

Laws governing the management of public funds for health in Zimbabwe

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for
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And Ministry of Health and Child Care**



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1. Background

In 2009, the Zimbabwe Ministry of Health and Child Care (MoHCC) produced the 'National Health Strategy 2009–2013: Equity and quality in health – A people's right'. The strategy raises universality, equity and quality as central principles: that everyone has access to defined health interventions and services based on health need, including those that promote health and prevent ill health. In addition, sufficient resources for this are to be mobilised according to ability to pay and allocated according to health need. Within the context of the work of the MoHCC on health financing policy, the MoHCC and TARSC, in co-operation with partners, have implemented research to support policy dialogue and decisions on the technical design of equitable health financing. The research has examined the options for institutional and legal arrangements for collection, management and allocation of these health-financing options.

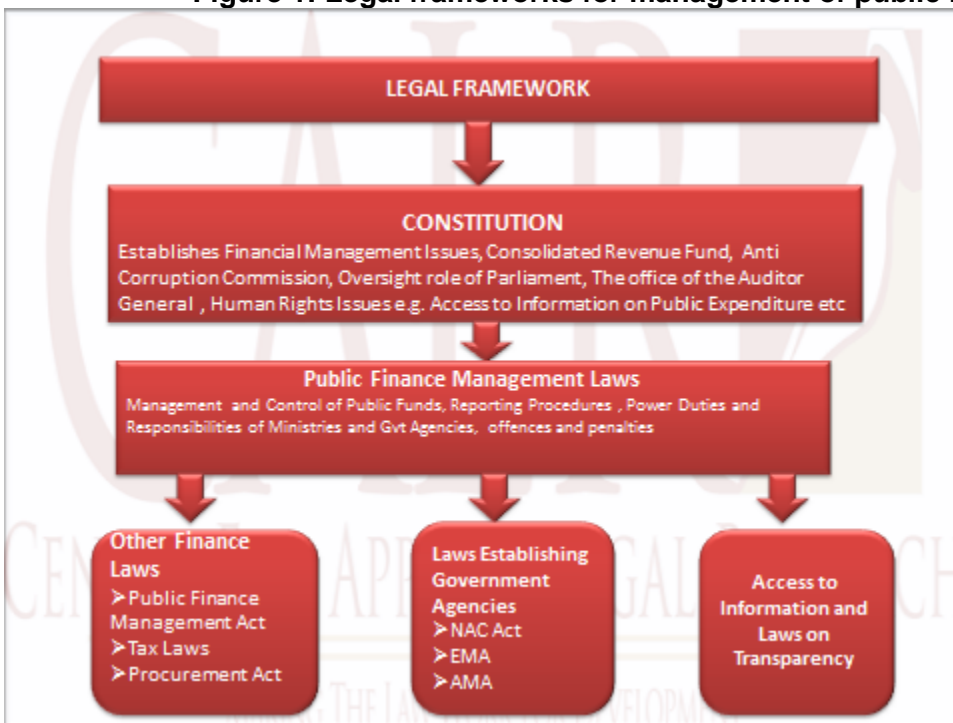
Public funds consist of taxes, any revenue, donations or income received by the state or profits made by the state. Earmarked funds are defined as "those meant for a specific, identified use for the revenue that it generates (the practice is also called "hypothecation"). Earmarked funds fit under the broad category of extra-budgetary funds (EBF). Tax earmarking, or hypothecation, assigns receipts either from a single tax base or as a proportion from a wider pool of revenue to a specific end use. It contrasts with general financing of expenditure from consolidated receipts. Various sources of tax revenue in Zimbabwe may be earmarked for revenue for health, as is the case with the National AIDS Trust Fund. Earmarking value added taxes (VAT), excise taxes or corporate taxes may be considered; these are in use internationally. Stakeholders felt that, if such funds should be collected, they be managed in quasi-autonomous funds to support transparency and accountability, along the National AIDS Council model.

Thus, a review of legislative options and institutional arrangements for management of new earmarked funds for domestic health financing was undertaken. To facilitate the process of review, the Ministry of Health and Child Welfare (now Ministry of Health and Child Care), with Training and Research Support Centre (TARSC) and Royal Tropical Institute (KIT) Netherlands convened a stakeholder meeting in April 2013 to consider options for institutional governance, collection, pooling management and allocation of earmarked funds (MoHCW, TARSC, KIT 2013). The legal framework for the management of public funds (*Figure 1*) was presented at that meeting.

Following the meeting, a legal analysis was commissioned to provide information on the legal provisions for institutional management of earmarked funds in health, drawing on the laws in Zimbabwe in terms of:

1. The legal definition and current law covering public funds;
2. Obligations in relation to the establishment of funds;
3. The oversight and governance of funds, including the powers, duties and responsibilities of the different parties involved in the control, management, protection and recovery of public funds, in relation to governance of funds and the measures and sanctions related to financial misconduct;
4. The collection, pooling, allocation and expenditure of funds, including duties and responsibilities in relation to collection, receipt, custody, control, issue or expenditure of public money, and in relation to management, audit and obligations of officers managing public funds; and
5. The reporting on funds and measures for transparency and accountability

Figure 1: Legal frameworks for management of public funds



Source: R Chari in MoHCW, TARSC, KIT (2013).

This report provides information on the legal arrangements as of September 2013, given the new legal dispensation brought by the 2013 Constitution of Zimbabwe. With the new Constitution as the supreme law, and other acts now being aligned to the Constitution, this document is used as the main reference for current legal provisions.

1. The definition in law and scope of public funds

2.1 Legal definition

According to section 2 of the Public Finance Management Act [Chapter 22:19] (PFMA) “public money” means revenues and all other money received and held, whether temporarily or otherwise, by a public officer in his or her official capacity. A public officer is defined to mean any person who is in the employment of the state or a designated corporate body.

Section 302 of the Constitution of Zimbabwe, Amendment Act No.20 (hereafter, the Constitution), defines public money as that which is held in the Consolidated Revenue Fund (CRF); whereas in section 308 on stewardship over public resources, this definition is broadened to include “any money owned or held by the State or any institution or agency of government, including provincial and local tiers of government, statutory bodies and government-controlled entities”. Section 302 identifies the CRF as the national account into which must be paid all fees, taxes and borrowings and all other revenues of the government, whatever their source, unless they are required by law to be paid into a separate fund or to be retained by the authority that receives them.

The Constitution and PFMA’s definition of public money therefore covers revenues within the national accounts, except for public money that Parliament authorises to be used for a

purpose that is specified by legislation. Expenditures are provided for in an Appropriation Act, discussed later.

The legislative power to establish and define statutory funds for a particular purpose in the definition of public money has been used in the past to allow the Minister of Health (and Child Care) to submit legislative proposals to Parliament to raise public revenue through taxation and to earmark the revenue so raised to pursue a particular objective mandated by legislation, as is further discussed in section 3. *Table 1* shows the laws and funds established in this respect.

Table 1: Laws appropriating / retaining funds for health or health related public entity

Legislation	Fund/ public entity
Health laws that appropriate funds for a particular purpose	
Health Services Act [Chapter 15:16] (HSA)	Health Services Fund administered by hospital management boards in terms of section 21 subject to the Constitution drawn up by Treasury for the regulation of the fund in terms of section 18 of the PFMA.
Mental Health Act [Chapter 15:12] (MHA)	Funds administered by mental hospital boards in terms of section 69 (1), which gives them power to control and administer any funds that may accrue from any source whatsoever for a specific purpose.
Public entities in health permitted by an act of Parliament to retain public money to meet expenses	
Medicines and Allied Substances Control Act [Chapter 15:03] (MASCA)	Section 13 (1) in paragraph (a) allows the Medicines Control Authority of Zimbabwe to retain fees as are payable in terms of regulations made under section 74.
National AIDS Council of Zimbabwe Act [Chapter 15:14] (NACZA)	Section 25 (b) provides that the funds of the National AIDS Council (NAC) shall consist of fees and charges raised for services and facilities provided and other things done by the Council.
Radiation Protection Act [Chapter 15:15] (RPA)	Section 9 permits the Radiation Protection Authority of Zimbabwe to retain any moneys accruing to the authority by way of licence fees or other payments charged in respect of any services rendered by the authority and for which fees may be charged under the RPA.
Zimbabwe National Family Planning Council Act [Chapter 15:11] (ZNFPCA)	Section 27 (2) allows the Zimbabwe National Family Planning Council to charge fees or raise levies as the board may, from time to time, determine with the approval of the Minister of Health and the Minister of Finance for the purpose of facilitating the functions of the ZNFPC.

2.2. Scope of public funds in law

Beyond the definition above, section 2 of the PFMA creates public accountability in respect of privately sourced money, if it is held by a public official in his or her official capacity or a public entity according to the earlier definitions of public money and the definition below of public entity.

The PFMA defines a “public entity” as any corporate body established by or in terms of any act for special purposes; any partnership or joint venture between the state and any juristic “person” and which is prescribed by the minister for the purposes of the application of the PFMA to be a partnership or joint venture; and unless otherwise specified, refers to a public entity prescribed for the purposes of part 5 of the PFMA.

Part 5 of the PFMA is a comprehensive section dealing with the accountability that exists in respect of public entities that possess a separate legal identity and substantial autonomy, including statutory discretion over the composition and volume of their expenditures and direct sources of revenue, such as earmarked taxes and donor funding. This is further discussed in section 5 on reporting and accountability.

In terms of section 39 of the PFMA, the requirements for accountability apply to public entities designated as such by the Minister of Finance in a statutory instrument; or specified by the Minister of Finance by notice in a statutory instrument. All such bodies that existed immediately before the date of commencement of the PFMA are deemed to be designated as public entities unless explicitly excluded by the Minister of Finance by notice in the *Gazette*. Such separate and distinct corporate bodies at whatever degree of autonomy from executive control are, nonetheless, accountable for the same legislative responsibilities and duties for governance and financial reporting as for public entities.

The PFMA in section 35 requires consolidation of the annual financial statements that Treasury must publish and through this ensures that there is greater accountability by the State for all of the funds in the consolidated revenue fund, statutory funds and any extra-budgetary funds such as official development assistance and social security funds.

The law in section 302 of the Constitution and sections 2 and 18 of the PFMA distinguishes between public money drawn from the CRF subject to an appropriations procedure in Parliament and public money that is vested in extra-budgetary funds, as autonomous or semi-autonomous funds set up by an act of Parliament for a specific purpose. It thus shows how expenditure is assigned to the CRF or other revenue sources in the national budget.

The Consolidated Revenue Fund is the principal source of funding for government. A budget appropriation procedure provides for parliamentary authorisation of public revenues in the CRF. The power to raise revenue through taxation is exercised by the Minister of Finance in terms of the Finance Act [Chapter 23:04] and by the Zimbabwe Revenue Authority established in terms of the Revenue Authority Act [Chapter 23:11]. This power to tax is exercised subject to Section 298 (2) of the Constitution which states that no taxes may be levied, except under the specific authority of the Constitution or an act of Parliament. Parliament consents to the use of public funds through enabling legislation for specific policy implementation. Parliament permits the use of public revenues each year by approving Estimates of National Expenditure (ENE) before the beginning of the government’s financial year. At the close of each financial year, Parliament expects a clear account of the use of the public funds that it would have authorised through the appropriations process regulated in terms of the Constitution in sections 302, 303, 305, 307 and 308 and the PFMA under section 6.

Funds that are set up by legislation, extra-budgetary funds and other funds which are sourced outside the CRF are subject to the accountability requirements of the public finance management system by virtue of the definition of public money in section 302 and 308 of the Constitution as discussed earlier. When such funds are collected for state agencies outside the CRF and directly into their own coffers (such as international donations to the National AIDS Council) they should then be accounted for in terms of the enabling legislation for that

particular body, as for example provided in the acts shown in *Table 1*. In most instances, the enabling legislation requires accounting for such funds in accordance with the PFMA.

Entirely private funds and funding from foreign funders to non-state actors that takes place directly without involvement of the state or any institution or agency of government are not included under public funds or governed by the PFMA.

2.3 Extra-budgetary funds

The 2013 Mid-year Fiscal Policy Statement highlighted that extra-budgetary funds established in terms of section 18 of the Public Finance Management Act (PFMA) handle substantial sums of money. Extra-budgetary funds refer to “general government transactions, often with separate banking, institutional arrangements that are not included in the annual state budget law” (Allen et al, 2010). Extra-budgetary funds may include funds such as earmarked taxes or levies. Section 302 of the Constitution and section 18 of the PFMA recognise extra-budgetary funds within the broad management of public funds framework. Section 18 of the PFMA states that whenever (i) money is appropriated by an act of Parliament for a particular purpose or (ii) the minister deems it necessary and desirable that separate account be created for facilitating the accounting of public resources, the Treasury shall establish a fund of that purpose. In Zimbabwe, such funds include the Number Plate Revolving Fund, Registrar-General Department Fund, Zimbabwe Republic Police Revolving Fund, Immigration Services Fund, among others. Because these funds use manual accounting systems, they have failed to produce financial statements on time for audit and consolidation. As a result, Treasury has begun computerising the accounting systems of these funds (Ministry of Finance 2013).

The PFMA clarifies the uncertainty about how to handle multiple streams of funding and the tensions inherent in partnerships and co-operation between public sector organisations and private bodies. Both the Constitution and the PFMA are a solid legal platform for addressing problems, such as misallocation of resources or manipulation of the budget process. The PFMA ensures that alternative sources of funding are accounted for in the public finance management system. It designates as a public entity corporate bodies established by law for special purposes or any partnership or joint venture between the state and any person (includes companies or institutions) that are in line with the PFMA definition of a public entity, as outlined earlier.

In its definition of public entity, the PFMA aims to balance the sovereignty of the state and the autonomy of non-state actors. It seeks to ensure sufficient accountability to give Parliament and the public confidence that both public and private resources are managed wisely. This includes management of public funds by corporate bodies other than government agencies, applied to benefit from the semi-autonomy, expertise or other capacities needed to implement certain policies.

The PFMA section 18 establishing extra-budgetary funds is particularly strict on ensuring that where a source of funding is designated to a particular purpose it should not be used for another unless Treasury approval is obtained. The act also provides the Treasury with instructions and other regulatory mechanisms such as a constitution for a fund established in terms of section 18.

Official / Overseas Development Assistance (ODA) refers to official resource flows from the international community to Zimbabwe in the form of grants, technical co-operation and financial co-operation. Government is held at least partially responsible or accountable for the management of such resources. Such external funding is extra- budgetary as it does not form

part of the national revenue. It must, however, appear in the consolidated budget as required under section 35 of the PFMA. The 2013 Mid-term Fiscal Policy Statement reported under reporting on ODA in the national budget as a result of bypassing government budget structures.

3. Obligations in relation to the establishment of funds

The obligations in relation to the establishment of funds using public money are set out in the 2013 Constitution, broadly in sections on the national objectives, the declaration of rights and principles governing public administration (Chapter 9), and in Chapter 17 on Financial Management. The Constitution is the yardstick for the laws that enable the establishment of funds for health as part of the progressive realisation of the right to health.

The establishment of funds through the budget process is governed by a budget policy process in which Cabinet identifies national priorities that benefit the entire nation. This is to lay a foundation for ministerial planning and budgeting. The Constitution passed in 2013 has changed the structure and distribution of power in the state with implications for the way in which public funds are allocated and used. In addition to detailing the structure of the state with respect to revenue expenditure and revenue assignment, the Constitution contains a Declaration of Rights that has implications for the equitable allocation of available resources. The right to health care (section 76) obligates the state to provide health services in relation to health need. Section 301 of the Constitution further provides for the allocation of revenues between provincial and local tiers of government.

3.1 Constitutional provisions

The Constitution's national objectives and directive principles for national policy obligate government to ensure civil society discourse, political action, public participation and administrative planning to develop public ownership of key public institutions.

The Constitution sets out national objectives that have broad (albeit indirect) implications for establishing and directing public funding towards these objectives:

- *Section 8 (1)* obligates the state and all institutions and agencies of government at every level to formulate and implement laws and policy decisions that establish, enhance and promote a sustainable democratic society in which people enjoy prosperous, happy and fulfilling lives.
- Section 9 (1) obligates the state to adopt and implement policies and laws to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level. It requires appointments to public office to be made primarily on the basis of merit and for measures to be taken to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and public offices.
- Section 11 requires government to take all practical measures to protect the fundamental rights and freedoms enshrined in the Declaration of Rights and to promote their full realisation and fulfilment.
- Section 17 requires the state to take all measures, including legislative measures, needed to ensure that both genders are represented equally in all institutions and agencies of government.
- Section 18 requires fair regional representation in all institutions and agencies of government at every level and practical measures to ensure that all local communities have equitable access to resources to promote their development.

- Section 29 requires the state to take: all practical measures to ensure provision of basic, accessible and adequate health services throughout Zimbabwe; appropriate, fair and reasonable measures to ensure that no person is refused medical treatment at any health institution; and all preventive measures within the limits of the resources available to it, including education and public awareness programmes, against the spread of disease.

Section 298 (2) of the Constitution provides that no taxes may be levied except under the specific authority of the Constitution and an act of Parliament. Section 302 of the Constitution and section 2 of the PFMA allow for establishment of other funds that are not included in the CRF for special purposes, through an act of Parliament as noted earlier. Section 18 of the PFMA spells out the obligations that need to be met before establishing any such funds, including that:

- Treasury is required to draw up a constitution to regulate the affairs of that fund and provide what money is to be paid into the fund and payments to be paid out of the fund;
- The Constitution has to be endorsed or adopted by Parliament;
- The funds to be paid into the fund include money appropriated by Parliament for the purposes of that fund, or required by any other enactment or by the constitution of that fund to be paid into the fund (with the approval of Treasury); any other money available from any other source, loans and receipts accruals, interests or earnings.

The Declaration of Rights in Chapter 4 of the Constitution in section 44 places a duty on the state and every person, including juristic persons, and every institution and agency of government at every level to respect, promote and fulfil the right to health care contained in section 76. All public sector organisations should operate as openly as is compatible with the requirements of their business. In line with the statutory public rights, they should make available timely information about their services, standards and performance. This aims to strike a balance between protecting confidentiality and open disclosure in the public interest and to limit unnecessary or disproportionate restrictions.

Section 194 (1) of the 2013 Constitution provides that public administration in all tiers of government, including institutions and agencies of the state and government-controlled entities and other public enterprises, must be governed by the following democratic values and principles-

- a high standard of professional ethics;
- efficient and economical use of resources;
- development-oriented public administration;
- impartial, fair, equitably provided services, provided without bias;
- people's needs responded to within a reasonable time, and the public encouraged to participate in policymaking;
- public administration accountable to Parliament and the people;
- co-operation between institutions and agencies of government at all levels;
- transparency, such as by providing timely, accessible and accurate information to the public;
- good human-resource management and career development practices, to maximise human potential;
- a public administration that is broadly representative of Zimbabwe's diverse communities; and
- employment, training and advancement practices based on merit, ability, objectivity, fairness, the equality of men and women and the inclusion of persons with disabilities.

Section 196 sets out the responsibilities of public officers and principles of leadership. It provides that the authority assigned to a public officer is a public trust that must be exercised in a manner consistent with the purposes and objectives of the Constitution, demonstrates respect for people and a readiness to serve rather than rule them and promotes public confidence in the public office held by the public officer.

Public officers are required to conduct themselves, in public and private life, so as to avoid any conflict between their personal interests and their public or official duties and to abstain from any conduct that demeans their office. Public officials in leadership position are required to abide by the following principles of leadership:

- objectivity and impartiality in decision-making;
- honesty in the execution of their public duties;
- accountability to the public for decisions and actions; and
- discipline and commitment in the service of the people.

Section 198 requires Parliament to provide measures to enforce the provisions of Chapter 9. These include: measures requiring public officers to make regular disclosures of their assets; establishing codes of conduct to be observed by public officers; specifying the standards of good corporate governance to be observed by government-controlled entities and other commercial entities owned or wholly controlled by the state; and providing for the discipline of persons who contravene Chapter 9 or any code of conduct or standard referred to in paragraph (b) of section 198.

Work is still underway to align laws with these provisions of the 2013 Constitution. For example, the Constitution calls for transparency by the state in section 62(1):

Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right to access any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.

This right may be hampered by section 14 and 15 of the Access to Information and Protection of Privacy Act [Chapter 10:27] (AIPPA) that protects the deliberations of Cabinet and advice relating to policy from the public eye and by section 19 that prohibits disclosure of information relating to financial and economic interests of a public body or the state. The constitutionality of these provisions may need to be further examined.

The Constitution ensures greater accountability by the state and institutions and agencies of the government at every level by ensuring that the executive's and legislature's powers are capable of judicial review. Section 167 (2) (d) of the Constitution provides that any breaches of the provisions of the Constitution should be taken to a Constitutional Court, that only the Constitutional Court may determine whether Parliament or the President has fulfilled a constitutional obligation or not, and that the Constitutional Court makes a final decision on whether an act of Parliament or conduct of the President or Parliament is constitutional.

3.2 Distribution of funds between levels of government

Chapter 14 of the Constitution creates an obligation of the state to devolve power and responsibilities to lower tiers of government to ensure democratic participation in government by all citizens and communities of Zimbabwe, equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas. The provisions of sections 264 and 265 enable distribution or redistribution of

authority so that local governments can make decisions and actions independent of central administrative oversight.

In accordance with section 264, the objectives of devolution of government powers and responsibilities to local government are:

- to give powers of local governance to the people and enhance their participation in the exercise of the powers of the state in decisions affecting them;
- to promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole;
- to preserve and foster the peace, national unity and indivisibility of Zimbabwe;
- to recognise the right of communities to manage their own affairs and to further their development;
- to ensure the equitable sharing of local and national resources; and
- to transfer responsibilities from national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.

The Constitution requires that Parliament provide for the equitable allocation of capital grants between provincial and metropolitan councils and local authorities, any other allocations to provinces and local authorities, and any conditions on which those allocations may be made. This must take into account, amongst other factors, the national interest; the national debt and other national obligations; the needs and interests of the central government, determined by objective criteria; the need to provide basic services, including educational and health facilities, water, roads, social amenities and electricity to marginalised areas; the fiscal capacity and efficiency of provincial and metropolitan councils and local authorities; developmental and other needs of provincial and metropolitan councils and local authorities; and economic disparities within and between provinces. Not less than 5% of the national revenues raised in any financial year must be allocated to the provinces and local authorities as their share in that year.

4. Oversight and governance of funds

The responsibility for the oversight of how the executive has used funds is distributed between Parliament, the Comptroller and Auditor-General as set in in law (referred to as the Auditor-General in practice). The oversight of expenditures by institutions is implemented by the Treasury and Finance Ministry and at the lower level by ministries responsible for certain entities. These institutions derive their oversight mandate and powers mainly from the Constitution, the PFMA, the Audit Office Act and other acts that set up specific funds as exemplified for the health sector in *Table 1*.

4.1 Oversight by Parliament

Section 119 of the Constitution provides that Parliament is the guardian of the Constitution and has the power to ensure that its provisions are upheld and that the state and all institutions and agencies of government at every level should act constitutionally and in the national interest. Section 299 of the Constitution contains provisions that detail the role of Parliament in monitoring and overseeing expenditure by the state and all commissions and institutions and agencies of government at every level, including statutory bodies, government controlled entities, provincial and metropolitan councils and local authorities. Parliament exercises this power to ensure that all revenue is accounted for, all expenditure has been properly incurred and that the limits and conditions on appropriations have been observed. How Parliament procedurally exercises this role, including through its specialised portfolio committees such as the Public Accounts Committee of Parliament, is not discussed in detail in this report.

Ministers can propose legislation to Parliament to raise public revenue through taxation or to use public funds to pursue national policy objectives. Parliament approves laws that empower ministers to carry out national policies. Parliament may periodically examine government activity such as expenditure administration and service delivery. Parliament examines financial accounts, scrutinises value for money and generally holds the government and its public servants to account for the quality of their past administration.

Parliament authorises expenditure from the CRF in accordance with the provisions of section 305 of the Constitution. Each year the Finance Minister is required to present to Parliament a statement of the estimated revenues and expenditures of government in the next year. Separate estimates of revenue and expenditure must be given for each commission established by the Constitution, for the office of the Auditor-General, the National Prosecuting Authority, the General Council of Chiefs and any other institution prescribed by an act of Parliament.

Parliament's powers are curtailed somewhat by the provisions of section 306 on the authorisation of expenditure in advance of appropriation. An act of Parliament may allow the President to authorise withdrawal of money from the Consolidated Revenue Fund (CRF) to meet unforeseen expenditure or whose extent was unforeseen and for which no provision had been made under any other law, but:

- the act must not allow the withdrawal of money in excess of 1.5% of the total amount appropriated in the last main Appropriation Act;
- any money withdrawn under the act must be included in additional or supplementary estimates of expenditure laid without delay before the National Assembly (Parliament) and, if the Assembly approves it, the money must be charged on the CRF by an additional or supplementary Appropriation Act.

If the Appropriation Act for a financial year has not come into operation by the beginning of that financial year, Parliament may allow the President to authorise withdrawal from the CRF to meet expenditure necessary to carry on the services of the government. Withdrawal can only be made in the first four months of the financial year, and only up to one-third of the amounts included in the estimates of expenditure for the previous financial year. The funds withdrawn under the act must be included in an Appropriation Act for the financial year concerned, under separate votes for the different heads of expenditure.

If Parliament is dissolved before adequate financial provision has been made for carrying on the services of the government, an act of Parliament may also allow the President to authorise withdrawal from the CRF to meet expenditure needed to carry on those services until three months after the National Assembly first meets after the dissolution. Any money withdrawn under the act must be included in an Appropriation Act under separate votes for the different heads of expenditure.

Section 307 (1) provides that if more money had been expended on a purpose than was appropriated to it by Parliament, then the Finance Minister must introduce a bill in the National Assembly seeking condonation of the unauthorised expenditure. Such a bill must be introduced into the National Assembly without delay and in any event no later than 60 days after the extent of the unauthorised expenditure had been established.

The PFMA in section 19 also provides for anticipated or unauthorised excess expenditures:

- for supplementary estimate of the sums required from the CRF to be laid before Parliament if in the financial year the amount appropriated by the Appropriation Act is insufficient for a specific purpose;
- for a statement of expenditure including revised amounts to be tabled with Parliament if at the close of accounts for any financial year it is found that money expended on a vote or purpose is in excess of the amount appropriated for it by an Appropriation Act.

Where Parliament approves these supplements or condones the excess spending, the PFMA requires that a Financial Adjustments Bill be introduced to Parliament for this.

Parliament's role in relation to the Auditor-General is further discussed in section 4.3.

4.2 Laws covering financial management

Chapter 17 of the Constitution establishes the overarching framework of public financial management in the provisions of section 298 (1) which require the following principles to guide all aspects of public money in Zimbabwe:

- a) there must be transparency and accountability in financial matters;
- b) the public finance system must be directed towards national development, and in particular:
 - i. the burden of taxation must be shared fairly;
 - ii. revenue raised nationally must be shared equitably between the central government, provincial and local tiers of government; and
 - iii. expenditure must be directed towards the development of Zimbabwe; and special provision must be made for marginalised groups and areas;
- c) the burdens and benefits of the use of resources must be shared equitably between present and future generations;
- d) public funds must be expended transparently, prudently, economically and effectively;
- e) financial management must be responsible and fiscal reporting must be clear; and
- f) public borrowing and all transactions involving the national debt must be carried out in the best interests of Zimbabwe.

Section 308 (1) requires every person who has custody or control of public property to safeguard the property and ensure that it is not lost, destroyed, damaged, misapplied or misused; and that every custodian of public money to safeguard the funds and ensure that they are only spent on legally authorised purposes and in legally authorized amounts.

4.3 Oversight by the Comptroller and Auditor-General

The Constitution provides in section 309 that there shall be an Auditor-General (termed the Comptroller and Auditor General) whose functions are:

- i. to audit the accounts, financial systems and financial management of all departments, institutions and agencies of government, all provincial and metropolitan councils and all local authorities;
- ii. at the request of the government, to carry out special audits of the accounts of any statutory body or government-controlled entity;
- iii. to order the taking of measures to rectify any defects in the management and safeguarding of public funds and public property; and
- iv. to exercise any other functions that may be conferred or imposed on him or her by or under an act of Parliament.

The Constitution also requires public officers to comply with orders given to them by the Auditor-General to rectify defects in the management of funds. In the exercise of his or her

functions, the Auditor-General is independent and subject only to the law according to section 311 of the Constitution.

The Audit Office Act [Chapter 22:18] (AOA) in section 5 states that subject to any duty imposed on him or her by any enactment, the Comptroller and Auditor-General has complete discretion in the discharge of functions, particularly in determining whether to carry out any examination in terms of the AOA and as to the manner in which any such examination is carried out.

The AOA also states in section 5 that subject to section 309 of the Constitution, the duties of the Comptroller and Auditor-General are:

- i. to examine, inquire into and audit accounts in terms of section 6;
- ii. to satisfy himself or herself in terms of section 7 as to the safeguarding of public moneys and state property;
- iii. to prepare and submit reports in terms of part III of the act;
- iv. to do any other thing required of him or her by or under this Act or any other enactment.

In addition to auditing the accounts referred to in section 309(2) of the Constitution, section 6 provides that the Comptroller and Auditor-General shall, on behalf of the House of Assembly, audit the accounts of any public entity, or designated corporate body. It may also carry out examinations into the economy, efficiency and effectiveness with which any ministry, public entity, local authority, designated corporate body, statutory fund or other body have used public resources in discharging their functions.

Section 106 (1) of the old Constitution, now repealed, stated that the public accounts of Zimbabwe and of all accounting officers, receivers of revenue and other persons entrusted with public moneys or property of the state be audited annually by the Comptroller and Auditor-General. If the Auditor-General is of the opinion that it would not be appropriate or expedient to examine and audit any particular account or fund or any particular class of documents, he or she would notify the relevant minister and the Speaker of Parliament of this and, unless otherwise directed by Parliament, would not audit this fund. Section 6 of the AOA regarded such funds as not being public money for the purposes of the AOA. The new Constitution has not retained this provision, and in terms section 5 of AOA the Auditor-General has unfettered discretion in the discharge of his or her duties on all public funds, without exceptions.

4.4 Oversight by and roles of Treasury

Section 2 of the PFMA provides that the Minister of Finance or any officer in the Ministry of Finance authorised by the minister in writing acts on behalf of the Treasury. The Treasury has the duty to make sure that the state and all institutions and agencies of government at every level use their powers only as intended; that revenue is raised, and the funds spent only within the agreed limits. The PFMA sets the ground rules for the administration of public money. It provides, amongst other matters, for:

- the control and management of public resources and their protection and recovery;
- the appointment, powers and duties of the Accountant-General and the staff;
- the national budget and preparation of financial statements; and
- the regulation and control of public entities.

The object of the PFMA set in the act is to secure transparency, accountability and sound management of the revenues, expenditures, assets and liabilities of ministries, designated corporate bodies and public entities, constitutional entities and

statutory funds. It mandates Treasury to manage the CRF, determine the manner in which public resources are accounted for and to exercise a general direction and control over public resources. Treasury may, by notice to officers concerned, issue instructions or directions in terms of section 78 in relation to matters involving:

- a) the collection, receipt, custody, control, issue or expenditure of public money;
- b) the acquisition, receipt, custody, control, issue, sale, delivery, transfer or disposal of any state property;
- c) the expenditure on any service involving a charge on the Consolidated Revenue Fund;
- d) the operation of any statutory fund;
- e) the acceptance, on behalf of the state, of any gift, donation, bequest or other grant of moneys or other property which is made subject to a condition or is likely to involve a charge on the Consolidated Revenue Fund; and how such funds are to be accounted for.

These instructions or directions may require an accounting officer or receiver of revenue to issue written departmental instructions to the officers in his or her ministry or department. The act further states that where a provision applies to Parliament, any controlling and supervisory functions of Treasury in terms of that provision will be performed by the Speaker of the House of Assembly

4.5 Oversight by and roles of Ministry of Finance

Subject to the PFMA and any other act, the Minister of Finance is responsible for the management of the CRF and the supervision, control and direction of all matters relating to the public resources of Zimbabwe. The Minister of Finance is mandated by section 7 of the PFMA to develop and implement a macroeconomic and fiscal policy for Zimbabwe and within this to supervise and monitor the finances of Zimbabwe; coordinate international and inter-governmental financial and fiscal relations; and to advise government on the allocation of public resources as between ministries, reporting units, public entities, constitutional entities and any government programmes. Section 305 (1) of the Constitution states that every year the minister responsible for finance must present to the National Assembly a statement of the estimated revenues and expenditures of the government in the next financial year.

In the PFMA the minister has a duty to:

- i. table full and transparent accounts from time to time and not less than annually with Parliament indicating the current and projected state of the economy, the public resources of Zimbabwe and the fiscal policy of the government;
- ii. establish systems throughout government for planning, allocating and budgeting for the use of public resources and approving all requests for the issue of public moneys prior to their inclusion in any estimates of expenditure for submission to Parliament in accordance with the PFMA;
- iii. provide a full account to Parliament for the use of public resources; and
- iv. ensure regularity and propriety in the handling and expenditure of public resources.

According to section 88 of the PFMA the Minister of Finance may make regulations prescribing:

- i. the manner, form and circumstances in which complaints, disciplinary measures and criminal charges of financial misconduct must be processed or undertaken and a report thereon made to the Treasury and the Comptroller and Auditor-General, including a report on:
 - a. the particulars of the alleged financial misconduct; and
 - b. the steps taken in connection with such financial misconduct;

- ii. matters relating to the investigation of allegations of, and disciplinary sanctions for, financial misconduct;
- iii. the circumstances in which the Treasury may direct that disciplinary steps be taken or criminal charges laid against a person for financial misconduct;
- iv. the circumstances in which a disciplinary board hears a charge of financial misconduct shall include a person whose name appears on a list of persons with expertise in state finances or public accounting compiled by the Treasury;
- v. the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board shall be reported to the Treasury and the Comptroller and Auditor-General;
- vi. any other matters to the extent necessary to facilitate the objects of part V of the act.

The Minister of Finance is also assigned to administer the Procurement Act [Chapter 22:14] which makes provision for the procurement of goods, construction work and services by the state, statutory bodies and other persons. The Procurement Act gives the Minister of Finance significant power in relation to the definition of a procuring entity in section 2 of the act. The Minister may, by statutory instrument, declare any local authority or other person to be a procuring entity for the purposes of this act. However, the Minister should not make any such declaration in relation to a person, other than a body corporate wholly owned or controlled by the state, without that person's consent.

To be declared a "procuring entity" brings a corporate body or person within the remit of Procurement Act and the State Procurement Board, which has a mandate to conduct procurement on behalf of procuring entities, where the procurement is of a class prescribed in procurement regulations; and to supervise procurement proceedings conducted by procuring entities, in order to ensure proper compliance with this act;

4.6 Oversight by and roles of accounting officers and authorities

In section 205, the Constitution establishes permanent secretaries of ministries who are appointed by the President after consultation with the Civil Service Commission for a five-year term renewable once only, subject to competence, performance and delivery. Section 10 (1) of the PFMA provides that the Minister of Finance, on the advice of the Secretary, shall prescribe an accounting officer in respect of each expenditure vote. The officer shall control and be accountable for the expenditure of money applied to that vote by an Appropriation Act and for all revenues and other public money received, held or disposed of, by or on account of any ministry, reporting unit, public entity or constitutional entity for which the vote provides. Traditionally, this role has been exercised by permanent secretaries responsible for ensuring that the estimates presented to Parliament for a ministry's annual expenditure are within the statutory powers and within government's expenditure plans. They also ensure that the use of public money is within the ambit of the budget vote and consistent with the estimate and must answer to Parliament for the stewardship of those responsibilities. Failure to comply with section 10 or the requirements of part IV of the PFMA constitutes an act of financial misconduct in accordance with section 85 (1) paragraph (a) and (b) and could result in disciplinary proceedings or criminal charges in accordance with section 87 and section 91.

Section 14 of the PFMA also provides that if an accounting officer is directed by a minister or deputy minister to order or commit a payment that an accounting officer believes is not authorised in terms of this act or any enactment or a receiver of revenue is directed by a minister or deputy minister that they:

- i. not collect any public money that such receiver of revenue believes he or she should collect; or
- ii. deal with public money in a manner that the receiver of revenue believes he or she is not authorised to deal with in terms of the PFMA or any other Act.

The accounting officer should submit in writing to the minister or deputy minister, as the case may be, his or her objections and reasons therefor. If, after receiving any objections and reasons, the minister or deputy minister instructs the accounting officer or receiver of revenue in writing to do anything referred to in (i) or (ii) above, the accounting officer or receiver of revenue shall comply with the instruction and shall immediately submit a written report thereon to the minister, the Accountant-General, the Comptroller and Auditor-General and the Secretary to Cabinet.

Section 14 (3) also provides that if an officer is directed by a superior officer or by a minister or deputy minister:

- i. to order or commit a payment the officer believes he or she is not authorised to make in terms of this act or any enactment; or
- ii. not to collect any public moneys the officer believes he or she should collect; or
- iii. to deal with public money in a manner the officer believes he or she is not authorised to deal with in terms of this act or any enactment

the officer shall submit to his or her accounting officer in writing his or her objections and reasons therefor. If, after receiving any objections and reasons, the accounting officer or a minister or deputy minister instructs the officer in writing to do anything referred to above, the officer shall comply with such instruction and shall immediately submit a written report thereon to the Accountant-General and the Comptroller and Auditor-General. Where the direction that gave rise to the objections was given by a minister or deputy minister, to the Secretary to the Cabinet; the officer shall submit with the report a copy of the instruction concerned.

The PFMA requires that every public entity have an authority accountable for the purposes of the act. According to section 41, if the public entity:

- i. has a board or other controlling body, that board or body shall be the accounting authority for that entity; or
- ii. does not have a board or other controlling body, the chief executive officer or the person in charge of that public entity shall be the accounting authority for that public entity unless the enactment or memorandum and articles of association or foundational document relating to that public entity designates another person as the accounting authority.

Treasury may, in exceptional circumstances, approve or appoint a person other than those referred to above as the accounting authority for a public entity. Treasury may also, at any time, withdraw an approval or such instruction.

Section 42 of the PFMA provides the fiduciary duties of accounting authorities. It provides that the accounting authority for a public entity shall:

- i. exercise the utmost care to ensure reasonable protection of the assets and records of the public entity;
- ii. act with fidelity, honesty, integrity and in the best interests of the public entity in managing the affairs of the public entity;
- iii. on request, disclose to the appropriate minister all material facts, including those reasonably discoverable, that in any way may influence the decisions or actions of the appropriate minister in relation to that public entity; and
- iv. seek, to the extent that it is competent for the accounting authority to do so, to prevent any prejudice to the financial interests of the state.

In an accounting authority (if it is a board or other body) every member of the accounting authority may not act in a way that is inconsistent with the responsibilities of an accounting

authority under the PFMA or use the position of such an authority, or any confidential information obtained as such an authority, for personal gain or to improperly benefit another person. If an accounting authority is a board or other body, a member thereof shall disclose to the other members of the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family relation of that member may have in any matter before the accounting authority and withdraw from the proceedings of the accounting authority when the matter is considered, unless the other members of the accounting authority decide that the member's direct or indirect interest in the matter is trivial or irrelevant.

The accounting authority is responsible for the management, including the safeguarding of the assets and revenue and expenditure and liabilities of the public entity. Section 44 of the PFMA states that the accounting authority for a public entity shall ensure that that public entity establishes and maintains effective, efficient and transparent systems of financial and risk management and internal controls, a system of internal audit under the control and direction of an audit committee, an appropriate procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective and a system for properly evaluating all major capital projects prior to a final decision on the project. Accounting authorities are required to take effective and appropriate steps to collect all revenue due to the public entity and prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity and to manage available working capital efficiently and economically.

The accounting authority of a public entity has a duty to comply with any tax, levy, duty, pension and audit commitments imposed by any enactment. It must take effective and appropriate disciplinary steps against any employee of the public entity who contravenes or fails to comply with applicable provisions of the PFMA or commits an act undermining the financial management and internal control system of the public entity or incurs or permits irregular expenditure or fruitless and wasteful expenditure. The authority is responsible for the submission by the public entity of all financial statements, reports, returns, notices and other information to the House of Assembly, the appropriate minister or the Treasury, required by the PFMA and to comply with the provisions of the PFMA and any other act applying to the public entity.

If an accounting authority is unable to comply with any of the responsibilities of an accounting authority, it should promptly report the inability, together with the reasons therefor, to the appropriate minister and the Treasury.

4.7 Oversight by and roles of the Accountant-General

Section 9 of the PFMA provides for an Accountant-General answerable to the Secretary of Finance, whose office forms part of the Public Service, and who is appointed by the President on the recommendation of the Public Service Commission for a term of five years and on such other terms and such conditions as shall be specified in the appointment. The Accountant-General is a senior professional accountant or auditor and registered as a public accountant or auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] for a period of not less than five years.

The Accountant-General is responsible to the Secretary for the compilation and management of the public accounts and the custody and safety of public resources, and for that purpose the Accountant-General may, in the manner prescribed and with the prior consent of the Secretary, give such instructions of a general or specific character to accounting officers, as may be necessary for the effectual implementation of the PFMA. The Accountant-General:

- i. specifies for every ministry, reporting unit or statutory fund the basis of the accounting system to be adopted and the classification system to be used, and ensures that a proper system of accounts is established in each of them, and that all money received and paid by the government is brought promptly and properly to account;
- ii. refuses payment on any voucher in support of a charge on the CRF that is defective in any way or which contravenes the Constitution or PFMA or any other act or instructions properly made or given, provided that the Accountant-General may admit or allow any payment against a defective, lost or destroyed voucher if satisfied with the explanation given to him or her by an officer;
- iii. reports in writing any apparent defect in the control of revenue, expenditure, cash, stores and other public resources in the care of any ministry, reporting unit or statutory fund and any breach or non-observance of regulations, directions or instructions pertinent to such public resources, which may come or be brought to his or her attention;
- iv. ensures, in so far as is practicable, that adequate provisions exist for the safe custody of public moneys, securities, negotiable instruments and financial statements; and
- v. takes precautions, by efficient checks including inspections against the occurrence of fraud, embezzlement and negligence in connection with public resources.

4.8 Measures to prevent and sanctions for financial misconduct

Section 254 of the Constitution deals with the establishment and composition of the Zimbabwe Anti-Corruption Commission, consisting of:

- a chairperson appointed by the President after consultation with the Committee on Standing Rules and Orders; and
- eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.

Members of the Zimbabwe Anti-Corruption Commission must be chosen for their integrity and their knowledge of and experience in administration or the prosecution or investigation of crime or for their general suitability for appointment. At least one must be qualified to practise as a legal practitioner in Zimbabwe and have been so qualified for at least seven years. At least one must be qualified to practise as a public accountant or public auditor in Zimbabwe, and have been so qualified for at least seven years. At least one must be a person with at least ten years' experience in the investigation of crime.

The functions of Zimbabwe Anti-Corruption Commission provided in section 255 are to:

- i. investigate and expose cases of corruption in the public and private sectors;
- ii. combat corruption, theft, misappropriation, abuse of power and other improper conduct in the public and private sectors;
- iii. promote honesty, financial discipline and transparency in the public and private sectors;
- iv. receive and consider complaints from the public and to take such action in regard to the complaints as the Commission considers appropriate;
- v. direct the Commissioner-General of Police to investigate cases of suspected corruption and to report to the Commission on the results of any such investigation;
- vi. refer matters to the National Prosecuting Authority for prosecution;
- vii. require assistance from members of the Police Service and other investigative agencies of the state; and
- viii. make recommendations to the government and other persons on measures to enhance integrity and accountability and prevent improper conduct in the public and private sectors.

In section 6 of the Prevention of Corruption Act [Chapter 9:16] (POCA) the Minister of Justice may specify persons where he or she on reasonable grounds, suspects that any person:

- i. by theft, fraud or other unlawful means has caused the misappropriation or loss of property of the state, a statutory body, a local authority or any other person;
- ii. has received property from the state, a statutory body, a local authority or any other person, whether directly or indirectly, in contravention of any law or as a result, either direct or indirect, of the action of any person who has caused misappropriation or loss such as is referred to in (i) above;
- iii. has accepted or obtained any benefit, advantage or profit corruptly or in circumstances that amount to an offence in terms of the POCA or the Bribery and Corruption chapter of the Criminal Law Code;
- iv. is associated with, or has been party to any transaction whatsoever with, any other person who has done anything referred to above and, as a result of such association or transaction, may be liable to the state, a statutory body, a local authority or any other person for any claim or proceedings in respect of any property or be liable to have the transaction set aside.

If the Justice Minister is satisfied that it is in the national interest to do so, he or she may, by notice published in the *Gazette*, declare such person to be a specified person.

On the prevention of victimisation in the POCA, section 14 states that a “corrupt practice” includes any contravention of Chapter IX on Bribery and Corruption of the Criminal Law Code, any misappropriation or loss of property caused by theft, fraud or other unlawful means or any receipt of property in contravention of any law or as a result, whether direct or indirect, of the action of any person who has caused misappropriation or loss. Further, any person who, without lawful excuse, prevents any other person from giving information concerning any corrupt practice, threatens, prejudices or does any other thing calculated or likely to deter such person from giving any information or after giving information concerning any corrupt practice is guilty of an offence and liable to a fine not exceeding level seven and/or to imprisonment for a period not exceeding two years.

Section 85 of the PFMA provides that an accounting officer for a ministry, reporting unit, public entity, constitutional entity, statutory fund or a constitutional entity to whom this power or duty is assigned commits an act of financial misconduct if they willfully or negligently fail to comply with the act or make or permit any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure. Section 86 (2) provides that if the accounting authority is a board or other body, every member thereof is individually liable for any financial misconduct of the accounting authority. There are additional offences provided for in the PFMA sections 85-88 and section 91 and in the Criminal law Codification and Reform Act.

Financial misconduct is a ground for the dismissal or other disciplinary sanction. Section 87 of the PFMA provides that a charge of financial misconduct must be investigated, heard and disposed of in terms of the applicable statutory or other conditions of appointment or employment. Section 88 permits the minister to regulate the manner, form and circumstances in which complaints, disciplinary measures and criminal charges of financial misconduct are processed or undertaken and reported to Treasury and the Comptroller and Auditor-General, including through a disciplinary board, the circumstances in which the Treasury or a disciplinary board may direct that disciplinary steps be taken or criminal charges laid against a person for financial misconduct; the reporting in such measures to Treasury and the Comptroller and Auditor-General; and any other matters to the extent necessary to facilitate the sanctions for financial misconduct.

5. Collection, pooling, allocation and expenditure of funds

Most public expenditure is financed from centrally agreed multiyear budgets administered by the Treasury, which oversees jpw departments use their budget allocations. As noted earlier, the Treasury operates financial controls to respect Parliament's concern to prevent unauthorised expenditure. The multiyear departmental budgets agreed collectively among ministers do not of themselves confer authority to spend or commit resources. Parliamentary agreement, usually through Estimates of Expenditure and appropriations procedure, is also essential.

Section 301 of the Constitution provides for the allocation of revenues between provincial and local tiers of government. The Constitution states that an act of Parliament must provide for the equitable allocation of capital grants between provincial and metropolitan councils and local authorities and any other allocations to provinces and local authorities, and any conditions on which those allocations may be made. The act referred to in section 301 (1) must take into account, amongst other factors: the national interest; any provision that must be made in respect of the national debt and other national obligations; the needs and interests of the central government, determined by objective criteria; the need to provide basic services, including educational and health facilities, water, roads, social amenities and electricity to marginalised areas; the fiscal capacity and efficiency of provincial and metropolitan councils and local authorities; developmental and other needs of provincial and metropolitan councils and local authorities; and economic disparities within and between provinces. Section 301 (3) also requires that not less than 5% of the national revenues raised in any financial year must be allocated to the provinces and local authorities as their share in that year. The Urban Councils Act and Rural District Council Act deal with financial provisions of local authorities and urban councils. Further analysis, beyond the scope of this report, is needed to determine any revisions needed to align these laws with the new constitutional provisions.

5.1 Expenditures from the consolidated revenue fund

The power to control expenditure from the CRF is bestowed on Treasury by section 17 of the PFMA which provides that no payment involving a charge upon the CRF be made without the written authority of the Treasury or unless provision has been made by act of Parliament.

Treasury authorises the issue of funds from the CRF for specified purposes not exceeding the amount so appropriated. If the amount appropriated is not specified, then as estimate by Treasury is required for such purpose. Treasury also authorises funds for investments and any other public moneys that are not revenues, which have been or may be paid into the CRF for any purpose. The Treasury may limit or suspend any authorised expenditure if, in its opinion, such action is in the public interest. Such authorisation only applies to the financial year in question and any unspent amount must be returned to the CRF, unless specifically noted as required and authorised as a grant.

Whenever any money has been appropriated under a vote of Parliament for a particular purpose, the Treasury may authorise the application of an expected saving on that vote to meet an excess of expenditure on any existing subhead of that vote or expenditure on a new subhead of that vote. Where, prior to the closing of the accounts of a financial year that relate to money appropriated by any act, it is found that an amount has been improperly charged against such appropriation, that amount shall be disallowed and the expenditure recorded against that appropriation in that financial year treated as an advance and the expenditure

reduced by the amount disallowed, until such time as the amount has been recovered or the charge has been otherwise adjusted.

Section 28 of the PFMA provides that the minister lay before the House of Assembly the annual budget for the forthcoming financial year, not earlier than 30 days before or not later than 30 days after the start of the forthcoming financial year. The budget should state the estimates of the revenues, expenditure and financing requirements for the Government of Zimbabwe for that year; for each vote of expenditure a statement of the classes of outputs expected to be provided from that vote during the year and the performance criteria to be met in providing those outputs. If Parliament is dissolved less than three months before the commencement of any financial year, the estimates for that year may be laid before the House of Assembly as soon as possible after the commencement of that year. The votes of expenditure contained in the estimates other than statutory expenditure are included in an Appropriation Bill, which is introduced in the House of Assembly to provide for the issue from the CRF of the sums necessary to meet the expenditure and the appropriation of those sums to the purposes specified. The minister may, through the appropriate portfolio committee of Parliament, seek Parliament's views in the preparation and formulation of the annual budget, for which purpose the appropriate portfolio committee shall conduct public hearings to elicit the opinions of as many stakeholders as possible.

Sections 46 and 47 of the PFMA require the accounting authority for every designated corporate body and specified public entity to submit to the accounting officer of the appropriate ministry and to the Accountant-General its projection of revenue, expenditure and borrowings for that financial year in the prescribed format and an annual corporate plan in the prescribed format covering the affairs of that designated corporate body, including its subsidiaries, for the following three financial years, including targets, outputs and outcomes. This must be submitted at least 30 days (or any greater period agreed by the appropriate ministry with the Accountant-General) before the start of its financial year. A public entity may not budget for a deficit, and may not accumulate surpluses, unless it obtains the prior written approval of the Treasury. The accounting authority for such public entity shall be responsible for ensuring that the expenditure of the public entity is in accordance with the approved budget.

The accounting authority for a public entity shall, before it engages in any of the following transactions, promptly notify and seek the approval of the Treasury and appropriate minister in writing, namely:

- the establishment or participation in the establishment of a company or subsidiary by the public entity;
- participation to a significant extent by the public entity in a partnership, trust, unincorporated joint venture or similar arrangement; (the meaning of significant is further detailed in the act in this and subsequent clauses)
- the acquisition or disposal of a significant shareholding in a company;
- the acquisition or disposal of a significant asset;
- the commencement or cessation of a significant business activity; or
- any other transaction involving a significant change in the nature or extent of its interest in a partnership, trust, unincorporated joint venture or similar arrangement:

If the appropriate minister lodges no objections in writing to any such transaction within 30 days of being notified thereof, the transaction concerned shall be deemed to have been approved by the appropriate minister. The minister may also exempt in writing any public entity from complying with this subsection.

5.2 Expenditures from other public entities

While designated ministers have overall oversight of a number of public entities and statutory funds, in their daily operations they report more directly to their own accounting authorities (which may be appointed by the minister in terms of the enabling law), provide estimates and annual reports, and settle their budgets directly with the Treasury. For instance, public entities run by hospital management boards in practice submit their budgets through the MoHCC, which are consolidated into one document. Disbursements are made to them through the MoHCC. In most instances, as shown in the examples below, the enabling law specifies who is responsible in terms of accountability for the use of funds, what the reporting requirements are, how such entities are to be overseen and monitored and the mechanisms by which PFMA compliance is assured.

The enabling Acts of these institutions now need to be reviewed to realign them to ensure compliance with applicable provisions of the Constitution and the PFMA and the AOA that came into operation in 2010.

Hospital Management Boards (HMBs) are established under the Health Services Act [Chapter 15:16] for each government central, provincial, district or general hospital. HMBs are body corporates capable of suing and being sued in their own name and, subject to this act, performing all acts that bodies corporate may by law perform. They are the responsible authority for the hospital concerned.

Their functions are to:

- i. provide for the care and treatment of the patients at the hospital
- ii. hire and fire staff; including providing facilities for the teaching and training of health personnel for teaching hospitals;
- iii. conduct negotiations with the ministry on the grants appropriated for the hospital;
- iv. ensure best use of the resources available to the hospital in the interests of the patients;
- v. implement government health policy; and to
- vi. devise means of financing the operations of the hospital on a continuing and sustainable basis and maintaining and improving the hospital.

In exercising these functions as a government hospital, the HMB has a duty to regard the social obligations of the hospital to provide for the health needs of the public and to assist in the implementation of national health policies and the formulation of institutional health management arrangements. Every hospital management board shall, before the commencement of each year to which the plan relates, devise an annual plan setting out the manner in which it proposes to spend the funds at its disposal and to fulfil its functions during that year.

In line with section 18 of the PFMA, the HMB is the responsible authority for administering the health services fund established for the hospital, and it should apply the funds to enable the HMB to fulfil the functions above. The health services fund established for each central, provincial, district or general hospital consists of such moneys as may be appropriated by an act of Parliament for the hospital concerned; the fees and charges payable for services and facilities provided at the hospital; any donation or grant permitted by the minister to be accepted by the hospital management board and paid into the fund; and any income derived from the investment of the surplus moneys of the fund.

Sections 22 and 23 of the Health Service Act need to be reviewed to check for compliance with applicable provisions of PFMA and the AOA that came into operation in 2010, to realign the HSA provisions to bring them within the scope of the PFMA

Section 22 on the accounts to be kept by hospital management boards states that:

- i. Each HMB keep proper books of accounts in relation to the health services fund and other records relating thereto and, as soon as possible after the end of each financial year, prepare audited accounts on the operations of the hospital in the financial year and its financial condition at the end of the financial year.
- ii. Each HMB furnish one copy of the audited accounts together with the report of the HMB within three months after the end of the financial year to which the accounts and the report relate.

Section 23 on audit of accounts provides that the accounts of a HMB be audited by the Comptroller and Auditor-General, in terms of the Audit and Exchequer Act [*Chapter 22:03*] (now replaced by sections 6 and 7 of the Audit Office Act [*Chapter 22:18*]). Any member of the HMB or health service who fails or refuses to provide the Comptroller and Auditor-General with any explanation or information required by him or her for the purpose of an audit or hinders or obstructs the Comptroller and Auditor-General in the conduct of an audit is guilty of an offence and liable to a fine not exceeding level five and/ or to imprisonment for a period not exceeding three months. The Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of a HMB with the same authorities as the Auditor-General and any expenses incurred by the person appointed in carrying out his or her audit shall be met from the health services fund.

The Mental Health Act [*Chapter 15:12*] establishes **mental hospital boards** in section 68 with a relatively less complex governance structure and less stringent reporting requirements. Section 69 on funds and property of mental hospital boards provides that they have the power to control and administer any funds and other property that may accrue to it from any source whatsoever. However, such funds and property shall be used only for the specific purpose, if any, for which the donor has given the funds or property. If no purpose has been specified by the donor, the funds are for the benefit of patients at any institution, special institution or other place for which the board has been established, including the provision of legal assistance for such patients. The chairman of a mental hospital board is responsible for keeping proper accounts of the board's funds and property, and such accounts shall be audited annually by the Comptroller and Auditor-General.

Mental hospital boards are required, from time to time, or when called upon by the minister to do so, to make to the Secretary such suggestions and observations as they considers desirable regarding the welfare of patients in the institution, special institution or other place for which the boards have been established. The boards are to report to the Secretary the result of any inspection made by them and to formulate and consider plans for the after-care of patients in the institution, special institution or other place for which the boards have been established. Section 74 provides that at least once a year the chairpersons of all mental hospital boards meet, at a date and place fixed by the Secretary, to prepare an annual report that outlines the activities of the boards during the preceding twelve months, including reports on the facilities and treatment. The report may contain proposals for improving the institutional, special institutions and other places for which the boards have been established or consider any other matters relating to the treatment, care or after-care of mentally disordered or intellectually handicapped persons.

The Medicines Control Authority of Zimbabwe (MCAZ) is established under the Medicines and Allied Substances Control Act [Chapter 15:03]. Funding for MCAZ is provided for in section 13 of the act through fees payable in terms of appropriations made by Parliament and other moneys and assets as may vest in or accrue to MCAZ, whether in the course of its functions or otherwise. The MCAZ may not accept any donation or bequest without the approval of the minister after consultation with the Minister of Finance. The MCAZ is required to keep proper accounts and other records relating to its funds, which are examined and audited by the Comptroller and Auditor-General or a person registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

In accordance with section 13A of the act, as soon as possible and in any case not later than six months after the end of the financial year concerned, MCAZ is to submit to the minister a report of its affairs during each financial year. This would include a copy of the authority's balance sheet and income and expenditure account, which the minister is required to lay before Parliament.

The National Aids Council of Zimbabwe Act [Chapter 15:14] establishes the **National AIDS Council (NAC)**. Section 25 provides that NAC's funds shall consist of any moneys payable to the council from moneys appropriated for the purpose by Parliament. Other funding may come from: fees and charges raised for services and facilities provided and other things done by the council; donations, which may be accepted with the approval of the minister; loans, which may be raised with the approval of the minister and the Minister of Finance; and any other moneys that may vest in or accrue to the council, whether in the course of its operations or otherwise.

Section 26 provides that moneys not immediately required by NAC may be invested in such manner as the minister, acting on the advice of the Minister of Finance, may approve. Section 28 provides that the NAC board ensure that proper accounts and other records relating to such accounts are kept in respect of all the council's activities, funds and property, including such particular accounts and records as the minister may direct. As soon as possible after the end of each financial year, the board is to prepare and submit to the minister a statement of accounts in respect of that financial year or in respect of such other period as the minister may direct.

Section 29 provides for the audit of the council's accounts. Subject to the Audit and Exchequer Act [*Chapter 22:03*] (repealed by the Audit Office Act and the PFMA), NAC shall appoint as auditors one or more persons approved by the minister who are registered as public auditors under the Public Accountants and Auditors Act [*Chapter 27:12*] or where required to do so the Comptroller and Auditor-General. The auditor shall be entitled at all reasonable times to require council or its agents to produce all accounts and other records relating to such accounts. Any member of the board or employee or agent of the council may be required to provide such information and explanation as in the auditor's opinion are necessary for the purpose of the audit. Any member of the board or employee or agent of the council who fails without just cause to comply with a requirement of an auditor shall be guilty of an offence and liable to a fine not exceeding level four and/ or to imprisonment for a period not exceeding three months.

After examination of the board's accounts, the auditor's report to the board and to the minister stating whether the statement of accounts gives a true and fair view of the council's financial affairs. In addition to these reports, the minister may require the board to obtain from the auditors such other reports, statements or explanations in connection with the council's activities, funds and property as the minister considers expedient, and the board shall comply with any such requirement. If, in the opinion of the auditors, they have not obtained any

information or explanation they require, or the board has not properly kept any accounts or records, or the council has not complied with its enabling act, the auditors will include this in their report.

6. Reporting on funds

The previous sections have already indicated that reporting on funds is required as part of the processes for management, oversight, audit and accounting of the funds. This section does not repeat these numerous specific reporting requirements, but provides an overview of general obligations on reporting.

6.1 Reporting to parliament

The law provides that reports of public funds be laid before Parliament. As noted earlier, section 299 of the Constitution provides that parliament monitor and oversee expenditure by the state and all commissions, institutions and agencies of government at every level, including statutory bodies, government-controlled entities, local authorities. This is to ensure that all revenue is accounted for, that all expenditure has been properly incurred and that any limits and conditions on appropriations have been observed. Section 15 of the PFMA provides that every minister lay before Parliament the annual report, financial statements and audit report within one month after the accounting officer for the public entity or constitutional entity for which the minister is responsible receives the report. This would include the finding of a disciplinary authority and any sanctions imposed by such authority that presided over a case of financial misconduct against an accounting officer or accounting authority or other person in terms of section 87.

If a minister fails to lay these documents before Parliament within six months after the end of the financial year to which those statements relate, the Speaker of the House of Assembly shall require the minister concerned to give a written explanation to the House of Assembly, setting out the reasons why they were not laid before it. The Comptroller and Auditor-General may issue a special report on the delay.

The PFMA provides for the reporting obligations on funds to Parliament.

Every accounting officer of a ministry shall keep or cause to be kept proper records of account and submit financial statements within 60 days of the end of the financial year to the Comptroller and Auditor-General for audit and the Accountant-General for consolidation. Every accounting officer of a constitutional entity or public entity shall submit to the minister, the appropriate minister and the Accountant-General, within 120 days of the end of the financial year, an annual report on the activities of the entity, audited financial statements of the entity and the audit report on those statements.

The annual report and audited financial statements should contain a report on the activities, outputs and outcomes of the ministry, presenting fairly the state of affairs of the ministry, reporting unit, constitutional entity or public entity for which the ministry is responsible, including, where appropriate:

- particulars relating to losses arising through criminal activities, and criminal and disciplinary action taken;
- instances of unauthorised and irregular expenditure;
- instances of fruitless and wasteful expenditure;
- recoveries and write-offs of public resources; and
- any other matters as may be prescribed.

Every accounting officer shall submit to the House of Assembly the annual report and the audited financial statements relating to the operations of a constitutional entity or public entity within 30 days of the completion of the audit. Any other reports that may be required in terms of this act the office may submit to the minister, the appropriate minister, the Accountant-General, the House of Assembly and the Comptroller and Auditor-General.

Every accounting officer of a ministry shall, within 90 days of the end of the financial year, submit to the respective Parliamentary Portfolio Committee the unaudited annual financial statements of his or her respective ministry. The minister shall, within 90 days of the end of the financial year, submit the unaudited consolidated annual financial statements to the House of Assembly. Every appropriate minister shall within 30 days of the tabling of the Report of the Comptroller and Auditor-General before the House of Assembly submit to the respective Parliamentary Portfolio Committee the audited annual financial statements of his or her respective ministry. The minister shall submit to the House of Assembly audited consolidated annual financial statements within 180 days of the end of the financial year.

The PFMA also provides for monthly, quarterly and annual reports.

Section 34 of the PFMA provides for the preparation and reporting of **monthly financial statements**. Every director of finance shall prepare or cause to be prepared monthly financial statements of the ministry concerned and shall submit such statements to the accounting officer in that ministry and to the Accountant-General, within fourteen days of the end of the respective month. Every accounting officer shall submit monthly financial statements and reports for submission by the minister to the appropriate Parliamentary Portfolio Committee, within 30 days of the respective month. The Accountant-General shall prepare consolidated monthly financial statements and shall submit such statements to the Secretary, who shall publish such statements or cause them to be published in the *Gazette*, within 30 days of the next succeeding month.

In section 33 of the PFMA every director of finance is required to prepare or cause to be prepared **quarterly financial statements** of the ministry concerned and to submit such statements to the accounting officer in that ministry and the Accountant-General, within fourteen days of the end of the respective quarter. Every accounting officer should submit quarterly financial statements and reports for submission by the minister to the appropriate Parliamentary Portfolio Committee, within 60 days of the end of the respective quarter. The Accountant-General has a duty to prepare consolidated quarterly financial statements and shall submit such statements to the Secretary, for presentation by the minister to the House of Assembly and to the appropriate Parliamentary Portfolio Committee, within 60 days of the end of the respective quarter.

Section 32 of the PFMA contains provisions on the preparation and reporting of **annual financial statements** by ministries. Every director of finance is required to prepare the annual financial statements of the ministry concerned and submit such statements to the accounting officer in that ministry and to the Accountant-General within 30 days of the year concerned. The Comptroller and Auditor-General or any independent auditor has a duty to audit the annual financial statements and return the audited statements to the accounting officer within 60 days of their receipt.

Section 35 on the consolidation of annual financial statements provides that unless the Accountant-General otherwise directs, all appropriation accounts be closed and the final returns submitted to the Treasury within one month after the end of the financial year. Every accounting officer or receiver of revenue should also prepare and transmit to the Accountant-

General, within two months after the end of each financial year, statements showing receipts and disbursements of public money, not being public money paid into a separate trust, fund or account. Within three months after the end of each financial year, the Accountant-General has a duty to prepare and transmit to the Comptroller and Auditor-General, in such detail as the Accountant-General, after consultation with the Comptroller and Auditor-General, considers necessary, statements of accounts showing the transactions of the CRF and the financial position of the state on the last day of that financial year.

Unless otherwise provided by law, an officer administering a trust, fund or account shall, within three months after the end of each financial year, prepare and transmit to the Accountant-General financial accounts, statements or returns in relation to that trust, fund or account during that financial year in such form as the Accountant-General may direct. If in the opinion of the responsible minister it would not be in the public interest to publish such account, statement or return, which is required to be transmitted to the Accountant-General, the accounting officer shall, on the instructions of the minister given in writing, endorse the account, statement or return accordingly.

Section 49 of the PFMA requires the accounting authority for a public entity to keep full records of its financial affairs, prepare financial statements for each financial year in accordance with generally accepted accounting practice and submit the financial statements within two months after the end of the financial year to the auditors of the public entity for auditing and to the Accountant-General. If it is a designated corporate body or specified public entity, the report is submitted to the Treasury. The accounting authority is required to submit an annual report on the activities of that public entity during that financial year, the financial statements for that financial year after the statements have been audited and the report of the auditors on those statements. The report must be submitted within five months of the end of a financial year to the Treasury, the appropriate minister and, if the Comptroller and Auditor-General did not perform the audit of the financial statements, the Comptroller and Auditor-General.

These annual reports and financial statements should fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned. They should also include particulars of:

- any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred in the financial year;
- any criminal prosecution or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
- any losses recovered or written off;
- any financial assistance received from the state and commitments made by the state on its behalf;
- any other matters that may be prescribed; and
- the financial statements of any subsidiaries of the public entity.

The accounting authority should submit these reports and statements to the appropriate Minister for him. her to table in Parliament. The Treasury may also direct that, instead of a separate report, the audited financial statements of a specified public entity be incorporated in those of a Ministry designated by the Treasury.

6.2 Publication and public reporting

Beyond reporting to Parliament, which provides a channel for public reporting, section 38 of the PFMA provides that within 30 days after the end of each month, the Treasury shall

publish in the *Gazette* a statement of actual revenue and expenditure with regard to the CRF. After the end of a prescribed period, but at least quarterly, every ministry shall submit to the Treasury a statement of revenue and expenditure with regard to the CRF, for publication in the *Gazette* within 30 days after the end of each prescribed period. The statement shall specify the following amounts and compare those amounts in each instance with the corresponding budgeted amounts for the relevant financial year:

- the actual revenue for the relevant period, and for the financial year up to the end of that period;
- the actual expenditure for each vote, distinguishing between capital and recurrent expenditure, for the relevant period, and for the financial year up to the end of that period; and
- actual borrowing for the relevant period, and for the financial year up to the end of that period.

The Treasury may determine the format of the statement of revenue and expenditure and the annual report; and any other details the statement may contain. For public reporting access to information laws are also important, as is their compliance with provisions of the new Constitution, as already discussed in section 3.1 of this report.

7. Other duties and obligations

The PFMA in section 78 provides for powers of Treasury to prescribe or issue instructions or directions to ministries, whether individually or collectively, concerning a wide range of matters that may not be specifically covered in the PFMA or referred to earlier in this report, including:

- any matter prescribed for ministries in terms of this act;
- the recovery of losses and damages of public resources;
- the handling of, and control over, trust money and property entrusted to the state or any employee of the state in his or her capacity as such;
- the rendering of free services by or on behalf of the state;
- the writing off of losses of public resources or amounts owed to the state;
- liability for losses and damages of public resources and procedures for the recovery thereof;
- the cancellation or variation of contracts to the detriment of the state;
- the settlement or waiver of claims by or against the state;
- the remission of money due to the CRF, refunds of revenue and payments from the CRF, as an act of grace;
- the alienation, letting or other disposal of state property;
- gifts or donations by or to the state;
- the charging of expenditure against particular votes;
- the variation of approved budgets by way of virements (transfers from one budget line to another);
- the establishment of and control over public entities;
- the improvement and maintenance of immovable state property;
- the avoidance of fruitless and wasteful, unauthorised and irregular expenditure;
- the determination of any scales of fees, other charges or rates relating to revenue accruing to, or expenditure from, the CRF;
- the treatment of any specific expenditure;
- vouchers or other proofs of receipts or payments that are defective or have been lost or damaged;
- assets that accrue to the state by operation of any law;

- any other matter that may facilitate the application of the PFMA;
- any matter that may be prescribed for all ministries, public entities, constitutional entities and statutory funds to which the PFMA applies;
- financial management and internal control;
- the determination of a framework for an appropriate procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective;
- audit committees, their composition, appointment and functioning;
- internal audit units and their functioning;
- the duties and responsibilities of accounting officers, receivers of revenue and other persons;
- the issue of receipts;
- the reporting of any loss or destruction of or deficiency in public resources;
- the remission or writing off of public money; and
- any other matter that may facilitate the administration of the PFMA.

A Treasury instruction or direction in terms of this may be limited in its application to different classes of a ministry, public entity, constitutional entity and statutory fund to which the PFMA applies, accounting officers and accounting authorities. Such Treasury instructions or directions do not come into force until the minister approves them and they are published as a statutory instrument or general notice in the *Gazette*.

The Treasury may also on good grounds approve a departure from a Treasury instruction or direction on any condition it deems fit and shall promptly inform the Comptroller and Auditor-General in writing when it does so.

8. References

8.1 Background documents

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8.2 National laws referred to:

15. Access to Information and Protection of Privacy Act [Chapter 10:27]
16. Anti-Corruption Commission Act [Chapter 9:22]
17. Audit Office Act [Chapter 22:18]
18. Constitution of Zimbabwe, 2013
19. Finance Act [Chapter 23:05] and the Appropriation Bill of 2013
20. Health Services Act [Chapter 15:16]
21. Medicines and Allied Substances Control Act [Chapter 15:03]
22. Mental Health Act [Chapter 15:12]
23. National AIDS Council of Zimbabwe [Chapter 15:14]
24. Procurement Act [Chapter 22:14]
25. Public Finance Management Act [Chapter 22:09]
26. Radiation Protection Act [Chapter 15:15]
27. Revenue Authority Act [Chapter 23:11]
28. Zimbabwe National Family Planning Council Act [Chapter 15:11]