

SCHEDULE 2

The Constitution of the Turks and Caicos Islands

PART IX

PUBLIC FINANCIAL MANAGEMENT

General principles

109.—(1) The macro-economic and fiscal policies of the Government shall be formulated and conducted for the sustained long term prosperity of the people of the Islands.

(2) Public funds shall be managed according to established principles of value for money, affordability and regularity and the interests of long term financial stability.

(3) The Government shall, after public consultation in the Islands, formulate a framework document stating its principles of public financial management which sets—

- (a) limits on levels of public debt relative to public revenue;
- (b) limits on debt service costs as a proportion of total public expenditure; and
- (c) levels of reserves relative to public expenditure.

(4) Any framework document formulated under subsection (3) must be agreed by the House of Assembly and a Secretary of State in draft before it is adopted by the Government; and the Government shall publish the document in the *Gazette* as soon as possible after its adoption.

(5) The prior approval of a Secretary of State shall be required before—

- (a) the adoption by the Government of any proposed decision or policy; or
- (b) the coming into force of any Ordinance,

which, in the judgement of the Governor, would exceed the framework document published under subsection (4) which is for the time being in effect.

(6) The Minister of Finance shall report to the House of Assembly at least every six months on—

- (a) the performance of the Government in implementing the framework document published under subsection (4) which is for the time being in effect; and
- (b) the state of the public finances and the state of the economy of the Islands.

(7) The Government shall aim towards achieving and maintaining a surplus budget, and where any Appropriation Bill would not return a surplus result the Minister of Finance shall, at the same time as the Bill is introduced in the House of Assembly, lay before the House a statement explaining the reasons for not achieving a surplus.

Taxation

110.—(1) No tax, rate or other levy shall be imposed except under the authority of an Ordinance.

(2) Where an Ordinance confers powers on any person or authority to waive or vary a tax imposed by that Ordinance, that person or authority shall report to the House of Assembly on the exercise of those powers as often as shall be determined by law but not less than every six months.

Contingent liabilities

111. The Minister of Finance shall ensure that all contingent liabilities of the Government, including pension and healthcare liabilities, are subjected to independent actuarial assessment at

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least every two years, and shall report the information provided by any such assessment to the House of Assembly within two months of receiving it.

Consolidated Fund

112.—(1) There shall be a Consolidated Fund for the Islands into which shall be paid all revenues or other moneys raised or received by and for the purposes of the Government.

(2) The revenues or other moneys referred to in subsection (1) shall not include revenues or other moneys—

- (a) that are payable by or under an Ordinance into some other fund established for a specific purpose; or
- (b) that may, by or under an Ordinance, be retained by the department of government that received them for the purpose of defraying the expenses of that department.

Withdrawal from Consolidated Fund or other public funds

113.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure charged on the Fund by this Constitution or by an Ordinance; or
- (b) where the issue of those moneys has been authorised by an Appropriation Ordinance, a Supplementary Appropriation Ordinance, or as provided in subsection (3).

(2) No moneys shall be withdrawn from any public fund of the Islands other than the Consolidated Fund unless the issue of those moneys has been authorised by law.

(3) If the Minister of Finance is satisfied that the Appropriation Ordinance in respect of any financial year will not or has not come into force by the beginning of that financial year, that Minister may, if so authorised by the House of Assembly by resolution and subject to subsection (4), authorise the issue of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Ordinance, whichever is the earlier.

(4) Any sum issued in any financial year from the Consolidated Fund under subsection (3) in respect of any ongoing service of the Government—

- (a) shall not exceed one third of the amount approved for that service in an Appropriation Ordinance or a Supplementary Appropriation Ordinance for the previous financial year; and
- (b) shall be set off against the amount provided in respect of that service in the Appropriation Ordinance for that financial year when that Ordinance comes into force.

Appropriations Committee

114.—(1) There shall be an Appropriations Committee of the House of Assembly, which shall consist of at least three members of the House appointed by the Speaker from among members who are not Ministers, at least one of whom shall be a member of the House in opposition to the Government.

(2) The Appropriations Committee may co-opt to its membership up to two persons who are not members of the House of Assembly, either on a continuing basis or for the purpose of a specific enquiry conducted by the Committee, and shall be assisted in its work by the Permanent Secretary, Finance or his or her nominee and permanent Committee staff.

(3) The Appropriations Committee shall have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.

(4) The Appropriations Committee shall have and exercise the functions conferred on it by this Constitution and such other functions as may be conferred on it by any other law or by Standing Orders.

(5) The House of Assembly shall publish all reports of the Appropriations Committee without delay.

Financial year estimates

115.—(1) At least six weeks before the beginning of each financial year the Minister of Finance shall cause to be prepared and laid before the House of Assembly—

- (a) estimates of revenues and expenditure of the Government for that financial year; and
- (b) a document setting out targets for revenue and expenditure for the next three financial years, and an assessment of performance against the debt sustainability limits as set out in the framework document published under section 109(4) which is for the time being in effect,

and the House shall publish those estimates and that document without delay.

(2) Before the House of Assembly considers the estimates laid before it under subsection (1) (a), the Appropriations Committee shall scrutinise those estimates and make recommendations in relation to them to the House in sufficient time for an Appropriation Bill to be passed by the House before the beginning of the financial year in question.

Appropriation Bill

116.—(1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by this Constitution or any Ordinance, shall be included in a bill, to be known as an Appropriation Bill, which shall be introduced into the House of Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(2) If in respect of any financial year it is found that the amount appropriated for any purpose under the Appropriation Ordinance is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Ordinance, a supplementary estimate showing the sums required shall be laid before the House of Assembly by the Minister of Finance, and the Appropriations Committee shall scrutinise that estimate and make recommendations in relation to it to the House.

(3) The heads of expenditure contained in a supplementary estimate shall be included in a bill, to be known as a Supplementary Appropriation Bill, which shall be introduced into the House of Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(4) The Governor, acting in his or her discretion and with the prior approval of a Secretary of State, may refuse to assent to any Appropriation Bill or Supplementary Appropriation Bill if in his or her judgement the enactment of that bill would be inconsistent with section 109 or the Statement of Governance Principles for the time being in effect.

Excess expenditure

117.—(1) Where, in exceptional circumstances, at the close of accounts for any financial year it is found that moneys have been expended on any expenditure in excess of the amount appropriated for it by an Appropriation Ordinance or a Supplementary Appropriation Ordinance or for a purpose for which no moneys have been voted and appropriated, the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess.

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(2) The Minister of Finance shall lay every statement of expenditure in excess before the House of Assembly, which shall refer it to the Public Accounts Committee of the House, and the Minister shall at the same time send a copy of the statement to the Governor.

(3) The Public Accounts Committee shall report to the House of Assembly on a statement of expenditure in excess referred to it under subsection (2) within six months after the statement is referred to it.

(4) Where on receiving any report of the Public Accounts Committee issued under subsection (3) the House of Assembly, by means of a resolution, allows the excess or the amount expended but not appropriated to stand charged to public funds, the sum required to meet that excess or such amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation.

Contingencies

118.—(1) The Minister of Finance, if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or insufficient provision has been made by an Appropriation Ordinance or a Supplementary Appropriation Ordinance, may, by a Contingencies Warrant under his or her hand and in anticipation of the grant of an appropriation by the Legislature, authorise an advance from the Consolidated Fund to meet that need and shall forthwith report his or her action to the Cabinet.

(2) No Contingencies Warrant shall be issued by the Minister of Finance without the prior approval of the Governor, acting in his or her discretion, and the House of Assembly shall be invited to approve the expenditure resulting from any Contingencies Warrant issued by the Minister.

(3) An advance made under subsection (1) shall be subject to any Ordinance and to any restrictions imposed by the House of Assembly by resolution from time to time.

Power of Government to borrow or lend

119.—(1) Subject to this Constitution, the Government may borrow from any source.

(2) The Government shall not borrow, guarantee or raise a loan on behalf of itself or any other public institution, authority or person except—

- (a) as authorised by or under an Ordinance; and
- (b) in accordance with any borrowing guidelines agreed with Her Majesty's Government in the United Kingdom.

(3) An Ordinance enacted under subsection (2)(a) shall provide—

- (a) that the terms and conditions of the loan shall be laid before the House of Assembly and shall not come into force unless they have been approved by a resolution of the House; and
- (b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part of that Fund or into some other public fund which is existing or is created for the purpose of the loan.

(4) The Minister of Finance shall, at such times as the House of Assembly may determine and at least every six months, cause to be presented to the House such information concerning any loan as is necessary to show—

- (a) the extent of the total indebtedness by way of principal and accumulated interest;
- (b) the provision made for servicing or repayment of the loan; and
- (c) the utilisation and performance of the loan.

(5) The House of Assembly may, by resolution, authorise the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.

(6) An agreement entered into pursuant to subsection (5) shall be laid before the House of Assembly and shall not come into force unless it has been approved by the House by resolution.

(7) Any resolution passed by the House of Assembly under subsection (5) or (6) must be compatible with section 109 and the Statement of Governance Principles for the time being in effect.

(8) For the purposes of this section, “loan” includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which—

- (a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or
- (b) moneys from any fund by whatever name called, established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.

Public Debt

120.—(1) The Public Debt of the Islands shall be charged on the Consolidated Fund and other public funds of the Islands.

(2) For the purposes of this section, the Public Debt includes the interest on that debt, sinking fund payments in respect of that debt, and the costs, charges and expenses incidental to the management of that debt.

Financial control and accounts

121.—(1) The Minister of Finance shall provide the House of Assembly with such reports, information and accounts as may be necessary to ensure that the House is kept fully informed at all times of the state of the economy of the Islands and the finances of the Government.

(2) Every public corporation or other body or organisation established by or under an Ordinance shall report its financial transactions to the Minister of Finance, who shall include such reports in the information provided to the House of Assembly under subsection (1).

(3) An Ordinance shall make provision for the regular publication of accounts of the Consolidated Fund and any other public funds and for the laying of such accounts and any reports on them before the House of Assembly.

Public Accounts Committee

122.—(1) There shall be a Public Accounts Committee of the House of Assembly which shall consist of—

- (a) at least three members of the House appointed by the Speaker from among members who are not Ministers; and
- (b) two persons expert in public finance who are not members of the House, one of whom shall be appointed by the Speaker and one of whom shall be appointed by the Governor, acting in his or her discretion.

(2) The Chairman of the Public Accounts Committee shall be a member of the House of Assembly in opposition to the Government (without prejudice to the appointment of other such members to the Committee).

(3) A person appointed under subsection (1)(b) shall cease to be a member of the Public Accounts Committee—

- (a) at the expiration of the period for which he or she was appointed;
- (b) if he or she becomes a member of the House of Assembly; or

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(c) if the person who made the appointment revokes it, acting in his or her discretion.

(4) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the Speaker and the Chairman of the Committee, considers that a member of the Committee has a conflict of interests, the Governor, acting in his or her discretion, may appoint another person (whether or not a member of the House of Assembly) temporarily to replace that member of the Committee for the purpose of dealing with the business in question; and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(5) The Public Accounts Committee shall examine and report to the House of Assembly on—

- (a) the reports submitted to the Committee by the Auditor General under section 126(4); and
- (b) such management letters and reports of the Auditor General as have been submitted to the Committee or as have been laid before the House or as the Auditor General has brought to the attention of the House;

and shall have and exercise such other functions, and shall operate under such procedures, as are prescribed by this Constitution or as may be prescribed by Ordinance or by Standing Orders.

(6) The Public Accounts Committee shall have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.

(7) The Public Accounts Committee shall report to the House of Assembly by the date set by the House or by its terms of reference, whichever is the earlier; and except as otherwise provided in the Committee's terms of reference, such a report may be with or without recommendations.

(8) If the House of Assembly adopts a report of the Public Accounts Committee, and requests the responsible member of the Cabinet to advise the House of the action proposed to be taken by the Government in respect of the report, the member concerned shall convey the Government's response to the House not later than the first sitting day following the expiration of six weeks after the date of the House's request, unless the House extends the time for the response.

(9) The Auditor General shall be adviser to the Public Accounts Committee, and the Committee shall not meet without the presence of the Auditor General or his or her nominee.

(10) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

Accounting officers

123.—(1) There shall be an Accountant General of the Government, whose office shall be a public office.

(2) The Accountant General shall be responsible for the compilation and management of the accounts of the Government, and for the custody and safety of public money and other resources of the Government.

(3) The Governor, acting in his or her discretion, shall by directions in writing designate for each department of government and each institution protecting good governance an accounting officer who shall be responsible for the regularity and propriety of the expenditure, receipts and resources of that department or institution, and shall be accountable to the House of Assembly.

(4) For the purposes of subsection (3), "department of government" means any department of the Government by whatever name called and any other division of the administration of the Islands that the Governor, acting in his or her discretion, may designate by directions in writing.

Remuneration of Speaker and other members of House of Assembly

124.—(1) There shall be paid to the Speaker and the other members of the House of Assembly such remuneration and allowances as may be prescribed by Ordinance.

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(2) The House of Assembly shall not proceed on any bill for an Ordinance referred to in subsection (1) unless a report by the Integrity Commission recommending the appropriate levels of such remuneration and allowances has been laid before the House and has been published; and no Ordinance shall provide for levels of remuneration or allowances that exceed the levels recommended in such report.

(3) The remuneration and allowances payable to the Speaker and the other members of the House of Assembly are hereby charged on and shall be paid out of the Consolidated Fund.

Remuneration of certain officers

125.—(1) There shall be paid to the holders of the offices to which this section applies such remuneration and allowances as may be prescribed by or under an Ordinance.

(2) The remuneration and allowances payable to the holders of those offices are hereby charged on and shall be paid out of the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend on his or her option, the remuneration or terms for which he or she opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him or her than any others for which he or she might have opted.

(5) This section applies to the offices of Deputy Governor, Attorney General, Permanent Secretary, Finance, Commissioner of Police, and any member of the Public Service Commission, the Judicial Service Commission or the Mercy Committee.

(6) Nothing in this section shall preclude an Ordinance that reduces the level of remuneration payable to the holder of any office to which this section applies where that Ordinance makes equivalent reduction to the remuneration of all members of the public service.

Audit

126.—(1) The Auditor General shall audit and report on the public accounts of the Islands, including the House of Assembly, the courts, the central and local government administrations, the institutions protecting good governance, and any public corporations or other bodies or organisations established by or under any Ordinance.

(2) For the purposes of subsection (1)—

- (a) accounts shall be provided by the authorities referred to in that subsection to the Auditor General within four months of the end of each financial year; and
- (b) the Permanent Secretary, Finance shall, as soon as practicable after the end of each financial year, cause to be prepared for submission to the Auditor General a statement of accounts reflecting the financial operations of the Consolidated Fund and any other public fund or account for that financial year.

(3) The Auditor General and any person authorised by him or her shall have a right of access at all reasonable times to all such documents as appear to him or her to be necessary for the purposes of conducting an audit under subsection (1), and shall be entitled to require from any person holding or accountable for any such documents such information and explanation as he or she thinks necessary for those purposes.

(4) Each year the Auditor General shall, as soon as practicable and in any case within four months of receiving the accounts under subsection (2)(a), submit to the Public Accounts Committee of the House of Assembly a report of the accounts audited by him or her under subsection (1) for the

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immediately preceding financial year, and shall send a copy of each report to the Governor, who shall publish the audited accounts and report as soon as practicable.