

ACT NO. 6 OF 2016

Audit Act, 2016

An Act to repeal and replace the Audit Act, 1973¹ and the Audit (Statutory Bodies) Act 1973² and to provide for the independence of the Office of the Auditor-General and other incidental matters.

Enacted by the Parliament of Lesotho.

PART 1 - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Audit Act, 2016 and shall come into operation on the date to be appointed by the Minister by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires -

“audit” means -

- (a) an examination and evaluation of financial records;
- (b) an expression of opinion; and
- (c) a systematic review of systems and controls employed by the management of the audited entity.

“Auditor-General” means a person appointed as such under section 142 of the Constitution;

“auditing standards” means the prescription of basic principles and practices which auditors are expected to follow in the conduct of an audit;

“accounting officer” includes a public officer or a person operating as an agent in Lesotho who is charged with the responsibility of -

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- (a) collecting, receiving or accounting for, or who collects, receives or accounts for any public moneys; or
 - (b) disbursing the receipt, custody or disposal of or the accounting for public shares;

“chief accounting officer” means an officer designated by the Minister who is personally charged with the responsibility for financial control over his ministry, department or unit;

“compliance audit” means a comprehensive review of adherence to regulatory guidelines by an organisation;

“Consolidated Fund” means the consolidated fund of the Government of Lesotho as referred to in section 110 of the Constitution;

“document” means any record of information which includes anything on which there is writing or an image, mark, figure, symbol or perforation that has a meaning for persons qualified to interpret anything from which a sound, image or writing can be produced or extracted with or without aid;

“environmental audit” means an independent external audit of environmental issues;

“expenditure” means payment of public money authorised by Parliament through an Appropriation Act;

“financial audit” means an independent examination of accounts of an institution for the purpose of expressing an opinion;

“financial institution” means a deposit taking institution or non-deposit taking institution carrying out financial activities as stipulated in its license, irrespective of whether it is a banking or non-banking financial institution;

“financial year” means the period commencing 1st April and ending on 31st of March of the next year;

“forensic audit” means an examination and evaluation of financial in

formation of an institution or an individual;

“Independent Auditor” means a practicing member of a professional body recognised by the law of Lesotho;

“internal auditor” means an employee charged with providing an independent and objective evaluation of financial and operational business activity of an organisation, including its internal control, risk management and corporate governance;

“internal control” means a system established by a Public Body or a Statutory Body to safeguard the assets of such a body and which provide reasonable assurance regarding the achievement of objectives in effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations;

“Minister” means the Minister responsible for finance;

“Office” means the Office of the Auditor-General established under section 3 of this Act;

“performance audit” means an assessment of the activities of an organisation to see if its operations are being carried out with due regard to economy, efficiency and effectiveness and that accountability requirements are met reasonably;

“professional body” means a membership body comprised of individual professionals, accountants, auditors and accounting technicians who perform a variety of roles in the accountancy field and adhere to high quality standards of practice;

“public accounts” means all accounts required under the Public Financial Management and Accountability Act 2011³;

“public body” means the central and local government bodies in which the government has a controlling interest;

“public monies” means any money, bank deposit, negotiable instrument and other investment or earning -

- (a) in the custody or under the control of the Government or a local authority or their agencies;
- (b) in the custody or under the control of any person acting for or on behalf of the Government or local authority or their agencies; or
- (c) held by the Government in trust for, or otherwise for the benefit of a person other than the Government;

“public officer” means a person holding or acting in any public office;

“regularity audit” means a combination of financial and compliance audits;

“revenue” includes all tolls, taxes, imports, rates, duties, fees, fines, penalties, forfeitures, rents due, proceeds of sale and all other receipts of the Government from whatever source over which Parliament has the power of appropriation, the proceeds of all loans raised and all grants and gifts received by the Government;

“statutory body” means any statutory corporation in which the Government has financial interest of fifty percent or more, or such body as the Minister may by notice published in the Gazette designate.

PART II - THE OFFICE OF THE AUDITOR-GENERAL

Continued existence of the Office of the Auditor-General

3. (1) There is a continued existence of the Office of the Auditor-General.
- (2) The Office of the Auditor-General shall be -
- (a) an independent and autonomous body;
 - (b) the supreme audit institution of Lesotho;
 - (c) capable of -

- (i) suing and being sued in its own name;
- (ii) entering into contracts;
- (iii) holding, purchasing, acquiring and disposing of any property in the course of carrying out its functions; and
- (iv) performing all such acts as are necessary for or incidental to the attainment of the objective and purpose of the Office.

Independence of the Office of the Auditor-General

4. The Office of the Auditor-General shall -

- (a) accomplish its tasks objectively;
- (b) be independent in its performance of duty and exercise of its powers; and
- (c) have administrative autonomy.

Power to inspect financial institutions

5. (1) Subject to rules of strict confidentiality and secrecy between a financial institution and its clients, the Auditor-General or his staff may examine or audit a financial institution account of a person in any financial institution if he has reason to believe that the money which belongs to a public body has been fraudulently or wrongfully paid into the account of the person.

(2) The Auditor-General requires a warrant or court order in exercising his functions under subsection (1).

(3) A financial institution officer shall produce any document or provide requested information relating to the accounts in the custody of the financial institution or control after having been presented with a warrant or order of court.

(4) The financial institution officer shall make copies of any document so produced.

The Auditor-General

6. The Auditor-General shall -
- (a) pursuant to section 142(1) of the Constitution, be appointed by the King, acting in accordance with the advice of the Prime Minister;
 - (b) be the head of a supreme audit institution of Lesotho;
 - (c) not be subject to the direction or control of any person or authority in the discharge of his duties; and
 - (d) be sworn into office by the Chief Justice before undertaking his duty to abide by the laws of Lesotho and to uphold the rule of law.

Functions of the Auditor-General

7. (1) The Auditor-General shall -
- (a) ensure that all moneys appropriated by Parliament and disbursed are applied for the purpose for which they were appropriated;
 - (b) cause the following accounts to be audited -
 - (i) public accounts of the Government;
 - (ii) accounts of officers and authorities of the Government;
 - (iii) accounts of the courts of Law;
 - (iv) accounts of every commission or other body established by or under the Constitution or any other law;
 - (v) accounts of the Clerk of each House of Parliament;

- (vi) accounts of statutory bodies;
 - (vii) accounts of projects; and
 - (viii) any other account that the Auditor-General, acting on the advice of the Audit Advisory Committee, may determine.
- (c) prepares a report for Parliament on the accounts referred to in paragraph (b).
- (2) The Auditor-General shall undertake the following types of audits -
- (a) financial audit;
 - (b) regularity audit;
 - (c) compliance audit;
 - (d) performance audit;
 - (e) environmental audit;
 - (f) forensic audit; and
 - (g) any other type of audit.

(3) The Auditor-General shall, in exercising his functions under the Act, apply local and international standards adopted by the Office of Auditor-General.

Tenure of Office of the Auditor-General

8. The Auditor-General shall vacate his office at the age of sixty.

Salary and benefits of the Auditor-General

9. Subject to section 115 (1) and (5) of the Constitution, the salary and benefits of the Auditor-General shall be in accordance with the Statutory Salaries

Act, 1972⁴.

Resignation of the Auditor-General

10. If the Auditor-General wishes to resign from the Office of the Auditor-General he shall give at least six months notice, in writing, to the King before vacating the office.

Removal from the Office of the Auditor-General

11. The Auditor-General shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under section 142(4), (5) and (6) of the Constitution and the tribunal has recommended to the King that he ought to be removed for inability or for misbehaviour.

Designation of an acting Auditor-General

12. Pursuant to section 142(2) of the Constitution if the Auditor-General is for any reason unable to exercise the functions of his office under this Act, a person may be appointed to act as the Auditor-General, and any person so appointed shall, subject to the provisions of section 142(3),(5) and (7) of the Constitution, continue to act until a person has been appointed to the office of Auditor-General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

Disclosure of interest

13. (1) The Auditor-General and the auditing staff shall disclose all material facts where they -

- (a) have direct or indirect interest in any private or professional body or activity that they could profit from or influence through powers of their positions; and
- (b) have any commitment, obligation or investment which will present conflict of interest, and shall not take part in the consideration or discussion of any issue in respect of the matter.

(2) The Auditor-General and the auditing staff shall not be actively involved in any political activity.

(3) The Auditor-General shall not hold a position of authority in an auditing and accounting of a professional organisation or standard setting body.

(4) The Auditor-General and the staff of the Auditor-General shall declare their assets and any direct or indirect financial interest in any undertaking to the Directorate on Corruption and Economic Offences.

Appointment of the Deputy Auditor-General

14. The Deputy Auditor-General shall be appointed by the Auditor-General acting on the advice of the Audit Advisory Committee.

Functions of the Deputy Auditor-General

15. The Deputy Auditor-General shall -

- (a) be the chief accounting officer of the Office of the Auditor-General;
- (b) be responsible for the efficient management and administration of the office;
- (c) be responsible for the efficient utilization of staff;
- (d) maintain discipline and proper use and care of movable and immovable property of the Office;
- (e) exercise the responsibilities, duties and powers of the Office subject to the directions of the Auditor General; and
- (f) perform any other related functions subject to the directions of the Auditor General.

Remuneration for Deputy Auditor-General

16. The remuneration and benefits of the Deputy Auditor-General shall be

determined by the Auditor-General acting on the advice of the Audit Advisory Committee, in consultation with the Minister responsible for finance.

Retirement of the Deputy Auditor-General

17. The Deputy Auditor-General shall -

- (a) retire from service at the age of 60; or
- (b) may, by written notice to the Auditor-General, voluntarily retire from office at the age of 50.

Appointment and remuneration of the staff of the Office of the Auditor-General

18. (1) The Auditor-General shall, in consultation with the Audit Advisory Committee, employ persons necessary for the efficient and effective execution of the functions and powers of the Auditor-General.

(2) The staff of the Office of the Auditor-General shall be remunerated on such terms and conditions as may be determined by the Auditor-General on the advice of the Audit Advisory Committee in consultation with the Minister responsible for finance.

Retirement age of staff of the Office of the Auditor-General

19. A member of staff of the Office of the Auditor-General shall -

- (a) retire at the age of 60; or
- (b) by written notice to the Auditor-General voluntarily retire from Office at the age of 50.

Conduct of the staff of the Office of the Auditor-General

20. A member of the staff of the Office of the Auditor-General who -

- (a) fails to report to the Auditor-General any abuse or irregularity that comes to his notice in the course of his auditing duties; or

- (b) makes any report to the Auditor-General which he knows to be false or has no reason to believe to be true,

commits an offence and is liable on conviction, to a fine not exceeding five thousand Maloti or to imprisonment for a period not exceeding three years or both.

Designation of Acting Deputy Auditor-General

21. (1) Whenever the Deputy Auditor-General is for any reason absent or unable to exercise the responsibilities, duties and powers of the office or whenever there is a vacancy in the office of Deputy Auditor General, Auditor General shall appoint another staff member to act for a period of not exceeding six months.

- (2) Whilst acting as Deputy Auditor-General, such staff member -
 - (a) has the responsibilities, duties and powers of the Deputy Auditor-General; and
 - (b) is subject to such terms and conditions of employment of the Deputy Auditor-General.

Access to documents and property

22. (1) The Auditor-General or any person authorised by him shall -
- (a) have access to and require the production of any book, record, return, report, voucher and any other document that in his opinion relates to any public account;
 - (b) keep such a book, record, return, report, voucher and any other document for such time as the Auditor-General may determine;
 - (c) have access to cash, stamps, securities, stores or any property that he considers necessary to inspect in connection with any public account that is in the possession of any officer or authority of the Government; and
 - (d) summon a public or accounting officer for an explanat-

ion or information which the Auditor-General may require in the discharge of his duties.

(2) The Auditor-General or any officer authorised by him may, and with proper identification -

- (a) enter and remain in premises in which he believes that documents or other information relating to an activity of a public body may be held; and
- (b) carry out a search, examine and make copies of any document which he considers necessary for his work.

Power to obtain information from others

23. (1) The Auditor-General may obtain from a person who is not a member of a public body, any information that he considers necessary to execute his functions under this Act.

(2) The Auditor-General shall -

- (a) advise a person, in writing, of the nature of the information and why it is necessary;
- (b) reimburse a person referred to in subsection (1) for any reasonable cost associated with provision of information and the information shall not be used by the person for any other purpose.

(3) A person who -

- (a) intentionally obstructs, hinders or resists the Auditor-General in the performance of his audit work;
- (b) intentionally refuses or fails to comply with any lawful request of the Auditor-General;
- (c) makes a statement or gives information to the Auditor-General knowing that the statement or information is false or misleading; and

- (d) willfully suppresses any information required by the Auditor-General,

commits an offence and is liable on conviction, to a fine not exceeding five thousand Maloti or to imprisonment for a period not exceeding three years or both.

PART III - ADMINISTRATIVE PROVISIONS

Contracts with accounting and other professional firms

24. (1) The Auditor-General may authorise a practicing member of a professional accountancy body recognised by the Laws of Lesotho to examine or audit books of accounts of any authority or body which the Auditor-General may be so required to examine and audit.

(2) Audit decisions shall remain those of the Auditor-General notwithstanding subsection (1).

Audit inspection reports

25. (1) The Auditor-General shall, at the conclusion of any audit work, provide the chief accounting officer of the authority or a body which is being audited with a report which includes findings and recommendations.

(2) The chief accounting officer of the authority or body shall respond on findings and recommendations made pursuant to subsection (1) to the Auditor-General within thirty days upon receipt of the report.

Special reports

26. The Auditor-General may, at any time, if he considers it necessary, send a special report on any matter incidental to his powers and duties under any provision of this Act to the Minister for presentation to Parliament.

Annual audit report on the consolidated financial statements

27. The Auditor-General shall submit a report on the consolidated financial statements made by him to the Minister for the time being responsible for finance who shall, not later than 7 days after -

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- (a) the first meeting of each House of Parliament; and
 - (b) he has received the report, lay it before that House.

Accounts of spending units, statutory bodies

28. The Auditor General shall report on his examination and audit of accounts of spending units, statutory bodies and project; and send such reports to the appropriate minister who shall present the report to Parliament.

Disclosure of information

29. (1) A person shall not, without a written consent of the Auditor-General, publish or disclose information obtained in the course of an audit unless the person is required to do so by a court of law.

(2) A person who contravenes the provisions of subsection (1) commits an offence, and is liable on conviction to a fine not exceeding five thousand Maloti or to imprisonment for a period not exceeding three years or both.

Submission of an annual performance

30. The Auditor-General shall, once in a financial year, submit an annual performance report which shall include financial statements of the Office of the Auditor-General to the Minister for presentation to Parliament six months after the end of the financial year.

PART IV - ESTABLISHMENT OF THE AUDIT ADVISORY COMMITTEE

Establishment and composition of the Audit Advisory Committee

31. (1) There is established the Audit Advisory Committee which shall advise the Auditor-General.

(2) The Committee shall consist of -

- (a) Principal Secretary of the Ministry responsible for finance or his representative;

- (b) an auditor with not less than five years of experience, nominated by the Minister of Finance;
- (c) the head of a body regulating accounting profession who shall be the chairperson;
- (d) a representative of the Law Society nominated by the Law Society;
- (e) a secretary who shall be the Deputy Auditor-General or his representative; and
- (f) head of the Human Resource section who shall be an ex-officio member of the Committee.

Meetings of the Committee

32. (1) The Committee shall meet at least once every four months and hold special meetings whenever business of the Committee requires.

(2) The chairperson shall preside at all meetings of the Committee and, in the absence of the chairperson, members present shall elect one of them to preside at a meeting.

(3) At a meeting of the Committee, any issue before the Committee shall be decided by the majority of votes of members present.

(4) A quorum for a meeting of the Committee shall be two thirds of the majority of the members.

Functions of the Committee

33. The Committee shall -

- (a) advise on the appointment, remuneration conditions of service and benefits of appointment of the staff of the Office of the Auditor-General;
- (b) advise on the draft budget plan and the final budget plan;

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- (c) advise on the effectiveness of the internal controls of the office; and
 - (d) advise on any other matter relating to auditing.

Tenure of office

34. Tenure of office for members of the Committee who are not public officers shall be three years.

Remuneration and expenses of members of the Committee

35. (1) A member of the Committee may be paid -
- (a) such allowances as the Auditor-General may on the advice of the Audit Advisory Committee determine.
 - (b) any expense that may be incurred by a member in connection with the business of the Committee.
- (2) Any payments paid pursuant to subsection (1) shall be paid from the funds of the Office.

Disclosure of interest

36. If a member has a direct or indirect pecuniary interest in a matter and is present at a meeting of the Committee at which the matter is the subject for consideration by the Committee, the member shall, before the commencement of the meeting, disclose all the material facts pertaining to interest of the member to the Committee, and shall not take part in the consideration or discussion, or vote on any question in respect of the matter.

PART V - FINANCIAL PROVISIONS AND ACCOUNTABILITY

Presentation and submission of an annual plan and proposed budget

37. The Auditor-General shall prepare and submit to the Minister -
- (a) an annual operational plan that describes the proposed work and programme of the Auditor-General for the fi-

financial year; and

- (b) a detailed budget in support of the annual plan for presentation to the Parliament.

Audit Revenue Fund

38. (1) There is established a fund to be known as the Audit Revenue Fund in which all revenue contemplated under the Act shall be deposited.

(2) The Fund shall consist of money -

- (a) from the Consolidated Fund;
- (b) earned in connection with services rendered by the office in terms of this Act;
- (c) earned by way of interest on investments;
- (d) accruing to the office from any other lawful source which is a donation or bequest; and
- (e) which is acceptable to the Auditor-General and will not cause a conflict of interest.

Application of funds

39. The Deputy Auditor-General shall -

- (a) manage the funds of the Office of the Auditor-General in a manner he considers fit for the efficient discharge of the functions of the office and in conformity with financial practices and public service laws; and
- (b) prepare and submit financial statements to the Auditor-General.

Audit fees

40. (1) The Office of the Auditor-General shall, in consultation with the Audit Advisory Committee, determine fees to be charged for audit service for a statutory body and projects.

(2) Fees for contracted services shall be paid by an agency receiving such a service where the Office of the Auditor-General contracts with a professional individual or an accounting firm.

(3) The agency which has received audit services from a professional individual or an accounting firm contracted by the Auditor-General shall pay part of the fees to the Auditor-General.

Audit of financial statements of the Auditor-General

41. The Minister shall appoint an independent auditor to audit and report on the following -

- (a) financial statements of the Office of the Auditor-General; and
- (b) any other information relating to the performance of the Office of the Auditor-General.

PART VI - MISCELLANEOUS**Savings**

42. (1) A person who before the coming into force of this Act is the Auditor-General under the Audit Act 1973 continues to be the Auditor-General for the purpose of this Act as if he has been appointed under this Act on the same terms and conditions.

(2) If any right, liability or obligation vests in or subsists against the Auditor-General before the commencement of the Act, he shall have the same right and incur the same liability or obligation as he would have had if the Act had not been in force.

(3) A public officer who is employed in the Audit Office at the com-

mencement of this Act, may apply to the Office of the Auditor-General and be appointed as a staff member of the Office if he qualifies.

(4) An officer whose application for employment is successful shall be deemed to have retired from the public service from the date of his assumption of duties with the Office of the Auditor General and he shall be entitled to such terminal benefits, if any, due to him under the law governing pensions and gratuities in the public service.

(5) A public officer who after the commencement of this Act, does not apply for employment with the new Office of the Auditor-General or whose application is not successful in securing employment with the Office of the Auditor-General, shall be re-deployed in any department in the public service.

Regulations

43. The Minister may make regulations for giving effect to the provisions of this Act.

Repeals

44. The Audit Act 1973 and Audit (Statutory Bodies) Act, 1973 are repealed.

NOTE

1. Act No. 12 of 1973
2. Act No. 5 of 1973
3. Act No. 12 of 2011
4. Act No. 8 of 1992 as amended by Act No. 3 of 1994