

PUBLIC AUDIT ACT 25 OF 2004

[ASSENTED TO 14 DECEMBER 2004]

[DATE OF COMMENCEMENT: 1 APRIL 2004]

(English text signed by the President)

ACT

To give effect to the provisions of the Constitution establishing and assigning functions to an Auditor-General; to provide for the auditing of institutions in the public sector; to provide for accountability arrangements of the Auditor-General; to repeal certain obsolete legislation; and to provide for matters connected therewith.

Preamble

WHEREAS the Constitution establishes the Auditor-General as a State Institution Supporting Constitutional Democracy; and

WHEREAS the Constitution further -

establishes the Auditor-General as the external auditor of all national and provincial state departments and municipalities, and any other institutions or accounting entities required by national or provincial legislation to be audited by the Auditor-General;

recognises the independence of the Auditor-General, subject only to the Constitution and the law; requires the Auditor-General to be impartial and to perform his or her powers and functions without fear, favour or prejudice;

prohibits any person or organ of state from interfering with the functioning of the Auditor-General; requires the Auditor-General to submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation, and that all reports be made public; and

provides for the granting of additional powers and functions to the Auditor-General as prescribed by national legislation,

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

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CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT (ss 1-2)

1 Definitions

(1) In this Act, unless the context indicates otherwise-

'audit' means the examination or investigation, in accordance with any applicable audit standards, of those aspects to be reported on in terms of section 20 or 28;

'accounting entity' means an accounting entity referred to in section 188 (1)(c) of the Constitution.

'auditee' means an institution or accounting entity referred to in section 4 that is or is to be audited in terms of this Act, and includes any group of such institutions or accounting entities whose financial statements are or are to be consolidated in terms of legislation referred to in section 4 (2) of this Act;

'audit fees' means an amount recoverable by the Auditor-General from an auditee or other institution for the performance of an audit or other function in terms of this Act, and includes any costs arising as a consequence of an audit or investigation carried out by the Auditor-General or an authorised auditor;

'Auditor-General'-

(a) as an institution, means the institution contemplated in section 181 (1) (e) of the Constitution; and

(b) as an individual, means the individual appointed as Auditor-General or acting as such;

'authorised auditor' means a person authorised in terms of section 12 to perform or to assist in the performance of an audit referred to in section 11;

'constitutional institution' has the meaning assigned to it in section 1 of the Public Finance Management Act;

'delegation', in relation to a duty, includes an instruction or request to perform or to assist in performing the duty;

'Deputy Auditor-General' means the person appointed in terms of section 31, and includes a person acting as the Deputy Auditor-General;

'fruitless and wasteful expenditure', in relation to expenditure of the Auditor-General, means expenditure incurred by the Auditor-General that was made in vain and would have been avoided had reasonable care been exercised;

'irregular expenditure', in relation to expenditure of the Auditor-General, means expenditure incurred by the Auditor-General in contravention of, or that is not in accordance with, a requirement of this Act or any other legislation applicable to the Auditor-General;

'legislature' means Parliament, a provincial legislature or a municipal council;

'Municipal Finance Management Act' means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);

'municipality' means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

'municipal entity' has the meaning assigned to it in section 1 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

'national department' has the meaning assigned to it in section 1 of the Public Finance Management Act;

'National Treasury' means the National Treasury established in terms of section 5 of the Public Finance Management Act;

'oversight mechanism' means the oversight mechanism established in terms of section 10 (3);

'provincial department' has the meaning assigned to it in section 1 of the Public Finance Management Act;

'provincial treasury' has the meaning assigned to it in section 1 of the Public Finance Management Act;

'Public Accountants' and Auditors' Act' means the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);

'public entity' has the meaning assigned to it in section 1 of the Public Finance Management Act;

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act 1 of

1999);

'**relevant legislature**' means a legislature that has a direct interest in an audit;

'**standards**' means the standards by which an audit is conducted and includes audit practices, procedures and guidelines;

'**supreme audit institution**' means the institution which, however designated, constituted or organised, exercises by virtue of the law of a country, the highest public auditing function of that country.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

2 Objects of this Act

The objects of this Act are-

- (a) to give effect to the provisions of the Constitution establishing, and assigning supreme auditing functions to, an Auditor-General;
- (b) to provide for the auditing of institutions and accounting entities in the public sector; and
- (c) to provide for an oversight mechanism established in terms of section 10 (3)-
 - (i) to assist and protect the Auditor-General in order to ensure the independence, impartiality, dignity and effectiveness of the Auditor-General; and
 - (ii) to advise the National Assembly.

CHAPTER 2

AUDITOR-GENERAL (ss 3-10) Part 1: Status and functions (ss 3-5)

3 Constitutional and legal status

The Auditor-General-

- (a) is the supreme audit institution of the Republic;
- (b) has full legal capacity, is independent and is subject only to the Constitution and the law, including this Act;
- (c) must be impartial and must exercise the powers and perform the functions of office without fear, favour or prejudice; and
- (d) is accountable to the National Assembly.

4 Constitutional functions

(1) The Auditor-General must audit and report on the accounts, financial statements and financial management of-

- (a) all national and provincial state departments and administrations;
- (b) all constitutional institutions;
- (c) the administration of Parliament and of each provincial legislature;
- (d) all municipalities;
- (e) all municipal entities; and
- (f) any other institution or accounting entity required by other national or by provincial legislation to be audited by the Auditor-General.

(2) The Auditor-General must audit and report on the consolidated financial statements of-

- (a) the national government as required by section 8 of the Public Finance Management Act;
- (b) all provincial governments as required by section 19 of the Public Finance Management Act; and
- (c) a parent municipality and all municipal entities under its sole or effective control as required by section 122 (2) of the Municipal Finance Management Act.

(3) The Auditor-General may audit and report on the accounts, financial statements and financial management of-

- (a) any public entity listed in the Public Finance Management Act; and
- (b) any other institution not mentioned in subsection (1) and which is -
 - (i) funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
 - (ii) authorised in terms of any legislation to receive money for a public purpose.

(4) In the event of any conflict between a provision of this section and any other legislation existing when this section takes effect, the provision of this section prevails.

5 Other functions

(1) The Auditor-General may, at a fee, and without compromising the role of the Auditor-General as an independent auditor, provide-

- (a) audit related services to an auditee referred to in section 4 (1) or (3) or other body, which is commonly performed by a supreme audit institution on condition that-
 - (i) no services may be provided in respect of any matter that may subsequently have to be audited by the Auditor-General;
 - (ii) such service will not directly result in the formulation of policy; and
 - (iii) there must be full and proper disclosure of such services in terms of section 10 (1) (b).
 - (b) advice and support to a legislature or any of its committees outside the scope of the Auditor-General's normal audit and reporting functions;
 - (c) comments in a report on any responses by an auditee to reported audit findings, or responses by an auditee to a report of any legislature arising from its review of an audit report; or
 - (d) carry out an appropriate investigation or special audit of any institution referred to in section 4 (1) or (3), if the Auditor-General considers it to be in the public interest or upon the receipt of a complaint or request.
- (2) In addition, the Auditor-General may-
- (a) co-operate with persons, institutions and associations, nationally and internationally;
 - (b) appoint advisory and other structures outside the administration of the Auditor-General to provide specialised advice to the Auditor-General; and
 - (c) do any other thing necessary to fulfil the role of Auditor-General effectively.
- (3) The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organ of state with a direct interest in the matter.

Part 2: Appointment and conditions of employment (ss 6-9)

6 Appointment

(1) Whenever it becomes necessary to appoint a person as Auditor-General, the Speaker must initiate the process in the National Assembly for the recommendation of a person to the President for appointment as Auditor-General as set out in section 193 of the Constitution.

(2) When making an appointment, the President must determine the term for which the appointment is made, subject to section 189 of the Constitution.

7 Conditions of employment

(1) The oversight mechanism must consult the person recommended in terms of section 193 of the Constitution for appointment as Auditor-General and make recommendations to the President for the determination of the conditions of employment of that person, including an appropriate salary, allowances and other benefits.

(2) The salary, allowances and other benefits of a person appointed as Auditor-General must-

- (a) take into account the knowledge and experience of the prospective incumbent;
- (b) be substantially the same as those of the top echelon of the judiciary; and
- (c) be paid from the funds of the Auditor-General.

(3) The conditions of employment determined in terms of subsection (1) may not be altered by the President during the incumbent's term of office without the incumbent's written consent or to the incumbent's detriment.

(4) A person appointed as Auditor-General-

- (a) must perform the functions of office full-time; and
- (b) may not perform any other remunerative work.

8 Vacation of office

(1) A person appointed as Auditor-General ceases to be the Auditor-General-

- (a) when that person's term of office expires; or
- (b) if that person-
 - (i) resigns, subject to subsection (2); or
 - (ii) is removed from office in terms of section 194 of the Constitution.

(2) A person appointed as Auditor-General may resign-

- (a) on account of ill health or for any other reason which the President considers sufficient; and
- (b) by giving at least three month's written notice to the President, but the President may accept a shorter period.

9 Acting Auditor -General

- (1) The Deputy Auditor-General assumes the role of acting Auditor-General if
- (a) the Auditor-General is unable to perform the functions of office;
 - (b) the Auditor-General is absent; or
 - (c) the appointment of a person as Auditor-General is pending.
- (2) When acting in terms of subsection (1), the Deputy Auditor-General has all the powers and duties of the Auditor-General.

Part 3: Accountability (s 10)

10 Accountability reports to National Assembly

- (1) The Auditor-General must annually submit a report to the National Assembly on his or her activities and the performance of his or her functions, including on-
- (a) the standards to be applied to audits as determined in terms of section 13 (1);
 - (b) the categories of services provided in terms of section 5 (1) (a);
 - (c) the institutions and accounting entities to which such services have been provided; and
 - (d) any instances of co-operation in terms of section 5 (2) (a).
- (2) In addition, the Auditor-General must annually submit to the National Assembly-
- (a) the report on his or her overall control of the Auditor-General's administration in terms of section 30 (2); and
 - (b) the annual report, the financial statements and the audit report on those statements in terms of section 41 (5).
- (3) The National Assembly must provide for a mechanism to maintain oversight over the Auditor-General in terms of section 55 (2) (b) (ii) of the Constitution.

CHAPTER 3

AUDITS (ss 11-29)

Part 1: Audits by Auditor-General (ss 11-23)

11 Application of this Part

This Part applies to all audits of auditees which the Auditor-General-

- (a) must perform in terms of section 4 (1) or (2); or
- (b) opts to perform in terms of section 4 (3).

12 Authorised auditors

- (1) The Auditor-General may authorise one or more persons to perform or to assist in the performance of an audit referred to in section 11.
- (2) Such a person must be-
- (a) a member of the staff of the Auditor-General who-
 - (i) is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act; or
 - (ii) is not so registered but has the qualifications, experience and competence referred to in subsection (3) (a);
 - (b) a private practitioner who-
 - (i) is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act and is engaged in public practice as an accountant and auditor; or
 - (ii) is not so registered but has the qualifications, experience and competence referred to in subsection (3) (a); or
 - (c) a person with non-accountancy qualifications, experience and competence to the extent that a person with such qualifications, experience and competence is necessary for any particular audit.
- (3) The Auditor-General must-
- (a) determine the minimum qualifications, experience and competence for authorised auditors referred to in subsection (2) (a) (ii) and (2) (b) (ii) for appointment as authorised auditors;
 - (b) after consulting the oversight mechanism, issue a code of conduct for authorised auditors, prescribing-
 - (i) standards of professional conduct for the performance of an audit or their other functions, taking into consideration the manner in which the accountancy and audit profession is regulated in this regard;
 - (ii) any disciplinary steps for misconduct; and

- (iii) any other relevant matter;
 - (c) determine the manner in which an audit referred to in section 11 must be performed; and
 - (d) determine the manner in which any powers conferred on authorised auditors in terms of this Act may be exercised, and limitations on the exercise of any of those powers.
- (4) Authorised auditors exercise their functions and powers-
- (a) in accordance with the code of conduct referred to in subsection (3); and
 - (b) subject to any directives issued by the Auditor-General.
- (5) The code of conduct for authorised auditors referred to in subsection (3) is subject to any code of professional conduct prescribed by any legislation applicable to public practitioners in the accountancy and auditing profession, and in the event of any inconsistency between the code of conduct referred to in subsection (3) and such code of professional conduct, the latter code prevails.

13 Standards for audits

- (1) The Auditor-General, after consulting the oversight mechanism, must determine-
- (a) the standards to be applied in performing audits referred to in section 11;
 - (b) the nature and scope of such audits; and
 - (c) procedures for the handling of complaints when performing such audits.
- (2) In setting standards the Auditor-General must take into account all relevant factors, including-
- (a) best auditing practices, both locally and internationally; and
 - (b) the capacity of the Auditor-General and the auditing profession to comply with those standards.
- (3) The Auditor-General may-
- (a) make different determinations on the matters mentioned in subsection (1) for different categories of audits based on recognised best practice; or
 - (b) issue specific directives on those matters in any specific case.

14 Submission of financial statements

(1) Financial statements submitted to the Auditor-General for auditing by an auditee which is subject to the Public Finance Management Act or the Municipal Finance Management Act, must be submitted within the period, be in a format, contain the information and otherwise comply with the requirements determined by those Acts.

(2) Financial statements submitted by an auditee which is not subject to the Public Finance Management Act or the Municipal Finance Management Act, must be submitted within the period, be in a format, contain the information and otherwise comply with any requirements determined-

- (a) by any legislation applicable to that auditee; or
- (b) in the absence of such legislation by the Auditor-General.

15 General auditing powers

(1) When performing an audit referred to in section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to-

- (a) any document, book or written or electronic record or information of the auditee or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;
- (b) any of the assets of or under the control of the auditee; or
- (c) any staff member or representative of the auditee.

(2) The Auditor-General or an authorised auditor may for the purpose of an audit-

- (a) enter any property, premises or vehicle of or under the control of an auditee, including any property, premises or vehicle where-
 - (i) a document, book or written or electronic record or information, or any assets, referred to in subsection (1) are kept; or
 - (ii) a staff member or representative of the auditee performs work for the auditee;
- (b) direct a person to produce, or to deliver at a specified place and time and in a specified format-
 - (i) any such document, book or written or electronic record or information, including any confidential, secret or classified document, book, record or information of whatever nature; or
 - (ii) any such asset;
- (c) inspect, and question any person about, any such document, book or written or electronic record or information, or any such asset;

- (d) copy, or make extracts from, any such document, book or written or electronic record or information, at the expense of the auditee, or remove such document, book, record or written or electronic information to make copies or extracts;
- (e) direct a person to disclose, either orally or in writing, any information that may be relevant for the audit, including any confidential, secret or classified information, and question any person about such information; or
- (f) direct-
 - (i) a person to disclose information or to give answers to questions in terms of this subsection in writing or under oath or affirmation; or
 - (ii) that any such information or answers be recorded.

(3) (a) A person who is required in terms of any legislation to maintain secrecy or confidentiality, or not to disclose information relating to a matter, may be required by the Auditor-General to comply with any of the requirements in this section, even though the person would be otherwise in breach of that person's obligation of secrecy or confidentiality or non-disclosure.

(b) Compliance with a requirement of this section is not a breach of any applicable legislation imposing the relevant obligation of secrecy or confidentiality or non-disclosure.

16 Searches of property, premises, vehicles and persons

(1) When performing an audit, the Auditor-General or an authorised auditor designated by the Auditor-General may, under the authority of a warrant issued by a judge or magistrate-

- (a) enter any property, premises or vehicle on reasonable suspicion that a document, book or written or electronic record or information, or an asset, referred to in section 15 (1) (a) or (b) which the Auditor-General or such authorised auditor needs to inspect for the audit is hidden or kept on such property, premises or in that vehicle;
- (b) search the property, premises or vehicle, or any person on the premises or in the vehicle, for such document, book or written or electronic record or information or asset; and
- (c) seize such document, book or written or electronic record or information or asset for the purpose of completing the audit.

(2) The person conducting the search must provide proof of identify to the person in charge of the property, premises or vehicle. A copy of the warrant must be handed to the person in charge of the property, premises or vehicle or affixed to the property, premises or vehicle at a prominent place.

(3) The Auditor-General or such an authorised auditor may request assistance from the South African Police Service or any other law enforcement agency or investigating authority to enforce the provisions of this section.

(4) The entering and search of property, premises or a vehicle, and the search of a person, in terms of this section must be conducted with strict regard to decency, order and any affected person's constitutional rights.

17 Accompanying assistants

When exercising the powers referred to in sections 15 and 16, the Auditor-General or an authorised auditor may be accompanied by such assistants and other persons as are reasonably required for the exercise of those powers.

18 Protection of information

(1) The Auditor-General must take precautionary steps to guard against the disclosure of secret or classified information obtained in terms of section 15 (1), (2) or (3) or 16.

(2) Steps taken in terms of subsection (1) may not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act or the Municipal Finance Management Act, or any other legislation as applicable to the auditee which is the subject of the audit, or on any other irregular or criminal conduct relating to the financial affairs of an auditee, but any such disclosure may not include facts the disclosure of which would harm the national interest.

(3) The Auditor-General, an authorised auditor or an assistant or other person referred to in section 17, is competent but may not be compelled to disclose information obtained in the course of official duties in any proceedings in which the Auditor-General is not a party, before-

- (a) a court in a civil matter; or
- (b) any other body or institution established in terms of legislation.

(4) Subsection (3) does not apply in any proceedings before-

- (a) a legislature or an internal committee of a legislature; or
- (b) a court in a criminal matter.

19 Auditees to render assistance

- (1) An auditee must-
- (a) render all reasonable assistance to the Auditor-General or the authorised auditor performing the audit to enable the Auditor-General or authorised auditor to complete the audit within any applicable timeframes; and
 - (b) accede free of charge to all reasonable requests of the Auditor-General or the authorised auditor to facilitate the expeditious completion of the audit, including-
 - (i) the provision of suitable office accommodation and parking on the auditee's premises;
 - (ii) logistical support required for the proper carrying out of the audit; and
 - (iii) access to office equipment.
- (2) An authorised auditor-
- (a) must be given notice of every meeting of the auditee's audit committee, if the auditee has such a committee; and
 - (b) may attend and participate in any meeting of such an audit committee at the expense of the auditee.

20 Audit reports

- (1) The Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit.
- (2) An audit report must reflect such opinions and statements as may be required by any legislation applicable to the auditee which is the subject of the audit, but must reflect at least an opinion or conclusion on-
- (a) whether the annual financial statements of the auditee fairly present, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date in accordance with the applicable financial framework and legislation;
 - (b) the auditee's compliance with any applicable legislation relating to financial matters, financial management and other related matters; and
 - (c) the reported information relating to the performance of the auditee against predetermined objectives.
- (3) In addition, the Auditor-General may report on whether the auditee's resources were procured economically and utilised efficiently and effectively.

21 Submission of audit reports

- (1) The Auditor-General must submit an audit report in accordance with any legislation applicable to the auditee which is the subject of the audit.
- (2) If there is no such legislation as contemplated in subsection (1) the Auditor-General must submit the audit report to the relevant legislature within a reasonable time.
- (3) Audit reports must be tabled in the relevant legislature in accordance with any applicable legislation or otherwise within a reasonable time. If an audit report is not tabled in a legislature within one month after its first sitting after the report has been submitted by the Auditor-General, the Auditor-General must promptly publish the report.
- (4) Despite any other legislation, the Auditor-General may in the public interest submit an audit report to-
- (a) any legislature whether or not that legislature is a relevant legislature; or
 - (b) any organ of state.

22 Audit reports on confidential, secret or classified accounts

- (1) When the Auditor-General reports on an account established by the Security Services Special Account Act, 1969 (Act 81 of 1969), the Defence Special Account Act, 1974 (Act 6 of 1974), or the Secret Services Act, 1978 (Act 56 of 1978), or any other confidential special account established by any other Act of Parliament, the Auditor-General-
- (a) must have due regard for the special nature of the account; and
 - (b) on the written advice from the relevant Minister, on the basis of national interest, may exclude confidential, secret or classified details of findings from the audit report, provided that the audit report states that these details were excluded.

(2) Subsection (1) must not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act, or on any other irregular conduct or activity, or criminal conduct, relating to the financial affairs of such an account.

23 Audit fees

(1) The Auditor-General determines the basis for the calculation of audit fees to be recovered from auditees in respect of audits referred to in section 11, after having consulted the oversight mechanism and the National Treasury.

(2) An auditee must settle the account for audit fees within 30 days from the date of invoice, failing which the Auditor-General must promptly take legal steps to recover the amount, unless it is not practical to do so.

(3) The Auditor-General may charge interest on any audit account not paid within 30 days of the date of the account at the rate prescribed in terms of section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975).

(4) If an auditee defaults on the payment of audit fees, the Auditor-General must promptly notify the National Treasury and, when applicable, the relevant provincial treasury.

(5) The National Treasury or the relevant provincial treasury, as may be appropriate, may, after consulting the Auditor-General, direct that audit fees recoverable from an auditee which is not a national or provincial department, be defrayed from a vote on the national or a provincial budget identified by the relevant treasury.

(6) If the audit fee exceeds one percent of the total current and capital expenditure of such auditee for the relevant financial year, such excess must be defrayed from the National Treasury's vote, provided that the National Treasury is of the view that the auditee has financial difficulty to settle the cost. This excludes national and provincial departments.

Part 2: Audits of institutions by auditors in private practice (ss 24-28)

24 Application of this Part

This Part applies to audits of institutions referred to in section 4 (3) where the Auditor-General has opted not to perform the audit.

25 Appointment of auditors

(1) If the Auditor-General has opted not to perform the audit of an auditee referred to in section 4 (3)-

- (a) the Auditor-General must give notice of his or her decision to that auditee before the start of the auditee's financial year for which the appointment is to be made; and
- (b) the auditee must appoint as its auditor a person registered in terms of the Public Accountants' and Auditors' Act as an accountant and auditor and engaged in public practice as such.

(2) Before appointing an auditor in terms of subsection (1), the auditee must give notice of the suggested appointment to the Auditor-General, including information on the extent to which the auditor would provide other services than audit services during the duration of the appointment, and any other information required by the Auditor-General.

(3) If the Auditor-General, within 14 days of receiving a notice in terms of subsection (2), or such longer period as may be agreed to, rejects the auditee's appointment, the auditee must in terms of that subsection recommence the process to appoint another person as its auditor.

(4) Appointments in terms of this section may not be for a longer period than one financial year of the auditee.

26 Discharge of auditors

(1) An auditee referred to in section 4 (3) may discharge an auditor appointed by it in terms of section 25 (1) (b) before the expiry of that auditor's term of appointment, but only with the consent of the Auditor-General and, if that auditee has an executive authority within the meaning of the Public Finance Management Act, also of the relevant executive authority.

(2) If such an auditee intends discharging an auditor in terms of subsection (1), it must-

- (a) give the auditor notice, in writing, setting out the reasons for the discharge; and
- (b) give the auditor an opportunity to make representations, in writing, to the Auditor-General within 20 days of receipt of the notice.

(3) The Auditor-General must report any discharge of an auditor in terms of subsection (1) to the relevant legislature.

27 Duties and powers of auditors

(1) An auditor appointed in terms of section 25 (1) (b) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act.

(2) In performing those functions as the auditor of an auditee, the auditor has the powers assigned to the Auditor-General in terms of section 15.

(3) An auditor may consult the Auditor-General or a person designated by the Auditor-General concerning any matter relating to the auditing of the auditee concerned.

(4) An auditor-

(a) must be given notice of every meeting of the auditee's audit committee, if the auditee has such a committee; and

(b) may attend, and participate in, any meeting of such an audit committee at the expense of the auditee.

(5) The Auditor-General or a person designated by the Auditor-General may request information regarding the audit from an auditor appointed in terms of section 25 (1) (b).

28 Audit reports and other reports

(1) The report of an auditor appointed in terms of section 25 (1) (b) must reflect such opinions and statements as may be required by any legislation applicable to the auditee which is the subject of the audit, but must reflect at least an opinion or conclusion on-

(a) whether the financial statements of the auditee fairly present, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date in accordance with the applicable financial framework and legislation;

(b) the auditee's compliance with any applicable legislation relating to financial matters, financial management and other related matters; and

(c) the reported information relating to the performance of the auditee against predetermined objectives.

(2) If required by the Auditor-General, the auditor must report-

(a) whether the auditee's resources were procured economically and utilised efficiently and effectively; and

(b) on any matters arising from an investigation required by the Auditor-General that should in the public interest be brought to the attention of the relevant legislature.

(3) The auditor must submit copies of the audit report referred to in subsection (1)-

(a) to the auditee;

(b) if the auditee has an executive authority within the meaning of the Public Finance Management Act, to that executive authority for submission to the relevant legislature;

(c) to the Auditor-General; and

(d) to the National Treasury or the relevant provincial treasury, as may be appropriate.

(4) A report referred to in subsection (2) must be submitted-

(a) in the case of a public entity listed in the Public Finance Management Act, to the executive authority of the entity within the meaning of the Public Finance Management Act, for submission to the relevant legislature; or

(b) in any other case, to the National Treasury or the relevant provincial treasury.

(5) When reporting in terms of subsection (2), the auditor must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should in the public interest be brought to the notice of the relevant legislature.

Part 3: Investigations and special audits by Auditor-General (s 29)

29 Carrying out of investigations and special audits

(1) The Auditor-General may designate an authorised auditor to carry out an investigation or special audit referred to in section 5 (1) (d).

(2) The provisions of Part 1 of this Chapter, read with any changes as may be required by the context, apply to any investigation or special audit referred to in subsection (1).

(3) If the Auditor-General issues a special report on an investigation or special audit in terms of this section, the Auditor-General must simultaneously submit the special report-

(a) to the auditee which is the subject of the investigation or special audit;

(b) if the auditee has an executive authority within the meaning of the Public Finance Management Act, to that executive authority;

- (c) to the National Treasury or the relevant provincial treasury, as may be appropriate; and
 - (d) to the relevant legislature, for tabling in the relevant legislature.
- (4) The Auditor-General may charge a fee, calculated in terms of section 23, for carrying out an investigation or special audit in terms of this section.

CHAPTER 4

ADMINISTRATION OF AUDITOR-GENERAL (ss 30-47)

30 Administration

- (1) The Auditor-General has an administration consisting of-
 - (a) the Deputy Auditor-General; and
 - (b) any other staff members referred to in section 34.
- (2) The Auditor-General is in overall control of and accountable for his or her administration.

Part 1: Deputy Auditor-General (ss 31-33)

31 Appointment of Deputy Auditor -General

- (1) The Auditor-General, after consulting the oversight mechanism, must appoint a person with appropriate qualifications and experience as the Deputy Auditor-General.
- (2) The person appointed as the Deputy Auditor-General holds office-
 - (a) for an agreed term not exceeding five years, but which is renewable for one further period of no longer than five years; and
 - (b) on terms and conditions determined by the Auditor-General, which must include performance standards.

32 Responsibilities of Deputy Auditor-General

- (1) The Deputy Auditor-General is the head of the administration who must perform the functions of office in accordance with the directions of the Auditor-General
- (2) As administrative head, the Deputy Auditor-General-
 - (a) is responsible for the management of the administration, including-
 - (i) the formation and development of an efficient staff;
 - (ii) the organisation, control and management of all staff; and
 - (iii) the maintenance of discipline;
 - (b) must comply with section 43;
 - (c) must carry out the decisions of the Auditor-General, subject to section 45 (2);
 - (d) must perform such duties and may exercise such powers as the Auditor-General may delegate to the Deputy Auditor-General; and
 - (e) must report to the Auditor-General on aspects of management and the exercise of responsibilities, duties and powers, at such frequency and in such manner, as the Auditor-General may require.
- (3) The Deputy Auditor-General must exercise the responsibilities, duties and powers of office subject to the directions of the Auditor-General.

33 Acting Deputy Auditor -General

- (1) Whenever the Deputy Auditor-General is for any reason absent or unable to exercise the responsibilities, duties and powers of office, or whenever there is a vacancy in the office of Deputy Auditor-General, the Auditor-General must appoint another staff member as acting Deputy Auditor-General for a period not exceeding six months.
- (2) Whilst acting as Deputy Auditor-General, such staff member-
 - (a) has the responsibilities, duties and powers of the Deputy Auditor-General; and
 - (b) is employed subject to such terms and conditions of employment as the Auditor-General may determine.

Part 2: Other staff (ss 34-35)

34 Appointments

- (1) The Deputy Auditor-General-
 - (a) within the financial, administrative and other limits set by the Auditor-General, must determine a staff establishment necessary for the work of the Auditor-General; and
 - (b) may appoint persons in posts on the staff establishment.
- (2) All appointments to senior and other posts identified by the Auditor-General may be made only with the approval of the Auditor-General.
- (3) Persons appointed as employees are employed subject to the terms and conditions of employment determined by the Auditor-General, subject to section 35. Terms and conditions of

employment must be consistent with the basic values and principles set out in section 195 of the Constitution.

(4) Persons seconded to the administration or appointed on contract to perform specific tasks, must carry out their duties under the control and directions of the Deputy Auditor-General in accordance with the secondment or contract.

35 Human resource management

Human resource management and related issues, including terms and conditions of employment, must be dealt with in accordance with generally accepted human resource practice and applicable labour legislation through appropriate management, consultative and, where applicable, negotiation processes.

Part 3: Financial administration (ss 36-47)

36 Funds

(1) The funds of the Auditor-General consist of money-

- (a) earned as fees for audits or services performed by the Auditor-General in terms of this Act or any other legislation;
- (b) appropriated by Parliament for the purposes of the Auditor-General;
- (c) earned on investments;
- (d) obtained by the alienation or letting of movable or immovable property;
- (e) accruing to the Auditor-General from any other source; and
- (f) otherwise becoming available to the Auditor-General.

(2) The Auditor-General may accept a donation or bequest, provided that it will not result in a conflict of interest. All donations or bequests must be disclosed in the annual report of the Auditor-General, and all material donations or bequests must be itemised.

37 Bank accounts

(1) The Auditor-General must open one or more accounts with an institution or institutions registered in terms of the Banks Act, 1990 (Act 94 of 1990).

(2) All money received by or on behalf of the Auditor-General must promptly be deposited into such account or accounts.

(3) Only the Deputy Auditor-General or staff members authorised by the Deputy Auditor-General, in writing, may make payments from such a bank account, with two signatories.

38 Budget and business plan

(1) The affairs of the Auditor-General must be conducted in accordance with a budget and business plan prepared by the Auditor-General for each financial year which must include-

- (a) estimates of revenue and expenditure, for the year to which it relates;
- (b) projected revenue and expenditure for the two financial years following the year to which the budget and business plan relates; and
- (c) the basis on which audit fees for the year to which the budget relates and the following two years are to be calculated.

(2) The Auditor-General must at least six months before the start of a financial year submit the budget and business plan referred to in subsection (1) to-

- (a) the oversight mechanism; and
- (b) the National Treasury, for planning of and preparing the national annual budget.

(3) The oversight mechanism must consider the budget and business plan and within two months of receipt thereof submit its recommendations to-

- (a) the Speaker for tabling in the National Assembly; and
- (b) the National Treasury.

(4) The Auditor-General may, after consultation with the National Treasury and by agreement with the oversight mechanism, at the end of a financial year retain for working capital and general reserve requirements, any surplus as reflected in the financial statements or a portion thereof. The portion of a surplus not retained must be paid into the National Revenue Fund.

39 Auditing of Auditor-General's accounts, financial statements and financial management

(1) The oversight mechanism must annually appoint an independent external auditor to audit the accounts, financial statements, and financial management and performance information of the Auditor-General.

(2) A person appointed as external auditor in terms of subsection (1)-

- (a) must be registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act and engaged in public practice as accountant and auditor;

- (b) may not be a staff member in the administration of the Auditor-General; and
- (c) may not have any conflict of interest as a result of the appointment.

40 Audit Committee

- (1) The Deputy Auditor-General must-
 - (a) establish an audit committee contemplated in section 43 (3) (b) (ii); and
 - (b) appoint the members of the audit committee in consultation with the Auditor-General.
- (2) The audit committee must consist of at least three persons of whom the majority may not be in the employ of the Auditor-General.
- (3) The chairperson of the audit committee-
 - (a) may not be in the employ of the Auditor-General; and
 - (b) must be independent, knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be a political office bearer.
- (4) The membership of the audit committee must be disclosed in the annual report of the Auditor-General referred to in section 41.
- (5) The audit committee must meet at least three times a year.
- (6) The audit committee-
 - (a) must in the annual report referred to in section 41 comment on-
 - (i) the effectiveness of internal control; and
 - (ii) its evaluation of the Auditor-General's annual financial statements; and
 - (b) may communicate any concerns it may have to the-
 - (i) Auditor-General;
 - (ii) external auditor of the Auditor-General; and
 - (iii) oversight mechanism.

41 Annual report and financial statements

- (1) The Deputy Auditor-General must for each financial year prepare an annual report and financial statements, including cash-flow information, which-
 - (a) fairly present the state of affairs of the Auditor-General, including its business, financial results, performance against predetermined objectives and financial position as at the end of the financial year; and
 - (b) include particulars of-
 - (i) any material losses through criminal conduct, any material irregular expenditure, and any fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any material amounts recovered or written off as a result of criminal conduct, irregular expenditure and fruitless and wasteful expenditure; and
 - (iv) any other matters that the external auditor considers necessary.
- (2) The financial statements must be in accordance with South African Statements of Generally Accepted Accounting Practice or other international best practice approved by the oversight mechanism.
- (3) The Deputy Auditor-General must within two months after the end of a financial year submit the financial statements for that year to the external auditor appointed in terms of section 39.
- (4) The external auditor must-
 - (a) audit those statements; and
 - (b) submit an audit report on those statements to the Auditor-General within two months of receipt of the statements for auditing, which report must include an opinion or conclusion on the reported information relating to the performance of the Auditor-General against predetermined objectives.
- (5) The Auditor-General must submit the annual report, the financial statements and the audit report on those statements within six months after the financial year to which they relate to the oversight mechanism and to the Speaker for tabling in the National Assembly.
- (6) If the Auditor-General fails to comply with subsection (5), the Auditor-General must promptly submit a written explanation setting out the reasons for the delay to the National Assembly.

42 Financial year

The financial year of the Auditor-General is 1 April to 31 March the next year.

43 Financial responsibilities of Deputy Auditor-General

- (1) The Deputy Auditor-General is the accounting officer in the administration of the Auditor-

General.

- (2) As accounting officer, the Deputy Auditor-General is responsible for-
- (a) managing the financial administration of the Auditor-General;
 - (b) all income and expenditure of the Auditor-General; and
 - (c) all assets and the discharge of all liabilities of the Auditor-General.
- (3) The Deputy Auditor-General must, for the purposes of subsection (2), take all reasonable steps to ensure-
- (a) that full, true and effective records of all income and expenditure and of all assets, liabilities, and of all financial transactions of the Auditor-General are kept;
 - (b) that the Auditor-General has and maintains-
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) a system of internal audit under the control and direction of an audit committee;
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
 - (c) that the resources of the Auditor-General are used effectively, efficiently, economically and transparently;
 - (d) that all money due to the Auditor-General is collected;
 - (e) that irregular expenditure, fruitless and wasteful expenditure and losses resulting from criminal conduct are prevented;
 - (f) that available working capital is managed efficiently and economically;
 - (g) that the assets of the Auditor-General are effectively managed, safeguarded and maintained, and that liabilities are properly managed;
 - (h) that any tax, levy, duty, pension, medical aid scheme and other statutory commitments of the Auditor-General are complied with;
 - (i) that all contractual obligations of the Auditor-General are complied with and that all money owing is paid within the agreed period;
 - (j) that any irregular or fruitless and wasteful expenditure in the administration is immediately reported to the Auditor-General, in writing;
 - (k) that disciplinary or, when appropriate, criminal proceedings, are instituted against any staff member who has allegedly committed an act of financial misconduct in terms of section 46, an offence in terms of section 51 or a criminal act resulting in a loss for the Auditor-General;
 - (l) that all relevant financial considerations, including issues of propriety, regularity and value for money, are considered when decisions affecting the Auditor-General's funds are made, and, when necessary, that those considerations are brought to the attention of the Auditor-General; and
 - (m) that staff members comply with the provisions of this Act.
- (4) If the Deputy Auditor-General is unable to comply with any of his or her responsibilities as accounting officer, the Deputy Auditor-General must promptly report, in writing, the inability, together with reasons, to the Auditor-General.
- (5) The Deputy Auditor-General must-
- (a) take effective and appropriate steps to prevent any overspending of the budget referred to in section 38 or any expenditure not in accordance with the budget; and
 - (b) report to the Auditor-General and the oversight mechanism on any actual or impending-
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue; and
 - (iii) overspending of the budget or expenditure not in accordance with the budget.
- (6) The Deputy Auditor-General has such additional responsibilities as accounting officer as the Auditor-General may determine from time to time.

44 Financial responsibilities of other staff members

Each member of the staff of the Auditor-General exercising financial management responsibilities must take all reasonable steps within his or her area of responsibility to ensure-

- (a) that the system of financial management and internal control established for the

- administration is carried out diligently;
- (b) that the financial and other resources of the Auditor-General are utilised effectively, efficiently, economically and transparently;
 - (c) that any irregular or fruitless and wasteful expenditure, and losses resulting from criminal conduct, are prevented;
 - (d) that all revenue due to the Auditor-General is collected;
 - (e) that the provisions of this Act to the extent applicable to that staff member, including any delegations by the Auditor-General or the Deputy Auditor-General, are complied with; and
 - (f) that the assets of the Auditor-General are effectively managed, safeguarded and maintained, and that liabilities are properly managed.

45 Irregular or fruitless and wasteful expenditure

- (1) Without limiting liability in terms of the common law or other legislation-
- (a) the Deputy Auditor-General is liable for an irregular expenditure or a fruitless and wasteful expenditure deliberately or negligently incurred or authorised by the Deputy Auditor-General, subject to subsection (2); and
 - (b) a staff member who deliberately or negligently incurred or authorised an irregular expenditure or a fruitless and wasteful expenditure is liable for that expenditure.
- (2) If the Deputy Auditor-General becomes aware that the Auditor-General has taken a decision which, if implemented, is likely to result in irregular or fruitless and wasteful expenditure, the Deputy Auditor-General is not liable for any ensuing irregular or fruitless and wasteful expenditure provided that the Deputy Auditor-General has informed the Auditor-General, in writing, that the expenditure is likely to be irregular or fruitless and wasteful expenditure.
- (3) Any decision of the Auditor-General to proceed with the implementation of the decision in subsection (2), and the reasons for the decision, must be in writing, and the Deputy Auditor-General must promptly notify the external auditor and the oversight mechanism.
- (4) The Deputy Auditor-General must promptly inform the Auditor-General, in writing, of
- (a) any irregular or fruitless and wasteful expenditure incurred in the administration of the Auditor-General;
 - (b) whether any person is responsible or under investigation for such irregular or fruitless and wasteful expenditure; and
 - (c) the steps that have been taken-
 - (i) to recover or rectify such expenditure; and
 - (ii) to prevent a recurrence of such expenditure.

46 Financial misconduct by staff members

- (1) The Deputy Auditor-General commits an act of financial misconduct if the Deputy Auditor-General deliberately or negligently -
- (a) fails to comply with a requirement of section 41 (1) or (3) or 43; or
 - (b) makes or permits, or instructs any other person to make, an irregular expenditure or a fruitless and wasteful expenditure.
- (2) A member of the staff of the Auditor-General commits an act of financial misconduct if that staff member deliberately or negligently-
- (a) fails to carry out a duty delegated to that staff member in terms of section 48;
 - (b) contravenes or fails to comply with a requirement of section 44 or a condition of any delegation of a power or duty in terms of section 48; or
 - (c) makes or permits, or instructs any other person to make, an irregular expenditure or a fruitless and wasteful expenditure.
- (3) Financial misconduct is a ground for dismissal or suspension of, or other appropriate sanction against, a staff member in the administration despite any other legislation.

47 Applicable legal regime for disciplinary proceedings

A charge of financial misconduct against the Deputy Auditor-General or another staff member, must be investigated, heard and disposed of in terms of that person's conditions of employment and any applicable provisions of the code of conduct referred to in section 12 (3) (b).

CHAPTER 5 GENERAL (ss 48-55)

48 Delegation of powers and duties

(1) The Auditor-General may delegate any power and duty assigned to the Auditor-General in terms of this Act or any other legislation to-

- (a) the Deputy Auditor-General;
- (b) any other member of the staff of the Auditor-General; or
- (c) an authorised auditor.

(2) The Deputy Auditor-General may delegate to another staff member-

- (a) any power and duty assigned to the Deputy Auditor-General in terms of this Act; or
- (b) any power or duty reasonably necessary to assist the Deputy Auditor-General in complying with a duty assigned in terms of this Act as accounting officer to take reasonable steps to ensure the achievement of a specific result.

(3) A delegation in terms of subsection (1) or (2)-

- (a) must be in writing;
- (b) is subject to any limitations, conditions and directions the Auditor-General or Deputy Auditor-General may impose;
- (c) may include the power to sub-delegate;
- (d) does not divest the Auditor-General or Deputy Auditor-General of the responsibility concerning the exercise of the delegated power or the delegated duty;
- (e) does not prevent the exercise of the delegated power or delegated duty by the Auditor-General or Deputy Auditor-General; and
- (f) may be withdrawn at any time.

(4) The Auditor-General or Deputy Auditor-General may confirm, vary or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

49 Limitation of liability

The Auditor-General, the Deputy Auditor-General, any other staff member or any authorised auditor exercising a power or carrying out a duty in terms of this Act, is not liable in respect of any loss or damage resulting from the exercise of that power or the carrying out of that duty in good faith.

50 Disclosure of information

No authorised auditor, person assisting an authorised auditor or a member of the staff of the Auditor-General may, without the permission of the Auditor-General, disclose information obtained in the course of an audit or the carrying out of duties in terms of this Act otherwise than in an audit report or in accordance with section 18 (4).

51 Offences and penalties

(1) A person is guilty of an offence if that person-

- (a) hinders or interferes with the Auditor-General or any person exercising a power or carrying out a duty in terms of this Act;
- (b) refuses or fails to comply with a request of the Auditor-General or an authorised auditor in terms of section 15;
- (c) furnishes false or misleading information when complying with a request of the Auditor-General or an authorised auditor; or
- (d) contravenes section 50.

(2) The Deputy Auditor-General, as accounting officer, is guilty of an offence if he or she-

- (a) deliberately or in a grossly negligent way -
 - (i) contravenes or fails to comply with a provision of section 41 (1) or (3) or 43;
 - (ii) fails to take steps to prevent irregular or fruitless and wasteful expenditure; or
 - (iii) fails to take steps to prevent corruptive practices in the management of the assets of the Auditor-General or the receipt of money;
- (b) deliberately misleads or withholds information from the Auditor-General's external auditor on any matter relating to the administration of the Auditor-General; or
- (c) deliberately provides false or misleading information in -
 - (i) Auditor-General's financial statements submitted to the Auditor-General's external auditor in terms of section 41 (3); or
 - (ii) the Auditor-General's annual report.

(3) A member of the staff of the Auditor-General to whom a power or duty was delegated in terms of section 48, is guilty of an offence if that official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation.

(4) Any person convicted of an offence in terms of this Act, is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

52 Regulations

(1) The Auditor-General may make regulations pertaining to any matter to facilitate the application of this Act.

(2) The Auditor-General must, after consultation with the oversight mechanism, submit any regulations made in terms of subsection (1) to the Speaker for tabling in the National Assembly.

53 Repeal of legislation

The legislation mentioned in the second column of the table in the Schedule is hereby repealed to the extent mentioned in the third column, subject to section 54.

54 Transitional provision

(1) As from the date of repeal of the legislation referred to in section 53-

- (a) the person who was the Auditor-General immediately before the repeal of such legislation, remains the Auditor-General for the unexpired part of the term for which that person was appointed;
- (b) the person who was the Deputy Auditor-General immediately before the repeal of such legislation, remains the Deputy Auditor-General for the unexpired part of the term for which that person was appointed;
- (c) a person who was an employee of the Office of the Auditor-General immediately before the repeal of such legislation, becomes an employee of the Auditor-General; and
- (d) all the funds, assets, liabilities, rights and obligations of the Office of the Auditor-General, including any balance in the Audit Revenue Fund, become the funds, assets, liabilities, rights and obligations of the Auditor-General.

(2) The repeal of the legislation referred to in section 53 does not affect the conditions of employment of a person referred to in subsection (1) (a), (b) or (c), including any accumulated pension, leave or other benefits to which such a person was entitled immediately before the repeal of that legislation, and such a person remains subject to the same conditions of employment applicable to that person immediately before the repeal of that legislation without a break in those conditions of employment.

(3) (a) The Audit Commission established by the Audit Arrangements Act, 1992 (Act 122 of 1992), remains in existence until this Act comes into effect on the date mentioned in section 55.

(b) Paragraph (a) comes into effect on the date of publication of this Act.

55 Short title and commencement

This Act is called the Public Audit Act, 2004, and takes effect on 1 April 2004.

Schedule

REPEAL OF LEGISLATION

(Section 53)

No. and year of Act	Short title of Act	Extent of repeal
Act 12 of 1995	Auditor-General Act, 1995	The repeal of the whole
Act 122 of 1992	Audit Arrangements Act, 1992	The repeal of the whole
Act 1 of 1999	Public Finance Management Act, 1999	Sections 58, 59, 60, 61 and 62 are hereby repealed