



I assent,

EDMUND W LAWRENCE

Governor-General.

15th July, 2013.

SAINT CHRISTOPHER AND NEVIS

AN ACT to amend the Finance Administration Act, Cap. 20.13.

[Published 15th July 2013, Extra Ordinary Gazette No. 35 of 2013.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

1. Short Title.

This Act may be cited as the Finance Administration (Amendment) Act, 2013.

2. Interpretation.

In this Act, unless the context otherwise requires, “Act” means the Finance Administration Act, Cap. 20.13

3. Amendment of Section 3.

The Act is amended in Section 3 by

- (a) inserting immediately after the definition of ‘Appropriation Act’ the following new definition:

..... “ “Board” means the Government Entities Oversight Board established pursuant to section 64A;”

- (b) inserting immediately after the definition of “government bank account” the following new definition:

“ “government entity” includes a statutory body, or any corporation wholly owned by the Government;”

- (c) inserting immediately after the definition of “Treasury instructions”, the following new definition:

“ “Unit” means the Government Entities Monitoring Unit responsible for carrying out the administrative operations of the Government Entities Oversight Board.”.

4. Amendment of section 59.

The Act is amended in section 59 by replacing that section as follows:

“ 59. Application of Part.

(1) Subject to subsection (2), the provisions of this Part shall apply to a statutory body notwithstanding any provision of any other law respecting the statutory body.

(2) The provisions of sections 60, 62, 63, and 64 shall be of equal applicability to a government entity notwithstanding the provisions of the Companies Act and subject to any changes that the context may require.

5. **Insertion of Part XA.**

The Act is amended by inserting the following new part XA immediately after Part X:

.....

“ **PART XA**

GOVERNMENT ENTITIES OVERSIGHT BOARD

64A. Government Entities Oversight Board.

(1) For the purpose of monitoring the financial activities of government entities, there is hereby established in the Ministry, a Board to be known as the Government Entities Oversight Board.

(2) The Board shall be composed of not less than three and not more than seven persons appointed by the Minister as follows:

- (a) the Financial Secretary, who shall be the Chairperson of the Board;
- (b) a representative of the Ministry of Industry and Commerce nominated by the Minister after consultation with the Minister of Industry and Commerce; and
- (c) such other persons with qualifications or experience in the areas of accounting and finance, and related fields.

(3) The Minister shall designate a member of the Board as the Secretary of the Board.

(4) The members of the Board shall be appointed on such terms and conditions as may be specified in their instruments of appointment.

.....**64B. Functions of the Board.**

The Board shall perform the following functions:

- (a) monitoring compliance of government entities with the relevant enactments;
- (b) reviewing the financial statements of government entities including

- their cash flow requirements;
- (c) notifying the relevant Ministry of any issues that the Board deems necessary with regard to any government entity;
- (d) making recommendations for improvements in the operations of government entities.
- (e) reviewing the activities of the Board and committees of any government entity;
- (d) recommending the annual borrowing limits for government entities; and
- (e) submitting an annual report to Cabinet on government entities which report shall include a risk profile.

.....**64C. Powers of the Board.**

(1) The Board shall have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Board may appoint auditors or such other experts as it may deem necessary to assist it in carrying out its functions pursuant to section 64B or to conduct independent investigations where necessary.

64D. Sanctions.

(1) Subject to subsection (2), where the Board is of the opinion that a government entity

- (a) is operating in a manner that is, or is likely to be financially unsound; or
- (b) may jeopardise the reputation and integrity of Saint Christopher and Nevis in commercial and financial matters; or
- (c) has failed to submit the relevant documents under section 60 and 64 in a timely manner

.....the Board may take action in accordance with the provisions of subsection (2).

(2) The Board may take any one or more of the following measures against a government entity that is acting in a manner contrary to subsection (1):

- (a) issue a written warning to the government entity specifying the particular practice or violation being complained of;
- (b) conclude a written agreement with the government entity providing for a program of remedial action; or
- (c) issue a cease and desist order that requires the government entity or the person responsible for its management to cease and desist from the practice or violations specified in the order.

(3) Where the Board has imposed the relevant measures pursuant to subsection (2) and there has been no material change in the conduct in question, then the Board may, after exhausting the measures in subsection (2), recommend to the Minister of Finance further action against the government entity.

(4) A government entity or any director thereof, who fails to comply with any requirement or contravenes any prohibition imposed on that government entity under this section, commits an offence and is liable on summary conviction

- (a) in the case of a statutory body that is a corporation, to a fine not exceeding twenty thousand dollars;
- (b) in the case of any other government entity, to a fine not exceeding twenty thousand dollars;
- (c) in the case of a director of the government entity to a fine not exceeding five thousand dollars

64E. Compliance Fund.

(1) There is hereby established a Compliance Fund to which shall be deposited any monies collected as fines pursuant to this Act.

(2) Any monies collected and deposited in the fund pursuant to Subsection (1) shall be used for capacity building in respect of public corporations.

.....**64F. Tenure of members of the Board.**

The members of the Board, other than the Chairperson, shall hold office for a period not exceeding three years but shall be eligible for reappointment.

64G. Tenure of Chairperson.

The Chairperson shall hold office once he or she holds the position of Financial Secretary.

.....**64H. Resignation of member of the Board.**

(1) A member of the Board other than the Chairperson may resign from his or her office at any time in writing and his or her resignation shall be addressed to the Minister through the Chairperson.

(2) The Chairperson may at any time in writing addressed to the Minister, resign his or her office.

64I. Termination of office.

The Minister may remove any member of the Board from office on one of the following grounds:

- (a) inability to perform the functions of his or her office;
- (b) being absent from three consecutive meetings of the Board without the permission of the Chairperson; or
- (c) if he or she is declared bankrupt or compounds with his or her

creditors;

(d) any other reasonable ground in the public interest.

.....**64J. Remuneration of members.**

The members of the Board shall be paid such remuneration and allowances as the Ministry, with the approval of the Minister, may determine.

.....**64K. Facilitation of work of the Board.**

(1) There is hereby established a Government Entities Monitoring Unit which shall be responsible for carrying out the administrative operations of the Government Entities Oversight Board.”.

(2) The Unit shall consist of such number of officers not exceeding five as shall be appointed by the Board to facilitate it in its work on such terms and conditions as the Board may deem fit.”.

(3) The Unit shall perform the functions relating to administration, secretarial services, collection of data and research which are necessary for the operations of the Board.

(4) The Board may assign to any officer of the Unit, such number of government entities as are to be monitored.

(5) In facilitating the Board, the Unit shall:

- (a) keep abreast of the operations of each statutory body;
- (b) report to the Board at the prescribed intervals and in the prescribed format;
- (c) receive and review the Board minutes of individual government entity boards;
- (d) receive and review the management reports of individual government entities; and
- (e) conduct such discussions as may be necessary with the finance officers of the government entities on matters relating to finance issues.

.....**64L. Funds of the Board.**

(1) The funds of the Board shall consist of such sums as may be provided by Parliament.

(2) The expenses of the Board including the stipends or allowances for officers, the operating expenses of the Unit and any administrative expenses shall be paid out of the funds of the Board.

64M. Board Meetings

The Meetings of the Board shall be on such terms as are set out in the Schedule to the Act.

6. Insertion of Part XIA.

The Act is amended by inserting immediately after Part XI, the following new Part XIA and new sections 69A to 69F.

..... “ **PART XIA.**

..... **SURCHARGE**

69A. Conditions under which surcharge may be imposed.

Where it appears to the Financial Secretary that by reason of the neglect or fault of any person who is or was at the time of such neglect or fault a public officer, public monies or public stores have sustained loss or damage; and if, within a period specified by the Financial Secretary an explanation satisfactory to him or her is not furnished with regard to such apparent neglect or fault, the Financial Secretary shall surcharge against that person 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 such lesser amount as the Financial Secretary may determine.

69B. Neglect or Fault.

Neglect or fault of a person for the purpose of section 69A may include:

- (a) failure to collect any monies owing to Government for the collection of which such person is or was at the relevant time responsible;
- (b) making, allowing or directing any payment of public monies without proper authority, or payment of public monies without obtaining proper evidence that the amount was due;
- (c) responsibility for any deficiency in, loss or destruction of or damage to any public monies, stamps, securities, stores, or other public property;
- (d) failure to render accurate accounts by a person whose duties require him to render accounts;
- (e) signing an incorrect certificate on a voucher;
- (f) mixing public monies with other monies; or
- (g) failure to observe Financial Instructions or to Store Rules or other relevant instructions given under proper authority.

69C. Notification of surcharge.

The Financial Secretary shall notify in writing the decision to surcharge to

- (a) the person surcharged;
- (b) the head of department concerned;

- (c) the accounting officer of the department concerned;
- (d) the Accountant General; and
- (e) the Director of Audit.

69D. Appeal.

(1) An appeal shall lie to the appropriate Service Commission in respect of any surcharge made pursuant to section 69A at the instance of the person against whom that surcharge is made.

(2) An appeal pursuant to sub-section (1) shall be in writing addressed to the Chairperson of the appropriate Service Commission and shall be lodged not later than one month after the person appealing had been notified of the surcharge.

(3) The Minister, in consultation with the Chairperson of the appropriate Service Commission, may by regulation make provision for the procedure in appeals under this section and, in particular, for the attendance at such appeals of public officers and other persons as well as for the production of public accounts, public stores or any other public property at such appeals.

(4) Upon an appeal under this section the appropriate Service Commission may confirm the surcharge which is the subject of the appeal or may release the person against whom the surcharge is made either wholly or in part from the surcharge.

(5) An appeal shall lie to the Public Service Board of Appeal from any decision of the appropriate Service Commission under this section.

69E. Withdrawal of surcharge.

The Financial Secretary may at any time withdraw any surcharge in respect of which a satisfactory explanation is received or if it otherwise appear to him that no surcharge should have been made, and in any event the Financial Secretary shall notify the person concerned, the Head of Department, the Accounting Officer of the department concerned, the Accountant General and the Director of Audit of such withdrawal.

69F. Recovery of surcharge.

(1) The Accountant General, on receiving notice of a surcharge made under this Part, shall cause the amount of the surcharge to be recovered from the person surcharged in such manner as the Financial Secretary may, by direction given under subsection (2) authorise except that

- (a) no such recovery shall be made until after the expiration of the period specified in section 69D for the lodging of an appeal; and
- (b) where the person surcharged appeals under the provisions of section 69D no recovery shall be made unless the amount of the surcharge has been confirmed or that person has been

only partially released from the surcharge in accordance with the provisions of section 69D.

(2) The amount of any surcharge made under the provisions of this Part shall be recovered either in one sum or by such monthly instalments by deductions from the salary, pension or other emolument of the person surcharged as the Financial Secretary may direct except that

- (a) No such deduction shall exceed one quarter of the gross monthly salary or pension, as the case may be, of the person surcharged; and
- (b) Where the person surcharged is due to be paid any monies by the Government, other than by way of salary or pension, the Financial Secretary may require the amount of any surcharge imposed on that person to be deducted from such monies in whole or in part as he may consider just and reasonable.

(3) The provision of this section shall not prejudice the right of the Attorney General, on behalf of the Government, acting on the instructions of the Financial Secretary to sue for and recover the amount of any surcharge as a civil debt due to the Government.”.

7. Insertion of Schedule.

The Act is amended by inserting the following new Schedule immediately after section 75:

“Schedule

Meetings and Procedure of the Government Entities Oversight Board.

1. The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time as the Board may determine.
2. A majority of the members of the Board shall form a quorum.
3. The Chairperson shall preside at meetings of the Board and in the absence of the Chairperson, the members present and constituting a quorum shall elect a temporary Chairperson from among their members to preside at the meeting.
4. The decisions of the Board shall be a majority of votes and in any case in which the voting is equal, the Chairperson or other members presiding at the meeting shall have in addition to his deliberative vote, a second or casting vote.
5. (1) Minutes of each meeting shall be recorded and kept by the Secretary.
(2) A certified copy of the minutes of each meeting confirmed by the Chairperson shall be forwarded to the Minister within fourteen days after the meeting at which they were confirmed.
6. (1) The Chairperson may invite any person to attend a meeting of the Board where the

Board considers it necessary to do so.

- (2) A person referred to in subparagraph (1) may take part in the deliberations of the Board but shall not vote on any matter.
7. Subject to this Schedule, the Board may regulate its own procedure and may delegate to any of its members or a committee, the power to carry out on behalf of the Board such duties as the Board may determine”.

CURTIS A.
MARTIN

.....
Speaker

.....Passed by the National Assembly this 8th day of July,
2013.

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JOSÉ LLOYD
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*Clerk of the
National Assembly*