to be included in any supplementary

annual plan and estimates and the supplementary Appropriation Bill to be presented in accordance with section 25.

(3) In carrying out its duties under this section the Public Accounts Committee shall-

- (a) make its decisions in accordance with the budget process established by the Executive Council under section 17; and
- (b) ensure that its decisions are consistent with the principles of responsible financial management set out in section 14(3).

67. (1) The Audit Office shall obtain its entity revenue by charging-

Fees and charges

- (a) Executive Council, ministries, portfolios, statutory authorities and government companies for -
  - (i) audits conducted under section 59(a) and (b); and
  - (ii) investigations conducted under section 59(e) where the Governor determines that such investigations shall be paid for by Executive Council;
- (b) the Legislative Assembly for audits, investigations or assistance and advice requested or agreed by it under section 59(c) and (d); and
- (c) the persons, companies or bodies investigated under section 59(e) for the investigations conducted, where paragraph (a)(ii) does not apply.

(2) The charge to be made by the Audit Office under subsection (1) shall be a fair price.

(3) In this section “fair price” means-

- (a) the amount for which the output would be purchased and sold between knowledgeable and willing parties in an arm’s length transaction; or
- (b) where an amount cannot be determined under paragraph (a) the cost of producing that output calculated on the basis of a complete allocation of input costs to outputs.

68. (1) In accordance with section 44, the Audit Office shall prepare an annual report on the activities of the Audit Office for the year.

Annual report of the  
Audit Office

(2) The statement of outputs delivered and the annual financial statements of the Audit Office shall be audited by an entity or individual who is independent of the Auditor-General (called in this section the “independent auditor”).

- (3) The independent auditor shall-
  - (a) be an entity or individual who is, in the opinion of the Public Accounts Committee, suitably qualified and experienced to be the independent auditor; and
  - (b) be appointed by the Public Accounts Committee for a term not exceeding three years and on such other terms and conditions as the Public Accounts Committee determines.
- (4) For the purpose of conducting an audit of the Audit Office, the independent auditor shall have-
  - (a) the obligations under section 62; and
  - (b) the powers under section 63;
- (5) Section 44 shall apply in respect of the Audit Office as if every reference in that section to the Auditor-General were a reference to the independent auditor.

## **PART VIII - General Provisions**

### **Trust Assets**

Trust assets to be  
separately accounted for

69. (1) All trust assets shall be accounted for separately from executive assets and entity assets.

(2) The Financial Secretary shall manage all trust assets and shall have all such powers as are necessary for this purpose.

(3) Any trust asset received by a ministry, portfolio or the Audit Office shall be immediately transferred to the Financial Secretary.

(4) The Financial Secretary may charge fees in accordance with a scale prescribed by regulations for the management of trust assets which shall be deducted from the trust assets or from income from those assets when returned to the beneficiary, provided that the fee charged shall be no more than the income earned on those trust assets.

Trust bank accounts

70. (1) There shall be established at one or more banks approved by the Financial Secretary, one or more accounts to be known as trust bank accounts.

(2) Trust bank accounts shall be operated only by the Financial Secretary.

(3) All receipts of trust assets consisting of money shall be paid into a trust bank account.

71. (1) The Financial Secretary may, for such periods and on such terms and conditions as he thinks fit, place trust assets, consisting of money, on deposit with any bank. Deposit of trust assets consisting of money
- (2) No person shall have a right of action against the Financial Secretary in respect of any deposit or non-deposit of any trust assets consisting of money.
72. When any trust asset is returned to a beneficiary by the Financial Secretary, the amount of income (if any) certified by the Financial Secretary to have been earned thereon shall be added to the trust asset. Transfer of trust assets
73. (1) Any trust asset that shall be unclaimed for a period of six years after having become transferable to any person entitled to the asset shall, together with any income payable in respect of the asset, be treated as an unclaimed trust asset. Unclaimed trust assets
- (2) An unclaimed trust asset in the form of money shall be paid into the executive bank account and recorded as executive revenue.
- (3) If any person establishes, to the satisfaction of the Financial Secretary or his nominee, a claim to any money that has been paid into the executive bank account in accordance with subsection (2), that amount, together with such interest (if any) as the Financial Secretary may approve, shall be paid to the claimant and recorded as an executive expense without further appropriation than this section.
- (4) Where any money paid to any claimant under subsection (3) is afterwards claimed by any other person, neither the Government, nor the Financial Secretary nor his nominee shall be liable to that other person by reason of having paid the money to the first claimant.
- (5) An unclaimed trust asset that is not in the form of money shall be sold on such terms and conditions as the Financial Secretary thinks fit and the proceeds of sale shall be dealt with in accordance with subsections (2), (3) and (4).
- (6) In the event of any inconsistency between the provisions of this section and the operation of any other law, the provisions of this section shall prevail to the extent of the inconsistency.
74. (1) Where any asset except an interest in land is vested in the Crown as bona vacantia, the Financial Secretary (or any person appointed by him for this purpose) may on behalf of the Crown exercise any power or right (including any Bona vacantia

power of disposal), and perform any obligation, in respect of or in connection with the asset that could be exercised or performed by the Crown.

(2) If any person claims any asset which belongs to the Crown as bona vacantia, and establishes a claim to the satisfaction of the Financial Secretary (or any entity appointed by him under subsection (1)), the asset shall be transferred to that person without further appropriation.

(3) Where any asset transferred to any claimant under subsection (2) is afterwards claimed by any other person, neither the Government, nor the Financial Secretary, nor a person appointed under subsection (1) shall be liable to that other person by reason of having transferred the asset to the first claimant.

### **Offences**

Offences and penalties

75. A person who, without reasonable excuse-

- (a) fails, after a request in writing, to-
  - (i) produce any information that is in that person's possession or under that person's control; or
  - (ii) allow access to premises; or
  - (iii) provide answers or explanations, when required to do so by or by regulations made under this Law; or
- (b) makes any statement or gives any information required by or by regulations made under this Law, knowing it to be false or misleading,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding six months, or both, or on conviction on indictment to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years, or both and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine not exceeding ten thousand dollars for every day on which the offence is so continued.

Offences by corporations

76. (1) Where an offence under, or under any regulation made under, this Law which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.



(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **Miscellaneous Provisions**

77. (1) Nothing in this Law shall affect the constitutional functions or independence of the Governor, his office or support staff.

Law not to affect the independence of the Governor

(2) Nothing in this Law shall be construed so as to define the Governor as a ministry or portfolio or to require him to comply with any of the provisions of Parts III, IV or V.

(3) The office of the Governor shall not be required to comply with sections 42, 43 and 44, but the outputs and ownership performance of the office of the Governor shall be included in the performance agreement and the quarterly and annual reports of the Portfolio of Internal and External Affairs prepared in accordance with those sections.

(4) Notwithstanding subsection (3), the chief officer of the Portfolio of Internal and External Affairs shall not be accountable, or deemed to be accountable, for the activities or the financial performance of the office of the Governor.

### **Transitional Arrangements, Repeals and Consequential Amendments**

78. (1) The following bank accounts existing and operated by the Treasury immediately prior to the commencement of Part VI, are deemed to be an executive bank account established in accordance with section 53(j) -

Transition of accounts

- (a) current account;
- (b) Cayman Brac account;
- (c) US dollar call account;
- (d) US dollar account;
- (e) pound sterling accounts;
- (f) Capital development fund accounts;
- (g) payroll account; and
- (h) revenue account.

(2) The following bank accounts existing and operated by a ministry or portfolio prior to the commencement of Part VI are deemed to be an entity bank account established in accordance with section 41(3) -

- (a) Commissioner of Police account;
- (b) the bank accounts operated by the United Kingdom representative;
- (c) the bank accounts operated by the Department of Tourism overseas offices; and
- (d) the bank accounts of the London shipping office.

(3) The balance of each imprest account recorded by the Treasury at the commencement of Part IV shall be recorded as a cash balance in the opening balance sheet of the relevant ministry or portfolio.

(4) All fund balances, public debt, fixed deposit and investments, advance accounts, deposit accounts, investment undertakings, self-financing loans, loans recoverable and arrears of revenue recorded by the Treasury at the commencement of Part V, shall be transferred and appropriately classified in accordance with generally accepted accounting practice to the executive balance sheet or the balance sheet of the relevant ministry, portfolio, statutory authority or government company.

(5) All physical assets of the Government and any financial assets or liabilities of the Government not referred to in subsections (1) to (4) that exist at the commencement of Part VI are to be recorded in the opening balance sheets of the executive and ministries and portfolios as follows-

- (a) all Crown land is to be recorded on the executive balance sheet;
- (b) all debtors relating to entity revenue and all creditors relating to entity expenses are to be allocated to the relevant ministry or portfolio's balance sheet; and
- (c) all assets used by a ministry or portfolio to produce its outputs, are to be recorded on the relevant ministry or portfolio balance sheet, except to the extent that the Financial Secretary declares this shall not occur in relation to a specific asset; and
- (d) all other assets and liabilities not covered by paragraphs (a) to (c) are to be recorded on the executive balance sheet.

Transition to responsible  
financial management

79. (1) If at the time that section 14 comes into force, the financial performance and financial position of the entire public sector is not consistent with the principles of responsible financial management specified in section 14, the Executive Council shall ensure that the results of the strategic phase specified in section 18 and the detailed planning and budgeting phase specified in section 19 are such that -

- (a) total entire public sector revenue less total entire public sector expenses (as defined in section 14(3)(a)) is positive from the next financial year;
- (b) total entire public sector assets less total entire public sector liabilities (as defined in section 14(3)(b)) is increased each financial year by the amount specified in subsection (2) until the level defined by section 14(3)(b) is achieved;
- (c) entire public sector borrowing is decreased each financial year by the amount specified in subsection (3) until the level defined by section 14(3)(c) is achieved; and
- (d) cash reserves are increased each financial year by an amount equal to no less than three percent of executive expenses for that financial year until the level defined in section 14(3)(d) is achieved.

(2) The amount by which net worth shall be increased under subsection (1)(b) shall be at least an amount equal to one-eighth of the difference between the level of net worth at the commencement of section 14 and the level defined in section 14(3)(b).

(3) The amount by which borrowing shall be decreased under subsection (1)(c) shall be at least an amount equal to one-eighth of the difference between the level of borrowing at the commencement of section 14 and the level defined in section 14(3)(c).

80. (1) Until the commencement of section 39, a ministry or portfolio shall comply with any interim input control regulations issued by the Financial Secretary under this section.

Interim input control  
system

(2) Until the commencement of sections 41(3), 41(4) and 53(i), all money relating to the entity financial transactions of ministries and portfolios shall be paid into or out of the executive bank account.

(3) In addition to the requirements of section 42, each performance agreement of a ministry or portfolio for the financial year commencing 1 July, 2004 or the financial year commencing 1 July, 2005 prepared in accordance with section 42 shall include-

- (a) a detailed line item input budget for all operating input items for that financial year; and
- (b) a detailed capital expenditure budget for all capital expenditure for that financial year.

(4) A Ministry or portfolio may not incur any entity expense or entity liability, or purchase or create any entity asset, in respect of either of the financial years referred to in subsection (3) except in accordance with the performance agreement referred to in that subsection.

Repeals and transitional provisions

81. (1) Subject to subsection (2) -

- (a) the Public Finance and Audit Law (1997 Revision) and regulations made under that Law; and
- (b) section 74 of the Customs Law (1998 Revision),

are repealed.

(2) The Public Finance and Audit Law (1997 Revision) and regulations made under that Law shall be deemed not to have been repealed, but to remain in full force and effect in relation to financial transactions relating to any financial year ending on, or before, 30 June, 2004.

(3) Notwithstanding section 3 -

- (a) the first financial year ending on 30 June shall be the financial year ending 30 June, 2004;
- (b) the financial year immediately prior to the year ending 30 June, 2004 shall be for a period of six months ending 30 June, 2003; and
- (c) the financial years prior to that defined in paragraph (b) shall be for a year ending on 31 December.

Sections 23 and 26

## **SCHEDULE 1**

### **ECONOMIC FORECASTS**

1. Gross domestic product.
2. Consumer prices.
3. Unemployment and employment.
4. Current account position of the balance of payments.
5. A statement of all significant assumptions underlying the above.

Sections 24, 26, 42 and 49

## **SCHEDULE 2**

### **FORECAST FINANCIAL STATEMENTS**

1. Forecast financial statements shall include-

- (a) a forecast operating statement;
  - (b) a forecast balance sheet statement;
  - (c) a forecast statement of changes in net worth;
  - (d) a forecast statement of cash flows;
  - (e) such other statements as may be required to fairly reflect financial performance and position;
  - (f) a statement of accounting policies;
  - (g) a statement of responsibility prepared in accordance with paragraph 4; and
  - (h) except as provided in paragraph 3, in respect of each statement referred to in subparagraphs (a) to (e) -
    - (i) comparative estimated actual figures for the immediately preceding financial year;
    - (ii) comparative forecast figures for the immediately preceding financial year, being the forecast figures published at the beginning of that year; and
    - (iii) comparative actual figures for the financial year preceding the financial year referred to in sub-subparagraph (i).
2. Forecast financial statements for the entire public sector shall also include-
- (a) a forecast statement of borrowings, and the comparative figures referred to in paragraph 1(h);
  - (b) a forecast statement of loans, and the comparative figures referred to in paragraph 1(h);
  - (c) a statement of actual commitments as at the day on which the forecasts are finalised;
  - (d) a statement of actual contingent liabilities as at the day on which the forecasts are finalised; and
  - (e) a statement of significant assumptions underlying the forecasts.
3. In the case of forecast financial statements required by section 26 -
- (a) actual figures published in the entire public sector quarterly report immediately preceding the economic and financial update and the year to date budget for that quarter are required instead of estimated actual figures; and
  - (b) comparative actual figures are not required.
4. Every statement of responsibility required by this Schedule shall-
- (a) be signed by-
    - (i) in the case of the entire public sector forecast financial statements, the Financial Secretary and a member of the Executive Council appointed by the Executive Council to do so on their behalf;

- (ii) in the case of forecast financial statements of a ministry, portfolio, or the Audit Office, the chief officer; and
- (iii) in the case of a forecast financial statement of a statutory authority or government company, the chairman on behalf of the board;
- (b) include-
  - (i) a statement acknowledging responsibility for the accuracy of the information in the forecast financial statements; and
  - (ii) a statement that the forecast financial statements fairly reflect the forecast financial position and performance of the entity for the period concerned; and
- (c) in the case of the entire public sector forecast financial statements, include a statement that those statements include all policy decisions that have or may have a material effect on the economic or financial forecasts.

Sections 28, 43, and 50

### **SCHEDULE 3**

#### **QUARTERLY FINANCIAL STATEMENTS**

1. Quarterly financial statements (or in the case of statutory authorities and government companies half-year financial statements) shall contain for the quarter in question, and for any preceding quarters in the current financial year on a cumulative basis-

- (a) an operating statement;
- (b) a balance sheet statement;
- (c) a statement of changes in net worth;
- (d) a statement of cash flows;
- (e) such other statements as may be required fairly to reflect financial performance and position;
- (f) a statement of accounting policies;
- (g) a statement of responsibility prepared in accordance with paragraph 3; and
- (h) in respect of each statement referred to in subparagraphs (a) to (e) -
  - (i) comparative cumulative forecast figures for the current and preceding quarters in the current financial year; and
  - (ii) comparative actual figures for the period corresponding to that referred to in sub-subparagraph (i) in the preceding financial year.

2. Quarterly financial statements for the entire public sector shall also include-
  - (a) a statement of borrowings, and the comparative figures and information referred to in paragraph 1(h);
  - (b) a statement of loans, and the comparative figures and information referred to in paragraph 1(h); and
  - (c) a statement of emergency financial transactions, being financial transactions approved under section 13.
3. Every statement of responsibility required by this Schedule shall-
  - (a) be signed by-
    - (i) in the case of the entire public sector quarterly financial statements, the Financial Secretary;
    - (ii) in the case of quarterly financial statements of a ministry or portfolio, the chief officer; or
    - (iii) in the case of half-yearly financial statements of a statutory authority or government company, the chairman of the board; and
  - (b) include-
    - (i) a statement acknowledging responsibility for the accuracy of the information in the financial statements;
    - (ii) a statement acknowledging responsibility for establishing and maintaining a system of internal controls designed to provide reasonable assurance that the transactions recorded in the financial statements are authorised by law and properly record the financial transactions of the entity; and
    - (iii) a statement that the financial statements fairly reflect the financial position and performance of the entity for the financial year concerned.

#### **SCHEDULE 4**

Sections 29,44 and 51

#### **ANNUAL FINANCIAL STATEMENTS**

1. Annual financial statements shall include-
  - (a) an operating statement;
  - (b) a balance sheet statement;
  - (c) a statement of changes in net worth;
  - (d) a statement of cash flows;
  - (e) such other statements as may be required to fairly reflect financial performance and position;

- (f) a statement of commitments;
  - (g) a statement of contingent liabilities;
  - (h) a statement of accounting policies;
  - (i) a statement of responsibility prepared in accordance with paragraph 4; and
  - (j) in respect of each statement referred to in subparagraphs (a) to (e)-
    - (i) comparative figures for the preceding financial year; and
    - (ii) comparative forecast figures for the financial year, and an explanation of all significant differences between actual and forecast figures.
2. Annual financial statements for the entire public sector shall also include-
- (a) a statement of borrowings, and the comparative figures and information referred to in paragraph 1(j);
  - (b) a statement of loans, and the comparative figures and information referred to in paragraph 1(j);
  - (c) a statement of unappropriated financial transactions, being those executive financial transactions that require, but have not been granted, appropriation;
  - (d) a statement of emergency financial transactions, being financial transactions under section 13; and
  - (e) a statement of trust assets, stating the revenues, expenses and opening and closing balances for each category of such assets.
4. Every statement of responsibility required by this Schedule shall-
- (a) be signed by-
    - (i) in the case of the entire public sector financial statements, the Financial Secretary and a member of the Executive Council appointed by the Executive Council to do so on their behalf;
    - (ii) in the case of financial statements of a ministry or portfolio, the chief officer; or
    - (iii) in the case of financial statements of a statutory authority or government company, the chairman on behalf of the board; and
  - (b) include-
    - (i) a statement acknowledging responsibility for the accuracy of the information in the annual financial statements;
    - (ii) a statement acknowledging responsibility for establishing and maintaining a system of internal controls designed to provide reasonable assurance that the transactions recorded



- in the financial statements are authorised by law and properly record the financial transactions of the entity; and
- (iii) a statement that the financial statements fairly reflect the financial position and performance of the entity for the financial year concerned.

## **SCHEDULE 5**

Sections 42, 43, 44, and  
49

### **OWNERSHIP PERFORMANCE MEASURES**

#### **Financial Performance**

1. (1) Amounts for-
  - (a) revenue from trading with Executive Council;
  - (b) revenue from trading with ministries, portfolios, statutory authorities and government companies;
  - (c) revenue from trading with any other person;
  - (d) surplus/deficit from outputs;
  - (e) ownership expenses (such as major losses on sales of fixed assets and downward asset revaluations);
  - (f) net surplus/deficit;
  - (g) net worth;
  - (h) cash from operating activities;
  - (i) cash from investing activities;
  - (j) cash from financing activities; and
  - (k) change in cash balances.
- (2) Ratios of-
  - (a) current assets to current liabilities; and
  - (b) total assets to total liabilities.

#### **Capital Maintenance**

2. (1) Details of human capital, including-
  - (a) total full time equivalent staff;
  - (b) staff turnover;
  - (c) average length of service; and
  - (d) significant changes to personnel management system.
- (2) Details of physical capital, including-
  - (a) value of total physical assets;
  - (b) asset replacements as a percentage of total assets;

- (c) ratio of book value of depreciated assets to initial cost of depreciated assets;
  - (d) ratio of depreciation to cash flow on asset purchases; and
  - (e) any changes in asset management policies and systems.
- (3) Details of capital expenditure, including-
- (a) description and amount of major new capital expenditure projects; and
  - (b) description and amount of existing major capital expenditure projects, and details of whether-
    - (i) all development projects are likely to be completed on due date;
    - (ii) all development projects are within budget; and
    - (iii) there are any external changes which threaten the viability of any development projects.

**Risk Management**

3. Details of key risks to the activities of the entity, including-
- (a) an explanation of each risk;
  - (b) any change in status of each risk; and
  - (c) financial quantification of each risk.

Passed by the Legislative Assembly the 26th day of September, 2001.

MABRY S. KIRKCONNELL

Speaker.

GEORGETTE MYRIE

Clerk of the Legislative Assembly.