



Tonga

PUBLIC FINANCE MANAGEMENT ACT

Chapter 2.10

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PUBLIC FINANCE MANAGEMENT ACT

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PUBLIC FINANCE MANAGEMENT ACT

AN ACT TO REGULATE ECONOMIC, FISCAL AND FINANCIAL MANAGEMENT BY GOVERNMENT¹

Commencement [30 June 2003²]

PART I - PRELIMINARY

1 Short title

- (1) This Act may be cited as the Public Finance Management Act 2002.
- (2) This Act shall come into force on a day to be proclaimed by His Majesty in Council.

2 Interpretation

In this Act, unless the context otherwise requires —

“**accountable officer**” means —

- (a) every Chief Executive Officer or person appointed to act in the post of Chief Executive Officer;³
- (b) every person who is required to render an account under this or any other Act for any public moneys;
- (c) every person who by any Act, regulation, Treasury Instruction or by virtue of any appointment, is charged with the duty of collecting, receiving or disbursing any public money or trust money or who actually does receive or disburse any public money or trust money; and

- (d) every person who is charged with the purchase, receipt, custody or disposal of, or the accounting for, any public money or public resources;

“approved investments” means —

- (a) any securities issued by the Government;
- (b) any securities issued by a bank lawfully operating in Tonga;
- (c) any securities issued by an overseas institution with a credit rating of investment grade or better notified by an internationally recognized credit rating agency;
- (d) any other investments declared by the Minister on the approval of Cabinet; and
- (e) any business activity conducted by an entity that is a public enterprise under the Public Enterprises Act.⁴

“Audit Office” means the Office of the Auditor General;

“bank” has the meaning given to it by the National Reserve Bank of Tonga Act⁵;

“chief executive” means the chief executive officer appointed to manage a public enterprise;

“Chief Executive Officer” means the Government chief executive responsible for a Ministry;⁶

“Contingency Fund” means expenditure that —

- (a) could not have reasonably been expected to have been included in the Estimates of any Vote;
- (b) becomes essential to the carrying on of programme operations; and
- (c) cannot be met through the re-allocation of financial resources from within a programme allocation or from within the total allocation to the relevant Ministry programmes;

“Estimates” means the statements of the proposed public revenues and expenditure in any financial year and any accompanying explanatory statements, as presented to the Legislative Assembly;

“financial statements” means the financial statements required under this Act;

“financial year” means —

- (a) in relation to the Government and Government financial statements a period of twelve months ending on 30th June; and
- (b) in relation to a public enterprise, the body’s annual accounting period;

“generally accepted accounting practice” means —

- (a) standards and practices promulgated by the International Federation of Accountants as applicable to Governments and public enterprises; or
- (b) if no standard or practice exists then accounting principles or practices which have the approval of the Secretary for Finance and the Auditor General.

“**Government agency**” means an office, entity or instrument of the Government other than a Ministry or public enterprise;

“**grants**” means —

- (a) non-repayable receipts from other Governments, international or domestic institutions or individuals; or
- (b) non-repayable payments made by the Government of Tonga to other Governments or international or domestic institutions or individuals;

“**imprestee**” means a person in whose hands any public money is placed for expenditure;

“**Minister**” means the Minister responsible for finance;⁷

“**moneys**” includes —

- (a) negotiable instruments; and
- (b) securities of any kind for the payment of moneys;

“**off-set receipt**” means revenue received which is used to fund the activities of a Ministry and is authorised for that purpose by an Appropriation Act in accordance with this Act;

“**outcomes**” mean the impacts or consequences for the community of the programmes or activities of Government;

“**programmes**” means the activities required to produce the goods and services to be produced by a Ministry;

“**public enterprise**” means a statutory corporation, corporation, company or other entity in which the Government holds a controlling interest;

“**public debt**” means all liabilities of the Government but does not include liability where the Government is trustee for another person;

“**Public Fund**” means the Public Fund established under this Act;

“**public money**” means all money other than trust money received by the Government, including all revenue, grants, loans and other moneys, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government by —

- (a) any officer of Government in his capacity as such; or
- (b) any person on behalf of Government;

“**public resources**” mean real or personal property that belongs to or is owned or held by the Government, or by an agency, public enterprise or person on behalf of the Government;

“**public securities**” means securities representing the investment, or securing the payment, of any public money;

“**records**” mean information recorded and kept by any means and includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms, photostatic negatives, prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls and any other type of written, printed, copied, magnetic tape, electronic data record or other information whatsoever, and also includes all papers and other records relating to accounting operations and practice or information recorded and kept by any means;

“**Responsible Minister**” means —

- (a) in relation to a Ministry, the Minister appointed to be responsible for that Ministry;
- (b) in relation to an office of the Legislative Assembly, the Speaker; and
- (c) in relation to a public enterprise, the Minister appointed to be responsible for that public enterprise;

“**revenue**” means all non-repayable Government receipts;

“**securities**” means certificates attesting credit, the ownership of stocks or bonds, or the right of ownership connected with tradable derivatives;

“**security**” means an asset or assets pledged as a guarantee of the fulfilment of an undertaking or the repayment of a loan, to be forfeited in the case of default;

“**sequester**” means the permanent transfer of an appropriated amount of funds from a programme within a Ministry to the Contingency Fund;

“**statutory expenditure**” means expenditure charged on the Public Fund under the provisions of the Constitution or charged on the Public Fund or any other public fund or account by any other Act in which it is expressly stated to be statutory expenditure;

“**term loan**” means any loan that is not intended to be repaid within the financial year that it is raised;

“**Tonga Government Fund**” means revenue raised domestically by the Government;

“**Treasury Instructions**” means Treasury Instructions issued under this Act;

“**trust account**” means a trust account established under this Act;

“**trust money**” means —

- (a) money that is deposited with the Government pending the completion of a transaction or dispute and which may become repayable to the depositor or payable to the Government or any other person;
- (b) money that is paid into Court for possible repayment to the payer or a third party, by virtue of any Act, rule, court order or other authority;
- (c) unclaimed money that is due to or belongs to any person and is deposited with the Government;
- (d) money that is paid to the Government in trust for any purpose as approved by the Minister; and
- (e) money that belongs to or is due to any person and is collected by the Government under any agreement between the Government and that person;

“Vote” means a specified sum of money authorised under an Appropriation Act.

PART II - RESPONSIBILITY FOR FINANCIAL MANAGEMENT

3 Responsibilities of the Minister

The Minister is responsible for the management of public finance under this Act.

4 Minister may delegate powers⁸

The Minister may in writing delegate to the Secretary for Finance, or any other person the Minister considers appropriate, any of his powers under this Act unless prohibited by any other law.

5 The Secretary for Finance

The Secretary for Finance shall be the administrative head of the Ministry of Finance and he shall report to the Minister.

6 Access to information

- (1) The Minister has power —
 - (a) to obtain full and free access at all times to all accounts and records of accountable officers that relate, directly or indirectly, to —
 - (i) the collection, receipt, expenditure, issue or use of public money; and
 - (ii) the receipt, custody, disposal, issue or use of public resources,

- and to inspect and inquire into and call for any information arising from those accounts and records; and
- (b) where he has reason to believe that an accountable officer has been or may have been in breach of this Act, recommend to the appointing authority that the accountable officer be suspended from all financial duties and responsibilities, pending an investigation.
- (2) In the exercise of his powers under this section, the Minister may appoint in writing any person to inquire into and report to him on any matter or matters specified in the instrument of appointment.

PART III - BUDGETS AND APPROPRIATIONS

7 Estimates

- (1) The Minister shall prepare and submit to Cabinet a statement of anticipated revenue for the forthcoming financial year together with a statement of the anticipated budgetary appropriations.⁹
- (2) The Minister shall prepare the Estimates, in accordance with the Budget approved by Cabinet, for introduction to the Legislative Assembly for the forthcoming financial year.¹⁰
- (3) The Minister shall present the Estimates for the forthcoming financial year to the Legislative Assembly.
- (4) The statement of statutory expenditure shall be included in the Estimates in order to present the total expenditure proposed in the Government's programmes or activities.
- (5) The statement of statutory expenditure shall include a brief description of all projected statutory expenditures for the forthcoming financial year, stating the authority for any payment to be made and showing comparative revised estimated figures for each item in respect of the previous appropriation period.

8 Form of the Estimates

The Estimates shall include the following information in respect of each Vote —

- (a) the Minister responsible for the Vote;
- (b) the Ministry administering the Vote;
- (c) a brief description of the activities of the Ministry receiving the Vote including anticipated expenditure and revenue; and
- (d) any other relevant information required by the Minister.

9 Appropriation required

- (1) No public money shall be expended unless the expenditure has been authorised by an Appropriation Act limited in accordance with subsection (2) or is statutory expenditure.
- (2) The authority to expend money or incur expenses or liabilities under an Appropriation Act lapses at the end of the financial year to which that Act relates.
- (3) Subject to section 10, any money appropriated under this section may be expended only in relation to that appropriation and for no other purpose.
- (4) Each expenditure of public money made in respect of statutory expenditure shall be managed and accounted for in the same manner as public money is expended under an Appropriation Act.
- (5) Donor funds received subsequent to the passage of the Appropriation Bill shall be made available to the respective Votes without further approval from the Legislative Assembly.

10 Transfer between programmes

- (1) The Minister may, at the request of the relevant Minister, direct that an amount appropriated for a programme be transferred to any other programme for that Ministry where —
 - (a) the amount transferred does not increase an appropriation for the financial year for that programme by more than 10 per cent;
 - (b) the transfer does not conflict with performance of the programme from which funds are transferred; and
 - (c) the total appropriation for that financial year for that Ministry is unaltered.
- (2) A clause recording any transfers made under subsection (1) in that financial year, and all such budget variations shall be noted in the financial statements for that year.

11 Charge for supply of goods and services

Subject to section 12(1), a Ministry may charge for the provision of goods or services, if the recipient is another Ministry provided that there is a prior agreement to charge the cost incurred to the recipient Ministry.

12 Adjustment for Contingency Fund

- (1) The Estimates presented to the Legislative Assembly shall contain a Vote for a Contingency Fund, with a proposed appropriation not exceeding 5 per cent of the Tonga Government Fund.

- (2) Where the Minister considers that expenditure from the Public Fund in any financial year in excess of, or without, appropriation by the Legislative Assembly should be approved, he may with the approval of Cabinet, transfer to one or more nominated programmes from the Contingency Fund such sum or sums as he considers necessary up to but not exceeding the amount of the balance from time to time available in the Contingency Fund.¹¹
- (3) If, during any review of economic and fiscal performance, the Cabinet determines that it is necessary to redirect spending, the Minister, with the consent of Cabinet, may sequester any amounts from any programme or programmes and such amounts shall be made available to the Contingency Fund.¹²
- (4) No expenditure in excess of, or without, appropriation other than is provided in this section, shall be permitted.
- (5) This section does not apply to statutory expenditure.
- (6) The financial statements for the financial year in which any transfers approved under section (1) are made, shall disclose each instance of a revised appropriation, together with an explanation of the reasons for such revision regardless of whether such sum has been subsequently appropriated during the course of the financial year in an amended or supplementary Appropriation Act.

13 Net appropriation

- (1) All appropriations shall be for the total amount of the expenditure required, unless otherwise provided for in this Act.
- (2) An appropriation may be shown in the Appropriation Act to be off-set by an amount of revenue where the revenue applies to the recovery of costs of the relevant budget programme and meets the criteria set for that programme by the Minister.
- (3) Where an appropriation is for a net appropriation, all estimated expenditure associated with revenue generation and revenue from all sources shall be included in the budget statement and provided for in the Appropriation Act to reflect how the net appropriation figure was ascertained.
- (4) Where this section applies the Minister shall establish separated ledger accounts for off-set receipts and shall ensure that appropriations from those accounts are permitted only for the purpose for which the accounts are established.
- (5) Interest and other receipts derived from the investment of off-set receipts shall be treated as further off-set receipts.

14 Timing and approval of Appropriation Bill

- (1) The Appropriation Bill shall be introduced in the Assembly before the end of the previous financial year.
- (2) If an Appropriation Act has not come into force in accordance with subsection (1), the Minister may issue from the Public Fund such sums as are necessary for carrying out the essential services of Government at a level not exceeding the level of those services in the previous financial year for a period of up to 3 months or until the Appropriation Act comes into force, whichever is the earlier.
- (3) The Minister shall, upon an Appropriation Act coming into force, make funds available to the respective Votes according to the cash flow forecasts agreed between the Minister responsible for the Vote and the Minister or, if agreement cannot be reached, as directed by Cabinet.

PART IV - PUBLIC MONEY, THE PUBLIC FUND AND TRUST MONEY**15 The Public Fund**

There shall be a Public Fund which shall consist of —

- (a) such funds as may be declared by the Minister to be part of the Public Fund;
- (b) every separate fund, account or subsidiary account established under any other Act to form part of the Public Fund; and
- (c) for accounting purposes only, any grant from a foreign aid donor to develop the Kingdom which is managed and disbursed by an aid donor in the Kingdom, outside of the Government accounting system.¹³

16 Dealing with public money

- (1) Public money is the property of the Government.
- (2) Public money shall, except as otherwise provided in this Act, be paid into bank accounts designated by the Ministry for that purpose and such accounts shall form part of the Public Fund.
- (3) No bank account shall be opened or operated for the deposit and withdrawal of public money without the express authority of and on such conditions as the Minister determines and the Minister may transfer money within the Public Fund from one bank account to another.
- (4) All Ministries shall within 1 month from the commencement of this Act, cease to operate any bank other than in accordance with subsection (3).

- (5) The Minister may demand in writing the manager of a bank operating in Tonga to disclose the records of any accounts with his bank operated by a Ministry and on receiving such demand, the manager shall comply.

17 Government banking business

- (1) The Minister may agree with any bank in Tonga or overseas upon terms and conditions for the conduct of the Government's banking business, including arrangements for deposits to be made under the authority of this Act and for interest to be payable by the bank on balances held.
- (2) Any such bank deposit shall be an approved investment.
- (3) Every bank at which any Government account of any nature is kept shall send to the Ministry and to the Audit Office statements of such accounts as the Minister or the Auditor General may require.
- (4) The Minister may make arrangements with any bank for the receipt, custody, payment and transmission of public money within or outside Tonga.

18 Balances may be invested

- (1) The Minister may invest any balance or part thereof of the Public Fund for such period or on such terms as he thinks fit at any bank and in such other securities as the Minister may declare to be approved investments consistent with the financial policies of Government.
- (2) Interest earned on investments shall be credited to the Public Fund and shall be used only in accordance with an Appropriation Act.
- (3) The Minister may sell and convert into money any securities, and that money shall be paid into the Public Fund to the credit of the proper fund to which it belongs.

19 Imprests

- (1) The Minister in such cases as he thinks fit may, with the consent of Cabinet, authorise an imprest account to be opened at a bank and such account shall be identified as a Government account.
- (2) Withdrawals from an imprest account shall only be made by the imprestee and at least one officer designated by the Minister in writing.
- (3) Money may be issued by way of imprest in the name of the Government from the Public Fund.
- (4) Money required to be issued by way of imprest shall be charged against the Programme or other authority for the activities required.

- (5) The Minister may charge money by way of general imprest against the relative money or a relevant account and not from the Programme or other authority and the expenses of the money so issued shall be transferred to the Programme or other authority for the purposes of which the money is expended.¹⁴
- (6) The total of all money issued by way of general imprest shall not exceed 10 per cent of the total amount of all sums appropriated by all Appropriation Acts for the current financial year.

20 Passing of payments without receipts

The Minister may, on proof that any receipts or other requisite papers are lost or destroyed, order that any payment of public money be allowed without the production of receipts or other requisite papers.

21 Refunds and corrections

- (1) The Minister may refund as statutory expenditure, within 5 years of any sum being paid into the Public Fund, all or any part of such sum as was not properly payable to the Government, whether or not application has been made for a refund.
- (2) The Minister shall record the payment of the amount against the appropriate vote or other authority, fund or account.
- (3) The Minister may amend the record to reflect the true position where there has been an error in the amount of any debt to Government or the identity of the debtor.

22 Trust money

- (1) The Minister may establish trust accounts under this or any other Act and all trust moneys shall be paid into such trust accounts.
- (2) The Chief Executive Officer for Finance or the appropriate officer of the organisation responsible for the account shall prepare for each trust account an instrument, signed by that person, setting out the following —
 - (a) the name of the account;
 - (b) a request for the establishment of the account;
 - (c) the name of the Ministry or organisation operating the account;
 - (d) any legal requirement;
 - (e) the names and designations of not less than 2 authorised signatories;
 - (f) the purpose of the account;
 - (g) the source or sources of funds to be deposited in the account;

- (h) the approved categories of expenditure to be paid from the account;
 - (i) any particular conditions; and
 - (j) instructions for the disposal of funds on the completion of the purpose for, or the closure of, the account.
- (3) The Minister shall endorse approval or disapproval of the request on the face of the instrument, provided that the Minister shall not disapprove the request where the money has already been received by the Ministry and is trust money as defined under this Act.
- (4) In the case of approval, the instrument shall constitute an agreement for the operation of the relevant account which shall be established forthwith.

PART V - BORROWING, LOANS, AND GUARANTEES

23 Government not to borrow except under Act

The Government may only borrow under the authority of this Act or any other Act authorising it to do so.

24 Form and signing of loan agreement

Every loan under this Part shall be in the name of the Government and the Minister shall, before entering into any agreement to borrow money under this Part, obtain the approval of Cabinet.¹⁵

25 Power to raise loans

- (1) The Minister may borrow from any source whether within or without the Kingdom, sums of money not exceeding in the aggregate \$15,000,000 in any one financial year, or such further sums as may be authorised by a resolution of the Legislative Assembly.
- (2) Any borrowings made for the purpose of managing cash flows within a financial year and paid within that financial year shall not be included in the calculation of the limitation imposed by subsection (1).
- (3) All loans made by government in any financial year, and the associated terms and conditions, shall be reported in the Budget statement presented to the Legislative Assembly for the next following financial year.

26 Loans to Government

- (1) All money received by the Government under the loan agreement shall be —
 - (a) statutory expenditure;

- (b) paid into and charged to such account as may be agreed between the Government and the lender; and
 - (c) expended for the purposes for which it is borrowed.
- (2) All principal, interest and other money payable under the loan agreement shall be a charge on the public revenues of Tonga and on the Public Fund or such other fund or account as the Minister determines, and shall be statutory expenditure payable at the time or times provided in the loan agreement.
- (3) The Minister shall not issue or register any bonds, in respect of any loan entered into under this section, unless otherwise directed by the Cabinet.¹⁶

27 Subsidiary loan agreements

- (1) The Government may lend to another entity under a subsidiary loan agreement, for the purposes specified in the primary loan agreement entered into under this Act.
- (2) Where appropriate, when the Government enters into a subsidiary loan agreement under subsection (1) it shall ensure it has adequate security against the loan.
- (3) All on-lendings by government in any financial year, and the associated terms and conditions, shall be reported in the Budget statement presented to the Legislative Assembly for the following financial year.

28 Stocks, bonds, and promissory notes

- (1) Where Government intends to raise a loan through the issue of stocks, bonds or promissory notes then it shall do so in accordance with any Regulations made under this Act.
- (2) The principal and interest represented by the stocks, bonds, or promissory notes issued under this section shall form part of the public debt.

29 Treasury Bills

- (1) The Minister may borrow for and on behalf of the Government by the issue of Treasury Bills, and he shall do so in accordance with any Regulations made under this Act.
- (2) The principal moneys represented by Treasury Bills issued under this section shall form part of the debt.

30 Liability of the Government

The Government shall not be liable to contribute towards the payment of any debt or liability unless it is liable to contribute under any Act, or under any guarantee or indemnity given under this Act.

31 Power to give guarantees and indemnities

- (1) The Minister may, subject to subsection (2), give a written guarantee or indemnity upon such terms and conditions as the Minister thinks fit, in respect of the performance of any person, organisation or public enterprise, but may only do so —
 - (a) with the prior consent of Cabinet;¹⁷
 - (b) where the total level of all guarantees or indemnities given in any one financial year and still outstanding does not exceed 5 per cent of the Tonga Government Fund as appropriated; and
 - (c) subject to satisfying the requirement of an “approved investment”:

Provided that if the Minister considers there are special circumstances that make it expedient to exceed the limit imposed by paragraph (b) of this subsection, he shall apply to the Cabinet which may give specific authority for that excess.¹⁸

- (2) The Minister shall report any guarantee or indemnity he has given within 28 days to the Legislative Assembly or, if it is not in session, at the commencement of the next session.
- (3) Where the Minister has received specific authority from the Cabinet to exceed the limit in subsection (1)(b), he shall include the reasons in his report to the Legislative Assembly under subsection (2).¹⁹
- (4) Any money paid by the Government under a guarantee or indemnity given under this section shall be statutory expenditure and shall constitute a debt due to the Government from the person, organisation or public enterprise in respect of whom the guarantee or indemnity was given.

32 Taking and release of security to the Government

- (1) Wherever security is taken in respect of an advance of public money, and unless the Act authorising the advance provides otherwise, the security shall be given to and taken in the name of the Government.
- (2) Where any security is for the time being vested in the Government, whether it has become so vested before or after the commencement of this Act, the Minister may on behalf of the Government exercise any powers, functions and rights, and undertake and perform any liabilities in respect of or in connection with the security which could be exercised, undertaken, or performed by the Government.

- (3) A document purporting to be executed by the Minister under this section shall be deemed to have been duly executed on behalf of and shall bind the Government.

33 Expenditure for protection of public securities

- (1) Subject to Part III and to the provisions of this section, money may be expended out of any fund or account in the Public Fund for the protection, preservation and improvement of any real or personal property on the security of which any money in that fund or account has been invested, whether before or after the commencement of this Act.
- (2) The authority conferred by this section may be exercised notwithstanding the prior exercise in respect of the mortgaged property of any power of sale or entry into possession.
- (3) No amount shall be expended under this section in respect of any property without the approval of the Minister on the recommendation of the Responsible Minister.
- (4) This section is in addition to and not in substitution for any powers or authorities conferred otherwise than by this section.

34 Register of loans and guarantees

The Minister shall maintain a register of loans, subsidiary loans, guarantees or indemnities to which the Government is a party.

PART VI - FINANCIAL REPORTING

35 Financial statements

- (1) The Minister shall no later than 6 months after the end of the financial year, prepare and present to the Legislative Assembly or if it is not in session at the commencement of the next session, the financial statements for that year.
- (2)
 - (a) The Minister shall copy the financial statements presented to the Legislative Assembly under subsection (1) to the Auditor General at the same time it is presented to the Legislative Assembly.
 - (b) The Auditor General shall examine the financial statements and provide to the Minister a written report to be presented to the Legislative Assembly stating his opinion whether the financial statements —
 - (i) have been prepared in accordance with this Act and any other relevant Acts; and
 - (ii) present fairly the matters required by this Act and those Acts.

- (3) If the Auditor General is not able to report in the terms specified under this section, he shall state the reasons and if the Auditor General is of the opinion that he did not obtain all necessary information and explanations, he shall give particulars of the shortcomings.
- (4) The report of the Auditor General shall be returned to the Minister not later than 8 months from the end of the financial year to which it relates, and the Minister shall present the report to the Legislative Assembly forthwith or if it is not in session, at the commencement of the next session.
- (5) The Minister shall publish by Notice in the Gazette, the financial statements and the Auditor General's report.
- (6) The Legislative Assembly may allow such further time as may be necessary for the preparation and presentation to the Assembly of the financial statements and the Auditor General's report if satisfied by the Minister, that exceptional circumstances exist.

36 Quarterly summaries

- (1) The Minister shall within one month of the end of each quarter, except the last quarter of each financial year, prepare and send to the Auditor General a summary of the receipts and payments of the Public Fund from the beginning of the financial year to the end of that quarter.
- (2) Each such summary after being certified by the Auditor General shall be returned to the Minister not later than 2 months after the end of the quarter to which it relates and the Minister shall forthwith publish the certified summary in the Gazette.

37 Payments to be included in financial statements and summaries

- (1) All financial statements and quarterly summaries required under this Act shall include all payments authorised by the Minister during the period to which the financial statements or summary relate.
- (2) Imprests unaccounted for at the end of any quarter shall not be included in the payments but shall be shown as balances in hand.

38 General accepted accounting practice

Financial reports, financial statements, associated information and accounting procedures required by this Act shall be in accordance with generally accepted accounting practice.

PART VII – OFFENCES AND PENALTIES

39 Offences and penalties

- (1) A person who —
 - (a) refuses or wilfully neglects to attend at a time and place required by the Minister or a person appointed by him under section 6(2), in connection with an inspection or inquiry under this Act;
 - (b) refuses or wilfully neglects to pay any public money or trust money into the account or fund into which it is payable;
 - (d) refuses or wilfully neglects to provide any report required under this Act;
 - (e) wilfully or recklessly over-commits or overspends funds under his control;
 - (f) knowingly makes a false statement or declaration or gives a false certificate required under this Act;
 - (g) does any act for the purpose of procuring —
 - (i) the improper payment of public money or trust money;
 - (ii) the improper use of public property or public resources; or
 - (iii) wilfully failing to carry out any duty or obligation imposed on that person under this Act; or
 - (h) wilfully provides misleading or false information,
commits an offence and shall be liable upon conviction to a fine not exceeding \$4,000 and where the person is a body corporate to a fine not exceeding \$50,000.
- (2) Where any body corporate commits an offence against this Act, every director, chief executive, secretary, or other officer of the body corporate and every person purporting to act in any such capacity shall also be guilty of an offence unless that person satisfies the Court that either —
 - (a) the offence was committed without that person's knowledge or consent;
 - (b) was not the result of that person's gross negligence; or
 - (c) that person took all reasonable steps to prevent the commission of the offence.
- (3) The Attorney General may bring a civil claim against any person who, in breach of this section, receives public money or public resources in order to recover such public money or public resources or the value thereof.

40 Disciplining of accountable officers

- (1) For the purposes of this section, “appointing authority” means the authority by whom the accountable officer is appointed.
- (2) Where an accountable officer authorises expenditure or commitment of funds in excess of the approved limit for any programme, the appointing authority may suspend the accountable officer without pay with effect from the date on which the Minister certifies the unauthorised expenditure or commitment.
- (3) An accountable officer suspended under subsection (2) may within 14 days of the date of such suspension make written submissions to the appointing authority as to the circumstances giving rise to the unauthorised expenditure or commitment.
- (4) At the expiry of 14 days from the date of the suspension the appointing authority, after considering any submission made under subsection (3), may remove the suspension or terminate the appointment of the accountable officer.

PART VIII - MISCELLANEOUS PROVISIONS**41 Write off losses**

- (1) An accountable officer shall report promptly to the Secretary for Finance —
 - (a) any losses or deficiencies of public moneys;
 - (b) any irrecoverable amounts of revenue;
 - (c) any irrecoverable debts and overpayments;
 - (d) the value of lost, deficient, condemned, unserviceable or obsolete public resources; and
 - (e) any investments written off.
- (2) The Secretary for Finance may, following any investigation that he thinks necessary in a particular case —
 - (a) approve the write-off of an amount not exceeding \$5,000; or
 - (b) refer to the Minister any case in which the amount exceeds \$5,000 or where the write offs reported by any one accountable officer exceed \$10,000.
- (3) The Minister may, in any case referred by the Secretary for Finance to him —
 - (a) approve the write-off of an amount, not exceeding \$10,000; or
 - (b) in a case in which the amount exceeds \$10,000, refer the matter to Cabinet for decision.

- (4) All amounts approved for write-off by the Secretary for Finance, the Minister or Cabinet respectively shall be reported in the financial statements.

42 Minister responsible for payment of remuneration to Public Servants

- (1) The Minister is responsible for —
 - (a) making payment of the remuneration due to employees in the Public Service in accordance with the programmes in the Appropriation Act for that financial year; and
 - (b) carrying out the obligations of the Government as an employer for withholding taxes or other amounts from remuneration due to such employees as required by law.
- (2) The Minister may by regulation prescribe the manner by which any such employee can identify himself as a person entitled to receive remuneration.
- (3) Where an employee fails to identify himself in the manner prescribed, the Minister may suspend the payment of his remuneration until his identification is verified.
- (4) Where no appropriation is made for the payment of remuneration, then an employee's obligation to work and the Government's obligation of pay that employee's remuneration is suspended until another appropriation is made.

43 Indemnity

The Minister or any person duly appointed or authorised by the Minister, shall not incur any liability as a result of anything done in good faith and with due care in the exercise of any power or the performance of any duty under this Act.

44 Regulations

The Minister may make regulations for the proper and efficient administration of this Act.

45 Treasury Instructions

The Minister may issue Treasury Instructions setting out detailed procedures and requirements not inconsistent with this Act.

46 Transitional provisions

- (1) No person involved in the preparation of financial statements, budgets or forecasts, shall be convicted of any offence under this Act for any act or failure to act by that person in respect of the reporting provisions in Parts II

and VI during the period of 12 months from the coming into force of this Act, unless it is shown that person acted intentionally.

- (2) Where, during the period of 12 months from the coming into force of this Act, any report, statement or update required by this Act is not provided by the due date in accordance with this Act, the Minister shall report the circumstances to the Legislative Assembly forthwith and if it is not in session, at the commencement of the next session.
- (3) Every act done in the name of the Minister, the Treasurer or Secretary for Finance before the commencement of this Act will continue to have effect as if done in the name of the Minister after the commencement of this Act.

47 This Act to prevail

Subject to the Constitution, where any provision of this Act conflicts with any other enactment, the provision of this Act shall prevail.

48 Repeal and savings

- (1) The Public Revenue Act (Cap. 64), Public Finance Administration Act (Cap. 65) and General Loan and Stock Act (Cap. 109) are repealed.
- (2) All subordinate legislation made under the Acts repealed in subsection (1) and in force immediately before the coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act

ENDNOTES

¹ Act 27 of 2002

Amending Acts	Commencement
Act 1 of 2010	18 May 2010
Act 42 of 2010	24 November 2010
Act 5 of 2012	30 July 2012
Act 6 of 2020	31 st August 2020

² Act 6 of 2020

³ Amended by Act 5 of 2012

⁴ Cap 32.09; Inserted by Act 1 of 2010

⁵ Cap 38.20

⁶ Inserted by Act 5 of 2012

⁷ Amended by Act 5 of 2012

⁸ Amended by Act 1 of 2010

⁹ Amended by Act 42 of 2010

¹⁰ Amended by Act 42 of 2010

¹¹ Amended by Act 42 of 2010

¹² Amended by Act 42 of 2010

¹³ Inserted by Act 1 of 2010

¹⁴ The English version of this subsection was originally misprinted and is now corrected against the Tongan language version by the Law Revision Commissioner in accordance with the statutory law revision powers

¹⁵ Amended by Act 42 of 2010

¹⁶ Amended by Act 42 of 2010

¹⁷ Amended by Act 42 of 2010

¹⁸ Amended by Act 42 of 2010

¹⁹ Amended by Act 42 of 2010