

(COMMITTEE ON THE AUDITOR-GENERAL)

(As introduced in the National Assembly (proposed section 75): explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

PUBLIC AUDIT AMENDMENT BILL

REPUBLIC OF SOUTH AFRICA

To amend the Public Audit Act, 2004, so as to provide for the Auditor-General to refer undesirable audit outcomes for investigation by an appropriate body; to provide for the Auditor-General to disallow an item of expenditure which is contrary to the law and to surcharge an amount in certain instances against the person responsible; to provide certainty with regard to the discretion of the Auditor-General with regard to certain audits; to authorise the Auditor-General to provide audit or audit related services to an international association, body, institution or organisation; to empower the Auditor-General to make regulations to guide the Auditor-General in deciding on investigations; to provide further with regard to reporting on an audit by the Auditor-General; to provide a fresh for the appointment and the powers and functions of an audit committee for the Auditor-General; to provide for the appointment and powers and functions of a Remuneration Committee for the Auditor-General; to provide for an annual process of consultation between the Independent Commission for the

BILL

[] Words in bold type in square brackets indicate omissions from existing enactments
 [] Words underlined with a solid line indicate insertions in existing enactments

GENERAL EXPLANATORY NOTE:

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Remuneration of Public Office-bearers and the Remuneration Committee with

regard to the determination of the remuneration and benefits of the Auditor-

General, and to provide for matters connected therewith.

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

Amendment of section 1 of Act 25 of 2004

1. Section 1 of the Public Audit Act, 2004 (hereinafter referred to as the

principal Act), is hereby amended—

(a) by the insertion after the definition of "Deputy Auditor-General" of the following

definition:

"disallowance" means to reject an item of expenditure that is contrary to

the law as contemplated in section 5(1D);

(b) by the insertion after the definition of "National Treasury" of the following

definition:

"nominated account" means a public account nominated by the Auditor-

General as contemplated in section 5(1F)(b) and may include, but is not

limited to, the National Revenue Fund, a Provincial Revenue Fund, or an

account owned by an auditee; and

(c) by the substitution for the full stop at the end of the definition of "supreme audit

institution" of a semi colon and the insertion after that definition of the following

definitions:

Amendment of section 5 of Act 25 of 2004

(b) by the substitution for subsection (4) of the following subsection:
“(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.”

(a) by the insertion after subsection (3) of the following subsection:
“(3A) Despite the provisions of any other law, the discretion of the Auditor-General as contemplated in subsection (3) applies with respect to any public entity contemplated in subsection (3)(a) and any other institution contemplated in subsection (3)(b) that meets criteria published by the Auditor-General in regulations issued in terms of section 52(1); and
2. Section 4 of the principal Act is hereby amended—

Amendment of section 4 of Act 25 of 2004

“**undesirable audit outcome**” means any act or omission arising from an audit performed under this Act that causes, or is likely to cause, a loss of public resources or that redirects such resources away from its intended purpose or beneficiary.”
“**surcharge**” means a sum charged by the Auditor-General as contemplated in section 5(1C) or (1D); and

3. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

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

(a) **provide** 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) **provide** 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) **provide** 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[.];

(e) perform an appropriate audit of any institution referred to in section

4(1) or (3) to determine whether appropriate and adequate

measures have been implemented to ensure that resources are

procured economically and utilised efficiently and effectively; or

(f) provide audit and audit related services commonly performed by an

independent audit institution to an international association, body,

institution or organisation on condition that—

(i) prior approval of the oversight mechanism is obtained;

(ii) such service does not compromise the efficiency, or put a

strain on the resources, of the Auditor-General; and

(iii) there must be full and proper disclosure of such services in

terms of section 10(1)(b);"

(b) by the insertion after subsection (1) of the following subsections:

"(1A) The Auditor-General may make regulations or issue

instructions regarding the nature and category of matters in respect of

which an investigation or special audit contemplated in subsection (1)(d)

would be carried out and the manner in which decisions relating to such

matters are to be made.

(1B) The Auditor-General may—

(a) refer any undesirable audit outcomes for investigation by an appropriate body including, but not limited to, the Public Protector or the Directorate for Priority Crime Investigation established by section 17C of the South African Police Service Act, 1995 (Act No. 68 of 1995), and the relevant body must keep the Auditor-General informed of progress and the final outcome of the investigation; and (b) make regulations regarding the manner in which the referral of matters contemplated in paragraph (a) must be carried out. (1C) If it appears to the Auditor-General that any person who is or was in the employment of an accounting entity contemplated in section 4— (a) has failed to collect any moneys due to the State, for the collection of which that person is or was responsible; (b) is or was responsible for any improper payment of public moneys or for any payment of such moneys which is not duly vouched; or (c) is or was responsible for any deficiency in, or for the loss of, any public moneys or other property of the State, and if a satisfactory explanation is not, within a period specified by the Auditor-General, furnished by the person to the Auditor-General with regard to such failure to collect, improper payment, payment not duly vouched, deficiency or loss, the Auditor-General may surcharge against the said person any such amount not collected, improperly paid or not duly

vouched, or in respect of the deficiency, loss or value of the property, as

the case may be.

(1D) The Auditor-General may disallow any item of

expenditure which is contrary to the law and surcharge the amount of any

expenditure disallowed upon the person responsible for incurring or

authorising the expenditure.

(1E) The amount of any surcharge contemplated in

subsection (1C) or (1D) shall, subject to the provisions of subsection

(1F)(c), be a debt due to the State from the person against whom the

surcharge is made.

(1F) (a) The Auditor-General shall, by means of a

certificate, specify to the appropriate head of an accounting entity

or the relevant executive authority, as the case may be, the amount

due from any person upon whom he or she has made a

disallowance or surcharge and the reason for the disallowance or

surcharge.

(b) A sum specified by the Auditor-General to be due from any person

shall be paid by that person into a nominated account within 60

days after receipt by the person of the notice of the certificate

specifying the amount.

(c) A person aggrieved by a disallowance or surcharge made by the

Auditor-General may approach the High Court for a judicial review

of the decision not later than the expiration of the 60 days prescribed in paragraph (b).

(d) The Rules Board for Courts of Law may, in terms of section 6 of the Rules Board for Courts of Law, 1985 (Act No. 107 of 1985), issue rules for purposes of a judicial review contemplated in paragraph (c).

(e) Any sum which is lawfully due under this section shall—

(1) where the person surcharged is entitled to any payment from the State or an institution funded by public money and that person is not in the service of the State, subject to that person's written agreement, be recovered by way of deduction from any moneys owing to him or her by the State to the extent of the sum lawfully due;

(ii) where the person surcharged is in receipt of remuneration from the State or an institution funded by public money, subject to that person's written agreement, be recovered from him or her by way of a deduction from his or her salary of such instalments as the relevant head of the accounting entity or relevant executive authority, as the case may be, may determine; or

(iii) on civil proceedings taken by the head of the accounting entity or relevant executive authority, as the case may be, in a court, be recoverable as a civil debt.

- (f) In any proceedings for the recovery of the sum lawfully due under this section, a certificate issued in accordance with paragraph (a) and signed by the Auditor-General shall be prima facie evidence of the facts and sum certified.
- (g) The Auditor-General may, with the prior approval of the National Assembly, revoke any surcharge made under this section; and by the substitution for subsection (2) of the following subsection:
- (c) "(2) In addition, the Auditor-General [may]—
- (a) may co-operate with persons, institutions and associations, nationally and internationally;
- (b) may appoint advisory and other structures outside the administration of the Auditor-General to provide specialised advice to the Auditor-General; [and]
- (bA) must appoint a Remuneration Committee, consisting of not less than three and not more than five members of which the majority may not be in the employ of the Auditor-General and who must be suitably qualified and experienced in human resource practices, including remuneration practices, to make recommendations to—
- (i) the Independent Commission on the salary, allowances and benefits of the Auditor-General;
- (ii) the Auditor-General on the conditions of employment, the remuneration, allowances and benefits of the staff of the Auditor-General contemplated in section 34;

Amendment of section 10 of Act 25 of 2004

5. Section 10 of the principal Act is hereby amended—
(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

(a) the Cabinet member responsible for finance; and
(b) the Remuneration Committee contemplated in section 5 and
consider any recommendations made by the Committee."
Auditor-General, consult with—
investigating or considering the salary, allowances and benefits of the
"(1A) The Independent Commission must, when

subsection (1A) of the following subsection:
4. Section 7 of the principal Act is hereby amended by the substitution for

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Amendment of section 7 of Act 25 of 2004, as amended by section 15 of Act 22 of

(bB) must appoint a chairperson of the Remuneration Committee from
the members contemplated in paragraph (bA), who must not be in
the employ of the Auditor-General; and
(c) may do any other thing necessary to fulfil the role of Auditor-
General effectively;".

Amendment of section 20 of Act 25 of 2004

6. Section 20 of the principal Act is hereby amended by the substitution for

subsection (2) of the following subsection:

"(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 or findings

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 reporting framework

and legislation;

(b) [the auditee's] compliance with any applicable legislation relating to

financial matters, financial management and other related matters; and

"(b) the categories of services provided in terms of section 5(1)(a),(e)

or (f);

(b) by the deletion at the end of subsection (1)(c) of the word "and"; and

(c) by the insertion after subsection (1)(c) of the following paragraph:

"(cA) any matters referred for investigation in accordance with section

5(1B); and"

(c) [the] reported [information relating to the] performance of the auditee against its predetermined objectives."

Amendment of section 34 of Act 25 of 2004

7. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) Persons appointed [as employees] in terms of this section are employed subject to the terms and conditions of employment and must be paid the remuneration, allowances and benefits determined by the Auditor-General, subject to section 35 and after considering the recommendations of the Remuneration Committee.

(b) Terms and conditions of employment contemplated in paragraph (a) must be consistent with the basic values and principles set out in section 195 of the Constitution."

Amendment of section 38 of Act 25 of 2004

8. Section 38 of the principal Act is hereby amended—
(a) by the deletion at the end of subsection (1)(b) of the word "and"; and
(b) by the insertion after subsection (1)(b) of the following paragraph:

"(bA) estimated expenditure expected to be incurred by the relevant body contemplated in section 5(1B), relating to an investigation referred to in that section, upon that body pursuing the investigation; and"

Amendment of section 40 of Act 25 of 2004

9. Section 40 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(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];”

- (b) by the deletion at the end of subsection (6)(a)(ii) of “and”, and the substitution for the full stop at the end of subsection (6)(b)(iii) of “; and”; and
- (c) by the addition of the following paragraph:
“(c) must meet with the oversight mechanism annually.”

Short title and commencement

10. This Act is called the Public Audit Amendment Act, 2017, and takes effect on20.....