

**MINISTRY OF FINANCE, PLANNING, ECONOMIC & PHYSICAL
DEVELOPMENT**

**Financial Legislations
Handbook for Public
Entities**

2018

PREPARED BY THE MACROECONOMIC POLICY UNIT



Foreword

This Handbook has been prepared by the Macroeconomic Policy Unit of the Ministry of Finance. It provides succinct details of the provisions relevant to State-owned Enterprises and Statutory Bodies (Public Entities) as set out in the following Acts, as amended: Public Financial Management Act; Fiscal Responsibility Act; Public Debt Management Act; and Public Procurement and Disposal of Property Act.

This Handbook is organised according to thematic areas that are pertinent to Public Entities. It is our hope that the compilation of all the relevant provisions in a single document and in simple language would assist Public Entities to better execute their responsibilities as stipulated in the respective legislations, with a view to enhancing Public Sector management, efficiency and overall governance.

This Handbook is not a legal document; it has been prepared solely for ease of reference. It is therefore a complement to, and not a substitute for, the respective principal Acts, as amended.

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1. PUBLIC FINANCIAL MANAGEMENT ACT NO 17 OF 2015: PART XII, SECTIONS 68-82

Governance Arrangements

- **Section 69 (2):** The Minister of Finance shall establish the institutional arrangements on matters pertaining to financial governance, policy formulation and oversight of Public Entities, consistent with the constituent Act of Parliament for the respective entities or the Articles of Incorporation and By Laws.
- **Sections 79/80 (1-2):** The composition of Board of Directors of Public Entities, as well as the procedures for their appointment, terms and conditions for their appointment, and their duties and responsibilities **are contained in their respective constituent Acts of Parliament or the Articles of Incorporation and By Laws.** The Minister of Finance may, **but shall not be obliged to** nominate a representative of the Ministry being a senior officer of the Ministry, to be appointed to the Board of a Public Entity if he/she deems it necessary to do so.

Operations

- **Section 70 (1):** The Board of Directors of a Public Entity shall establish and maintain policies, procedures, risk management and internal control systems, as well as good governance and management practices. The policies, procedures and practices are to ensure that the entity operates efficiently and consistent with the objectives for which it was established and in line with the duties of directors provided for under the constituent Act of Parliament for the respective entities or the Articles of Incorporation and By Laws.
- **Section 78 (7-8):** Notwithstanding the provisions of the law establishing a Public Entity, the Minister of Finance and the Line Minister, **may**, in consultation with the Board of Directors of the entity, **direct** that entity pay to the Government any money administered by it in excess of the amount required for the purposes of its operations or capital expenditures. Any money so paid may be applied as revenue of the Government of Grenada. However, the Minister of Finance shall ensure that Public Entities are adequately resourced through appropriations to enable them to operate effectively and may upon recommendation of the governing body of a Public Entity, **direct it to retain all or part of its revenues for its operations.**
- **Section 78 (9):** The Minister of Finance may prescribe in writing, expenditure ceilings for a Public Entity for which the entity **shall not incur** any liability or make any commitment above any ceilings prescribed by the Minister in writing without prior approval in writing of the Minister. **Furthermore, the Minister shall have the power to override any financial decision or commitment made by a Public Entity, whether directly by the**

Minister or acting through the Ministry's representative on the Board of Directors of the entity.

Financial Matters

- **Section 70 (2):** The Minister of Finance shall, in consultation with the Line Minister, prescribe by Regulations, specific financial responsibilities of the Board of Directors of a Statutory Body or a State-owned Enterprise provided that such responsibilities do not conflict with the provisions of the constituent Act of Parliament for the respective entities or the Articles of Incorporation and By Laws
- **Section 77 (1-3):** The Minister of Finance shall have the right to issue **any financial directive to all or any** Public Entity including without limitation, including directives to supply any information specified by the Minister and submit to any special audit or review by a person appointed by the Minister. **Public Entities shall comply with such directives.** Any directive issued by the Minister under subsection (1) shall be disclosed in the entity's annual report for the year in which the directive was received and the annual report shall also disclose the extent to which the directive was complied with by the entity.
- A director or the Board of Directors of a Public Entity who takes action pursuant to a directive issued by the Minister of **Finance shall not be held to be in breach** of their duties under this Act, the Companies Act, constituent Acts of Parliament establishing such entity or other relevant legislation.
- **Section 79 (3):** The Board of a Statutory Body shall provide reports on financial matters as may be requested by the Minister from time to time.

Financial Management

- **Section 78 (1-3):** At a minimum, Public Entities shall adopt the same financial management principles as are applicable to the Central Government under this Act, its Regulations, or other relevant legislation. They shall also be subject to the public sector scheme of service and employment laws and regulations that apply.
- The funds of a Public Entity include money that may be provided for it by Parliament, moneys accruing to it in the exercise and performance of its functions, and grants received for its operations through the Minister of Finance.
- A Public Entity, by resolution of its Board of Directors, may maintain in its own name, one or more bank accounts in such bank(s) in **Grenada**, and shall inform the Minister of Finance of such accounts.

Financial Statements

- **Section 74:** The Board of Directors of **every Public Entity shall** prepare the annual financial statements of such entity and **shall no later than three months from the end of the fiscal year (no later than March 31 of the following fiscal year)**, submit such accounts to the Director of Audit for auditing, with a copy to the relevant Line Minister, and the Minister for Finance.

Investments

- **Section 78 (4-6):** A Public Entity may invest any moneys obtained as prescribed in Section 78 (2) in such manner as the Board of Directors, by resolution, may approve and in consultation with the Minister of Finance, may reinvest any of its investments with any viable institution.
- A Public Entity may invest any moneys in such manner as the Minister of Finance may approve. Further, in consultation with the Minister, a Public Entity may reinvest any of its investments. However, a Public Entity may not invest its money in government securities.
- The Minister of Finance may make Regulations or issue instructions on the conditions upon which a Public Entity may undertake contractual commitments.

Dividends Policy

- **Section 81 (1-3):** The Board of Directors of a **State-owned Enterprise** shall be responsible for setting general policy on dividend in consultation with the Line Minister and the Minister of Finance. The Board of Directors shall ensure that such policy is adopted and respected by the management of the entity, taking due consideration of the financial well-being of the entity.
- Dividends or other profit distribution from a State- owned Enterprise paid to Government shall be reflected in the annual national budget presented to Parliament and paid into the Consolidated Fund.
- **Dividend payments owed to Government shall not be counted against any tax (or other) obligations the State-owned Enterprise may have towards the Government.**

Audits

- **Section 75 (2-3):** A Public Entity shall make provision for annual audit fees to be charged by the Director of Audit in the conduct of its responsibilities, in accordance with fees determined by the Minister of Finance in consultation with the Director of Audit during the budget preparation cycle.

- The Director of Audit may appoint a reputable private firm of auditors to audit the accounts of Public Entities on terms to be agreed with such firms, provided however, that the Director of Audit shall remain responsible for the audit.
- **Section 76 (1):** The Minister of Finance may request the Director of Audit to conduct a **special review or audit** of Public Entity with reasonable notice in writing to the entity, for a specific or general purpose, and within a timeframe and on terms and conditions agreed with the Director of Audit, including a reasonable fee.

Reporting Requirements: Strategic and Annual Plans

- **Section 71 (1-5):** The Board of Directors of Public Entities shall submit **no later than four months before the beginning of a fiscal year** a three-year strategic plan to the relevant Line Minister and the Minister of Finance reflecting the strategic objectives of the entity over the medium term. The 3 year strategic plan required shall include at a minimum, forecast financial information, forecast capital expenditure, key performance indicators and performance targets. **The Plan must be updated on an annual basis.**
- The Board of Directors shall submit no later than four months before the beginning of a fiscal year, a **financial plan** in the case of a Statutory Body, and a **business plan** in the case of a State-owned Enterprise, to the relevant Line Minister and the Minister of Finance, reflecting how the entity proposes to operationalize its strategic objectives over the fiscal year.
- Where the Board of Directors of a Statutory Body or State-owned Enterprise fails to comply with the reporting requirements, the Minister of Finance may, in consultation with the Line Minister, withhold the release of any subvention due to the entity, and or surcharge the entity and or members of its Board of Directors for each day that the non-compliance remains.
- On receipt of such plans, the Line Minister and the Minister of Finance shall consult together and shall each indicate their approval or otherwise of the plan to the Board of Directors of the entity within a period of **two months after receipt** of the plan and in any event, **no later than the beginning of the fiscal year for which the plan relates.**
- The Minister of Finance may prescribe the format in which the strategic plans and annual business plans required by this section shall be prepared and the procedures for review and approval by the Line Ministries and the Minister.
- **Refer to Part XI of the PFM Regulations for what the contents of the strategic plans and the annual business/ financial plans should entail.**

Borrowing, Lending, Guarantees and Contingent Liabilities

- **Section 82 (1-3):** The Minister of Finance may prescribe annual ceilings for borrowing, lending or the creation of contingent liabilities by a **State-owned Enterprise**. A State-owned Enterprise shall not incur any liability or make any commitment above any ceilings established by the Minister in writing, without prior approval in writing of the Minister. The Minister shall have the power to override any financial decision or commitment made by a State-owned Enterprise whether directly by the Minister or through the Ministry's representative on the Board of such entity. **Except to the extent of a written guarantee or indemnity issued by the Minister on behalf of Government, under Part IX of the Act, and any Act of Parliament, the Government shall in no way be liable for the debts of a State-owned enterprise.**

The provisions of this Act shall prevail over the provisions of any other statute to the extent of any inconsistency.

2. FISCAL RESPONSIBILITY ACT NO 29 of 2015

Coverage

This Act governs matters related to the management of public finances and fiscal matters relating **to the Central Government and Covered Public Entities**. A “Covered Public Entity” is a Statutory Body or State-owned Enterprise for which **any** of the following applies:

- a) the entity has received transfers of any kind from the Budget, including subventions or guarantees for any year in the five-year period immediately preceding the current fiscal year; **or**
- b) the entity has, for three consecutive quarters in the preceding fiscal year, not met the quarterly reporting requirements established by the Minister of Finance; **or**
- c) the audited balance sheet of the entity has recorded a negative equity position as at the end of one of the preceding three financial years.

Key Definitions

- **Expenditures:** means expenditures of the Central Government and Covered Public Entities, and includes (a) interest and non-interest spending; (b) current spending under the Recurrent Expenditure Chart of Accounts; and (c) capital spending under the Capital Expenditure Chart of Accounts.
- **Fiscal Balance:** means the total receipts into Central Government accounts and accounts of Covered Public Entities (excluding debt receipts and unspent grants) less total expenditure (excluding repayment of debt) during the financial year.
- **Public Debt:** means all direct liabilities of Central Government and Covered Public Entities, including advances, arrears, compensation claims, finance leases, Government securities, loans, overdrafts, promissory notes, and supplier’s credit agreements, and contingent liabilities, but excludes explicit contingent liabilities arising as a result of, or in connection with public-private partnerships.
- **Public Sector:** means the Central Government, the National Insurance Scheme, Statutory Bodies, and State-owned Enterprises.
- **Wage Bill:** means all personal emoluments, wages, allowances, and payments for professional services, made to Government established and un-established employees including project workers employed under the Public Sector Investment Programme, and such payments made to employees of Covered Public Entities, but excludes pensions and National Insurance Scheme payments.

Fiscal Rules and Targets: Sections 7 & 8

- Primary Expenditure Rule:** the rate of growth of the primary expenditure¹ of the Central Government, and of every Covered Public Entity, **shall not exceed two percent in real terms** in any fiscal year, when adjusted by the preceding year's inflation rate. Capital expenditures that are funded by grants are excluded from the calculation of the Expenditure Rule.

Example:

	2015	2016
Primary expenditure minus capital grants	\$650 m	\$655 m
Inflation rate	2.1%	2.2%
Change in <u>real</u> primary expenditure minus capital grants in 2016		$(655/650 - 1) * 100 - 2.1 = -1.33\%$
Primary expenditure rule is satisfied in 2016 because -1.33% is less than 2.0%.		

- Wage Bill Rule:** the ratio of expenditure on the wage bill **shall not exceed nine percent to GDP.**
 - Policy on negotiation of rates of pay and related conditions of employment for persons employed in the Central Government and Covered Public Entities shall be consistent with the Public Debt targets and the policies and plans set out in the Government's Medium-Term Fiscal Framework.
 - No multi-year commitment shall be entered during a period in which Parliament is dissolved.
- Primary Balance Rule:** the targeted primary balance **shall be a minimum of three point five percent of GDP.**
- Public Debt Target:** The total stock of public sector debt from domestic or external sources *for any purpose, including (a) the total sum of debt guaranteed by the Government including contingent liabilities assumed by the Government, but excluding contingent liabilities arising from, as a result of, or in connection with public-private partnerships; (b) the debt and contingent liabilities of Statutory Bodies and State-owned Enterprises; and (c) such sums as may be necessary to defray expenses in connection with such liabilities,* to the GDP **shall not exceed fifty-five percent of GDP.**

¹ Total Expenditure excluding interest payments.

- **Contingent Liabilities related to Public-Private Partnerships:** contingent liabilities arising from, as a result of, or in connection with public-private partnerships **shall not exceed five percent of GDP.**

Additional Provisions

- **Section 6 (e):** The Minister of Finance shall take appropriate measures to ensure compliance with this Act, including that documented public investment procedures are prepared and made available for the submission and approval of all projects submitted for inclusion in the capital expenditure programmes of the Central Government and Covered Public Entities.
- **Section 12 (4) (a):** The Minister may, for the purpose of fulfilling his or her responsibilities under this Act, request any financial statement, data, or information associated with fiscal risks from any economic entity, any entity in the public sector or any entity receiving guarantees and loans from the Government.

This Act shall be read and construed together with the Public Finance Management Act and the Public Debt Management Act.

3. PUBLIC DEBT MANAGEMENT ACT NO 28 OF 2015

Government Guarantees

- **Section 19 (1-3):** Subject to the provisions of this Act or any other applicable enactment, the Government may in a fiscal year guarantee in such manner and on such terms and conditions as it thinks fit, the repayment of the principal, interest, and other payment obligations under foreign or local loan transactions entered into by a Statutory Body or State-owned Enterprise, **subject to the approval of Parliament.**
- The Minister of Finance shall have sole authority to guarantee loans on behalf of the Government and to sign agreements and other documentation on behalf of the Government. The Minister may, in writing, appoint an official of the Ministry or another Government official to sign on his or her behalf such documents, and the signing by the official shall be valid as if it had been signed by the Minister.
- **The Minister shall cause to be established and maintained a register of Government guarantees.**
- **Section 20 (1-10):** A Public Entity applying for a Government guarantee shall apply to the Minister of Finance. The Minister of Finance may, subject to approval by Parliament, guarantee liabilities, if the Minister is satisfied through an evaluation by the Debt Management Unit that:
 - ✓ the purpose of the underlying loan is for a public purpose and that the proposed guarantee is itself expected to serve a specific public policy purpose and the guarantee is evaluated to be the most appropriate mechanism for achieving that public policy objective;
 - ✓ the terms and conditions of the underlying loan to be guaranteed are consistent with the Government's public debt management objectives and strategy;
 - ✓ the borrower has the ability to repay the underlying loan obligations and fulfil all payment and other obligations under such loan and under the guarantee and related agreements;
 - ✓ the borrower is in full compliance with all fiduciary and corporate governance requirements established by the Minister; and
 - ✓ it is prudent to guarantee such loan having regard to the debt target prescribed pursuant to the Fiscal Responsibility Act.

- Every Government guarantee shall be in writing, signed by the Minister of Finance on behalf of the Government, specifying the terms and conditions upon which the Government guarantee is issued.
- Every Government guarantee shall be supported by appropriate legal documentation prepared by the Attorney General and executed by the borrower whose loan is to be guaranteed, agreeing to indemnify the Government, **and under such legal documentation, the borrower shall commit to repaying the Government any money paid by the Government to the creditor under the Government guarantee in the event of default by such borrower.**
- The borrower shall pay or reimburse the Government, as the case may be, in such manner as the Minister shall direct, including: (a) before the Government guarantee is executed by the Minister, a fee to reflect administrative costs incurred by the Government in issuing the Government guarantee, including a fee for the risks borne by the Government; (b) an annual guarantee fee as shall be determined by the Minister; and (c) all other expenses incurred by the Government in relation to the Government guarantee.
- Where any guarantee issued by the Government in accordance with the provisions of this Act is called on for payment, the Government shall make good the obligations of the Government under such guarantee to the creditor and immediately notify the borrower accordingly and demand payment in terms of the indemnity provided by the borrower to the Government.
- Where the borrower fails to repay the Government when notified by the Government, the Government shall proceed to recover any amounts paid under the guarantee including through legal proceedings against the borrower, **and interest on the amounts paid shall accrue at the current market rate in favour of the Government until the date of final payment by the borrower.**
- Any sum paid by the borrower to the Government shall be paid into the Consolidated Fund.

Lending by Government

- **Section 21 (1-8):** Where the Minister of Finance is satisfied that it is in the public interest, he or she may on behalf of the Government make loans to statutory bodies and State-owned Enterprises, subject to such ceiling on Government lending as Parliament may as part of the annual budget approve, on such terms and conditions as may be determined by the Minister and approved by Cabinet.

- Before issuing any loan on behalf of the Government, the Minister of Finance shall establish through independent evaluation that:
 - ✓ the proposed loan would serve a specific public policy objective;
 - ✓ such loan would be the most appropriate mechanism for achieving the specified public policy objective;
 - ✓ the risk to the Government in providing such loan or credit is consistent with prudent public financial management;
 - ✓ the terms and conditions of such loan are consistent with Government's public debt management objectives and strategy;
 - ✓ the borrower has the ability to repay the loan and fulfil all payment and other obligations under the loan, including interest at a market-based rate to reflect the Government's credit risk and funding cost; and
 - ✓ the borrower is in full compliance with all fiduciary and corporate governance requirements established by the Minister

- Every loan made by the Minister of Finance shall be made pursuant to a loan agreement in writing and signed by the Minister, and shall set out the terms and conditions of such loan, **including the option of the Minister to require full repayment of the loan prior to maturity of the loan**, where there is breach of any provision of the loan document on the part of the borrower; or there is an adverse material change in the financial circumstances of the borrower or in other circumstances which could prejudice the interest of the Government.

- The borrower shall execute in favour of the Government a deed of pledge or other collateral document in respect of assets of a value acceptable to the Government, but not less in market value than the sum of the principal and interest under the loan agreement and a prudent margin to protect the Government against market risks.

- In addition to the payment of interest commensurate with the Government's credit risk and cost of funds, **the borrower shall pay to the Government, in such manner as the Minister shall direct, a fee to reflect the administrative costs incurred by the Government in lending to such borrower.**

- Where a borrower fails to repay a loan made pursuant to this section in accordance with the loan agreement, **after twenty-one days' notice to the borrower**, the Government shall proceed to enforce the deed of pledge or other collateral document executed by the

borrower in favour of the Government, and notwithstanding the provisions of any other enactment to the contrary, arrange the sale of the pledged or otherwise collateralised assets of the borrower at the open market value of such assets.

Additional Provisions Governing Borrowing by Public Entities

- **Section 22 (1-2):** Borrowing by a Public Entity shall be in accordance with this Act, the Public Finance Management Act, the Fiscal Responsibility Act, and other relevant enactment. **Any provision in any enactment or constituent document relating to borrowing by Public Entities, in existence prior to the commencement of this Act, shall be construed with such modification as necessary to give effect to the provisions of this Act.**
- **Section 23 (1-5):** A Public entity may borrow funds and obtain overdrafts from any lender and up to such limit as may be determined by the Minister from time to time. The Minister of Finance shall prescribe an annual borrowing limit for every Public Entity based on its capacity to repay and such other considerations as the Minister may determine upon consultation with the line minister responsible for the relevant Public Entity.
- A Public Entity intending to borrow above the limit prescribed by the Minister shall obtain prior approval in writing from the Minister through the responsible line minister.
- **A Public Entity shall submit to the Minister of Finance a record of its borrowing no later than ten working days from the date of signing a loan agreement, obtaining an overdraft, or issuing securities, as the case may be, and shall, upon request from the Minister, submit to the Ministry any data on total outstanding debt.**
- **All debt liabilities contracted by a Public Entity under the provisions of this Act shall be the primary obligations of such entity and without recourse to the Government, and the Government shall in no way be liable for such liabilities unless otherwise expressly guaranteed.**

4. PUBLIC PROCUREMENT AND DISPOSAL OF PROPERTY ACT NO 39 OF 2015

Application

- **Section 4 (1-2):** This Act applies to all public procurement by procuring entities within the meaning of this Act and any activities related thereto and each disposal by a public entity of stores and equipment that are unserviceable, obsolete or surplus. This Act does not apply to the procurement of goods, works or services under EC\$15,000.00 as well as nine other areas that are listed in Section 4 (2) (a-i).
- If there is a conflict between this Act or the Regulations and any other law of Grenada, in matters relating to public procurement and disposal, this Act and the Regulations shall prevail.

Fundamental Operational Principles and Rules of Procurement

- **Section 5 (1):** Except as provided under Part VI of this Act, all public procurement of goods, works and services by all procuring entities shall be conducted by open competitive tendering.
- **Section 5 (3):** A procuring entity shall use such standard tender documents as may be prescribed.
- **Section 17 (1-5):** A procuring entity shall not award a procurement contract to suppliers, contractors, consultants or service providers unless they have the certain qualifications listed in Section 17 (1) (a-f). The procuring entity may disqualify a supplier, contractor, consultant or service provider at any time for submitting false, materially inaccurate or incomplete information about his/her qualifications. Additionally, a procuring entity may disqualify a supplier, contractor, consultant or service provider who, without reasonable cause, fails to demonstrate his qualifications when requested to do so.
- **Section 18 (1):** A procuring entity may engage in a prequalification process, prior to soliciting submissions, for the purpose of identifying the suppliers, contractors or service providers that are qualified by inviting those interested to submit applications.
- **Section 19 (1-2):** The procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings. The specific requirements shall include all the procuring entity's technical requirements with respect to the goods, works or services being procured.

- **Section 20 (1):** A submission made by a supplier, contractor, consultant or service provider shall include a statement verifying that the supplier, contractor, consultant or service provider is not debarred from participating in procurement proceedings under Part VIII and a declaration that the person will not engage in any corrupt practice.
- **Section 21 (1-3):** A procuring entity may cancel the procurement at any time prior to the acceptance of a successful submission and shall not open any tender after taking a decision to cancel the procurement. A procuring entity that wishes to cancel procurement proceedings shall give prompt notice of such cancellation to each supplier, contractor, consultant or service provider who made a submission and in the case of open competitive tendering under Part V, shall in addition promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published and return any tenders that remain unopened at the time of the decision to the respective suppliers, contractors or service providers. The procuring entity shall give its reasons for cancelling the procurement proceedings within thirty (30) days of the request of a person to whom notice is provided.
- **Section 26 (1-3):** An employee or agent of the procuring entity or a member of a committee of the procuring entity who has a conflict of interest with respect to a procurement shall disclose the conflict of interest to the procuring entity, shall not take part in the procurement proceedings; and shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or procurement contract.
- **Section 27 (1):** During or after procurement proceedings, neither a procuring entity nor any employee or agent of the procuring entity or member of a committee of the procuring entity shall disclose the certain information listed in Section 27 (1) (a-d).
- **Section 30** stipulates the requirements for open competitive tendering and **Section 34** outlines provisions for alternative procurement procedures.

Disposal of Stores and Equipment

- **Section 54 (1-2):** A public entity shall ensure that this Act and the Regulations and Board are complied with in respect of each of its disposals to which this Part applies. The chief accounting officer of a public entity shall be primarily responsible for ensuring that the public entity fulfils its obligations under sub-section (1). **Section 57 sets out procedures for disposal.**
- **Section 59:** A public entity shall not dispose of unserviceable, obsolete or surplus stores and equipment to an employee of the public entity or a member of a committee of the public entity except as expressly allowed under the Regulations.