

Seychelles

Auditor-General Act, 2010

Act 9 of 2010

Legislation as at 30 June 2012

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Seychelles

Auditor-General Act, 2010

Act 9 of 2010

Commenced on 7 July 2010

[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]

Part I – Preliminary

1. Short title

This Act may be cited as the Auditor-General Bill [sic], 2010.

2. Interpretation

In this Act—

"**accounting officer**" means any Principal Secretary, head of department or other public officer whose duties involve overall responsibility in connection with public moneys, stores and all other assets under the control of such officer;

"**Auditor-General**" means the person appointed as Auditor-General under article 158 (1) of the Constitution;

"**Constitution**" means the Constitution of the Republic of Seychelles;

"**entity**" means any person, whether corporate or unincorporate;

"**public moneys**" includes—

- (a) the public revenues of Seychelles; and
- (b) any trust or other moneys held, whether temporarily or otherwise, by any public officer in his official capacity either alone or jointly with any other person, whether a public officer or not;

"**Office**" means the Office of the Auditor-General established by [section 3](#);

"**revenue**" means all dues, duties, fines, forfeitures, imposts, penalties, rates, rents, taxes and tolls and all other receipts of the Government from whatever source arising;

"**property**" means any movable or immovable property of a public authority;

Part 2 – The Office of the Auditor-General

3. Establishment of the Office of the Auditor-General

There is hereby established an Office to be known as the Office of the Auditor-General.

4. Establishment of Audit Revenue Fund

There is hereby established a Fund to be known as the Audit Revenue Fund into which all revenue contemplated in [section 5](#) (1) shall be deposited and from which all expenditure contemplated in [section 25](#) (1) shall be defrayed.

5. Revenue of the Office

- (1) The revenue of the Office shall consist of moneys—
 - (a) appropriated by the National Assembly in order to enable the Office to perform its functions under the Constitution, this Act or any other law;
 - (b) earned in connection with audit services rendered by the Office in terms of this Act and any other law;
 - (c) interest accruing to the Office from any source; and
 - (d) developmental grants becoming available to the Office.
- (2) The Office shall open an account with a financial institution registered as a bank in terms of the Financial Institutions Act, 1984 and deposit in that account all moneys contemplated in subsection (1) and make all payments therefrom.
- (3) The Office of the Auditor-General shall be exempt from all taxes on its profits and income.

Part 3 – The Auditor-General and his functions

6. Auditor-General: Appointment, term etc.

- (1) The Auditor-General shall be appointed by the President pursuant to article 158 of the Constitution to hold office for a term of seven years and shall be eligible for reappointment at the end of such a term.
- (2) The salary, allowances, gratuity or pension of the Auditor-General shall be those provided under the Constitutional Appointees' Emoluments Act.
- (3) The Employment Act and the Public Service Orders shall not apply to the Auditor-General in so far as they are inconsistent with the relevant provisions of the Constitution or this Act.
- (4) The President may allow the Auditor-General at his written request to vacate his office—
 - (a) on account of continued ill health; or
 - (b) for any other reason which the President deems sufficient.
- (5) The Auditor-General shall not hold any other office or accept any occupation without the approval of the President.
- (6) The Auditor-General shall act independently in the exercise and performance of the Auditor-General's powers and duties.

7. Acting appointment

In the event of the absence or incapacity of the Auditor-General, the President may appoint a person to act as the Auditor-General. Every person so appointed shall have and may exercise the powers, and shall perform the duties, of the Auditor-General.

8. Constitutional and other functions

The Auditor-General shall, in addition to the powers and functions conferred upon or entrusted to him in terms of article 158 of the Constitution, exercise the powers and perform the duties specified in this Act.

9. Constitution and this Act prevail

Notwithstanding the provisions of any other law but subject to the provisions of the Constitution, the Auditor-General shall perform the functions vested in him, in relation to—

- (a) the accounts which shall be audited;
- (b) the procedure according to which auditing shall be done; and
- (b) the steps to be taken by the Auditor-General as a result of an audit, in accordance with the provisions of this Act.

[Please note: numbering as in original.]

10. Discretion as to nature of audit and information requested

The Auditor-General may determine the nature and extent of any audit to be carried out by the Auditor-General and request the details and statements of account which he considers necessary. Notwithstanding the provisions of any other law, the Auditor-General may also determine the format in which and the date on which such details, statements of account and financial statements shall be submitted to him.

11. Matters examined in audit

The Auditor-General shall satisfy himself that—

- (a) adequate precautions have been taken to safeguard the proper collection of money to which an audit in terms of this Act relates, and that the laws, regulations, procedures and instructions relating thereto have been duly observed;
- (b) adequate precautions have been taken in connection with the receipt, custody and issue of, and accounting for, property, money, stamps, securities, equipment, stores, and other assets;
- (c) receipts, payments and other transactions have been in accordance with the applicable laws, regulations, procedures and instructions and supported by adequate vouchers; and
- (d) satisfactory management measures have been taken to ensure in compliance with applicable laws and regulations that resources are procured economically and utilised efficiently and effectively in accordance with the applicable laws.

12. Financial report audit

The Auditor-General shall from time to time audit the accounts of bodies referred to in article 158(3) of the Constitution.

13. Performance audit

- (1) The Auditor-General may at any time examine—
 - (a) the extent to which a public authority is carrying out its activities effectively and efficiently;
 - (b) a public authority's compliance with its statutory obligations;
 - (c) any act or omission of a public authority in order to determine whether waste has resulted or may result; and
 - (d) any act or omission showing a lack of probity or financial prudence by a public authority or by any of its members, office holders or employees.
- (2) An audit under this section may relate to one public authority or a number of public authorities.

14. Assistance available to Auditor-General

When exercising his powers and performing his duties under this Act—

- (a) the Auditor-General may, in writing—
 - (i) require any person in the employment of a public authority whose accounts are being audited by him to appear before him at a time and place mentioned in the request and to produce to him all such records, statement, accounts, books, vouchers and documents in the possession or under the control of such person as the Auditor-General may deem necessary for the exercise of his powers or the performance of his duties;
 - (ii) lodge before the Attorney-General or a legal practitioner a case as to any question regarding the interpretation of any Act or regulation concerning the powers of the Auditor-General or the discharge of his duties, and the Attorney-General shall give a written opinion upon such case;
 - (iii) bring a complaint to the Attorney-General on reasonable suspicion of lack of probity, or any fraudulent act found or suspected in the course of discharging his functions.
- (b) the Auditor-General and any person referred to in sections [19\(1\)](#) and [29](#) shall have—
 - (i) the right, without payment of any fee, to have access to and take extracts from any record, return, book, document and other information of an institution the accounts of which are being audited;
 - (ii) the right to investigate whether any property, money, stamps, securities, equipment, stores, and other assets of a public authority have been obtained in an economical manner, and are being applied honestly, efficiently and effectively; and
 - (iii) the right to investigate and to enquire into any matter, including the efficiency and effectiveness of internal control and management measures, relating to the expenditure and the revenue of a public authority whose accounts are being audited by him;
- (c) the Auditor-General may require the public authority concerned to make available free of charge, while the audit is being carried out, suitable office accommodation, other facilities and logistical support reasonably required for the proper carrying out of the audit.

15. Cooperation with local and foreign bodies

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

16. Protection of official acts

The Auditor-General or any person referred to in [section 29](#) or any person acting under the authority of the Auditor-General shall not be liable in his personal capacity in any civil or criminal proceedings in respect of anything done in good faith—

- (a) in the performance of any duty or the exercise of any power imposed or conferred upon him under this Act or any other law;
- (b) in giving evidence or an explanation or producing any document before a committee of the National Assembly in connection with a report of the Auditor-General.

17. Access of information

- (1) The Auditor-General is entitled to free access at all times to information that relates to the fulfillment of his responsibilities and he may require and receive from members of a public

authority such information, accounts, returns reports and explanations as he deems necessary for that purpose.

- (2) In order to carry out his duties more effectively, the Auditor-General may place any person employed in his office in any public authority and the public authority shall provide the necessary office accommodation for any person so placed.
- (3) The Auditor-General shall require every person authorised by him to examine the accounts of a public authority pursuant to this Act to comply with any security requirements applicable in the public authority.

18. Provision of professional services

- (1) The Auditor-General may, with the agreement of a public authority, perform for that authority any services of a kind that are reasonable and appropriate for an auditor to perform, provided that the services to be undertaken do not create conflicts of interest.
- (2) At the request of an entity whose auditor is not the Auditor-General under any law, the Auditor General may enter into an arrangement with that entity to be its auditor for any term not exceeding 3 years and is renewable:

Provided that the arrangement to be entered into is not of such a nature as would create a conflict of interest.

19. Engagement of private persons

- (1) The Auditor-General may appoint any professional accountant or any other person who in the opinion of the Auditor-General is sufficiently qualified to carry out any review, investigation or study on behalf of the Auditor-General. The person so appointed shall report to the Auditor-General in such manner as the Auditor-General may direct.
- (2) The appointment shall be in writing and shall specify the terms and conditions subject to which the relevant work shall be carried out.

20. Charging of fees by Auditor-General

- (1) The Auditor-General may charge fees from a public authority whose auditor is the Auditor-General or any other entity whose audit is carried out by the Auditor-General under an arrangement. The fees shall be reasonable, having regard to—
 - (a) the nature and extent of the service provided;
 - (b) the qualifications and experience of the persons necessarily engaged in providing the service; and
 - (c) any other relevant matter.
- (2) Any fees so charged and collected shall be credited to the Audit Revenue Fund.

21. Annual report to National Assembly

- (1) The Auditor-General shall, in accordance with article 158 of the Constitution submit his report to the Speaker of the National Assembly on or before 31st December in the year immediately following the financial year to which the report relates and the Speaker shall cause to be laid each such report before the National Assembly upon receiving it, or if the National Assembly is not then sitting, on any of the first fifteen days on which the National Assembly is sitting after the Speaker receives it.

- (2) The report of the Auditor-General shall call attention to any matter that he considers should be brought to the notice of the National Assembly, including any cases in which he has observed that:
 - (a) accounts have not been properly maintained or public money has not been fully accounted or paid, where so required by law, into the Consolidated Fund;
 - (b) essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public assets, to secure an effective check on the assessment, collection and proper allocation of the revenue and to ensure that expenditures are made only as authorised;
 - (c) money has been expended for purposes other than those for which it was appropriated by the National Assembly;
 - (d) money has been expended without due regard honestly to economy and efficiency; and
 - (e) satisfactory procedures have not been established to measure and report effectiveness of programs where such procedures could appropriately and reasonably be implemented.

22. Special report

- (1) The Auditor-General may make a special report to the National Assembly on any matter of importance or urgency if in the opinion of the Auditor-General the report should not be deferred until the next annual report under [section 21\(1\)](#).
- (2) Each special report under subsection (1) shall be transmitted to the Speaker of the National Assembly and shall be laid before the National Assembly by the Clerk upon receipt of the report or, if the National Assembly is not then sitting, on any of the first fifteen days on which the National Assembly is sitting after the Speaker receives it.

23. Report of irregularities

If at any time it appears to the Auditor-General that any irregularities have occurred in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other government property, or in the accounting for the same, he shall immediately bring the matter to the notice of the Minister of Finance.

Part 4 – Administration of the Office

24. Accounts of the Office

- (1) The Auditor-General shall be charged with the accounting for all revenue and expenditure of the Office.
- (2) The Auditor-General shall—
 - (a) keep full and proper records of all revenue and expenditure and of all the assets, liabilities and financial transactions of the Office;
 - (b) within three months after the end of each financial year or such longer period as the National Assembly may allow, prepare annual financial statements referred to in [section 26](#) (1) (a), (b) and (c);
 - (c) satisfy himself that all reasonable management measures have been taken to ensure that resources which are necessary for achieving the objectives of the Office are, as far as possible, obtained, safeguarded and utilised in the most economic, efficient and effective manner.

25. Estimate of revenue and expenditure of Office

- (1) At least 90 days before the beginning of each financial year, the Auditor-General shall submit to the Speaker of the National Assembly an estimate of the sums that will be required for the payment of salaries, allowances and other expenses of the Office during the next financial year.
- (2) The estimates under subsection (1) shall accompany a draft annual plan that describes the Auditor-General's proposed work programme for the next financial year.
- (3) The Speaker shall present the estimates and the draft annual plan to the Finance and Public Accounts Committee of the National Assembly within 30 days for its consideration.
- (4) The Finance and Public Accounts Committee of the National Assembly shall consider the estimates and may propose amendments to the estimates or the plan, as the case may be, which the Auditor-General may adopt as he thinks fit.
- (5) Upon the recommendation of the Finance and Public Accounts Committee of the National Assembly, the estimates shall be referred to the Minister of Finance for the Minister's consideration in the preparation of the Appropriation Bill for the ensuing financial year.

26. Annual report

- (1) The Auditor-General shall, each year, within six months after the end of the financial year, submit to the National Assembly a report on the activities of the Office during the said financial year, which shall include—
 - (a) an audited balance sheet, including any notes thereon or documents attached thereto providing information required by this Act;
 - (b) an audited income statement, including any notes thereon or documents attached thereto providing information required by this Act;
 - (c) an audited cash flow statement, including any notes thereon or documents attached thereto providing information required by this Act;
 - (d) an account of the implementation of the annual plan required under [section 25](#) (2); and
 - (e) an audit report by the person appointed under [section 27](#)(1).
- (2) The balance sheet and statements referred to in subsection (1) (a) and (b) shall—
 - (a) be in conformity with generally accepted accounting practice;
 - (b) fairly present the state of affairs and activities of the Office and the results thereof; and
 - (c) draw attention to any relevant matters which affect or are likely to affect the affairs of the Office.
- (3) The Finance and Public Accounts Committee of the National Assembly shall examine the report submitted to it under subsection (1), and transmit the report, together with any proposals it may wish to make in connection therewith, within 6 months after receiving the report, to the Speaker who shall cause it to be laid before the National Assembly.

27. Auditing of accounts of Office

- (1) The accounts of the Office shall be audited by a person who is registered in terms of the Companies Act, 1972 and is not in the service of the Office or did not during the period in question perform work on behalf of the Office and, being in the opinion of the Finance and Public Accounts Committee fit and proper in all respects to do that auditing, has been appointed by the Auditor-General.
- (2) The cost of an audit referred to in subsection (1) shall be charged on the Audit Revenue Fund.

28. Proprietary and other rights of Office

- (1) The movable and immovable property of the Republic which is immediately before the date of commencement of this Act at the disposal of the office of the Auditor-General shall on the said date become the property of the Office, except in so far as the Minister of Finance has determined otherwise.
- (2) No levy, tax, transfer duty, stamp duty or any other charges or fees imposed by law shall be payable in respect of the passing of any property to the Office under this section.
- (3) The Office may—
 - (a) hire, purchase or otherwise acquire movable or immovable property which the Auditor-General deems necessary for the performance of its functions and may let, sell or otherwise dispose of property so purchased or acquired in accordance with existing laws;
 - (b) in order to perform its functions, enter into an agreement with any person, including the Government, for the performance on its behalf of any specific act or function or the rendering of specific services;
 - (c) insure itself against any loss, damage, risk or liability which it may suffer or incur;
 - (d) with the approval of the Minister of Finance, borrow or otherwise obtain money for the purpose of acquiring immovable property;
 - (e) procure advances for such purposes, to such extent and on such conditions as the Minister of Finance may after consultation with the Finance and Public Accounts Committee determine; and
 - (f) in general perform such acts as may be necessary or expedient for the performance of its functions.

29. Employees of Auditor-General

Subject to [section 31](#), the Auditor-General may employ such persons as are necessary for the performance of the Auditor-General's functions.

30. Repeal of Audit Act

The Audit Act 1972 (Cap 11) is repealed.

31. Transitional provisions

- (1) Notwithstanding [section 30](#), every person employed in the Audit Department immediately before the date of commencement of this Act is, on and from that date, an employee of the Auditor-General and is employed under the same terms and conditions as applied to that employee immediately before that date.
- (2) The conditions of service under which a person referred to in subsection (1) served immediately before the date of commencement of this Act shall not be altered to his detriment, and after that date no such condition of service shall be so interpreted or applied that it is less favourable to him than it was immediately prior to that date.
- (3) For the purposes of every enactment, law, contract, and agreement relating to the employment of a person referred to in subsection (1)—
 - (a) the contract of employment of that employee that applied immediately before the commencement of this Act in respect of that person's employment in the Audit Department is to be treated as unbroken; and

- (b) the employee's period of service with the Audit Department and every other period of service of that employee that was recognised by the Audit Department as continuous service is to be treated as a period of service with the Auditor-General.