

BILL No. 5 of 2004

Thursday 11th February, 2004

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

11th March, 2004

The following Bill which will be passed in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 5 of 2004

AUDIT BILL 2004

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**A BILL
Intituled**

AN ACT to set out the responsibilities and authority of the Auditor General; to strengthen Parliamentary oversight over the work of the Auditor General; to provide for the establishment and administration of an independent Audit Office; and to regulate such other matters connected with or incidental to the independent auditing of the finances of Guyana.

A.D. 2004 **Enacted by the Parliament of Guyana:-**

PART I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Audit Act 2004.
- (2) This Act shall come into operation on such date as the Minister responsible for finance may, by Order, prescribe:

Provided that the Act shall come into operation no later than one year from the date of its enactment.

Interpretation.

2. In this Act, unless the context otherwise requires -

“annual budget proposal”, “appropriation”, “Budget Circular”, “budget agency”, “Head of a budget agency”, “official”, and “Programme Performance Statement” have the same meanings as in the Fiscal Management and Accountability Act 2003;

No. 20 of 2003.

“Chartered Accountant in public practice” means a Chartered Accountant or firm of Chartered Accountants authorised by the Institute of Chartered Accountants of Guyana to engage in public practice under section 11 of the Institute of Chartered Accountants of Guyana Act 1991.

No. 7 of 1991.

“concerned Minister” means the Minister assigned responsibility for the relevant budget agency or other public entity;

“consolidated financial statements” means the consolidated financial statements prepared under section 73 of the Fiscal Management and Accountability Act 2003;

No. 20 of 2003.

“expenditure” means payments of public moneys authorised by an appropriation Act or any other law or a resolution of the National Assembly;

“prescribed date” means the date prescribed by the Minister responsible for finance under section 1(2);

“Public Accounts Committee” referred to in article 223(5) of the Constitution means the Public Accounts Committee established by order 70(2) of the Standing Orders of the National Assembly;

“revenue” means all tolls, taxes, imposts, rates, duties, fees, fines, penalties, forfeitures, rents, dues, proceeds of sale and all other receipts of the Government, from whatever source arising, over which Parliament has the power of appropriation, including the proceeds of all loans raised and all grants and gifts received by the Government;

“Rules, Policies and Procedures Manual” means the Rules, Policies and Procedures Manual made under section 11.

PART II

THE AUDITOR GENERAL

*Auditor General;
Audit Office.*

3. (1) There shall, in accordance with article 223 of the Constitution, be an Auditor General for Guyana, whose office shall be a public office.

(2) There shall be an Audit Office comprising the Auditor General and the officers and employees appointed thereto.

Functions.

4. (1) The Auditor General shall be the external auditor of the public accounts of Guyana and, in the discharge of his functions, shall have complete discretion in examining and reporting on the receipt, disbursement, and control of public moneys and on the economy, efficiency and effectiveness in the use of such moneys.

(2) Without prejudice to subsection (1), the Government may cause an additional audit to be conducted by an auditor other than the Auditor General where an agreement entered into between the Government and an international financial institution so dictates.

(3) Without prejudice to subsections (1) and (2), the

Minister responsible for finance may request the Public Accounts Committee to cause an additional audit to be conducted by an auditor other than the Auditor General.

(4) Notwithstanding anything in this Act or any other law, Government's right to conduct or cause to be conducted internal audits remains unimpaired.

Independence.

5. The Auditor General shall, in accordance with article 223(4) of the Constitution, act independently in the discharge of his functions.

Conflict of interest.

6. (1) The Auditor General shall not have a direct or indirect official role in any private or professional entity or activity that he could profit from or influence through his powers as Auditor General and he shall declare to the Public Accounts Committee any of his commitments, obligations or investments which may present a real or perceived conflict of interest.

(2) The Auditor General may act as an officer of, collaborate with, or participate in the activities of professional auditing or accounting organisations and standard-setting bodies whose activities cannot be perceived to be in conflict with his duties.

Oath.

7. The Auditor General shall not enter upon the duties of his office unless he has taken and subscribed before the Speaker of the National Assembly the oath in the form set out in the First Schedule to the Constitution.

Conditions of service.

8. The salary, superannuation, benefits and other conditions of service of the Auditor General shall be the same as those of the Chief Justice.

Removal from office.

9. The Auditor General may be removed from office only in accordance with the provisions of article 225 of the Constitution.

Seal.

10. The Auditor General shall maintain the seal of the Audit Office and shall determine under what circumstances it shall be used.

Regulations.

11. (1) The Auditor General may, with the approval of the Public Accounts Committee, make regulations for the administration of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may include a Rules, Policies and Procedures Manual regarding the management and operation of, the conduct of audits by, and the standards by which such audits shall be conducted by, the Audit

Office.

(3) Within fifteen days of the publication in the *Gazette* of any regulations made under this section, the Public Accounts Committee shall cause to be lodged with the Clerk of the National Assembly a copy of the regulations and a notice of motion for the confirmation of the regulations by the Assembly.

(4) As soon as practicable thereafter, the regulations shall be laid before the National Assembly and the motion moved therein.

(5) The National Assembly may confirm the regulations with or without amendment or may revoke them, and the regulations shall come into operation upon the publication of the resolution in the *Gazette*.

Authority.

12. For the purpose of discharging the functions of his office, the Auditor General may, subject to the provisions of this Act or any other law, do anything and enter into any transaction including -

- (a) establishing and implementing human resource management systems and policies;
- (b) developing and maintaining such systems, whether by computer or other means, for the collection, storage, analysis, and retrieval of information; and
- (c) formulating procedures for conducting audit work.

PART III

OFFICERS AND EMPLOYEES OF THE AUDIT OFFICE

Job descriptions.

13. The Auditor General shall establish job descriptions with clearly defined qualifications, responsibilities and performance expectations for all positions in the Audit Office.

Appointment and discipline.

14. (1) Subject to subsection (3), within the framework of the budget approved for the Audit Office, the Auditor General shall assess staffing needs, and appoint, pay, train, assign, promote, and discipline officers and employees in accordance with the Constitution, this Act, the Rules, Policies and Procedures Manual and any other law.

(2) The officers and employees shall be appointed at such remuneration and on such other terms and conditions as the Auditor General may decide, within the framework of the budget approved for

the Audit Office, taking into consideration the Rules, Policies and Procedures Manual.

(3) The Auditor General's appointment and discipline of all senior officers and senior employees shall be subject to approval by the Public Accounts Committee.

Laws administered.

15. The Rules, Policies and Procedures Manual and all other laws shall be administered to ensure that -

- (a) there is fair and equal treatment of individuals applying for or offered appointments;
- (b) appointment and promotion decisions are made on the qualification and merit of every individual eligible for consideration; and
- (c) in disciplinary matters, the right to be heard and to make representations is guaranteed.

Disengagement and re-employment.

16. (1) Before the prescribed date -

- (a) the Auditor General shall identify such of the officers and employees of the existing office of the Auditor General as he wishes to re-employ in the Audit Office with effect from the prescribed date and the terms and conditions of such re-employment;
- (b) the Auditor General shall notify every officer and employee in writing as to whether approval has been granted for his re-employment under paragraph (a) and, if so, the terms and conditions of such re-employment;
- (c) every officer and employee in receipt of an offer of re-employment under paragraph (b) shall respond to the Auditor General in writing accepting or rejecting the offer of re-employment; and
- (d) every officer and employee not in receipt of or rejecting an offer of re-employment under this subsection shall be referred to the Public Service Commission for appropriate action by that Commission.

(2) With effect from the prescribed date, every officer and employee accepting an offer of re-employment under subsection (1) shall be re-employed on such terms and conditions as determined by the Auditor General, within the framework of the budget approved for the Audit Office.

Pension.

17. (1) For the removal of doubt, with effect from the prescribed date, the officers and employees of the Audit Office shall not be public officers; and service within the Audit Office with effect from the said date shall not be pensionable service for the purposes of the Pensions Act.

Cap. 27:02.

(2) Every officer and employee re-employed within the Audit Office under section 16(2) shall receive superannuation with respect to his pensionable service prior to the prescribed date on attainment of the age of fifty-five years and, for that purpose, his pensionable emoluments on attainment of the age of fifty-five years shall be deemed to be his pensionable emoluments at the prescribed date.

(3) The Auditor General may, within the framework of the budget approved for the Audit Office, make provision for the payment of pension, gratuity or other allowance in respect of the service of the officers and employees of the Audit Office on and after the prescribed date on their retirement therefrom.

PART IV

CONTRACTING OF TECHNICAL EXPERTS AND CHARTERED ACCOUNTANTS IN PUBLIC PRACTICE

*Employment of
contractors.*

18. In the discharge of his functions, the Auditor General may engage the services of technical experts and Chartered Accountants in public practice to serve on a contract basis for limited audit engagements including those required as part of agreements with international organisations.

*Guidelines for
contracting.*

19. In contracting with technical experts and Chartered Accountants in public practice, the Auditor General shall, subject to this Act, follow the detailed guidelines in the Rules, Policies and Procedures Manual to-

(a) recruit and determine the terms of employment and remuneration;

(b) in selecting from among applicants, receive

recommendations from a committee comprising the Finance Secretary, the Governor of the Bank of Guyana, the Commissioner General of the Guyana Revenue Authority, a representative of the Institute of Chartered Accountants of Guyana (who is not in public practice) and the Head of the Department of Management Studies at the University of Guyana;

- (c) award the contract;
- (d) determine the manner in which the required work shall be completed;
- (e) approve the audit plan and audit procedures (scope and methodology) for the assignment;
- (f) review the work-papers, reports, and the opinion (in the case of a financial audit) prepared by the contractor; and
- (g) request additional work if he deems it necessary to satisfy the terms of the contract.

- Obligations of contractors.* 20. In discharging their functions, technical experts and Chartered Accountants in public practice engaged under contract with the Audit Office shall be required to follow auditing standards approved for use by the Auditor General and shall be subject to the Rules, Policies and Procedures Manual.
- Limit on tenure.* 21. The Auditor General shall not contract a Chartered Accountant in public practice to perform audit services with respect to the same entity for more than six consecutive years.
- Limit on scope of work.* 22. Chartered Accountants in public practice contracted by the Auditor General under this Part shall not provide tax or accounting advice or management consulting services to any entity with respect to which they are contracted by the Auditor General to provide audit services.
- Authority.* 23. The Auditor General may delegate to technical experts and Chartered Accountants in public practice contracted under this Part such of his powers under this Act and any other law as may be necessary for the purposes of performing the contracted audit engagement.

PART V

AUDITS, REPORTS AND POWERS*Types of audit.*

24. (1) As external auditor of the public accounts of Guyana, the Auditor General shall be responsible for conducting -

- (a) financial and compliance audits; and
- (b) performance and value-for-money audits,

with respect to -

- (i) the consolidated financial statements;
- (ii) the accounts of all budget agencies;
- (iii) the accounts of all local government bodies;
- (iv) the accounts of all bodies and entities in which the State has a controlling interest; and
- (v) the accounts of all projects funded by way of loans or grants by any foreign State or organisation.

(2) In conducting financial and compliance audits, the Auditor General shall examine in such manner as he deems necessary the relevant financial statements and accounts and ascertain whether -

- (a) the financial statements have been properly prepared, in accordance with applicable law, and properly present the operations and affairs of the entity concerned;
- (b) the accounts have been faithfully and properly kept;
- (c) the rules, procedures and internal management controls are sufficient to secure effective control on the assessment, collection and proper allocation of revenues;
- (d) all moneys expended and charged to an account have been applied to the purpose or purposes for which they were intended; and
- (e) essential records are maintained, and the

internal management controls and the rules and procedures established and applied are sufficient to safeguard the control of stores and other public property.

(3) In conducting performance and value-for-money audits, the Auditor General shall examine the extent to which a public entity is applying its resources and carrying out its activities economically, efficiently, and effectively and with due regard to ensuring effective internal management control.

- Annual reports.* 25. The Auditor General shall report at least annually, and within nine months of the end of each fiscal year, on the results of his audit of the consolidated financial statements and the accounts of budget agencies in relation to that fiscal year.
- Special reports.* 26. During the course of the year, the Auditor General may choose to conduct special audits and at his discretion prepare special reports when such audits are completed.
- Responses to draft reports.* 27. At the conclusion of any audit, the Auditor General shall provide the relevant Head of a budget agency, or the governing body in the case of other public entities, with a draft report including findings and recommendations, and the Head of the budget agency or the governing body shall provide a written response to the Auditor General within thirty days, which response the Auditor General shall include in his report to be submitted for laying before the National Assembly.
- Submission of reports.* 28. The Auditor General shall, in accordance with article 223(3) of the Constitution, submit his reports to the Speaker of the National Assembly, who shall cause them to be laid before the Assembly.
- Availability of reports.* 29. Reports of the Auditor General, when laid before the National Assembly, may be made available by the Auditor General to the public for a cost recovery fee.
- Requirement to provide information.* 30. The Head of a budget agency, or the governing body in the case of other public entities, shall ensure that the Auditor General has access at all reasonable times to the documents of the budget agency or entity relating to the discharge of the Auditor General's functions. This shall include providing reasonable, suitable and secure space for the Audit Office to conduct its work. The Head of a budget agency or governing body shall also furnish the Auditor General from time to time or at regular periods, as may be specified by the Auditor General, with the accounts of the transactions of the budget agency or entity.

Power to obtain information.

31. For the purpose of the discharge of his functions, the Auditor General may require a public entity, or any officer or employee of a public entity, to -

- (a) produce a document in the entity's or person's custody, care or control; and
- (b) provide the Auditor General with information or an explanation about any information.

Power to obtain evidence.

32. The Auditor General may, in the course of the discharge of his functions, require a person to give evidence either orally or in writing.

Power to inspect bank accounts.

33. For the purpose of the discharge of his functions, the Auditor General may examine or audit the account of any person in any bank if the Auditor General has reason to believe that moneys belonging to a public entity have been fraudulently or wrongfully paid into such person's account, except that -

- (a) to exercise this authority, the Auditor General shall establish that information obtained shall not be used for any purpose other than intended, and shall first obtain a warrant from a court authorising such examination;
- (b) when presented with the warrant, the bank through its officer shall produce any documents or provide requested information relating to the relevant account; and
- (c) the Auditor General may make copies of any documents so produced.

Access to premises.

34. For the purpose of obtaining documents, information or other evidence relevant to any matter arising in the discharge of his functions, the Auditor General or any officer so authorised by him may, at all reasonable times and with proper identification -

- (a) enter into and remain on a public entity's premises;
- (b) enter into and remain on any other premises if so authorised by a warrant issued by a court on the grounds that there is reason to believe that documents or other information relating to the activities of a public entity may be held at those premises; and
- (c) carry out a search for documents, examine

documents, or make copies of documents.

Disclosure of information.

35. (1) No person shall, without the written consent of the Auditor General, publish or disclose information obtained in the course of an audit to any person other than in the course of his duties or when lawfully required to do so by a court.

(2) Every person conducting an audit shall regard and deal with all documents and information relating to the audit as secret and confidential and shall make and subscribe a declaration in the form prescribed to that effect before the Auditor General.

Cost recovery fees.

36. Where the Auditor General renders a service to an entity other than a budget agency or a foreign-funded project, he may charge a cost recovery fee which shall be paid into the Consolidated Fund.

PART VI

OFFENCES

Offences.

37. A person commits an offence who, knowingly and without lawful justification or excuse -

- (a) intentionally obstructs, hinders or resists the Auditor General or an officer authorised by him in the exercise of his power under this Act;
- (b) intentionally refuses or fails to comply with any lawful requirement of the Auditor General;
- (c) makes a statement or gives information to the Auditor General or an officer authorised by him knowing that the statement or information is false or misleading;
- (d) represents directly or indirectly that the person holds any authority under this Act when the person knowingly does not hold that authority; or
- (e) contravenes or violates the provisions of section 35.

Requests for prosecution.

38. If the Auditor General has reason to believe that an offence was committed, he shall request the Director of Public Prosecutions and the Commissioner of Police to take appropriate action and prosecute the offender if necessary.

Penalties.

39. A person who is convicted of an offence under section 38 is liable, on summary conviction, to a fine not to exceed two hundred

thousand dollars and to imprisonment for a term not to exceed five years; an entity or body of persons which is convicted of such an offence is liable, on summary conviction, to a fine not to exceed four hundred thousand dollars.

PART VII

FINANCES AND ACCOUNTABILITY OF THE AUDIT OFFICE

Funds of the Audit Office.

40. (1) The expenditure of the Audit Office shall, in accordance with article 222A(a) of the Constitution, be financed as a direct charge on the Consolidated Fund, determined as a lump sum by way of an annual subvention approved by the National Assembly after review and approval of the Audit Office's budget as a part of the process of the determination of the national budget.

(2) For the removal of doubt, at an appropriate time within the timetable established by the Minister responsible for finance for the preparation of the annual budget proposal -

- (a) the Auditor General shall prepare, in accordance with the rules, procedures and guidelines set out in the Budget Circular, and submit to the Public Accounts Committee a budget submission for the Audit Office, including work plans and programmes, for the next ensuing fiscal year;
- (b) the Public Accounts Committee shall review the budget submission made under paragraph (a) and provide comments for consideration by the Auditor General;
- (c) after considering comments from the Public Accounts Committee, the Auditor General shall revise the budget submission and re-submit it to the Public Accounts Committee for endorsement;
- (d) the Public Accounts Committee shall, no later than ninety days before the commencement of the next ensuing fiscal year, forward the revised budget submission for that year, together with its comments thereon, to the Minister responsible for finance for consideration and inclusion in the annual budget proposal; and

- (e) the Minister responsible for finance shall include in the annual budget proposal a subvention for the Audit Office within the allocations of the Parliament Office to be voted on by the National Assembly.

Application of funds.

41. (1) The Auditor General shall, in accordance with article 222A(b) of the Constitution, manage the subvention of the Audit Office in such manner as he deems fit for the efficient discharge of his functions, subject only to conformity with the financial practices and procedures approved by the National Assembly to ensure accountability.

(2) Expenses to be paid from this subvention shall include -

- (a) salaries and allowances of the officers and employees of the Audit Office;
- (b) the fees for such reasonable travelling, transportation and subsistence allowances as required by officers and employees engaged in conducting the business of the Audit Office; and
- (c) reasonable costs for training and professional development activities.

Periodic reports.

42. The Auditor General shall prepare and submit to the Public Accounts Committee, within four weeks of the end of each quarter, a quarterly report on the performance and operation of the Audit Office in the format of a Programme Performance Statement.

Performance and financial report.

43. The Auditor General shall submit to the Public Accounts Committee, within four months of the end of each fiscal year, an Annual Performance and Financial Audit Report, which shall include a Programme Performance Statement for that year, with respect to the Audit Office.

Independent audit.

44. The Public Accounts Committee shall, in respect of each fiscal year, appoint an independent auditor to audit and report on the financial statements, accounts, and other information relating to the performance of the Audit Office in that year. This may include awarding the contract to an international firm.

General supervision.

45. The Public Accounts Committee may, in accordance with article 223 of the Constitution, exercise general supervision over the functioning of the Audit Office, including the functions of the Auditor

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General under Part III, in accordance with the Rules, Policies and Procedures Manual and any other law.

PART VIII

REPEAL

Repeal.
Cap. 73:01.

46. The unrepealed provisions (Parts I and IV) of the Financial Administration and Audit Act are hereby repealed.

*Power to remove
difficulties.*

Cap. 73:01.

47. The Minister responsible for finance may, for the purpose of removing any difficulty in giving effect to the provisions of this Act, particularly in relation to the transition from the provisions of the Financial Administration and Audit Act to the provisions of this Act, make such Order or give such direction not inconsistent with the provisions of this Act, as appears to him to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such Order or direction shall be made or given after the expiry of two years from the commencement of this Act.

EXPLANATORY MEMORANDUM

This Bill seeks to introduce new and comprehensive legislation on the subject of the independent auditing of the public finances of Guyana.

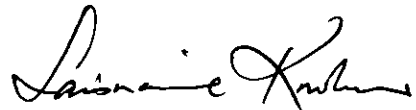
The Bill provides for the establishment of an independent Audit Office comprising the Auditor General and appointed officers and employees. It elaborates the functions and independence of the Auditor General. It also provides for the making of regulations by the Auditor General, subject to the approval of the Public Accounts Committee and confirmation by the National Assembly. These regulations may include a Rules, Policies and Procedures Manual to govern the management and operation of the Audit Office and the conduct of audits by that Office.

The Bill includes provision for disengaging employees of the existing office of the Auditor General and re-employing them in the Audit Office. It also includes provision for contracting of technical experts and Chartered Accountants in public practice.

The Bill details the different types of audits that may be conducted by the Auditor General, and sets out the powers of the Auditor General in conducting such audits, including the power to obtain information and evidence, the power to inspect bank accounts and the power to access premises.

The Bill sets out the accountability arrangements to govern the Audit Office, including the presentation of quarterly and annual performance reports.

Finally, the Bill seeks to repeal remaining provisions of the Financial Administration and Audit Act, Cap. 73:01, and authorises the Minister responsible for finance to make Orders or issue directions to remove any difficulty in implementing this Act.



Minister of Finance