

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE PUBLIC MANAGEMENT AND
FINANCE LAW (2010 REVISION) TO INCORPORATE THE
FRAMEWORK FOR FISCAL RESPONSIBILITY AGREED BY THE
GOVERNMENTS OF THE CAYMAN ISLANDS AND THE UNITED
KINGDOM ON 23 NOVEMBER, 2011; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

**THE PUBLIC MANAGEMENT AND FINANCE (AMENDMENT) BILL,
2012**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Public Management and Finance Law (2010 Revision) the (“principal Law”), to enact the substance of a Framework for Fiscal Responsibility (“the Framework”) agreed by the Governments of the Cayman Islands and the United Kingdom on 23rd November, 2011. The object of the Framework is to strengthen public financial management, particularly in the areas of borrowings and risk management, to a mutually acceptable and sustainable level.

Clause 1 of the Bill provides the short title.

Clause 2 amends section 2 of the principal Law to delete the definition of “borrowing”, expand the definition of “generally accepted accounting practice” and define nine new expressions.

Clause 3 amends section 14 of the principal Law to require compliance by the Governor in Cabinet with the borrowing limits prescribed in the Seventh Schedule and to stipulate the conditions which must be adhered to where borrowings have exceeded those limits.

Clause 4 inserts into the principal Law a new section 14A to provide for the eventuality of Government’s non-compliance with the Framework by establishing a process for the rectification of the breach.

Clause 5 amends section 23 of the principal Law to comprehensively enumerate, by way of the Seventh Schedule, the components of a strategic policy statement.

Clause 6 inserts into the principal Law a new section 29A to identify the types of information which the Governor in Cabinet is required to submit to the Government of the United Kingdom, which information is to be submitted in accordance with the timescales specified in the Sixth Schedule, unless otherwise agreed in writing by the parties.

Clause 7 amends section 34 of the principal Law by placing further limits on Government’s authority to borrow and establishing a scheme by which debts incurred by Government are to be repaid.

Clause 8 inserts into the principal Law new sections 81B and 81C to deal with-

- (a) the payment of compensation in the event of reputational or other damage to the Government; and

- (b) the possibility of inconsistencies between the principal Law and the Framework.

Clause 9 inserts into the principal Law a Sixth, Seventh, Eighth and Ninth Schedule.

The Sixth Schedule sets out the types of information required to be submitted by the Government to the United Kingdom Government.

The Seventh Schedule contains definitions and interpretations of certain central concepts and expressions contained in the Bill.

The Eighth Schedule outlines the borrowing limits with which Government must comply.

The Ninth Schedule lists the risk-weights to be agreed between the Government and the Secretary of State as a prerequisite for any borrowings by a statutory authority or a government company.

THE PUBLIC MANAGEMENT AND FINANCE (AMENDMENT) BILL,

2012

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 – definitions
3. Amendment of section 14 – responsible financial management
4. Insertion of section 14A – compliance with the Framework for Fiscal Responsibility
5. Amendment of section 23 – strategic policy statement
6. Insertion of section 29A – submission of information to the United Kingdom Government
7. Amendment of section 34 – power relating to specific financial transactions
8. Insertion of sections 81B and 81C – circumstances where compensation for damage becomes payable; and conflict with Framework
9. Insertion of a Sixth, Seventh, Eighth and Ninth Schedule

SIXTH SCHEDULE – Supply of Information to the United Kingdom

SEVENTH SCHEDULE – Interpretative and Explanatory

EIGHTH SCHEDULE – Compliance with Borrowing Limits

NINTH SCHEDULE – Statutory Authority and Government Company Risk-Weights

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**A BILL FOR A LAW TO AMEND THE PUBLIC MANAGEMENT AND
FINANCE LAW (2010 REVISION) TO INCORPORATE THE
FRAMEWORK FOR FISCAL RESPONSIBILITY AGREED BY THE
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KINGDOM ON 23 NOVEMBER, 2011; AND FOR INCIDENTAL AND
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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Public Management and Finance (Amendment) Law, 2012. Short title
2. The Public Management and Finance Law (2010 Revision), in this Law referred to as the “principal Law”, is amended in section 2- Amendment of section 2 of the Public Management and Finance Law (2010 Revision) - definitions
 - (a) by deleting the definition of “borrowing”;
 - (b) in the definition of “generally accepted accounting practice” by deleting paragraph (a) and substituting the following paragraph-
 - “(a) the delivery of public accounts on a timely basis in line with International Financial Reporting Standards and International Public Sector Accounting Standards issued by the International Federation of Accountants;”; and

(c) by inserting the following definitions in alphabetical sequence;

“debt service” means annual payments resulting from public borrowing commitments and finance leases or any other form of borrowing;

“expenditure” means, unless otherwise specified, all public expenditure inclusive of transfer payments, capital and recurrent expenditure;

“Framework” means the Framework for Fiscal Responsibility setting out directives and guidelines for prudent fiscal management, contained in an agreement between the Governments of the Cayman Islands and the United Kingdom, dated 23rd November, 2011;

“lifetime value” means the discounted net present value of financing obligations calculated using a discount rate of 3.5%, which shall be subject to periodic review to assess its appropriateness;

“liquid assets” means the lowest balance of liquid funds at the disposal of the Government during the fiscal years, which funds-

- (a) shall be forecast in the strategic policy statement; and
- (b) shall not be pledged against budgeted expenses or liabilities of any form;

“net debt” means the total outstanding value of public borrowing minus liquid assets;

“operating revenue” means coercive and non-coercive revenue;

“past fiscal performance” means, unless otherwise specified, fiscal performance assessed on the basis of audited financial statements for the previous financial year where such statements are available, and where they are not the assessment is to be based on the summary operating statement with associated variance analysis to original budget;

“public borrowing” includes-

- (a) conventional borrowing from commercial and concessional institutions;
- (b) the capitalised value of all alternative financing transactions, including PFI/PPP arrangements, that will place future financial obligations, in terms of increased expenditure or reduced revenue, on the Government;
- (c) the risk weighted debts and PFI/PPP arrangements of statutory authorities, government corporations and companies;

- (d) borrowing that is contracted by the Government, but then on-lent;
and
- (e) any other debt guaranteed by the Government.

3. The principal Law is amended in section 14-

- (a) in subsection (2) by deleting the words “in subsection (3)” and substituting the words “in this section”;
- (b) in subsection (3) by deleting the words “in subsection (2) are” and substituting the words “in subsection (2) include but are not limited to”; and
- (c) by inserting after subsection (4) the following subsections-

Amendment of section
14 – responsible
financial management

“(5) To ensure that the level of debt is affordable and consistent with the delivery of macroeconomic and fiscal sustainability, and financial stability in the short, medium and long term, the Governor in Cabinet shall comply with the borrowing limits defined in this section and in the Seventh Schedule.

(6) Where the Governor in Cabinet has borrowed beyond the limits specified in the Seventh Schedule, it shall-

- (a) return to compliance by the dates prescribed in the Eight Schedule;
- (b) remain in compliance with the borrowing limits subsequent to the dates specified in the Eight Schedule or such earlier dates by which compliance is achieved; and
- (c) put in place arrangements to repay the loan principal where required by the strategic policy statement.

(7) The Governor in Cabinet and the Secretary of State will agree risk-weights for new statutory authorities/government companies within the parameters set out in the Seventh and Ninth Schedules before any such statutory authority/government company can incur debt.”.

4. The principal Law is amended by inserting after section 14 the following section-

“Compliance with the
Framework of fiscal
responsibility

14A.(1) Where the Governor in Cabinet is not in compliance with the Framework, it shall present for the approval of the Secretary of State a plan that is

Insertion of section 14A
– compliance with the
Framework of fiscal
responsibility

consistent with the strategic policy statement to remedy the breach.

(2) The maximum period which may be permitted for the rectification of a breach is five fiscal years from the point at which the breach occurred or, in other circumstances, given the current global economic climate, such other period as may be agreed in writing between the Governor in Cabinet and the Secretary of State.

(3) In the event of any non-compliance in respect of the Framework and until the breach has been rectified the Governor in Cabinet shall obtain, on an annual basis, written approval from the Secretary of State before-

- (a) the strategic policy statement is finalised;
- (b) any public borrowing or any refinancing of public borrowing is undertaken unless the same is on more favourable terms;
- (c) proceeding with any project with a lifetime value of more than CI\$25 million;
- (d) using public assets as collateral as part of any arrangement with a party external to the Government;
- (e) the hypothecation of any revenue stream; or
- (f) the divestment of public assets.

(4) For the avoidance of doubt, any failure to comply with the borrowing limits or forecast failure to comply within the timeframe of the strategic policy statement will be deemed a failure to comply with the Framework.

(5) In exceptional cases, the Governor in Cabinet may seek the Secretary of State's approval to make in-year changes to the approach set out in the strategic policy statement, and in such cases the Governor in Cabinet shall supply the Secretary of State with—

- (a) a written request to make the changes, which request must be received no later than two months before such changes are considered to be required by the Governor in Cabinet unless a shorter period is agreed in writing by the parties;
- (b) an evidence based business case to support the request for approval; and
- (c) a revised strategic policy statement which sets out the measures the Governor in Cabinet intends to take.

(6) Where a request under subsection (5) is approved, the Governor in Cabinet shall publish in the Gazette, the revised strategic policy statement.”.

5. The principal Law is amended in section 23 by repealing subsection (2) and substituting the following subsection-

Amendment of section 23 – strategic policy statement

“(2) The strategic policy statement shall comprise the elements listed in item 15 of the Seventh Schedule.”.

6. The principal Law is amended by inserting after section 29 the following section-

Insertion of section 29A – submission of information to the United Kingdom Government

“Submission of information to the United Kingdom Government

29A. (1) The Government shall submit the information specified in the Sixth Schedule, to the persons from time to time specified by the United Kingdom Government.

(2) The Government shall supply the United Kingdom Government with such other information as it may request, including further information on-

- (a) any aspect of the strategic policy statement, including specific capital investment projects and proposed borrowing; and
- (b) the draft budget.

(3) Other than in exceptional circumstances where different timescales are agreed in writing for the

submission of information, all information shall be submitted in accordance with the timescales specified in the Sixth Schedule.”.

Amendment of section 34 – power relating to specific financial transactions

7. The principal Law is amended in section 34(1)-
- (a) by deleting the words “subsection (3)” and substituting the words “subsections (3), (4) and (5)”; and
 - (b) by inserting after subsection (3) the following subsections-
 - “(4) Unless, in exceptional circumstances, different arrangements are agreed in writing by the Government and the Secretary of State, the Minister will borrow only to fund capital expenditure where-
 - (a) the proposed project is forecast to yield sufficient revenues to fund the additional debt service costs; or
 - (b) the Government can demonstrate that it has sufficient surplus operating cash flows to fund the additional debt service costs which arise from borrowing to finance such capital expenditure.
 - (5) Where a debt has been incurred by the Government, the repayment shall be achieved either through-
 - (a) agreeing a fully amortized structure in part or in full, with the lending institution;
 - (b) establishing a dedicated sinking fund with a binding contribution schedule capable of offsetting the outstanding principal repayment on maturity of the debt;
 - (c) acquiring debt in the market; or
 - (d) by other financial arrangements.”.

Insertion of sections 81B and 81C– circumstances where compensation becomes payable; conflict with the Framework

8. The principal Law is amended by inserting after section 81A the following sections-
- “Circumstances where compensation becomes payable
 - 81B. Should advice emanating from the Framework result in reputational damage to the Cayman Islands or additional

costs incurred by the Government, the United Kingdom Government will compensate the Government for the reputational damage or the additional costs.

Conflict with the Framework

81C. Except as otherwise expressly provided, where there is conflict between any of the provisions of this Law and a directive of the Framework, the latter shall prevail to the extent of such conflict.”.

9. The principal Law is amended by inserting after the Fifth Schedule the following Schedules-

Insertion of a Sixth, Seventh, Eighth and Ninth Schedule

“SIXTH SCHEDULE

section 29A(1)

SUPPLY OF INFORMATION TO THE UNITED KINGDOM GOVERNMENT

- Triennially: Actuarial reviews of contingent and actual liabilities, including health care and pensions provisions.
- Annually:
- (i) Annual audit reports for the Government and Statutory Authorities/Government Companies.
 - (ii) Debt and PFI/PPP breakdown for the Government and Statutory Authorities/Government Companies.
 - (iii) Annual updates on GDP figures, employment and the performance of key sectors to the extent that this is not separately identified in budget documentation or the strategic policy statement.
 - (iv) The Government’s strategic policy statement, accompanied by a written request for any approvals that may be necessary over the course of the next fiscal year owing to the Government’s failing to comply with the Framework. Both should be submitted to the United Kingdom Government no later than three weeks before the strategic policy statement is due to be published.
 - (v) The Government’s budget in draft no less than three weeks before it is due to be presented, and when finalised.

Monthly	(i) Liquid Assets fund balances and variance analysis. (ii) Revenue and capital and operating expenses, actual performance and forecast reports with accompanying variance analysis.
On request	(i) Details of the stock and composition of debt, currency, date and origin of issue, maturity, and interest rate structure. (ii) Updates on capital project progress. (iii) Details of proposed capital investments, PFI, PPP and alternative forms of private finance, an independent accounting opinion on the IFRS accounting treatment and the capitalised value of the arrangement, and implications for public expenditure prepared and signed off by appropriate independent professionals. (iv) Completed investment appraisals. (v) Such other information as may reasonably be requested.

SEVENTH SCHEDULE

section 14(6)

INTERPRETATIVE AND EXPLANATORY

1. “Expenditure”, unless otherwise specified, refers to all public expenditure (inclusive of grants, capital and recurrent expenditure).
2. “Public accounts” includes all the accounts of the Government and of all statutory authorities /government companies.
3. “Public borrowing” includes-
 - (a) conventional borrowing from commercial and concessional institutions;

- (b) the capitalised value of all alternative financing transactions (including PFI/PPP arrangements) that will place future financial expenditure (in terms of increased expenditure or reduced revenue) on the Government;
- (c) the risk weighted debts and PFI/PPP arrangements of statutory authorities, government corporations and companies;
- (d) borrowing that is contracted by the Government, but then on-lent; and
- (e) any other debt guaranteed by the Government.

4. Public borrowing taken out to clear “informal debt” or debt owed by one public sector entity or another (including arrears of such debts) will be treated as new debt.

5. The risk weighting attached to debts and PFI/PPP arrangements of statutory authorities/government companies will be agreed with the Secretary of State according to the following criteria:

Risk-weighting	Description
100%	Outstanding contractual commitments to PFI or PPP arrangements of any form, agencies with a consistent demand for grants
80%	A high likelihood of grants being required
50%	Moderate likelihood of grants being required
20%	No grants required in the last three years

6. A list of statutory authorities /government companies with assigned risk-weights is set out in the Ninth Schedule and can be updated to reflect recent financial performance at the request of either the Government or the Secretary of State.

7. The Government and the Secretary of State shall agree risk-weights for new statutory authorities/government companies before any such statutory authority/government company can incur debt.

8. “Borrowing limits” means the following-

<u>Net Debt</u>	80% maximum of operating revenue	<u>Debt Service</u>	10% maximum of operating revenue	<u>Liquid Assets</u>	At least 25% of operating expenses
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9. “Operating Revenue” consists of coercive and non coercive revenue as defined in this Law.

10. “Net Debt” means the total outstanding value of public borrowing minus liquid assets.
11. “Debt service” means annual payments resulting from public borrowing commitments and finance leases or any other form of borrowing.
12. “Liquid Assets” means the lowest balance of liquid funds at the disposal of the Government during the fiscal years, which shall be forecast in the strategic policy statement. These funds should not be pledged against budgeted expenses or liabilities of any form.
13. Past fiscal performance, unless otherwise specified, should be assessed on the basis of audited financial statements for the previous financial year, where available. In the event that such statements are unavailable, the summary Operating Statement with associated variance analysis to original budget should be used.
14. “Lifetime value” means the discounted net present value of financing obligations calculated using a discount rate of 3.5%-which shall be subject to periodic review to assess its appropriateness.
15. “Strategic Policy Statement” means a document which, at a minimum sets out-
- (a) a statement of the Government’s economic and fiscal objectives;
 - (b) a summary of the broad outcomes, the specific outcomes and the links between them, that the Government intends to achieve in the next financial year and for at least the following two financial years;
 - (c) a summary of recent economic statistics, trends and forecasts;
 - (d) a statement of the prior two years’ fiscal performance, and analysis of variance from previous budgets and plans;
 - (e) a statement of existing public sector borrowing, including statutory authorities/government companies (whether guaranteed by Government or not). For each loan this should include quantum, currency, date and origin of issue, maturity and interest rate structure;
 - (f) the Accounts Receivable Aging Summary of the Government and the associated Bad Debt Summary;
 - (g) the detailed breakdown of forecast operating revenue and expenses for the current and next three financial years;
 - (h) a statement detailing the actual and contingent liabilities of the Government and an explanation of how each will be

- managed/financed, progress to date and intended financing for the current and next three financial years;
- (i) a capital investment plan for the next financial year and for each of the following two financial years. This should include details of new and continuing projects which are anticipated to have a lifetime value of over CI\$25 million for the next financial year and for each of the following two financial years;
 - (j) anticipated revenue and expense measures and actions for the next financial year and for each of the following two financial years;
 - (k) a statement of the current position and forecasts for the next three financial years for each of the following-
 - (i) forecast summary operating statement;
 - (ii) forecast summary balance sheet;
 - (iii) forecast summary statement of cash flows;
 - (iv) operating expenses performance by Ministry/Portfolio;
 - (v) operating revenue performance by Ministry/Portfolio;
 - (vi) reserves levels for each month;
 - (vii) borrowing;
 - (viii) performance against borrowing limits;
 - (ix) surplus or deficit, being the difference between total operating revenue and total operating expenses;
 - (x) net worth;
 - (xi) net cash flows for each of its operating, investing and financing activities;
 - (xii) the anticipated impact of any proposals to refinance existing debt;
 - (xiii) the value of contingent and actual liabilities, including pensions and healthcare schemes and the steps taken to mitigate these liabilities; and
 - (xiv) the approximate amount of executive expenses allocated to each minister, official member, the Office of the Complaints Commissioner, the Office of the Information Commissioner and the Audit Office for each financial year.

EIGHTH SCHEDULE

section 14(6)(a)

COMPLIANCE WITH BORROWING LIMITS

Where because of the global financial crisis it became necessary for the Government to operate beyond the borrowing limits defined in the Seventh

Schedule, the Government shall return to compliance with those borrowing limits by the following dates-

Net debt	by no later than the end of the Government's financial year 2015-2016
Debt service	by no later than the end of the Government's financial year 2015-2016
Liquid assets	by no later than the end of the Government's financial year 2015-2016.

NINTH SCHEDULE

section 14(7)

STATUTORY AUTHORITY AND GOVERNMENT COMPANY RISK-WEIGHTS

Statutory Agency/Government Company	Risk-Weight
Cayman Airways Limited	80%
National Housing Development Trust	80%
Tourism Attractions Board	80%
Cayman Turtle Farm (1983) Ltd	80%
Cayman Islands Development Bank	50%
Cayman Islands Airports Authority	20%
University College of the Cayman Islands	20%
Port Authority	20%
Water Authority	20%
Civil Aviation Authority	20%”

Passed by the Legislative Assembly the day of , 2012

Speaker

Clerk of the Legislative Assembly.