

Public Finances (Management)

PART VIII. - PUBLIC BODIES.

48. APPLICATION OF THIS PART.

(1) Subject to Subsection (4), nothing in this Part applies to or in relation to a public body unless it is so provided by a law, and then only to the extent, and subject to the exceptions, limitations, conditions, additions and modifications prescribed by that law.

(2) The constituent law of a public body may provide that the provisions of this Act apply to and in relation to that body.

(3) Subject to Subsection (4), the application of this Act to a public body may be in whole or in part, and may be with or without exceptions, limitations, conditions, additions or modifications, as prescribed by its constituent law.

(4) Where any provision in this Part is stated to apply to all public bodies notwithstanding any contrary provision in any other law, then such provision shall apply, notwithstanding any provision to the contrary and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications in any other law.

49. SUBSIDIARY CORPORATIONS.

(1) For the purposes of this Part, a corporation shall, subject to Subsection (3), be deemed to be a subsidiary of a public body if -

(a) that public body -

(i) controls the composition of the board of directors of the corporation; or

(ii) controls more than 50% of the voting power of the corporation; or

(iii) holds more than 50% of the issued share capital of the corporation (excluding any part of it that carried no right to participate beyond a specific amount in a distribution of either profits or capital); or

(b) the corporation is a subsidiary of a corporation that is a subsidiary of the public body.

(2) For the purposes of Subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by a public body, if the public body, by the exercise of a power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision the public body shall be deemed to have power to make such an appointment if -

- (a) a person cannot be appointed as a director without the exercise in his favour by the public body of such a power; or
 - (b) a person's appointment as a director follows necessarily from his being a member of the controlling body of, or an officer or employee of, the public body.
- (3) In determining whether a corporation is a subsidiary of a public body -
 - (a) any shares held or power exercisable by a public body in a fiduciary capacity shall be treated as not held or exercisable by it; and
 - (b) subject to Paragraphs (c) and (d), any shares held or power exercisable -
 - (i) by a person as a nominee for the public body (except where it is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of the public body, not being a subsidiary that is concerned only in a fiduciary capacity,
 shall be treated as held or exercisable by that public body; and
 - (c) any shares held or power exercisable by a person by virtue of the provisions of any debenture of the corporation, or of a trust deed for securing an issue of any such debenture shall be disregarded; and
 - (d) any share held, or power exercisable by, or by a nominee for, the public body or a subsidiary of it (otherwise than as mentioned in Paragraph (c)) shall be treated as not held or exercisable by that public body if -
 - (i) the ordinary course of business of the public body or its subsidiary, as the case may be, includes the lending of money; and
 - (ii) the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the normal course of business.

50. PERFORMANCE AND MANAGEMENT PLANS.

(1) The provisions of this section apply to and in respect of all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) The chief executive of each public body shall, at such intervals as are required by the Departmental Head of the Department responsible for financial management, submit to the Departmental Head of the Department responsible for financial management, a

performance and management plan in respect of the public body of which he is the chief executive.

(3) A performance and management plan under Subsection (2) shall be in such form, and shall contain such information, as is specified by the Departmental Head of the Department responsible for financial management.

(4) The Departmental Head of the Department responsible for financial management may carry out a performance review when he considers it necessary.

51. PARTICULARS OF PROPOSED EXPENDITURE.

A public body to which this Act applies shall, not later than three months before the end of each fiscal year, submit to the Departmental Head of the Department responsible for financial management -

(a) estimates of its receipts and expenditure for the next financial year; and

(b) its proposed works programme (if any) for that financial year, in such form as the Minister approves.

52. BANK ACCOUNTS.

(1) A public body to which this Act applies may open and maintain an account or accounts with an approved bank or approved banks, and shall at all times maintain at least one such account.

(2) The public body shall pay all its moneys into an account referred to in Subsection (1).

53. MONEYS PAYABLE TO PUBLIC BODIES.

(1) There are payable to a public body to which this Act applies such moneys (if any) as are appropriated by the Parliament for the purposes of the public body.

(2) Moneys payable to a public body in accordance with this section shall be paid in such amounts and at such times as the Departmental Head of the Department responsible for financial management determines.

(3) Moneys payable under Subsection (1) are in the nature of a conditional grant and in the event of non-expenditure for the purposes for which they were appropriated, may be required to be returned to Consolidated Revenue.

54. LOANS BY THE STATE.

(1) A public body to which this Act applies may accept an offer by the Minister to loan moneys for the purposes of the public body on such terms as are agreed between the public body and the Minister.

(2) The public body shall repay in accordance with the terms on which a loan under Subsection (1) is made, such portion of the loan as is repayable.

55. PRIVATE TREATY LOANS.

(1) A public body to which this Act applies may, with the consent of the Minister, borrow money for its purposes, from a person on such terms as are agreed between the public body and the person.

(2) The public body shall repay a loan made under Subsection (1) in accordance with the terms on which it was made.

56. BORROWING BY OVERDRAFT.

A public body to which this Act applies may, with the consent of the Minister, borrow for its purposes, by overdraft, within such limits as the Minister approves.

57. INVESTMENT.

(1) In this section, “authorized short-term money market” means the group of dealer companies that are authorized by the Central Bank to be approved dealers in short-term loans and towards which that Bank acts as a lender of last resort.

(2) Moneys of a public body to which this Act applies that are not immediately required may be invested -

- (a) in any securities of, or guaranteed by, the State; or
- (b) in any manner in which a trustee may, under any law, invest trust moneys in his hands; or
- (c) on deposit with an approved bank; or
- (d) in the securities of an authorized short-term money market; or
- (e) in any other manner approved by the Minister.

(3) The Minister may, by notice in the National Gazette, declare a public body (including a subsidiary corporation) to which this Act applies to be a public body which may, without the approval of the Minister, invest its moneys that are not immediately required, provided that each investment, whether a sale or a purchase, does not exceed a maximum level of 3% of its total assets.

(4) A notice under Subsection (3) may include investment guidelines and planning and reporting requirements.

(5) Moneys invested by a public body (including a subsidiary corporation) under Subsection (3) may not be so invested that the public body has an equity holding in any one company exceeding 10% of the issued shares of that company except with the prior written consent of the Minister.

58. APPLICATION OF MONEYS.

The moneys of a public body to which this Act applies may be applied only in payment or discharge of expenses, obligations and liabilities of the public body arising under this Act or its constituent law.

59. CONTRACTS FOR WORKS AND SERVICES.

(1) Subject to Subsection (2), tenders shall be publicly invited and contracts taken by a public body to which this Act applies for all works, supplies and services the estimated cost of which exceeds such sum as is specified in its constituent law or declared by the Minister.

- (2) Subsection (1) does not apply to any works, supplies and services -
- (a) that are to be executed, furnished or performed by the State, or an arm, agent or instrumentality of the State approved by the Minister for the purposes of this subsection; or
 - (b) in respect of which the public body certifies that the inviting of tenders is impracticable or inexpedient.

60. POLICY DIRECTIONS ON TENDERING.

(1) The provisions of this section apply to and in respect of all public bodies and subsidiary corporations notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) The Minister may, from time to time, issue directions to public bodies and subsidiary corporations on policy to be followed in relation to the giving of preference to national tenderers and local manufacturers in relation to tenders invited and contracts taken by public bodies.

(3) A public body and a subsidiary corporation shall be bound by directions issued under Subsection (2).

61. APPROVAL REQUIRED FOR CERTAIN CONTRACTS.

(1) The provisions of this section apply to and in respect of all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) Subject to Subsection (3), a public body shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt of an amount, or of property to a value, (or both) exceeding -

- (a) K100,000.00; or

(b) in the case of a public body declared by the Head of State, acting on advice, by notice in the National Gazette, to be a public body to which this paragraph applies - K500,000.00.

(3) The provisions of Subsection (2) do not apply to a contract relating to investment by a public body (including a subsidiary corporation) the subject of a declaration under Section 57(3).

(4) *(Subsection (4) repealed by No. 14 of 1998).*

62. ACCOUNTS, RECORDS, ETC.,

(1) Subject to Subsection (2), a public body or a subsidiary corporation to which this Act applies shall cause to be kept proper accounts and records of its transactions and affairs, and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over its assets, or assets in its custody, and over the incurring of liabilities by it.

(2) In the case of a public body or a subsidiary corporation that is declared by a constituent law or by the Minister to be a trading enterprise for the purpose of this section, the accounts and records required by Subsection (1) shall be kept in accordance with the accounting principles generally applied in commercial practice.

63. REPORTS AND FINANCIAL STATEMENTS.

(1) The provisions of this section apply to and in relation to all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exception, limitation, condition, addition or modification contained in any other law.

(2) A public body shall prepare and furnish to the Minister -

(a) before 30 June in each year, a performance and management report of its operations for the year ending 31 December preceding, together with financial statements to enable the Minister to present such report and statements to Parliament at its first meeting after receipt of the report referred to in Subsection (4); and

(b) the following reports in relation to investments made by it:-

(i) a quarterly report on all investment decisions; and

(ii) by 28 February in each year, a detailed report on investment performance and returns for the year ending 31 December preceding; and

(iii) a five year investment plan (updated each year) setting out investment policies, strategies and administrative systems to be pursued and providing forecasts of investment flows and returns.

- (3) Financial statements under Subsection (2) shall be -
- (a) in the case of a public body declared under its constituent law to be a trading enterprise - in accordance with accounting principles generally applied in commercial practice; and
 - (b) in all other cases - in a form approved by the Minister in consultation with the Auditor-General.

(4) Before furnishing financial statements to the Minister, a public body shall submit them to the Auditor-General who shall report to the Minister in accordance with Part II of the *Audit Act 1989*.

(5) The Minister shall cause the report and financial statements, together with the report of the Auditor-General, to be laid before Parliament at the first meeting of the Parliament after their receipt by the Minister.

(6) When the report or a financial statement of a public body is reproduced for publication or for other purposes, the report of the Auditor-General on it shall be included in the reproduction.

(7) The first report and financial statements of a public body under this section shall be furnished as soon as practicable after 31 December next following the commencement of its constituent law.

(8) Where a public body does not furnish to the Minister reports and financial statements in accordance with Subsection (2), the Minister, in consultation with the Auditor – General may –

- (a) withhold half of any of the grants appropriated to that public body for any fiscal year next following the fiscal year to which the reports and financial statements relate; and
- (b) refer the head of that body to the Public Accounts Committee for failure to comply with Subsection (2).

(Subsection 63(8) inserted by 13 of 2003)

64. POWERS OF INSPECTION OF THE MINISTER, ETC.,

(1) The provisions of this section apply to and in respect of all public bodies and subsidiary corporations of public bodies notwithstanding any provisions to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) The Minister or the Departmental Head of the Department responsible for financial management may, where he has reason to believe that a public body has or may have failed to implement the management plan as submitted under Section 50(2) or has been or may have been in breach of this Act, authorize the Departmental Head of the Department responsible for financial management to carry out an investigation into, or inspection of, the records of that public body.

(3) Where an investigation into, or inspection of, the records of a public body is being carried out the Minister and the Departmental Head of the Department responsible for financial management have power to obtain full and free access at all reasonable times to all accounts and records of a public body and any subsidiary corporation of the public body that

relate, directly or indirectly to -

- (a) the collection, receipt, expenditure and issue of moneys of the public body and any subsidiary corporation of the public body;
and
- (b) the receipt, custody, disposal, issue or use of stores or other property of the public body and any subsidiary corporation of the public body.

(4) The Departmental Head of the Department responsible for financial management may, by written instrument, delegate to a person specified in the instrument all or any of his powers under this section (other than this power of delegation) in respect of all public bodies or of specified public bodies or of a specified public body.