



Tuvalu

AUDIT ACT

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Tuvalu

AUDIT ACT

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Tuvalu

AUDIT ACT¹

AN ACT TO PROVIDE FOR THE AUDIT OF TUVALU PUBLIC FINANCES AND PROPERTIES, GOVERNMENT MINISTRIES AND DEPARTMENTS, FALEKAUPULE, STATUTORY BODIES, AND OTHER MATTERS

Commencement [1 January 2008]

PART 1 – PRELIMINARY

1 Short title

This Act may be cited as the Audit Act.

2 Definitions

In this Act —

“**authorised auditor**” means —

- (a) the Auditor-General; or
- (b) auditor of the audit office; or
- (c) a contract auditor appointed by the Auditor-General;

“**contract auditor**” means a person who is appointed by the Auditor-General under section 14 of the Act;

“**audit office**” means the Tuvalu National Audit Office established by section 11;

“**officer**”, in relation to a public sector entity, includes a member or employee of the entity;

“**public accounts committee**” means the Public Accounts Committee of the Parliament;

“**public money**” includes:

- (a) securities and all revenue, loans and other money whatever, collected, received or held by, for, or on account of the State; and
- (b) without limiting the generality of paragraph (a):
 - (i) money which, pursuant to any Act, is directed to be paid to or expressed to form part of the Consolidated Fund or the Special Deposits Account; and
 - (ii) such money, or money of such class or description of money, as is prescribed for the purposes of this definition;

“**public property**” means all property, other than public money, held by any person for or on behalf of the State;

“**public sector entity**” includes —

- (a) a government department; or
- (b) a Falekaupule; or
- (c) a statutory body; or
- (d) an entity that is controlled by one, or more than one government department, Falekaupule, or statutory body or by a combination of government departments, Falekaupule or statutory bodies; or
- (e) an entity controlled by an entity that is a public sector entity under paragraph (d).

PART 2 – AUDITOR-GENERAL AND THE AUDIT OFFICE

GENERAL

3 Auditor-General

- (1) There is to be an Auditor-General of Tuvalu.
- (2) The Auditor-General has the functions conferred or imposed on the Auditor-General by law.
- (3) The Auditor-General’s functions include the following:
 - (a) to audit the Public Accounts and any other financial reports that the Auditor-General is required or authorised to audit by law;
 - (b) to provide any particular audit or audit-related service to Parliament at the request of Parliament;

- (c) to provide any particular audit or audit-related service to the Minister of Finance at the request of the Minister of Finance or to any other Minister at the request of that other Minister;
 - (d) to report to Parliament as required or authorised by law;
 - (e) to do anything that is incidental to the exercise of the Auditor-General's functions.
- (4) The Auditor-General may exercise his or her functions in such manner as the Auditor-General thinks fit. However, the Auditor-General is required:
- (a) to have regard to recognised professional standards and practices, and;
 - (b) to comply with any relevant requirements imposed by law.
- (5) The Auditor-General may, in the exercise of his or her functions have regard to whether there has been:
- (a) any waste of public resources, or
 - (b) any lack of probity or financial prudence in the management or application of public resources.

4 Auditor-General not subject to direction

- (1) Subject to section 171 of the Constitution, in the performance of his functions under this Act or any other law the Auditor-General is not subject to direction or control of any other person or body.

PROVISIONS RELATED TO AUDITOR-GENERAL

5 Appointment of Auditor-General

The Auditor-General is to be appointed by the Head of State in accordance with section 159(2)(a) of the Constitution.

6 Terms of appointment

- (1) The Auditor-General holds office on a full-time basis.
- (2) The salary and allowances of the Auditor-General are payable out of the public accounts, which are appropriated accordingly.

7 Preservation of rights

- (1) This section applies if an officer of the public service is appointed as the Auditor-General.
- (2) The person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as

Auditor-General were a continuation of service as an officer of the public service.

- (3) If the person ceases to be Auditor-General and again becomes an officer of the public service, the person's service as Auditor-General is to be regarded as service of similar kind in the public service for the purpose of determining the person's rights as an officer of the public service.

8 Leave of absence

The Secretary to Government may grant leave of absence to the Auditor-General in accordance with existing regulations regarding such leave.

9 Resignation

The Auditor-General may resign from the office or position by written notice to the Secretary to Government, and the resignation takes effect —

- (a) on a date specified in the notice; or
- (b) when the notice is received by the Secretary to Government,

whichever is the later, but the resignation may be withdrawn, with the consent of the Secretary to Government, at any time before it takes effect.

10 Suspension and removal

The Auditor General may only be removed or suspended in accordance with section 162 (removal of prescribed officials from office) and section 163 (suspension of prescribed officials) of the Constitution.

11 Audit Office

- (1) An Office called the Tuvalu National Audit Office is established by this Act.
- (2) The Audit Office consists of those auditors who are for the time being appointed in accordance with section 13.
- (3) The Auditor-General is not a member of the Audit Office but is taken, for all purposes, to be the person who exercises the functions of chief executive officer in relation to the Audit Office.

12 Terms of appointment and discipline of staff of the audit office

- (1) Auditors of the Audit Office shall be appointed under the Public Service Act.
- (2) Auditors appointed under subsection (1) must conduct themselves in accordance with the requirements of the Audit Office Code of Conduct.

13 Staff subject only to direction of Auditor-General

- (1) The staff of the audit office are not subject to direction by any person (other than the Auditor-General or a person authorised by the Auditor-General) about —
 - (a) the way in which the Auditor-General's powers in relation to audit are to be exercised; or
 - (b) the priority to be given to audit matters.
- (2) Subsection (1) has effect despite the Public Service Act.²

14 Appointment of contract auditors

- (1) The Auditor-General may appoint any appropriately qualified individual or firm external to the Audit Office to be a contract auditor.
- (2) The appointment of a person or firm to be a contract auditor may be general or limited to a particular audit.
- (3) The contract auditor —
 - (a) is appointed on terms specified in the instrument of appointment;
 - (b) may resign the appointment by signed notice given to the Auditor-General; and
 - (c) may be dismissed at any time at the discretion of the Auditor-General subject to the terms of the instrument of appointment.

OTHER MATTERS**15 Delegation of powers**

- (1) The Auditor-General may delegate powers provided to him or her under any Act (other than this power of delegation) to an authorised auditor.
- (2) However, the Auditor-General must not delegate a power to report to Parliament.

16 Estimates

- (1) The Auditor-General must prepare, for each financial year, estimates of proposed receipts and expenditure relating to the audit office.
- (2) The Auditor-General must give the estimates to the Permanent Secretary responsible for finance.
- (3) The Permanent Secretary responsible for finance must consult with the Public Accounts Committee in developing the proposed budget of the audit office for each financial year.

17 Audit of audit office

- (1) The Minister of Finance must, for each financial year, appoint a qualified person to conduct the audit of the audit office.
- (2) The person is to be paid the fee determined by the Minister of Finance for the audit.
- (3) For the purpose of conducting the audit —
 - (a) the person has all the powers of an authorised auditor; and
 - (b) this Act and other Acts apply to the person as if the person were an authorised auditor.
- (4) On completing the audit, the person must give a report on the audit to the Auditor-General and the Minister of Finance.
- (5) The Auditor-General must include the person's report in the annual report of the audit office.

PART 3 - AUDIT OF PUBLIC ACCOUNTS AND PUBLIC SECTOR ENTITIES**SCOPE OF AUDITOR-GENERAL'S MANDATE****18 General**

- (1) The Auditor-General must, in relation to each financial year, audit —
 - (a) the public accounts; and
 - (b) all public sector entities.
- (2) The Auditor-General must not audit the audit office.

19 Audits at request of Parliament

- (1) If Parliament, by resolution, requests the Auditor-General to conduct an audit of a matter relating to the financial administration of a public sector entity, the Auditor-General must conduct the audit.
- (2) This section does not apply to the financial administration of the audit office.

20 By-arrangement audits

- (1) The Auditor-General may audit an entity that is not a public sector entity at the request of a Minister or public sector entity.
- (2) The Auditor-General may audit the entity only if the entity agrees to the audit.

21 Appropriate Minister to give Auditor-General information relating to public sector entities

- (1) If—
 - (a) a public sector entity is established; or
 - (b) an entity becomes a public sector entity,the appropriate Minister must give the Auditor-General any information about the matter that the Auditor-General requires.
- (2) This section does not apply to a public sector entity that is or is a part of, a department within government ministries.

22 Auditor-General to be appointed auditor of a company that is a public sector entity

The shareholders of a company that is a public sector entity must —

- (a) appoint the Auditor-General to be the auditor of the company; and
- (b) ensure that the Auditor-General remains, at all times, the auditor of the company while the company remains a public sector entity.

CONDUCT OF AUDITS**23 General**

- (1) The Auditor-General may conduct an audit in the way the Auditor-General considers appropriate.
- (2) In determining the appropriate way to conduct an audit, the Auditor-General may have regard to —
 - (a) the character of the relevant internal control system; and
 - (b) recognised standards and practices.
- (3) Subsection (2) does not limit the matters to which the Auditor-General may have regard.
- (4) In the case of the audit of a company, the Auditor-General is not limited to conducting the audit in accordance with the laws that govern the company.

24 Audit of public accounts

In auditing the public accounts, the Auditor-General must ascertain whether or not, in the Auditor-General's opinion —

- (a) proper accounts were properly kept in accordance with law; and
- (b) procedures applied were in accordance with the prescribed requirements and were adequate to ensure —

- (i) proper control and safeguards were exercised over the collection, custody, banking, withdrawal, issue of, and accounting for, public moneys; and
 - (ii) public moneys received on account of, the public accounts were credited to, or charged to, the appropriate fund; and
 - (iii) withdrawals from the public accounts were made for lawful and appropriate purposes; and
 - (iv) proper safeguards were followed to prevent fraud and mistake; and
 - (v) the requirements of the law relating to public moneys were complied with in all material respects; and
- (c) the Minister's annual statement is in agreement with the public accounts; and
- (d) the Minister's annual statement has been properly drawn up to present a true and fair view of —
- (i) the transactions for the financial year; and
 - (ii) the position of the public accounts at the end of the financial year.

25 Value for money auditing

- (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of a public sector entity to determine whether the entity is carrying out those activities effectively and doing so economically and efficiently and in compliance with the relevant laws and other prescribed requirements.
- (2) The audit may be conducted as a separate audit or as part of another audit.

26 Auditing etc of financial report of statutory body

- (1) The Auditor-General is to audit a statutory body's financial report for a financial year within 3 calendar months of its receipt by the Auditor-General.
- (2) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is, within that 3 calendar month period to furnish an opinion:
 - (a) stating that the Auditor-General has audited the financial report of the statutory body for that financial year; and
 - (b) indicating whether the financial report exhibits a true and fair view of the financial position and financial performance of the statutory body and whether it complies with all applicable accounting standards and governing legislation; and

- (c) setting forth any qualifications subject to which the opinion is given.
- (3) An opinion in relation to the financial report of a statutory body is not to be furnished under subsection (2) unless the Auditor-General has received a statement made in accordance with a resolution of the statutory body and:
 - (a) stating whether, in the opinion of the person or persons by whom the statement is signed, the financial report exhibits a true and fair view of the financial position and financial performance of the statutory body, or:
 - (b) including such matters as are prescribed by the regulations for the purposes of this subsection.
- (4) The statement referred to in subsection (3) is to be signed:
 - (a) in the case of a statutory body that has a governing body; by at least 2 members of the governing body; or
 - (b) in the case of a statutory body that does not have a governing body, by the General Manager of the statutory body or the person who exercises the functions of a General Manager in relation to the statutory body; or
 - (c) by a person prescribed by the regulations in respect of the statutory body.
- (5) Nothing in this section prevents the alteration of a statutory body's financial report, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Minister for Finance.

27 Return of audited financial report etc to statutory body

The Auditor-General or a person authorised by the Auditor-General shall, after all the functions conferred by section 26 in relation to the financial report of a statutory body have been performed, submit the financial report and the opinion under that section to the statutory body for submission to the Minister for Finance.

28 Application for extension

- (1) A statutory body may, at any time within the period of 2 calendar months after the end of each financial year of the statutory body, apply to the Minister for Finance for an extension of the period within which it is required to submit the financial report.
- (2) An application under subsection (1) shall include detailed reasons and other relevant information in support of the application.
- (3) The Minister for Finance may, after consultation with the Minister responsible to that statutory body and the Auditor-General, extend a period within which a statutory body is required to comply.

- (4) Where, in relation to a statutory body, the Minister for Finance extends a period within which a statutory body is required to comply with section 26 or any requirement of that section, the body shall comply with section 26 or the requirement, as the case may require, within the extended period.

PART 4 – POWERS AND DUTIES OF AUDITORS

29 Identity cards for authorised auditors

- (1) The Auditor-General may issue an identity card to an authorised auditor.
- (2) The identity card must —
- (a) contain a recent photograph of the authorised auditor; and
 - (b) be signed by the authorised auditor and the Auditor-General.
- (3) A person who ceases to be an authorised auditor must not, without reasonable excuse, fail to return the person’s identity card to the Auditor-General as soon as practicable after ceasing to be an authorised auditor.

30 Proof of authority as authorised auditor

An authorised auditor may exercise a power in relation to a person only if the authorised auditor produces his or her identity card for inspection by the person.

31 Access to documents and property

- (1) For the purpose of conducting an audit of an entity under this Act an authorised auditor is entitled, at all reasonable times, to full and free access to all documents and property belonging to, in the custody of, or under the control of, the entity that is relevant to the audit.
- (2) For the purpose of conducting an audit under this Act an authorised auditor may —
- (a) enter, at any reasonable time —
 - (i) a place occupied by a public sector entity or another entity subject to audit; or
 - (ii) a place occupied by a financial institution with which a public sector entity, or another entity subject to audit, maintains an account; or
 - (iii) another place if the occupier of the place consents to the entry; and
 - (b) inspect, examine, photograph or film anything in the place; and
 - (c) take extracts from, and make copies of, any documents in the place; and

- (d) take into the place persons, equipment and materials that the authorised auditor reasonably requires; and
 - (e) require any person in the place to give to the authorised auditor reasonable assistance in relation to the exercise of the powers mentioned in paragraph (a) to (d).
- (3) The Auditor-General, an auditor or a person authorised by the Auditor-General is entitled to exercise functions under this section despite:
- (a) any rule of law which, in proceedings in a court of law, might justify an objection to access to books, records, documents or papers or information on grounds of public interest; or
 - (b) any privilege of an authority which the authority might claim in a court of law, other than a claim based on legal professional privilege;
 - (c) any duty of secrecy or other restriction on disclosure applying to an authority or to an officer of an authority.
- (4) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (2)(e). Such person not complying with this requirement commits an offence and shall be liable upon conviction to a penalty prescribed under section 48.

32 Access to records of bank or credit union

Where an account for the banking of money (whether public money or other money) of an authority is kept with a bank, or credit union, the bank, or credit union concerned or a person in charge of the account shall, whenever requested to do so by the Auditor-General, an auditor or a person authorised by the Auditor-General:

- (a) furnish to the Auditor-General, auditor or authorised person, in accordance with the request, a statement of the account or a certificate as to the balance of the account; and
- (b) produce to the Auditor-General, auditor or authorised person any book, account, record or document relating to the authority and under the custody or control of the bank, or credit union or person in charge.

PART 5 – OFFENCES

33 Obtaining information

- (1) If it is reasonably necessary for the purposes of an audit under this Bill, an authorised auditor may, by written notice given to a person, require the person to give to the authorised auditor specified information, within 14 days and in a reasonable way specified in the notice.

- (2) A person who without any reasonable excuses, fail to comply with subsection (1), commits an offence, and shall be liable upon conviction to a penalty prescribed under section 48.

34 False or misleading information

A person who —

- (a) makes a statement to an authorised auditor that the person knows is false or misleading in a material particular; or
- (b) omits from a statement made to an authorised auditor anything without which the statement is, to the person’s knowledge, misleading in a material particular,

commits an offence and shall be liable upon conviction to a penalty prescribed under section 48

35 Obstruction of authorised auditor

A person must not, without reasonable excuse —

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist,

an authorised auditor in the exercise of a power under this Act commits an offence, and shall be liable upon conviction to a penalty prescribed under section 48

36 Impersonation of authorised auditor

A person must not pretend to be an authorised auditor. A person found pretending to be an authorised auditor commits an offence, and shall be liable upon conviction to a penalty prescribed under section 48.

37 Confidentiality

- (1) In this section —

“**person to whom this section applies**” means a person who is or has been —

- (a) an authorised auditor;
- (b) a person engaged or employed by a contract auditor,

“**protected information**” means information that is obtained under this Act.

- (2) A person to whom this section applies must not —

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate protected information,

- unless the record is made, or the information divulged or communicated —
- (c) under or for the purposes of this Act; or
 - (d) in the performance of duties, as a person to whom this section applies, under or for the purposes of this Act.
- (3) Subsection (2) does not prevent the disclosure of information to —
- (a) the Public Accounts Committee; or
 - (b) a police officer, or a person or body responsible for the investigation or prosecution of offences, if the information relates to the investigation or prosecution of an offence; or
 - (c) a court for the purposes of the prosecution of a person for an offence.

PART 6 - MISCELLANEOUS

38 Report on audit

- (1) The Auditor-General may prepare a report on any audit conducted under this Act.
- (2) If the Auditor-General is of the opinion that observations or suggestions require attention or further consideration, the Auditor-General must give them (together with any comments on them) —
 - (a) if they arose out of an audit of the public accounts to the Minister for Finance; or
 - (b) if they arose out of an audit of a department to the accountable officer of the department; or
 - (c) if they arose out of an audit of another entity- the chairperson or equivalent officer of the entity and the person responsible for the financial administration of the entity.
- (3) If the Auditor-General is of the opinion that the observations or suggestions are of significance, the Auditor-General must also give them (together with any comments on them) to the appropriate Minister and Minister for Finance.

39 Protection from liability

- (1) An authorised auditor does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under or for the purposes of this Act.
- (2) A liability that would, but for subsection (1), attach to an authorised auditor attaches instead to the State.

40 Audit fees

- (1) The Auditor-General may charge fees for an audit conducted by the Auditor-General.
- (2) The Auditor-General may, with the Minister for Finance's approval, determine the basic rates of fees.
- (3) The Auditor-General must assess the fees for an audit having regard to the basic rates of fees determined under subsection (2).
- (4) Unpaid fees may be recovered by the Auditor-General as a debt due to the Crown.

41 Bill does not limit other powers of Auditor-General

This Act does not limit any power that the Auditor-General has apart from this Act.

REPORTS ON AUDITS TO PARLIAMENT**42 The Auditor-General must prepare a report to Parliament on audits conducted.**

For each entity audited the report must —

- (a) state whether or not —
 - (i) the audit has been completed; and
 - (ii) the statements relating to the accounts have been audited;
- (b) draw attention to any case in which the functions relating to the financial management were not adequately and properly performed if, in the Auditor-General's opinion, the matter is of sufficient significance to require inclusion in the report;
- (c) deal with the action (if any) taken to remedy significant deficiencies reported in previous reports on audits of the public sector entity; and
- (d) the Auditor-General may, in his or her report prepared under this section or in other special report which the Auditor-General may at any time think fit to make, recommend any plans and make any suggestions for the better collection and payment of public money, and for more effectually and economically auditing and examining the Public Accounts.

43 Comments on proposed audit reports

- (1) If the Auditor-General proposes to include in a report to Parliament, a matter that, in the Auditor-General's opinion, is a matter of significance, the Auditor-General must give written advice of the matter that is proposed to the accountable officer of the entity.

- (2) The advice must include a statement to the effect that comments on the proposed matter may be made in writing and given to the Auditor-General in a specified time.
- (3) If comments are received within the specified time the Auditor-General must include them in the report.

44 Tabling etc of financial audit, value for money and special reports

- (1) The Auditor-General is, as soon as practicable after making a special report under section 42, to present the report to Parliament.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Speaker of Parliament to be dealt with in accordance with section 45.

45 Documents presented to Speaker of Parliament

A document which is presented to the Speaker of Parliament in accordance with a provision of this Act:

- (a) is, on presentation and for all purposes, taken to have been laid before Parliament; and
- (b) is to be printed by authority of the Speaker of Parliament, and
- (c) is, for all purposes, taken to be a document published by order or under the authority of Parliament; and
- (d) is to be recorded in the minutes of Parliament according to the Rules of Parliament.

46 Recovery of money and value of property

- (1) Where there occurs a loss of or deficiency in:
 - (a) public money or other money that has been advanced to an officer of a public sector entity; or
 - (b) public money or other money while that money is under the control of an officer of a public sector entity, that loss or deficiency shall be a debt due to the Crown or public sector entity, as the case may require, and may be recovered from the officer as a civil claim in a court of competent jurisdiction.
- (2) Where loss or destruction of or damage to public property or other property occurs while the property is in the care of a public sector entity, the value of the property lost or destroyed or, as the case may be, the cost of replacing or repairing the damage to that property shall be a debt due to the Crown or the

public sector entity, as the case may require, and may be recovered in a court of competent jurisdiction by civil action brought against:

- (a) the officer of the authority in whose care the property was at the material time; or
 - (b) another officer of the public sector entity who by culpable negligence or misconduct caused or contributed to the loss or destruction of or damage to the property.
- (3) Where the negligence or misconduct of an officer of a public sector entity was not the sole cause of the loss or destruction of or damage to the property the subject of an action under subsection (2), the Crown or the public sector entity, as the case may require, may recover from the officer so much only of the cost of, or the cost of replacing or repairing, the loss, destruction or damage as is just and equitable having regard to the contribution made by the officer to that loss, destruction or damage as determined by the court.
- (4) In this section a reference to an officer of a public sector entity includes a reference to a person who has been such an officer.
- (5) For the purposes of this section:
- (a) public money or other money shall be taken to be under the control of an officer of a public sector entity if the money has been collected or received by or has come into the custody of the officer but has not been paid to another person or to the credit of an account with a bank, or credit union as required by the provisions of the government financial instructions or the prescribed requirements; and
 - (b) public property or other property shall be taken to be in the care of an officer of an authority if the property:
 - (i) has been delivered to the officer; and
 - (ii) has not been returned to a person or delivered to another person entitled to receive it on behalf of the Crown or the public sector entity, as the case may require.
- (6) The provisions of this section do not affect a right of the Crown or a public sector entity to recover an amount from an officer of a public sector entity otherwise than under this section but the Crown or the public sector entity, as the case may require, shall not recover amounts from the one officer both under this section and otherwise than under this section, in respect of the same loss, deficiency, destruction or damage.

47 Misappropriation of money or property

- (1) An officer of a public sector entity shall not:
 - (a) misapply, improperly dispose of or improperly use, any public money, other money, public property or other property; or

- (b) pay any public money or other money into an account other than the account into which the money is required to be paid.
- (2) An officer of a public sector entity shall not wilfully and unlawfully damage or destroy any public property or other property.
- (3) An officer of a public sector entity who fails to comply with these requirements under this section commits an offence and shall be dealt with according to the relevant requirements of the Penal Code.³

48 Offences—generally

A person who contravenes or fails to comply with any provision of this Act or the prescribed requirements is guilty of an offence and liable, where a penalty is not otherwise expressly provided, to a penalty not exceeding \$200 or imprisonment for a term of not more than 6 months.

49 Regulations

The Minister may, after consultation with the Auditor-General, make regulations for carrying into effect any purposes of this Act.

ENDNOTES

¹ Act 8 of 2007, commencement date 1 January 2008 by LN 1/2008

² Cap. 4.24

³ Cap. 10.20