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ANTIGUA & BARBUDA



THE OFFICE OF THE DIRECTOR OF AUDIT ACT, 2014

No. 4 of 2014

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[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

22nd May, 2014.

ANTIGUA AND BARBUDA

THE OFFICE OF THE DIRECTOR OF AUDIT ACT, 2014

No. 4 of 2014

AN ACT to establish the Office of the Director of Audit, to reform the law relating to that Office and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Short title

This Act may be cited as the Office of the Director of Audit Act 2014.

2. Interpretation

In this Act, unless the context requires otherwise —

“accounting officer” has the meaning assigned to it by section 2 of the Finance Administration Act;

“appropriation Act” has the meaning assigned to it by section 2 of the Finance Administration Act;

“Consolidated Fund” has the meaning assigned to it by section 2 of the Finance Administration Act;

“Constitution” means the Antigua and Barbuda Constitution Order 1981 No.1106;

“Director of Audit” means the Director of Audit appointed pursuant to section 102 of the Constitution;

“internal audit” means an audit carried out internally to assist the Government in the accomplishment of its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes;

“Finance Administration Act” means the Finance Administration Act No. 23 of 2006;

“Financial Secretary” means the Financial Secretary of Antigua and Barbuda;

“financial year” means the twelve month period beginning the 1st day of January and ending on the 31st day of December in any year or such other period of twelve months as may be prescribed;

“Office of the Director of Audit” means the post held by the Director of Audit;

“performance audit” means an examination of the programs, functions, operations and procedures of a Government entity to assess whether such an entity is achieving economy, efficiency and effectiveness in its use of available resources;

“Public Accounts” has the meaning assigned to it pursuant to section 2 of in the Finance Administration Act;

“Public Accounts Committee” means the committee appointed pursuant to section 98 of the Constitution;

“public body” includes a ministry, government funded entity, public organisation and statutory body;

“public money” has the meaning assigned to it pursuant to section 2 of the Finance Administration Act;

“public officer” has the meaning assigned to it pursuant to section 127 of the Constitution;

“public organisation” means an enterprise, authority, body or organisation to which section 22 applies; and

“statutory body” has the meaning assigned to it pursuant to section 2 of the Finance Administration Act.

PART II

THE OFFICE OF THE DIRECTOR OF AUDIT

3. The Office of the Director of Audit and his officers

(1) The Director of Audit shall be the executive head of his department and shall be assisted by such other officers appointed under this section in performing his duties and functions under this Act.

(2) The Public Service Commission shall, after consultation with the Director of Audit, appoint the officers referred to in subsection (1).

(3) Directions to the staff of the Director of Audit relating to the performance of the Director of Audit's functions may only be given by-

(a) the Director of Audit; or

(b) an officer of the Director of Audit, authorised by the Director of Audit to give such directions.

(4) The Director of Audit may delegate any of his functions to an officer appointed under this section, save and except for certifying and reporting on accounts.

4. Appointment of the Director of Audit

(1) The Director of Audit shall be appointed by the Governor-General, acting in accordance with the advice of the Public Service Commission, tendered after the Public Service Commission has consulted the Prime Minister and has obtained the agreement of the Prime Minister to such appointment.

(2) If the office of the Director of Audit is vacant or if the holder of the office is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission tendered after the Public Service Commission has consulted the Prime Minister and has obtained the agreement of the Prime Minister to such appointment, may appoint a person to act as the Director of Audit.

(3) A person who is appointed to hold the office of the Director of Audit under subsection (2) shall cease to hold that office when the person in whose place he is acting resumes the functions of that office and that person shall, while holding office be paid the salary and other allowances that may be determined by the Governor-General.

5. Remuneration of the Director of Audit

(1) The Director of Audit shall be paid such salary and allowances as shall be determined by a resolution of the House of Representatives.

(2) Notwithstanding section 109 of the Constitution regarding pensions, the salary and allowances of the Director of Audit in respect of his office and his other terms of service, (save and except for allowances that are not taken into account in the calculation of any pension payable in respect of his service in that office), shall not be altered to his disadvantage after his appointment.

6. Retirement of the Director of Audit

Subject to section 7, the Director of Audit shall vacate his office when he attains the age of sixty years.

7. Removal of the Director of Audit

(1) The person holding the office of the Director of Audit may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed, except in accordance with the provisions of this section.

(2) The Director of Audit may be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed by the Governor-General, in accordance with section 87(9) of the Constitution, and the tribunal has recommended such removal on the grounds specified in subsection (1).

(3) If the question of removing the Director of Audit has been referred to a tribunal under this section, the Governor-General may, acting in accordance with the advice of the Public Service Commission, suspend the Director of Audit from the exercise of the functions of his office.

(4) The Governor-General may, acting on the advice of the Public Service Commission, revoke such suspension at any time.

8. Resignation of the Director of Audit

(1) The Director of Audit may, by writing addressed to the Governor-General, resign from his office.

(2) The Public Service Commission shall, in receipt of the resignation of the Director of Audit, advise the Governor-General to revoke the appointment of the Director of Audit.

9. Functions and Duties

(1) The Director of Audit shall -

- (a) satisfy himself that all monies that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it.

- (b) at least once every year audit and report on the public accounts of Antigua and Barbuda, the accounts of all officers and authorities of the Government, the accounts of all courts including any accounts of the Supreme Court maintained in Antigua and Barbuda, the accounts of every commission established by the Constitution and the Clerks to the House of Representatives and the Senate.

(2) The Director of Audit shall have the power to carry out an audit of the accounts, balance sheets and other financial statements of any enterprise that is owned or controlled by or on behalf of Antigua and Barbuda.

(3) The Director of Audit shall satisfy himself that-

- (a) all reasonable precautions have been taken to safeguard the collection and custody of revenue and that the law, directions and instructions relating thereto are duly observed;
- (b) expenditure is incurred with due regard to the economy and to the value obtained;
- (c) public moneys other than those appropriated are dealt with in accordance with the proper authority;
- (d) all reasonable precautions are taken to safeguard the receipt, custody, issue and proper use of cash, stamps, securities and stores and that the regulations, directions and instructions relating thereto are duly observed; and
- (e) that adequate regulations, directions or instructions exist for the guidance of the accounting officer.

(4) If the Minister responsible for Finance fails to table a report in accordance with subsection (1), the Director of Audit shall transmit a copy of such report to the Speaker of the House of Representatives, who shall as soon as practicable present it to the House of Representatives.

10. Performance of duties

The Director of Audit shall devote his full time and attention to the performance of his functions and duties under this Act, and shall not, while he holds that office, hold any other paid office.

11. Independence of the Director of Audit

Subject to any duty imposed on him by the Constitution and this Act, the Director of Audit shall have-

- (a) complete discretion in the discharge of his functions and, in particular, in determining whether to carry out any examination of accounts under of this Act as to the manner in which any such examination is carried out; but in determining whether to carry out any such examination he may take into account any requests made by the Public Accounts Committee; and

- (b) a duty to follow up recommendations and bring the results to the attention of the Public Accounts Committee.

PART III

FUNDS OF THE OFFICE OF THE DIRECTOR OF AUDIT

12. Funds of the Office of the Director of Audit

The funds of the Office of the Director of Audit shall consist of moneys –

- (a) appropriated by the Parliament for the purposes of the Office of the Director of Audit;
- (b) earned in connection with the performance of duties authorised by this Act or any other relevant law;
- (c) accruing to the Office of the Director of Audit from any other source;
- (d) which are donations or bequests, the terms of which are acceptable to the Director of Audit.

13. Financial Management of the Office of the Director of Audit

(1) The financial affairs of the Office of the Director of Audit shall be conducted in accordance with a budget and business plan prepared by the Director of Audit for each financial year which shall include-

- (a) estimates of expenditure for the year to which it relates;
- (b) projected expenditure for the two financial years following the year to which the budget and business plan relates; and
- (c) the basis of any audit fees, for the year to which the budget relates and the following two years, are to be calculated.

(2) The Director of Audit shall, before the start of a financial year, submit the budget and business plan referred to in subsection (1) to the Minister responsible for Finance for inclusion in the national budget.

(3) The budget and business plan in subsection (1) and any other information required under the Finance Administration Act shall be submitted in accordance with any comments and recommendations made by the Minister responsible for Finance.

(4) The Minister responsible for Finance shall consider the budget and business plan submitted to him under subsection (2), and within one month of receipt thereof submit the budget for approval by the Parliament and for inclusion in the budget as a separate line of funds from the Consolidated

Fund in the estimates of expenditure to be submitted to the Parliament for approval under the relevant appropriation Act.

(5) The full amount of any moneys appropriated by the Parliament for the purposes of administration and operation of the Office of the Director of Audit shall be paid out of a separate fund.

(6) The Director of Audit shall prepare or cause to be prepared, the annual accounts of the Office of the Director of Audit, in respect of its finances using the internationally recognised accounting standards and relevant laws applicable to their preparation.

14. Internal Audit

(1) Each year any qualified auditor entitled to practise as a professional accountant in Antigua and Barbuda, appointed by the Minister after consultation with the Public Accounts Committee, and with the approval by a resolution of the House of Representatives, shall examine and audit the accounts of the Office of the Director of Audit and shall prepare a report on his findings.

(2) The Minister shall not appoint any person who, in the financial year in which he is appointed or in the preceding financial year—

- (a) is or was a public officer;
- (b) is or was an employee, officer or member of the board of management, board of directors or other governing body of—
 - (i) a statutory body; or
 - (ii) a corporation that is controlled by the Government.

(3) The auditor may delegate to an employee or a person engaged by him, any responsibility or power that the auditor has under this Act, other than the responsibility to make a report to the Minister under this section.

(4) No later than seven months after the end of the previous financial year, the auditor shall submit the report to the Minister.

(5) The Minister shall, not later than seven days after the House of Representatives first meets after he has received the report of the auditor, lay it before the House of Representatives.

15. Director of Audit as accounting officer

The Director of Audit shall be the accounting officer for the Office of the Director of Audit and shall be held accountable for—

- (a) any funds appropriated by Parliament for use by the Director of Audit in meeting the financial obligations specified in the annual appropriation Act for the Office of the Director of Audit; and

- (b) such responsibilities in relation to the property of the Government as are assigned to him by any officer authorised by the Government.

PART IV

POWERS OF THE OFFICE OF THE DIRECTOR OF AUDIT

16. Non interference in the work of the Director of Audit

The Director of Audit and all officers and employees of the Office of the Director of Audit and any other persons authorised by the Director of Audit to perform any functions and duties under this Act shall perform those functions without fear, favour or prejudice, and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their duties under the provisions of this Act.

17. Powers of the Director of Audit

(1) When performing his duties under this Act --

- (a) the Director of Audit is entitled to free access at all convenient times to any information that relates to the fulfilment of his responsibilities and he is further entitled to require and receive from any person in the employment of the Government, of any agency of the Government, any information reports and explanation that he considers necessary for the purposes of an examination, inquiry and audit under the provisions of this Act;
- (b) the Director of Audit or any officer employed in the Office of the Director of Audit authorised by him or any person appointed pursuant to section 18-
 - (i) shall have all access at all convenient times to any records, books, vouchers, electronic data, other documents, moneys, stamps, securities, stores, equipment and other property of the Government, or a statutory body or a public organisation in the possession or under the control of any person and which are necessary for the purposes of an examination, inquiry and audit in terms of this Act; and
 - (ii) may, without payment of any fee, examine and make copies of or extracts from any record, book, electronic data file, document or other information of an office, ministry, agency of the Government or public organisation or enterprise whose accounts are being examined and audited by him.

(2) The Director of Audit may examine any person on oath on any matter pertaining to any account subject to audit by him and for the purposes of any such examination, the Director of Audit may exercise all of the powers of a Commissioner under section 10 of the Commission of Inquiry Act Cap. 91.

(3) The Director of Audit may lay before the Attorney-General a case in writing as to any question regarding the interpretation of any law concerning the exercise of the powers and the performance of the duties of the Director of Audit.

18. Director of Audit may appoint specialists

(1) The Director of Audit may, after consultation with the Public Accounts Committee, appoint any person, who has, in his opinion, specialist expertise which is relevant to a particular enquiry or audit, to assist him in conducting an examination, inquiry or audit under this Act.

(2) Any person who assists the Director of Audit by virtue of an appointment under sub-section (1) shall —

- (a) have, to the extent required for the purposes of the examination, inquiry or audit, the same powers and duties as a staff member of the Office of the Director of Audit; and
- (b) as soon as practicable after the examination, inquiry or audit, submit a written report on his findings to the Director of Audit.

(3) When the Director of Audit intends to appoint a specialist under sub-section (1), the Director of Audit shall first consult the public organisation concerned in that regard.

(4) The Director of Audit shall remain responsible for the work of the appointed specialist including content, standards, quality assurance and shall submit the report of the auditor referred to in sub-section (2), to the Minister responsible for Finance for introduction in the House of Representatives.

19. Director of Audit may charge fees for certain audits

The Director of Audit may charge a fee for auditing the accounts of any person or body, other than any person or body specified in section 97 of the Constitution.

20. Cooperation of Director of Audit with international and regional bodies

The Director of Audit may conduct trainings, joint or parallel audits or exchange information with relevant international and regional bodies for the purpose of fulfilling his mandate.

21. Extension of power to certain bodies

(1) Where the Director of Audit is informed and can confirm that an authority or body has, in any of its financial years, received financial support from the Government, he may carry out an examination into the economy, efficiency and effectiveness with which it has in that year used its resources in discharging its functions.

(2) Subsection (1) above shall not be construed as entitling the Director of Audit to question the merits of the policy objectives of any authority or body in respect of which an examination is carried out.

(3) In determining for the purposes of subsection (1) above whether the income of an authority or body is such as to bring it within the category specified in that subsection the Director of Audit shall consult that particular authority or body and the respective Ministry.

(4) For the purposes of this section money is received from public funds if it is paid —

- (a) out of moneys provided by appropriation of Parliament; or
- (b) by an authority or body which itself falls within subsection (1), including an authority or body falling within that subsection by virtue of this paragraph.

PART V

AUDIT AND EXAMINATION OF PUBLIC ACCOUNTS

22. Audit of Public Accounts

(1) The Director of Audit shall —

- (a) audit and examine all public accounts or cause the public accounts to be audited and examined; and
- (b) certify such public accounts, sign and submit an annual report on the examination and audit of all such accounts, together with copies of the certification of such accounts, in accordance with section 97 of the Constitution; and
- (c) provide an opinion on the public accounts referred to in paragraph (a).

(2) The Director of Audit shall publish the report referred to in subsection (1) on the website of the Government one month after referring it to the House of Representatives.

(3) Where it appears to the Director of Audit that an irregularity has occurred in the-

- (a) receipt, custody, issue or expenditure of public moneys;
- (b) receipt, custody, issue, sale, transfer or delivery of stamps, securities, stores or other Government property; or
- (c) in accounting for the procedures specified in paragraphs (a) and (b),

the Director of Audit shall immediately send a written notice of such irregularity to the relevant accounting officer and send a copy of the notice to the Financial Secretary.

23. Audit of public organisations and statutory bodies

(1) Any person who is appointed as an auditor of the books and accounts of a statutory body or

a company owned by the Government, or any person who is in possession of the information and reports of that auditor, shall provide to the Director of Audit, upon his request, a copy of-

- (a) the annual financial statements of the statutory body or company;
- (b) his report on these statements, including the relevant auditing standards applied; and
- (c) any other report he makes to the board of directors, the executive or the management of the body or company, as the case may be, on his findings and recommendations.

(2) A person mentioned in subsections (1) shall make available to the Director of Audit, on request, the working papers, and other reports and documents in respect of that audit as well as any other information and explanation which the Director of Audit may require in respect of that audit and its results.

(3) When the Director of Audit is of the opinion that the information, explanations, documents and reports provided by the person mentioned in subsection (1) are insufficient or that additional audit work should be carried out, he may conduct or cause to be conducted such additional audit or investigation as he considers necessary, of the books, accounts and operations of the body or company.

(5) The Director of Audit may refer any audit received under sub-section (1) to the Minister of Finance for tabling in the House of Representatives.

(6) The Director of Audit may charge a fee in respect of any public organisation audited by him pursuant to the Constitution or to this section.

(7) The Director of Audit may make a recommendation to the Public Service Commission for the appointment of an external auditor to conduct an audit under this section on his behalf.

24. A Minister may request audit

(1) Notwithstanding anything to the contrary in any other enactment, the Minister responsible for a particular Ministry may request the Director of Audit to examine and audit the accounts, or to investigate and report on the financial affairs of a statutory body or any other body owned by the Government or any other body in which the Government has an interest of 25% or more.

(2) The Director of Audit shall report to the Minister responsible for Finance on any investigation made under this section and send a copy of such report to the Minister who made the request under subsection (1), with regard to the statutory body which was audited, and that Minister may obtain feedback from the statutory body.

(3) The Minister who made the request under subsection (1) shall cause any report submitted to him under subsection (2) together with any comments made by the respective statutory body to be laid before the House of Representatives no later than thirty days after its next sitting.

25. Power of the Director of Audit to conduct performance audits

(1) The provisions of sections 19, 20 and 21 of this Act shall apply to any examinations, enquiries and investigations conducted by the Director of Audit in the exercise of his powers under this Part.

(2) Subsection (1) above applies only to documents in the custody or under the control of the ministry, authority or body to which the examination relates.

(3) The Director of Audit may, for the purposes of establishing the economy, efficiency, effectiveness and environmental impact of any expenditure or use of public resources by any ministry, entity, public organisation required to prepare appropriation or other accounts under the terms of the Finance Administration Act or by any public organisation or statutory body or any other organisation audited by him, enquire into, examine, investigate and report insofar as he considers necessary on—

- (a) the expenditure of public moneys and the use of public resources by such departments and public bodies;
- (b) the conduct of and the performance of their functions by accounting officers, heads of departments and divisions, and chief executive officers of all such public bodies;
- (c) any other activity undertaken by such public bodies as he considers necessary.

(4) In any examination or investigation carried out under subsection (3), the Director of Audit may, where appropriate, take into account —

- (a) any requirements of any macro-economic and fiscal policy framework document prepared under the Finance Administration Act in force at the time of the relevant accounting period; and
- (b) any social, economic and environmental issues relative to the operations or activities being reviewed or examined, having regard to the principles of sustainable development.

(5) Any report prepared by the Director of Audit as a result of his examinations, enquiries and investigations under this section shall be laid before the House of Representatives, where it shall stand referred to the Public Accounts Committee thereof.

(6) Having laid the report referred to in subsection (3), before the House of Representatives, the Director of Audit shall publish the report on the website of the Government and carry out any other reasonable actions to ensure that the findings of the audit are made known to the public.

(7) Nothing in this section shall be construed as entitling the Director of Audit to question the merits of the policy objectives of any ministry, organisation, entity, public organisation or statutory body in respect of which an examination is carried out.

PART VI MISCELLANEOUS

26. Immunity

(1) No criminal or civil proceedings shall be taken against the Director of Audit, or against any person acting on the behalf or under the direction of the Director of Audit, for any thing done, reported or said in good faith in the course of the performance or purported performance of his powers, duties or functions under this or any other Act.

(2) Any person who is, or has been-

- (a) the Director of Audit; or
- (b) an officer employed in the Office of the Director of Audit, acting on behalf of the Director of Audit,

shall be indemnified against any liability incurred for an act or omission of the person in the performance or purported performance of a function carried out in good faith.

27. Confidentiality

(1) A person who obtains information in the performance of a function of the Director of Audit shall not disclose the information except in the performance of such a function.

(2) Subsection (1) does not apply to the disclosure of information to a court of competent jurisdiction or an authority or a person prescribed by Regulations made under this Act.

(3) The Director of Audit shall require every person employed in his Office who examines any account of a department, ministry, agency of the Government or a statutory corporation pursuant to this Act, to comply with any requirement of security applicable to such examination, and to take the oath of secrecy required to be taken by a person employed in the department, ministry, agency of the Government or a statutory corporation being audited.

28. Offences

(1) A person commits an offence if that person —

- (a) without reasonable excuse and contrary to section 17, fails to provide the Director of Audit or a person authorised by him with all such explanation and information as the Director of Audit or that person may reasonably require;
- (b) without reasonable cause fails to provide, or wilfully obstructs access to, any item as required by section 17.
- (c) contrary to section 16, interferes with or exerts undue influence on the Director of Audit

or any officer or employee of the Office of the Director of Audit or on any person authorised by the Director of Audit to perform functions under this Act; or

- (d) contrary to section 28 wilfully discloses information obtained in the performance of his functions under this Act to an unauthorised person.

(2) Where a person fails or refuses by notice to comply with subsection (1), the person commits an offence and is liable upon summary conviction to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 3 months imprisonment.

29. Regulations, Transition and Repeal

(1) The Attorney General, after consultation of the Director of Audit, may make regulations, including transitional regulations, to enable the Office of the Director of Audit to move towards the full implementation of this Act.

(2) Any regulations made under this Act shall be subject to affirmative resolution of the House of Representatives.

(3) Parts VI, VII and section 48 of the Finance and Audit Act Cap. 168 are hereby repealed.

Passed the House of Representatives
on the 17th March, 2014.

Passed the Senate on the 31st March,
2014.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.