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An Act to provide for the office of the Auditor-General established under section 124 of the Constitution; to provide for the appointment and tenure of office of the Auditor-General; to provide for the staff of the office of the Auditor-General; to make further and better provision for the audit of public accounts and the accounts of certain statutory corporations; to empower the Auditor-General with right of access to documents and information relevant to the performance of his or her functions and for matters connected or incidental thereto.

Date of Assent: 29.10.2012

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – Preliminary

Short title and commencement

1. This Act may be cited as the Public Audit Act, 2012 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires —

“audit” means the examination or the investigation, in accordance with any applicable standards, of those aspects to be reported on in terms of this Act;

“Auditor-General” means the person appointed under section 112 of the Constitution;

“Deputy Auditor-General” means the person appointed under section 112 of the Constitution;

“financial year” means any period of 12 months ending on 31st of March;

“Public Accounts Committee” means the Committee appointed under the Standing Orders of the National Assembly;

“public fund” means any fund or account of public moneys;

“public moneys”, subject to the provisions of subsection (2), means —

- (a) public revenues; and
- (b) any trust or other moneys, stamps or securities received or held, whether temporarily or otherwise, by any public officer in his or her official capacity either alone or jointly with any other person;

“public officer” has the meaning assigned to it in the Public Service Act, subject to the provisions of subsections (3) and (4);

“public supplies” means property of any description, other than money, stamps and securities, belonging to, in the possession of, or under the control of Government; and

“standards” means the standards by which an audit is conducted and includes audit practices, procedures and guidelines.

(2) Where the Minister responsible for finance is of the opinion that adequate provision exists outside this Act for the audit of moneys forming part of any trust fund of which a public officer is a trustee, he or she may, by Order published in the *Gazette*, direct that such moneys shall not be public moneys for the purposes of this Act.

(3) For the purposes of this Act, a person shall not be considered to be a public officer by reason only of the fact that he or she is in receipt of any remuneration or allowance from public revenues, and the provisions of section 127 (3) and (4) of the Constitution shall have effect in relation to this Act as they have in relation to the Constitution.

(4) A public officer acting otherwise than in his or her official capacity shall not be regarded as a public officer for the purposes of this Act.

(5) Where there is any doubt as to the capacity in which a public officer acts, he or she shall be deemed to be acting in his or her official capacity unless the contrary is proved.

PART II – *Appointment of Auditor-General and Staff*

3. The office of the Auditor-General in existence immediately before the commencement of this Act is continued in existence subject to the provisions of this Act.

Continuation
of office of
Auditor-General

4. The Auditor-General shall be appointed by the President in accordance with section 112 of the Constitution.

Appointment
of Auditor-
General

5. (1) The appointment of the Auditor-General shall be subject to a contract for such term as may be prescribed.

Tenure of office
of Auditor-
General

(2) Subject to section 114 of the Constitution, a person appointed as Auditor-General under section 4 shall —

(a) be eligible for re-appointment for such number of terms as may be prescribed; and

(b) vacate office when he or she attains the age of 60 years or such other age as may be prescribed by Parliament.

6. The Auditor-General shall appoint staff of the office of the Auditor-General at the level of D1 scale and below or at such scale as may be determined by the Director of Public Service Management.

Staff of office
of Auditor-
General

PART III – *Duties and Powers of Auditor-General*

Duties of Auditor-General

7. (1) The Auditor-General shall satisfy himself or herself in discharging his or her duties under section 124 (2) and (3) of the Constitution –

- (a) that all reasonable precautions are taken to safeguard the collection and custody of public moneys and that the laws, instructions and directions relating thereto have been duly observed;
- (b) that the disbursement of public moneys has taken place under proper authority and for the purposes intended by such authority;
- (c) that all reasonable precautions are taken to safeguard the receipt, custody, issue and proper use of public supplies, and that the instructions and directions relating thereto have been duly observed; and
- (d) that adequate instructions or directions exist for the guidance of officers responsible for the collection, custody, issue and disbursement of public moneys or the receipt, custody, issue and disbursement of public supplies.

(2) The Auditor-General shall, in addition to his or her duties under section 124 (2) and (3) of the Constitution and subsection (1) of this section, where he or she considers it necessary or desirable, examine the economy, efficiency or effectiveness with which any officer, authority or institution of Government falling within the scope of the audit has, in the discharge of official functions, applied or utilised the public moneys or public supplies and shall forward a report of such findings to the appropriate Minister.

Duties not to be undertaken

8. (1) The Auditor-General shall not undertake any examination of accounts having the nature of pre-audit where in his or her opinion this would preclude the proper exercise of his or her functions under the Constitution or this Act.

(2) The Auditor-General shall not undertake any duties outside those he or she is required under the Constitution or this Act to undertake if he or she considers that such duties are incompatible with the responsibilities of the office of the Auditor-General.

Delegation of Authority

9. Anything which, under the authority of the Constitution, this Act or any other law, may be done by the Auditor-General other than the certifying of and reporting on accounts to the National Assembly may be done by –

Act No. 10 of 2010

- (a) any public officer; or
 - (b) any professional accountant registered under the Accountants Act or any other relevant Act,
- authorised in writing by the Auditor-General.

10. (1) The Auditor-General may in addition to exercising his or her powers under section 124 (2) of the Constitution and in carrying out his or her duties —

Powers of Auditor-General

- (a) require any person to produce to him or her such books, records, reports or other documents in that person's custody as he or she may consider it necessary or expedient to examine in order to fully discharge those duties;
- (b) require any public officer to give him or her any explanation or information; and
- (c) with the concurrence of the departmental head concerned, require any public officer to conduct on his or her behalf any enquiry, examination or audit and report thereon to him or her, and any person so required shall comply with that requirement.

(2) The Auditor-General may lay before the Attorney-General a case in writing as to any question regarding the interpretation of any provision of the Constitution or of any law concerning the powers of the Auditor-General or the discharge of his or her duties and the Attorney-General shall give to the Auditor-General a written opinion upon any such case.

(3) The Auditor-General may, without payment of any fees, cause search to be made in and extracts to be taken from any book, record, report or other document in any public office.

(4) In the performance of his or her duties, the Auditor-General shall have access, at all reasonable times, to all offices, stores, workshops and other premises whatsoever and sites subject to his or her audit.

(5) The Auditor-General may charge fees for auditing the accounts of any public body.

(6) Any fees received under subsection (5) shall be paid into the Consolidated Fund.

PART IV – Audits of Public Accounts and Reports

11. (1) Within a period of two months after the close of each financial year, any officer other than the Accountant-General who, by virtue of any law, is responsible for the administration of any Special Fund, shall prepare, sign and transmit to the Auditor-General and to the Accountant-General an account of such Fund in respect of that financial year containing such information and in such form as the Minister responsible for finance may direct.

Annual public accounts

(2) Within the period of six months after the close of each financial year, the Accountant-General shall prepare, sign and transmit to the Auditor-General, for the purpose of auditing, the accounts and statements specified in the Public Finance Management Act in relation to that financial year, together with such other accounts and statements in relation to that year as the Minister responsible for finance may specify for the purposes of this subsection.

Act No. 17 of 2011

(3) As soon as the Auditor-General completes his or her examination of the accounts and statements transmitted to him or her in accordance with subsection (2), he or she shall return the same, together with his or her certificate thereon, to the Accountant-General who shall, within the period of four weeks after their return to him or her, submit them, together with the Auditor-General's certificate thereon, to the Minister responsible for finance.

(4) The Minister responsible for finance shall, within the period of 30 days after the submission to him or her of the accounts and statements in accordance with subsection (3), lay the same, together with the Auditor-General's certificate thereon, before the National Assembly.

12. (1) Where, by virtue of such a written law as is referred to in the proviso to section 124 (2) of the Constitution, the Auditor-General is required to exercise any functions in relation to the accounts of any body corporate directly established by law he or she —

- (a) shall have, in relation to that body and its members, officers, employees and property, in addition to the powers conferred upon him or her by any other law, the same duties and powers as are imposed and conferred upon him or her by the Constitution and this Act in relation to public moneys and public supplies; and
- (b) may authorise a professional accountant to examine or audit the books and accounts of that body and such professional accountant shall report thereon to the Auditor-General in such manner as the Auditor-General may direct.

(2) The Auditor-General shall report on his or her audit of the accounts referred to in this section and shall send such report to the appropriate Minister and a copy thereof to the Minister responsible for finance, and the appropriate Minister shall present the report to the National Assembly as if such report were in all aspects one which the Minister is required to present in accordance with section 20.

(3) The appropriate Minister referred to in subsection (2) shall obtain the observations of the body concerned in any matter to which attention has been called by the Auditor-General in his or her report, and such observations shall be presented by the appropriate Minister to the National Assembly with the said report.

(4) Where the appropriate Minister referred to in subsection (2) fails within a reasonable time to present such report to the National Assembly, the Auditor-General shall transmit such report to the Speaker of the National Assembly.

(5) Nothing in this subsection shall require the appropriate Minister referred to in subsection (2) to present any accounts of, or reports on, any authority or body to the National Assembly if the written law establishing such body provides to the contrary.

(6) A body corporate whose accounts have been audited under the provisions of this section shall, in respect of such audit, pay such fees as may be determined by the Auditor-General, with the approval of the appropriate Minister, and such fees shall be paid into the Consolidated Fund.

13. (1) Notwithstanding any other written law, where the Auditor-General considers that it is in the public interest to carry out investigations into the finances of any corporation established by a written law or any corporation registered in accordance with the Companies Act, in which Government owns 51 per cent or more of the equity shares, he or she may carry out such investigation.

Public interest investigations

Cap. 42:01

(2) The Auditor-General may, in carrying out an investigation under this section, request such information as he or she considers necessary from any corporations referred to in that subsection.

(3) A corporation referred to in subsection (1) shall, if so requested by the Auditor-General, give the Auditor-General access to, or provide him or her with such records, information or explanation in respect of itself as the Auditor-General may require for the purposes of an investigation under this section; and the Auditor-General shall be entitled to make copies of or take extracts from any such records.

(4) A corporation which gives any information, explanation or access to any records pursuant to this section shall not give information or an explanation or access to records which it knows to be false or misleading.

(5) The Auditor-General shall, for purposes of carrying out an investigation under this section, have all the powers conferred by section 12 (1) in relation to the corporation in question and to its members, officers, employees and property, and shall have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Enquiry Act, and the provisions of that Act shall, with the necessary modifications, apply in relation to the investigation and to any person summoned to give evidence or giving evidence at the investigation.

Cap. 05:02

(6) The Auditor-General shall, on the conclusion of an investigation under this section, submit a report to the appropriate Minister on that investigation.

(7) Where, after the conclusion of an investigation under this section, the appropriate Minister is of the opinion that there are reasonable grounds for suspecting that any person has committed an offence, he or she shall refer the matter to the appropriate authority.

(8) Any corporation which contravenes the provisions of this section shall be guilty of an offence, and shall be liable to a fine of not less than P50 000 but not exceeding P100 000.

14. (1) Notwithstanding anything to the contrary contained in this Act or any other law, the Auditor-General shall have at his or her own initiative or on the request of any Minister, exercise any of the functions, powers and duties conferred on him or her by the Constitution or by this Act, in relation to the accounts of —

Audit at instance of Auditor-General or Minister

- (a) a local authority;
- (b) an agency, department or ministry of Government;
- (c) an entity which receives more than half of its annual budget directly or indirectly from the Government; and
- (d) an entity which such Minister may by order declare to be subject to this Act on the grounds that such entity deals with public funds or supplies.

(2) Where the Auditor-General exercises the powers conferred on him or her by subsection (1), he or she shall have all the powers conferred by subsection 12 (1) in relation to the entity in question and to its members, officers, employees and property, and shall have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Enquiry Act, and the provisions of that Act shall, with the necessary modifications, apply in relation to the investigation and to any person summoned to give evidence at the investigation.

Special audits and investigations

15. The Auditor-General may at any time, if it appears to him or her to be desirable, send a report of a special audit on any matter incidental to the Auditor-General's powers and duties under the provisions of this Act to the Speaker of the National Assembly.

Reporting of frauds, losses or irregularities

16. If at any time it appears to the Auditor-General that any fraud or serious loss or irregularity has occurred in the collection, custody or disbursement of public moneys or in the receipt, custody, issue or use of any public supplies, or in the accounting therefor, he or she shall, unless the fraud, loss or irregularity has already been so reported, immediately bring the matter to the notice of the appropriate Minister.

Outsourcing of audit of public entities

17. (1) The Auditor-General may appoint a certified auditor of public interest entity registered under the Financial Reporting Act to assist him or her in the performance of his or her functions under this Act.

Act No. 11 of 2010

(2) A person appointed under subsection (1) shall comply with any general or specific directions given by the Auditor-General.

(3) The Auditor-General shall pay such remuneration or allowances as he or she may determine, to the person appointed under subsection (1).

(4) A person appointed under subsection (1) shall submit copies of the audit report to the Auditor-General.

Standards of auditing

18. (1) The Auditor-General shall adopt standards, manuals, code of ethics and other tools necessary for implementing the auditing standards.

(2) The Auditor-General shall carry out his or her activities in accordance with the standards, manuals or code of ethics adopted under subsection (1) and ensure that staff and other persons undertaking any audit function comply with these standards, manuals or code of ethics.

(3) The Auditor-General shall be responsible for implementing a quality control system to ensure that auditing standards, manuals or code of ethics are complied with in the audit work, including quality assurance mechanisms ensuring that the standards and the control systems are suitable and are applied consistently.

Reports by Auditor-General

19. (1) The Auditor-General shall, in respect of each audit carried out prepare a report on the audit.

(2) An audit report shall reflect such opinions and statements as may be required by any law applicable to the person audited, but shall reflect at least an opinion or a conclusion on —

- (a) whether the annual financial statements of the person audited fairly represent, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date in accordance with the applicable financial reporting framework and legislation;
- (b) the compliance of the person audited with any applicable legislation relating to financial matters, financial management and other related matters; and
- (c) the reported information relating to the performance of the person audited against predetermined objectives.

(3) The Auditor-General shall forward to the Minister responsible for finance his or her report upon the audit of those accounts and statements and related matters within —

- (a) nine months after the end of the financial year to which the accounts and statements relate; or
- (b) three months after his or her receipt of accounts and statements under section 11 (2),

whichever expires later.

20. (1) The Minister responsible for finance shall, within 30 days of the receipt by him or her of the Auditor-General's reports forwarded to him or her by the Auditor-General, lay the same, without any alteration thereto, before the National Assembly.

Laying of
audit
reports

(2) If the Minister responsible for finance fails to, as required by subsection (1), lay any report mentioned in this section before the National Assembly, the Auditor-General shall send such report to the Speaker and the Speaker shall present the report to the National Assembly.

21. (1) The Auditor-General shall, where he or she reports on any confidential, special or classified account established by any Act of Parliament —

Audit reports
on
confidential,
secret or
classified
accounts

- (a) have due regard to the special nature of the account; and
- (b) on the written advice from the appropriate Minister and on the basis of national interest, exclude confidential, secret or classified details of findings from the audit report, provided that the audit report states that these details were excluded.

(2) Subject to subsection (1), the Auditor-General or an authorised auditor shall disclose, under confidential cover to the appropriate Minister, any audit findings on any unauthorised expenditure, irrelevant expenditure or fruitless and wasteful expenditure or any other irregular conduct or activity, or criminal conduct, relating to the financial affairs of such an account.

PART V – Access to Information

- Protection of information
- 22.** (1) The Auditor-General shall **not** include particular information in a public report if that information is protected by any Act of Parliament.
- (2) The Auditor-General shall not disclose information that he or she has obtained in the course of performing his or her duties, unless –
- (a) the information is required by the Directorate on Corruption and Economic Crime in connection with an investigation being carried out by that Directorate or under its authority in accordance with the provisions of the Corruption and Economic Crime Act; or
- (b) a court of competent jurisdiction in Botswana orders the disclosure of the information.
- Cap. 08:05
- Oath of affirmation
- 23.** (1) Every member of staff of the office of the Auditor-General shall, on assuming the duties of his or her office, take an oath or affirmation of secrecy and confidentiality.
- (2) The oath referred to in subsection (1) shall be administered by the Auditor-General or by a person authorised in writing by the Auditor-General.

PART VI – General Provisions

- Enforcement of recommendations
- 24.** (1) An audited entity shall, in accordance with this Act, implement all the agreed recommendations made in the reports of the Auditor-General.
- (2) The Auditor-General shall, in writing, report the failure under subsection (1) to the appropriate Minister for such entity and to the National Assembly.
- Offences and penalties
- 25.** A person who, without lawful cause, interferes with or exerts undue influence on any officer or employee of the Auditor-General, or on any person authorised by the Auditor-General to perform functions under this Act commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a term of two years, or to both.
- Regulations
- 26.** (1) The Minister may make regulations for the better carrying out of the provisions of this Act.
- (2) Without derogating from the generality of subsection (1), regulations may provide for –
- (a) the form of any document referred to in this Act and the way it is to be prepared, executed, transmitted or delivered; and
- (b) reports to be submitted by authorised persons for any matter under this Act.

PASSED by the National Assembly this 16th day of August, 2012.

BARBARA N. DITHAPO,
Clerk of the National Assembly.