



Tonga

PUBLIC AUDIT ACT 2007

Act No. 15 of 2007



PUBLIC AUDIT ACT 2007

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PUBLIC AUDIT ACT 2007

Act No. 15 of 2007

AN ACT TO REFORM THE LAW RELATING TO PUBLIC AUDIT

I assent,
GEORGE TUPOU V,
26 October 2007

Commencement [not yet in force]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1

PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Public Audit Act 2007.
- (2) This Act shall come into force on a day to be proclaimed by His Majesty in Council.

2 Interpretation

- (1) In this Act unless the context otherwise requires —

“**annual report**” means the annual report required to be presented to the Legislative Assembly in accordance with section 24;

“**authorised officer**” means a person appointed under section 15 as an authorised officer for the purposes of this Act;

“**Auditor General**” means the person appointed under section 5 as Auditor General and head of the Audit Office;

“**Audit Office**” means the Office of the Auditor General;

“**books and accounts**” means information recorded and kept by any means and includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms, photo-static negatives, prints, tapes, disks, computer reels, diskettes, and hard disk, perforated rolls, and any other type of written, printed, copied, magnetic tape, electronic data record or other information whatsoever, and also includes all papers and other records relating to accounting operations and practice or information recorded and kept by any means;

“**Committee**” means the Audit Advisory Committee appointed under Section 19;

“**document**” means a document in any form, and includes —

- (a) any writing, printing or images on any material;
- (b) any information recorded or stored by means of any tape-recorder, computer, diskette, tape or other device, and any material subsequently derived from information so recorded or stored;
- (c) any label, marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
- (d) any book, map, plan, graph, or drawing; or
- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“**financial year**” means:

- (a) in relation to the Government and Government financial statements, a period of 12 months ending on 30th June; and
- (b) in relation to a public enterprise, that body's annual accounting period;

“**generally accepted auditing standards**” means —

- (a) approved auditing standards as determined by the international community and in particular those promulgated by the International Organisation of Supreme Audit Institutions for application to the

public sector and in so far as those standards apply in the application of this Act; and

- (b) in relation to matters for which no provision is made in approved auditing standards, and which are not subject to any applicable rules of law, auditing policies, concepts or principles which may be regarded as appropriate in relation to the application of this Act and having the authoritative support of the auditing profession;

“Government agency” or **“Government agencies”** means an office, entity or instrument of the Government other than a Ministry or public enterprise;

“Government contract” means any contract concerning the use of public resources or for the supply of goods, services or the execution of any works in consideration of any payment of public money and includes any sub-contract made in relation to such contract (whether or not the contract or sub-contract has been wholly or partly performed or executed);

“Head of Department” shall have the same meaning as in the Public Service Act 2002;

“Ministry” shall have the same meaning as in the Public Service Act 2002;

“public enterprise” has the same meaning as in the Public Enterprises Act 2002;

“public expenditure” means the commitment or expenditure of public money and includes –

- (a) any loan obtained for or given by; or
(b) any public security provided to or by,

the Government, or a Ministry, Government agency or public enterprise;

“public fund” shall have the same meaning as in the Public Finance Management Act 2002;

“public money” shall have the same meaning as in the Public Finance Management Act 2002;

“public resources” shall have the same meaning as in the Public Finance Management Act 2002;

“public security” means any security issued by the Government in respect of money borrowed, or a guarantee given and includes any loan or credit agreement, guarantee, indemnity, bond, note, debenture, bill of exchange, promissory note, stock and any other security, representing part of the debt of the Crown;

“Speaker” means the Speaker of the Legislative Assembly; and

“Vote” shall have the same meaning as in the Public Finance Management Act 2002.

- (2) Where a document is held by a board, committee, sub-committee, or other body —
- (a) which is established for the purpose of assisting or advising, or performing functions connected with, any Minister, Ministry or Government agency; and
 - (b) which is established in accordance with the provisions of any enactment or by the Cabinet, Minister, Ministry or Government agency,
- that document shall, for the purposes of this Act, be deemed —
- (i) in any case where that body is established in respect of any Ministry or Government agency, to be a document held by that Ministry or Government agency; and
 - (ii) in any case where that body is established in respect of a Minister, to be a document held by that Minister.
- (3) Where subsection (2) applies in respect of any body that body shall for the purposes of this Act, be deemed to be part of the relevant Ministry or Government agency.
- (4) A document held by an officer or employee of a Ministry or Government agency in his capacity as such, or in his capacity as a statutory officer shall, for the purposes of this Act, be deemed to be held by the Ministry or Government agency of which he is an officer or employee or statutory office holder.
- (5) Any document held by any independent contractor engaged by any Minister, Ministry or Government agency shall, for the purposes of this Act, be deemed to be held by the Minister, Ministry or Government agency under which the independent contractor is engaged.

3 Act binds the Crown

This Act shall bind the Crown.

PART 2

AUDITOR GENERAL

4 Auditor General

- (1) There shall be appointed an Auditor General who shall be the principal auditor for Government, responsible for carrying out the duties and responsibilities conferred on him under this or any other Act and who shall be responsible for the Audit Office.

- (2) The Auditor General shall be an independent statutory office holder and shall not be subject to administrative control or direction in the exercise of his functions and duties other than as imposed by law.

5 Appointment and qualification

- (1) The Auditor General shall be appointed after due process of recruitment, by the Prime Minister in consultation with the Speaker.
- (2) No person shall be appointed or continue to hold office as Auditor General unless that person is a chartered or certified accountant with experience in audit work and has and maintains no interest in the undertaking or outcome of any work required by this Act or undertaken by the Audit Office other than an interest in common with members of the public generally.

6 Tenure

- (1) The Auditor General shall serve —
 - (a) for a term of five years and may be reappointed for one additional term upon satisfactory performance; and
 - (b) a maximum of two terms.
- (2) The Legislative Assembly may remove the Auditor General from office by a two-thirds majority vote for disability affecting the performance of duty, bankruptcy ordered by the Court, neglect of duty or misconduct.

7 Salary

The salary of the Auditor General shall be fixed by a Remuneration Commission set up by law.

8 Employees of Auditor General

- (1) Notwithstanding section 12 of the Public Service Act 2002, the Auditor General may employ such persons as are necessary for the performance of the Auditor General's functions, duties and powers.
- (2) Except as otherwise stated in this Act, the terms and conditions of employment of any such employees are to be in accordance with the Public Service Act 2002.

9 Conflict of Interest

The Auditor General or any employee of the Audit Office shall not —

- (a) undertake, perform or engage in any duty or function; or
- (b) hold any other Government position or any other public office;

that may be inconsistent with the performance of his duties under this Act.

10 Auditor General's duties

- (1) The Auditor General shall, without limiting any other statutory provisions undertake an audit programme, in accordance with section 13(2), to examine transactions, books and accounts, and other financial records of Ministries and Government agencies.
- (2) The Auditor General shall undertake an audit programme to review and approve the audited accounts of public enterprises and may conduct audits of any public enterprise that has not had its financial statements audited by a private firm of auditors. Where the Auditor General does not approve the audited financial statements of a public enterprise, he shall commence an independent audit of the public enterprise within 31 days of rejecting the private audit report.
- (3) The Auditor General shall undertake an audit programme to audit and examine transactions, books and accounts and other financial records associated with any project, programme, or other activity receiving funding in whole or in part from public money, including public money received by a non-profit organisation (including relevant international organisations).
- (4) Without limiting the general duties of the Auditor General under subsections (1) to (3) the Auditor General shall —
 - (a) monitor compliance with the requirements of any Act governing the management and control of public money and public resources;
 - (b) review and confirm the discharge of financial management obligations, including maintenance of accounting records and an adequate accounting system of internal control, to ensure that Ministries, Government agencies and public enterprises have complied with their financial management obligations under the law;
 - (c) in reviewing such obligations, determine whether the procedures and systems of internal control of each Ministry, Government agency and public enterprise ensure —
 - (i) revenue is properly assessed and collected;
 - (ii) public expenditure is validly and correctly authorised; revenue, public expenditure, assets and liabilities are properly recorded and accounted for;
 - (iv) financial and operating information is reliable;
 - (v) assets are safeguarded against loss or destruction;

- (vi) resources are employed and managed with economy, efficiency and effectiveness;
 - (vii) there has been no waste or extravagance;
 - (viii) outcomes or provisions produced are consistent with those specified in the Appropriation Act;
 - (ix) relevant Government policies and legislation are being complied with;
 - (x) all public expenditure is charged against the relevant allocation appropriated by the Legislative Assembly; and
 - (xi) the accounts and records are properly kept;
- (d) arrange for all audits to be undertaken and confirm such are completed to a standard consistent with generally accepted auditing standards;
- (e) pursue any concern that arises in respect of the management of public resources which in the Auditor General's opinion justifies further investigation;
- (f) perform follow-up audits when the Auditor General considers it appropriate; and
- (g) carry out such other audits or reviews as may from time to time be necessary.

11 Contracting out

The Auditor General may contract out any of his functions under this Act.

12 Conduct of Audits

- (1) The Auditor General shall, where appropriate, express an opinion on the reliability of the information contained in statements produced under any Act governing the management and control of public money and public resources.
- (2) The Auditor General shall ensure that —
- (a) all audits are properly specified, planned and managed, so as to ensure that the audits are completed to the required standard in the time specified;
 - (b) all audits contracted out to a person or organisation in accordance with section 11 shall include an agreement as to all the necessary terms and conditions of that audit; and
 - (c) all audits are the subject of a formal opinion and report which shall confirm that the audit has been completed to a standard consistent with generally accepted auditing standards.

- (3) All provisions relating to auditors contained in any Act concerning provisions and regulation of companies and corporations shall not derogate from the functions, duties and powers of the Auditor General under this Act.

13 Procedures

- (1) The Auditor General shall, subject to the provisions of this Act, establish, review and regulate the procedures of the Audit Office in accordance with generally accepted auditing standards.
- (2) The Auditor General shall maintain a continual programme of audits and reviews, which will provide for the regular and systematic review of all Ministries and Government agencies.

14 Powers of Auditor General

The Auditor General shall have full access at all reasonable times to all documents, books and accounts necessary for the performance of his functions, duties or powers, including Government contracts and books and accounts relating thereto and subject to audit, and to any place where they are kept and may —

- (a) summon persons to appear at a reasonable time before him;
- (b) call for the production of receipts and expenditures of money, books, accounts, records and any other relevant financial papers or matters necessary for the performance of his functions, duties or powers;
- (c) ask questions of any person in relation to receipts, expenditures of money or any other relevant matters necessary for the performance of his functions, duties or powers.
- (d) require any person to supply any information or answer any questions relating to documents, books and accounts, money, or operations subject to audit;
- (e) require by notice in writing —
 - (i) any person having possession or control of any documents or books and accounts subject to audit, to deliver all or any of them, at a time and place and to such person specified in the notice;
 - (ii) any person, who is for the time being liable to the Government for the payment or receipt of any money, royalties under any lease, licence or subsidies, to deliver such documents or books and accounts at a time and place and to such person as is specified in the notice;

- (f) inspect, measure or test any real or personal property to which any Government contract relates; and
- (g) enter any land, building, or place (other than a dwelling-house) where a Government contract is being performed that is subject to audit.

15 Authorised Officer

- (1) The Auditor General may by notice in the Gazette, appoint a person or persons as authorised officers for the purposes of the Act.
- (2) Authorised officers may examine or audit any transactions, books and accounts and other financial records the Auditor General is required or authorised by any Act to examine or audit, and report thereon to the Auditor General.
- (3) Any appointment under this section may be made on such terms and conditions as the Auditor-General thinks fit.
- (4) Subject to the terms and conditions of his appointment, an authorised officer appointed under this section shall, for the purposes of any such examination or audit, have the powers conferred upon the Auditor General by section 14 of this Act.

16 Legal privileges

Every person who supplies any information or answers any question put to him by the Auditor General or an authorised officer under section 14 shall be entitled to the same legal privileges to which he would have been entitled if giving evidence before a court.

17 Penalty for non-compliance

Any person who fails, without reasonable cause, to supply any information or answer any question put to him by the Auditor General or an authorised officer under section 14 is guilty of an offence and upon conviction shall be liable to a fine not exceeding \$500 or to imprisonment to a term not exceeding six months.

18 Civil liability

Neither the Auditor General nor any employee of the Audit Office shall have any civil liability for any act done in good faith in the course of his duties and functions under this Act.

PART 3

AUDIT ADVISORY COMMITTEE

19 Establishment

- (1) There shall be established an Audit Advisory Committee to advise the Auditor General in the discharge of his functions and duties.
- (2) The Committee shall comprise three competent audit advisers who are independent of the Auditor General and the Audit Office, one of whom shall be a qualified law practitioner.
- (3) The Prime Minister shall, on the advice of the Auditor General, appoint the members of the Committee.

20 Procedures of the Committee

- (1) The Chairman shall be appointed by the Prime Minister from among the members of the Committee.
- (2) The Chairman shall preside at every meeting of the Committee. In the absence of the Chairman, the members present shall appoint one of their number to be Chairman of that meeting.
- (3) At every meeting the quorum shall be three, the composition of which shall include any person co-opted under sub-section (6).
- (4) The proceedings at every meeting of the Committee shall be decided by a majority of the members present.
- (5) The Secretariat shall be provided by the Auditor General.
- (6) The Committee may co-opt any person with particular expert knowledge or skill but such co-opted person shall not be entitled to vote.

21 Principal functions of the Committee

- (1) If the Committee considers it appropriate, at any time prior to the presentation to the Legislative Assembly of the Auditor General's draft annual plan pursuant to section 22, it shall report to the Legislative Assembly on —
 - (a) the adequacy and nature of the audit programme intended to be undertaken by the Auditor General;
 - (b) the adequacy of the external audit arrangements proposed by the Auditor General including the standards to be followed; and
 - (c) whether the Audit Office has sufficient resources to enable the Auditor General to perform his functions, and if the Committee

finds there are insufficient resources, the additional resources required.

- (2) The contents of each report produced under subsection (1) shall be determined by a majority of the members of the Committee and shall indicate the dissenting views of a member if the member so requests.

PART 4

PLANNING AND REPORTING

22 Annual Plan

- (1) The Auditor General shall prepare and submit to the Speaker a draft annual plan, at least 60 days before the beginning of each financial year, that describes the Auditor-General's proposed work programme for that financial year.
- (2) The Speaker shall, when the Legislative Assembly is in session, forthwith present the draft annual plan to the members of the Legislative Assembly and give the members the opportunity to comment on the draft plan. Where the Legislative Assembly is not in session the Speaker must forthwith present the draft plan to the members at the start of the next ensuing session of the Legislative Assembly and give the members the opportunity to comment on the draft plan.
- (3) The Auditor General, after considering any comments of the Speaker or the Legislative Assembly, may amend the plan as the Auditor General thinks necessary but must indicate in the plan the nature of any changes to the Auditor General's work programme priorities requested by the Speaker or the Legislative Assembly but not included in the plan.
- (4) The Auditor General shall present a completed annual plan to the Speaker before the beginning of each financial year and the Speaker must then present it to the Legislative Assembly.

23 Reporting

- (1) The Auditor General shall separately report to the Head of Department or Government agency, or other affected person, in respect of any matter that may relate to an audit, review, investigation or inquiry, and may require that person to respond to the Auditor General within 14 days of receiving the report.
- (2) The Auditor General may, in the annual report or in any special report make such recommendations as he deems appropriate.

24 Annual Reports

- (1) The Auditor General shall, without limiting the right to report at any other time, by 31 March of each year forward to the Speaker and to the Prime Minister, an annual report relating to the reviews and audits undertaken according to law.
- (2) The Speaker shall, when the Legislative Assembly is in session, forthwith present the annual report to the members of the Legislative Assembly and give the members the opportunity to comment on the annual report. Where the Legislative Assembly is not in session the Speaker must forthwith present the annual report to the members at the start of the next ensuing session of the Legislative Assembly and give the members the opportunity to comment on the annual report.
- (3) The Auditor General shall, without limiting the generality of subsection (1), provide in the annual report a signed statement in respect of every Ministry, Government agency, public enterprise or other organisation account audited that shall —
 - (a) comment on the audit undertaken, containing such information as will fairly disclose the Ministry's, Government agency's, public enterprise's or other organisation's compliance with the matters referred to in section 10(4)(a), (c) and (d) and section 14 together with such other information and comments relating thereto as the Auditor General thinks fit; and
 - (b) include a statement or statements containing such matters as the Auditor General thinks fit relating to —
 - (i) any accounts or transactions that are required to be audited under this Act; or
 - (ii) the performance or exercise by the Auditor General of any of the functions, duties, or powers under this or any other Act.
- (4) The Auditor General may publish and disseminate any annual report or any special report that has been presented to the Legislative Assembly.

25 Communication

- (1) The Auditor General may communicate with the Speaker, the Prime Minister, a Head of Department or any other person upon any matter subject to audit, review, investigation or inquiry.
- (2) The Auditor General may report to the responsible person the name of any person failing to comply with the requirements of this or any other Act, or of any failure by any person to comply with the recommendations or otherwise address the concerns he has raised in any report.

26 Get Support

The Legislative Assembly shall appropriate sufficient moneys, to enable the effective and efficient administration of this Act.

PART 5**MISCELLANEOUS****27 Confidentiality**

The Auditor General, authorised officers or any employee of the Audit Office shall not, except as may be required by law, disclose to any person any information that shall come to their attention in the performance of their duties, functions and powers under this Act and all such information shall remain confidential.

28 Relevant Acts

The Auditor General shall have the right to review and comment on any proposed legislation that affects his office and when doing so shall provide his comments in writing to the Minister responsible for the proposed legislation and to the Speaker who shall lay the same before the Legislative Assembly at the first reading of the proposed legislation.

29 False statement

Any person who makes any statement or declaration or gives any information, certificate or document required by this Act knowing it to be false or misleading commits an offence and upon conviction shall be liable to a fine not exceeding \$10,000 or imprisonment not exceeding three years or both.

30 Obstruction

Any person who resists or obstructs the Auditor General in the discharge of his functions, duties or powers under this Act commits an offence and shall be liable to a fine not exceeding \$10,000 or imprisonment not exceeding three years or both.

31 Offences by a corporate body

If a body corporate commits an offence under this Act each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for that offence, unless the director or other person

proves that he exercised reasonable diligence to prevent the commission of the offence.

32 Fee

- (1) The Auditor General may, with the approval of the Minister of Finance, charge a fee for undertaking specified audits.
- (2) Any fee charged for an audit shall be commensurate with that charged by a private sector auditor.

33 External audit

- (1) There shall be conducted by a competent external audit agency appointed by the Prime Minister after consultation with the Speaker and the President of the Tongan Society of Accountants, an annual audit of the Audit Office, and the audit report prepared by the external audit agency together with the annual financial statements of the Audit Office shall be forwarded to the Speaker no later than six months from the end of the financial year to which they relate and the Speaker shall lay them before the Legislative Assembly forthwith if the Legislative Assembly is in session and if not at the start of the next ensuing session.
- (2) The cost of the external audit under subsection (1) shall be charged to a separate appropriation under the Auditor General's Vote.

34 Transition

- (1) The person holding office as Auditor General immediately before the commencement of this Act shall continue to hold office as the Auditor General in accordance with the provisions of this Act.
- (2) Every person holding office as an officer or employee of the Audit Office immediately before the commencement of this Act shall continue to hold office as an officer or employee upon the same terms and conditions of employment, in accordance with the provisions of this Act.
- (3) Every audit, review, investigation or inquiry undertaken or being undertaken by the Auditor General on or before the commencement of this Act shall continue to have effect or be undertaken by the Auditor General in accordance with the provisions of this Act.

35 Regulations

The Auditor General may, with the consent of Cabinet, make all such Regulations as may be necessary or expedient for giving full effect to the provisions of this Act and the due administration thereof.

Passed by the Legislative Assembly of Tonga this 9th of August 2007.