

THE PUBLIC AUDIT ACT, 2016

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GOVERNMENT OF ZAMBIA

ACT

No. 29 of 2016

Date of Assent: 6th June, 2016

An Act to enhance the independence and autonomy of the National Audit Office and strengthen its functions; provide a framework for promoting efficiency, accountability, effectiveness and transparency of public administration through effective oversight and audit of public funds and performance; domesticate the principles of United Nations Resolution A/66/209 on promoting efficiency, accountability, effectiveness and transparency of supreme audit institutions; provide for guiding principles of public finance and performance audit; repeal and replace the Public Audit Act, 1980; and provide for matters connected with, or incidental to the foregoing.

[7th June, 2016

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Public Audit Act, 2016, and shall come into operation on such date as the Minister may appoint by statutory instrument.

Short title and commencement

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

Interpretation

“ audit investigation ” means an analysis and examination of the accounts of a State organ, State institution or private institution for a specific purpose;

“ Auditor-General ” means the Auditor-General appointed pursuant to the provisions of the Constitution;

Cap. 1

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- “ authorised person ” means a person, firm, company or other entity authorised by a State organ, State institution or private institution to conduct an audit on behalf of the National Audit Office;
- Cap. 1 “ Commission ” means the State Audit Commission established under the Constitution;
- “ contract audit ” means the audit of transactions relating to contracts to which a State organ or State institution is a party;
- Act No. 15 of 2004 “ controlling officer ” has the meaning assigned to it in the Public Finance Act, 2004;
- “ effectiveness ” means the prudent, efficient, economic, transparent and accountable use of public funds to ensure value for money and that such funds are applied for the intended purpose;
- Cap. 1 “ emoluments ” has the meaning assigned to it in the Constitution;
- Cap. 1 “Emoluments Commission” means the Emoluments Commission established under the Constitution;
- “ Defence Force ” means the Zambia Army, the Zambia Air Force, the Zambia National Service and any other unit of the Defence Force as may be prescribed under the relevant written law;
- “ National Audit Office ” means the National Audit Office established in accordance with section *seven*;
- “ national security services ” means the Zambia Police Service, the Zambia Security Intelligence Service, the Zambia Correctional Service and any other national security service as may be prescribed;
- “ performance audit ” means an independent, objective and systematic assessment of an organisation’s or institution’s programmes, utilisation of resources, information systems, performance measures, monitoring systems and legal and policy compliance;
- “ private institution ” means a body in receipt of a Government grant, subsidy or subvention or financed from public funds;
- Cap. 1 “public officer” has the meaning assigned to it in the Constitution;

“specialist consultant” means an individual or institution with specialised expertise or knowledge in the provision of professional or expert services that are relied upon in reaching an objective conclusion on a matter that is the subject of an audit investigation;

“ State institution ” has the meaning assigned to it in the Constitution;

Cap. 1

“ State organ ” has the meaning assigned to it in the Constitution;

Cap. 1

“ statement of comprehensive income ” means a statement that illustrates or presents the financial performance and results of the operations of a particular company or entity for a period of time, and aggregates income statement and other comprehensive income which are not reflected in the profit and losses;

“statement of financial position” means a statement that shows the financial position of an entity at a particular date, and comprises three main components of the financial position in terms of the assets, liabilities and equity; and

“ Zambia Institute of Chartered Accountants ” means the Zambia Institute of Chartered Accountants continued under the Accountants Act, 2008.

Act No. 13
of 2008

3. (1) The Auditor-General shall oversee the implementation of this Act.

Implementation
of Act

(2) The Auditor-General may, in implementing this Act, request a State organ, State institution, private institution or authorised entity to assist the Auditor-General in ensuring compliance with the Constitution and this Act.

Cap. 1

(3) The National Audit Office may require a State organ, State institution, private institution or authorised person to perform such functions and exercise such powers as may be necessary under this Act.

(4) Where a State organ, State institution, private institution or authorised person fails to comply with the requirement under subsection (3), the National Audit Office may apply to a court for an appropriate order requiring the State organ, State institution, private institution or authorised person to comply with the requirement.

PART II

NATIONAL AUDIT OFFICE

- Establishment of National Audit Office
- Cap. 71
- Functions of National Audit Office
- Act No. 15 of 2004
- Auditor-General, Deputy Auditor-General, auditors and other staff of National Audit Office
- 4.** (1) There is established the National Audit Office which is a public office in the Republic.
- (2) The provisions of the State Proceedings Act apply to civil proceedings by, or against, the National Audit Office as if, for a reference to the State, there were substituted a reference to the National Audit Office.
- 5.** (1) The functions of the National Audit Office are to—
- (a) perform audits under the Public Finance Act, 2004, and any other written law;
- (b) recommend to the Commission the organisational structure and technical competencies required for the efficient and effective performance of its functions;
- (c) recommend to the Commission the terms and conditions of service of officers and other employees of the National Audit Office, other than the Auditor-General; and
- (d) do such other things as are necessary or incidental to the performance of its functions under this Act.
- (2) The National Audit Office shall perform its audit function in accordance with the relevant written law and international best practices.
- 6.** (1) The Auditor-General shall be the chief executive officer of the National Audit Office.
- (2) A person qualifies for appointment as Auditor-General if that person—
- (a) is a qualified accountant;
- (b) is a member of the Zambia Institute of Chartered Accountants;
- (c) has served as an auditor for at least ten years, of which at least five years should have been at senior management level; and
- (d) is at least forty-five years of age.
- (3) The Commission shall appoint the Deputy Auditor-General, auditors and other staff of the National Audit Office as are necessary to assist the Auditor-General in the performance of the Auditor-General's functions.

(4) The Auditor-General may, by directions, in writing, and subject to such terms and conditions as the Auditor-General may consider necessary, delegate to the Deputy Auditor-General, an auditor or authorised person or any other member of staff, any of the functions of the Auditor-General.

7. (1) The National Audit Office shall have a controlling officer who shall be appointed by the Secretary to the Treasury in accordance with the provisions of the Public Finance Act, 2004.

Controlling officer
Act No. 15 of 2004

(2) The functions of the controlling officer shall be as prescribed in the Public Finance Act, 2004.

Act No. 15 of 2004

8. (1) The National Audit Office shall have a seal and the seal shall bear the words “National Audit Office of the Republic of Zambia”.

Seal of National Audit Office

(2) The affixing of the seal shall be authenticated by the Auditor-General or the Deputy Auditor-General or any other person authorised in that behalf by the Auditor-General.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the National Audit Office by the Auditor-General or any other person generally or specifically authorised by the Auditor-General in that behalf.

(4) A document purporting to be a document under the seal of the National Audit Office or issued on behalf of the National Audit Office shall be received in evidence and shall be executed or issued, as the case may be, without any further proof, unless the contrary is proved.

9. The National Audit Office may, on such terms and conditions as it may determine, appoint suitably qualified persons as experts or assessors to assist the National Audit Office in the performance of its functions under this Act.

Experts and assessors

10. (1) The Auditor-General may, where the Auditor-General is unable to carry out an audit as specified in this Act, sub-contract a private audit firm registered with the Zambia Institute of Chartered Accountants to undertake the audit.

Appointment of external auditors

(2) The Auditor-General shall provide general supervision and monitoring of the activity subcontracted under subsection (1).

- Emoluments **11.** The emoluments of the Deputy Auditor-General, auditors and other staff of the National Audit Office shall be determined by the Emoluments Commission, on the recommendation of the Commission, and shall be a charge on the Consolidated Fund.
- Oath **12.** (1) The Deputy Auditor-General, auditors and other staff of the National Audit Office shall take an oath in accordance with the Official Oaths Act.
- Cap. 5
- (2) An authorised person or specialist consultant engaged under this Act shall, before performing any functions, take and subscribe to an oath in accordance with the Official Oaths Act.
- Cap. 5
- Immunity **13.** An action or other proceeding shall not lie against the Auditor-General, Deputy Auditor-General, auditor, staff of the National Audit Office, a public officer, agent or specialist consultant authorised by the Auditor-General for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

PART III

AUDIT PROCESS AND TYPES OF AUDIT

- Scope of audit **14.** (1) The public accounts of State organs, State institutions and private institutions shall be audited and reported on by the Auditor-General.
- (2) The Auditor-General shall, in performing an audit under this Act or any other written law, verify that the monies expended by a State organ, State institution or private institution has been applied to the purposes for which the monies were appropriated.
- (3) The Auditor-General may examine or inspect the accounts of a State organ, State institution, or private institution where the Auditor-General considers it desirable to achieve the purposes specified in subsection (2).
- (4) The Auditor-General may, where the Auditor-General considers it necessary, inquire into, examine, investigate and report on, the expenditure of public monies disbursed, advanced or guaranteed to a private institution.
- (5) The Auditor-General shall submit an audit report on the accounts audited under this section simultaneously to the President and the Speaker of the National Assembly.

15. (1) The Auditor-General shall examine the public accounts of State organs, State institutions and private institutions in order to ascertain whether— Examination of accounts

- (a) public monies have been fully accounted for and the rules and procedures applicable are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue;
- (b) monies have been expended for the purposes for which they were appropriated and the expenditures conform to the authority for such expenditure;
- (c) the collection of revenue and the acquisition, receipt, issuance and use of assets and liabilities conforms with authority;
- (d) internal controls and risk management systems and processes are effective and implemented;
- (e) the accounts have been properly kept;
- (f) essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property; and
- (g) programmes and activities have been undertaken with due regard to effectiveness in relation to the resources utilised and results achieved.

(2) The Auditor-General, a public officer or an authorised person shall, upon the examination of the public accounts of a State organ, State institution or private institution, express the Auditor-General's opinion as to whether the accounts of the State organ, State institution or private institution—

- (a) present fairly, financial information in accordance with the applicable statutory provisions and approved accounting policies of the Government; and
- (b) accord with generally accepted accounting standards, and are consistent with those of the preceding financial year.

16. (1) The Auditor-General shall, at the request of the President, conduct a specific audit into the accounts of a State organ, State institution or private institution as the President may consider desirable in the public interest. Specific audit

(2) The head of a State organ, State institution or private institution may request the Auditor-General to carry out an audit investigation of the State organ, State institution or private institution considered necessary for purposes of this Act.

- Special audits and reviews **17.** (1) The Auditor-General may, in the public interest, carry out a special audit or review of a State organ, State institution or private institution.
- (2) The Auditor-General shall determine the nature and extent of the audit review referred to in subsection (1) and shall prepare a report on the audit review and submit to the President and the Speaker of the National Assembly.
- Performance audit **18.** The Auditor-General shall conduct a performance audit to examine the effectiveness with which public funds have been expended by a State organ, State institution or private institution pursuant to the Constitution.
- Cap. 1
- Forensic audit **19.** The Auditor-General may conduct a forensic audit to establish fraud or other financial improprieties in a State organ, State institution or private institution.
- Environmental audit **20.** The Auditor-General may conduct an environmental audit to establish whether the environmental management and equipment of a State organ, State institution or private institution meets the stated objectives of the State organ, State institution or private institution.
- Procurement audit **21.** The Auditor-General may examine the public procurement and asset disposal process of a State organ, State institution or private institution to confirm whether procurements were done lawfully and effectively.
- Contract audit **22.** Despite any other written law, a contract for construction works or for the supply of equipment, machinery or materials involving the expenditure of public funds to which a State organ or State institution is a party, shall contain a provision empowering the Auditor-General to have access to, and examine, the books, records, papers, reports and other documents relating to the contract.
- Audit of accounts by Auditor-General or as requested by National Assembly **23.** The Auditor-General may, upon request by the National Assembly or on the Auditor-General's own motion, inquire into and report on—
- (a) the financial affairs of a State organ or State institution; and
- (b) a person or organisation in receipt of financial aid from the Government or in respect of whom or which financial aid from the Government is sought.
- Access to records, books and accounts **24.** (1) The National Audit Office may, at any reasonable time—

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- (a) access and examine the records, returns, reports and other documents relating to the accounts of a State organ, State institution or private institution;
 - (b) access, at any reasonable time of the day, the premises of any State organ, State institution or private institution under audit examination or inspection;
 - (c) request for any relevant information from persons responsible for the financial administration of a State organ, State institution or private institution under audit examination or inspection;
 - (d) request a State institution, State organ or private institution to furnish the Auditor-General with copies of such certificates, reports, documents and other relevant information in respect of the accounts of such State organ, State institution or private institution as the Auditor-General may require;
 - (e) determine and levy fees that the National Audit Office considers necessary to finance its activities under this Act; and
 - (f) determine what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion of the fee is payable.
- (2) A public officer, an authorised person, agent or specialist consultant may—
- (a) be given such information and explanations requested in the performance of duties under this Act;
 - (b) access at any reasonable time of the day to the premises of a State organ, State institution or private institution under audit examination or inspection; and
 - (c) access or inspect all books, records, returns, reports and other documents relating to the accounts of a State organ, State institution or private institution.
- (3) Despite the provisions of subsection (1), the Auditor-General shall not permit any authorised person, agent or specialist consultant to have access to any book, record, returns report or other document, or to enter—
- (a) the premises of any component of the Defence Force, national security services or a law enforcement agency;
or
 - (b) premises other than those mentioned in paragraph (a) if such access or entry is likely to—

- (i) prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or
- (ii) involve the disclosure of any matters or deliberations of a secret or confidential nature of the Cabinet or any committee of the Cabinet.

Provision of reports, documents and other information

25. (1) Where, under any written law establishing a State organ or State institution, provision is made for the appointment of an auditor, the auditor shall furnish the Auditor-General with copies of the certificates, reports, documents and other relevant information in respect of the accounts of the State organ or State institution.

(2) Where a private institution appoints an auditor for the purposes of an audit under this Act, the auditor appointed shall furnish the Auditor-General with copies of the certificates, reports, documents and other relevant information in respect of the accounts of the private institution.

Surcharge and disallowance by Auditor-General

Act No. 15 of 2004

26. (1) The Auditor-General may, during the course of an audit of a State Organ, State institution or private institution surcharge a person or disallow expenditure by a person if the expenditure was incurred in contravention of the this Act, the Public Finance Act, 2004, or any other written law.

(2) The Auditor-General shall specify to the head of a State organ, State institution or private institution the amount due from a person upon whom the Auditor-General has made a surcharge or disallowance under subsection (1) and the reasons for the surcharge or disallowance.

(3) A sum specified by the Auditor-General to be due from a person shall be paid by that person to the department or institution, as the case may be, within sixty days after it has been so specified.

(4) A person aggrieved by a surcharge or disallowance made by the Auditor-General may appeal to the High Court within thirty days of the surcharge or disallowance under subsection (2).

(5) Any sum which is lawfully due under this section shall, on civil proceedings taken by a State organ or State institution in a court, be recoverable as a civil debt and where the person surcharged or whose expenditure is disallowed is in receipt of emoluments from Government or any institution, the emoluments shall be attached to the extent of the sum lawfully due.

(6) In any proceedings for the recovery of a sum surcharged or disallowed under subsection (1), a certificate signed by the Auditor-General shall be *prima facie* evidence of the facts certified.

(7) The Auditor-General may, with the prior approval of the National Assembly, revoke any surcharge or disallowance made under this section.

27. (1) The Auditor-General shall, upon completion of an audit, express an opinion on each head of expenditure based on the results of each audit and shall state whether—

Certification of Government accounts

(a) the accounts conform to the requirements of the Constitution, this Act and the Public Finance Act, 2004;

Cap. 1
Act No. 15
of 2004

(b) the receipts and expenditure shown in the accounts have been dealt with in accordance with proper authority and, in particular, that all expenditure conforms to the authority that governs it;

(c) the financial affairs of the State organ or State institution and all revenues received and public funds under its control have been properly accounted for by the accounting officer or any other responsible public officer;

(d) reasonable precautions have been taken to safeguard the receipt, custody, issue and proper use of government resources and property and that regulations, directives and instructions relating to them have been fully observed; and

(e) in the Auditor-General's opinion, the accounts reflect fairly the financial position of the State organ or State institution.

28. Subject to the Constitution, the Auditor-General shall, in auditing accounts under this Act, apply the standards set by the International Organisation of Supreme Audit Institutions and other internationally recognised bodies approved by the Government.

Adherence to international practice and standards of auditing
Cap. 1

29. (1) Whenever the Auditor-General has reason to believe that delay in reporting serious irregularities in the expenditure of public funds through an annual report may occasion financial loss to the Government or prejudice effective financial control, the Auditor-General shall immediately prepare a special, interim or other audit report relating to an audit investigation into the serious irregularities as the Auditor-General considers necessary to prevent or reduce any financial loss to the Government.

Special and interim publication of reports

(2) The Auditor-General shall, as soon as practicable, submit the special, interim or other audit report to the President for purposes of subsection (1)

Submission
of audit
report
Cap. 1

30. (1) The Auditor-General shall submit an audit report in accordance with Article 212 of the Constitution.

(2) The Auditor-General shall draw attention to the irregularities in the accounts audited and any other matter which ought to be brought to the attention of the President and National Assembly.

Publication
and
distribution
of reports

31. (1) The Auditor-General shall publish reports of audits on the accounts of the Republic as soon as the reports have been presented to the Speaker and laid before the National Assembly.

(2) The Auditor-General shall submit copies of the published reports to—

(a) the National Archives;

(b) the libraries of public higher education institutions;

(c) the public libraries; and

(d) the website of the National Audit Office, for access to the general public.

(3) The Auditor-General may distribute copies of audit reports to audited institutions and such other persons as the Auditor-General considers necessary for purposes of information.

PART IV

FINANCIAL PROVISIONS

Funds of
National
Audit Office

32. (1) The funds of the National Audit Office shall consist of such monies as may—

(a) be appropriated to the National Audit Office by Parliament for the purposes of the National Audit Office;

(b) be paid to the National Audit Office by way of fees, loans, grants or donations; and

(c) otherwise vest in or accrue to the National Audit Office.

(2) The National Audit Office may—

(a) subject to the approval of the Minister—

(i) accept moneys by way of grants or donations from any source within or outside the Republic; and

(ii) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions; and

(b) charge and collect fees for services provided by the National Audit Office.

(3) There shall be paid from the funds of the National Audit Office—

- (a) the emoluments of the staff of the National Audit Office; and
- (b) any other expenses incurred by the National Audit Office in the performance of its functions under this Act.

(4) The National Audit Office may, with the approval of the Minister, invest in such manner as it considers appropriate such funds of the National Audit Office that it does not immediately require for the discharge of its functions.

33. The financial year of the National Audit Office shall be the period of twelve months ending on 31st December of each year. Financial year

34. (1) The National Audit Office shall cause to be kept proper books of account and other records relating to its accounts. Accounts and audit

(2) The accounts of the National Audit Office shall be audited annually by an independent auditor appointed by the Commission.

(3) The auditor's fees shall be paid by the National Audit Office.

35. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the National Audit Office shall submit to the Commission a report concerning its activities during the financial year. Annual report

(2) The report referred to in subsection (1) shall include information on the financial affairs of the National Audit Office and there shall be appended to the report—

- (a) an audited statement of financial position;
- (b) an audited statement of comprehensive income; and
- (c) such other information as the Minister may require.

PART V

GENERAL PROVISIONS

36. (1) The Auditor-General may, in the course of performing the Auditor-General's functions, track a transaction into the account of any person in any bank through an order of the courts, if the Auditor-General has reason to believe that the money belonging to a State organ or State institution has been fraudulently or wrongly paid into such person's account. Power to examine bank accounts

(2) When required under this section, the bank shall produce any documents or provide requested information relating to the account in the bank's custody or control.

(3) In exercising the authority under this section, the Auditor-General shall ensure that any information obtained is not used for any purpose other than that legally intended and the Auditor-General shall keep in safe custody all the documents and information so obtained.

(4) The Auditor-General may make copies of any documents so produced.

Prohibition
of
publication
or disclosure
of
information
to
unauthorised
persons

37. (1) A person shall not, without the consent in writing given by or on behalf of the Auditor-General, publish or disclose to an unauthorised person, otherwise than in the course of the duties of that person, the contents of a document, communication or information which relates to, or which has come to the knowledge of the person in the course of that person's duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General
offences

38. (1) A person shall not—

- (a) knowingly make, or cause to be made, to the Auditor-General or an officer or a member of staff of the Auditor-General's Office, a false testimony or false report in any material particular on a matter under investigation;
- (b) knowingly mislead the Auditor-General, an officer or a member of staff of the Auditor-General's Office by giving any false information or statement or making a false allegation;
- (c) obstruct, assault, insult, hinder, delay or impersonate the Auditor-General, an officer or a member of staff of the Auditor-General's Office in the lawful exercise of the powers conferred on the Auditor-General, an officer or

a member of staff of the Auditor-General's Office under this Act;

- (d) refuse or fail, without reasonable cause, to give the Auditor-General, an officer or a member of staff of the Auditor-General's Office on request, a document or information required for purposes of this Act;
- (e) fail to comply with a lawful summon, order or directive of the Auditor-General, an officer, or member of staff of the Auditor-General's Office under this Act; or
- (f) destroy anything or prevent the seizure of any property or document or securing of the property or document.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

39. The Commission may, by statutory instrument, on the recommendation of the National Audit Office, make regulations for the better carrying out of the provisions of this Act.

Regulations

40. The Public Audit Act, 1980, is repealed.

Repeal of
Cap. 378

41. (1) A person who was an officer or member of staff in the Auditor-General's Office before the commencement of this Act shall continue to be an officer or member of staff of the National Audit Office, as the case may be, as if appointed or employed under this Act.

Transitional
and savings
provisions

(2) The service of persons referred to in subsection (1) shall be treated as continuous service.

(3) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the Auditor-General's Office before the commencement of this Act.
