

## AUDITOR-GENERAL ACT

### PRESIDENT'S OFFICE

No. 882 14 June 1995

#### NO. 12 OF 1995: AUDITOR-GENERAL ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

#### ACT

In view of the provisions of the Constitution of the Republic of South Africa, 1993, to provide for the conditions of service and additional functions of the AuditorGeneral; and for the auditing of certain accounts and the submission of audit reports to legislative institutions; and to provide for matters connected therewith.

(English text signed by the President.) (Assented to 8 June 1995.)

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

#### Definitions

1. In this Act, unless the context otherwise indicates-

(i) "accounting officer" means a person referred to in section 15 of the Exchequer Act, or the corresponding provisions of a provincial Exchequer Act, or in a law in respect of a statutory body; (xiv)

(ii) "Audit Arrangements Act" means the Audit Arrangements Act, 1992 (Act No. 122 of 1992); (xi)

(iii) "Audit Commission" means the Audit Commission established by section 12 of the Audit Arrangements Act; (x)

(iv) "Auditor-General" means the person who in terms of section 244(1)(a) of the Constitution continues in the office of Auditor-General or is appointed as such in terms of section 191 of the Constitution; (ix)

(v) "Commission" means the Public Service Commission established by section 209(1) of the Constitution; (vii)

(vi) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (v)

(vii) "Deputy Auditor-General" means the person appointed in terms of section 27 of the Audit Arrangements Act; (i)

(viii) "Exchequer Act" means the Exchequer Act, 1975 (Act No. 66 of 1975), and includes a provincial Exchequer Act; (xvi)

(ix) "fund or account concerned" means a vote, fund or account from which the current or capital expenses, as the case may be, of a department of State or any statutory body are defrayed; (ii)

- (x) "local government" means an institution or body referred to in section 174 of the Constitution; (xii)
- (xi) "money" means-
- (a) all revenue; and
- (b) all other money received or held by an accounting officer or other person in the service of the State or a statutory body or any company or other legal entity controlled by a statutory body, as the case may be, for or on account of the State or a statutory body; (iv)
- (xii) "Office" means the Office of the Auditor-General established by section 3 of the Audit Arrangements Act; (vi)
- (xiii) "property" means any movable or immovable goods of the State or a statutory body; (iii)
- (xiv) "province" means a province established by section 124 of the Constitution; (xiii)
- (xv) "public service" means the public service referred to in section 8 of the Public Service Act; (xviii)
- (xvi) "Public Service Act" means the Public Service Act, 1994 (Proclamation No. 103 of 1994); (xix)
- (xvii) "security" means any stock or bond certificate, promissory note, debenture, treasury bill, or a document issued as evidence of the borrowing of money or any other form of financing in terms of any Act of Parliament or of a provincial legislature and signed by a person authorised thereto; (xv)
- (xviii) "State" includes a province; (xvii)
- (xix) "statutory body" means an institution referred to in section 193(2) of the Constitution; (xx)
- (xx) "Treasury" means the Treasury as defined in section 1(1) of the Exchequer Act, and includes a provincial treasury existing in an executive department of a province; (xxi)
- (xxi) "trust money" means money kept by an accounting officer or other person in the service of the State or a statutory body, as the case may be, on behalf of a person or institution, which money does not belong to the State or a statutory body, as the case may be; (xxiii)
- (xxii) "trust property" means goods kept by an accounting officer or other person in the service of the State or a statutory body, as the case may be, on behalf of a person or institution, which goods do not belong to the State or a statutory body, as the case may be; (xxii)
- (xxiii) "unauthorised expenditure" means expenditure referred to in section 33 of the Exchequer Act, or the corresponding provisions of a provincial Exchequer Act. (viii)

## **Conditions of service of Auditor-General**

2. (1) If an officer or employee in the public service or in the Office, or a member of the Commission who immediately prior to his or her appointment as such a member, was such an officer or employee, is appointed in terms of section 191(2) of the Constitution, or acts as Auditor-General in terms of section 191(5) of the Constitution, the period of his or her service as Auditor-General shall for the purposes of leave and pension be reckoned as part of and continuous with his or her employment in the public service or in the Office, as the case may be, and in the case of a member of the Commission, of that service which

in terms of section 3(4) (a) of the Commission for Administration Act, 1984 (Act No. 65 of 1984), is reckoned as part of and continuous with his or her employment in the public service, and the provisions of any pensions Act applicable to him or her as such officer or employee or, in the event of his or her death, to his or her dependants, and which are not inconsistent with this section, shall mutatis mutandis continue so to apply.

(2) (a) The basis of remuneration and other conditions of service of the Auditor-General shall be determined by the Audit Commission.

(b) A determination by the Audit Commission in terms of paragraph (a) shall be made on the basis of consensus, but if consensus cannot be reached the matter shall be decided by resolution of a majority of at least two thirds of all the members of the Audit Commission.

(3)(a) The President may allow the Auditor-General at his or her written request, to vacate his or her office-

(i) on account of continued ill-health; or

(ii) for any other reason which the President deems sufficient.

(b) If the Auditor-General is allowed to vacate his or her office-

(i) in terms of paragraph (a) (i), he or she shall be entitled to such pension as he or she would have been entitled to under the pensions Act applicable to him or her if his or her services had been terminated on the ground of continued ill-health occasioned without his or her being instrumental thereto; or

(ii) in terms of paragraph (a) (ii), he or she shall be entitled to such pension as he or she would have been entitled to under the pensions Act applicable to him or her had he or she been compelled to retire owing to the abolition of his or her post.

(4) If the Auditor-General's term of office expires, he or she shall be deemed to have retired on the date of such expiration and he or she shall be entitled to such pension as he or she would have been entitled to under the pensions Act applicable to him or her had he or she been compelled to retire from the service of the Office owing to the abolition of his or her post.

(5) The conditions of service applicable to the person who immediately prior to the date of commencement of this Act occupied the post of Auditor-General, shall not be altered to his or her detriment, and no such condition of service shall at any time be construed or applied in a manner which is less favourable to the person concerned than the manner in which it was construed or applied immediately prior to the said date.

### **Functions of Auditor-General**

3. (1) The Auditor-General shall, in addition to the powers and functions conferred upon or entrusted to him or her in terms of section 193 of the Constitution, have the powers and perform the duties specified in this Act.

(2) Notwithstanding the provisions of any other law but subject to the provisions of the Constitution, the Auditor-General shall perform the functions vested in him or her by virtue of any other law, in accordance with the provisions of this Act in relation to

(a) the accounts which shall be audited;

(b) the procedure according to which auditing shall be done; and

(c) the steps to be taken by the Auditor-General as a result of an audit.

(3) The Auditor-General may at his or her discretion determine the nature and extent of the audit to be carried out and request the details and statements of account which he or she considers necessary: Provided that he or she may, notwithstanding the provisions of any other law, also determine the format in which and the date on which such details, statements of account and financial statements shall be submitted to him or her.

(4) The Auditor-General shall reasonably satisfy himself or herself that

(a) reasonable precautions have been taken to safeguard the proper collection of money to which an audit in terms of this Act relates, and that the laws and instructions relating thereto have been duly observed;

(b) reasonable precautions have been taken in connection with the receipt, custody and issue of, and accounting for, property, money, stamps, securities, equipment, stores, trust money, trust property and other assets;

(c) receipts, payments and other transactions are made in accordance with the applicable laws and instructions and are supported by adequate vouchers; and

(d) satisfactory management measures have been taken to ensure that resources are procured economically and utilised efficiently and effectively.

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

(b) the Auditor-General and any person referred to in section 6 shall have

(i) the right, without payment, to investigate and to make extracts from any record, book, document and other information of an institution whose accounts are being audited by him or her;

(ii) the right to investigate whether any property, money, stamps, securities, equipment, stores, trust money, trust property and other assets of an institution whose accounts are being audited by him or her have been obtained in an economical manner, and are being applied efficiently and effectively;

(iii) the right to investigate and to enquire into any matter, including the efficiency and effectiveness of internal control and management measures, relating to expenditure by and the revenue of an institution whose accounts are being audited by him or her;

(c) the Auditor-General or any person referred to in section 6 may administer an oath to or accept an affirmation from and interrogate under oath or upon affirmation any person whom he or she thinks fit to interrogate, in connection with the receipt, custody, payment or issue of property, money, stamps, securities, equipment, stores, trust money, trust property and other assets to which the provisions of this Act and the Constitution apply, and in connection with any other matter in so far as it may be necessary for the due performance and exercise of the powers and duties conferred or imposed upon the Auditor-General by this Act: Provided that notwithstanding any provisions to the contrary contained in any other law, the Auditor-General shall not be required to reveal the identity of the person referred to in this paragraph; and

(d) the Auditor-General may require the department of State, provincial department or statutory body concerned, to make available free of charge, while the audit is being carried out, suitable office accommodation, other facilities and logistical support reasonably required for the proper carrying out of the audit.

(6) The Auditor-General may on such conditions as he or she may determine co-operate with persons, institutions and associations in the Republic and in other countries, and take such steps as he or she may deem necessary in order to promote or develop his or her functions and government auditing in the Republic or elsewhere.

(7) Subject to section 10 of the Powers and Privileges of Parliament Act, 1963 (Act No. 91 of 1963), or any corresponding provision of a provincial Act, the Auditor-General, any person referred to in section 6 or any person acting under the authority of the Auditor-General, shall not be liable in his or her personal capacity in any civil or criminal proceedings in respect of anything done in good faith-

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

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

### **Reports of Auditor-General**

4. (1) Notwithstanding the provisions of any other law but subject to the provisions of the Constitution and subsection (3) and (5), the Auditor-General shall submit a report to the provincial legislature concerned on the auditing of the accounts of an accounting officer on provincial government level, and a statutory body established or constituted by or under any law on provincial government level or is under control of a province and whose accounts shall be audited by the Auditor-General.

(2) The Auditor-General shall, not less than seven days before the date on which he or she submits a report referred to in subsection (1) and section 193(7) of the Constitution to Parliament or a provincial legislature, transmit a copy thereof to

(a) each Minister;

(b) the Member of the Executive Council of a province who is entrusted with the financial matters of such province;

(c) the chairperson of the council or board of a statutory body; and

(d) the accounting officer, concerned.

(3) (a) Notwithstanding the provisions of any other law but subject to subsection (5), a report referred to in section 193(2) of the Constitution in respect of the accounts of a local government shall be transmitted by the Auditor-General to the chairperson of the council of the local government concerned.

(b) When the Auditor-General transmits a report referred to in paragraph (a) to the chairperson of the council, the Auditor-General shall also transmit a copy thereof to the accounting officer of the local government concerned and if necessary to the provincial Director-General concerned.

(c) The chairperson of the council shall after receipt of a report from the Auditor-General submit that report not later than at the second succeeding ordinary meeting of the local government, which shall not take

place behind closed doors, for discussion and to decide what corrective steps (if any) are to be taken: Provided that the Auditor-General or his or her representative may elucidate such meeting if he or she deems it to be in the public interest.

(d) Within 30 days after the date of the meeting referred to in paragraph (c), the chairperson of the council shall submit a copy of the minutes of that meeting containing the comments of the local government in regard to the report and indicating what steps were taken or are to be taken in connection with any matter revealed by the report, to the Auditor-General, and to the provincial DirectorGeneral concerned.

(e) For the purposes of this subsection a reference to "chairperson" means the chairperson or mayor, as the case may be, of the local government.

(4) Subject to the provisions of this section, the Auditor-General may also cause to be included a report on the auditing of the accounts and financial statements which he or she is in terms of this Act or any other law required to audit, and which is signed by him or her or a person in the Office designated by him or her, in the annual report of the institution concerned.

(5) Notwithstanding the provisions of any other law

(a) a report referred to in section 193(2) of the Constitution in respect of the accounts-

(i) of a local government shall not be submitted to the provincial legislature concerned or a body of such legislature concerned or a body of such legislature designated for this purpose;

(ii) of a local government, and of any statutory body established or constituted by or under any law on provincial government level or is under control of a province, shall not be submitted to Parliament in terms of section 193(7) of the Constitution,

except where the Auditor-General deems it to be in the public interest, in which case he or she may submit such report, to the provincial legislature or to Parliament, as the case may be, or to a body of such legislature or of Parliament designated for such purpose.

(b) the Auditor-General may, whenever he or she deems it to be in the public interest, report on any matter concerning the powers vested in him or her and submit such report to Parliament or the provincial legislature concerned or a body of Parliament or a provincial legislature designated for this purpose.

(6) The Auditor-General shall report on accounts established by-

(a) the Security Services Special Account Act, 1969 (Act No. 81 of 1969);

(b) the Defence Special Account Act, 1974 (Act No. 6 of 1974);

(c) the Secret Services Act, 1978 (Act No. 56 of 1978),

with due regard to the special nature of the accounts, and shall limit such report to the extent which he or she, after consultation with the President, the Minister of Finance and the responsible Minister, may determine: Provided that the reporting on any unauthorised expenditure or other irregularity shall not be so limited, except in respect of the disclosure of facts which will be to the detriment of the national interest.

Additional directives to Auditor-General in connection with report on accounts

5. When reporting on any accounts as required by section 4, the Auditor General shall draw attention to material cases-

(a) where in his or her opinion a grant has been exceeded or has been utilised for a service or for a purpose other than that for which it was intended;

(b) where the utilisation of resources for a service is in his or her opinion uneconomical, inefficient or ineffective or not conducive to the best interests of the State or the statutory body concerned;

(c) where the use or custody of property, money, stamps, securities, equipment, stores, trust money, trust property or other assets occurs in a manner which is or may be to the detriment of the State or the statutory body concerned;

(d) of unauthorised expenditure which in the course of the exercise of his or her powers or the performance of his or her duties comes to his or her attention: Provided that the Auditor-General shall list all unauthorised expenditure which has so come to his or her attention;

(e) where in his or her opinion the applicable internal control and management measures are inefficient or ineffective; and with regard to any other matter which in his or her opinion should in the public interest be brought to the notice of Parliament or the provincial legislature concerned, or a local government or statutory body, as the circumstances may require.

### **Personnel of Auditor-General**

6. The Auditor-General shall perform the functions assigned to him or her by this Act or any other law with the assistance of persons appointed in the Office in terms of the Audit Arrangements Act, and such other persons as he or she may appoint at his or her discretion against payment of such remuneration as may be agreed upon with such other persons and subject to such directives as the Auditor-General may deem expedient.

### **Deputy Auditor-General shall carry out certain instructions**

7. The Deputy Auditor-General shall subject to his or her duties as accounting officer and Head of the Office in terms of the Audit Arrangements Act, with regard to matters referred to in sections 3, 4 and 5, carry out the instructions given to him or her from time to time by the Auditor-General.

### **Cost of auditing**

8. (1) The cost of auditing, as determined by the Auditor-General, in respect of all the accounts audited by him or her in terms of this Act or any other law, shall, subject to subsections (3) and (4), be defrayed from the fund or account concerned, as the case may be, within 90 days after the receipt of an account:

Provided that the Treasury may in any case where it deems it expedient, direct that another account or fund may be charged with such expenditure: Provided further that, notwithstanding the provisions of any other law, the basis according to which audit costs are determined, shall be determined by the Auditor-General in consultation with the Audit Commission.

(2) The cost referred to in subsection (1) may, in respect of audits contemplated in section 193(2) and (4) of the Constitution, include interest on outstanding accounts at a rate prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(3) If circumstances in his or her opinion justify it, the Auditor-General may recover an amount less than

the cost of auditing, or no cost or interest charges at all, from the fund or account concerned.

(4) If the cost of auditing referred to in subsection (1) in respect of the auditing of a statutory body for any financial year concerned exceeds one per cent of the total current and capital expenditure of such body for that financial year as the Auditor-General may determine, such cost shall, to the extent to which it exceeds one per cent, as the Auditor-General may determine, be defrayed from a vote designated by the Director-General: State Expenditure.

### **Delegation of powers**

9. The Auditor-General may, subject to such conditions as he or she may determine, delegate or assign any power or duty conferred or imposed upon him or her by or under this Act, except the power conferred upon him or her by this section to a person referred to in section 6.

### **Transitional provision**

10. The Auditor-General may also submit a report prepared in respect of

(a) a provincial administration, self-governing territory as defined in section 38(1) of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), statutory body or any other institution as it existed before the commencement of the Constitution; and

(b) the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, or an institution the auditing of which was assigned to the Auditor-General concerned of such a Republic, which report has been or is to be submitted to Parliament after the commencement of the Constitution, to the provincial legislature of each province referred to in section 124 of the Constitution to which the report may relate.

### **Repeal and amendment of laws, and savings**

11. (1) Subject to subsection (2) the laws mentioned in the Schedule are hereby repealed or amended to the extent set out in the third column of the Schedule. (2) Anything done under a provision of any law repealed or amended by subsection (1) and which could have been done under a provision of this Act, shall be deemed to have been done under the latter provision.

### **Short title**

12. This Act shall be called the Auditor-General Act, 1995.

### **SCHEDULE**



## LAWS REPEALED OR AMENDED (SECTION 11)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 52 of 1989	Auditor-General Act, 1989	The repeal of the whole.
Act No. 66 of 1990	Auditor-General Amendment Act, 1990	The repeal of the whole.
Act No. 123 of 1992	Auditor-General Amendment Act, 1992	The repeal of the whole.
Act No. 142 of 1992	Secret Services Account Amendment Act, 1992	The amendment of the Schedule by the deletion of the amendment pertaining to the Auditor-General Act, 1989.