



BERMUDA

AUDIT ACT 1990

1990 : 56

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[preamble and words of enactment omitted]

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Short title

1 This Act may be cited as the Audit Act 1990.

Interpretation

2 (1) In this Act—

“the Audit Committee” means the committee established by section 5;

“function”, unless the context otherwise requires, means function whether under this Act or under some other provision of law;

“Government-controlled”, in relation to an entity, has the meaning set forth in subsection (2);

“member of the Auditor’s staff” means the Auditor and any person appointed as mentioned in section 3(1) or engaged as mentioned in section 3(2);

“the Minister” means the Minister of Finance;

“the Parliamentary Standing Committee” means the Parliamentary Standing Committee on the Office of the Auditor provided for by the Rules of the House of Assembly [*title 2 item 1(b)*];

“public officer” means the holder of an office in the public service of the Government;

“record” includes any device by which information is recorded or stored.

(2) An entity is Government-controlled for the purposes of this Act if the Government has the power—

- (a) by virtue of rights conferred by the constitution of that entity or by some other document regulating that or some other entity; or
- (b) by means of possession of voting power or the holding of shares in or in relation to that first-mentioned entity; or
- (c) by some other means,

to secure that the affairs of that first-mentioned entity are conducted in accordance with the wishes of the Government.

Staff of auditor

3 (1) Without prejudice to subsection (2), there shall be appointed to assist the Auditor in the discharge of his functions such number of public officers as may be required.

(2) The Auditor may, in addition, engage such further number of persons at such remuneration (deriving from funds provided for that purpose) and on such terms and conditions as he considers necessary for assisting him in the discharge of his functions.

(3) Every person appointed as mentioned in subsection (1) or engaged as mentioned in subsection (2) is subject to the Auditor’s direction and control.

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(4) Subject to subsection (5), anything under which the authority of the Constitution or any statute is to be done by or to the Auditor may be done by or to a duly authorised member of the Auditor's staff.

(5) The delegation of the Auditor's functions provided for by subsection (4) does not extend to the expression of an opinion on any accounts, or to the signing or submission of any report.

Remuneration of Auditor

4 (1) The salary or other remuneration of the Auditor shall not be less than that of a Puisne Judge.

(2) The expression "salary or other remuneration" in its reference in subsection (1) to a Puisne Judge does not extend to any allowances of a Puisne Judge or to any special treatment of a Puisne Judge's salary or remuneration for pension purposes.

Audit Committee

5 (1) There shall be established and maintained a committee, to be known as the "Audit Committee", for the purpose of performing the functions assigned to that committee by this Act.

(2) The Audit Committee ("the Committee") shall consist of—

(a) the Minister *ex officio*; and

(b) such other members (not fewer than five in number) as the Governor, acting in accordance with the advice of the Premier, may appoint, but so that no such member may be a public officer or an officer or a member of either House of the Legislature or an employee of any Government-controlled entity.

(3) The Governor, so acting, shall appoint a member to be the Committee's Chairman or, in case of need, acting Chairman, but the Minister may not be appointed, or act, as such.

(4) The Committee shall meet when summoned by the Chairman or acting Chairman—

(a) to consider any urgent matter proposed by the Minister or the Auditor for the Committee's consideration; or

(b) otherwise for the discharge of the Committee's functions under this Act.

(5) Subject to this section, the Committee may regulate their own procedure.

Audits of public accounts

6 (1) The Auditor shall in every year—

(a) audit—

(i) the accounts referred to in section 101(2) of the Constitution [*title 2 item 1*]; and also

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- (ii) the accounts of every Government-controlled entity whose accounts are not referred to in section 101(2) of the Constitution; and
 - (b) include in every such audit a report setting forth the Auditor's opinions in accordance with subsection (3).
- (2) The Auditor's primary functions are those specified in subsection (1), and he is not to exercise his powers under section 16 or 17, or to perform any other function, if to do so would or might impair his ability to discharge his functions under subsection (1).
- (3) A report for the purposes of subsection (1)(b)—
- (a) shall include the matters specified in Part I of the Schedule;
 - (b) may, if the Auditor thinks fit, include any or all of the matters specified in Part II of the Schedule.
- (4) Accounts that have been audited under subsection (1) shall not be published unless there is or are attached to them any report or reports that the Auditor prepared in relation to those accounts under subsection (1)(b).
- (5) The Auditor shall prepare accounts in respect of the work of the Office of the Auditor during each financial year, and those accounts shall be audited by such auditor as the Minister may select after consultation with the Parliamentary Standing Committee.

Procedure for audits

- 7 (1) The Auditor shall as soon as may be deliver to the relevant Minister a report on every audit conducted by the Auditor pursuant to section 6(1)(a)(ii), and that Minister shall lay the report before the House of Assembly as soon as may be thereafter.
- (2) In subsection (1) the expression "the relevant Minister" means the Minister responsible for the Government-controlled entity to which the accounts in question relate or, if there is no such Minister, then the Minister of Finance.
- (3) If any difficulty arises in determining for the purposes of subsection (2) of this section or section 11(1)(b) the Minister who is responsible for a Government-controlled entity, then that difficulty shall be resolved by the Premier after consultation with the Attorney-General.
- (4) Every report delivered by the Auditor to a Minister, or laid by a Minister before the House of Assembly, pursuant to subsection (1) shall have attached to it a copy of the accounts to which the report relates.
- (5) Subsections (1) and (4) of this section apply *mutatis mutandis* in relation to audits conducted pursuant to section 6(5) as those subsections apply in relation to audits conducted by the Auditor.

Ad hoc reports in connexion with audits

- 8 (1) Notwithstanding section 6, where it appears to the Auditor at any time in the course of the discharge of his functions under section 6(1) and (3) that a matter to which this section applies requires some action in the public interest, the Auditor shall report the matter to the entity in question and, if the circumstances in his judgment so warrant,

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also to the Minister; and, where the matter appears to the Auditor to be one requiring immediate or urgent action, he shall report under this section immediately.

(2) This section applies to any matter affecting an entity whose accounts are referred to in section 6(1).

Annual reports of Auditor

9 (1) The Auditor shall in every financial year make a report under this section on the work done by the Office of the Auditor during the next preceding financial year.

(2) A report under this section shall—

- (a) set forth details of every case in which the Auditor has qualified or reserved his opinion on, or on anything in, accounts referred to in section 6(1); and
- (b) report on every case in which the Auditor has observed that—
 - (i) a collection of public money, or a disbursement of public money—
 - (aa) has not been made, or has been made otherwise than, as required by any enactment, regulation, rule, order or directive applicable to that collection or disbursement; or
 - (bb) has not been accounted for, or has not been properly reflected, in any relevant accounts; or
 - (ii) property has not been adequately safeguarded or accounted for; or
 - (iii) any accounting or management control system (or any system designed to ensure economy and efficiency in the collection of public money or the making of disbursements, or in the preservation or use of assets, or in the determination of liabilities) was not in existence when it should have been, or was inadequate or had not been complied with; or
 - (iv) although appropriate and reasonable procedures could have been used to measure and report on the effectiveness of programmes, such procedures either had not been established or were not being complied with:

Provided that the Auditor need not report on any matter which in his opinion is not significant, or on any error or deficiency which in his opinion has been, or is being, satisfactorily rectified; and

- (c) call attention to any other case that the Auditor considers merits attention.

(3) A report under this section may include such comments as the Auditor may think fit to make—

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- (a) on the effect on the work of the Office of the Auditor of any changes made in relation to staffing or money sought by the Auditor for the operation of that Office; and
- (b) on whether in the carrying out of that work the Auditor received all the information or assistance that he required.

(4) A report under this section may also include, in relation to the accounts of any entity whose accounts are referred to in section 6(1), such comments as the Auditor may think fit to make—

- (a) on the accounting policies employed by the entity;
- (b) on whether the substance of any significant matter that came to his attention was adequately disclosed; and
- (c) on the suitability of the form of any estimates prepared by the entity for controlling disbursements.

(5) Where a report under this section deals with any accounts, there may be included in, or attached to, the report copies or summaries of or extracts from those accounts if the Auditor deems that necessary or convenient for the purposes of the report.

Time limit for annual reports of Auditor

10 (1) An annual report under section 9 shall be addressed to the Speaker of the House of Assembly, and, subject to subsection (2) of this section and to section 11, it is the Auditor's duty to deliver each such report to the Speaker, and send a copy of the report to the Governor and the President of the Senate, on or before 30th November in the financial year next following the financial year to which the report relates.

(2) Where in any case the Auditor will be unable to fulfil his duty under subsection (1), he shall so inform the Speaker of the House of Assembly in writing beforehand, giving his reasons; and he shall then use his best endeavours to deliver the report to the Speaker as soon after 30th November as he is able.

Procedure for annual reports of Auditor

11 (1) The Auditor shall as soon as may be in every year complete the final draft of his proposed report under section 9 and—

- (a) send a copy of the draft report to—
 - (i) the Chairman of the Audit Committee for circulation to the Committee; and
 - (ii) the Minister for his information; and
- (b) where any part or parts of the draft report deals or deal with any matter concerning a Government-controlled entity for which any other Minister is responsible, send copies of that part or those parts to that Minister for his information.

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(2) The Audit Committee shall study every draft report sent to them under subsection (1)(a); and the Auditor shall make himself and his staff fully available to the Committee, and shall give to the Committee all the assistance that the Committee may reasonably require for the purpose of studying the draft report.

(3) The Audit Committee—

- (a) shall consult the Auditor and may make to him such observations and recommendations on the draft report as they may think appropriate; and
- (b) shall inform the Cabinet of any matters in the draft report that in the Committee's opinion ought to be brought to the Cabinet's attention.

(4) The Auditor may, but need not, give effect to any recommendations made to him by the Audit Committee under subsection (3)(a).

(5) The Audit committee and the Auditor shall use their best endeavours so that the process of scrutiny, study and consultation provided for by subsections (1) to (3) may be completed in time to enable section 10(1) to be complied with.

Special reports by Auditor

12 (1) Notwithstanding sections 9 to 11, where at any time in the course of the performance of the Auditor's functions a matter arises to which this section applies, the Auditor shall make an immediate report under this section.

(2) This section applies to any matter—

- (a) of a nature described in sections 9(2)(b)(i) to (iv); and also
- (b) such, in the Auditor's opinion, as to warrant his making in the public interest an immediate report under this section in accordance with section 13.

Procedure for special reports by Auditor

13 (1) A special report under section 12 shall be addressed to the Speaker of the House of Assembly, and, subject to subsection (2) of this section, the Auditor shall deliver any such report to the Speaker, and send a copy of the report to the Governor and the President of the Senate, as soon as may be.

(2) The provisions of section 11 apply *mutatis mutandis* in relation to a special report under section 12 as those provisions apply in relation to an Auditor's annual report under section 9.

General powers of Auditor

14 The Auditor is entitled in the exercise and for the purpose of his functions—

- (a) to request that he be supplied with any explanation, information or assistance which he may reasonably require for the performance of his functions;

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- (b) to require access to all property of any entity whose accounts are referred to in section 6(1), and to all records relating to those accounts;
- (c) to call for reasonable accommodation to be provided to any member of the Auditor's staff; and
- (d) to seek from the Attorney-General in writing an opinion on any question regarding the interpretation of any statutory provision;

and any person to whom a reasonable demand by the Auditor in that behalf is properly directed shall comply with the demand with all reasonable despatch.

Power to charge fees in certain cases

15 (1) Where the Auditor acting under this Act audits the accounts of an entity whose accounts do not form part of the accounts of the Consolidated Fund, he may charge for the audit such reasonable fees as he thinks fit.

(2) Fees charged pursuant to subsection (1) shall be paid to the Accountant-General as public money.

Ad hoc investigations, etc

16 (1) Where any public money has been paid by way of grant or contribution to any person, or been placed by way of investment with any person, being in either case a person who is not an entity whose accounts are referred to in section 6(1), then the Auditor may direct to that person such enquiries, and in connexion with those enquiries make such investigations, as the Auditor thinks necessary or expedient for determining to what extent the public money so paid or placed has been used for the purposes for which it was so paid or placed and not otherwise.

(2) The Auditor—

- (a) shall report the results of any enquiries or investigations that he makes under subsection (1) to the Minister; and
- (b) may report those results, or any part of them, to any other person or authority (being a person of *sic* authority affected by the grant, contribution or investment) to whom or to which the Auditor considers it necessary or expedient to make such a report.

Power to give advice

17 The Auditor may, if requested to do so by an entity whose accounts are referred to in section 6(1), render to that entity any technical advice or assistance that he is competent to render by virtue of his professional qualifications and experience.

Independence of Auditor

18 The Auditor is not subject to the direction or control of any other person or authority in the exercise of his functions, but he shall take into account any proposals or recommendations made to him by the Parliamentary Standing Committee in relation to the expenditure of public money by the Office of the Auditor.

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Confidentiality

- 19 (1) Where any information is obtained—
- (a) by any member of the Auditor's staff while acting as such; or
 - (b) by any person by reason of that information having been included in a draft report prepared pursuant to section 11 and conveyed (whether directly or indirectly) to him,

that information is confidential and shall not be disclosed by him except—

- (aa) to the Minister or a public officer or, but so far only as may be necessary or expedient for the proper discharge or any function to be performed under this Act, to other persons; or
- (bb) for the purpose of any criminal or civil proceedings.

(2) A person shall not make working papers of the Office of the Auditor available to any person who is not a member of the Auditor's staff.

Criminal offences

- 20 (1) A person who—
- (a) contravenes section 6(4) or section 19(1) or (2); or
 - (b) fails or refuses to fulfil his duty under section 14 in relation to a demand properly directed to him under that section,

commits an offence against this Act for which he may be prosecuted summarily; and, if convicted of such an offence, he is liable to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding twelve months or to both.

(2) Any person who alters, erases, destroys or conceals any document or information with the intention of avoiding producing the document or information to the Auditor in accordance with section 14(a) or (b), commits an offence and is liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

(3) Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this Act shall be commenced within three years after the date of the commission of the offence.

[Section 20 amended by 2011 : 35 s. 4 effective 21 October 2011; subsection (3) inserted by 2012 : 25 s. 6 effective 3 July 2012]

Repeal of Act No. 343 of 1968

21 The Audit Act 1968 is repealed.

Commencement and transitional

22 (1) The provisions of this Act commence on such day as the Minister may by notice published in the Gazette appoint; and different days may be so appointed for different provisions or for different purposes.

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(2) The arrangements for auditing provided for by sections 6 and 7 (“the new arrangements”) apply on and after commencement day in relation to any Government-controlled entity (whether or not constituted by or under any statutory provision) that was in being immediately before that day; and, if any arrangements in force in relation to any such entity immediately before commencement day are inconsistent with the new arrangements, the former arrangements cease to have effect to the extent of the inconsistency, and are superseded by the new arrangements, on commencement day.

(3) The expression “commencement day” in subsection (2) means the day appointed pursuant to subsection (1) for sections 6 and 7 to commence.

[all the provisions of the Act were brought into operation on 1 April 1991 by BR 13/1991 made 21 March 1991 Gazette 28 March 1991]

SCHEDULE

(Section 6(3))

PART I

Matters that an Auditor's Report under Section 6(1)(b) Must Contain

In relation to each entity whose accounts have been audited—

- (a) a statement that the audit was conducted in accordance with generally accepted auditing standards;
- (b) a statement whether in the Auditor's opinion the accounts
 - (i) were prepared in accordance with the accounting principles (if any) stated in the accounts, being principles appropriate to the case;
 - (ii) were prepared on a basis consistent with that on which the last preceding accounts were prepared;
 - (iii) present fairly the financial position, results of operation, and changes in the financial position since the preparation of the last preceding accounts, of the entity;
- (c) where the audit report contains a reservation of opinion by the Auditor—
 - (i) a statement of the Auditor's reasons for that reservation;
 - (ii) where the reservation has been made on account of some deficiency, a statement of the effect of the deficiency on the accounts;
- (d) where the Auditor has been unable to form an opinion because of a limitation on the scope of the audit, a reservation by the Auditor in the form of a denial of an opinion on the accounts.

In paragraphs (b), (c) and (d) above and in Part II of this Schedule, "accounts", in relation to an entity, means the following statements (in so far as they exist), that is to say—

- (a) the balance sheet;
- (b) the statement of income and expenditure;
- (c) the statement of retained earnings;
- (d) the statement of changes in financial position;
- (e) the Auditor's report;
- (f) any other statement that the accounting principles (if any) stated in the accounts call for if the entity's financial position is to be fairly presented,

prepared for the entity in respect of the accounting period stated in the respective statement.

PART II

**Matters that an Auditor's Report under Section (6)(1)(b)
May Contain**

In relation to each such entity as aforesaid—

- (a) the Auditor's comments on the accounting policies employed in preparing the accounts;
- (b) any other comments arising out of the accounts that the Auditor considers appropriate.

[Assent Date: 17 July 1990]

[Amended by:

2011 : 35

2012 : 25]