

CAYMAN ISLANDS



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PUBLIC MANAGEMENT AND FINANCE LAW

(2013 REVISION)

Law 25 of 2001 consolidated with Laws 18 of 2002, 4 of 2004, 23 of 2004, 9 of 2009, 23 of 2009, 14 of 2010, 19 of 2011 and 23 of 2012 and as amendeded by the Cayman Islands (Constitution) (Amendment) Order 2003 (U.K.S.I. 2003 No. 1515) and the Cayman Islands Constitution Order 2009 (U.K.S.I. 2009 No. 1379).

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Public Management and Finance Law (2013 Revision)

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Note (not forming part of the Law): This revision replaces the 2012 Revision which should now be discarded.

PUBLIC MANAGEMENT AND FINANCE LAW

(2013 Revision)

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PUBLIC MANAGEMENT AND FINANCE LAW

(2013 Revision)

PART I - Introductory

1. This Law may be cited as the Public Management and Finance Law, (2013 Revision). Short title

2. In this Law - Definitions

“appropriation” means a power given by an Appropriation Law to the Governor in Cabinet to incur executive expenses, make an equity investment, acquire or create executive assets, or lend or borrow money 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”, except in section 14(3)(c), 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 established, operated and managed by the ministry responsible for finance under section 54;

“centralised banking system” means the system of bank accounts consisting of the executive bank account and the bank accounts of ministries and portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office established, operated and managed by the ministry responsible for finance under section 54;

“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 such public officer in the Portfolio as may be designated by the Governor;

- (ii) in the case of the Portfolio of Legal Affairs, such public officer in the Ministry as may be designated by the Governor; and
- (iii) in the case of the ministry responsible for finance, such public officer in the Portfolio as may be designated by the Governor;
- (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;
- (e) in the case of the judicial administration, the court administrator or such other suitable person as may be designated by the Chief Justice;
- (f) in the case of the Office of the Complaints Commissioner, the Complaints Commissioner; and
- (g) in the case of the Office of the Information Commissioner, the Information Commissioner;

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

“Constitution” means the Constitution set out in Schedule 2 to the Cayman Islands Constitution Order 2009;

“core government” means the Legislative Assembly, the Governor in Cabinet, ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office and includes the equity investment in statutory authorities and government companies;

“entire public sector” means the Legislative Assembly, the Governor in Cabinet, ministries, portfolios, statutory authorities, government companies, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office;

“entity” means any body and includes a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office;

“entity assets”, in relation to a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office, means all assets controlled by that entity for the purpose of producing its outputs, but does not include any assets of the core 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, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office, 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 core 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, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office, means all liabilities incurred by the entity in respect of its own activities, but does not include any liabilities of the core 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, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office, means revenue earned by the entity from the production of outputs (including those purchased by the Governor in Cabinet) or any other of its own activities, but does not include any revenue of the core 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, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office by the Governor in Cabinet;

“exceptional circumstance” means an event which occurs during a financial year and which -

- (a) is beyond the control of the Governor in Cabinet;
- (b) could not have been reasonably anticipated at the time of enactment of the Appropriation Law for that financial year;
- (c) has an economic or social impact that is significant enough to necessitate executive financial transactions different from those planned for that financial year; and
- (d) requires the executive financial transactions to be entered into in a timescale that makes compliance with the procedure established by section 12 impractical;

“executive assets” means all assets of the core government other than entity assets, and includes the equity investments of the Government in ministries, portfolios, statutory authorities, government companies, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office, but does not include assets held by the Government as trustee for another person;

“executive expenses” means all expenses incurred by the core government other than entity expenses, and includes expenses incurred by the Governor in Cabinet in purchasing outputs from ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office 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 core 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 core government other than entity revenue, but does not include revenue earned by the Government as trustee for another person;

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

“Framework” means the Framework for Fiscal Responsibility providing the directives and guidelines for prudent fiscal management, contained in an agreement between the Governments of the Cayman Islands and the United Kingdom dated 23rd November, 2011, the terms of which are set out in Schedule 6.

“generally accepted accounting practice” means -

- (a) International Public Sector Accounting Standards issued by the International Federation of Accountants;
- (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 national governments, regional

governments, local governments and related governmental entities such as agencies, boards, commissions and enterprises;

“Government” means the Government of the Islands;

“government company” means -

- (a) a company in which the core 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 administration” means the Government department, including all of its staff and physical resources, which provides administrative support for the Judiciary;

“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 appointed to the Governor in Cabinet in accordance with section 44 of the Constitution;

“Minister of Finance” means the minister charged with responsibility for finance under section 54 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, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office;

“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 Governor in Cabinet and that is not a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office;

“Office of the Complaints Commissioner” means the department, including all of its staff and physical resources, of which the chief officer is the Complaints Commissioner;”;

“official member” means a member of the Governor in Cabinet who is not a minister;

“outcomes” means the impacts on, or the consequences for, the community of the outputs or activities of the entire public sector, the core 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) a departmental section or unit which forms part thereof;
- (b) the Governor’s office; and
- (c) the judicial administration;

but “portfolio” does not include a statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office;

“public officer” means any person employed in the civil service but does not include any member of the Governor in Cabinet 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 Governor in Cabinet, and for which the Governor or the Governor in Cabinet 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 core government) transferred or paid to the Government, a ministry, portfolio, the Office of the Complaints Commissioner, the Office of the Information Commissioner 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.

3. In this Law, the terms “asset”, “liability”, “revenue” and “expense” have the meanings accorded to them by generally accepted accounting practice. Meaning of accounting terms
4. 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
5. For the purposes of this Law, the core 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 - Legislative Assembly

Appropriation Functions of Legislative Assembly

6. (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.

- 2012 Revision
- (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 (2012 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
7. 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 Governor in Cabinet;
 - (c) no equity investment may be made by the Governor in Cabinet; and
 - (d) no borrowing may be undertaken by the Governor in Cabinet,
- unless authorised by an appropriation.
- Resolution required for guarantees
8. 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
9. (1) All appropriations granted by the Legislative Assembly shall be granted on an accrual accounting basis.
- (2) Except as provided in section 10, the Legislative Assembly may grant appropriations only to the Governor in Cabinet.
- (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 Governor in Cabinet from ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, 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 Governor in Cabinet;
 - (c) each category of executive expense relating to borrowings or loans which may be authorised by the Governor in Cabinet;
 - (d) each category of any other executive expenses which may be authorised by the Governor in Cabinet;

- (e) the amount of each equity investment which may be authorised by the Governor in Cabinet;
- (f) the capital cost of each acquisition or creation of executive assets (other than equity investments) which may be authorised by the Governor in Cabinet;
- (g) the amount of each category of loan which may be authorised by the Governor in Cabinet; and
- (h) the amount which may be borrowed by the Minister of Finance.

(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.

10. (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 salaries, emoluments and allowances of members of the judiciary and the magistracy;
- (c) the employees' and employer's contributions to -
 - (i) the Public Service Pensions Fund established under the Public Service Pensions Law (2013 Revision); and 2013 Revision
 - (ii) a pension fund established in accordance with an Order made by the Governor under the Judges' Emoluments and Allowances Law (2006 Revision); 2006 Revision
- (d) the core government's contributions to -
 - (i) the Public Service Pensions Fund established under the Public Service Pensions Law (2013 Revision); and
 - (ii) a pension fund established in accordance with an Order made by the Governor under the Judges' Emoluments and Allowances Law (2006 Revision),
for past service liability;
- (e) pension payments in accordance with -
 - (i) the pension plan established by the Public Service Pensions Law (2013 Revision);
 - (ii) the Parliamentary Pensions Law (2010 Revision); 2010 Revision
 - (iii) the provisions for *ex-gratia* allowances in regulations made under the Public Service Pensions Law (2013 Revision); and

- (iv) an Order made by the Governor under the Judges' Emoluments and Allowances Law (2006 Revision); and
- (f) the executive expense relating to borrowings authorised by the Governor in Cabinet 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 9(3).

Authorisation in
advance of appropriation

11. (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 9(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 core government, the Minister of Finance 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.

(5) Where an exceptional circumstance has occurred during a financial year, the Governor in Cabinet may authorise executive financial transactions for which no appropriation exists if -

- (a) the executive financial transactions directly relate to, and attempt to remedy the effects of, the exceptional circumstance; and
- (b) the total amount authorised is no more than five per cent of budgeted executive revenue for the financial year.

(6) Where the Governor in Cabinet has authorised executive financial transactions in accordance with subsection (5) -

- (a) a member of the Cabinet appointed by the Governor in Cabinet to do so on his behalf shall, at the next sitting of the Legislative Assembly after the exceptional circumstance has occurred, make a statement to the Legislative Assembly advising of -
 - (i) the exceptional circumstance, its nature, and how it complies with the definition of the term “exceptional circumstance” set out in section 2;
 - (ii) the type and amount of the executive financial transactions authorised or likely to be authorised; and
 - (iii) the effect of the authorisations, or likely authorisations on compliance with the principles of responsible financial management specified in section 14; and
- (b) the authorised executive financial transactions are to be included in the next supplementary Appropriation Bill introduced in the Legislative Assembly after those transactions have been entered into.

12. (1) Subject to subsection (2), the Governor in Cabinet may authorise -

Advance approval of executive expenses and capital expenditure

- (a) executive expenses for an output group, category of transfer payment or category of other executive expense; and
- (b) the acquisition or creation of executive assets, the making of loans or the making of equity investments,

that are not included in an Appropriation Bill for a financial year.

(2) Before an executive expense is incurred, an executive asset acquired or created or a loan or equity investment made in accordance with an authority granted under subsection (1), the approval of the Finance Committee of the Legislative Assembly is to be obtained.

(3) The executive expenses incurred, executive asset acquired or created, or a loan or equity investment made in accordance with subsection (1) are to be included in a supplementary Appropriation Bill for that financial year.

PART III - Governor in Cabinet

Powers and Duties of the Governor in Cabinet

13. (1) Notwithstanding any other provision of this Law, where a state of emergency is proclaimed under the Emergency Powers Law (2006 Revision) the Governor in Cabinet may approve such executive financial transactions to meet the emergency as it thinks fit, whether or not those transactions have been

Emergency expenditure
2006 Revision

authorised by an appropriation, and those transactions may be entered into accordingly.

(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 in the first Government 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.

(3) Where -

- (a) a state of emergency is proclaimed under the Emergency Powers Law (2006 Revision); or
- (b) an exceptional circumstance occurs,

the Legislative Assembly may, by resolution passed during or following the state of emergency or exceptional circumstance, extend the date by which -

- (i) a Government annual report is required to be gazetted under section 29;
- (ii) an annual report of a ministry or portfolio, is required to be presented to the Legislative Assembly under section 44;
- (iii) an annual report of a statutory authority or government company, is required to be presented to the Legislative Assembly under section 52; or
- (iv) the Government budgeting process is to be completed in accordance with sections 17 to 22.

(4) A resolution referred to in subsection (3) shall specify the new date for compliance with the requirements of subsection (3)(i) to (vii).

Responsible financial
management

14. (1) The Governor in Cabinet shall manage the financial performance and financial position of the core government in accordance with the principles set out in this section.

(2) The policies and decisions of the Governor in Cabinet shall be consistent with the principles of responsible financial management set out in subsection (3), and the impact of those decisions on the core 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 core government revenue less total core government expenses (measured using generally accepted accounting practice) should be positive;
- (b) total core government assets less total core government liabilities (measured using generally accepted accounting practice) should be positive;
- (c) 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 per cent of core government revenue (calculated using generally accepted accounting practice) for that financial year, where, for the purposes of this principle, borrowing is defined as all borrowing that is in the name of the Government regardless of whether it is serviced directly by the core government, a statutory authority or government company;
- (d) net debt should be no more than eighty per cent of core government revenue, where, for the purposes of this principle, net debt is defined as -
 - (i) core government borrowing less core government liquid assets;
 - (ii) borrowing that is serviced directly by a statutory authority or government company but is in the name of the Government; and
 - (iii) the percentage of statutory authority and government company debt guaranteed by the Government that regulations made under this Law specify is to be included in the net debt calculation;
- (e) 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, where, for the purposes of this principle, cash reserves are defined as core government cash and cash equivalents, marketable securities and deposits, and other liquid assets, including any amounts held for restricted funds and reserves purposes; and
- (f) the financial risks, including contingent liabilities, facing the core government should be managed prudently so as to minimise the likelihood of any such risk resulting in an expense or liability.

(4) Governor in Cabinet decisions may depart from the principles of responsible financial management for a limited period if the Governor in Cabinet 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 Governor in Cabinet intends to take in order to return to those principles; and
- (c) the period of time that the Governor in Cabinet expects to take to return to those principles.

Compliance with the Framework

14A. (1) The Government shall comply with the principles outlined in the Framework to ensure effective medium-term planning, obtain value for money, effectively manage risk and deliver improved accountability.

(2) Where an interpretation dispute arises between the provisions of the Framework and those of the remainder of this Law, the former shall have precedence over the latter.

Shareholding arrangements for government companies

15. (1) All shares held in a government company by the core 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 core government may be exercised, on behalf of the core government by a minister or official member appointed for the purpose by the Governor in Cabinet.

(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 Cabinet and by a resolution of the Legislative Assembly.

Governor in Cabinet’s power to direct

16. (1) Subject to subsection (3), the Governor in Cabinet 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 Governor in Cabinet 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 of subsection (1) and the operation of any other law, subsection (1) shall prevail to the extent of the inconsistency.

Government Budgeting

17. (1) No later than the 1st October in each year, the Governor in Cabinet, in accordance with the advice of the Minister of Finance 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 the 1st October. Budget process

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

18. During the strategic phase, the Governor in Cabinet 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 to be allocated to each minister, official member, the Office of the Complaints Commissioner and the Audit Office for each financial year;
 - (v) the forecast total amount of core government equity investments, acquisition of other executive assets, and loans for each financial year; and
 - (vi) the forecast total amount of core government 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 Governor in Cabinet;
- (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 annual budget statement 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 49; 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 50.

Governor in Cabinet
collective review phase

20. During the Governor in Cabinet collective review phase, the Governor in Cabinet 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 annual budget statements, purchase agreements and ownership agreements prepared in accordance with sections 30, 42 and 49 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 Minister of Finance on behalf of the Governor in Cabinet 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 Governor in Cabinet 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 9, the executive expenses, borrowing and other executive financial transactions referred to in section 9; and
 - (iii) authorising by resolution, the giving of guarantees by the Government.

Documentation phase

22. During the documentation phase, the Governor in Cabinet shall agree -

- (a) a finalised annual budget statement 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 Governor in Cabinet will purchase outputs, in accordance with sections 30(2) and 49;
- (c) a finalised ownership agreement with each statutory authority and government company in accordance with section 50; 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 Governor in Cabinet appointed by the Governor in Cabinet to do so on their behalf not later than the 1st 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 Governor in Cabinet 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 core government 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

Schedule 1

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 allocated to each minister, official member, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office for each financial year; and
- (h) the total amount of core government 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 chief officer (Public Finance) of the ministry responsible for finance shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Minister of Finance.

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 Minister of Finance on behalf of the Governor in Cabinet to the Legislative Assembly, for review prior to the start of the coming financial year.

(2) The annual plan and estimates shall -

- (a) summarise the specific outcomes that the Governor in Cabinet 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 Governor in Cabinet 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 core government and the entire public sector for the budget year which shall contain the statements and information set out in Schedule 2;
- (e) explain how the core government 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 Minister of Finance shall introduce an Appropriation Bill providing for appropriations in accordance with section 9 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 Minister of Finance 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 chief officer (Public Finance) of the ministry responsible for finance shall provide copies to any person requesting them on payment of a copying charge prescribed by regulations made by the Minister of Finance.

25. (1) Before the Governor in Cabinet 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 Minister of Finance 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 chief officer (Public Finance) of the ministry responsible for finance shall provide copies to any person requesting them on payment of a copying charge prescribed by regulations made by the Minister of Finance.

Pre-election economic
and financial update

2013 Revision

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 (2013 Revision) as the date for a general election, the chief officer (Public Finance) of the ministry responsible for finance 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 core government and 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 the core government 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 chief officer (Public Finance) of the ministry responsible for finance shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Minister of Finance.

(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 (2013 Revision).

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 Governor in Cabinet decisions that may have a material effect on the forecasts.

Information to be included in forecasts

(2) Subsection (1) does not apply to the extent that the chief officer (Public Finance) of the ministry responsible for finance determines, after consultation with the Financial Secretary, 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.

Government Reporting

28. *Repealed by section 3 of Law 19 of 2011.*

Repealed

29. (1) No later than five months and two weeks after the end of each financial year, the Governor in Cabinet shall gazette a Government annual report for that financial year.

Government annual report

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

- (a) for the financial years -
 - (i) 2004/5 to 2007/8, the unaudited annual consolidated financial statements for the core government and the entire public sector for that year; or
 - (ii) 2008/9 and onwards, the audited annual consolidated financial statements for the core government and the entire public sector for that year,which shall be prepared on a basis consistent with the forecast financial statements in the annual plan and estimates for that year, and contain the statements and information set out in Schedule 4; and
- (b) for the financial years -
 - (i) 2004/5 to 2007/8, the unaudited annual schedule of appropriations; or
 - (ii) 2008/9 and onwards the audited annual 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.

Schedule 4

(3) The annual consolidated financial statements and the annual schedule of appropriations referred to in subsection (2) shall be prepared within four months of the end of the financial year.

(3A) The annual consolidated financial statements and the annual schedule of appropriations referred to in subsection (2)(a)(ii) and (b)(ii) shall be submitted to the Auditor General for auditing, and the Auditor General shall express an opinion within one month of receipt of the annual consolidated financial statements.

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

(5) As soon as the Government annual report is published it shall be a public document, and the chief officer (Public Finance) of the ministry responsible for finance shall provide a copy to any person requesting one on payment of a copying charge prescribed by regulations made by the Minister of Finance.

Agreeing Output and Ownership Performance

Agreement and
monitoring of output
delivery

30. (1) Each financial year, the Governor in Cabinet shall, by way of an annual budget statement under section 42 or a purchase agreement under section 49, agree with each ministry, portfolio, statutory authority or government company, the outputs it wishes the entity to deliver in that financial year.

(2) Where the Governor in Cabinet wishes a non-governmental output supplier to deliver an output, the Governor in Cabinet 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 Governor in Cabinet in accordance with section 17;
- (b) available for review by the Governor in Cabinet as part of the Governor in Cabinet 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 Governor in Cabinet on behalf of the Governor in Cabinet 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 Governor in Cabinet.

(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 Governor in Cabinet shall monitor the delivery of outputs during the financial year against the relevant annual budget statement or purchase agreement and may only authorise payment for those outputs when it is satisfied that the specified outputs have been satisfactorily delivered.

31. (1) Each financial year, the Governor in Cabinet shall, by way of an annual budget statement under section 42 or annual ownership agreement under section 50, agree with each ministry, portfolio, statutory authority or government company the ownership performance it wishes the entity to achieve during that financial year.

Agreement and monitoring of ownership performance

(2) The Governor in Cabinet shall monitor the ownership performance of the entity during the financial year against the relevant annual budget statement 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 Minister of Finance

32. The Minister of Finance shall -

Duties of Minister of Finance

- (a) oversee the management of the finances of the core government and the entire public sector;

- (b) undertake the financial transactions specified in section 34;
- (c) advise the Governor in Cabinet 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 ministry responsible for finance under section 54 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 core government and the principles of responsible financial management specified in section 14;
- (f) ensure that the reporting requirements for the Government established by section 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.

Delegation by Minister of Finance

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

(2) The Minister of Finance 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 Minister of Finance personally.

Powers relating to specific financial transactions

34. (1) Subject to subsection (3), the Minister of Finance may, on behalf of the Governor in Cabinet -

- (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 Cabinet may determine.

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

- (3) The Minister of Finance shall not -
- (a) borrow money on behalf of the Governor in Cabinet, unless the borrowing -
 - (i) has been authorised by an appropriation;
 - (ii) is consistent with the statement of borrowings included in the annual plan and estimates or supplementary annual plan and estimates for that financial year; and
 - (iii) has been approved by the Foreign and Commonwealth Office of the United Kingdom, where any of the principles of responsible financial management specified in section 14(3)(c), (d) or (e) are in breach;
 - (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 or supplementary 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.

35. The Governor in Cabinet on the advice of the Minister of Finance may make regulations -

Power to 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 ministry or the Governor in Cabinet 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 54(h);
- (d) governing the operation of the centralised banking system established under section 54(i);
- (e) regulating the operation of bank accounts of ministries, portfolios, the Office of the Complaints Commissioner, the office of the Information Commissioner and the Audit Office;
- (f) governing the calculation and payment of the capital charge required to be paid by ministries, portfolios, the Office of the Complaints Commissioner, the office of the Information Commissioner and the Audit Office under section 41(5);
- (g) regulating the financial management practices of ministries, portfolios, the Office of the Complaints Commissioner, the office of the Information Commissioner and the Audit Office;

- (h) providing for competitive tendering in connection with contracts to be entered into by or on behalf of the core 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 core government from, to or between entities;
- (k) establishing the weighting of statutory authority and government company debt to be included in the calculation of net debt in accordance with section 14(3)(d); and
- (l) prescribing matters -
 - (i) required or permitted by this Law to be prescribed by the Minister of Finance; or
 - (ii) necessary or convenient to be prescribed by the Minister of Finance 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, a portfolio, the Office of the Complaints Commissioner, the office of the Information Commissioner or the Audit Office shall comply with any direction given by the Minister of Finance, expressed to be under this section, which he considers necessary to protect the core government's financial interests.

(2) The Minister of Finance shall not give a direction under subsection (1) that prevents the chief officer of a ministry, a portfolio, the Office of the Complaints Commissioner, the office of the Information Commissioner 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 core government or criminal activity; or
- (b) he is satisfied that the entity has consistently failed to comply with the requirements of section 39 or 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 Minister of Finance 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 annual budget statement with the Governor in Cabinet 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 Governor in Cabinet or individual members of the Governor in Cabinet;
 - (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 Governor in Cabinet;
 - (b) supply outputs to entities or individuals other than the Governor in Cabinet 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 annual budget statement 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 annual budget statement under section 42; and
 - (b) the Governor in Cabinet, 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 subsection (2) and the operation of any other law, subsection (2) shall prevail to the extent of the inconsistency.
38. (1) The chief officer of a ministry or portfolio shall ensure that his ministry or portfolio - Duties of chief officer of a ministry or portfolio

- (a) complies with its duties under section 37;
 - (b) delivers the outputs specified in his annual budget statement prepared in accordance with section 42;
 - (c) achieves the ownership performance specified in his annual budget statement 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 Governor in Cabinet; and
 - (b) assist the Governor in Cabinet to prepare the reports and documents required to be prepared by the Governor in Cabinet under this Law.

Powers of Ministries, Portfolios and Chief Officers

Powers of chief officer
of a ministry or portfolio

39. (1) It is the responsibility of a minister or official member to recommend to the Governor in Cabinet the outputs to be purchased from their ministries or portfolios and it is the responsibility of the Governor in Cabinet to determine the outputs to be purchased from a ministry or portfolio; and no outputs may be produced by a ministry or portfolio unless the production of those outputs has been agreed by the Governor in Cabinet in the relevant annual budget statement.

(2) It is the responsibility of the chief officer to determine and acquire the inputs required to produce the outputs specified in his finalised annual budget statement and, subject to section 40, no decision or action in relation to inputs shall 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 agreed by the chief officer of the ministry or portfolio.

(3) 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, subject to subsections (1) and (2) -

- (a) earn entity revenue by providing outputs;
- (b) enter into agreements with entities or individuals other than the Governor in Cabinet for the supply of specified outputs for amounts to be specified in the agreements;
- (c) subject to regulations made by the Minister of Finance under section 35, purchase, and incur entity expenses in relation to, inputs on such terms and conditions as its chief officer may authorise;

- (d) subject to regulations made by the Governor in Cabinet on the advice of the Minister of Finance under section 35, 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) subject to regulations made by the Governor in Cabinet on the advice of the Minister of Finance under section 35, 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 Minister of Finance; 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 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.

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

41. (1) A ministry or portfolio shall not -

- (a) do anything that is inconsistent with its annual budget statement under section 42 or any direction given to it by the Minister of Finance 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 Minister of Finance;
- (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 (Public Finance) of the ministry responsible for finance 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 ministry responsible for finance for each financial year a charge for the use of the equity invested by the Governor in Cabinet in the entity.

(6) The capital charge shall be the amount arrived at by applying the capital charge rate determined by the Minister of Finance under section 32(g) to the net worth of the entity reported in the balance sheet of the entity.

(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 Minister of Finance 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) -
“capital charge” means the charge referred to in subsection (5).

Performance Specification and Reporting

42. (1) The chief officer of a ministry or portfolio shall prepare and execute an annual budget statement with the Governor in Cabinet in respect of each financial year in accordance with this section. Annual budget statement

(2) Every annual budget statement shall contain -

- (a) a specification of all the outputs the Governor in Cabinet 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; and

- (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 Governor in Cabinet 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 Governor in Cabinet planned for the year.
- (3) The draft annual budget statement for a financial year shall be -
- (a) prepared in accordance with the timetable established each year by the Governor in Cabinet in accordance with section 17;
 - (b) available for review by the Governor in Cabinet as part of the Governor in Cabinet 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 annual budget statement shall be -
- (a) prepared immediately the legislative review phase of the budget process has been completed in accordance with section 21;
 - (b) signed by the chief officer and by the following persons on behalf of the Governor in Cabinet -
 - (i) in the case of the annual budget statement of the Portfolio of Internal and External Affairs and the Portfolio of the Civil Service, the Deputy Governor;
 - (ii) in the case of the annual budget statement of the Portfolio of Legal Affairs, the Attorney General or, where the Attorney General is the chief officer, the Governor; and
 - (iii) in the case of the annual budget statement of a ministry, the relevant minister; 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 annual budget statement or the finalised annual budget statement 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 Minister of Finance.

(6) An annual budget statement may be amended by the Governor in Cabinet during the financial year to which it relates provided that the price to be paid for each output in the amended performance agreement is sufficient to deliver the outputs required by the amended performance agreement.

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

43. *Repealed by section 6 of Law 19 of 2011.*

Repealed

44. (1) An annual report of a ministry or portfolio shall be presented to the Governor in Cabinet 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 annual budget statement (including any amendments thereto) for that financial year and shall -

- (a) for the financial years 2004/5 to 2007/8, include unaudited financial statements; or
- (b) for the financial years 2008/9 and onwards, include audited financial statements,

which shall be prepared on a basis consistent with the forecast financial statements in the annual budget statement for that financial year and contain the statements and information set out in Schedule 4.

(3) The financial statements referred to in subsection (2) shall be prepared within two months of the end of the financial year.

(3A) The financial statements referred to in subsection (2)(b) shall be 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 Government 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 Minister of Finance.

Application of Part IV to
Office of the Complaints
Commissioner

45. (1) The Complaints Commissioner shall be the chief officer of the Office of the Complaints Commissioner and shall be accountable to the Legislative Assembly for the performance of the Office of the Complaints Commissioner.

(2) Unless the context otherwise requires, Part IV shall apply in respect of the Office of the Complaints Commissioner as if -

- (a) every reference to the Governor in Cabinet or a minister were a reference to the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Complaints Commissioner, or if no such committee exists, the Speaker; and
- (b) every reference to a ministry were a reference to the Office of the Complaints Commissioner.

(3) Notwithstanding sections 9, 19, 20, 22, 30 and 31, the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Complaints Commissioner, or if no such committee exists, the Speaker, shall -

- (a) be granted the appropriations relating to the Office of the Complaints Commissioner;
- (b) in respect of the Office of the Complaints Commissioner, undertake the duties assigned to the Governor in Cabinet or a minister under sections 19, 20(a) and (b), 22(a), 30 and 31;
- (c) provide the Minister of Finance with the necessary information in relation to the Office of the Complaints Commissioner 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 Minister of Finance with the necessary information in relation to the Office of the Complaints Commissioner to be included in any supplementary annual plan and estimates and the supplementary Appropriation Bill to be presented in accordance with section 25.

(4) In carrying out its duties under this section the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Complaints Commissioner, or if no such committee exists, the Speaker shall -

- (a) make its decisions in accordance with the budget process established by the Governor in Cabinet under section 17; and

- (b) ensure that its decisions are consistent with the principles of responsible financial management set out in section 14(3).

45A.(1) The Information Commissioner shall, in accordance with section 36(2) of the Freedom of Information Law, 2007, be responsible to the Legislative Assembly.

Application of Part IV to
Office of the
Information
Commissioner
Law 10 of 2007

(2) Unless the context otherwise requires, Part IV shall apply in respect of the Office of the Information Commissioner as if -

- (a) every reference to the Governor in Cabinet or a minister were a reference to the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Information Commissioner, or if no such committee exists, the Speaker; and
- (b) every reference to a ministry were a reference to the Office of the Information Commissioner.

(3) Notwithstanding sections 9, 19, 20, 22, 30 and 31, the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Information Commissioner, or if no such committee exists, the Speaker, shall -

- (a) be granted the appropriations relating to the Office of the Information Commissioner;
- (b) in respect of the Office of the Information Commissioner, undertake the duties assigned to the Governor in Cabinet or a minister under sections 19, 20(a) and (b), 22(a), 30 and 31;
- (c) provide the Minister of Finance with the necessary information in relation to the Office of the Information Commissioner 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 Minister of Finance with the necessary information in relation to the Office of the Information Commissioner to be included in any supplementary annual plan and estimates and the supplementary Appropriation Bill to be presented in accordance with section 25.

(4) In carrying out its duties under this section the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Information Commissioner, or if no such committee exists, the Speaker shall -

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

PART V - Statutory Authorities and Government Companies

Duties and Powers of Statutory Authorities and Government Companies

Duties of statutory
authorities and
government companies

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

- (a) supply outputs that the Governor in Cabinet has agreed that it will purchase from the statutory authority or government company;
- (b) supply outputs to entities or individuals other than the Governor in Cabinet for payment and in accordance with agreements with those entities or individuals; and
- (c) achieve the ownership performance that it has agreed with the Governor in Cabinet 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 Governor in Cabinet, 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 subsection (2) and the operation of any other law, subsection (2) shall prevail to the extent of the inconsistency.

Duties of board

47. (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 -

- (a) delivers the outputs specified in the purchase agreement prepared in accordance with section 49; and
- (b) achieves the ownership performance specified in the ownership agreement prepared in accordance with section 50.

(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.

48. 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 Governor in Cabinet.

Acquisition and disposal of subsidiaries

Performance Specification and Reporting

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

Annual purchase agreement

(2) A purchase agreement executed under subsection (1) shall specify all the outputs the Governor in Cabinet 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 Governor in Cabinet in accordance with section 17;
- (b) available for review by the Governor in Cabinet as part of the Governor in Cabinet 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 Governor in Cabinet on behalf of the Governor in Cabinet 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 Minister of Finance.

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

(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

50. (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 Governor in Cabinet in the authority or company planned for the financial year;
- (f) details of any capital withdrawals to be made by the Governor in Cabinet 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 Governor in Cabinet during the financial year; and

- (i) details of any guarantees relating to the authority or company proposed to be made by the Governor in Cabinet 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 Governor in Cabinet in accordance with section 17;
 - (b) available for review by the Governor in Cabinet as part of the Governor in Cabinet 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 Governor in Cabinet on behalf of the Governor in Cabinet 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 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 Minister of Finance.
- (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 Governor in Cabinet.
- (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.

51. *Repealed by section 8 of Law 19 of 2011.*

Repealed

52. (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) for the financial years -
 - (i) 2004/5 to 2007/8, unaudited financial statements; or
 - (ii) 2008/9 and onwards, audited financial statements,` which shall 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 contain the statements and information set out in Schedule 4.
- (e) the amount of any equity investment made by the Governor in Cabinet in the authority or company during the financial year;
- (f) the amount of any capital withdrawals made by the Governor in Cabinet 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 Governor in Cabinet during the financial year; and
- (i) details of any guarantees relating to the authority or company made by the Governor in Cabinet during the financial year.

(3) The financial statements referred to in subsection (2)(d) shall be prepared within two months of the end of the financial year.

(3A) The financial statements referred to in subsection (2)(d)(ii) shall be 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 Governor in Cabinet 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 Minister of Finance.

53. An annual ownership agreement, 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 Minister of Finance so agrees.

Exclusion of commercially sensitive matters

PART VI - Ministry Responsible for Finance

54. The Ministry responsible for finance shall -

Duties of ministry responsible for finance

- (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 core government and the entire public sector required by sections 24(2) and 26(2);
- (g) prepare annual consolidated financial statements required by section 29(2);
- (h) establish, operate and manage a centralised accounting information system for the core government;
- (i) establish, operate and manage the centralised banking system;
- (j) establish, operate and manage 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, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office under section 41(5);
- (m) monitor the output delivery and the ownership performance of ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, 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, portfolio, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office, provide accounting and financial services to the entity and recover the actual cost of provision of those services from the entity to which they are provided.

Executive bank account

55. (1) There shall be an executive bank account, which shall consist of -
- (a) a main executive bank account or accounts which shall be operated by the ministry responsible for finance; and
 - (b) such subsidiary executive bank accounts as the chief officer (Public Finance) of the ministry responsible for finance shall determine and which may be operated by a ministry, a portfolio, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office in accordance with a written delegation from the chief officer (Public Finance) of the ministry responsible for finance.

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

44 (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, the Office of the Complaints Commissioner, the Office of the Information Commissioner 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
Government reporting

56. (1) For the purposes of preparing the government budgets and reports required by this Law, Minister of Finance may request from members of the Governor in Cabinet, ministries, portfolios, the Office of the Complaints Commissioner, the Audit Office, statutory authorities, government companies or any non-government entity receiving money from the Governor in Cabinet, such relevant information as the chief officer (Public Finance) of the ministry responsible for finance may need to prepare those budgets or reports, and the

person or entity concerned shall supply the information requested by the date and in the format requested by the Minister of Finance.

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

57. (1) For the purposes of reviewing the financial management systems operated by ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, statutory authorities and government companies under section 54(n), the Director of Internal Audit shall have the right -

Powers of Internal Audit Unit

- (a) of access to all information held by any ministry, portfolio, statutory authority or government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office;
- (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, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office.

(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.

(3) Notwithstanding the foregoing provisions of this section, the Director of Internal Audit shall not access or copy the medical records of a patient of a health care facility (whether an in-patient or an out-patient) without the written permission of the Chief Executive Officer; and, for the purposes of this subsection, “health care facility” and “Chief Executive Officer” have the respective meanings assigned to those expressions in section 2 of the Health Services Authority Law (2010 Revision).

2010 Revision

PART VII - Audit Office

Auditor General

Independence of Auditor General

58. (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 114 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.

Appointment of acting Auditor General

59. 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.

Powers and Duties of Auditor General

Powers and duties of Auditor General

60. (1) The Auditor General shall -

- (a) conduct audits of the financial statements -
 - (i) referred to in section 29(2)(a)(ii) in respect of the core government and the entire public sector; and
 - (ii) referred to in sections 44(2)(b) and 52(2)(d)(ii) in respect of every ministry, portfolio, statutory authority and government company;
- (b) conduct audits of the annual schedule of appropriation referred to in section 29(2)(b)(ii);;
- (c) on his own initiative or at the request of the Legislative Assembly or of any of its committees or subcommittees, conduct investigations and value for money audits, into -

- (i) the management of executive financial transactions;
 - (ii) the financial management of any ministry, portfolio, statutory authority or government company or the Office of the Complaints Commissioner; or the Office of the Information Commissioner; and
 - (iii) the economy, efficiency and effectiveness with which any ministry, portfolio, the Office of the Complaints Commissioner, the Office of the Information Commissioner, or any statutory authority or government company has used its resources in discharging its functions and in its financial dealings;
- (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).

(2) Notwithstanding subsection (1), for the financial statements which have not been subject to audit or for which an audit opinion could not be given for the financial years 2004/5 to 2007/8, the Auditor General shall carry out a risk assessment and identify areas or transactions on which he shall conduct a compliance audit.

(3) In performing the risk assessment under subsection (2), the Auditor General shall consult with the Financial Secretary and Chief Officers to identify areas for consideration.

(4) For the purposes of subsection (2), the objective of a compliance audit shall be to enable the Auditor General to report on the audited entity's compliance with a particular set of criteria when incurring expenditure and such criteria may be derived from relevant financial reporting frameworks, laws, regulations, terms of contracts or funding agreements, or may be other criteria deemed by the Auditor General to be suitable.

61. 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 60(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

Reporting by Auditor
General

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 60(c).

Reporting sensitive information

62. 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 Auditor General

63. 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.

Investigatory powers of Auditor General

64. (1) For the purposes of carrying out an audit or an investigation other than under section 60(e), the Auditor General or any person authorised by him for that purpose has -

- (a) 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, the Office of the Complaints Commissioner, the Office of the Information Commissioner or any 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 60(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 60(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 but shall not include a right of access to information held by a member of the Governor in Cabinet or a member of the Legislative Assembly.

(4) Where a person fails to comply with a direction given under subsection (3) within three days from the date of the direction or such longer period as the Auditor General may permit, the Auditor General may apply to a court of summary jurisdiction for an order requiring the person to comply with the requirement or direction.

(5) Where, in connection with a direction given under subsection (3), the Auditor General considers it necessary to examine a person on oath, the Auditor General may apply to a court of summary jurisdiction to have that person examined by the court and to have the results of that examination sent to the Auditor General.

(6) The court shall process an application under subsection (5) and send the results of the examination to the Auditor General.

(7) Where a person complies with a direction under subsection (3), an order under subsection (4) or gives evidence under subsection (5), such

compliance shall not be treated as a breach of any restriction upon disclosure of information by or under any law and shall not give rise to any civil liability.

2010 Revision

(8) Notwithstanding the foregoing provisions of this section, the Auditor General shall not access or copy the medical records of a patient of a health care facility (whether an in-patient or an out-patient) without the written permission of the Chief Executive Officer; and, for the purposes of this subsection, “health care facility” and “Chief Executive Officer” have the respective meanings assigned to those expressions in section 2 of the Health Services Authority Law (2010 Revision).

Appointment of contractors

65. (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.

(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 69 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 Audit Office

Audit Office

66. (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 Audit Office

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

- (a) every reference to the Governor in Cabinet 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 9, 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 Governor in Cabinet or a minister under sections 19, 20(a) and (b), 22(a), 30 and 31;
- (c) provide the chief officer (Public Finance) of the ministry responsible for finance 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 Governor in Cabinet under section 17; and
- (b) ensure that its decisions are consistent with the principles of responsible financial management set out in section 14(3).

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

Fees and charges

- (a) the Governor in Cabinet, ministries, portfolios, statutory authorities and government companies for -
 - (i) audits conducted under section 60(a) and (b); and
 - (ii) investigations conducted under section 60(e) where the Governor determines that such investigations shall be paid for by Governor in Cabinet;
- (b) the Legislative Assembly for audits, investigations or assistance and advice requested or agreed by it under section 60(c) and (d); and
- (c) the persons, companies or bodies investigated under section 60(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.

Annual report of Audit Office

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

(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 63; and
- (b) the powers under section 64;

(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

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

(2) The chief officer (Public Finance) of the ministry responsible for finance 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, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office shall be immediately transferred to the chief officer (Public Finance) of the ministry responsible for finance.

(4) The chief officer (Public Finance) of the ministry responsible for finance 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.

71. (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. Trust bank accounts

(2) Trust bank accounts shall be operated only by the chief officer (Public Finance) of the ministry responsible for finance.

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

72. (1) The chief officer (Public Finance) of the ministry responsible for finance, after consultation with 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 Minister of Finance, the Financial or the chief officer (Public Finance) of the ministry responsible for finance in respect of any deposit or non-deposit of any trust assets consisting of money.

73. When any trust asset is returned to a beneficiary by the chief officer (Public Finance) of the ministry responsible for finance, the amount of income, if any, certified by the chief officer (Public Finance) of the ministry responsible for finance to have been earned thereon shall be added to the trust asset. Transfer of trust assets

74. (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 chief officer (Public Finance) of the ministry responsible for finance 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 chief officer (Public Finance) of the ministry responsible for finance 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, the Minister of Finance, the Financial Secretary, the chief officer (Public Finance) of the ministry responsible for finance 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 this section and the operation of any other law, this section shall prevail to the extent of the inconsistency.

Bona vacantia

75. (1) Where any asset, except an interest in land, is vested in the Crown as *bona vacantia*, the Minister of Finance (or any person appointed by him for this purpose) may on behalf of the Crown exercise any power or right (including any 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 Minister of Finance (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 Minister of Finance 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

76. 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;
 - (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 of ten thousand dollars and to imprisonment for six months, or on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for five years, and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

77. (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 commits that offence and is liable to be proceeded against and punished accordingly.

Offences by corporations

(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

78. (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 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 and 44, but the outputs and ownership performance of the Office of the Governor shall be included in the annual budget statement 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.

Law not to affect constitutional independence of Attorney General or Director of Public Prosecutions

79. (1) Nothing in this Law shall affect the constitutional functions or constitutional independence of the Attorney General or Director of Public Prosecutions.

(2) This Law shall apply to the Portfolio of Legal Affairs, except that -

- (a) in the annual budget statement -
 - (i) in relation to the outputs of the Portfolio that relate to the functions of the Attorney General or Director of Public Prosecutions specified in the Constitution, the specifications set out in section 42(2)(a)(i) to (iv) shall be contained in the annual budget statement but shall be subject to agreement with the Attorney General or Director of Public Prosecutions;
 - (ii) in relation to the outputs of the Portfolio that relate to the functions of the Attorney General or Director of Public Prosecutions specified in the Constitution, the specifications set out in section 42(2)(a)(v) to (viii) shall be contained in the annual budget statement but shall be subject to agreement with the Governor in Cabinet; and
 - (iii) in relation to the other outputs of the Portfolio, the specifications set out in section 42(2)(a) shall be contained in the annual budget statement and shall be subject to agreement with the Governor in Cabinet; and
- (b) the chief officer shall be accountable to the Attorney General or Director of Public Prosecutions for the delivery of the specifications provided for in paragraph (a)(i) and shall be accountable to the Governor in Cabinet for the delivery of the specifications provided for in paragraph (a)(ii) and (iii).

Law not to affect constitutional independence of Judiciary

80. (1) Nothing in this Law shall affect the constitutional functions or constitutional independence of -

- (a) the President or any Judge of the Court of Appeal; or
- (b) the Chief Justice or any Judge of the Grand Court.

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

(3) This Law shall apply to the judicial administration except that the outputs and the details of the ownership performance specified in the annual budget statement of the judicial administration shall be specified so as to ensure that they do not impinge on the constitutional functions or constitutional independence of the judiciary.

81. Nothing in this Law shall affect the constitutional functions or constitutional independence of the Complaints Commissioner.

Law not to affect constitutional independence of Complaints Commissioner

81A. Nothing in this Law shall affect the independence of the Information Commissioner as set out in the Freedom of Information Law, 2007.

Law not to affect independence of Information Commissioner

Law 10 of 2007

Transitional Arrangements, Repeals and Consequential Amendments

82. (1) The following bank accounts existing and operated by the Treasury immediately prior to the 7th April, 2003 are deemed to be executive bank accounts established in accordance with section 54(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 7th April, 2003 are deemed to be entity bank accounts 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 7th April, 2003 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 7th April, 2003, 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 core government and any financial assets or liabilities of the core government not referred to in subsections (1) to (4) that exist at the 7th April, 2003 are to be recorded in the opening balance sheets of the executive and ministries, portfolios and the Audit Office 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, portfolio or Audit Office balance sheet; and
- (c) all assets used by a ministry a portfolio or the Audit Office to produce its outputs, are to be recorded on the relevant ministry, portfolio or Audit Office 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

83. (1) If at the time that section 14 came into force, the financial performance and financial position of the core government was not consistent with the principles of responsible financial management specified in section 14, the Governor in Cabinet 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 core government revenue less total core government expenses (as defined in section 14(3)(a)) is positive from the next financial year;
- (b) total core government assets less total core government 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) core government 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) core government cash reserves are increased each financial year to the amounts specified in subsection (4) until the level defined in section 14(3)(e) 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).

(4) The amounts that cash reserves are to be increased to under subsection (1)(d) are -

- (a) thirty days by the end of the financial year ending the 30th June, 2005;
- (b) forty-five days by the end of the financial year ending the 30th June, 2006;
- (c) sixty days by the end of the financial year ending the 30th June, 2007;
- (d) seventy-five days by the end of the financial year ending the 30th June, 2008; and
- (e) ninety days by the end of the financial year ending the 30th June, 2009.

SCHEDULE 1

sections 23 and 26

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.

SCHEDULE 2

sections 24, 26, 42 and 50

FORECAST FINANCIAL STATEMENTS

1. Forecast financial statements shall include -
 - (a) a statement of financial performance;
 - (b) a statement of financial position;
 - (c) a forecast statement of changes in net worth;
 - (d) a forecast 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 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; and
 - (ii) comparative actual figures for the financial year preceding the financial year referred to in subparagraph (i).
2. Forecast financial statements for the core government and 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. *Repealed by section 14 of Law 19 of 2011.*
4. Every statement of responsibility required by this Schedule shall -
- (a) be signed by -
 - (i) in the case of the core government and the entire public sector forecast financial statements, the Minister of Finance and a member of the Governor in Cabinet appointed by the Governor in Cabinet to do so on their behalf;
 - (ii) in the case of forecast financial statements of a ministry, portfolio, the Office of the Complaints Commissioner, the Office of the Information Commissioner 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 core government and 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.

SCHEDULE 3

Repealed by section 15 of Law 19 of 2011.

SCHEDULE 4

sections 29, 44 and 52

ANNUAL FINANCIAL STATEMENTS

1. Annual financial statements shall include -

- (a) a statement of financial performance;
- (b) a statement of financial position;
- (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 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,

except that paragraphs (b) to (g) shall not apply for the financial years 2004/5 to 2007/8.

2. Annual financial statements for the core government and 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.
3. Every statement of responsibility required by this Schedule shall -
 - (a) be signed by -
 - (i) in the case of the core government and the entire public sector financial statements, the Minister of Finance and a member of the Governor in Cabinet appointed by the Governor in Cabinet to do so on their behalf;
 - (ii) in the case of financial statements of a ministry or portfolio, the Office of the Complaints Commissioner or the Audit Office, the chief officer; and
 - (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 and 50

OWNERSHIP PERFORMANCE MEASURES

Financial Performance

1. (1) Amounts for -
 - (a) revenue from trading with the Governor in Cabinet;
 - (b) revenue from trading with ministries, portfolios, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, 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.

SCHEDULE 6

**CAYMAN ISLANDS GOVERNMENT:
FRAMEWORK FOR FISCAL RESPONSIBILITY**

- 1. The Cayman Islands Government remains fully committed to deliver on the promises it has made to the people of the Cayman Islands. These include:
 - Creating a vibrant and sustainable economy;
 - Enhancing tourism and financial services as the twin pillars of the economy; and
 - Creating opportunities for Caymanians.
- 2. Restoring prudent fiscal management is central to achieving these objectives, and will help create an environment in which people and businesses can plan for the future with confidence. The Cayman Islands Government's fiscal strategy consists of the following five components:
 - Controlling Government expenditure;
 - Limiting new borrowings;

- Re-aligning the revenue base;
 - Improving the performance of Statutory Authorities and Government Companies; and
 - Reducing costs by working in partnership with the private sector.
3. The Cayman Islands Government’s approach will continue to be open and transparent, consistent with the highest standards of governance and democracy. That is why the Cayman Islands Government published its Cayman Islands Government 3 Year Budget Forecast (2010/2011 to 2012/13) (“three year plan”) in June 2010, and is committed to strengthening its Public Management and Finance Law (PMFL).
 4. This Framework (“the Framework”) sets out the key principles that will be encapsulated in the revised PMFL which will also specify the detailed requirements necessary to deliver the principles in practice. Subject to the agreement of the Legislative Assembly, the revised PMFL will enter into force by 1 July 2012.
 5. The Cayman Islands Government and the United Kingdom Government reaffirm their commitment to work in partnership and to respect the rights and responsibilities specified in the Framework and the revised PMFL.

POLICY PRINCIPLES

6. The Cayman Islands Government is committed to the following principles:
 - a. Effective **medium-term planning**, to ensure that the full impact of fiscal decisions is understood;
 - b. Putting **value for money** considerations at the heart of the decision making process;
 - c. Effective **management of risk**; and
 - d. Delivering improved **accountability** in all public sector operations.

IMPROVING MEDIUM TERM PLANNING

Strategic Policy Statement

7. The Cayman Islands Government will assess the impact of all proposals and decisions on expenditure, revenues, and borrowing in the context of a Strategic Policy Statement (SPS) covering a period of at least three fiscal years.
8. The SPS will include, as a minimum, the information defined in paragraph 14 of Annex A.

Transparency

9. The SPS will be updated and published annually. The budget that is presented for the forthcoming fiscal year will be consistent with the SPS.

Measurement

10. The collection of accurate internal and external economic, business and social data is fundamental to effective medium term fiscal planning.
11. The Cayman Islands Government will assess any gaps in information that is required and take steps to improve inputs to the SPS, by:
 - publishing and delivering a plan to improve the quality and independence of statistical data gathered from both the public and private sectors in order to measure accurately key national data including economic growth, inflation, and employment;
 - developing robust econometric models to assist with forecasting coercive revenue; and
 - developing a reporting framework to ensure that the Cayman Islands Government receives information about in-year developments in expenditure, performance against objectives and developing risks (whether or not quantifiable) from

government departments and other bodies in receipt of public funds.

DELIVERING VALUE FOR MONEY

12. The Cayman Islands Government recognises that achieving value for money is central to the appropriate use of public funds. Central government and other public sector bodies will therefore ensure that effective processes are in place to provide confidence and ensure suitability, effectiveness, prudence, quality, good value and avoidance of error and other waste.

Projects

13. There are five key stages that will be undertaken by the Cayman Islands Government in the planning, development and execution of a project:
 - a. appraisal and business case;
 - b. procurement;
 - c. contract management;
 - d. delivery; and
 - e. evaluation.

Appraisal and business case

14. The Cayman Islands Government will ensure that all projects, whether funded from recurrent surpluses, conventional borrowing or all alternative financing transactions, are suitably appraised before the procurement stage to ensure value for money and that a robust cost-benefit analysis has been carried out.
15. For projects with a lifetime value above CI\$10m and for those where the use of Public Private Partnerships (PPPs) or any other form of alternative financing is being considered, the Cayman Islands Government will also retain independent accounting, legal, financial,

economic, environmental and other technical advice as appropriate to ensure robust investment appraisals are produced.

16. For all projects, the business case which results from the appraisal process should: demonstrate the economic need for the project; include a fully argued and costed risk and impact assessment; and specify the benefits the project is designed to deliver to ensure that an informed decision can be made on whether or not to proceed to the procurement stage.
17. PPPs or any other form of alternative financing will only be considered:
 - a. where there is a sound appraisal underpinning the proposed project before the financing means has been determined;
 - b. where a financial appraisal demonstrates improved value for money against a conventionally financed alternative;
 - c. where the long term affordability case has been assessed and agreed by the appropriate technical experts retained by the Cayman Islands Government; and
 - d. where an independent opinion has been received from a qualified accountant of good standing on the correct accounting treatment in the Cayman Islands Government's accounts.
18. PPPs or any other form of alternative financing will not be considered by the Cayman Islands Government for:
 - a. projects with a lifetime value of less than CI\$15 million and therefore too small to justify the transaction costs; or
 - b. projects where the fast pace of change in the sector makes it difficult to effectively define the outputs it requires in a long term contract (such as Information and Communication Technology projects).

19. All proposed capital projects with an expected lifetime value of CI\$10 million or more will be incorporated in the published SPS, and appraisals will be published for public consultation prior to procurement.

Procurement

20. Procurement processes will be open, transparent and competitive. The Cayman Islands Government will adhere to agreed statutory tender processes. For projects with a lifetime value above CI\$10m and for those where the Public Private Partnerships (PPPs) or any other form of alternative financing is used, the Cayman Islands Government will retain independent accounting, legal, financial, economic, environmental, and other technical advice as appropriate to ensure value for money.

Contract management

21. The Cayman Islands Government will retain sufficient expert advice, whether internal or external, to ensure that it is an “intelligent customer” of services or other arrangements agreed with private sector suppliers.

Delivery

22. The Cayman Islands Government will put together sufficiently competent teams to manage all projects and ensure receipt of high quality services and products as agreed at the procurement stage.

Evaluation

23. For projects with an expected lifetime value of more than CI\$10 million, the Cayman Islands Government will undertake an evaluation of project performance within a reasonable timescale. This evaluation will be made publicly available. This will ensure that the lessons learned will strengthen the decision-making process and overall project performance.

Processes

24. The Cayman Islands Government will establish and maintain robust processes to:
- a. measure the performance of government departments and other bodies in receipt of public funds;
 - b. allocate expense budgets, profile expenses and monitor actual results against profile budget in a timely manner;
 - c. determine revenue targets, profile receipts and monitor actual results against budget on a timely basis;
 - d. track and quantify developing risks to determine the value of actual and contingent liabilities to assess calls on current expenditure budgets and, in exceptional cases, the reserves;
 - e. report total public sector debt, profile debt repayments and determine debt service costs;
 - f. undertake timely internal and external audits and act on the findings.

MANAGING RISKS

Contingent and actual liabilities

25. The Cayman Islands Government is committed to managing risks and ensuring that contingent and actual liabilities which accrue are consistent with sustainable public finances.
26. The Cayman Islands Government will make contingent and actual liabilities, including (but not limited to) pensions and healthcare schemes, subject to actuarial assessments at least every three years. Actuarial assessments will be published within three months of receipt. The Government will publish its proposals to address the results of the assessments no later than the budget following the receipt of the actuarial assessment.

27. The Cayman Islands Government will set out in the SPS its strategy for managing contingent and actual liabilities and report on progress in delivering the strategy.

Debt

28. Unless in exceptional circumstances different arrangements are agreed in writing by the Cayman Islands Government and the Secretary of State, the Cayman Islands Government will borrow only to fund capital expenditure where:
 - a. The proposed project is forecast to yield sufficient revenues to fund the additional debt service costs; or
 - b. The Government can demonstrate that it has sufficient surplus operating cash flows to fund the additional debt service costs which arise from borrowing to finance such capital expenditure.
29. The Cayman Islands Government will give preference to borrowing from concessional lenders which should ensure that the lender's expertise is brought to projects.
30. To ensure that the level of debt is affordable and consistent with the delivery of macroeconomic and fiscal sustainability and financial stability in the short, medium and long term, the Cayman Islands Government will:
 - a. comply with the borrowing limits defined in Annex A by no later than the dates specified in Annex D;
 - b. remain in compliance with the borrowing limits subsequent to the dates specified in Annex D or such earlier date by which compliance is achieved; and
 - c. put in place arrangements to repay loan principal.
31. The repayment of principal will be achieved either through:

- a. agreeing a fully amortized structure with the lending institution; or
- b. establishing a dedicated sinking fund with a binding contribution schedule capable of offsetting the outstanding principal repayment on maturity of the debt.

ACCOUNTABILITY

32. The Cayman Islands Government is committed to delivering improved accountability mechanisms through the transparency delivered by the Framework and subsequently the revised PMFL and by ensuring that public accounts are:
- a. prepared on a timely basis in line with International Financial Reporting Standards and International Public Sector Accounting Standards; and
 - b. subject to an annual external audit - the results of which will be subject to the Public Accounts Committee's scrutiny and publications.

PARTNERSHIP WITH THE UK

33. In support of the commitments to deliver fiscal responsibility made by the Cayman Islands Government, the United Kingdom Government will:
- a. undertake an annual assessment of the economy of the Cayman Islands, including the state of the public finances;
 - b. provide technical assistance by monitoring compliance with the Framework and the revised PMFL;
 - c. provide support in identifying sources of expertise at the request of the Cayman Islands Government;
 - d. consider requests for technical support made by the Cayman Islands Government where any such requests are accompanied by a business case and specific terms of reference.

Exchange of information

34. The Cayman Islands Government will submit the information specified in Annex C to the person(s) from time to time specified by the United Kingdom Government.
35. The Cayman Islands Government will supply the United Kingdom Government with such other information it may request, including further information on:
 - a. any aspect of the SPS, including specific capital investment projects and proposed borrowing; and
 - b. the draft budget.
36. All information will be submitted by the Cayman Islands Government within the timescales specified in Annex C unless, in exceptional circumstances, different timescales are agreed in writing by the Cayman Islands Government and the United Kingdom Government.

Consideration of representations

37. The Cayman Islands Government will consider fully any representations made by the Secretary of State on the information provided.
38. The Cayman Islands Government will not proceed with any project on which the Secretary of State has made representations until fifteen working days after a full written response has been received by the Secretary of State to those representations.

Approvals Process

39. Where the Cayman Islands Government is not in compliance with the Framework, the Cayman Islands Government will present, for the approval of the Secretary of State, a plan that is consistent with the SPS to remedy the breach. The maximum period which may be permitted to rectify a breach is three fiscal years from the point at which the breach occurred or, in exceptional circumstances, such other period that may be

agreed in writing between the Cayman Islands Government and the Secretary of State.

40. In the event of any non-compliance by the Cayman Islands Government in the respect of the Framework and until the breach has been rectified the Cayman Islands Government will obtain, on an annual basis, written approval from the Secretary of State before:

- a. the SPS is finalised;
- b. any public borrowing or any refinancing of public borrowing is undertaken;
- c. proceeding with any project with a lifetime value of more than CI\$10 million;
- d. using public assets as collateral as part of any arrangement with a party external to Cayman Islands Government;
- e. the hypothecation of any revenue stream; or
- f. the divestment of public assets.

41. For the avoidance of doubt, any failure to comply with the borrowing limits or forecast failure to comply within the lifetime of the SPS will be deemed a failure to comply with the Framework.

42. In exceptional cases, the Cayman Islands Government may request the Secretary of State's approval to make in-year changes to the approach set out in the SPS. In such cases, the Cayman Islands Government will supply the Secretary of State with:

- a. a written request to make the changes, to be received no later than two months before such changes are considered to be required by the Cayman Islands Government unless a shorter period is agreed in writing by the Cayman Islands Government and the United Kingdom Government;
- b. a compelling evidence based business case to support the request for approval; and
- c. a revised SPS, which sets out the measures the Cayman Islands Government intends to take to return to the course

set previously. If approval is granted, the Cayman Islands Government will publish the revised SPS.

Signed: W. McKeeva Bush
Date: 23rd Nov. 2011.....
Premier, Cayman Islands

Signed: Henry Bellingham
Date: 23rd Nov. 2011
Minister for Overseas Territories, Foreign and Commonwealth Office

ANNEX A: DEFINITIONS

1. **Expenditure**, unless otherwise specified, refers to all public expenditure (inclusive of grants, capital and recurrent expenditure).
2. **Public accounts** include all the accounts of the Cayman Islands Government and of all Statutory Authorities/Government Companies.
3. **Public borrowing** includes:
 - conventional borrowing from commercial and concessional institutions;
 - the capitalised value of all alternative financing transactions (including PFI/PPP arrangements) that will place future financial obligations (in terms of increased expenditure or reduced revenue) on the Cayman Islands Government;
 - the risk weighted debts and PPP/PFI arrangements of statutory authorities, government corporations and companies;
 - borrowing that is contracted by the Cayman Islands Government, but then on-lent; and
 - any other debt guaranteed by the Cayman Islands Government.

4. Public borrowing taken out to clear “informal debt” or debt owed by one public sector entity or another (including arrears of such debts) will be treated as new debt.
5. The risk weighting attached to debts and PPP/PFI arrangements of Statutory Authorities/Government Companies will be agreed with the Secretary of State according to the following criteria:

Risk-weighting	Description
100%	Outstanding contractual commitments to PFI or PPP arrangements of any form, agencies with a consistent demand for grants
80%	A high likelihood of grants being required
50%	Moderate likelihood of grants being required
20%	No grants required in the last three years

6. A list of Statutory Authorities/Government Companies with assigned risk-weights is attached at Annex B. Risk-weights can be updated to reflect recent financial performance at the request of either the Cayman Islands Government or the Secretary of State.
7. The Cayman Islands Government and the Secretary of State will agree risk-weights for new Statutory Authorities/Government Companies before any such Statutory Authority/Government Company can take on debt.
8. **Borrowing limits** mean the following:

<u>Net</u> <u>Debt</u>	80% maximum of operating revenue	<u>Debt</u> <u>Service</u>	10% maximum of operating revenue	<u>Liquid</u> <u>Assets</u>	At least 25% of operating expenses
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9. **Operating Revenue** consists of coercive and non coercive revenue as defined in the PMFL.
10. **Net Debt** is defined as the total outstanding value of public borrowing minus liquid assets.
11. **Debt service** is defined as annual payments resulting from public borrowing commitments and finance leases or any other form of borrowing.
12. **Liquid Assets** are defined as the lowest balance of liquid funds at the disposal of the Cayman Islands Government during the fiscal years, which shall be forecast in the Strategic Policy Statement. These funds should not be pledged against budgeted expenses or liabilities of any form.
13. **Past fiscal performance**, unless otherwise specified, should be assessed on the basis of audited financial statements for the previous financial year, where available. In the event that such statements are unavailable, the summary Operating Statement with associated variance analysis to original budget should be used.
14. **Lifetime value** is defined as the discounted net present value of financing obligations calculated using a discount rate of 3.5% - which shall be subject to periodic review to assess its appropriateness.
15. **Strategic Policy Statement** means a document which, at a minimum, sets out:
 - A statement of the Cayman Islands Government's economic and fiscal objectives;
 - A summary of the broad outcomes, the specific outcomes, and the links between them, that the Cayman Islands Government intends to achieve in the next financial year and for at least the following two financial years;
 - A summary of recent economic statistics, trends and forecasts;

- A statement of the prior two years fiscal performance, and analysis of variance from previous budgets and plans;
- A statement of existing public sector borrowing, including Statutory Authorities/Government Companies (whether guaranteed by government or not). For each loan this should include quantum, currency, date and origin of issue, maturity, and interest rate structure;
- The Accounts Receivable Aging Summary of the Cayman Islands Government and the associated Bad Debt Summary;
- The detailed breakdown of forecast operating revenue and expenses for the current and next three financial years;
- A statement detailing the actual and contingent liabilities of the Cayman Islands Government and an explanation of how each will be managed/financed, progress to date and intended financing for the current and next three financial years;
- A capital investment plan for the next financial year and for each of the following two financial years. This should include details of new and continuing projects which are anticipated to have a lifetime value of over CI\$10m for the next financial year and for each of the following two financial years;
- Anticipated revenue and expense measures and actions for the next financial year and for each of the following two financial years;
- A statement of the current position and forecasts for the next three financial years for each of the following:
 - Forecast summary Operating Statement;
 - Forecast summary Balance Sheet;
 - Forecast summary Statement of Cash Flows;
 - Operating expenses performance by Ministry/Portfolio;
 - Operating Revenue performance by Ministry and Portfolio;
 - Reserve levels for each month;
 - Borrowing;
 - Performance against borrowing limits;
 - Surplus or deficit, being the difference between total operating revenue and total operating expenses;

- Net worth;
- Net cash flows for each of its operating, investing and financing activities;
- The anticipated impact of any proposals to refinance existing debt;
- The value of contingent and actual liabilities, including pensions and healthcare schemes, and the steps taken to mitigate these liabilities;
- The approximate amount of executive expenses allocated to each minister, official member, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office for each financial year,.

ANNEX B: STATUTORY AUTHORITY AND GOVERNMENT COMPANY RISK-WEIGHTS

<i>Statutory Agency/Government Company</i>	<i>Risk Weight</i>
<i>Cayman Airways Ltd</i>	80%
<i>National Housing Development Trust</i>	80%
<i>Tourism Attractions Board</i>	80%
<i>Cayman Turtle Farm (1983) Ltd</i>	80%
<i>Cayman Islands Development Bank</i>	50%
<i>Cayman Islands Airports Authority</i>	20%
<i>University College of the Cayman Islands</i>	20%
<i>Port Authority</i>	20%
<i>Water Authority</i>	20%
<i>Civil Aviation Authority</i>	20%

ANNEX C: MONITORING

The Cayman Islands Government will provide the following information to the United Kingdom Government:

- Triennially: Actuarial reviews of contingent and actual liabilities, including healthcare and pensions provisions.
- Annually:
- (i) Annual audit reports for the Cayman Islands Government and Statutory Authorities/Government Companies.
 - (ii) Debt and PPP/PFI breakdown for Cayman Islands Government and Statutory Authorities/Government Companies.
 - (iii) Annual updates on GDP figures, employment, and the performance of key sectors to the extent that this is not separately identified in budget documentation or the SPS.
 - (iv) The Cayman Islands Government's SPS, accompanied by a written request for any approvals that may be necessary over the course of the next fiscal year owing to the Cayman Islands Government failing to comply with the Framework. Both should be submitted to the United Kingdom Government no later than three weeks before the SPS is due to be published.
 - (v) The Cayman Islands Government budget in draft no less than three weeks before it is due to be presented, and when finalised.
- Monthly: (i) Liquid Assets fund balances and variance analysis.

(ii) Revenue and capital and operating expenses, actual performance and forecast reports with accompanying variance analysis.

On request:

(i) Details of the stock and composition of debt, currency, date and origin of issue, maturity, and interest rate structure.

(ii) Updates on capital project progress.

(iii) Details of proposed capital investments, PFI, PPP and alternative forms of private finance, an independent accounting opinion on the IFRS accounting treatment and the capitalised value of the arrangement, and implications for public expenditure prepared and signed off by appropriate independent professionals.

(iv) Completed investment appraisals.

(v) Such other information as may reasonably be requested.

ANNEX D: TRANSITIONAL PROVISIONS

1. The unprecedented global financial crisis has forced the Cayman Islands Government to operate beyond the borrowing limits defined in Annex A.
2. The Cayman Islands Government will return to compliance with the borrowing limits by the following dates:
 - **Net debt:** by no later than the end of the Cayman Islands Government financial year 2015-16;
 - **Debt service:** by no later than the end of the Cayman Islands Government financial year 2015-16; and

- **Liquid assets:** by no later than the end of the Cayman Islands Government financial year 2015-16.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 17th day of September, 2013.

Carmena Watler
Acting Clerk of Cabinet

(Price \$ 17.60)