

PUBLIC FINANCE MANAGEMENT ACT, 2012*(Act 9 of 2012)***ARRANGEMENT OF SECTIONS****PART I - PRELIMINARY****Sections**

1. Short title and commencement
2. Interpretation
3. Application of the Act

PART II - POLICY DEVELOPMENT

4. Development of economic policy and advice by the Minister
5. Reporting of economic and fiscal information, performance and projections to the National Assembly

**PART III - CONTROL AND MANAGEMENT
OF PUBLIC FINANCE**

6. Supervision, control and management of public finances
7. Duties of accounting officers

PART IV - BUDGET

8. Annual budget
9. Appropriation
10. Contingency appropriation
11. Deposit of moneys approved by National Assembly
12. Charge of expenditure and revenue
13. Net budgeting
14. Person in possession of stores
15. Store Control Officer
16. Written-off stores
17. Sale of Government asset
18. Acquisition of assets
19. Guarantee
20. Grant, subsidy or capital injection

PART V - TREASURY MANAGEMENT

- 21. Treasury single account
- 22. Efficient cash management

PART VI - BUDGET EXECUTION CONTROLS

- 23. Warrant
- 24. Control by accounting officer
- 25. Advance payment
- 26. Powers of Minister
- 27. Internal audit

PART VII - ACCOUNTING AND REPORTING

- 28. Accountability
- 29. Accounting manual and financial statements
- 30. Mid-year report
- 31. Annual performance report
- 32. Annual report
- 33. Audit of Government accounts
- 34. Government Audit Committee

PART VIII - PUBLIC ENTERPRISES

- 35. Efficient financial management of Public Enterprises

PART IX - REGULATIONS

- 36. Regulations

PART X - SURCHARGE

- 37. Power to surcharge
- 38. Circumstances of action
- 39. Notification of surcharge
- 40. Appeal against surcharge
- 41. Withdrawal of surcharge
- 42. Recovery of surcharge
- 43. Penalties and surcharge

PART XI - REPEAL AND SAVINGS

- 44. Repeal and savings



PUBLIC FINANCE MANAGEMENT ACT, 2012

(Act 9 of 2012)

I assent



J. A. Michel
President

16th November, 2012

AN ACT to repeal and replace the Public Finances Act, 1996 to provide for the development of an economic and fiscal policy frame work for Seychelles, the financial management of the Government, the responsibilities of persons entrusted with financial management in the Government, the transparent and effective management of the Finance of Seychelles, the control of finance of Government, statutory corporations and other bodies under the control of Government and for connected matters.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Public Finance Management Act, 2012 and shall come into operation 1st January 2013.

Short title and
commencement

Interpretation

2.

In this Act —

“Accounting officer” means a Principal Secretary, Chief Executive Officer, Head of department or other public officer whose duties involve being responsible for the management of public moneys, stores and government assets of the Government or any public body;

“Asset” means any item of economic value owned by the Government;

“Central Bank” means the Central Bank of Seychelles;

“Consolidated Fund” means the Consolidated Fund established under the Constitution;

“Constitution” means the constitution of the Republic of Seychelles;

“Contingency Appropriation” means an appropriation available to fund any unforeseen expenditures which cannot be deferred without detriment to the public interest;

“Government” means the Government of Seychelles;

“Financial year” means any period of twelve months beginning on 1st January in any year;

“Guarantee” means the potential liability assumed by the Republic that is contingent on the financial obligation of another legal person and becomes public debt when the party responsible for the payment of the financial obligation fails to make payment;

“Government Audit Committee” means the committee established under section 34;

“Internal audit” means a process to measure, evaluate and report to the management of an entity on the efficacy of the system of internal control used to ensure the validity of financial and other information;

“Internal control” means a set of systems to ensure that financial and other records are reliable and complete and which ensure adherence to the entity's management policies, the orderly and efficient conduct of the entity, and the proper recording and safeguarding of assets and resources;

“Indicators” means measures such as numerical ceilings and proportions to gross domestic product for the purpose of evaluation of the state of economy of Seychelles or the fiscal position of government;

“Minister” means the Minister responsible for Finance;

“Programme” means a collection of activities funded by an appropriation with the aim of creating the impacts set forth in the programmes stated in the economic and fiscal management plan;

“Public body” means—

- (a) a department, division or agency of the Government;
- (b) a statutory corporation;
- (c) a company incorporated and registered under the Companies Act of which the Government is the majority shareholder; or
- (d) any other body of persons, whether corporate or unincorporate, carrying on a service or undertaking which in the opinion

of the Minister is of a public nature for the benefit of Seychelles;

"Public Enterprise" means an organisation specified in Schedule 1 of the Public Enterprise (Monitoring) Act, 2009;

"Public money" means all money belonging or payable to, or received, collected or held by, for or on behalf of, the Government and includes —

- (a) the revenue of the Government;
- (b) money raised or received for the public purposes of the Government; and
- (c) money or funds held in his or her official capacity, whether temporarily or otherwise, by a public officer, either alone or jointly with any other person, whether a public officer or not;

"Public officer" means a person holding or acting in an office of emolument in the public service;

"Public property" means resources owned by the Government or in the custody of the Government;

"Republic" means the Republic of Seychelles;

"Resources" includes moneys, stores, property, assets, loans and investments;

"Supplementary estimate" means an appropriation of moneys to supplement an existing appropriation made already under an Act.

Application
of the Act

3. This Act shall apply to the Government, all public bodies, and other Organisations under the control of the Government.

PART II - POLICY DEVELOPMENT

4.(1) The Minister shall develop and implement a national macro-economic and fiscal policy framework¹ for Seychelles for a period of not less than 3 years and for this purpose shall —

Development of economic policy and advice by the Minister

- (a) advise Government on the total of resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes within that sector;
- (b) advise on the state of the economy for current and projected period;
- (c) supervise and monitor the public finances of Seychelles; and
- (d) co-ordinate the international and inter-governmental economic and fiscal relations of Seychelles.

(2) In pursuing his or her policy objectives the Minister shall adhere to the principles of prudent fiscal management and seek to manage financial risks accordingly having regard to economic circumstances including the maintaining of public debt at prudent levels.

(3) As soon as possible after the commencement of this Act, the Minister shall lay before the National Assembly a statement setting out the key principles of prudent financial management he or she will adhere to and shall keep the National Assembly fully informed of any significant changes

- (b) the estimates of revenue and expenditure of the Government for the financial year in terms of Article 154 (1) of the Constitution.

(2) An economic and fiscal management plan prepared under sub-section (1) must identify—

- (a) the period considered by the Minister to be appropriate for both the short term and the long term planning;
- (b) the macro-economic, fiscal policies and broad programmes to be pursued under sub-section 4(1) above for the periods identified in paragraph (a) of this sub-section;
- (c) indicators which the Minister considers will enable an accurate overall assessment to be made of the state of the economy of Seychelles;
- (d) indicators which the Minister considers will enable an accurate overall assessment to be made of the state of the finances of government including indicators in respect of—
 - (i) revenues;
 - (ii) current and capital expenditures;
 - (iii) borrowing and debt servicing;
 - (iv) contingent liabilities; and
 - (v) such other assets and liabilities that may be considered appropriate by the Minister;
- (e) any significant policy changes made since the previous economic and fiscal management plan.

(3) The Minister in the economic and fiscal management plan prepared under subsection (1), shall —

- (a) assess the current and projected finances of the Government;
- (b) assess the current and projected state of the economy of Seychelles;
- (c) identify the total of resources to be allocated to the public sector for the periods identified in sub-section (2)(a) of this section;
- (d) compare the projected outcome of the indicators for the current year with the targets set in previous years and indicate the reasons for any significant differences.

(4) The Minister shall provide the National Assembly with such additional reports and information as may be reasonable during the financial year that ensure the National Assembly is kept fully informed of the state of the economy of Seychelles and the finances of the government.

**PART III - CONTROL AND MANAGEMENT OF
PUBLIC FINANCE**

6.(1) The Minister shall —

- (a) ensure that systems are established throughout Government for planning, allocating, and budgeting for the use of resources in order to improve the economy, efficiency and effectiveness of Government;
- (b) consider all requests for the issue of moneys from the Consolidated Fund and, where the Minister considers it appropriate, approve their inclusion in estimates of expenditure for submission to the National Assembly in accordance with section 8; and

Supervision,
control and
management of
public finances

- (c) enhance the oversight of the National Assembly over Public resources and public moneys by maintaining transparent systems which —
 - (i) provide a full account to the National Assembly of the use of resources and public moneys;
 - (ii) ensure the exercise of regularity and propriety in the handling and expenditure of resources and public money and, in particular, that goods or services are procured in a transparent, fair, equitable, competitive and cost-effective manner; and
 - (iii) ensure the efficient and cost effective cash management of the Consolidated Fund, any other fund established under this Act and other public moneys;
- (d) be responsible for any statutory body for which he or she is responsible by virtue of being a Minister of Finance responsible for that statutory body.

(2) For the purpose of sub-section (1), the Minister shall, subject to the Constitution and this Act, be responsible for the management of the Consolidated Fund and the supervision and control of all matters relating to the financial affairs of the Government.

Duties of
accounting
officers

7.(1) An accounting officer shall control and be personally accountable to the National Assembly through the Finance and Public Accounts Committee for the regularity and propriety of the expenditure of money applied by an expenditure vote or any other provision to any Ministry, department, fund, agency or other entity funded wholly through the Consolidated Fund and for all resources received,

held or disposed of, by or on account of that Ministry, department, fund, agency or other entity.

(2) A Public Officer shall —

- (a) whenever the necessity arises, consult the accounting officer on the applicability of this Act, any regulations, instructions or directives issued under this Act; and
- (b) bring to the immediate attention of the accounting officer any defect in the application of this Act, any regulations or directives or instructions made under this Act that may result in a diminution of control over the resources and finances of Government.

(3) In the exercise of his or her duties under subsection (1), an accounting officer shall ensure in particular —

- (a) that adequate control is exercised over the incurring of commitments;
- (b) that effective systems of internal control and internal audit are in place in respect of all transactions and resources under his control; and
- (c) in respect of paragraphs (a) and (b), that he or she complies with any instructions issued under this Act.

(4) An accounting officer shall submit to the Minister within 6 months of the end of the financial year, an annual performance report on the programmes under each Head or part of a Head of expenditure charged on the Consolidated Fund by law and identified in the main or Supplementary Appropriation that will be laid before the National Assembly by the Minister, in such form as the Minister may direct.

(5) An accounting officer shall, if so required by any regulations, instructions or directives issued under this Act, state in writing the extent to which the powers conferred on him or her, may be exercised or performed on his or her behalf by any public officer under his or her control, and shall give such directives as may be necessary to ensure the proper exercise or performance of those powers and duties.

(6) Any delegation of the powers and duties of the accounting officer under sub-section (5) shall not affect the personal accountability of the accounting officer.

PART IV - BUDGET

Annual budget

8. In accordance with the provisions of the Constitution, the Minister shall propose to the National Assembly for approval an annual budget, which shall include —

- (a) the aim for the budget balance for the next three years;
- (b) a forecast of the macroeconomic developments and the fiscal outlook for the current year, following year and two years beyond;
- (c) a disaggregate assessment of the fiscal impact of any new policy for the upcoming budget year and the following two years;
- (d) a statement demonstrating the consistency between the policy in the budget and objectives for the Government balance for the upcoming budget year and the following two years;
- (e) a comparison, including the differences, between the actual balance for the previous fiscal year, the expected balance for the

current year and the aim previously stated for these two years;

- (f) an assessment of the main risk to the projected macroeconomic development and fiscal outlook;
- (g) the amount and purpose of each appropriation;
- (h) revenue estimates and appropriations into votes;
- (i) title of the accounting officer and Government entity responsible for each appropriation;
- (j) present estimates in a form that links appropriations to the policy objectives they are intended to serve.

9.(1) An appropriation proposed in the annual budget shall not be exceeded without an authorisation from the National Assembly. The Minister shall provide reasons for requests for supplementary appropriations.

Appropriation

(2) The Minister may, upon request from an Accounting officer, vary amount allocated within a vote, except that the total amount authorised by National Assembly for that vote shall not be exceeded.

10.(1) There shall be a Contingencies Fund.

Contingencies
Fund

(2) Subject to the Constitution, where the Minister is satisfied that there is an urgent and unforeseen need for expenditure for which no other provision exists, the Minister may make advances from the Contingencies Fund to meet the need.

(3) The Minister may include in the budget a contingency appropriation, which shall not exceed 3 percent of the total amount of the appropriations in the proposed budget.

Deposit of
moneys
approved by
National
Assembly

11. In accordance with the provisions of the Constitution, all moneys approved by the National Assembly shall be charged against the Consolidated Fund.

Charge of
expenditure
and revenue

12. The expenditure and revenue shall be charged continuously throughout the financial year as follows—

- (a) expenditure shall be charged against an appropriation in the period when the payments are made; and
- (b) revenue shall be charged to a revenue estimate in the period when payments are received.

Net
budgeting

13. Notwithstanding section 12, and subject to the Constitution, revenue received from fees charged for voluntarily demanded goods and services may be budgeted and charged against an appropriation, provided that the activity generating the revenue is insignificant in relation to the total budget of the Government entity for which the appropriation has been authorised and the revenue is used to cover expenditure directly related to the activity. Any net budgeting shall be approved by the National Assembly.

Person in
possession of
stores

14.(1) A person employed by a public body who is in possession of stores or other assets shall be responsible for their safe custody, protection, proper maintenance and for any loss.

(2) Stores shall be kept to a minimum and restricted to the consumable items required for everyday use and according to the needs of a public body.

Store control
officer

15. An accounting officer may nominate a qualified and experienced person to be the store control officer, who shall be responsible to maintain a store register and supervise the stores and other assets in accordance with the accounting manual and financial instruction.

16. Where the Principal Secretary is the accounting officer he or she shall with the authorisation of the Minister write-off stores and other assets when they become obsolete or unserviceable through normal wear and tear. An accounting officer other than the Principal Secretary shall obtain the authorisation of the Principal Secretary for such a write-off. An accounting officer shall be responsible for an asset that is dismantled or disposed off without prior approval of the authority specified in 14(1).

Write-off
stores

17.(1) The sale of an asset belonging to a public body shall require the approval of the Minister where the value of the asset does not exceed SCR1,000,000 and no longer needed to carry out the Government policy.

Sale of
Government
asset

(2) The proceeds of sale of assets shall be submitted to the Ministry responsible for Finance and deposited in the Consolidated Fund.

(3) The Ministry responsible for Finance shall assess and make recommendation to cabinet for approval of the sale of an asset above SCR1,000,000 and inform the National Tender Board to proceed with the sale as per the requirements of the Public Procurement Act.

(4) The Minister may by regulation exempt any public enterprises for the purposes of this section.

18. The acquisition of an asset by a Government entity shall be provided for in the budget and charged against an appropriation.

Acquisition
of asset

19 (1) A guarantee involving a financial liability shall not be binding on the Government unless given in accordance with Part III of the Public Debt Management Act, 2008.

Guarantee

(2) Any moneys required to fulfil a guarantee binding upon the Government shall be charged on and paid out of the Consolidated Fund.

Grant, subsidy
or capital
injection

20. Any grant, subsidy or capital injection into a Government entity shall be provided for in the budget and charged against an appropriation.

PART V - TREASURY MANAGEMENT

Treasury
Single
Account

21.(1) All public moneys shall be kept with the Central Bank or such financial institution as the Minister may from time to time direct.

(2) The Ministry responsible for Finance shall maintain a Treasury Single Account at the Central Bank to deposit cash receipts and to make payments.

(3) The Minister may authorise accounting officers to open separate bank accounts at the Central Bank or other commercial banks for specific operations.

Efficient cash
management

22.(1) The Minister shall ensure efficient cash management for timely execution of all budgetary spending at the lowest possible cost.

(2) The Minister may by Financial Regulation prescribe the responsibilities and procedure for efficient cash management under sub section (1)

PART VI - BUDGET EXECUTION CONTROLS

Warrant

23. The Minister may issue warrants authorising accounting officers to withdraw money against an appropriation in the Consolidated Fund.

Control by
accounting
officer

24. An accounting officer shall —

- (a) approve any commitment for a future expenditure prior to its execution;
- (b) establish and maintain an up to date register of all approved commitments in the manner and format prescribed by regulations;

- (c) establish and maintain an up to date register of all invoices in the manner and format prescribed by regulations;
- (d) establish procedures to ensure that the goods have been received and the services has been carried out as per request and in line with the approved commitment;
- (e) maintain a record of the approval of goods received or services carried out;
- (f) maintain all accounting records and produce accounting statements for funds under his or her control in the format specified by regulations.

25. An accounting officer shall not approve advance payment before goods and services have been received, unless authorised by the Minister for purposes prescribed in the regulations.

Advance
payment

26. The Minister may —

Powers of
Minister

- (a) set restrictions for the use of an appropriation by an accounting officer;
- (b) limit the use of an appropriation if it is justified by economic or fiscal conditions or the purpose for which the appropriation was authorised is no longer applicable.

27. (a) The Minister shall establish an internal audit to review the financed management system operated by Ministries, Public Bodies and other Public Enterprises;

Internal audit

- (b) The functions of the internal audit includes —
 - (i) appraising the soundness and application of the accounting,

financial and operational controls of each entity;

(ii) evaluating the effectiveness and contribute to the improvement of risk management process of the entity; and;

(iii) providing assurance on the economy, efficiency and effectiveness in the administration of the programs and operations of the entity.

(c) the internal audit operations processes and reporting requirements shall be in accordance with the requirements set out in the regulations.

PART VII - ACCOUNTING AND REPORTING

Accountability

28. The Minister is accountable to the National Assembly for the revenue collected and the use of public funds.

Accounting manual and financial statements

29.(1) The annual financial statements shall be prepared in accordance with international public sector accounting standards. The Minister will establish whether the cash basis or the accrual basis of accounting shall be used.

(2) The Minister shall issue an accounting manual setting out the chart of accounts and accounting treatment for revenues, expenditures, assets and liabilities in reference to accounting standards in sub section (1).

Mid-year report

30. The Minister shall submit a mid year fiscal statement report to the National Assembly by the end of August.

Annual performance report

31.(1) The accounting officers shall produce and forward to the Minister an annual performance report, outlining the

performance of the entity he or she is responsible for during the financial year.

(2) The Minister shall upon receipt of the annual performance report prepare a consolidated performance report for presentation to the National Assembly to accompany the financial statements.

32. The Minister shall after approval by the Cabinet and within ninety-one days after the end of each financial year, submit to the National Assembly and the Auditor General —

Annual
report

- (a) annual financial statements;
- (b) details of all accounts maintained in respect of the Consolidated Fund, any other funds established and other accounts showing amounts received and spent in that year compared to the estimated amounts;
- (c) annual fiscal statement report, including statements of fiscal outcome and fiscal effect showing separately the actual components of fiscal outcome, position and effect, and in respect of fiscal effect, separate disclosure of actual additional borrowings, movements in cash balances of Central Bank, other banks and non-bank borrowings;
- (d) a statement of actual outstanding debt at the end of the financial year, showing separately bilateral, multilateral, institutional, foreign and domestic debt, type and aggregate amounts of debt instruments outstanding, and in the case of new or restructured debt or debt in default, a separate disclosure with full details;
- (e) statements of outstanding guarantees given by the Government and the Central Bank,

showing separately guarantees that have been renewed, new guarantees given and guarantees that have been called up and, in the case of new guarantees given or that have been called up, details of such guarantees together with a statement of guarantees that have expired during the financial year;

- (f) a statement of actual official reserves, identifying those held by Central Bank and there shall be shown separately the extent to which those reserves are borrowed or encumbered in a way;
- (g) as far as practicable, a statement of assets and liabilities of the Government at the end of the financial year;
- (h) a statement of commitments and payments outstanding at the end of the financial year; and
- (i) such other statements as the Minister may think fit.

Audit of
Government
accounts

33.(1) The Auditor General shall audit the accounts within three months after the Minister submitted the documents in accordance with section 32 and report to the National Assembly in terms of Article 158 of the Constitution.

Government
Audit
Committee

34.(1) There shall be a Government Audit Committee which shall function in an advisory capacity to the Minister.

(2) The membership, role, responsibilities, functions and operating procedures of the Government Audit Committee shall be as set out in guidelines issued by the Minister.

(3) The responsibilities and functions of the Government Audit Committee shall not conflict with the

performance of the duties and exercise of the powers of the Auditor General pursuant to Article 158 of the Constitution or any other law.

PART VIII - PUBLIC ENTERPRISES

35.(1) An accounting officer for a Public Enterprise —

Efficient
financial
management
of public
Enterprises

(a) shall ensure that that Public Enterprise establishes and maintains —

- (i) effective, efficient and transparent systems of financial and risk management and internal controls;
- (ii) a system of internal audit under the control and direction of a Government audit committee;
- (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
- (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;

(b) shall take effective and appropriate steps to —

- (i) collect all revenue due to the Public Enterprise concerned;
- (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the Public Enterprise; and
- (iii) manage available working capital efficiently and economically;

- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the Public Enterprise;
 - (d) shall comply with any tax, levy, duty, pension and audit commitments as required by legislation;
 - (e) shall take effective and appropriate disciplinary steps against any employee of the Public Enterprise who —
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control;
 - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
 - (f) shall promptly inform the Minister on any new entity which that Public Enterprise intends to establish or in the establishment of which it takes the initiative, and allow the Minister reasonable time to submit his or her decision prior to formal establishment; and
 - (g) shall comply, and ensure compliance by the Public Enterprise, with the provisions of this Act and any other legislation applicable to the Public Enterprise.
- (2) If an accounting officer is unable to comply with any of the responsibilities determined for an accounting officer

in this Part, the accounting officer shall promptly report the inability, together with the reasons, to the Minister for the time being responsible for the relevant Public Enterprise and to the President.

PART IX - REGULATIONS

36. The Minister may make regulations for carrying into effect the provisions of this Act and may — Regulations

- (a) provide for write off and surcharge;
- (b) prescribe for exceptions for the restrictions for the use of an appropriation by an accounting officer;
- (c) prescribe provisions for efficient cash management;
- (d) prescribe for additional provisions for opening and management of separate bank accounts by accounting officers;
- (e) prescribe for procedures and conditions for public internal control;
- (f) prescribe for the format for registers to be kept by accounting officers;
- (g) prescribe for circumstances when advance payment can be made;
- (h) prescribe for procedures, roles and responsibilities of the Government Audit Committee;
- (i) procedures for sale of government asset; and
- (j) requirements for internal audit.

PART X - SURCHARGEPower to
Surcharge

37.(1) If, at any time, the Principal Secretary brings to the attention of the Minister moneys or public stores have been lost or damaged, and if, within a period specified by the Minister an explanation satisfactory to him or her is not furnished by the responsible officer with regard to such loss or damage, the Minister in consultation with the Principal Secretary shall surcharge against that officer the amount which appears to him or her to be the loss suffered by the Government, or the value of the property lost or damaged as the case may be, or a lesser amount as the Minister may determine.

(2) Any officer who contravenes any provision of this Act or of any Regulations made hereunder shall be liable to a surcharge in such sum as may be determined by the Minister in consultation with the Principal Secretary after due inquiry.

(3) The amount of the surcharge made under subsection (2) shall not exceed one-tenth of the annual salary of the officer concerned.

Circumstances
of action

38. The circumstances which may give rise to action under section 39 include —

- (a) failure to collect any moneys owing to Government for the collection of which a person is or was at the time responsible;
- (b) payment of public moneys in excess of amounts authorised under the Financial Regulations;
- (c) making, allowing or directing any payment of public moneys without proper authority, or proper evidence that the amount was due;
- (d) payment of public moneys without obtaining proper evidence of the identity of the payee;

- (e) responsibility for any deficiency in, loss or destruction of or damage to any public moneys, stamps, securities, stores or other public property;
- (f) failure to render accurate accounts by a person whose duties requires him to render such accounts;
- (g) signing an incorrect or false certificate on a voucher;
- (h) mixing public moneys with other moneys; or
- (i) failure to observe Financial Regulations or Procurement and Stores Regulations or other directions or instructions given under proper authority.

39. The accounting officer shall notify in writing the decision of the Minister to surcharge:—

Notification
of
surcharge

- (a) the person surcharged;
- (b) the accounting officer of the department concerned;
- (c) the Comptroller General; and
- (d) the Auditor General.

40.(1) Any person who is aggrieved by any surcharge made against him or her under the provisions of section 37 may appeal to the Public Service Appeal Board, within one month from the date on which he or she is notified of the surcharge.

Appeal against
surcharge

(2) The Public Service Appeal Board, after making or causing to be made such investigation as it deems to be necessary, may confirm the surcharge or direct that the person surcharged be released wholly or in part from the surcharge as may appear to be just and reasonable.

Withdrawal
of surcharge

41. The Minister may at any time withdraw any surcharge in respect of which a satisfactory explanation is received or if it otherwise appears to him or her that no surcharge should have been made and in that event the Principal Secretary shall notify all the persons notified under section 39 of the decision of the Minister to withdraw the surcharge.

Recovery of
surcharge

42.(1) The Comptroller General, on being notified of a surcharge made under section 37, shall cause the amount of the surcharge to be recovered from the person surcharged in such a manner as the Principal Secretary directs.

(2) No recoveries shall be made under subsection (1) until after the expiration of the period allowed under section 40 for the lodging of any appeal, and where the person surcharged appeals under the provisions of that section, no recoveries shall be made until and unless the surcharge has been confirmed or otherwise determined.

(3) The amount of the surcharge made under the provisions of this Part shall be recovered as the Principal Secretary may direct and may be deducted from any salary, pension or other emoluments of the person surcharged:

Provided that —

- (a) no monthly instalment payable in respect of a surcharge shall exceed one quarter of the gross monthly salary or pension of the person surcharged; and
- (b) where the person surcharged is due to be paid any moneys by the Government other than by way of salary or pension or other emolument, the Principal Secretary may require the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he considers just and reasonable.

(4) Nothing in this section shall —

- (a) prejudice the right of Government to sue for and recover the amount of any surcharge as a civil debt due to the Government; or
- (b) exonerate any person from criminal liability under the Penal Code or any other law in force.

43.(1) Where —

Penalties and
surcharge

- (a) a loss of or deficiency in public money or other money occurs that has been advanced to or was under the control of a public officer, or
- (b) a loss or deficiency of or damage to public property or other property occurs while the property was in the care of a public officer, and the Minister is satisfied after due enquiry, that the negligence or misconduct of the public officer caused or contributed to the loss or deficiency —
 - (i) the amount of the loss or deficiency;
 - (ii) the value of the property lost or destroyed; or
 - (iii) the cost of replacing or repairing the damage to that property,

as the case may be, shall be a debt due to the Government, and may be recovered from the public officer either administratively or through a court of competent jurisdiction.

(2) Where the negligence or misconduct of a public officer is not the sole cause of any loss, deficiency or destruction resulting in an action under sub-section (1), the amount recoverable from the public officer may be restricted to only the cost of replacing or repairing the loss, deficiency,

damage or destruction that the Minister in consultation with the Principal Secretary considers, after due enquiry, to be just and equitable, having regard to the contribution made by the public officer to that loss, deficiency, damage or destruction.

(3) In this section a reference to a public officer includes a person who has been a public officer.

PART XI - REPEAL AND SAVINGS

Repeal and
savings

44.(1) The Public Finances Act, 1996 is hereby repealed.

(2) The regulations made, orders given, funds established, guarantee given, loans approved, write-off approved, surcharge ordered, warrant issued under the repealed Act shall continue into force until they are amended or repealed under the provisions of this Act.

(3) Statutory instruments made under the repealed Act shall continue into force as if made under this Act until it is amended or repealed under the provisions of this Act.

(4) Anything made, established or done under the repealed Act which could have been made, established or done under this Act shall continue into force and be deemed to be made under this Act until amended or revoked under this Act or ceases to have effect by effluxion of time.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 6th November, 2012.



Azarel Ernesta
Clerk to the National Assembly