

2015 *Finance Management Act (Section 45) Resolution* SRO. 40

GRENADA

STATUTORY RULES AND ORDERS NO. 40 OF 2015

RESOLUTION FOR THE PURPOSES OF SECTION 45 OF THE PUBLIC FINANCE MANAGEMENT ACT NO. 17 OF 2015.

(Gazetted 6th November, 2015).

WHEREAS it is enacted by section 45 (1) of the Public Finance Management Act, No. 17 of 2015 hereinafter called (“the Act”) that special funds shall mean a fund of public revenues established by or under any other Act or Regulations for a specific purpose;

AND WHEREAS it is provided by sub-section (2) of the Act that the Minister may by Regulations establish special funds;

AND WHEREAS sub-section (2) further provides that Regulations made pursuant to this section must state the purpose of the special fund, the money to be paid into the special fund and the public officer who is responsible for administering the funds and that the Regulations must be approved by a Resolution of the House of Representatives;

WHEREAS in accordance with section 45, the Minister has made Regulations for the establishment of the National Transformation Fund, which shall be maintained for a term of twenty years.

AND WHEREAS it is expedient that the National Transformation Fund Regulations, 2015 attached as a Schedule to this Resolution be hereby approved by the House of Representatives.

NOW THEREFORE BE IT RESOLVED that pursuant to the provision of sub-section (2) of Section 45 of the Act the National Transformation Fund Regulations, 2015 be now approved by the House of Representatives.

SCHEDULE

GRENADA

STATUTORY RULES AND ORDERS

NO. 40 OF 2015

NATIONAL TRANSFORMATION FUND REGULATIONS, 2015

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GRENADA

STATUTORY RULES AND ORDERS NO. 40 OF 2015

IN EXERCISE OF THE POWER CONFERRED BY SECTION 45 OF PUBLIC FINANCE MANAGEMENT ACT, 2015, THE MINISTER MAKES THE FOLLOWING REGULATIONS—

PART I

PRELIMINARY

1. Citation. These Regulations may be cited as the

NATIONAL TRANSFORMATION FUND REGULATIONS, 2015.

2. Interpretation. In these Regulations—

“Board” means the Board of Directors established under regulation 16;

“budget expenditure arrears” means the sum of the following—

- (a) any invoice that has been received by a spending agency from a supplier of goods, services, and capital goods delivered and verified, and for which payment has not been made within the contractually agreed period, taking into account any applicable contractual grace period or, in the absence of a grace period, within sixty days after the due date;
- (b) wages, pensions, or transfers for which payment has been pending for longer than sixty days to domestic or foreign residents, including transfers to the Grenada Solid Waste Management Authority established pursuant to the Grenada Solid Waste Management Authority Act, Chapter 131A; and
- (c) interest and amortisation payments on domestic debt for which payment has not been made within the contractually agreed period, taking into account any applicable contractual grace period,

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and excludes arrears resulting from the non-payment of debt service for which a clearance framework has been agreed or a rescheduling agreement is being sought;

“Consolidated Fund” means the Consolidated Fund established pursuant to section 75 of the Constitution;

“Contingency Fund” means an account in the Fund established pursuant to regulation 11;

“costs of a project” means the net present value of all future payments to be made from the Fund to a project, calculated as the sum of all future payments discounted at a rate of five percent per annum;

“Fund” means the National Transformation Fund established under regulation 3;

“Fund investment” means an investment in any project to which Fund assets are directed for which a financial return is expected;

“Fund disbursement” means a grant to any project to which Fund assets are directed for which no financial return is expected;

“Minister” means the Minister with responsibility for Finance;

“Ministry” means the Ministry of Finance;

“national disaster” means a national disaster declared to have occurred, pursuant to section 3 of the National Disaster (Emergency Powers) Act, Chapter 203;

“Uncommitted Funds” means Unused Money of the Fund that is not currently required to meet the costs of a project;

“Unused Money of the Fund” means money that has been paid into the Fund but has not yet been paid out of the Fund, and includes money standing to the credit of the Contingency Fund.

PART II

NATIONAL TRANSFORMATION FUND

3. Establishment of the Fund. The National Transformation Fund is hereby established.

4. Objectives of the Fund. The objectives of the Fund are as follows—

- (a) to provide financial resources for the repayment of budget expenditure arrears;
- (b) to provide financial resources to facilitate the restructuring, repayment or repurchase of Government debt; and
- (c) to provide financial resources to manage, coordinate and invest in a diversified portfolio of projects or programmes for national development.

5. Assets of the Fund. The assets of the Fund are the property of the Government of Grenada and are held by the Fund on the behalf of the Government of Grenada.

6. Bank Account.—(1) The Accountant General shall establish a bank account for the Fund, which shall be controlled by the Accountant General and forms part of the Treasury Single Account.

(2) The Board shall establish for the Fund a separate sub-account for the Contingency Fund.

(3) All payments from the Fund shall be made from the Consolidated Fund and processed through the financial management information system of the Government.

7. Receipts of the Fund. The following shall be paid into the Fund—

- (a) all money directed or authorised to be paid into the Fund under section 10 of the Grenada Citizenship by Investment Act, 2013 or under any other enactment; and
- (b) the proceeds of all investments made by the Fund.

8. Payments out of the Fund.—(1) The following shall be payable from the Fund—

- (a) any money, approved by the Board, required to meet advisory and administrative expenses related to the Fund as approved by the Minister;
 - (b) any expense related to the preparation of any analysis, report, assessment or any other document that may be required under the Fiscal Responsibility Act No. 29 of 2015, the Public Finance Management Act No. 17 of 2015, any other relevant enactment and these Regulations as approved by the Minister;
 - (c) any money appropriated in the National Budget to finance projects or programmes for national development as approved by the Board under regulation 31; and
 - (d) any money approved by these Regulations, or by the Minister, to be used for the repayment of budget expenditure arrears or the repayment, restructuring or repurchasing of public debt.
- (2) No payments shall be made from the Fund under subregulation (1) (b) unless—
- (a) all payment obligations under regulations 9 and 11 have been satisfied;
 - (b) the making of a payment would not breach the cap prescribed pursuant to regulation 10; and
 - (c) the Board executes a resolution that authorises such a payment.

(3) All purchases of goods and services shall be guided by the principles of transparency, economy and efficiency, and shall be in accordance with the provisions of the Public Procurement Act, 2014.

9. Repayment of budget expenditure arrears.—(1) In every financial year, the Board shall allocate the first twenty-four million dollars of payments into the Fund to the Consolidated Fund for the sole purpose of payment of budget expenditure arrears.

(2) The annual payment prescribed under subregulation (1) shall continue until all budget expenditure arrears have been repaid.

10. Payments not to exceed cap.—(1) Prior to the beginning of each financial year, the Minister shall advise the Board of an annual cap on payments from the Fund.

(2) The Board shall ensure that payments from the Fund do not exceed the lesser of—

(a) the annual cap in regulation (1) for the financial year to which the payments relate; or

(b) the Uncommitted Funds.

11. Contingency Fund.—(1) The Board shall establish a Contingency Fund as a separate account of the Fund.

(2) In accordance with section 8 (3) (f) of the Fiscal Responsibility Act, 2015, from the first day of January 2016, at the beginning of every month, forty percent of the inflows into the Fund from the previous month shall be directed to the Contingency Fund.

(3) Payments from the Contingency Fund shall be made to the Consolidated Fund, on the direction of the Minister, and shall be used for the following purposes—

(a) to meet the obligation under regulation 9 to reduce budget expenditure arrears;

(b) to meet the objective of the Fund to restructure, repay or repurchase debt; or

(c) to provide relief from a national disaster.

(4) Money standing to the credit of the Contingency Fund shall be invested in accordance with regulation 12.

12. Investment of Unused Money of the Fund.—(1) Subject to subregulation (2), Unused Money of the Fund may be invested—

(a) with a bank, whether at call or subject to notice not exceeding twelve months; or

(b) in deposits with the Eastern Caribbean Central Bank.

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(2) Where the Board deems it fit, the Unused Money of the Fund in excess of the future requirements of the Fund shall be paid to the Contingency Fund.

13. Borrowing and lending.—(1) The Fund shall not be used for the borrowing or taking on of any contingent liability in the form of a guarantee or otherwise.

(2) The Fund shall not be used for the lending of money to the Government of Grenada, any State Owned Enterprise or any Statutory Body.

14. Staff and facilities.—(1) The Board shall utilise staff and facilities of the Ministry as far as possible for the proper operation of the Fund and, where additional staffing is reasonably required, existing policies with respect to compensation and employment practices of Central Government shall apply.

(2) For the purposes of Regulation 8(1) (b) the Board may, in accordance with its approved work plan secure the services of any person that may be required for the proper and efficient discharge of its functions under these Regulations on such terms and conditions as it thinks fit.

15. Website. The Ministry shall publish the following information relating to the Fund on the Ministry's website—

- (a) a description of the Fund and its objectives under regulation 4;
- (b) the structure of and contact details for the Board;
- (c) the criteria used by the Board to assess applications for project approvals;
- (d) all approved projects;
- (e) the current financial statements; and
- (f) the annual expenditure plan for the current financial year.

PART III

NATIONAL TRANSFORMATION FUND BOARD

16. Establishment of the Board.—(1) There shall be a Board of Directors for the Fund.

(2) The Board shall be accountable to the Minister with respect to the achievement of the objectives under regulation 4.

17. Composition of the Board.—(1) The Board shall consist of a maximum of seven members, including the Chairperson of the Board.

(2) The Minister shall, in writing, appoint the members of the Board, having regard to the expertise necessary for the Fund to achieve the objectives under regulation 4, which includes expertise in law, finance and accounting.

18. Chairperson and Deputy Chairperson.—(1) The Permanent Secretary of the Ministry shall be the Chairperson of the Board.

(2) The Minister shall appoint one member of the Board as the Deputy Chairperson of the Board.

19. Powers of the Board.—(1) The powers of the Board include—

- (a) authorising payments out of the Fund under regulation 8;
- (b) authorising the investment of Unused Money of the Fund in accordance with regulation 12; and
- (c) authorising the Chairperson of the Board to enter into contracts with respect to the Fund.

(2) The Chairperson of the Board may, upon the authorisation of the Board, enter into contracts on the behalf of the Government of Grenada, for the purposes of the Fund.

20. Functions of the Board. The functions of the Board include taking all actions required to meet the objectives under regulation 4, including—

- (a) establishing criteria for the investment or distribution of Fund assets, consistent with the objectives under regulation 4;
- (b) identifying potential investment projects for the Fund;
- (c) making recommendations to the Minister on projects eligible for investment for the Fund;
- (d) subject to the Minister giving approval to a particular project, negotiating with project proponents on the structure, timing and quantum of funding provided by the Fund;
- (e) managing the risks of the Fund to ensure its ongoing solvency;
- (f) complying with the requirements set out in these Regulations.

21. Term of office.—(1) Subject to subregulations (3) and (4), a member shall hold office for the term specified in his or her instrument of appointment and such term shall not exceed three years.

(2) A member is eligible for reappointment after the expiration of his or her term of appointment.

(3) The Minister may terminate a member's appointment at any time for stated reasons including the following—

- (a) bankruptcy proceedings have been initiated in respect of the member;
- (b) the member failed to disclose a conflict of interest in accordance with regulation 28;
- (c) the member breaches one of his or her duties under regulation 22.

(4) A member may resign from office by giving notice in writing to the Minister.

(5) The office of a member becomes vacant if—

- (a) the member dies;

- (b) the member resigns pursuant to subregulation (4);
- (c) is adjudged bankrupt under the law of Grenada; or
- (d) is convicted of an offence under the law of Grenada, the maximum penalty for which includes imprisonment;
- (e) is terminated by the Minister pursuant to subregulation (3).

22. Duties of members. Every member of the Board, in exercising his or her powers and discharging his or her duties, shall—

- (a) act honestly and in good faith with a view to the best interests of the Fund; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

23. Remuneration of members. There shall be paid from the Fund to the members of the Board such, if any, remuneration, fees or allowances as the Minister may determine.

24. Meetings.—(1) The Board shall meet at least six times per financial year.

(2) The Chairperson of the Board shall preside at the meeting of the Board.

(3) Where the Chairperson of the Board is absent, the Deputy Chairperson of the Board may preside at the meeting of the Board.

25. Risk Management Committee.—(1) The Board shall establish a Risk Management Committee, comprising members of the Board with expertise in finance, accounting and law.

(2) The Risk Management Committee shall—

- (a) develop a Risk Management Plan for the Fund that identifies the key risks facing the Fund, and any mitigation strategies being undertaken to manage these risks; and
- (b) identify and advise the Board on key financial and operating risks in potential projects.

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26. Quorum. A simple majority of the Board, including the Chairperson or Acting Chairperson of the Board, constitutes a quorum.

27. Voting.—(1) Every member present at a meeting of the Board has a deliberative vote, unless the member is barred from participating in the deliberations of the Board under regulation 28.

(2) In the case of an equality of votes, the Chairperson of the Board shall have a casting vote in addition to a deliberative vote.

(3) Every question shall be resolved in accordance the majority of votes casted.

28. Conflict of Interest.—(1) A member of the Board who has a direct or indirect pecuniary or other interest in a matter shall—

(a) disclose the nature of the interest and the disclosure shall form part of the record of consideration of the matter; and

(b) not participate in the deliberations of the Board in respect of that matter.

(2) A resolution of the Board relating to a matter that a member has an interest in shall have no effect if the member—

(a) fails to disclose that interest; or

(b) is present and participates in the deliberations of the matter.

29. Procedure at meetings. The Board may determine its own meeting procedures to the extent that they are not fixed by these Regulations.

30. Committees. The Board may establish committees consisting of members of the Board or non-members, or both, to perform a function.

PART IV

FUND PROJECTS

31. Project Selection Process.—(1) In order to qualify for payments from the Fund, a project or programme shall first be approved for funding.

(2) In order for a project or programme to be approved for funding, the project shall be a part of the Public Sector Investment Programme.

(3) By the thirty-first day of March in every year, the Ministry shall submit to the Board a preliminary list of potential projects for funding for the following financial year.

(4) The preliminary list shall include the following information—

- (a) a brief statement setting out the objectives of the proposal, the need being addressed, the way in which the proposal advances the objectives under regulation 4, and the proposal's qualification under the project selection criteria under regulation 35;
- (b) a summary of the cost estimates for the current budget and the budget for subsequent years, including recurrent operational costs of the completed project;
- (c) the proposed benefits of the proposal and a clear statement of the way in which the proposal will improve programme outputs and outcomes.

(5) By the thirty-first day of May of a financial year, the Board shall advise the Ministry which projects have been shortlisted for further consideration.

(6) By the thirty-first day of August of a financial year, the Board shall provide the Ministry with a detailed analysis of the shortlisted project, including a cost-benefit analysis and project work-plan for formal submission as a new capital investment spending request during the annual budget cycle.

(7) Notwithstanding sub-sections (5) and (6) the Standing Committee on Finance shall have the power to add, vary or amend the shortlisted projects identified by the Board.

32. Fund to Comply with Budget Process.—(1) All payments for projects shall be made from the Consolidated Fund.

(2) Payments shall be made from the Fund to the Consolidated Fund as required to meet the obligations of the Fund for payments to projects.

(3) In identifying and selecting projects for which Funding may be provided, the Board shall comply with any additional requirements of Part III of the Public Finance Management Act, 2015.

33. Annual Expenditure Plan.—(1) At least three months prior to the commencement of the financial year, the Board shall prepare and submit to the Minister a draft annual expenditure plan setting out proposed activities, approved and proposed projects, and expected Fund inflows and expenditures for the forthcoming financial year.

(2) The Board shall make such changes to the draft plan as are requested by the Minister.

(3) After incorporating all changes made pursuant to subregulation (2), the Board shall deliver the completed annual expenditure plan to the Minister not later than two months before the commencement of the financial year to which the plan relates or by such other date agreed between the Board and Minister.

(4) The Minister shall, not later than seven days after the House of Representatives first meets after he or she has received the completed annual expenditure plan, lay it before the House of Representatives.

34. Projects to be fully funded. The Board shall not recommend a project for funding, and cannot authorise payments from the Fund for a project, unless—

- (a) there is sufficient Uncommitted Funds to meet the costs of the project;
- (b) the total duration of the committed funding for the project does not exceed five years; and
- (c) the project is fully financed, either entirely through the resources of the Fund or through a combination of the resources of the Fund and other fully-committed external resources.

35. Project Selection Criteria. Projects for Fund disbursements shall be assessed against the following criteria—

- (a) the extent to which the project meets the objectives set out in regulation 4;
- (b) the extent to which the project aligns with Grenada’s Growth and Poverty Reduction Strategy;
- (c) the extent to which the project aligns with the Public Sector Investment Programme;
- (d) the extent to which the project aligns with any other National Plans approved by the Minister or the Parliament;
- (e) the potential for the project to contribute to the long-term social or economic well-being of the citizens of Grenada;
- (f) the potential for the project to provide infrastructure, goods or services that are not currently available in Grenada;
- (g) the potential for the project to provide long-term financial returns to the Government of Grenada; and
- (h) the risks inherent in the project, including an assessment of the capacity of the project proponents to deliver the project on time and budget.

PART V

ACCOUNTABILITY

36. Financial year. The financial year of the Fund shall commence on 1 January and finish on 31 December.

37. Accounts.—(1) The Board shall—

- (a) keep proper books of account of its income and other receipts and expenditures; and

(b) take reasonable steps to ensure that—

- (i) all monies received are promptly brought to account,
- (ii) all payments out of its money are correctly made and properly authorised, and
- (iii) adequate control is maintained over its property and over the incurring of liabilities by the Fund.

(2) The books of account kept under regulation 38 (1) shall—

- (a) be sufficient to record and explain the transactions with respect to the Fund;
- (b) enable the financial position of the Fund to be determined with reasonable accuracy at any time; and
- (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.

(3) Within three months after the end of each financial year, the Board shall cause to be prepared—

- (a) the following financial statements together with proper and adequate explanatory notes—
 - (i) a statement of the assets and liabilities of the Fund at the end of the financial year,
 - (ii) a statement of the revenue and expenditure of the Fund during the financial year,
 - (iii) such other financial statements for the financial year as may be specified in writing by the Minister; and

(b) an annual report of the Fund on the implementation of the business plan and such other matters as the Board considers advisable or the Minister directs.

(4) Without delay, after the completion of the financial statements and the annual report, the Board shall furnish a copy of each to the Director of Audit.

38. Audit.—(1) Not later than three months after receipt of the financial statements and annual report from the Board, the Director of Audit shall audit the financial statements in accordance with the Audit Act, Chapter 22A.

(2) Without delay after the completion of his or her audit of the Fund, the Director of Audit shall submit a copy of his or her report together with the financial statements and annual report to the Minister and the Board.

(3) The Minister of Finance shall, not later than seven days after the House of Representatives first meets after he or she has received the report together with the financial statements and the annual report of the Fund, lay it before the House of Representatives.

Made by the Minister this 23rd day of October, 2015.

KEITH MITCHELL
Minister responsible for Finance.

Approved by the House of Representatives this 23rd day of October, 2015.

WILLAN A. THOMPSON
Clerk to the House of Representatives.