

A CONSOLIDATED VERSION OF

THE FINANCE AND AUDIT ACT

30 July 2009

A consolidated version of

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[RL 2/741 – 12 June 1982]

[Amended Act 68/85, Act 15/88, Act 3/91, Act 48/91, Act 13/94, Act 13/96, Act 15/97, Act 18/99, Act 19/99, GN 152/99, GN 156/99, GN 60/2000, Act 23/2001, Act 39/2001, GN 45/2001, GN 60/2001, GN 188/2001, GN 23/2002, GN 115/2002, Act 20/2002, GN 126/2003, GN 196/2003, Act 12/2005, GN 70/2005, GN 89/2006, Act 17/2007, Act 4/2008, GN 110/2008, Act 1/2009, Act 14/2009]

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PART I - PRELIMINARY

1. Short title

This Act may be cited as the Finance and Audit Act.

2. Interpretation

In this Act –

“appropriate Minister”, in relation to a Ministry, Government department or statutory body, means the Minister to whom responsibility for the Ministry, Government department or statutory body, as the case may be, is assigned;

“bank” means the Bank of Mauritius, the Development Bank of Mauritius and any bank licensed under the Banking Act;

“Commissioner” means the Commissioner responsible for the subject of finance under the Rodrigues Regional Assembly Act;

“estimates of expenditure” –

- (a) means the annual estimates of expenditure based on programmes and sub-programmes (programme-based budgeting) prepared on a 3-fiscal year rolling basis, specifying the resources to be allocated and the outcomes to be achieved and outputs to be delivered, the estimates for the first year of every such period of 3 fiscal years requiring appropriation by the National Assembly; and
- (b) includes any supplementary estimates of expenditure appropriated by the National Assembly;

“estimates of revenue” means the annual estimates of revenue prepared on a 3-fiscal year rolling basis;

“financial instructions” means instructions issued under section 22;

“fiscal year” has the same meaning as “financial year” in section 111 of the Constitution;

“General Orders” means instructions including instructions in the form of Personnel Management Manual issued under the authority of the Government for, inter alia, the conduct and discipline of public officers;

“investment project” means an intervention relating to acquisition or preservation, or to both acquisition and preservation of non-financial assets for meeting defined objectives and consisting of a set of interrelated activities to be carried out within a specified budget and a time-schedule;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“outcome” means the likely or achieved short-term and medium-term effects of an activity’s or intervention’s outputs;

“outputs” –

- (a) means the products, goods and services resulting from the carrying out of an activity; and
- (b) includes changes resulting from activities relevant to the achievement of outcomes;

“programme” means a group of activities or interventions intended to contribute to a common set of outcomes, specific objectives and outputs that are verifiable, consisting of a defined target and a given budget including staffing and other necessary resources;

“public money” includes –

- (a) the public revenues of the Government; and
- (b) any money or funds held in his official capacity, whether temporarily or otherwise, by a public officer, either alone or jointly with any person;

“Regional Assembly” means the Rodrigues Regional Assembly established under section 75A of the Constitution;

“revenue” means any cess, toll, tax, rate, duty, fee, fine, penalty, forfeiture, proceeds of sale, loan, grant or other receipt and due of the Government arising from whatever source, and over which Parliament has the power of appropriation;

“Rodrigues Capital Fund” means the Rodrigues Capital Fund established under section 75D of the Constitution;

“Rodrigues Consolidated Fund” means the Rodrigues Consolidated Fund established under section 75D of the Constitution;

“Special Fund” means a fund specified in the Schedule;

“sub-programme” means the programme hierarchy which breaks programmes into sub-programmes and which in turn break into activities or interventions and is designed to achieve at least one specific objective.

[Amended 48/91, 39/2001, 17/2007, 4/2008, 1/2009]

2A. Financial year

For the purposes of section 111 of the Constitution, “financial year” means the period of 12 months specified in that section but ending on 31 December in any year.

[Added 1/2009]

PART II - FINANCE

3. Consolidated Fund

(1) The Consolidated Fund established by section 103 of the Constitution shall consist of -

- (a) any money standing to the credit of the Consolidated Fund;
- (b) all revenue of the Government;
- (c) any other money properly accruing to the Consolidated Fund under any enactment,

but shall not include any deposit specified in section 8 or any money properly accruing to a Special Fund.

(2) No money shall be withdrawn from the Consolidated Fund except on the authority of a warrant under the Minister’s hand, and no such warrant shall be issued unless the expenditure to which it relates -

- (a) has been authorised by an appropriate Act in respect of the fiscal year during which the withdrawal is to take place; or
- (b) is authorised by this Act or by any other enactment directly charging it on the Consolidated Fund.

(3) Any money standing to the credit of the Consolidated Fund shall, except for day to day cash requirements or for investments made under subsection (4), be kept in a bank approved by the Minister.

- (4) (a) The Minister may authorise the investment of any money standing to the credit of the Consolidated Fund with a bank, financial institution, fund, or in such securities, as may be approved by the Minister.
- (b) Any money invested under this subsection and any interest received from such investment shall form part of the Consolidated Fund.

[Amended 48/9, 13/96, 4/2008]

4. Vote on account

- (1) (a) Subject to paragraph (b), the Minister may, by warrant under his hand, issue from the Consolidated Fund such sums as may be necessary to meet, during any period not exceeding 4 months between the end of a fiscal year and the enactment of the Appropriation Act in respect of the next fiscal year, the estimates of expenditure for which corresponding provision had been made in the previous fiscal year.
- (b) Any expenditure incurred under this subsection shall not exceed one third of the amount provided for in the corresponding provision of the estimates in the previous fiscal year.

(2) Any sum issued under subsection (1) shall be deemed to have been issued in anticipation of approval being given by Parliament, by an Act authorising the appropriation for the fiscal year in which the sum was issued, and on the coming into force of the Appropriation Act, the warrant shall cease to have effect and any issue made under it shall be deemed to have been made under the Appropriation Act and shall be accounted for accordingly.

[Amended 4/2008]

4A. Fiscal rule

The public sector debt shall be governed by the ceiling referred to in section 7 of the Public Debt Management Act 2008.

[Added 4/2008]

5. Provision for contingencies

(1) There shall be in the estimates of expenditure, in every fiscal year, a provision for contingencies to meet urgent and unforeseen expenditure in accordance with subsection (2).

- (2) Where the Minister is of opinion that it is necessary to incur expenditure –
- (a) on any service –
- (i) which, being a new service, is not provided for in the estimates of expenditure; or

- (ii) which will result in an excess of the sum provided for that service in the estimates of expenditure,

and the expenditure cannot, without injury to the public service, be postponed; or

- (b) in case of natural disasters or other emergencies requiring exceptional expenditure,

he may, by warrant under his hand, authorise from the provision under subsection (1), the payment of the expenditure.

(3) Subject to subsection (4), the provision under section (1) shall not, in a fiscal year, exceed 3 per cent of the total estimates of expenditure excluding estimates in respect of investment projects for that fiscal year.

(4) The percentage referred to in subsection (3) shall, in each fiscal year, be reduced so that, in the fiscal year ending 31 December 2012, the percentage shall not exceed 2 per cent, and that percentage shall remain the ceiling for every subsequent fiscal year.

(5) Where in any fiscal year, expenditure is required to be incurred in excess of the provision under subsection (1), the expenditure shall, unless determined by the Minister to be incurred for the purposes of section 5(2)(b), be earmarked to be incurred in the following fiscal year.

(6) Where, in a fiscal year, there is an increase in the percentage pursuant to subsection (5), the Minister shall present a plan to the Cabinet describing how, within the 2 fiscal years immediately following that fiscal year, the average annual percentage of the provisions for contingencies to the estimates of expenditure shall be restored to the percentage referred to in subsection (4).

[Amended 15/88, 13/94, 13/96, 39/2001, 20/2002, 4/2008]

6. Other advances from Consolidated Fund

(1) Subject to this section, the Minister may, by warrant under his hand, authorise the issue of an advance from the Consolidated Fund or from a deposit specified in section 8 -

- (a) on behalf of, and recoverable from, the Government of any other State;
- (b) to or on account of a Special Fund;
- (c) to a public officer, for the purposes and under the conditions specified in financial instructions or General Orders;
- (d) to or on behalf of any other person, where the advance is required in the public interest; and

- (e) for the purpose of expenditure authorised by any enactment which regulates the raising of loans by or on behalf of the Government in anticipation of the raising all or any part of the loan.

(2) An advance to or account of a Special Fund, other than an advance issued under subsection (1)(e), shall be recoverable within a period not exceeding 12 months after the close of the fiscal year in which it was made.

(3) Advances issued under subsections (1)(b), (c) and (d) shall not, after deduction of any repayment, in the aggregate exceed 3,500 million rupees at any time.

(4) Advances issued under subsection (1)(e) shall not in the aggregate exceed such amount as the Minister may authorise.

[Amended 68/85, 3/91, 13/96, 18/99, 4/2008]

7. -

8. Deposits

(1) Any deposit being money, other than money raised or received for the public purposes of Mauritius or money which accrues to a Special Fund, which may be deposited with the Accountant-General or with any other public officer authorised to receive the deposit by the Accountant-General by financial instructions or by General Orders, shall not form part of the Consolidated Fund and shall not except as provided in subsections (2), (3) and (4), be applied in any way for the public purposes of Mauritius.

(2) Every deposit –

(a) shall be held by the Accountant-General; and

(b) (i) may, with the Minister's approval, be invested in the manner specified in section 3(4)(a); or

(ii) may be used to finance advances in the manner specified in section 6.

(3) Any interest or dividend received in respect of a deposit shall, as soon as possible thereafter and unless the Minister otherwise directs, be credited to the Consolidated Fund.

(4) Subject to this section, the Accountant-General may administer a deposit in such manner as he thinks fit and may, in any appropriate case, refund a deposit or any part of it to any person entitled to it.

(5) (a) A deposit which is unclaimed for 5 years shall, subject to any other enactment, cease to be a deposit and accrue to the Consolidated Fund.

(b) The Minister may, by warrant under his hand, refund a deposit or any part to a person who subsequently satisfies him that he is entitled to it.

[Amended 4/2008]

9. Special Funds

(1) No proposal for the creation of a new Special Fund shall be made save in exceptional circumstances and with the prior approval of the Minister.

(1A) Every Special Fund shall, if it is so provided, be administered in the manner specified in the enactment or the instrument creating it.

- (2) (a) Where there is no such provision in the enactment or instrument creating a Special Fund, the Minister may provide for its administration.
- (b) Except where such provision is contained in an enactment, the Minister may, if in his opinion further and better provision should be made for the administration of a Special Fund, provide for the better administration of the Fund.
- (3) (a) Subject to this section and to any other enactment, money standing to the credit of a Special Fund may, with the Minister's approval, be invested with a bank, financial institution, fund, or in such securities, as may be approved by the Minister.
- (b) Any interest or dividend received in respect of a Special Fund shall accrue to that Fund.

[Amended 48/91, 13/96, 4/2008]

10. *[Repealed 4/2008]*

11. *[Repealed 17/2007]*

12. *[Repealed 17/2007]*

13. *[Repealed 17/2007]*

14. *[Repealed 17/2007]*

14A. *[Repealed 23/2001]*

[Added 15/97, Amended 19/99]

PART III – AUDIT AND ACCOUNTS

15. Powers of auditors

Anything which, under the authority of this Act or of any other enactment, may be done by the Director of Audit, other than the certifying of and reporting on accounts for the National Assembly, may be done by an officer of his staff authorised by him.

[Amended 39/2001]

16. Duties of Director of Audit

- (1) The Director of Audit shall satisfy himself -
 - (a) that all reasonable precautions have been and are taken to safeguard the collection of public money;
 - (b) that all laws, directions or instructions relating to public money have been and are duly observed;
 - (c) that all money appropriated or otherwise disbursed is applied to the purpose for which Parliament intended to provide and that the expenditure conforms to the authority which governs it; and
 - (d) that adequate directions or instructions exist for the guidance of public officers entrusted with duties and functions connected with finance or storekeeping and that such directions or instructions have been and are duly observed;
 - (e) that satisfactory management measures have been and are taken to ensure that resources are procured economically and utilized efficiently and effectively.

(1A) The Director of Audit shall carry out performance audit and report on the extent to which a Ministry, Department or Division is applying its resources and carrying out its operations economically, efficiently and effectively.

(2) The Director of Audit shall not be required to undertake any examination of accounts partaking of the nature of a preaudit and involving acceptance by him of responsibility which would preclude him from full criticism of any accounting transactions after those transactions have been duly recorded.

[Amended 23/2001, 4/2008]

17. Powers of Director of Audit

- (1) In the exercise of his duties under this Act the Director of Audit may –
 - (a) call upon any public officer for any explanations and information which he may require in order to enable him to discharge his duties; and
 - (b) with the concurrence of the head of any Ministry or Department, authorise an officer of that Ministry or Department to conduct on his behalf any inquiry, examination or audit and such officer shall report thereon to the Director of Audit;
 - (c) without payment of any fee cause searches to be made in, and extracts to be taken from any document in the custody of any public officer;

- (d) lay before the Attorney-General a case in writing as to any question regarding the interpretation of any enactment concerning the powers of the Director of Audit or the discharge of his duties and the Attorney-General shall give a written opinion on such case.

(2) The Director of Audit may, if it appears to him to be desirable, send a special report on any matter incidental to his powers and duties under this Act to the Speaker of the National Assembly to be by him presented to the National Assembly.

(3) Where the Minister fails, within a reasonable time, to lay any report made under section 20 before the National Assembly, the Director of Audit shall send such report to the Speaker of the National Assembly to be by him presented to the National Assembly.

[Amended 39/2001]

17A. Immunity

(1) No action shall lie against the Office of the Director of Audit, the Director of Audit or any officer of his staff, in respect of any act done or omitted to be done by the Office of the Director of Audit and by the Director of Audit or any officer of his staff during or after his appointment, in the execution in good faith, of its or his functions under the Act.

(2) This section shall be in addition to and not in derogation of the Public Officers' Protection Act.

[Added 4/2008]

18. Losses and irregularities

Where it appears to the Director of Audit that a fraud, or serious loss or serious irregularity has occurred in the receipt, custody or expenditure of public money or in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other Government property, or in the accounting of the same, he shall immediately bring the matter to the notice of the Financial Secretary who shall forthwith report such matter to the Minister.

19. Annual statements

(1) Subject to subsections (2) and (4), the Accountant-General shall, within 6 months of the close of every fiscal year, sign and submit to the Director of Audit statements showing fully the financial position of Mauritius on the last day of such fiscal year.

(2) Subject to subsection (5), the Minister may, by direction to the Accountant-General, extend the period within which the statements shall be presented, and any direction so given shall be sent forthwith to the Speaker of the National Assembly to be by him presented to the National Assembly.

- (3) The statements required under subsection (1) shall include -
- (a) a statement of assets and liabilities;
 - (aa) a statement of receipts and payments;
 - (b) an abstract account of revenue and expenditure of the Consolidated Fund;
 - (c) *[Deleted]*
 - (d) a detailed statement of revenue and a detailed statement of expenditure by programmes and sub-programmes of the Consolidated Fund;
 - (dd) a progress report on performance in respect of outcomes achieved and outputs delivered;
 - (e) *[Deleted]*
 - (f) a statement of investments;
 - (g) a detailed statement of advances;
 - (h) a statement of the Special Funds deposited with the Accountant-General, indicating the assets by which such funds are represented;
 - (i) a detailed statement of deposits;
 - (j) a statement of public sector debt;
 - (k) *[Deleted]*
 - (l) a statement of contingent liabilities, including details of any loans, bank overdrafts or credit facilities guaranteed by the Government;
 - (m) a statement of all outstanding loans financed from revenue;
 - (n) a statement of arrears of revenue;
 - (o) a statement of claims abandoned;
 - (p) a statement of losses charged to expenditure;
 - (q) a statement of stores losses;
 - (r) a tabular summary of all unallocated stores showing opening and closing stocks; and
 - (s) *[Repealed 17/2007]*

(t) *[Repealed 17/2007]*

(u) such other statements as the National Assembly may require.

(4) Subject to subsection (5), the Commissioner shall, within 3 months of the close of every fiscal year, sign and submit to the Director of Audit statements showing fully the financial position of the Island of Rodrigues on the last day of such fiscal year.

(5) The Minister may, by direction to the Commissioner, extend the period within which the statements shall be presented, and any direction so given shall be sent forthwith to the Regional Assembly.

(6) The statements required under subsection (4) shall include –

(a) a statement of assets and liabilities;

(b) an abstract account of revenue and expenditure of the Rodrigues Consolidated Fund;

(c) *[Repealed]*

(d) a detailed statement of revenue and a detailed statement of expenditure, by programmes and sub-programmes, of the Rodrigues Consolidated Fund;

(e) *[Repealed]*

(f) a statement of investments;

(g) a detailed statement of advances;

(h) a detailed statement of deposits;

(i) a statement of arrears of revenue;

(j) a statement of claims abandoned;

(k) a statement of losses charged to expenditure;

(l) a statement of stores losses;

(m) a tabular summary of all unallocated stores showing opening and closing stocks;

(n) a statement of foreign aid received;

(o) such other statements as the Regional Assembly may require.

[Amended 15/97, 23/2001, 39/2001, 17/2007, 4/2008, 1/2009]

20. Annual certificates and reports

(1) Subject to subsection (2), the Director of Audit shall, within 8 months of the close of every fiscal year, send to the Minister copies of the statements submitted in accordance with section 19 together with a certificate of audit and a report upon his examination and audit of all accounts relating to public money, stamps, securities, stores and other property –

- (a) of the Government; and
- (b) of the Regional Assembly relating to the Island of Rodrigues,

and the Minister shall as soon as possible thereafter lay those documents before the National Assembly.

(2) The Minister may, by direction to the Director of Audit, extend the period within which the reports shall be transmitted and any direction so given shall be sent forthwith to –

- (a) the Speaker of the National Assembly to be by him presented to the National Assembly; and
- (b) the Chairperson of the Regional Assembly to be by him presented to the Regional Assembly.

[Amended 39/2001, 4/2008]

PART IV - MISCELLANEOUS

20A. Financial activities

(1) The Government in respect of the Island of Mauritius, or the Regional Assembly in respect of Rodrigues may, and shall be deemed always to have been empowered to, undertake such financial or other similar activities as it thinks fit.

(2) Any money required for the purpose of an activity under subsection (1) shall be paid out of the Consolidated Fund or the Rodrigues Consolidated Fund, as the case may be.

[Amended 39/2001, 4/2008]

21. Designation of officers

(1) Subject to subsection (2), the Minister shall designate in writing the public officers –

- (a) who shall be accounting officers and who shall be charged with the duty of controlling expenditure on any service in respect of which public funds have been appropriated; and

- (b) who shall be receivers of revenue and shall be charged with the duty of collecting revenue and paying that revenue into public funds.

(2) An officer designated as receiver of revenue may appoint another officer to act on his behalf and any officer so appointed shall be deemed to have been designated under subsection (1).

- (3) The Minister may in writing revoke any designation made under this section.

22. Financial instructions

(1) The Minister may issue financial instructions for the better carrying out of the provisions of this Act and, without prejudice to the generality of this provision, financial instructions may provide for -

- (a) the collection, receipt, custody, issue, expenditure, due accounting for, care and management of any public money and the guidance of all persons concerned therewith;
- (b) the record, examination, inspection and departmental check of all receipts and expenditure and the keeping of all necessary books and accounts;
- (c) the forms for all documents required to be kept by this Act or by financial instructions;
- (d) the purchase, safe custody, issue, sale, disposal or writing off of public stores and other property of the Government, and the proper accounting for, and stocktaking of, those stores and property;
- (e) the preparation of estimates of revenue and estimates of expenditure;
- (f) the authorisation of rates of payment of public funds for specific purposes where the rates of payment are not provided by law; and
- (g) the making of advances to public officers and other persons and the rates and limits of those advances and the rates of interest thereon.

(2) Financial instructions shall be published in such manner as the Minister shall direct and shall include instructions in the form of the Financial Management Manual (FMM) and the Programme-Based Budgeting Manual (PBBM).

(2A) Every public officer shall, in the performance of his duties, comply with the financial instructions issued under this section.

[Amended 4/2008]

22A. Investment Project Process Manual (IPPM)

(1) The Minister to whom responsibility for the subject of public infrastructure is assigned shall, after consultation with the Minister, issue instructions including instructions in the form of Investment Project Process Manual for better -

- (a) organising the investment projects process;
- (b) developing a single window system for approval of projects;
- (c) establishing best practices in budget expenditure in respect of investment projects based on Programme-Based-Budgeting principles;
- (d) developing a well defined long-term pipeline of projects;
- (e) ensuring active participation of the implementing Ministry or Department in the process leading to a timely completion of projects within the approved budget.

(2) Every public officer shall, in the performance of his duties, comply with the instructions referred to in subsection (1).

[Added 4/2008]

22B. Non-compliance with instructions

Where a public officer does not comply with –

- (a) the General Orders;
- (b) financial instructions issued under section 22; or
- (c) instructions issued under section 22A,

the responsible officer may refer the matter to the appropriate Service Commission for disciplinary action.

[Added 4/2008]

23. Delegation of powers

The Minister may delegate to the Financial Secretary any of the powers exercisable by him under this Act other than those specified in sections 6(4), 9(2), 9(3) and 24.

23A. Transitional provisions

(1) The assets and liabilities of the Consolidated Sinking Fund as at 30 June 2007 shall, on 1 July 2007, be transferred to the Consolidated Fund.

(2) The balance of the Capital Fund as at 30 June 2008 shall, on 1 July 2008, be transferred to the Consolidated Fund.

(3) Notwithstanding the repeal of section 5, the total amount of advances made from the Contingencies Fund shall be cleared upon the passing of the Supplementary Appropriation Bill in respect of the financial year ending 30 June 2008.

(4) (a) Sections 19 and 20 and the other relevant provisions of this Act shall apply to the estimates of revenue and estimates of expenditure referred to in section 21 of the Finance and Audit (Amendment) Act 2008.

(b) Sections 19 and 20 and the other relevant provisions of this Act and Part IV of the Rodrigues Regional Assembly Act shall apply to the draft estimates of recurrent revenue and recurrent expenditure and capital revenue and capital expenditure referred to in section 44(6) and (7) of the Rodrigues Regional Assembly Act.

[Added 17/2007, Amended 4/2008, 14/2009]

Transitional provisions (*Section 21 of the Finance and Audit (Amendment) Act 2008*)

The Minister shall present estimates of revenue and estimates of expenditure in respect of the period of 6 months ending 31 December 2009.

24. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Such regulations may provide for -

- (a) the administration or the better administration, as the case may be, of a Special Fund; and
- (b) *[Deleted]*
- (c) the amendment of the Schedule.

[Amended 4/2008]

SCHEDULE (*section 2*)

SPECIAL FUNDS

Co-operative Development Fund
Curatelle Fund
De Chazal Maternity Home Fund

Employees Welfare Fund
Food Security Fund
Francophone Summit Special Fund
Fund for the Promotion of Culture
Health Fund
Human Resource, Knowledge and Arts Development Fund
Local Infrastructure Fund
Lycée Polytechnique Sir Guy Forget Fund
Manufacturing Adjustment and SME Development Fund
Maurice Ile Durable Fund
Morris Legacy Fund
National Energy Fund
National Infrastructure Development Fund
National Parks and Conservation Fund
National Pensions Fund
National Solidarity Fund
National Trust Fund for Renal Dialysis Treatment
Non-Governmental Organisation Trust Fund
Permanent Resident Investment Fund
Portable Pension Fund
Post Office Savings Bank
President Fund for Creative Writing in English
Prime Minister's Children Fund
Prime Minister's Cyclone Relief Fund
Prime Minister's Relief and Support Fund
Regional Economic Zones Development Fund
Social Housing Development Fund
Special Fund for the welfare of the Elderly
State of Jersey – Mauritius Self Reliance Fund
Students' Relief Fund
Sugar Cane Disease Control Fund
Sugar Industry Labour Welfare Fund
Tourism Fund
Treasury Foreign Currency Management Fund
Trust Fund for Excellence in Sports
Trust Fund for the Social Integration of Vulnerable Groups

[Amended GN 152/99, GN 156/99, GN 60/00, GN 188/00, GN 45/2001, GN 60/2001, GN 24/2002, GN 115/2002, GN 126/2003, GN 196/2003, section 134(1) of Act 12 of 2005, GN 14/2005, GN 70/2005, Act 12/2005, GN 89/2006, GN 110/2008]
