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Audit Act, 2005

Act 4 of 2005

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Audit Act, 2005

Act 4 of 2005

Assented to on 26 October 2005

Commenced

[This is the version of this document at 1 December 1998.]

An Act to establish the Office of the Auditor-General and to provide for matters incidental thereto.

1. Short title and commencement

This Act may be cited as the Audit Act, 2005, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Auditor-General**” means the Auditor-General appointed in terms of [section 4](#);

“**Deputy Auditor-General**” means the Deputy Auditor-General appointed in terms of [section 4](#);

“**Constitution**” means the Constitution of the Kingdom of Swaziland;

“**financial year**” means the period of twelve months ending on the thirty-first day of March in any year;

“**Government company**” means a Public Enterprise as defined in the Public Enterprise (Control and Monitoring) Act, 1989;

“**Minister**” means the Minister responsible for Audit;

“**Public Body**” includes a Government Ministry or department;

“**statutory body**” means any corporation, company, board, commission, authority or body established by or under an Act to provide goods and services to the public and which meets one or more of the following conditions—

- (i) all or part of its appropriation for operating purposes are provided under that heading in the budgetary estimates tabled in the Parliament of the Kingdom of Swaziland;
- (ii) the Government, the Executive or a Minister appoints at least half of its members or directors and at least half of its operating expenses are borne directly by the Consolidated Fund or other funds administered by a public body, or by both at the same time.

3. Establishment of the Office of Auditor-General

- (1) There is hereby established the Office of Auditor-General which shall consist of the Auditor-General, the Deputy Auditor-General and other officers of the Office. The Auditor-General may sue or be sued in his official capacity.
- (2) The Office of the Auditor-General shall perform such functions as are conferred upon it under this Act or any other law.
- (3) The Office of the Auditor-General shall be a public office.

4. Appointment of Auditor-General and Deputy Auditor-General

- (1) Subject to [section 5](#), the Auditor-General shall be appointed by the King acting on the advice of the Minister responsible for Finance after recommendation by the Civil Service Commission.
- (2) In the performance of their functions, the Auditor-General and the Deputy Auditor-General shall be independent and shall not be subject to the direction or control of any person or authority.
- (3) The Auditor-General shall be responsible for the administration of the Office subject to any specific or general direction of the King.

5. Disqualification from appointment of Auditor-General and Deputy Auditor-General

A person may not qualify for appointment as Auditor-General or Deputy Auditor-General if he—

- (a) is not a citizen of Swaziland;
- (b) has been declared insolvent or declared bankrupt under any law in force in any country or has not been discharged or has made a composition with his creditors and has not paid them in full;
- (c) has been convicted of any offence involving dishonesty in any country;
- (d) does not hold a degree in accounting or professional qualifications in accounting plus a minimum of ten years' experience or a minimum of twenty years continuous working experience in auditing and accounts;
- (e) is not a qualified auditor in terms of the Accountants Act of 1985;
- (f) is certified as insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland.

6. Removal of Auditor-General

The provisions of section 207 of the Constitution shall apply in the case of removal of the Auditor-General.

7. Acting Auditor-General

- (1) If the Auditor-General is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Auditor-General shall act as Auditor-General.
- (2) If both the Auditor-General and Deputy Auditor-General are absent from duty, or are unable for any reason to perform the functions of their office, the King shall, subject to [section 5](#), appoint another person to act as Auditor-General.

8. Remuneration

- (1) The remuneration and other conditions of service of the Secretary to Cabinet shall apply in respect of the Auditor-General.
- (2) The Auditor-General and the Deputy Auditor-General shall not perform remunerative work outside their official functions.

9. Functions of the Auditor-General

- (1) The Auditor-General shall, in addition to the powers and functions conferred upon or entrusted to him in terms of section 207 of the Constitution, have the powers and perform the duties specified in this Act.

- (2) Notwithstanding the provisions of any other law but subject to the provisions of the Constitution, the Auditor-General shall perform the functions vested in him by this Act in relation to—
- (a) the accounts which shall be audited and shall include—
 - (i) an abstract account of receipts and payments;
 - (ii) a statement of the assets and liabilities at the close of the financial year;
 - (iii) a detailed statement of revenue and expenditure;
 - (iv) statement of the amount outstanding at the end of the year in respect of the public debt;
 - (v) a statement of all losses of public moneys, stamps, securities, stores and other property of the Government written off during the year;
 - (vi) a statement of trading and other special funds;
 - (vii) a statement of all undischarged guarantees issued in terms of section 8 of the Finance Management and Audit Act, [No. 18 of 1967](#); and
 - (viii) such other statements as the Minister or the House of Assembly may, from time to time require;
 - (b) the procedure according to which auditing shall be done; and
 - (c) the steps to be taken by the Auditor-General as a result of an audit.
- (3) The Auditor-General may at his discretion determine the nature and extent of the audit to be carried out and request the details and statements of account which he considers necessary:
- Provided that he may also determine the format in which and the date on which such details, statements of account and financial statements shall be submitted to him.
- (4) In the performance of his duties, the Auditor-General shall reasonably satisfy himself that—
- (a) reasonable precautions have been taken to safeguard the proper collection of money to which an audit in terms of this Act relates, and that the laws and instructions relating thereto have been duly observed;
 - (b) reasonable precautions have been taken in connection with the receipt, custody and issue of, and accounting for property, money, stamps, securities, equipment, stores, trust money, trust property and other assets;
 - (c) receipts, payments and other transactions are made in accordance with the applicable laws and instructions and are supported by adequate vouchers; and
 - (d) satisfactory management measures have been taken to ensure that resources are procured economically and utilised efficiently and effectively.

10. Powers of investigation

- (1) When exercising his powers and performing his duties under this Act—
- (a) the Auditor-General may in writing require any person in the employment of an institution whose accounts are being audited or inspected by him to appear before him at a time and place mentioned in the request and to produce to him all such records, books, vouchers and documents in the possession or under the control of such person as the Auditor-General may deem necessary for the exercise of his powers or the performance of his duties;

- (b) the Auditor-General shall have—
 - (i) the right, without payment, to investigate and to make extracts from any record, book, document and other information of an institution whose accounts are being audited or inspected by him;
 - (ii) the right to investigate whether any services obtained, property, money, stamps, securities, equipment, stores, trust money, trust property and other assets of any institution whose accounts are being audited by him have been obtained in an economical manner, and are being applied efficiently and effectively;
 - (iii) the right to investigate and to enquire into any matter, including the efficiency and effectiveness of internal control and management measures, relating to expenditure by and the revenue of an institution whose accounts are being audited or inspected by him and the parties who have such relationship shall accordingly be notified.
- (2) The Auditor-General may administer an oath or accept an affirmation from and interrogate under oath or upon affirmation any person whom he thinks fit to interrogate, in connection with the receipt, custody, payment or issue of property, money, stamps, securities, equipment, stores, trust money, trust property and other assets to which the provision of this Act and the Constitution apply, and in connection with any other matter in so far as it may be necessary for the due performance and exercise of the powers and duties conferred or imposed upon the Auditor-General by this Act and the Auditor-General shall not be required to reveal the identity of the person referred to in this paragraph.
- (3) Subsections (1) to (2) shall also apply equally to the accounts of contractors or suppliers who have or have had contractual relationship with Government and the parties who have such relationship shall accordingly be notified.
- (4) The Auditor-General may require the Government department or Ministry, or a statutory body to make available free of charge, while the audit is being carried out, suitable office accommodation, other facilities and logistical support reasonably required for the proper carrying out of the audit.

11. Direct access to bodies or companies

- (1) In the exercise of the powers conferred by [section 10](#), the Auditor-General may request a statutory body, Government company or a company in which Government has a major shareholding, to obtain and furnish to him such information and explanations from its present or former directors, officers, employees, agents and auditors or those of any of its subsidiaries as are, in his opinion, necessary to enable him to fulfil his responsibilities as the auditor of the accounts of the Kingdom of Swaziland.
- (2) If, in the opinion of the Auditor-General, a statutory body, Government company, or a company in which Government has a major shareholding, in response to a request made under subsection (1) fails to provide any or sufficient information or explanations, he may so advise the Government, who shall thereupon direct the officers of the body or company to furnish the Auditor-General with such information and explanations and to give him access to those records, documents, books, accounts and vouchers of the body or company or any of its subsidiaries access to which is, in the opinion of the Auditor-General, necessary for him to fulfil his responsibilities as the auditor of the accounts of the Kingdom of Swaziland.

12. Immunity from proceedings of Auditor-General and Deputy Auditor-General

Subject to the powers and privileges of Parliament, the Auditor-General, Deputy Auditor-General or any person acting under the authority of the Auditor-General, shall not be liable in his personal capacity in any civil or criminal proceedings in respect of anything done or omitted to be done in good faith—

- (a) in the performance of any duty or the exercise of any power imposed or conferred upon him in terms of this Act or any other law;

- (b) in giving evidence or an explanation or producing any document before a committee of Parliament in connection with a report of the Auditor-General.

13. Power to conduct performance audits and to appoint persons of specific skill

- (1) The Auditor-General shall have power to conduct performance audits.
- (2) The Auditor-General may appoint a person or persons of specific skill to assist him with a specific investigation.
- (3) The Auditor-General may, whenever he considers it to be in the public interest, or upon receipt of a complaint, investigate, audit and report on the accounts and financial statements of any statutory body or any other institution in control of public funds.

14. Submission of annual report by the Accountant-General

- (1) Subject to subsection (2), the Accountant-General shall within six months after the end of each financial year, sign and submit to the Auditor-General accounts showing fully the financial position of the Consolidated Fund, and other public funds on the last day of such financial year.
- (2) The time allowed for the submission of the accounts by the Accountant-General may be extended by the Minister for a further period not exceeding two months.
- (3) The accounts shall include—
 - (a) an abstract account of receipts and payments;
 - (b) a statement of the assets and liabilities at the close of the financial year;
 - (c) a detailed statement of revenue and expenditure;
 - (d) a statement of the amount outstanding at the end of the year in respect of the public debt;
 - (e) a statement of all losses of public moneys, stamps, securities, stores or other property of the Government written off during the year;
 - (f) a statement of trading and special funds;
 - (g) a statement of all guarantees issued in terms of section 8 of the Finance Management and Audit Act, 1967 which have not yet been discharged; and
 - (h) such other statements as the Minister or the House of Assembly may, from time to time require.

15. Reporting

- (1) The Auditor-General shall report annually to Parliament—
 - (a) on the work of his office; and
 - (b) on whether, in carrying out the work of his office, he received all the information, reports and explanations he required.
- (2) Each report of the Auditor-General under subsection (1) shall be certified by him and call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Assembly including any cases in which he has observed that—
 - (a) accounts have not been faithfully and properly maintained or public money has not been fully accounted for or paid, where so required by law, into the Consolidated Fund;
 - (b) essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public property, to secure an effective check on the

assessment, collection and proper allocation of revenue and to ensure that expenditures have been made only as authorized;

- (c) money has been expended without due regard to economy (the acquisition, at the lowest cost and at the appropriate time, of human and material resources in appropriate quantity and quality) or efficiency (the conversion, in the best ratio, of resources into goods and services); or
 - (d) satisfactory procedures have not been established to measure and report on the effectiveness of programmes (the achievement, to the best degree, of the objectives or other intended effects of programmes, an organization or any activity), where such procedures could appropriately and reasonably be implemented.
- (3) The Auditor-General shall submit a certified annual report to Parliament through the Minister within a period of nine months after the close of each financial year and if Parliament is not sitting, on the first day next that Parliament is sitting.
- (4) Parliament, through the Speaker, may, by direction in writing addressed to the Auditor-General, extend the period within which such report shall be transmitted and any direction so given shall be laid before the Parliament forthwith after transmittal to the Auditor-General or, if Parliament is not sitting, on the first day next that Parliament is sitting.

16. Special Report

- (1) The Auditor-General may, at any time, submit a Special Report to Parliament through the Minister on any matter of importance or urgency that in his opinion, should not be deferred until the presentation of his Annual Report.
- (2) Each Special Report of the Auditor-General to the House of Assembly shall be submitted to the Speaker of the House of Assembly and the Speaker shall lay such Report before the House of Assembly forthwith after receipt thereof by him or, if that House is not sitting, on first day next that the House of Assembly is sitting.

17. Misappropriation

Whenever it appears to the Auditor-General that any public money has been misappropriated by any person, he shall forthwith report the circumstances of the case to the Attorney-General and the Controlling Officer for the Ministry of Finance for appropriate action.

18. Advisory powers

The Auditor-General may be asked to look at a specific issue or may do it at his own initiative and advise appropriate officers and employees in the public service of the Kingdom of Swaziland on matters discovered in his examinations and, in particular, may draw any such matter to the attention of Controlling Officers and employees engaged in the conduct of the business of the Ministries concerned.

19. Premises and equipment

In order to carry out his duties more effectively, the Auditor-General may station in the premises occupied by any public body, statutory body, Government company, or other organization established by law for public purposes, any person employed in or by his Office and the body, company or organization shall provide the necessary office accommodation for any person so stationed free of charge.

20. Security and secrecy

The Auditor-General shall require every person employed in his office who is to carry out an audit, pursuant to this Act, of a public body, statutory body, public company or other organization established by law for public purposes, to comply with any security requirements applicable to, or any oath of secrecy required to be taken by persons employed in that body, company or organization.

21. Other auditor

- (1) The Auditor-General shall not be required to audit the books of a statutory body or Government company for which another auditor is appointed in accordance with the provisions of the Act that establishes it and may, in order to fulfil his responsibilities as the auditor of the accounts of the Kingdom of Swaziland, rely on the report of the duly appointed auditor of the statutory body or Government company.
- (2) The auditor of the books and accounts of a statutory body or Government company, other than the Auditor-General, shall provide to the Auditor-General with dispatch, a copy of—
 - (a) the annual financial statements of the body or company;
 - (b) his report on these statements;
 - (c) any other report he makes to the Board of Directors, the executive or the management of the body or company, as the case may be, on his findings and recommendations.
- (3) The auditor referred to in subsections (1) and (2) shall make available to the Auditor-General, on request, the working papers and other reports and documents in respect of his audit, as well as any other information and explanations which the Auditor-General may require in respect of that audit and its results.
- (4) If the Auditor-General is of the opinion that the information, explanations, documents and reports provided by the Auditor mentioned in subsections (1) and (2) are insufficient, or that additional audit work should be carried out, he may conduct or cause to be conducted such additional audit or investigation as he considers necessary of the books, accounts and operations of the body or company.
- (5) Notwithstanding subsections (1) and (4), the Auditor-General may at any time audit or cause to be audited the books of a statutory body or Government company for which another auditor is appointed in accordance with the provisions of the Act that establishes it and the cost of such additional audit shall be borne by that body or company.

22. Estimates

- (1) The Auditor-General shall annually prepare an estimate of the sums that will be required to be provided by Parliament for the payment of the salaries, allowances and expenses of his office during the next ensuing fiscal year.
- (2) The Auditor-General may make a Special Report to the House of Assembly through the Minister in the event that amounts provided in the estimates submitted to Parliament are, in his opinion, inadequate to enable him to fulfil the responsibilities of his Office.
- (3) The provisions of the Finance Management and Audit Act, [No. 18 of 1967](#) or Regulations made thereunder with respect to the division of appropriations into allotments, suspension of the right to commit appropriations and suspension of payment of appropriations, shall not apply to appropriations granted to the Office of the Auditor-General.
- (4) The Auditor-General may submit supplementary estimates to the House of Assembly through the Minister if, during the fiscal year, he foresees expenditures in excess of the appropriations granted by Parliament.

23. Audit of Office of Auditor-General

- (1) A qualified auditor nominated by the Minister responsible for Finance, after due tendering process, shall examine the receipts and disbursements of the Office of the Auditor-General and shall submit his report through the Minister, not later than nine months after the close of each financial year, to the Speaker of the House of Assembly within three days of receiving it, or if that House is not sitting, within three days of the opening of the next session or resumption.

- (2) The auditor nominated under subsection (1) shall not be a public servant or a person employed by contract or otherwise by a public body, statutory body or Government company.

24. Articles under the Auditor-General

A person who has served articles under the Auditor-General for a period of two years shall be deemed to have complied with the provisions of section 9(3) of the Accountants Act, 1985.

25. Transitional provisions

- (1) A person who immediately before the commencement of this Act was the Auditor-General or the Deputy Auditor-General for the Kingdom of Swaziland shall continue in office subject to the provisions of this Act.
- (2) Notwithstanding subsection (1), the conditions of service applicable to the person who immediately prior to the date of commencement of this Act occupied the post of Auditor-General or Deputy Auditor-General, shall not be altered to his detriment, and no such condition of service shall at any time be construed or applied in a manner which is less favourable to the person concerned than the manner in which it was construed or applied immediately prior to the said date.
- (3) The period of service of a person mentioned in subsection (1) shall, for the purposes of leave and pension, be reckoned as part of, and continuous with, his employment in the public service or as Auditor-General, as the case may be.

26. Repeal of some sections of the Finance Management and Audit Act, No. 18 of 1967

Sections 14, 15, 16, 17, 18, 19 and 20 of the Finance Management and Audit Act, [No. 18 of 1967](#), are hereby repealed.