COOK ISLANDS
EXPLANATORY NOTES
FINANCIAL MANAGEMENT ACT 2015/2016

Short title and commencement

1. The Act is titled the Financial Management Act 2015 – 2016. It is intended as a replacement for the Ministry of Finance and Economic Act 1995-1996 (MFEM Act). The Act is expected to be enacted before the end of 2015 and would take effect on 1 July 2016, the beginning of the 2016 financial year. The 1995-1996 Act created the Ministry of Finance and Economic Management and established public financial management requirements for the Cook Islands. The title has been changed to more accurately reflect the broader purpose of establishing financial management requirements for the Government of the Cook Islands.

Application

2. The Act applies to all revenue, expenditure and investment of Government. It applies to ministries, crown or statutory agencies, island administrations and councils, statutory corporations, the Parliament, and ministerial and opposition support offices. The implementation of the law may require different standards for different classes of government entities. This is a new provision, added to make it clear that all Government financial management is covered by the provisions of this law. Standards may be different for ministries, island administrations, sponsored enterprise or other categories of public institutions. For example accounting standards for sponsored enterprises may be different than internationally accepted standards for government agencies.

Interpretation

3. Section 3 presents definitions of terms used in the Act. Terms added or modified compared to the MFEM Act are:

   - "Agency" – agency is added to introduce a standard term to apply to all government organisations;
   - "Budget" – standing orders are amended by section 4 to refer to Budget, rather than the financial statement; requirements for budget estimates are specified in section 12;
   - "Capital expenditures" – capital expenditures are defined by section 17 as one of the categories of appropriations; capital expenditures are divided between Cook Islands funded capital expenditures and donor financed capital expenditures; transfers for capital expenditures are treated differently than transfers for operating expenditures; section 17 establishes a new requirement for a capital plan;
   - "Contingent liabilities" – section 13 requires contingent liabilities to be identified and quantified as fiscal risks in every economic and fiscal update prepared under the act; section 69 restricts establishes restrictions on making guarantees that impose an actual or contingent liability on the Crown;
   - "Crown" – means the Government of the Cook Islands.
   - "Crown agency" – means any instrument or agent of the Government; but excludes "any entity or organization excluded by the Minister from time to time by notice in the Gazette";
   - "Current appropriation" – current appropriations are established by section 17 as one of the categories of appropriations; current appropriations are divided between

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personnel, other operating costs, and depreciation; transfers for current appropriations are treated differently from transfers for capital expenses, POBOCs, and trading revenue;

- "Financing transactions" – financing transactions are non-programmatic expenses for financing government including debt interest contributions and depreciation contingency fund. Financing transactions are established as one of the appropriations categories by section17;
- "Internationally accepted accounting standards" – The name was changed from "Generally" to "Internationally" accepted accounting standards, to avoid possible confusion between internationally accepted practice and GAAP standards; Cook Islands uses internationally accepted accounting practices;
- "POBOC" – Payments on Behalf of the Crown are defined as expenditures mandated by law or a court order. Many of the expenditures identified in the current budget as POBOCs should be reclassified as operating expenses of agencies POBOCs are established as one of the appropriations categories by section17; POBOCs have different transfer authority than other categories of expenditures under section 20;
- "ROBOC" – ROBOCs are defined as revenue earned by the Crown through legislation, rather than revenue earned through operations of an agency.
- "Trading revenue" – is defined as revenue earned through the operations of an agency that is used to offset expenditure – Trading revenue is established as one of the appropriations categories by section17; section 22 requires both trading revenue and related expenditure to be appropriated;
- "Trust money" – Part IX establishes requirements for Trust Money. The definition is added to explain what trust money consists of.

PART I - PARLIAMENTARY REVIEW OF THE BUDGET

Part I is a new addition to the public finance law of the Cook Islands. It establishes requirements for Parliamentary Review of the Budget, consistent with the Part V of the Constitution.

Parliament

4. Section 4 adds requirements for Parliamentary review of the Budget to the public finance law. The section begins by referring to Part V of the Constitution of the Cook Islands that precludes taxation or expenditure except as authorized by law. The section then revises PARTs XXXIV and XXXV the Standing Orders of Parliament to strengthen Parliamentary review of the budget.

   Strengthening the Standing Orders is intended to enhance debate on the budget and to preclude "guillotining" of Parliamentary debate on the budget. It attempts to do this by changing the Committee on Supply from a Committee of the Whole House to a Committee of nine members. A quorum is defined as a simple majority of the Committee on Supply. Deliberations during the second reading of the budget are defined as "non-confidence" votes which would allow debate without threatening the majority's control of Government. The third reading of the budget which is an up or down vote on the final budget is a "confidence" vote. If Government cannot enact a budget, it has lost the confidence of the Parliament.

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The Standing Orders are the sole prerogative of the Parliament and could be revised by any subsequent Parliament. Some Parliamentarians recommended revising the Constitution to preclude revisions to these provisions. Revising the standing orders to protect the Government and the rights of the minority to an open debate on the budget should be a goal that all governments would want to protect.

PART II - GOVERNMENT PUBLIC FINANCIAL MANAGEMENT RESPONIBILITIES

Part II establishes requirements for public finance functions of the major components of Government. Part II of the MFEM Act established the Ministry and described its functions. This section has been broadened to address the public sector. A new section 5 has been added defining functions of Cabinet. Requirements of section 29 of the MFEM Act specifying requirements for Heads of Departments have been shifted from Reporting Requirements to Public Financial Management Responsibilities.

Cabinet

5. Section 5 adds requirements for the Cabinet's role in public financial management. It describes three functions:

   - Approving budget policy;
   - Approving transfers above the appropriated totals; and
   - Approving financial regulations.

Ministry of Finance and Economic Management

6. Language creating the Ministry is removed. The Ministry is given the general charge for the Administration of this Act.

Financial Secretary

7. Language establishing the Financial Secretary as the Executive Head of the Ministry of Finance and Economic Management is continued from the MFEM Act. New sections are added giving the Financial Secretary overall or government-wide responsibility for financial management functions of government, clarifying that the Financial Secretary reports to the Minister, and that the Financial Secretary is responsible for providing reports required by the Act to the Minister.

Responsibilities of Heads of Government Agencies

8. Section 8 describes the heads of government agencies as being responsible for financial management functions within their agencies. Some of these provisions were incorporated in the Reporting Requirements, Part V of the MFEM Act. They have been moved to present all Government Financial Management functions under the same heading.

Financial Management Functions

9. Financial Management Functions - A new section is added making the Financial Secretary responsible government-wide and heads of agencies responsible within their agencies for the following financial management functions:

   - Planning and management of the budget;
   - Management of payments of outstanding liabilities within authorized cash;
   - Financial reporting to properly record the agency's transactions and financial position;

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- Accounting for money and property accurately;
- Preparation of annual reports and financial statements;
- Preparation of fiscal notes and periodic updates to a statement of forecast revenues, expenditures and available balances;
- Collection of government revenue;
- Development, implementation, and oversight of procurement;
- Monitoring, maintenance and management of capital assets; and
- Maintenance of an effective system of internal control.

Delegation of Financial Management Powers

10. Section 10 authorizes the Financial Secretary or head of agency to delegate any financial management functions assigned to him. The section provides for the revocation of such delegation at the discretion of the delegating official. It provides that delegation of authority does not limit the responsibility or accountability of the delegating official. Section 10 applied only to the Financial Secretary in the MFEM Act. This language has been broadened to apply also to the Heads of agencies.

PART III - ECONOMIC, FINANCIAL, AND FISCAL POLICY

Part III presents requirements for economic and fiscal policy documents. A majority of the requirements are virtually identical to the provisions of Part II of the MFEM Act. Requirements for the "Half-year economic and fiscal update have been shifted to follow the Budget policy statement because of a change in the transmittal dates for both statements to December 31st. A medium term budget framework is integrated into the requirements for the fiscal strategy report. Additional detail is added to the requirement for budget estimates, and new requirements are added for a capital plan and budgeting for donor assistance; all reflecting current practice.

Part III has been substantially revised to simplify requirements in response to an IMF Leg recommendation. The 15 sections of the October draft have been revised to 4 consolidated sections, as follows:

11. Mid-year economic and fiscal update and budget policy statement
12. Annual budget submission
13. Economic and Fiscal Forecast Data
14. Pre-election economic and fiscal update

Mid-year economic and fiscal update and budget policy statement

11. Section 11 establishes the requirements for the mid-year economic and fiscal update and the budget policy statement. The section consolidates requirements for the half-yearly economic and fiscal update and the budget policy statement. It reflects current practice.

- The Minister is required to submit a half-yearly economic and fiscal update and budget policy statement by December 31st. The intention is that the budget policy statement and half-yearly economic and fiscal update would be submitted together.
- The mid-year update is to contain forecasts required under section 13 of this Act, no change from the MFEM Act.

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- The Minister is required to publish a budget policy statement specifying Government's long-term objectives, broad strategic priorities, fiscal objectives, and output or expenditure targets. Timing of this report has been shifted from March 31 to December 31st. The goal of the earlier release is to promote debate on budget policy in Parliament and with the public.
- These consolidated documents would provide the planning framework for the formulation of the next year's budget.
- Any member of the public may, within 14 days of the budget policy statement being published provide views in writing to the Public Expenditure Review Committee.

Annual Budget Submission

12. The annual budget is required to be submitted on the day of the introduction of the first appropriation bill in each financial year. It requires the budget to include the following information:

    - A statement of economic and financial policy affecting key economic variables;
    - A fiscal strategy report that identifies any significant differences between the current economic and fiscal situation and the assumptions presented in the budget policy statement, and provides projections of future trends. A new requirement is added for presentation of a medium term budget framework (MTBF) for the financial year and three succeeding years that would present a current policy baseline, identify the Governments financial targets, and identify outyear implications of budget policy. The new requirement makes explicit both the MTBF baseline and the costing of budget policy;
    - Budget estimates providing detail for Ministry budget statements and detailed capital plans. Both statements are currently produced and presented to support the Appropriations Bill.
    - A capital plan, a new requirement is added for the Government to prepare an annual compilation of capital funding proposals to serve as a basis for the budget for capital investment for the Government. The capital plan is required to reflect the national strategic development plan, to identify the source of funding, provide a schedule for construction or purchase, identify the implementing ministry, and provide estimates of outyear operating budget requirements. The capital plan is currently being presented in volume 3 of the budget document. The law is being revised to reflect current practice.
    - Donor assistance, a new requirement is added to the law requiring the Ministry to incorporate donor assistance projects in the annual budget to the extent possible and to provide mid-year and end-of-year reports on the status of donor assistance. The law is being revised to reflect current practice; and
    - Current year fiscal updates, an update of fiscal forecast and budget assumptions for the current year. Updated current estimates are an essential base for decisions on budget policy. Three financial measures are shifted from the financial statements to this current year fiscal update:
        - A statement of borrowings
        - A statement of commitments
        - A statement of specific fiscal risks

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These measures should be part of the base for decisions on budget policy, but should not need to be updated on a monthly or quarterly basis.

Economic and fiscal forecast data

13. This section identifies the economic and fiscal variables to be included in the economic and fiscal updates required throughout Part III. The section consolidates requirements presented separately in the MFEM Act, as follows:

- Economic forecast - Employment was dropped from the list of measures in the MFEM Act because the data is not available. Balance of payments was also dropped because the Cook Islands uses the New Zealand dollar as its currency and Cook Islands economic activity does not have a significant effect on the New Zealand currency. The balance of trade was added as an economic variable, because exports of some commodities have been significant in the past.
- Fiscal forecast data are required for budgeted and estimated actual data for the financial year before the first financial year to which fiscal forecasts are made. Fiscal forecast data requirements are tied to section 41 which specifies fiscal reporting requirements for the act.
- Actual figures are required to be used rather than estimated figures in developing a forecast, if they are available.
- Financial statements required by this Act are required to identify the reporting entity.
- Economic and fiscal updates required by this Act are required to identify fiscal risks – those Government decisions that have a material effect on the economic and fiscal outlook. A reference was added to the requirement to include risks identified for statutory corporations and outer island governments, in response to issues raised in the 2014 PEFA report. Fiscal risks should be estimated as part of the economic and fiscal update and incorporated in reports required by Part III by the Ministry.

Pre-election economic and fiscal update

14. Not later than 14 days after the polling day is set for a general election of Parliament, the Minister is required to prepare a report providing an economic and fiscal update. This provision is unchanged from the MFEM Act.

PART IV - FISCAL RESPONSIBILITY

Fiscal responsibility requirements presented in Part IV are unchanged from requirements presented in Part III of the MFEM Act.

Principles of fiscal management

15. Principles of fiscal management established by this Act are:

- Managing total Crown debt at prudent levels;
- Achieving and maintaining levels of Crown net worth to provide a buffer against factors that may adversely impact Crown net worth in the future;
- Managing fiscal risks facing the Crown prudently; and
- Pursuing policies that are consistent with a reasonable level and stability of tax rates for future years.

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The Government is authorised to depart from these principles of fiscal management only in exceptional circumstances, only if such departure is temporary. The Minister is required to provide detailed reasons for such departure, specify the approach the Government intends to take to return to these principles and the period of time it will take to return to these principles.

PART V - BUDGET PROCESS

Budget process provisions of the MFEM Act have been replaced by an overview of the budget process schedule currently being followed.

Budget process

16. Broad actions by Government and Parliament on the budget are specified in outlining the budget process:

- Mid-Year Fiscal and Economic Update and Budget Policy Statements are released by the end of December;
- Government presents the Budget Estimates and Appropriation Bill to Parliament by June 1st;
- Parliament approves the Budget Estimates and Appropriation Bill by June 30th;
- The financial year begins on July 1.

PART VI - APPROPRIATIONS

Part VI, Appropriations, has been shifted forward to follow the Budget Process. Appropriations is then followed by Authorisation of Expenditure, Public Funds, Trust Funds, and Public Money outside Cook Islands. The new Part XI, Reporting Requirements, which followed the Budget Process in the MFEM Act, now follows all categories of spending.

Appropriations requirements have been changed substantially. The initial change is the replacement of categories of spending with categories currently being used. All of the remaining provisions of Part VI have been revised either to provide or to limit flexibility in using appropriations. Language is added to make all executive discretion subject to reporting to Parliament.

Appropriation required

17. Section 29 limits all spending to the Constitutional requirement for an appropriation and requires spending to be charged to one of the categories established by this section. Subsection 2 establishes the following categories of expenditure:

- Current appropriations
  - Personnel
  - Operating expenses
  - Trading revenue
  - Depreciation
- Capital expenditures
  - Cook Islands funded
  - Donor funded
- POBOCs
- Financing transactions

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The authority to spend under an appropriation bill lapses at the end of the financial year.

Definitions for these categories of expenditure have added to Section 3 of this Act, Interpretation. Flexibility to reallocate funds is limited by section 31 and varies by category and as defined in section 32.

Timing of first Appropriation Bill for any financial year

18. The Appropriation Bill related to a year is to be introduced by June 1st. This requirement is a change from 31 July. The change is intended to provide Parliament sufficient time to consider the budget before passage before the beginning of the financial year on 1 July.

Limitations on Appropriations

19. No appropriations are to be transferred between appropriations categories. This is a new provision, but is consistent with current practice. Several provisions of the MFEM Act restricting transfers are continued in this authority. Transfers within categories must be consistent with budget policy. The total amount appropriated for the financial year for all outputs of a Government agency must be unaltered. The head of the agency is required to advise the Minister and to provide sufficient detail to explain the transfer. The Minister will report on all transfers in the Quarterly Report to Parliament. Finally, the Minister will provide further guidance on transfers through regulations. For example, the Minister may restrict transfers from operating expenses to personnel, it the transfer would increase future year personnel costs.

Transfer of resources with appropriation categories

20. Separate transfer authorities are provided for five major categories of appropriations, as follow:

- Current appropriations – The Head of a Government agency may transfer an amount appropriated for a prescribed output to another output;
- Cook Islands funded capital projects – The Head of a Government agency may transfer amounts appropriated from one project to another project identified in the Capital Plan;
- Donor financed capital projects – Transfers between donor financed projects may only occur with the agreement of the donor and the Government;
- POBOCs – The head of a Government agency may transfer funds from one program to another within a specified amount for POBOC funding.
- Financing transactions – The Cabinet must approve any transfers of amounts appropriated for financing.

  All transfers would be subject to the limitations established under section 19 and to regulatory guidance from the Ministry.

Expenses or liabilities or payments appropriated other than by an Appropriation Act

21. All appropriations, regardless of the legal authority, must be classified in one of the categories identified in section 32 and shall be accounted for in accordance with this Act. This provision is made to ensure that execution and accounting provisions can be applied comparably to all government spending.

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Net appropriation

22. This section provides authority for expenditures offset by trading revenue. It requires appropriations for the total amount of the expenditure required and for estimated trading revenue. If the agency receives more revenue than estimated, the Financial Secretary with the concurrence of the Minister may authorize additional spending. If the Financial Secretary with the concurrence of the Minster directs excess revenue to be paid into the Cook Islands account, the agency shall make the payment accordingly. Excess revenue, changes in spending, or increases in transfers deposited shall be reported in the next Quarterly Report.

Carryover

23. The Financial Secretary with the concurrence of the Minister may approve the carryover of unexpended balances from one year until the next with the limitation that the funds must be obligated within three months of the beginning of the fiscal year. The Ministry is required to report any approved carryovers in the next Quarterly Report. This provision adds the restriction that carryovers must be obligated within three months. Language under the MFEM Act allowed carryovers to be used in "following financial years". Restricted carryover authority is consistent with the section 70(2) of the Constitution which states that "Every Appropriation Act shall lapse at the end of the financial year to which it relates."

Unauthorised expenditure

24. All sums issued and paid under section 70 (3) (b) of the Constitution shall be charged as unauthorised expenditure and separately disclosed in the Quarterly Report submitted to the Parliament. The Constitution authorizes the Executive Council to approve expenditure of not to exceed one and a half percent of the total of all sums appropriated by the Appropriation Act for that year. Cabinet approval would be required for unauthorised expenditure.

Supplemental appropriations

25. If the Cabinet approves expenditure over and above the category totals established under section 32 of this Act or the unauthorised expenditures provided for in section 36, the Government is required to request a supplemental appropriation. Expenditures are prohibited prior to approval of the supplemental appropriation by Parliament.

PART VII - AUTHORISATION OF EXPENDITURE

Part VII provides the authority for payments of Government funds. A new provision has been added requiring Government agencies to prepare a cash plan. Provisions concerning certification of expenditure, impresses, refunds and corrections, and writing off are unchanged from the MFEM Act.

Annual cash plans

26. A new requirement has been added directing Government agencies to prepare annual cash plans projecting monthly expenditures and revenues for the year. The Ministry is to allocate available cash among budget entities based on these cash plans and the approved budget.

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Authorisation and certification of expenditure

27. Heads of agencies are responsible for ensuring that monies are expended for purposes intended, for ensuring that there are adequate controls over commitment for expenditure and release and use of funds in accordance with section 9 and for ensuring that no money is withdrawn from the Public Account other than in payment of a commitment that has been duly authorized in accord with this section.

Imprests

28. Money may be issued by way of imprest from the Public Account for the purpose of effecting payment of amounts payable where it is impractical to draw a payment by cheque or other means. The Head of a Government agency shall ensure that the imprest is subject to adequate financial control, including regular accounting.

Refunds and corrections

29. The Head of a government agency shall, on application being made any time within 6 years of any sum being paid to any Government agency, refund as statutory expenditure all or so much of any sum as was not properly paid to the Government. Where any person has become indebted to the Government and it is subsequently discovered that the amount of the debt or identity of the debtor is in error, the Financial Secretary on being satisfied of the facts may amend the records to reflect the true position.

Writing off

30. No losses of public resources shall be written off without the authority of the Financial Secretary acting with the concurrence of the Minister.

PART VIII - PUBLIC MONEY

Treatment of public funds is essentially unchanged from the MFEM Act. One new provision has been added to section 43 requiring the Ministry to develop an integrated system for managing public money.

Public money

31. Section 43 establishes requirements for management and use of public money. Public money is the property of the Crown; it is too be paid into accounts designated for that purpose. Public money can only be spent consistent with requirements of the Constitution and this Act. Bank accounts can be opened and operated under conditions that the Financial Secretary determines. The new language added as subsection 6 requires the Ministry to develop an integrated system for managing public money. In countries with Central Bank's, public money is managed through the Central Bank. The Cook Islands is directed to develop an integrated system of public accounts that will allow efficient cash management and investment of public money.

Balances may be invested

32. The Financial Secretary is authorized to invest the balances of public accounts consistent with the financial policies of the Government. Interest earned may be spent only pursuant to authority provided in an appropriation. The Financial Secretary is given discretion to sell and convert public money into securities. Money received from donors is to be managed separately.

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Account or fund may be overdrawn

33. Accounts or funds within the Public Account may be overdrawn only where it is consistent with financial policies of Government.

PART IX - TRUST MONEY

Trust money provisions are unchanged from the MFEM Act.

Trust money

34. Section 46 defines Trust money. It describes money deposited with the Crown for payment to an individual or third party as trust money. Trust money is to be accounted for separately from public money.

Establishment of bank accounts for trust money

35. All trust money is to be held in a bank account designated as a trust account.

Investment of trust money

36. The Ministry may invest trust money for such periods and on such terms and conditions consistent with the Government's investment policies.

Payment of interest on trust money

37. When trust money held by the Crown is paid to the person entitled to the payment, interest earned on the funds will be paid.

Fee for service

38. The Ministry may charge fees for managing trust monies.

Unclaimed trust money

39. Any trust money that is unclaimed for a period of three years after it becomes payable, together with any interest due, shall be transferred to the Public Account.

PART X - PUBLIC MONEY HELD OUTSIDE THE COOK ISLANDS

Public money held outside the Cook Islands provisions are unchanged from the MFEM Act.

Overseas imprest and other special accounts

40. The Minister may approve setting up and operation of bank accounts overseas. The requirements of this Act apply.

PART XI - REPORTING REQUIREMENTS

Reporting requirements have been modified to require the Ministry to issue guidance on accounting policies and to authorize the Ministry to provide accounting systems support. Requirements for monthly, quarterly, and annual reports are specified separately.

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Reporting requirements

41. Section 41 itemizes information to be included in forecasts and statement of accounts. Requirements for statements of borrowings, commitments and fiscal risks were shifted from general requirements for financial statements to the to section 13 requirements for fiscal year updates, rather than requiring this information on a monthly or quarterly basis.

Accounting principles

42. The MFEM Act addressed accounting principles under Part II, Functions of the Ministry. This requirement is shifted to be part of Part XI, Reporting Requirements. The term "generally" accepted accounting practice was changed to "internationally" accepted accounting standards, a more accurate term. A new requirements is added directing the Ministry to issue guidance on accounting standards.

Accounting systems support

43. A new requirement is added directing the Ministry to develop financial information systems to implement the accounting and reporting requirements of this Act. The Ministry is authorized to provide accounting and support services for government agencies. Providing services by the Ministry does not transfer control over spending or accountability for financial management from the agencies to the Ministry. The Ministry has already begun to provide centralized accounting services for outer island governments. This section is added on the assumption that the Ministry could offer similar services to smaller agencies.

Monthly reports

44. Agencies are required to reconcile their bank accounts on a monthly basis and to submit comparisons between budget estimates and actual transactions for the month and for the year to date to the Ministry within 30 days of the end of the month.

Quarterly reports

45. Heads of agencies are required to a quarterly report to the Ministry providing a comparison between budget and actual transactions, budget performance and budget plan, and any administrative changes within the quarter. The Ministry is required to report to the Parliament within 45 days of the end of the quarter on performance of the budget verses the approved budget.

Annual statement of accounts

46. The Financial Secretary is required to submit a financial statement consistent with the requirements of section 53 no later than the end of the third month of the succeeding year to the Parliament and to the Government Auditor. The Auditor's report on the financial statement is required to be submitted to the Parliament.

Appropriation account

47. The Financial Secretary is to include in the statement of accounts for each year the amounts appropriated and actual expenditure for each vote or line item in the budget.

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Departmental accounts

48. This section consolidates the reporting requirements for agencies of government. It requires:

- An annual report providing the information on finances required under section 41;
- A statement of financial performance showing results achieved by output ; and
- The financial statements for each agency are to be examined and reported by the Government Auditors.

PART XII - STATEMENT OF RESPONIBILITY

Requirements for Statements of Responsibility are unchanged from the MFEM Act. Requirements for public release of information have been revised to recognize the internet and electronic distribution of information.

Statements of responsibility

49. All reports prepared under this Act are required to be accompanied by statements of responsibility signed by the head of the agency and the responsible Minister, and or by the Financial Secretary and the Minister of Finance and Economic Management.

Publication, inspection and purchase of statements and reports

50. The Minister is required to arrange electronic access to all statements and reports produced under Parts III and XI of this Act. Notice will provide information that the report has been published, where it can be inspected for free and where it can be purchased.

PART XIII - LOANS AND SECURITIES

Most of the provisions of the MFEM Act concerning loans and securities are unchanged. New language was added to section 63 stating explicitly that no government agency, island government or government sponsored enterprise may borrow or create a contingent claim on the Government without the approval of the Minister.

Government not to borrow except under statute

51. No one can loan money to the Government other than as provided by this Act. No government agency, island government or government sponsored enterprise may borrow or create a contingent claim on Government without the approval of the Minister. These provisions, when taken into consideration with the other provisions of Part XIII require approval in law for any borrowing by Government or any agency of Government.

Minister may raise loans

52. The Minister, on behalf of the Crown, and with the concurrence of the Cabinet, may provide a loan to any person, organization or Government agency either within or outside the Cook Islands. The Minister is required to report the details of the loan at the next sitting of Parliament. This authority is restricted to purposes that have been specified in an appropriation.

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Repayment or conversion of loans

53. The Minister is authorized to repay or restructure loans, both extending the amount and/or term with the agreement of the lenders. This flexibility is subject to the limitations set in section 64.

The Minister may appoint underwriters and managers for loan

54. The Minister may enter into an agreement with a bank, financial institution or other person to act as an underwriter or manager for any loan under this Act.

Liability for debt of Crown

55. The Government shall not be liable to contribute towards the payment of any debt or liabilities of any Crown entity, unless it is liable to contribute pursuant to any Act, or a guarantee or indemnity given by the Minister pursuant to section 58, or by virtue of a good cause action a creditor has against the Crown, or any sum the Crown is liable to pay to any creditor of the crown.

Power to lend money

56. The Minister is authorized to lend money subject to approval by Cabinet and advice of the Financial Secretary and where an appropriation exists. This language seems to be redundant with section 64.

Authority for giving by the Crown of guarantees and indemnities

57. Giving a guarantee or indemnity that imposes an actual or contingent liability is prohibited unless it is authorized by law.

Power to give guarantees and indemnities

58. The Minister is authorized to guarantee or indemnify any person or organization or Government, but only with the approval of the Cabinet, on the advice of the Financial Secretary, and consistent with the requirements of this Act. The Minister is required to provide an assessment of the risks associated with the guarantee or indemnity to Parliament at its next sitting.

PART XIV- DEBT MANAGEMENT

Language is added to section 59 to tie debt repayment to the Loan Repayment Fund Act 2014.

Payment of principal and interest on loans

59. Section 59 requires all government debt to repaid from the Cook Islands Loan Repayment Fund, consistent with the Loan Repayment Fund Act of 2014.

PART XV - PROCUREMENT

Part XV is a new addition. The Ministry issued procurement guidance in 2014. That guidance replaced requirements in the Cook Islands Government Procedures Manual. Procurement policy is one of the major functions of public financial management. The language added in Part XIV provides a general mandate to the Ministry to oversee government procurement.

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Procurement

60. The Ministry is required to provide guidance and to oversee government procurement, including:

- Issuing and amending procurement instructions to govern the process of acquiring goods, civil works and services;
- Having the objective of an open, competitive, and transparent means of acquiring all government goods and services;
- Applying to all government agencies and sponsored enterprises;
- Specifying that procurement guidance will cover duties of officers, qualifications of supplies and contractors, tender procedures, project assessment and project management; and
- Instructions will be established to avoid conflict of interest in Government procurement.

PART XVI - INTERNAL CONTROL

Part XVI is a new addition to public financial management legislation. Its intent is to mandate internal control, but not to establish an internal audit or more defined procedures. This is a function that the Financial Secretary and heads of agencies need to undertake. Given the small size of many government entities in the Cook Islands, it will be necessary to approach this function with flexibility.

Internal control

61. The Financial Secretary is charged with maintaining an effective system of internal controls for the government. The Financial Secretary may conduct special audits and investigations of financial management of any ministry or department, the accounts of sponsored enterprises, or accounts of recipients of government grants. The Financial Secretary may appoint any officer to carry out audits. Ministries and departments are to provide full, free, and unrestricted access to all premises, assets, personnel records, accounting records and other documents to officers appointed by the Financial Secretary to carry out these reviews.

PART XVII - INFORMATION AND COMPLIANCE

Part XVI is similar to comparable provisions of the MFEM Act. The Powers of the Financial Secretary to obtain information are unchanged. The authority of the Ministry to issue regulations and procedural guidance to implement the Act has been expanded to differentiate between regulations and guidance and to identify categories of guidance that the Ministry will maintain.

Power of the Financial Secretary to obtain information

62. The Financial Secretary is authorized to request any agency to provide such information as necessary to enable the preparation of financial statements or fiscal forecasts or other obligations under the outputs of the Ministry to comply with requirements of this Act.

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Ministry instructions

63. The Ministry is authorized to issue instructions to ensure compliance with the financial disciplines provided for in this Act. Regulations will be issued by the Minister with the approval of the Cabinet and will be viewed as an extension of this Act. Procedural guidance will be issued by the Financial Secretary and will provide instructions on implementation of the Act and regulations. Instructions will be issued for the following topics:

- Financial policies and procedures
- Accounting
- Procurement
- Development assistance
- Capital planning
- Such other matters as determined necessary by the Financial Secretary.

PART XVIII - OFFENSES AND SANCTIONS

Part XVII provisions for Offenses and Sanctions are taken from the MFEM Act. Under the MFEM Act section 64 began by referring to "offense, without reasonable excuse". This qualified description of "offense" created the impression that there are reasonable excuses for violating the law. The revised language drops the qualification, but requires the head of agency to determine whether there is a reasonable excuse. Making an expenditure in excess of appropriation is added as an explicit offense under the Act. Primary responsibility for taking action against offenses is given to the head of the agencies. The intent is to clarify who is required to act in the event of an offense under the Act.

Offences

64. Section 64 defines offenses under the Act as taking one of the following actions without a reasonable excuse:

- Refusing or failing to produce information when required to do so by this Act;
- Resisting or obstructing the discharge of functions or duties under this act;
- Obligating Government to expenditure in excess of appropriated amounts;
- Refusing or neglecting to pay money to a Crown account;
- Refusing to pay money into a trust account of the Crown;
- Making false or misleading statements or providing false information;
- Improper payment of public money or trust money; and
- Wilfully failing to carry out any duty or obligation imposed by this Act.

Expenditure in excess of appropriation is added as an offense. It may be possible to drop the second to the last offense "improper payment", which is similar. Spending in excess of legal authority is potentially the most serious public finance offense. The qualifier without reasonable excuse is dropped from the title and from many of the specific offenses. The head of agency is required to determine whether there is a reasonable excuse under section 66.

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Obligation to report

65. Any public servant who becomes aware of a violation of this Act has the obligation to report that violation to the Financial Secretary.

Action by head of agency

66. Actions required by the head of agency in the event of an offense under this Act are:

- When the head of agency becomes aware of an offense, the head of agency must immediately take action to remedy the failure;
- Where the Ministry draws attention of any head of agency to an example of non-compliance with this Act, the head of agency shall immediately take action to remedy the failure;
- In taking action to remedy the failure, the head of agency shall determine whether there is a reasonable explanation for the non-compliance; and
- The head of agency shall explain the failure and the action taken to the Public Expenditure Review Committee.

Responsibility for action to resolve offenses is given to the head of the agency. The head of agency is required to determine whether there is a reasonable explanation for non-compliance. The head of agency reports to the Public Expenditure Review Committee.

Penalties for offenses

67. The MFEM Act included a schedule of financial penalties that did not have a clear rationale for the dollar amounts selected. This section now establishes recovering the Government's loss as the first penalty. The second penalty addresses personnel actions that could be imposed, including: reprimand, removal from position of responsibility, or criminal prosecution if the circumstances warrant.

PART XIX - MISCELANEOUS

This bill includes the miscellaneous provisions included in the MFEM Act, updated to reflect assumed timing of enactment and coming into force and the repeal of the MFEM Act.

Transitional

68. No person shall be convicted of an offense pursuant to section 64 of this Act until the Act comes into force. Penalties under the MFEM Act would continue in force until it is repealed.

Act to prevail

69. The language giving this Act precedence over other Acts in the event of conflict between provisions of the two Acts is continued under this Act.

Repeals

70. The Ministry of Finance and Economic Management Act 1995-1996 is repealed when this Act comes into force, 1 July 2016.

Draft for Discussion