

NATIONAL AUDIT OFFICE ACT, 2015

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National Audit Office Act, 2015



THE GAMBIA

NO. 10 OF 2015

Assented to by The President,
this 23rd day of December, 2015



YAHYA A. J. J. JAMMEH.
President

AN ACT to strengthen the National Audit Office, to establish its governing Board, to define the status and mandate of the Auditor General, to promote efficiency and accountability in the use of public resources and for connected matters.

[23rd December 2015]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the National Audit Office Act, 2015 and comes into force on such date as the Minister may, by Order published in the Gazette, appoint.

2. Interpretation

In this Act, unless the context otherwise requires -

“Appropriation Act” means the selected classification of Government expenditures and incomes included in the Appropriation Bill documents which, after approval of the National Assembly, form the legal structure and annual limits for spending, accounting and reporting by the Government;

“Auditor General” means the Auditor General appointed by the President under section 158 (1) of the Constitution;

“Board” means the National Audit Office Board established under Section 5 (1);

“budget agency” means a Government organisation, including a Ministry, an agency, an office, an authority, an institution and any other department or unit, for which, independently, an annual budget is included in the Appropriation Bill documents, and for which an appropriation is made by the National Assembly;

“Consolidated Fund” means the Consolidated Fund established under section 150 (1) of the Constitution;

“departmental self-raised revenue” means revenue or other money collected and retained by a budget agency for the purpose of defraying the expenses of the budget agency in accordance with section 150 (2)(b) of the Constitution;

“financial year” means a year of twelve months, starting on the first day of January and ending on the thirty-first day of December for which a Government Budget is approved, executed, reported and audited;

“financial statements” means a collection of statements comprising-

- (a) a Statement of financial position or balance sheet,
- (b) a statement of revenue and expenditure,
- (c) a statement of receipts into and payments from the Consolidated Fund,
- (d) a statement of revenue and expenditure of retained Internally Generated Funds,
- (e) cash flow statement of the Consolidated fund, and
- (f) notes to the accounts;

“Government” means the Government of The Republic of The Gambia;

“Government Budget” means sections of the Appropriation Bill documents that are approved by the National Assembly, which consist of the appropriation structure and legal provisions relating to revenue and expenditure transactions;

“Minister” means the Minister of Finance and Economic Affairs; and “Ministry” shall be construed accordingly;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“President” means the President of The Republic of The Gambia;

“Public Enterprise” means any body corporate or other body or institution, wholly owned or controlled by the Government as defined in section 175 (1) of the Constitution;

"public money" means -

- (a) any money in the custody or under the control of -
 - (i) the Government of The Gambia, or
 - (ii) any person or entity acting for or on behalf of the Government of The Gambia, and
- (b) includes any public money held in trust for, or otherwise for the benefit of a person, other than the Government of The Gambia;

"public officer" means a person holding or acting in a public office as defined in section 230 of the Constitution;

"Supervising Department" means a Ministry which co-ordinates the operations of one or several budget agencies under its supervision;

"Treasury Main Account" means the Government bank account held at the Central Bank and managed by the Accountant General for the transactions of the Consolidated Fund;

"Vote" means the upper spending limit appropriated by the National Assembly which entitles a budget agency to make commitments and payments; and

"Vote Controller" means the head of a budget agency or the public officer authorised by the head of the agency to take charge of and manage funds appropriated for that agency.

PART II – ESTABLISHMENT OF THE NATIONAL AUDIT OFFICE AND ITS GOVERNING BOARD

3. Establishment of the National Audit Office

(1) There is established by this Act, the National Audit Office in the public services consisting of -

- a) the Auditor General;
- b) two deputy Auditors General; and
- c) the staff appointed by the Auditor General under section 17 (1).

(2) In the exercise of its functions under the Constitution or any other law, the National Audit Office shall not be subject to the

direction or control of any person or authority.

4. Organisation of the National Audit Office

- (1) The Auditor General is the Head of the National Audit Office.
- (2) The Auditor General shall be assisted in the performance of his or her functions by two Deputy Auditors General.
- (3) The first Deputy Auditor General shall be responsible for the technical aspects of the work of the National Audit Office.
- (4) The second Deputy Auditor General shall be responsible for Administration and Finance matters.
- (5) The National Audit Office shall have such staff other than the Auditor General and the Deputy Auditors General, as may be required for the proper and efficient performance of the functions of the Auditor General under section 160 of the Constitution or any other Act of the National Assembly.
- (6) The Auditor General, acting on the advice of the Board, may establish such departments in the National Audit Office as he or she may consider necessary or expedient for the effective management of the National Audit Office.

5. Establishment of the National Audit Office Board

- (1) There is established by this Act, the National Audit Office Board, which shall be the governing body for the National Audit Office and consists of-
 - (a) the Auditor General;
 - (b) the Chairperson of the Public Service Commission;
 - (c) a nominee of the Gambia Bar Association;
 - (d) a nominee of the Gambia Association of Accountants;
 - (e) a retired seasoned economist.
- (2) The Auditor General shall be the Chairperson of the Board.
- (3) The Board may establish and assign responsibilities to such committees and sub-committees as it considers necessary for the performance of its functions under this Act.
- (4) In the exercise of its functions under the Constitution or any

other law, the Board shall not be subject to the direction or control of any person or authority.

6. Functions of the Board

(1) The Board shall -

- (a) appoint the First and Second Deputy Auditors General, after consultation with the Auditor General, and determine the terms and conditions of service of the Deputy Auditors General;
- (b) advise the Auditor General on the appointment of staff of the National Audit Office and determine their terms and conditions of service;
- (c) issue budgetary guidelines and directives for preparation of the annual estimates of the National Audit Office;
- (d) review the financial estimates of the National Audit Office before submission to the National Assembly;
- (e) review the performance of the National Audit Office as and when it considers it necessary; and
- (f) review the annual report of the National Audit Office.

(2) The Board may from time to time present reports to the National Assembly in the exercise of its functions.

7. Appointment of Secretary to the Board

(1) The Board shall appoint as Secretary to the Board, a senior member of the National Audit Office with proven ability in administration.

(2) The Secretary shall be paid such allowances as the Board may determine but he or she shall have no voting rights on the Board.

8. Meetings of the Board

(1) The Board shall meet at least once every quarter.

(2) The quorum for Board meetings shall be three members including the Auditor General.

(3) All decisions of the Board shall be taken on the basis of a simple majority vote.

(4) A member of the Board, who is not physically present at a meeting, may join in the making of a resolution by electronic means.

9. Disclosure of interest

(1) A member of the Board who has an interest, whether pecuniary or otherwise, direct or indirect, in any entity subject to audit or examination by the National Audit Office, shall -

(a) disclose to the Board the fact of such interest and the nature of it; and

(b) not take part in any deliberation or decision of the Board relating to the entity subject to audit or examination by the National Audit Office.

(2) A disclosure of interest by a member shall be recorded in the minutes of the Board.

(3) A member who contravenes the provisions of sub-section (1) may be removed from the Board.

10. Remuneration and expenses of members of the Board

(1) The members of the Board shall be paid such remuneration and allowances as the Minister may determine.

(2) Members of the Board shall be reimbursed by the National Audit Office, for reasonable expenses incurred in connection with the discharge of their functions.

PART III – APPOINTMENT OF THE AUDITOR GENERAL AND ANCILLARY MATTERS

11. Appointment of the Auditor General

(1) The President shall, after consultation with the Public Service Commission, appoint the Auditor General whose office shall be an office in the public service.

(2) A person shall not be appointed as Auditor General unless he or she holds a professional auditing or accounting qualification with at least ten years post qualification experience.

12. Taking the prescribed oaths

A person appointed as Auditor General of The Gambia shall, before assuming the functions of his or her office take and

subscribe before the President, the Oath of Allegiance and the Oath for the Due Execution of Office.

[Cap. 35:03]

13. Mandate of the Auditor General

(1) Without prejudice to the functions of the Auditor General under section 160 of the Constitution, the public accounts of The Gambia and of all public offices other than that of the office of the Auditor General, including the programmes and activities underlying the accounts, shall be audited and reported on by the Auditor General.

(2) For the purposes of sub-section (1), the public offices of The Gambia shall include -

- (a) all offices and authorities of the Government;
- (b) the Judiciary;
- (c) the National Assembly;
- (d) all Public Enterprises.

(3) The Auditor General shall examine the accounts of the entities subject to audit and ascertain whether in his or her opinion -

- (a) the accounts have been properly kept;
- (b) all public moneys have been fully accounted for, and rules and procedures applicable are sufficient to ensure an effective check on the assessment, collection and proper allocation of the revenue;
- (c) moneys have been expended for the purposes for which they were appropriated and the expenditures have been made as authorised;
- (d) essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property; and
- (e) programmes and activities have been undertaken with due regard to economy, efficiency and effectiveness in relation to the resources utilised and results achieved.

(4) The Auditor General shall exercise such other functions as may be incidental to the above or conferred on him or her by an

Act of the National Assembly.

14. Authority and powers of the Auditor General

In the exercise of his or her functions, the Auditor General -

- (a) shall not be subject to the direction or control of any other person or authority;
- (b) shall have access to all books, records, returns, reports, documents, and facilities related to or relevant to those accounts and programmes and activities underlying the accounts and access to premises, stores or any Government property;
- (c) may search and make copies of or take extracts from any book, document or record in any public office without the payment of a fee;
- (d) may undertake audits at the request of third parties, such as international donor agencies;
- (e) may charge a fee for the purpose of meeting the costs of auditing any entity which is not a budget agency and such fees shall be credited to the National Audit Office;
- (f) may station any of his or her staff at the premises of the entity that is the subject of an audit or examination;
- (g) may disallow any item of expenditure which is contrary to law and surcharge -
 - (i) the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure; or
 - (ii) any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account; or
 - (iii) the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred.
- (h) may establish formal relations with and obtain professional assistance or advice from such institutions and associations like the International Organisation of Supreme Audit Institutions.

15. Emoluments of the Auditor General

- (1) The Auditor General shall be paid such salary and allowances and, on retirement, such gratuity and pension as are approved by the Board after consultation with the President, and such payments shall be a charge on the Consolidated Fund.
- (2) The salary, allowances and retirement benefits of the Auditor General shall not be varied to his or her disadvantage during his or her tenure of office.

16. Tenure of office of the Auditor General

- (1) The Auditor General shall hold office for a term not exceeding nine years.
- (2) Notwithstanding sub-section (1), the Auditor General shall vacate his or her office when he or she attains the compulsory retirement age.
- (3) The Auditor General may resign his or her appointment by giving thirty days' notice in writing addressed to the President.
- (4) The Auditor General may only be removed from office by the President on the following grounds -
 - (a) inability to perform the functions of his or her office arising from infirmity of mind or body or from any other cause; or
 - (b) misbehaviour; or
 - (c) incompetence.
- (5) The President may remove the Auditor General from office under paragraph (a) of sub-section (4) following a report submitted by a properly constituted Medical Board.
- (6) The President may remove the Auditor General from office under paragraph (b) and (c) of sub-section (4) following a report submitted by a Tribunal appointed by the President.
- (7) The Tribunal appointed by the President under sub-section (6) shall comprise -
 - (a) a judge of the High Court;
 - (b) the Ombudsman;
 - (c) a member of the Public Service Commission; and

(d) a chartered accountant.

17. Appointment of the Deputy Auditors General

(1) The Board shall appoint the First and Second Deputy Auditors General, after consultation with the Auditor General.

(2) A person shall not be appointed as First or Second Deputy Auditor General unless he or she holds a professional auditing or accounting qualification with at least five years post graduate experience.

(3) A person appointed as First or Second Deputy Auditor General shall, before assuming the functions of his or her office take and subscribe before the Auditor General, the Oath for the Due Execution of Office.

(4) The First and Second Deputy Auditors General shall be paid such salaries and allowances as are approved by the Board after consultation with the Ministry.

18. Appointment of other staff of the National Audit Office

(1) The Auditor General shall appoint other staff of the National Audit Office after consultation with the Public Service Commission and the Board.

(2) The other staff of the National Audit Office shall, before assuming the functions of their offices take and subscribe before the Auditor General, the Oath for the Due Execution of Office.

(3) The other staff of the National Audit Office shall be paid such salaries as are approved by the Board after consultation with the Ministry.

19. External auditors

The Auditor General may appoint an Auditor who is not a member of the staff of the National Audit Office to assist in auditing the accounts of any public entity.

PART IV – REPORTING BY THE AUDITOR GENERAL

20. Audit opinion and report

(1) The Auditor General shall provide an audit opinion on the financial statements of each entity for which he or she has the responsibility to audit within six months of the end of the immediately preceding financial year.

(2) The Auditor General shall attach the audit opinion to the financial statements of the audited entity and present them to the National Assembly.

(3) The Auditor General may provide a report to the National Assembly concerning the activities of the audited entity, at the same time as the audit opinion or at a time determined by the Auditor General.

(4) The Auditor General shall provide annual detailed audit paragraphs to the National Assembly, which will provide details of outstanding issues and recommendations for improvement on the internal and financial management controls of the audited institutions and any other issues deemed necessary by the Auditor General.

(5) The Auditor General shall report to the National Assembly as and when necessary, on the outcome of any reports into the economy, efficiency and effectiveness of the activities of any entity.

(6) The Auditor General shall follow up the action taken by each audited entity in respect of his or her findings and recommendations and, if necessary, report to the National Assembly the outcome of any action taken by the entity to address the shortcomings or deficiencies.

21. Annual activity report

The Auditor General shall provide the National Assembly with an annual report setting out -

- (a) the work undertaken by the National Audit Office during the year;
- (b) a summary of the findings of the audits carried out and recommendations for improvement in the management of public finance; and
- (c) any other matter which he or she deems necessary.

22. Special audit reports

The Auditor General may in addition to the audit of public accounts, carry out in the public interest, such special audits or examinations as he or she considers necessary and shall submit reports on the audits or examinations undertaken by him or her to the National Assembly.

PART V – FINANCIAL PROVISIONS

23. Income and expenses of the National Audit Office

(1) The National Audit Office shall be funded through moneys appropriated to it by the National Assembly.

(2) The administrative expenses of the National Audit Office including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the National Audit Office shall be met out of and shall be a charge on the Consolidated Fund.

24. Submission of estimates of expenditure to the President

(1) The Auditor General shall submit the annual estimates of expenditure for the National Audit Office for the following financial year to the President for presentation to the National Assembly in accordance with the Constitution.

(2) The President shall cause the estimates to be placed before the National Assembly without amendment, but may attach to the estimates his or her comment and observations.

25. Audit of the National Audit Office

(1) The National Audit Office shall keep proper records and books of accounts of its income and expenditure.

(2) The National Audit Office shall prepare in respect of each financial year, a statement of accounts audited and reported upon by an Auditor or a firm of Auditors appointed by the National Assembly.

(3) The National Audit Office shall within three months after the end of each financial year, submit its statements of audited accounts to the National Assembly.

PART VI – MISCELLANEOUS

26. Protection from liability

The Auditor General, staff of the National Audit Office or a person acting on behalf of the Auditor General shall not be subject to civil or criminal proceedings or be personally liable for any act done or omitted to be done in good faith in the exercise of his or her functions.

27. Inconsistency with other laws

Subject to the Constitution, where a provision of this Act is inconsistent with the provision of any other law relating to audits, the provision of this Act shall prevail, and that other provision shall, to the extent of the inconsistency, be void.

28. Deletion and Savings

(1) Part III of the Finance and Audit Act is deleted.

[Cap. 75: 01]

(2) Notwithstanding the deletion of Part III of the Finance and Audit Act -

- (a) any document made or anything duly done by the Auditor General under the deleted Part shall remain valid;
- (b) the Auditor General of The Gambia immediately before the commencement of this Act shall remain in the Office of the Auditor General established by this Act;
- (c) all employees of the National Audit Office immediately before the commencement of this Act shall remain employees of the National Audit Office established by this Act;
- (d) all assets, funds, resources and other moveable property which immediately before the commencement of this Act were vested in the National Audit Office shall be vested in the National Audit Office established by this Act; and
- (e) all rights, interests, obligations and liabilities of the National Audit Office existing immediately before the commencement of this Act under any contract or instrument or in law or equity, shall by virtue of this Act be assigned to or vested in the National Audit Office established by this Act.

MC

National Audit Office Act, 2015

PASSED in the National Assembly this Second day of December, in
the year of Our Lord Two Thousand and Fifteen.

D. C. M. Kebbeh
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill
which has passed in the National Assembly, and found by me to be a true and
correct copy of the said Bill.

D. C. M. Kebbeh
Clerk of the National Assembly.

