THE FINANCIAL ADMINISTRATION AND AUDIT ACT

The Financial Administration and Audit (Fiscal Responsibility Framework) (Amendment) Regulations, 2015

In exercise of the power conferred upon the Minister by section 50 of the Financial Administration and Audit Act, and of every other power hereunto enabling, the following Regulations are hereby made:-

1. These Regulations may be cited as the Financial Administration and Audit (Fiscal Responsibility Framework) (Amendment) Regulations, 2015, and shall be read and construed as one with the Financial Administration and Audit (Fiscal Responsibility Framework) Regulations, 2012 (hereinafter called the "principal Regulations").

2. The principal Regulations are amended by renumbering regulation 2 as regulation 2A and by inserting next after regulation 1 the following as regulation 2 –

"Public Investment Management System.

2. – (1) A public entity within the specified public sector shall not enter into a commitment to undertake a public investment project without the written approval of the Cabinet.

(2) A public entity within the specified public sector that proposes a project for inclusion in the Public Sector Investment Programme (hereinafter called the "PSIP") shall submit the proposal to the Public Investment Secretariat (hereinafter called the "Secretariat") for assessment and appraisal.

(3) Upon receipt of the proposal, the Secretariat

shall conduct an assessment and appraisal of the project to determine whether the project is –

(a) consistent with the strategic objectives of the Government;

(b) technically, financially, economically and environmentally feasible; and

Fourth Schedule.

(c) satisfies the criteria set out in the Fourth Schedule.

(4) After assessing and appraising the project in accordance with subsection (3), the Secretariat shall submit a report thereon to the Public Investment Management Committee (hereinafter called the "PIMC") within the time specified in Financial Instructions issued by the Financial Secretary under section 51 of the Act.

(5) Upon receipt of the report on the project submitted under paragraph (3), the PIMC shall –

(a) review the report; and

(b) submit a recommendation to the Cabinet in respect of the project within the time specified in Financial Instructions issued by the Financial Secretary under section 51 of the Act.

(6) A public entity within the specified public sector that is desirous of undertaking a public investment project shall forward such details on the project as may be prescribed or required by the Cabinet and the recommendation of the PIMC under paragraph (4)(b) to the Cabinet for approval.".

3. Regulation 2A of the principal Regulations, as renumbered, is amended –

(a) by deleting paragraph (1) and substituting the following –

" (1) Where a public entity within the specified public sector proposes to benefit from a loan or grant from any source in respect of a programme or a project, the accounting officer with responsibility for the public entity shall cause a proposal to be first developed and submitted to the Planning Institute of Jamaica for appraisal and pre-selection."; and

(b) in paragraph (2) –

(i) by re-lettering sub-paragraphs (e) and (f) as sub-paragraphs (f) and (g) respectively; and

(ii) by inserting the following next after sub-paragraph (d) as subparagraph (e) –

"(e) the capital and recurrent expenditure associated with the programme or project, including any expenditure after completion of the programme or project;".

4. Regulation 5(1) of the principal Regulations is amended by deleting the words "maintained at a prudent level" and substituting the words "maintained at a level that is consistent with –

(a) the fiscal targets set by the Government, in respect of the financial years 2014, 2015 and 2016, respectively; and

(b) the fiscal targets referred to in section 48C(1) of the Act, in respect of the financial year 2017 and each financial year thereafter.".

5. Regulation 6 of the principal Regulations is deleted and the following is substituted therefor –

"Corporate plan. 6. – (1) Pursuant to section 48E(4) of the Act, each accounting officer shall, not later than November 30 of each year, submit to the Minister a four-year corporate plan in respect of each department for which the accounting officer is responsible.

(2) A corporate plan submitted under paragraph (1) shall –

(a) indicate the estimates for the following financial year, and forward-estimates for the succeeding three financial years, in respect of existing recurrent programmes and public investment projects, and any new policy proposals, that are to be implemented within the period covered by the corporate plan;

(b) incorporate into the recurrent budget all recurrent costs associated with public investment projects that are being implemented under the current Public Sector Investment Programme; and

(c) be consistent with the expenditure ceilings set out in the Budget Call under regulation 12 of the *Financial Management Regulations, 2011.*

(3) If an accounting officer fails to submit a corporate plan in accordance with this regulation, the Financial Secretary shall provide a report with regard to that failure to the Public Service Commission for appropriate action.".

6. Regulation 7 of the principal Regulations is amended –

(a) by deleting paragraph (4) and substituting the following –

" (4) If the Cabinet supports the request, the Financial Secretary shall send a report to the Public Administration and Appropriations Committee of the House of Representatives, and the Financial Secretary shall appear before the Committee as required to discuss the implications of the excess expenditure, having regard to the fiscal targets referred to in regulation 5(1).";

and

(b) by inserting next after paragraph (9) the following as paragraphs (10) and (11) –

" (10) Excess expenditure or supplementary expenditure that is to be funded by grants shall not be included in a report by the Financial Secretary under paragraph (2) unless the proposed expenditure is maintained at a level that is consistent with the fiscal targets referred to in regulation 5(1).".

7. Regulation 9(1) of the principal Regulations is amended –

(a) by re-lettering subparagraphs (a) to (i) as subparagraphs (b) to (j); and

(b) by inserting immediately before the re-lettered sub-paragraph (b) the following –

"(a) the attainment of the fiscal targets referred to in regulation 5(1);".

8. Regulation 12 of the principal Regulations is amended by deleting the words "six weeks" and substituting the words "two weeks".

9. Regulation 14 of the principal Regulation is deleted and the following is substituted therefor –

"Certification of public bodies as not part of the public sector.

14. – (1) For the purposes of Part VII of the Act, the Auditor General shall, in accordance with this regulation, certify that a public body primarily carries out functions

that are of a commercial nature if the Auditor-General is satisfied that the public body meets the criteria that are set out in the Schedule.

(2) The Minister shall, no later than August 31 in the year 2016, and no later than August 31 in every third year thereafter, provide the Auditor General with a list of public bodies that the Minister wishes the Auditor General to consider for certification under paragraph (1), together with the audited financial statements and annual reports of those public bodies for the three financial years preceding the year in which the list is provided.

(3) Upon receiving a list and the financial statements and annual reports under paragraph (2), the Auditor General shall –

(a) no later than September 30 in the year in which the list is received, make a decision on whether or not to certify any of the listed public bodies under paragraph (1); and

(b) notify the Minister of that decision.

(4) Certification of a public body as not being part of the specified public sector shall take effect on April 1 of the year following the date of the Auditor General's decision under paragraph (3) to certify the public body.

(5) At the time of a recalibration under section 48CA(2) to (4) of the Act, or upon receiving a request from the Minister under paragraph (6), the Auditor

General shall, in accordance with paragraph (1), determine –

(a) whether a public body that is not part of the specified public sector continues to meet the criteria set out in the Schedule, and if the Auditor General is satisfied that it does not do so, the Auditor General shall withdraw the certification of that public body; and

(b) whether a public body that is within the specified public sector meets the criteria set out in the Schedule, and , if the Auditor General is satisfied that the public body meets the criteria, the Auditor General shall certify that the specified public body primarily carries out functions that are of a commercial nature.

(6) The Minister may request the Auditor General to make a determination under paragraph (5) and take the action required under that paragraph following such determination, if at any time between recalibrations the Minister considers that –

(a) a public body that is not part of the specified public sector does not meet the criteria set out in the Schedule; or

(b) a public body that is within the specified public sector meets the criteria set out in the Schedule.”.

10. The principal Regulations are amended by inserting next after regulation 14 the following Schedule –

" **SCHEDULE** (Regulation 14(1))

Criteria for Public Bodies that are not Part of the Specified Public Sector

1. In this Schedule –

"audited financial statements", in relation to a public body, means the audited financial statements of that public body prepared on a stand-alone basis and, where the public body has a subsidiary, on a consolidated basis, for the three preceding financial years;

"regulated industry" means an industry in respect of which prices must be approved by an independent regulator acting with statutory authority or legally constituted to act independently; and

"the three preceding financial years" means the three financial years preceding a decision or determination of the Auditor General under regulation 14.

2. The criteria for determining whether a public body primarily carries out functions that are of a commercial nature consist of the four standards (and the respective elements of those standards) set out in paragraphs 3, 4, 5 and 6.

Fiscal Independence

3. The standard of fiscal independence comprises the elements listed below as 3.1 to 3.3.

3.1 The price that a public body and each of its subsidiaries, if any, charges for its products or outputs is –

(a) consistent with full cost recovery for public bodies that operate in a regulated industry, based on the average price over the three financial years preceding a decision or determination by the Auditor General under regulation 14; or

(b) determined independently without requiring Government approval, in the case of public bodies that do not operate in a regulated industry.

3.2 The public body has not in the three preceding years received any subsidy or other financial support from the Government or preferential tax treatment.

3.3 The Government has no outstanding financial guarantees in respect of the public body.

Independence of Human Resource Decision-Making

4. The standard of independence of human resource decision-making comprises the elements listed below as 4.1 and 1.2.

4.1 Staff positions of the public body are not included on the Civil Service establishment.

4.2 The public body exercises legal autonomy with regard to its employment decisions (such as hiring and termination).

Financial Standards

5. The financial standards comprise the elements listed below as 5.1 to 5.4.

5.1 The auditor of the public body has expressed an unqualified opinion on the financial statements of the public body, including an opinion that the accounts comply with the International Financial Reporting Standards (IFRS).

5.2 Annual reports, including audited financial statements of the public body have been submitted in accordance with section 3(2) of the *Public Bodies Management and Accountability Act.*

5.3 The public body has, on average over the three preceding financial years, recorded a positive net profit after tax, on a stand-alone basis or, if applicable, on a consolidated basis.

5.4 At least one of the following provisions apply in respect of the public body –

(a) the average long term debt to equity ratio of the public body (on a stand-alone basis or, if applicable, on a consolidated basis) over the three preceding financial years is no more than 2.5, where long term debt means debt that is due over a period that is longer than one year;

(b) the positive working capital and current ratio of the public body (on a stand-alone basis or, if applicable, on a consolidated basis) is at least 1.2, where current ratio means current assets divided by current liabilities.

Transparency and Governance

6. The standard of transparency and governance comprises the elements listed below as 6.1, 6.2 and 6.3.

6.1 The public body has a functioning audit committee in accordance with the *Public Bodies Management and Accountability Act*.

6.2 The annual report of the public body, including audited financial statements, complies with section 22 of the *Public Bodies Management and Accountability Act*.

6.3 The annual report discloses the information required by the *Public Bodies Management and Accountability Act* and any regulations made thereunder.".

Dated the 16th day of January, 2015.

Minister of Finance and Planning