

No. 1 of 1989.  
***Audit Act 1989.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 1 of 1989.

***Audit Act 1989.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Audit Act 1989,***

Being an Act as authorized by Section 214 (*functions of the Auditor-General*) of the *Constitution* to expand and provide in more detail for the functions of the Auditor-General and to confer additional functions and duties on the Auditor-General and to provide for fees and charges payable to the Auditor-General and to effect repeals and amendments consequential thereon, and for related purposes.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears—

**“accountable officer”** means a person who—

- (a) is an officer; or
- (b) authorizes the collection or payment of public moneys or accounts for stores, whether or not he is an officer;

**“accounts and records”** includes any accounts, deeds, writings and documents and other records of information, whether compiled, recorded or stored by microfilm or electronic process or otherwise;

**“approved bank”** means a bank carrying on business in the country and approved by the Minister, by notice in the National Gazette, for the purposes of this Act;

**“Auditor-General”** means the person occupying the office established by Section 213 (*establishment of the office of Auditor-General*) of the *Constitution* (and includes, where appropriate, the Office of the Auditor-General);

**“constituent law”**, in relation to a public body, means the Act by or under which the public body is established or carries on its operations;

**“Financial Instruments”** means Financial Instruments authorized and issued under Section 117 of the *Public Finances (Management) Act 1995*;

**“fiscal year”**, in relation to a public body to which Part III applies, means the year ending on 31 December in each year, or, where some other date is specified by or under its constituent law, that date, and otherwise means the year ending 31 December;

<sup>1</sup>**“Government association”** means an association (other than a Provincial Government association) incorporated under the *Associations Incorporation Act 1966* which—

- (a) is funded in whole or in part by public moneys; or
- (b) has as its objectives or one of its objectives the development of Governmental or inter-Governmental administration or co-operation;

<sup>23</sup>**“Government-owned company”** means a company incorporated under the *Companies Act 1997*, a majority of the shares in which are held by, or on behalf of, the State but does not include the company referred to as “the Company” in the Petromin PNG Holdings Limited Authorisation Act 2006 or any subsidiary of that company;

**“information storage device”** means—

- (a) a computer; or
- (b) papers or other materials on which there are marks, symbols, perforation or other indicators having a meaning for persons qualified to interpret them; or
- (c) a disc, tape or other device on which information may be stored; or
- (d) a device, electronic or otherwise, capable of storing information;

**“property”** means real and personal property;

<sup>4</sup>**“Provincial Audit Service”** means a Provincial Audit Service established under Section 16A;

<sup>1</sup> Section 1 (definition of “Government association”) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(a); amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

<sup>2</sup> Section 1 (definition of “Government-owned company”) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(a); Section 1 (definition of “Government-owned company”) amended by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*, s12; Section 1 Amended by No. 1 of 2007, s. 14.

<sup>3</sup> Section 1 Amended by No. 1 of 2007, s. 14.

<sup>4</sup> Section 1 (definition of “Provincial Audit Service”) inserted by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s1(a).



<sup>5</sup>**“Provincial Auditor”** means a Provincial Auditor appointed under Section 113(2) of the *Organic Law on Provincial Governments and Local-level Governments* and Section 20AA;

<sup>6</sup>**“Provincial Government association”** means an association incorporated under the *Associations Incorporation Act* (Chapter 142) which—

- (a) is funded in whole or in part by a Provincial Government or Provincial Governments; or
- (b) has as its objectives or one of its objectives the development of Provincial Government administration or co-operation between—
  - (i) Provincial Governments; or
  - (ii) a Provincial Government and the National Government; or
  - (iii) Provincial Governments and the National Government;

<sup>7</sup>**“Provincial Government-owned company”** means a company incorporated under the *Companies Act 1997* a majority of the shares in which are held by, or on behalf of, a Provincial Government or Provincial Governments;

<sup>8</sup>**“provincial law”**, in relation to a province, means—

- (a) a law made by a provincial legislature in accordance with the *Organic Law on Provincial Governments and Local-level Governments*; and
- (b) a law adopted by a Provincial Government in accordance with Section 120 of the *Organic Law on Provincial Governments and Local-level Governments*;

**“the Public Account”** means the Public Account established under Section 10 of the *Public Finances (Management) Act 1995* consisting of—

- (a) the Consolidated Revenue Fund; and
- (b) the Trust Fund;

**“public body”** means any body, authority or instrumentality (corporate or unincorporate) established by or under an Act or a Constitutional law, other than the Auditor-General or a body, authority or instrumentality incorporated under the *Companies Act 1997*;

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<sup>5</sup> Section 1 (definition of “Provincial Auditor”) inserted by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s1(a).

<sup>6</sup> Section 1 (definition of “Provincial Government association”) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(b); amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

<sup>7</sup> Section 1 (definition of “Provincial Government-owned company”) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(b); amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

<sup>8</sup> Section 1 (definition of “provincial law”) repealed and replaced by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s1(b).

“**public moneys**” includes all revenue and loans, trust and other moneys raised or received, and all bonds, debentures and other securities received—

(a) by any person on behalf of the State; or

(b) by an officer in his capacity as such on behalf of any other person;

<sup>9</sup>“**public project**” means a project funded by a loan the repayment or part of the repayment of which is, or is to be, made out of public moneys;

<sup>10</sup>“**Registered Company Auditor**” means a Registered Company Auditor as defined in Section 2 of the *Accountants Act 1996*;

<sup>11</sup>“**relevant body**” means a body specified in Section 3(2);

“**subsidiary corporation**” has the meaning given to it in Section 49 of the *Public Finances (Management) Act 1995*;

“**stores**” means goods and chattels of any kind that are or are intended to be the property of, or in the possession or under the control of, the State;

“**Trust Account**” means a Trust Account established under Section 15 of the *Public Finances (Management) Act 1995*;

“**Trust Fund**” means the fund established by Section 10 of the *Public Finances (Management) Act 1995*.

## 2. APPLICATION OF ACT IN RELATION TO INFORMATION STORAGE DEVICES, ETC.

(1) For the purposes of this Act—

(a) a provision of this Act authorizing the Auditor-General or a person authorized by him to have full and free access to, or to search accounts and records, authorizes the Auditor-General or a person authorized by him in a case where accounts or records are kept by means of an information storage device, to have free access to, or to search, as the case may be, the information contained in the accounts or records, or extracts from, the accounts or records as the Auditor-General, or a person authorized by him, requests; and

(b) a person who is entitled, by or under this Act, to take a copy of, or extracts from, accounts or records, is entitled in a case where accounts or records are kept by means of an information storage device, to take a copy of, or extract from, the information contained in the accounts or records; and

<sup>9</sup> Section 1 (definition of “public project”) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(c).

<sup>10</sup> Section 1 (definition of “Registered Company Auditor”) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(d).

<sup>11</sup> Section 1 (definition of “relevant body”) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s1(e).

- (c) a requirement under this Act to produce accounts or records to the Auditor-General or to a person authorized by him shall be taken to include a requirement to produce, in a case where the accounts or records are kept by means of an information storage device, the information contained in the accounts or records, or in such extracts from the accounts or records as the Auditor-General or a person authorized by the Auditor-General requests; and
- (d) a provision of this Act authorizing or requiring the Auditor-General to inspect, examine or audit accounts or records includes, in a case where the accounts or records are kept by means of an information storage device, a requirement authorizing or requiring the Auditor-General to be provided with the information contained in the accounts or records, or in such extracts from the accounts or records as the Auditor-General requests.

(2) Without limiting the powers of the Auditor-General or of a person authorized by the Auditor-General, under a provision of this Act, where the Auditor-General, or a person authorized by the Auditor-General, is entitled, under another provision of this Act, to inspect, examine or audit any account or records and those accounts or records are kept by means of an information storage device, the Auditor-General or a person so authorized is entitled to be provided with such reasonable facilities for access to that information storage device as he considers necessary for the performance of his functions under this Act.

## PART II. – AUDIT.

## 3. FUNCTIONS AND DUTIES OF THE AUDITOR-GENERAL.

(1) The primary functions of the Auditor-General are to inspect and audit, and to report at least once in every fiscal year to the Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and such other functions as are prescribed by or under a law of Papua New Guinea.

(2)<sup>12</sup> <sup>13</sup>Without limiting the generality of Subsection (1), unless other provision is made by law in respect of the inspection and audit of them, Subsection (1) extends to the accounts, finances and property of all–

- (a) Departments of the National Public Service and arms, agencies and instrumentalities of the National Government; and
- (b)<sup>14</sup> Provincial Governments and arms, agencies and instrumentalities of Provincial Governments; and
- (c)<sup>15</sup> bodies established by–
  - (i) a Constitutional law; or
  - (ii) an Act of the Parliament; or
  - (iii) executive or administrative act of the National Executive; or
  - (iv) a provincial law; or
  - (v) executive or administrative act of a provincial executive,

for governmental or official purposes and subsidiary corporations of such bodies except the company referred to as “the company” in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* and the subsidiaries of that company; and

- (d) Government associations; and
- (e) Government-owned companies; and
- (f)<sup>16</sup> Provincial Government associations; and
- (g)<sup>17</sup> Provincial Government public projects; and
- (h) public projects.

(3) Notwithstanding that other provision for inspection or audit is made as provided for by Subsection (2), the Auditor-General may, if he thinks it proper to do so, inspect and audit, and report to the Parliament on, any accounts, finances or

<sup>12</sup> Section 3(2) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s2.

<sup>13</sup> Section 3(2) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s2.

<sup>14</sup> Section 3(2)(b) amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

<sup>15</sup> Section 3(2)(c) amended by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*, s13.

<sup>16</sup> Section 3(2)(f) amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

<sup>17</sup> Section 3(2)(g) amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

property of an institution referred to in that subsection, insofar as they relate to, or consist of or are derived from, public moneys or property of Papua New Guinea.

(4) Subject to Section 214 of the *Constitution*, the Auditor-General shall, in such manner and at such times as he thinks proper, inspect and audit all accounts that relate directly or indirectly to—

- (a) the collection, receipt, expenditure or issue of public moneys; or
- (b) the receipt, custody, disposal, issue or use of stores or other property of the State.

(5) The Auditor-General shall take such action as he thinks necessary to satisfy himself that—

- (a) all accounts referred to in Subsection (4) have been reasonably kept; and
- (b) all reasonable precautions have been taken to safeguard the collection and custody of public moneys, and that all applicable laws, directions and instructions have been duly observed and provide an effective check of the assessment and collection of the revenue; and
- (c) all expenditure of public moneys has been properly authorized and applied to the purposes for which they were appropriated; and
- (d) all such expenditure has been properly accounted for; and
- (e) all such expenditure has been made with due regard to economy and the avoidance of waste and extravagance; and
- (f) all reasonable precautions have been taken to safeguard the receipt, custody, disposal, issue and proper use of stores and other property of the State; and
- (g) all applicable laws, directions and instructions have been duly observed; and
- (h) the functions performed by, and the operations carried out by the relevant body, are being carried out in an economical, efficient and effective manner; and
- (i) the procedures that are followed by the relevant body for reviewing operations carried on by the body are adequate to assess the extent to which those procedures are being carried on in an economical, efficient and effective manner.

(6) The Auditor-General may, by instrument under his hand, appoint a person to assist him in the discharge of his functions under Subsection (5)(h) and (i) and a person so appointed shall act under the directions of and on terms and conditions determined by the Auditor-General.

#### **4. POWERS OF THE AUDITOR-GENERAL.**

(1) For the purpose of the performance of his functions and duties under this Act, the Auditor-General may—

- (a) authorize any person to inspect and audit any accounts and records that are authorized or required by any law to be inspected or audited by the Auditor-General, and to report to him on the inspection and audit; and
- (b) summon any person—
  - (i) to appear personally before him at a time and place specified by him in writing under his hand; and
  - (ii) to produce to him all accounts and records in the possession or under the control of that person that appear to the Auditor-General to be necessary for the purposes of any inspection or audit authorized or required by any law to be made by the Auditor-General; and
- (c) examine on oath or affirmation any person respecting—
  - (i) the collection, receipt, expenditure or issue of public moneys; and
  - (ii) the receipt, custody, disposal, issue or use of stores and other property of the State; and
  - (iii) all other matters and things necessary for the due exercise and performance of the powers, functions and duties conferred or imposed on the Auditor-General; and
- (d) ask such questions of, and make such observations to, any person, and call for such accounts and records and explanations, as he thinks necessary; and
- (e) without fee, cause searches to be made in, and copies or extracts to be taken from, any document, register or record in any Department, Organization or Agency for which the Auditor-General is the auditor.

(2) A person authorized by the Auditor-General under Subsection (1)(a) has and may exercise the powers of the Auditor-General under Subsection (1)(d) and (e).

(3) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts and records that relate, directly or indirectly, to—

- (a) the collection, receipt, expenditure or issue of public moneys; or
- (b) the receipt, custody, disposal, issue or use of stores or other property of the State,

and may take copies of or extracts from any such accounts and records.

(4) On request by the Auditor-General or a person authorized by him, an authority established under any law, an officer or employee of any such authority and any other person shall produce to the Auditor-General or a person authorized by him any accounts or records referred to in Subsection (3) that are specified or described in the request or that relate to a matter specified or described in the request.

(5) A person who appears before the Auditor-General when summoned to do so under Subsection (1)(b) is entitled to be paid such reasonable expenses as the Auditor-General certifies to be reasonable.

## **5. POWER TO PROSECUTE.**

(1) Where the Auditor-General is satisfied that a person, to whom the provisions relating to audit contained in the Constitutional Laws and this Act apply, is guilty of misappropriation, misuse or fraud of public money, stores or property he shall refer the matter, together with a statement of the reasons for being so satisfied, to the Public Prosecutor.

(2) Where a matter has been referred to the Public Prosecutor under Subsection (1) and the Public Prosecutor has failed to proceed with the matter after 60 days, the Auditor-General may prosecute the person who in his opinion is guilty of misappropriation of public monies.

## **6. MISCELLANEOUS AUDIT PROVISIONS.**

(1) Notwithstanding the preceding provisions of this Part, the Auditor-General may—

- (a) in his discretion, dispense with all or any part of the detailed audit of any accounts; and
- (b) after satisfying himself that any accounts of receipts, expenditure or stores have been examined and certified correct by the proper officer, admit the accounts as satisfactory evidence in support of the charges or credits to which they relate; and
- (c) if an account of expenditure is defective for want of a certificate or supporting document or of due stamping, or otherwise, admit the account if he is satisfied, by the explanation given by the accounting officer or by other evidence, that it is proper to do so.

(2) If an account of expenditure cannot be produced to the Auditor-General or a person authorized by him the Minister may, if he is satisfied as to the correctness of the expenditure, authorize the amount of expenditure to stand, and the Auditor-General shall accept the authorization instead of the missing account.

## **7. REPORTS BY AUDITOR-GENERAL.**

(1) The Auditor-General—

- (a) may, at any time, report to the Minister on any matter arising under this Act relating to the collection, receipt, expenditure or issue of public moneys or the receipt, custody, disposal, issue or use of stores and other property of the State, or to the accounting for such moneys, stores or property; and

- (b) shall report to the Minister any irregularities revealed by any inspection or audit that, in the opinion of the Auditor-General, are of sufficient importance to justify his so doing.

(2) Whenever he thinks it proper to do so, the Auditor-General may transmit to the Minister the name of any person who, in the opinion of the Auditor-General, has failed to comply with any of the provisions of this Act, together with details of the alleged non-compliance.

(2A)<sup>18</sup> <sup>19</sup>In a report under this section the Auditor-General shall specify—

- (a) whether the financial statements, to which the report relates, are based on proper accounts and records; and
- (b) whether the financial statements, to which the report relates, are in agreement with the accounts and records and whether they show fairly the financial operations for the period which they cover and the state of affairs as at the end of that period; and
- (c) whether the receipt and payment and investment of moneys and the acquisition and disposal of assets during the year have been in accordance with the *Public Finances (Management) Act 1995*; and
- (d) such other matters arising out of the financial statements, to which the report relates, as the Auditor-General considers should be reported.

(3) Where the Auditor-General has carried out his functions under Section 3(5)(h) and (i) in relation to a relevant body he shall prepare a report to the National Parliament that—

- (a) may include such information as he thinks desirable in relation to matters referred to in the report; and
- (b) may include any recommendations arising out of the audit that he thinks fit to make; and
- (c) shall set out his reasons for opinions expressed in the report,

and may send a copy of such report to the Minister and to the Head of the relevant body.

(4)<sup>20</sup> <sup>21</sup>The Auditor-General may at any time submit to the Speaker for presentation to the Parliament a special report on any matter that is of such importance or urgency that, in the opinion of the Auditor-General, it should not be deferred until the presentation of his annual report to Parliament.

<sup>18</sup> Section 7(2A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s3(a).

<sup>19</sup> Section 7(2A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s3(a).

<sup>20</sup> Section 7(4) added by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s3(b).

<sup>21</sup> Section 7(4) added by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s3(b).



## PART III. – PUBLIC BODIES.

## 8. AUDIT.

(1) The provisions of this section apply to and in respect of all public bodies and subsidiary corporations notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2)<sup>22</sup> <sup>23</sup>Subject to this section, the Auditor-General shall inspect and audit–

- (a) the accounts and records and financial transactions; and
- (b) the records relating to the assets and liabilities and assets in the custody,

of each public body and shall promptly draw the attention of the Minister, and of the Minister responsible for the body to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing and shall report to them the results of his inspection and audit of any accounts and records under this section in respect of each financial period for which financial statements are prepared.

(3) The Auditor-General may, in his discretion, dispense with the whole or any part of the detailed inspection and audit of any accounts and records referred to in Subsection (2).

(4)<sup>24</sup> <sup>25</sup>The Auditor-General shall report, on all financial statements furnished to him under Section 63(4) of the *Public Finances (Management) Act 1995* by each public body, to–

- (a) the Minister; and
- (b) the Minister responsible for the body.

(4A)<sup>26</sup> <sup>27</sup>A report under Subsection (4) shall specify–

- (a) whether the financial statements, to which the report relates, are based on proper accounts and records; and
- (b) whether the financial statements, to which the report relates, are in agreement with the accounts and records and, in the case of–
  - (i) a public body or subsidiary corporation–declared by its constituent law to be a trading enterprise; or
  - (ii) Government-owned company–empowered by its Articles of Association to trade,

<sup>22</sup> Section 8(2) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(a).

<sup>23</sup> Section 8(2) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(a).

<sup>24</sup> Section 8(4) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(b).

<sup>25</sup> Section 8(4) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(b).

<sup>26</sup> Section 8(4A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(c).

<sup>27</sup> Section 8(4A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(c).

whether the financial statements to which the report relates show fairly—

- (iii) the financial operations for the period which they cover; and
- (iv) the state of affairs at the end of that period.

(5) The Auditor-General may, in his discretion, for the purpose of assisting him in an audit and inspection under Subsection (2), employ a Registered Company Auditor who shall act under the direction of the Auditor-General and on terms and conditions determined by the Auditor-General.

(5A)<sup>28</sup> <sup>29</sup>A body which is liable to audit by the Auditor-General shall not appoint a Registered Company Auditor to carry out the functions and powers of the Auditor-General under the *Constitution* and this Act.

(6) The Auditor-General, or a person authorized by him to carry out or assist in carrying out an inspection or audit under this section—

- (a) is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the public body or subsidiary company relating, directly or indirectly, to the receipt or payment of moneys by it, or to the acquisition, receipt, custody or disposal of assets by it; and
- (b) may make copies of, or take extracts from, any such accounts, records, documents or papers; and
- (c) may require any person to furnish him with such information in his possession or to which he has access as the Auditor-General, or the person carrying out, or assisting in carrying out the inspection or audit thinks necessary for the purposes of the functions of the Auditor-General under the *Constitution* and this Act.

(7) A person who fails to comply with a requirement under Subsection (6) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**9<sup>30</sup>. [REPEALED.]**

<sup>28</sup> Section 8(5A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(d).

<sup>29</sup> Section 8(5A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s4(d).

<sup>30</sup> Section 9 repealed by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s5.

**PART IV. – AUDIT FEES AND CHARGES.**

**10. APPLICATION OF THIS PART.**

<sup>31</sup>Subject to Section 11, this Part applies to all relevant bodies subject to audit by the Auditor-General.

**11. EXEMPTION.**

<sup>32</sup>Where, in relation to any financial year, a relevant body is unable to pay audit fees and charges which may be levied under this Part, the Auditor-General may, on satisfactory evidence to that effect, exempt it from payment of such audit fees and charges or a proportion of such audit fees and charges.

**12. AUDITOR-GENERAL TO LEVY AUDIT FEES AND CHARGES.**

<sup>33</sup>Where the Auditor-General—

- (a) carries out an audit and inspection of the accounts and records of a relevant body; or
- (b) makes a report authorized under this Act or any other law relating to the accounts and records of a relevant body,

he shall levy on that relevant body audit fees and charges in accordance with a scale determined under Section 14.

**13. RELEVANT BODY, ETC., TO PAY AUDIT FEES AND CHARGES.**

<sup>34</sup>Any audit fees and charges levied under Section 12 on a relevant body (other than a Department of the National Public Service, a Provincial Government or a Local-level Government) are a debt due to the State and are payable to the Auditor-General in the prescribed manner.

**14. AUDITOR-GENERAL TO FIX AUDIT FEES, ETC.**

The Auditor-General shall, from time to time, in a manner approved by the Minister, fix a scale of audit fees and charges payable under this Act.

**15. AUDIT FEES, ETC., TO BE PAID INTO THE APPROPRIATE BANK ACCOUNT.**

All audit fees and charges received by the Auditor-General under this Act shall, after deduction of any sums due to a Registered Company Auditor employed by

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<sup>31</sup> Section 10 amended by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s6.

<sup>32</sup> Section 11 repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s7.

<sup>33</sup> Section 12 amended by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s8.

<sup>34</sup> Section 13 repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s9. ; amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

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the Auditor-General under Section 8, be paid into the appropriate bank account under Section 22.

**PART V.<sup>35</sup> – PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.**

**16. CONTROL AND AUDIT OF PROVINCIAL ACCOUNTS AND LOCAL-LEVEL GOVERNMENT ACCOUNTS.**

<sup>36</sup>(1) The provisions of this Part apply to all Provincial Governments and Local-level Governments, bodies and projects specified in Subsection (2) notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any options, limitations, conditions, additions or modifications contained in any other law.

(2) Subject to this Part, the provisions of Section 214 (*functions of the Auditor-General*) of the *Constitution* extended to the accounts, moneys and property of each—

- (a) Provincial Government; and
- (b) Local-level Government as specified in Section 26(3) of the *Organic Law on Provincial Governments and Local-level Governments*; and
- (c) subsidiary corporation of a Provincial Government; and
- (d) body established by—
  - (i) a provincial law; or
  - (ii) executive or administrative act of a Provincial Executive Council; and
- (e) Provincial Government Association; and
- (f) Provincial Government-owned company; and
- (g) public project, where the repayment or part repayment of the loan is to be made out of provincial moneys.

(3) The annual report of the Auditor-General on each Provincial Government and Local-level Government for a fiscal year shall be prepared by 30 April in the year succeeding and shall be submitted to—

- (a) the Minister responsible for Provincial Government and Local-level Government matters, who shall table it in Parliament at its meeting immediately following the receipt by him of the report; and
- (b) the Minister responsible for finance matters; and
- (c) the Provincial Government and Local-level Governments concerned; and
- (d) the National Economic and Fiscal Commission.

<sup>35</sup> Part V. repealed and replaced by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s2.

<sup>36</sup> Section 16(1) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s10(a); Section 16(2) repealed and replaced by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s10(b); Section 16(3A) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s10(c); Section 16(3B) inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s10(c); Section 16(6) repealed by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s10(d); Section 16 repealed and replaced by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s2.

(4) The Auditor-General shall, in a report under this section on the financial statements of a Provincial Government or Local-level Government, specify—

- (a) whether the financial statements are based on proper accounts and records; and
- (b) whether the financial statements are in agreement with the accounts and records and whether they show fairly the financial operations for the period which they cover and the state of affairs at the end of that period; and
- (c) whether the receipt and payment and investment of moneys and the acquisition and disposal of assets during the period covered by the financial statements have been in accordance with the *Public Finances (Management) Act 1995* and the provincial law; and
- (d) such other matters arising out of the financial statements as the Auditor-General considers should be reported.

(5) The Auditor-General shall, in a report under this section on the financial statements of a relevant body, specify—

- (a) whether the financial statements are based on proper accounts and records; and
- (b) whether the financial statements are in agreement with the accounts and records to which they relate and whether they show fairly the financial operations for the period which they cover and the state of affairs at the end of that period; and
- (c) whether the receipt and payment and (where appropriate) the investment of moneys and acquisition and disposal of assets of the body have been in accordance with its constituent law; and
- (d) such other matters arising out of the financial statements as the Auditor-General considers should be reported.

(6) The Auditor-General may, in his discretion, dispense with the whole or any part of the detailed inspection and audit of any accounts, moneys and property referred to in Subsection (2).

(7) The Auditor-General may, in his discretion, for the purpose of assisting him in an audit inspection under Subsection (2), employ a Registered Company Auditor who shall act under the direction of the Auditor-General and on terms and conditions determined by the Auditor-General.

## **16A. PROVINCIAL AUDIT SERVICE.**

<sup>37</sup>The Auditor-General may, by notice in the National Gazette, establish a Provincial Audit Service in a province.

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<sup>37</sup> Section 16A inserted by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s2.

**PART VI. – GENERAL PROVISIONS.****17. PROVISION AS TO SECRECY, ETC.**

(1) Subject to Subsection (3), the provisions of this Act are not limited by any provision of any other Act or subordinate enactment relating to the secrecy of information or restricting or prohibiting access to accounts and records.

(2) Subject to Subsection (3), notwithstanding—

(a) anything in any other law; or

(b) the taking of an oath or the making of an affirmation or declaration of secrecy,

no person is guilty of an offence or is otherwise liable by reason of anything done in compliance with this Act.

(3) Subsection (1) or (2) does not apply in any case in which, and to the extent that, an Act or subordinate enactment specifically excludes the operation, in whole or in part of that subsection.

(4) Except as required or authorized by or under the *Constitution*, the Auditor-General or any other person shall not disclose (except in the course of his duty to another person performing duties under this Act), any information that has come to his knowledge by reason, directly or indirectly, of the provisions of this Act, in any case where the person from whom the information was obtained, or from whose possession or control the accounts and records from which the information was derived were produced, could not, but for this section, have lawfully disclosed the information or produced the accounts and records to the Auditor-General or an authorized person.

(5) Subsection (4) does not prevent the Auditor-General from making or disclosing in any report or communication under this Act any conclusions, observations or recommendations that are based on information referred to in that subsection.

**18. OBTAINING OF LEGAL OPINIONS.**

The Auditor-General is entitled to present to the Principal Legal Adviser a written case as to any legal question concerning—

(a) the powers, functions or duties of the Auditor-General; or

(b) the collection, receipt, expenditure or issue of public moneys; or

(c) the receipt, custody, disposal, issue or use of stores or other property of the State; or

(d) the accounting for any such moneys, stores or property,

and the Principal Legal Adviser shall give him a written legal opinion on the case.

**19. AUDIT OF OTHER ACCOUNTS AND RECORDS.**

Where, by or under any other Act, provision is made for the audit of any accounts by the Auditor-General, the audit shall be carried out in accordance with the provisions of that Act, and the provisions of this Act, with the necessary modifications, apply to and in relation to that audit accordingly.



**PART VII. – STAFF, FINANCE AND AUDIT.**

**20. APPOINTMENT OF OFFICERS.**

(1) The Auditor-General may, within the limits of funds lawfully available to him, appoint—

- (a) such officers and employees as, in his opinion, are necessary for the efficient performance of his functions; and
- (b) a lawyer as counsel; and
- (c) such temporary and casual employees as he considers necessary.

(2) The Auditor-General is authorized, in respect of persons appointed under Subsection (1), to exercise the powers and perform the duties and functions of the Department of Personnel Management and of a Departmental Head under the *Public Services (Management) Act 1995* that relate to personnel management, including the determination of terms and conditions of employment.

(3) The Auditor-General may set classification standards for persons appointed under Subsection (1) to conform with the classification recognized by the Auditor-General for the purpose of the office.

(4) Where, immediately before his appointment, an officer appointed under Subsection (1) was an officer of the Public Service, his service as an officer in the Office of the Auditor-General shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the ground of illness; and
- (b) furlough, or pay in lieu of furlough (including pay to dependants or personal representatives on the death of an officer).

**20A. STATIONING OF OFFICERS.**

<sup>38</sup>In order to carry out his duties under this Act more effectively, the Auditor-General may station in any relevant body or other body liable to audit by the Auditor-General, any person employed in his office and the relevant body or other body shall provide the necessary office accommodation for any person so stationed.

**20AA. APPOINTMENT OF PROVINCIAL AUDITORS.**

<sup>39</sup>(1) The Auditor-General shall appoint for each province an officer to be Provincial Auditor for the province.

- (2) The Provincial Auditor shall—
  - (a) be Head of the Provincial Audit Service in the province; and

<sup>38</sup> Section 20A inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s11.

<sup>39</sup> Section 20AA inserted by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s3.

(b) otherwise assist the Auditor-General to carry out his functions in relation to the province as specified in the *Organic Law on Provincial Governments and Local-level Governments* and in this Act.

(3) The Auditor-General shall assign to the Provincial Audit Service such additional officers and other officers and employees as he considers necessary.

## **20B. ESTIMATES.**

<sup>40</sup>The Auditor-General shall prepare annually estimates of the sums that will be required for the payment of salaries, allowances and expenses of his office during the next ensuing financial year for consideration by the Permanent Parliamentary Committee on Public Accounts for recommendation to the Prime Minister for approval in conformity with Section 225 of the *Constitution*.

## **20BA. FUNDING OF PROVINCIAL AUDIT SERVICE.**

<sup>41</sup>The National Government shall ensure that adequate funding is made available to enable each Provincial Audit Service to carry out its functions.

## **20C. SPECIAL REPORT.**

<sup>42</sup>Where the Auditor-General is of the opinion that the amounts provided for the office of Auditor-General in the estimates submitted to Parliament are not sufficiently adequate to enable him to fulfil his responsibilities, he may make a special report to the Parliament.

## **21. FINANCE.**

(1) The State shall pay each year to the Auditor-General such sum as is determined by the National Executive Council after consideration of estimates submitted by the Auditor-General as is sufficient to enable the performance of the functions of the Auditor-General.

(2)<sup>43</sup> <sup>44</sup>The sums payable under Subsection (1) shall be paid out of the Consolidated Revenue Fund.

## **22. BANK ACCOUNTS.**

(1) The Auditor-General may open and maintain an account or accounts with an approved bank or approved banks, and shall at all times maintain at least one such account.

(2) All moneys paid to the Auditor-General shall be paid into an account referred to in Subsection (1).

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<sup>40</sup> Section 20B inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s12.

<sup>41</sup> Section 20BA inserted by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s4.

<sup>42</sup> Section 20C inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s13.

<sup>43</sup> Section 21(2) amended by the *Appropriation (Administrative Arrangements) Act 1996* (No. 37 of 1996), s1.

<sup>44</sup> Section 21(2) amended by the *Appropriation (Administrative Arrangements) Act 1996* (No. 37 of 1996), s1.

**23. MONEYS PAYABLE TO OFFICE OF AUDITOR-GENERAL.**

(1) There are payable to the Auditor-General—

- (a) such sums as are appropriated under Section 21; and
- (b) such other sums as are payable to the Auditor-General under this Act and any other law.

(2) Moneys payable to the Auditor-General under Subsection (1)(a) shall be paid in such amounts and at such times as the Departmental Head of the Department responsible for financial management determines.

**24. PAYMENTS BY THE OFFICE OF AUDITOR-GENERAL.**

The moneys of the Auditor-General to which this Act applies may be applied only in payment or discharge of the expenses, obligations and liabilities of the Auditor-General arising under this Act or any Constitutional Law.

**24A. INVESTMENT OF SURPLUS FUNDS.**

<sup>45</sup>The Auditor-General may invest in suitable investments any moneys at credit of his bank accounts surplus to his immediate requirements.

**25. CONTRACTS FOR WORK AND SERVICES.**

(1) Subject to Subsection (2), tenders shall be publicly invited and contracts taken by the Auditor-General for all works, supplies and services.

(2) Subsection (1) does not apply to any works, supplies and services—

- (a) that are to be executed, furnished or performed by the State or an arm, agent or instrumentality of the State; or
- (b) in respect of which the Auditor-General certifies that the inviting of tenders is impracticable or inexpedient.

**25A. ACQUISITION OF PROPERTIES.**

<sup>46</sup>The Auditor-General may acquire and dispose of real and personal properties.

**26. APPROVAL REQUIRED IN CERTAIN CASES.**

(1) The provisions of this section apply notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

<sup>45</sup> Section 24A inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s14.

<sup>46</sup> Section 25A inserted by the *Audit (Amendment) Act 1995* (No. 5 of 1995), s15.

(2) The Auditor-General shall not, except with the approval of the Head of State, acting on advice, enter into a contract of an amount, or of property to a value, (or both) exceeding K300,000.00.

## **27. ACCOUNTS AND RECORDS.**

(1) The Auditor-General shall cause to be kept proper accounts and records of the transactions and affairs of the Office of Auditor-General and shall do all things necessary to ensure that all payments out of the moneys of the Auditor-General are correctly made and properly authorized and that adequate control is maintained over the assets of, or assets in the custody of the Auditor-General and over the incurring of liabilities by the Auditor-General.

(2) The Auditor-General shall, before 30 June in each year, prepare and furnish to the Head of State a report of its operations for the year ending 31 December preceding, together with the financial statements in respect of that year, for presentation to the National Parliament in accordance with Section 19 of the *Organic Law on Certain Constitutional Office-holders*.

(3) A financial statement under Subsection (2) shall be in a form approved by the Minister in consultation with the Auditor-General.

## **28. AUDIT OF OFFICE OF AUDITOR-GENERAL.**

(1) The Head of State, acting on the advice of the Auditor-General, shall appoint a person who is a Registered Public Accountant under the *Accountants Act 1996* to audit the accounts and records of the Office of the Auditor-General.

(2) The person appointed under Subsection (1) shall, in conducting an audit of and preparing a report on the accounts and records of the Auditor-General, have the same powers, and be subject to the same requirements as the Auditor-General when auditing and reporting on the accounts and records of a public body.

(3) The person appointed under Subsection (1) shall deliver to the Auditor-General a report of an audit conducted under this section.

**PART VIII. – MISCELLANEOUS.****29. OFFENCES.**

(1) A person who hinders or obstructs the Auditor-General, or a person authorized by the Auditor-General, in the exercise and performance of his powers, functions and duties is guilty of an offence.

Penalty: In the case of an offence by a natural person, a fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years; in the case of a person other than a natural person, a fine not exceeding K20,000.00.

(2)<sup>47</sup> A person who, without lawful excuse (proof of which is on him)–

- (a) refuses or fails to attend, or wilfully neglect to attend at a time and place required by the Auditor-General, or a person authorized by the Auditor-General, for the purposes of being examined; or
- (b) refuses or wilfully neglects to produce any accounts and records; or
- (c) refuses to allow the Auditor-General, or a person authorized by the Auditor-General, to make copies or extracts from any documents, registers or records; or
- (d) refuses to be sworn or make an affirmation; or
- (e) refuses to answer a lawful question; or
- (f) makes or subscribes any statutory declaration or affirmation knowing it to be false; or
- (g) wilfully and corruptly gives false evidence in the course of his examination before the Auditor-General, or a person authorized by the Auditor-General,

<sup>48</sup>is guilty of an offence.

Penalty: In the case of a natural person, a fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years; in the case of a person other than a natural person, a fine not exceeding K20,000.00.

**30. TIME OF COMMENCING PROCEEDINGS.**

Proceedings in respect of an offence under Section 29 shall be commenced within two years of–

- (a) the date on which the offence was committed; or

<sup>47</sup> Section 29(2) amended by the *Audit (Amendment) Act* 1995 (No. 5 of 1995), s16, by inserting the words “is guilty of an offence” after Paragraph (g).

<sup>48</sup> Section 29(2) amended by the *Audit (Amendment) Act* 1995 (No. 5 of 1995), s16, by inserting the words “is guilty of an offence” after Paragraph (g).

- (b) where the offence was committed on more than one date, the latest date on which it was committed.

**31. REGULATIONS.**

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing penalties of fines not exceeding K200.00 or imprisonment for a term not exceeding six months for offences against the Regulations.

**PART IX. – REPEAL AND SAVINGS.****32. INTERPRETATION.**

In this Part, “**the repealed provisions**” means the provisions repealed by Section 33.

**33. REPEAL.**

The following provisions are repealed:–

- (a) *Auditor-General (Fees and Charges) Act* (Chapter 396);
- (b) Section 62(4)(a) and (b), Section 63 and Part IX of the *Public Finances (Management) Act 1986*.

**34. AMENDMENT TO *PUBLIC FINANCES (MANAGEMENT) ACT 1986*.**

The *Public Finances (Management) Act 1986* is amended–

- (a) in Section 2, in the definition of “public body” by inserting after the words “other than” the following:–
  - “the Auditor-General or the Office of the Auditor-General or”; and
- (b) in Section 62(4), by adding the following:–
  - “report to the Minister in accordance with Part II of the *Audit Act 1989*.”.

**35. SAVINGS.**

Where, immediately before the coming into operation of this Act, the Auditor-General or a person authorized by him was authorized or required to carry out an inspection and audit of any accounts and records and make any report thereon, and such inspection and audit had not been commenced or completed or the report made before that coming into operation, the inspection and audit shall be carried out and the report made in accordance with the appropriate provisions of this Act and audit fees and charges on such audit and inspection and report shall be levied and payable under this Act.

**36. AUDIT FEES AND CHARGES PAYABLE UNDER THE REPEALED PROVISIONS.**

All audit fees and charges leviable, levied or payable under the repealed provisions (other than those to which Section 29 relates) and remaining unlevied or unpaid as at the date of the coming into operation of this Act shall remain leviable and payable in accordance with the provisions of the repealed provisions until fully paid.

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