CHAPTER 396

AUDITOR GENERAL AND NATIONAL AUDIT OFFICE ACT

To provide for the setting out of the duties of the Auditor General and the manner whereby reports by the Auditor General are to be made to Parliament, and to provide for the manner in which funds shall be allocated to the National Audit Office and the manner whereby accounts of the National Audit Office are to be audited and reported upon, as well as other matters ancillary and consequential thereto.

25th July, 1997

Enacted by ACT XVI of 1997, as amended by Acts XIV of 1999 ,X of 2013 and XI of 2021.

Short title.

1. The title of this Act is the Auditor General and National Audit Office Act.

Interpretation.

2. In this Act unless the context otherwise requires -

"Auditor General" and "Deputy Auditor General" mean the Auditor General and the Deputy Auditor General appointed in terms of article 108 of the Constitution;

"Constitution" means the Constitution of Malta;

"National Audit Office" means the National Audit Office set up by article 108 of the Constitution.

Oath of Office.

3. The Auditor General and the Deputy Auditor General shall take an oath of Office in the terms following:

"I ..... swear that I shall honestly and diligently perform the functions of Auditor General/Deputy Auditor General, according to the Constitution of Malta and to any law that may from time to time be applicable, without fear or favour and to the best of my ability.".

Power of the Auditor General to administer oaths, etc. Cap. 273.

4. The Auditor General may in connection with his functions under the Constitution or any other law, examine any person on oath on any matter pertaining to any account subject to his audit and shall have all the powers that are by virtue of the Inquiries Act conferred on a chairman of a board of enquiry under that Act, and the provisions of that Act shall apply to the Auditor General in the exercise of his functions aforesaid as if he were a chairman appointed under that Act.

Manner in which the Auditor General shall report to Parliament.

5. The provisions of the First Schedule to this Act shall apply to the reports that the Auditor General is to make to Parliament in accordance with article 108 of the Constitution.

Power of the Auditor General to report to the Permanent Commission Against Corruption. *Added by: XI.2021.2.* Cap. 326.

5A. If during or after any investigation, the Auditor General is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Auditor General may refer his findings directly to the Attorney General.

Allocation of funds, etc., to National Audit Office. *Amended by: XIV. 1999.4.*

6. (1) The provisions of the Second Schedule to this Act shall apply to the recruitment of staff at the National Audit Office, to the powers of the Auditor General and of his office, the allocation of funds to the National Audit Office, the keeping of accounts thereat and for their proper audit.

(2) The National Audit Office Accounts Committee established under Part IV of the Second Schedule to this Act shall have the powers and functions as set out in the said Second Schedule as well as such other powers and functions as may be assigned to it by any other law.

FIRST SCHEDULE

(Article 5)

Reports of the Auditor General

1. (*a*) The Auditor General shall make such examination and inquiries in the accounts of all departments or offices of the Government of Malta, or of such other bodies on whose accounts he is to report in accordance with any law, as he may consider necessary in order to enable him to report thereon as required by the Constitution or any other law.

(*b*) The Auditor General shall at least once in every year inspect all securities held in Malta and shall verify the annual return of all securities held in Malta and abroad prepared by the Accountant General under the provisions of the Public Finance Management Act. Cap. 601.

(*c*) The Auditor General shall examine with the Treasury books the statements which the Accountant General is required to prepare and forward to him under the Public Finance Management Act; he shall certify and return them to the Accountant General within two weeks after the receipt thereof. Cap. 601.

(*d*) If the Auditor General objects to any part of such statements, he shall certify the same with such remarks thereon as he thinks fit, and they shall be published and laid on the Table of the House of Representatives together with such remarks.

(*e*) The Auditor General shall examine the statements and accounts prepared and sent to him by the Accountant General in terms of the Public Finance Management Cap. 601.

Act and shall make a report as is provided under and is required by this Act, by the Public Finance Management Act and any regulations made thereunder, or as the Auditor General may think fit and desirable.

2. The Auditor General shall examine, in particular, such books and records as government departments are required to keep by or under the Public Finance Management Act or any other law which may from time to time amend, supplement or replace that Act, and shall in his report state his opinion as to whether such books and records fairly contain such information as is required in accordance with stated accounting policies of the Government of Malta. Cap. 601.

3. The Auditor General may examine whether the department, office or other body whose accounts are being audited by him has used the funds and resources available to it effectively, efficiently, and economically without incurring expenditure which is unnecessary.

4. Nothing in paragraph 3 hereof shall be construed as entitling the Auditor General to go into the merits of any policy or objective of any such department, office or body.

5. The Auditor General shall annually report to the House of Representatives on:

(i) the work and activities of the National Audit Office; and

(ii) whether in carrying out his work he received all the information and explanations he required.

6. Each report under paragraph 5 shall call attention to anything that the Auditor General considers to be of significance and of a nature that should be brought to the attention of the House of Representatives, including in particular any cases in which he may have observed that -

(i) accounts and records have not been faithfully and properly maintained or public monies have not been fully accounted for or paid into the Consolidated Fund as may be required by law;

(ii) essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public property, to secure an effective check on the assessment, collection and proper allocation of revenue and to ensure that expenditures have been made only as authorised;

(iii) public monies have been expended for purposes other than those for which they were appropriated by Parliament or otherwise not in accordance with the Public Finance Management Act or such other law amending, supplementing or replacing that Act; Cap. 601

(iv) public monies have been expended uneconо-

mically or without due regard to effectiveness and efficiency;

(v) satisfactory procedures have not been established to measure and report the effectiveness of expenditure programmes, where such procedures should reasonably have been established.

7. Each report made by the Auditor General under paragraph 5 of this Schedule shall be submitted to the Speaker of the House of Representatives not later than twelve months after the end of the financial year being reported upon, and the Speaker shall lay each such report before the House of Representatives on the next sitting of the House after receipt thereof by him.

8. (*a*) The Auditor General may make special reports to the House of Representatives:

(i) on any matter of pressing importance or urgency; or

(ii) dealing with value for money audit relating to efficiency and effectiveness of any department, office or body.

(*b*) The Speaker shall lay each such report before the House of Representatives on the next sitting of the House after receipt thereof by him.

9. (*a*) The Auditor General may either personally or through the National Audit Office, on the initiative of the Auditor General himself or at the request of the Minister responsible for finance or of at least three members of the Public Accounts Committee or such other Committee of the House of Representatives that may from time to time replace such committee, inquire into and report on:

(i) any matter relating to government finances, property or funds administered or under the control of any Government department or office or of any body whose accounts are subject to his audit;

(ii) such accounts and financial reports which are in virtue of or under any law laid before the House of Representatives;

(iii) the accounts of those public authorities or bodies administering, holding or using funds belonging directly or indirectly to the Government of Malta;

(iv) the operations of companies or other entities in which the Government of Malta owns not less than 51 per cent of the shares;

(v) any other matter as may be provided by or under any law.

(*b*) The Speaker shall lay each such report before the

House of Representatives on the next sitting of the House after receipt thereof by him.

(*c*) The Auditor General may give advice to any Government department or office, or to any body to which sub-paragraph (*a*) hereof applies, on anything discovered during such inquiry.

10. (*a*) Any serious irregularity discovered by the Auditor General in a government department or office, or in a body subject to his audit, shall be brought to the notice of the Minister responsible for that government department, office or body by the Auditor General.

(*b*) (i) The Auditor General may report to the Speaker any person who performs duties in such government department or office, or body subject to his audit, and who fails to comply with any of the provisions of this Act or of the Public Finance Management Act, or of any regulations made thereunder. Cap. 601.

(ii) The Auditor General shall report any such person to the Minister responsible for that Government department, office or body and may recommend that the Minister surcharges against that person the amount of deficiency or loss or improper payment resulting from the non-compliance of any provisions of this Act, or of the Public Finance Management Act, or of any regulations made thereunder. Cap. 601.

(iii) Any person aggrieved by the imposition of any such surcharge shall have a right to contest such surcharge by action taken against the Minister in the First Hall of the Civil Court not later than one month after notice has been given to him of such surcharge, and such surcharge shall not become effective before the lapse of one month or during such time as any such court action is still pending.

(iv) The Auditor General shall report any such person who fraudulently applies or fraudulently causes or permits to be applied public monies to other than public services, or who is a defaulter in respect of public monies, to the Minister, who shall take such steps as he may consider necessary to have the offender prosecuted according to law; but nothing herein contained shall prevent the taking of proceedings against such person by any person other than the Minister.

(*c*) The Auditor General shall make queries and observations addressed to any accounting officer or officer in any way concerned with the receipt or payment of public monies and call for explanations as

he may think necessary. Every such query and observation addressed to any such officers shall be returned by them to the Auditor General with the necessary reply without delay. In the event of any unusual or unexplained delay occurring in obtaining reply, or an unsatisfactory reply being received, to inquiries or representations made by him, the Auditor General shall report the circumstances to the Minister responsible for the government department or office, or body subject to his audit, concerned.

Amended by: X. 2013.2.

SECOND SCHEDULE

(Article 6)

National Audit Office

PART I

Officers of the National Audit Office

1. The Auditor General shall appoint such number and such classes of officers at the National Audit Office as he may consider necessary to assist him in the discharge of his functions according to law.

2. Such officers shall be appointed on such terms and shall enjoy such remuneration as the Auditor General may determine.

PART II

Powers of Auditor General and of National Audit Office

3. Except as may be expressly provided by any law, the Auditor General, and all authorised officers of the National Audit Office, shall be entitled to free access at all reasonable times to such information from officers and other personnel of government departments or offices, or of bodies subject to his audit, that may be required by them for the proper execution of their functions according to law, and they shall be entitled to receive from such officers and other personnel such reports and explanations as they may deem necessary for such purposes.

4. The Auditor General may also cause searches to be made in, and extracts to be taken from any books, documents or records existing in any premises of government departments or offices, or of bodies subject to his audit, without paying any fee therefor notwithstanding any law or regulations to the contrary.

5. In order to carry out his duties more effectively, the Auditor General may station a member of his staff in the offices of any Government department or office, or of any other body subject to his audit, and such department, office or body shall furnish such member with the necessary office accommodation.

6. The Auditor General shall require every officer employed by him who is to examine the accounts of any department, office or body to comply with any security requirements applicable thereto and to take any oath of secrecy that may be required by law to be taken by any person employed with that department, office or body.

7. (a) In carrying out his functions and responsibilities according to law, the Auditor General may rely on the report of the duly appointed auditor of the organisation being reported upon, and may also commission any person or group of persons who may in accordance with any law hold a warrant entitling them to audit the accounts of public limited liability companies, to audit the accounts of any department, office or body subject to his audit.

(b) The provisions of paragraphs 3, 4 and 6 of this Schedule shall apply in respect of the person or group of persons commissioned by the Auditor General.

PART III

Finance

8. The expenses of the National Audit Office and the salaries and allowances of the officers thereof (other than those of the Auditor General and of the Deputy Auditor General) up to a sum as may be fixed by the House of Representatives in accordance with this Part, shall be a charge on the Consolidated Fund without the need of any further appropriation other than this Part of this Schedule.

9. For the purposes of establishing the sum referred to in paragraph 8, the Auditor General shall prepare an estimate of the sum that he considers to be required.

10. Such estimate shall before consideration by the House of Representatives be examined by the Committee established under Part IV of this Schedule.

11. Where during the course of any financial year the sum fixed by the House of Representatives is in the opinion of the Auditor General insufficient to enable him to efficiently fulfil the responsibilities of his office, the Auditor General shall prepare supplementary estimates for consideration by the House of Representatives after examination by the Committee as aforesaid in paragraph 10.

12. The sum or sums referred to in the previous paragraphs of this Part shall be fixed by resolution of the House of Representatives after considering the estimates prepared by the Auditor General and the report thereon by the Committee.

Part IV

National Audit Office Accounts Committee

13. There shall be a Committee to be styled the National Audit Office Accounts Committee (hereinafter referred to as "the Committee") which shall be composed as follows:

(i) the member of the House of Representatives who is for the time being Chairman of the Public Accounts Committee of the House of Representatives or such other committee of the said House from time to time replacing such

Committee;

(ii) the Minister or any another Member of the House of Representatives responsible for parliamentary affairs (hereinafter referred to as "the Leader of the House of Representatives");

(iii) three members of the House of Representatives appointed by the said House upon a motion by the Leader of the House of Representatives, as to two members from among members supporting the Government and as to the remaining member from among the members in opposition.

14. The Committee shall from time to time but not less often than once a year present to the House of Representatives (through the Leader of the House of Representatives) a report of its activities and the report of its examination of any estimates prepared by the Auditor General.

15. The Committee shall elect a chairman from among its members, and may regulate its own proceedings.

16. Upon the dissolution of the House of Representatives the Committee shall be deemed to be dissolved until it is next reconstituted after the House next meets. Where upon the dissolution of the House of Representatives the sum to be established for the purposes of paragraph 8 of Part III is not so established or the House has not after the end of a financial year established the said sum, the Auditor General shall be entitled to expend, each month, a sum equivalent to one twelfth of the sum or sums established for the previous financial year, until the said sum is so established.

17. The validity of any proceedings of the Committee shall not be affected by any vacancy among its members or by any defect in the appointment or nomination of any of its members.

PART V

Accounts of the National Audit Office

18. The accounts of the National Audit Office shall be audited by such person or persons (hereinafter referred to as "auditor") appointed by the Committee from among such persons who in accordance with such law as may from time to time be in force hold a warrant entitling them to audit the accounts of a public limited liability company.

19. The remuneration of the auditor shall be fixed by the Committee and shall be defrayed as part of the expenses of the National Audit Office.

20. The auditor shall have with regard to the accounts of the National Audit Office such powers as are by law vested in the Auditor General with regard to accounts subject to his audit.

21. The auditor shall present his report on the audit carried out by him to the Committee which shall (through the Leader of the House of Representatives) present the same to the House of Representatives together with any comment thereon by the said

Committee or any of its members.