

THE PUBLIC BODIES MANAGEMENT AND ACCOUNTABILITY ACT

The Public Bodies Management and Accountability (Nomination, Selection and Appointment to Boards) Regulations, 2021

In exercise of the power conferred upon the Minister by section 24 of the Public Bodies Management and Accountability Act, and of every other power hereunto enabling, the following Regulations are hereby made:-

Short title. 1. – (1) These Regulations may be cited as the Public Bodies Management and Accountability (Nomination, Selection, and Appointment to Boards) Regulations, 2021.

(2) Subject to paragraph (3), these Regulations shall take effect four months after the date of publication in the *Gazette*, of these Regulations.

(3) Regulations 10 through 16 (inclusive), regulation 18, and the Second Schedule shall take effect ten months after the date of publication in the *Gazette*, of these Regulations.

Interpretation. 2. In these Regulations, unless the context otherwise requires –

“applicant” means a nominee, and any person who has applied to be included in the Database of Prospective Directors;

“appointing authority” means the Governor-General, the responsible Minister, or other body or authority so designated for appointing persons to serve on the boards of public bodies;

“Database” means the Database of Prospective Directors established under regulation 4;

“due diligence check” means the process by which information including the name, experience, qualifications, skills and

expertise, in respect of an individual to be appointed as a director of a public body is obtained and verified;

“enabling Act” means the Act providing for the establishment of the public body concerned;

“financial services” has the same meaning assigned to it under the Banking Services Act;

“major undertaking” means the acquisition of assets or assumption of obligations of a value threshold and other matters that are of such a strategic impact that they would ordinarily require board approval;

“nominee” means a person who is recommended for consideration to be included in the Database;

“prospective director” means an applicant or current director who is eligible for appointment or reappointment as a director;

“transition period” means –

- (a) the period from the date on which the Governor-General issues a writ of election to the date on which persons are appointed by the appointing authority, to serve as members of the boards of public bodies, in accordance with the relevant laws; or
- (b) except for the circumstances referred to in paragraph (a), the period from the date on which a Minister is appointed, until the date on which that Minister appoints a new board or requests in writing that the existing board continues.

**Exclusions
to the
application
of these
Regulations.**

3. These Regulations shall not apply to –

- (a) boards of educational institutions as defined in section 2 of the Education Act, except where they are public bodies; and
- (b) individuals appointed as ex-officio members of boards except for procedures in respect of appointments.

Database.

4. – (1) The Financial Secretary shall cause to be established a Database of Prospective Directors from which persons shall be selected for appointment to a board.

(2) The Database shall include information with respect to prospective directors for whom a due diligence check determined that the prospective directors have the requisite knowledge, skills and experience for appointment to a board.

Maintenance of Database.

5. The Database shall be maintained in such a way as to allow for a secure and reliable facility, for ascertaining, recording, maintaining and preserving information such as the name, qualification, skills and experience, relating to prospective directors.

Access to Database.

6. – (1) Any person may, by a request in writing to the Financial Secretary, have access to the information referred to in regulation 7(2) contained in the Database,.

(2) A prospective director may, by request in writing to the Financial Secretary, access information in relation to that prospective director and contained in the Database.

Confidentiality.

7. – (1) Every person having an official duty or being employed in the administration of these Regulations, shall have regard to and deal with as confidential, all information, records or documents such as the names, qualification, skills and experience of applicants and current directors.

(2) Notwithstanding paragraph (1), a person having an official duty may communicate, at the request of a member of the public seeking information in relation thereto, information that is stored in the Database, as to the names of current directors, the board or boards to which a current director has been appointed and the competencies of a current director.

Changes to Database.

8. – (1) A prospective director –

- (a) may notify the Financial Secretary of any error in the Database of which the prospective director is aware; and
- (b) shall be notified of any change in the information entered in the Database, as it relates to the prospective director.

(2) A person having an official duty authorized by the Financial Secretary for the purpose specified in paragraph (1), shall on that person's own initiative or in response to a request to do so by a director or prospective director, correct or provide an update to any information in the Database.

Eligibility for inclusion in Database. First Schedule.

9. – (1) Subject to sub-paragraph (2) and regulation 4(2), a person may be included in the Database –

- (a) by nomination by persons prescribed in the First Schedule;
- or
- (b) by making an application in writing to the Financial Secretary.

(2) No person shall be eligible for inclusion in the Database if such person –

- (a) is a member of either of the Houses of Parliament;
- (b) is a councillor of a Local Authority as defined in the Local Governance Act;

- (c) is a person disqualified from serving as a director pursuant to the Companies Act;
- (d) is a bankrupt within the meaning of the Insolvency Act;
- (e) is a person who has a mental disorder within the meaning of the Mental Health Act; and
- (f) does not consent in writing to being subject to a due diligence check.

Selection procedure.

10. – (1) Subject to regulation 20, the Financial Secretary shall cause a list of all eligible prospective directors, who meet the requirements of the competency profile of the respective board, to be prepared from the Database.

(2) The relevant appointing authority shall review the list of all eligible prospective directors prepared under paragraph (1), for the purpose of selecting directors for appointment to a board and shall select from this list the directors to be appointed.

(3) A prospective director shall not be eligible for selection for appointment to the board of any of the public bodies mentioned under regulation 11, unless the person meets the criteria of a fit and proper person prescribed in regulation 12(1).

(4) A prospective director shall not be eligible for selection for appointment to a board of a public body if that person –

- (a) is a former Chief Executive Officer of the entity who held that office at any time during the period of three years immediately preceding the proposed date of appointment;
- (b) is a person with, or has connected parties with, an existing legal dispute with that public body;

- (c) is ineligible to be a director of that public body under the terms of the enabling Act or other constituent documents of the public body;
- (d) is a director serving on three public body boards (not including boards of subsidiaries);
- (e) does not satisfy the required competencies and requirements outlined by the competency profile for the respective board; or
- (f) becomes incapacitated to the extent that such incapacitation would affect that person's performance as a director.

Categories of public bodies for which fit and proper tests shall be conducted.

11. – (1) A fit and proper test shall be conducted, in accordance with regulation 12, in respect of prospective directors for appointment to boards of public bodies where the public body carries out the functions –

- (a) of providing financial services;
- (b) of regulating the financial and gaming sectors; or
- (c) of strategic importance.

(2) The public bodies referred to in paragraph (1)(c) are set out in the Second Schedule.

Second Schedule.

Fit and proper test for prospective director.

12. – (1) A prospective director shall be deemed a fit and proper person if –

- (a) the person, whether in Jamaica or elsewhere –
 - (i) has never been convicted of an offence involving dishonesty or moral turpitude; or
 - (ii) is not a bankrupt within the meaning of the Insolvency Act;

- (b) the person's employment record does not give the Financial Secretary reasonable cause to believe that the person has carried out any act involving impropriety in the handling of monies;
- (c) in the opinion of the Financial Secretary, the person is a person of probity, is likely to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to the business of the public body, and the person's relationship with such business is not likely to threaten the interests of the general public nor other persons who are in that business and for the purpose of this paragraph the Financial Secretary shall have regard to any evidence that the person has –
- (i) engaged in any business practice appearing to the Financial Secretary to be deceitful or oppressive or otherwise improper, which reflects discredit on the person's method of doing business; or
 - (ii) contravened any provision of any enactment for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of commercial services or the management of companies due to bankruptcy;
- (d) the person has knowledge of and competence in the business permitted under the enabling Act or constituent documents; and
- (e) the person is not incapacitated by reason of mental disorder within the meaning of the Mental Health Act.

(2) Subject to the provisions of the enabling Act, the Financial Secretary shall cause a fit and proper test in respect of a prospective director, to be conducted every three years.

(3) Notwithstanding paragraph (2), in the case of a prospective director, the Financial Secretary has the discretion not to require a fit and proper test to be undertaken, if the person has been subject to such a test in the last three years.

Appointment to board.

13. – (1) The appointing authority shall not appoint a prospective director to a board of a public body –

(a) except in accordance with the requirements of these Regulations; and

(b) where the prospective director fails to give consent in writing to being appointed, within fourteen days of being notified of selection for appointment to the board.

(2) The appointment of every member of a board of a public body shall be evidenced by instrument in writing, and such instrument shall specify the period of office of the board member.

(3) The period referred to in paragraph (2) shall be –

(a) any period stated in the public body's –

(i) enabling Act; or

(ii) constituent documents; or

(b) five years or any shorter period where the period is not prescribed by the public body's enabling Act or constituent documents.

(4) The total membership of a board of a public body shall be comprised of –

- (a) a minimum of thirty percent of members of the male gender;
and
- (b) a minimum of thirty percent of members of the female
gender,

with the remaining members being either of the male gender or the female gender, or a combination of members of the male gender and members of the female gender.

**Restriction
on appoint-
ment of
chairman.**

14. A person appointed under these Regulations shall not chair simultaneously more than three public body boards not including boards of subsidiaries.

**Tenure of
chairman.**

15. A person shall not serve as chairman of a public body for more than two consecutive terms.

**Reappoint-
ment of
directors.**

16. – (1) Subject to the provision of these Regulations, the appointing authority may reappoint any director from the outgoing board of a public body.

(2) A person currently serving as director shall not be automatically reappointed to the board of a public body at the end of their term, except where prescribed in the public body's enabling Act or other constituent documents.

(3) A person shall not be reappointed to a board if the person has already served on the board for one or more periods, consecutively amounting in the aggregate to –

- (a) ten years, if the maximum term limit is not provided for in the public body's enabling Act or constituent documents; or
- (b) the maximum term limit provided for in the public body's enabling Act or constituent documents.

(4) Subject to these Regulations and the public body's enabling Act and constituent documents, the appointing authority shall select for reappointment, at least one-third or three (whichever is less) of the members of an outgoing board, at the end of the board's term where –

- (a) there is a change of government;
- (b) there is a change of responsible Minister and the Minister makes a decision to appoint a new board; or
- (c) the period of tenure of all the members of the board expires.

Revocation of appointment.

17. Subject to the public body's enabling Act or constituent documents, the appointing authority may revoke the appointment of a director –

- (a) where the director is absent from duty for three consecutive meetings for reasons which the appointing authority does not regard as satisfactory, or is in breach of the provisions relating to the duration of absence that would qualify for vacancy as set out in the enabling Act or constituent documents;
- (b) on incapacitation of the director to the extent that such incapacitation affects the performance of the director's duty; or
- (c) for misconduct or a breach of duty of care by the director whether individually or with any or all of the other directors.

Vacancy.

18. Where there is a vacancy in the membership of a Board –

- (a) the appointing authority shall notify the Financial Secretary of the vacancy; and

- (b) except where the vacancy is in respect of an *ex officio* appointee, such vacancy shall be filled by the appointment of another director from the Database.

**Publication
in Gazette.**

19. The appointing authority shall cause the appointment of directors to boards of public bodies to be published in the *Gazette*.

**Board
restrictions
and actions
during the
transition
period.**

20. – (1) During the transition period, a board shall not –

- (a) enter into or pursue any new and major undertakings, including sale or purchase of land and investment properties save and except with the approval of the relevant Accounting Officer; and
- (b) make any new appointment to positions for which board approval is ordinarily required.

(2) During the transition period, the board shall –

- (a) notwithstanding paragraph (1), make new appointments to positions for which board approval is ordinarily required where the appointment was negotiated and contracted before the transition period began;
- (b) conduct in respect of the Chief Executive Officer or persons holding similar office by whatever name called, a performance appraisal which is due;
- (c) submit the resignation of its members to the relevant appointing authority, which shall not take effect until a new board is appointed.

**Circum-
stances for
change in
board
membership.**

21. A change in the membership of a board may occur in the following circumstances –

- (a) where there is a change of government;

- (b) where there is a change of the responsible Minister and the responsible Minister makes a decision to appoint a new board;
- (c) where there is a resignation or revocation of an appointment of a director or of the entire board;
- (d) where there is a cessation of term of appointment for any director or the entire board; or
- (e) where there is death of a director or the director is incapacitated.

Appointment of Board shall not be invalid. 22. For the avoidance of doubt, nothing in these Regulations shall be construed as invalidating the appointment of a board made within ten months after the date of publication in the *Gazette*, of these Regulations.

FIRST SCHEDULE (Regulation 9)**The Public Bodies Management and Accountability
(Nomination, Selection and Appointment to
Boards) Regulations, 2021***Categories of Nominees for the Appointment to Boards*

A person may be nominated by –

1. Various interest groups which include but are not limited to –
 - (a) professional bodies;
 - (b) business associations;
 - (c) trade unions;
 - (d) Public Sector agencies representing special interests such as gender affairs, children and youth, consumer affairs and the disabled community;
 - (e) political parties registered under the Representation of the People Act;
 - (f) the academic community; and
 - (g) civil society special interest groups (human rights groups, environmental action groups, as well as child and youth advocates).
2. The current chairman or board members of the public body;
3. The Portfolio Minister, Permanent Secretary or advisors to either.

SECOND SCHEDULE (Regulation 11(2))*Public Bodies of Strategic Importance*

1. National Water Commission;
2. Port Authority of Jamaica;
3. National Housing Trust;
4. Human Employment and Resource Training (HEART) Trust/NTA; and
5. Petrojam Limited.

Dated this ^{FLA} 30th day of November, 2021.

[Handwritten Signature]

Minister of Finance and the Public Service