Budget Alert

GRENLEC TRANSACTION DERAILS NATIONAL BUDGETS

By Laurel Theresa Bain

The repurchase of WRB shares in GRENLEC by the Government of Grenada has derailed the 2020 National Budget and has the potential to derail the 2021 National Budget.

On 2nd December 2020 detailed information was presented to Parliament on the provisional outcomes of the 2020 Budget relative to the approved Budget, the 2021 Budget with the estimated expenditure for 2021, and the sources of financing the expenditure. The information is expected to be accurate and presented with integrity for the approval of Parliament.

The revelation by WRB, on 24th December 2020 of the repurchase of its shares by the Government was followed by public disclosure of this by the Government on 29th December 2020. The public was informed that the repurchase of WRB shares in GRENLEC was financed by savings on the capital account of the 2020 Budget. Subsequently, it was argued that this transaction settled a debt in response to a court judgement, and therefore was not subject to Parliamentary approval.

The transaction involving the repurchase of the WRB shares needs to be clarified. The statements by the government to date on the matter, rather than explaining the transaction to the public in clear, unambiguous terms, have generated much confusion and many questions concerning the legality of the transaction, the source of its of funding and of course the impact on the Budget.

The treatment of the transaction relating to the repurchase of the shares from WRB by the Government raises the issue of the integrity of the information provided to Parliament and by extension the public. Fundamental questions arise as to [i] whether undertaking such transaction was in compliance with the legal requirements for incurring such expenditure by the Government; [ii] whether savings were available in the capital account to finance this transaction; and [iii] whether the financial resources budgeted in the 2020 Budget could accommodate the transaction. This transaction needs to be examined in the context of the legislative framework for the budget process and the projected budget outcomes. This article examines each of these.

Legal Basis of Transaction

Fundamental to the preparation and execution of the Budget is the adherence to the provisions of the Constitution which supersedes any other legislation. The claim that the repurchase of the WRB shares for approximately one hundred and seventy million dollars ($170M) was accommodated in the 2020 Budget needs to be critically examined. Unless there was explicit provision in the 2020 Budget for this transaction, this is not legally possible based on the Constitution. There was no provision in the 2020 Budget for such an expenditure and therefore the presentation of a Supplementary Appropriation Bill to Parliament for this purpose would have been required. The Constitution specifically states that the approved Appropriation Bill is for expenditure for specific purposes. The expenditures for the specific purposes are detailed in the Estimates of Revenue and Expenditure which is presented to Parliament with the Appropriation Bill. The governance arrangements for fiscal management are outlined in sub-sections 75-79 of the Constitution.

The classification of the transaction as a judgement debt does not exempt the process from Parliamentary scrutiny and approval. The Public Finance Management Act (PFM) 2015 authorizes the Minister to settle claims against the government out of the Consolidated Fund on the advice of the Attorney General, the Accountant General and the Director of Audit, but it states clearly at Article 42 (2) that no payments shall be made out of the Consolidated Fund for claims against the government that is in excess of amounts available **in the appropriation for the purpose**. The qualification at Article 42(2) means that payment out of the Consolidated Fund to settle judgement claims against the government is only permissible if the amounts had been approved/appropriated by Parliament and secondly the amount of the claim settled cannot exceed the approved amount. Neither the Constitution nor the PFM Act makes any provision for judgement claims against the government to be settled out of any unused balances in other votes and without reverting to Parliament.

The only constitutional arrangement for expenditure not approved by Parliament is under the Contingencies Fund. The use of the Contingencies Fund is restricted to unforeseen expenditures and must be immediately followed by a Supplementary Appropriation Bill to Parliament and the Fund must be replenished.

Financing of the Repurchase of WRB Shares

The source of financing for the WRB repurchased shares also has to be interrogated. In the Government Press Conference of 30th December 2020, it was stated that the transaction was not financed from loans or grants but from savings on the capital account, described as financial resources that became available as a result of the non-implementation of capital projects in the 2020 Budget.

The failure to implement capital projects cannot be considered savings. Savings on the capital account, as commonly understood, would only accrue if projects were efficiently implemented so that the actual expenditure was less than the budgeted amount for the projects. Further it is assumed that unless these projects are cancelled, they will be implemented in 2021 and therefore the financing is still needed. It is comparable to a private investor whose construction activity was delayed due to bad weather and the unavailability of labour. The funds not spent due to the delay in implementation cannot be considered savings. In any event, resources approved by Parliament for one purpose cannot simply be appropriated for another purpose. Without following the legislated procedures, such expenditure would be unauthorized expenditure.

Another pertinent issue is the adequacy of resources in the 2020 Budget to accommodate the transaction. The 2020 Budget made provision for capital expenditure of $225M, but actual expenditure was estimated at only $122M. These capital projects were expected to be financed with capital grants totaling $201M; with $146M from the National Transformation Fund (NTF) and $55M from donors and other sources. However, only $98M in grants, of which $86M came from the NTF, was applied to capital projects in 2020 resulting in unused grant funds of $103M. It is important to note, however, that unused donor resources are not available to be diverted to other purposes without approval. Therefore, the Government only had discretion over the unused grant resources from the NTF of $60M (i.e., $146M minus $86M). The resulting financial resources available due to the slow rate of implementation of capital projects should not be described as savings. The transaction is best described as a diversion of funds earmarked for capital projects to repurchase the WRB shares.

Budgetary Implications of WRB Repurchase Transaction

The fiscal performance in 2020 did not allow the Consolidated Fund to accommodate such a transaction. The information presented to Parliament on 2nd December 2020 revealed a very tight fiscal position. The financing requirement, inclusive of principal debt repayment was $237M and hence the need to borrow to finance the 2020 Budget. With such a weak fiscal position, the repurchase transaction could not have been accommodated in the 2020 Budget and would have had to be financed through another legally established fund. The most obvious would be the National Transformation Fund which is the main source of finance for capital projects.

Given this major financial transaction, an updated report on the fiscal performance for 2020 should be presented to Parliament as the repurchase transaction has derailed the Budget. This should be accompanied by a Supplementary Appropriation Bill to regularize the expenditure. In the updated fiscal report, the following would need to be adjusted to reflect the WRB repurchase transaction: the capital grants reported on 2nd December 2020 would need to be increased by the amount used for the repurchase transaction (i.e. $170M); total grants would now stand at $285M, comprising the reported grants of $115M plus $170M used for the repurchase transaction; and capital expenditure increased to $292M comprising capital projects of $122M and repurchase of shares totaling $170M. All other financial transactions associated with the repurchase of the shares would also need to be included in the fiscal performance report for 2020. The financial transaction will not affect economic indicators such as GDP and employment in 2020 as it is simply an exchange of shares without any capital investment.

The developments in 2020 will have implications for the 2021 Budget. The Budget was presented with significant risks to the outturn, including shocks affecting GDP, the persistence of the Covid-19 pandemic and less than budgeted financial inflows. The materialization of these risks could significantly alter the performance of the 2021 Budget.

The risks associated with the lower than budgeted inflows are heightened. The 2021 Budget estimates capital expenditure at $305M to be financed by grants of $244M of which $172M is from the National Transformation Fund. With the allocation of $170M for the repurchase of WRB shares, the risk of inadequate resources to finance the capital programme is real. The effect of economic shocks and the Covid-19 pandemic are risks that will continue to impact the Budget. With the emergence of the Covid-19 cluster in December and the accompanying restrictions, the economic decline for 2020 is likely to be steeper than the projected 12.2 percent. The extension of the Covid-19 concerns into 2021 over the peak tourism season will dampen economic activity. In this Covid-19 environment, economic recovery will be slow and achieving the projected 6 percent growth in 2021 would be a challenge. The derailing of the Budget implies higher national debt.

In this volatile and challenging environment, public policy decisions should concur with legislative requirements, be transparent and based on sound technical advice. The public should be continuously engaged, and this should be supported by the publication of timely, regular, comprehensive, and easy to understand reports.

"Knowledge is power, and experience is the greatest teacher!"

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