

No. 1 of 2011

VIRGIN ISLANDS
INTERNAL AUDIT ACT, 2011
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I Assent

(Sgd.) Boyd McCleary CMG, CVO
Governor

31ST March, 2011

VIRGIN ISLANDS

No. 1 of 2011

AN ACT to provide for the establishment of the Department of Internal Audit, the regulation of systems of internal auditing for Public Authorities and for other connected matters.

[Gazetted 7th April, 2011]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

- 1.** This Act may be cited as the Internal Audit Act, 2011 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.
- 2.** In this Act, unless the context otherwise requires, Interpretation.
- “auditor” means a person appointed to the Department to perform the functions of an auditor;
- “Auditor General” means the person appointed under section 109 of the Constitution to the office of Auditor General; U.K. S.I. 2007
No. 1678
- “audit plan” means a document prepared by the Director in accordance with section 11(b) of this Act;
- “Committee” means the Internal Audit Advisory Committee established under section 6 of this Act;
- “Constitution” means the Virgin Islands Constitution Order, 2007; U.K. S.I. 2007
No. 1678

“Department” means the Internal Audit Department established under section 3 of this Act;

“Director” means the person appointed to be the Director of the Department under section 5;

“financial year” means the period commencing on the 1st January and ending on the 31st December in each year;

“generally accepted internal audit standards” includes the AICPA, Sarbaines-Oxley Act/PCAOB Implementation Central standards, and such other standards which may from time to time replace any of these;

“Government asset” means money, goods or property, whether tangible or intangible, belonging to the Government of the Virgin Islands;

“governance procedures” means the systems and processes which relate to ensuring transparency, accountability and equity in the use of public funds;

“internal control” means a procedure, policy or system designed to promote efficiency, safeguard a Government asset, or reduce fraud and error;

“irregularity” means an act or omission which unlawfully diminishes a Government asset or which is inconsistent with the proper management of a Government asset;

“Minister” means the Minister who has responsibility for finance;

“Public Authority” means any ministry, department or an institution in respect of which the Government has control by virtue of the constitution of that institution, excluding statutory corporations that do not receive subventions from the Central Government;

U.K. S.I. 2007
No. 1678 “public officer” has the meaning assigned to it under section 2 of the Virgin Islands Constitution Order, 2007;

“record” includes any device on which information is recorded or stored, electronically or otherwise;

“relevant enactment” means an enactment which relates to the Public Authority being audited by the Department;

“risk management” means the processes of identifying, analyzing, and determining how to minimize risk;

“systems of internal control” means, in relation to a Public Authority, the mechanisms, processes and procedures which address risk management, control and governance procedures.

PART I
ESTABLISHMENT AND FUNCTIONS OF THE DEPARTMENT OF
INTERNAL AUDIT

3. There is established a Department to be known as the Internal Audit Department which shall exercise the functions assigned to it by this Act. Establishment of the Department.

4. (1) The functions of the Department are to Functions of the Department.

- (a) monitor the systems of internal control of a Public Authority using generally accepted internal audit standards;
- (b) evaluate and report on whether the systems of internal control of a Public Authority are adequate and efficient to ensure that
 - (i) Government assets are
 - (aa) adequately safeguarded;
 - (bb) used only for identified purposes or other purposes approved by law; and
 - (cc) used economically and efficiently.
 - (ii) risks may be identified and managed;
 - (iii) the financial management and control information of a Public Authority is accurate, and reliable;
 - (iv) the operations of a Public Authority are compliant with policies, procedures and the law;
- (c) review operations and programmes of a Public Authority to ascertain whether the results are consistent with the objectives of the operations and programmes of the Government;
- (d) report and make recommendations to the head of a Public Authority and the Committee regarding any irregularity or significant control weakness occurring within that Public Authority;

- (e) design plans to be approved by the Committee for the development and maintenance of efficient internal audits of Public Authorities;
- (f) design plans to be approved by the Committee for the improvement of systems of internal control of Public Authorities; and
- (g) prepare audit reports in accordance with this Act.

Appointments.
U.K. S.I. 2007
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5. (1) The Governor shall, acting in accordance with section 92 of the Constitution, appoint a Director, auditors and other members of staff necessary for the administration of this Act, to the Department.

(2) A person appointed to the Department under subsection (1) and any member of the Committee appointed under section 8(1) shall take the oath of confidentiality in the form set out in Schedule 1.

Schedule 1

Internal Audit
Advisory
Committee.

6. There is established an Internal Audit Advisory Committee, referred to in this Act as “the Committee”.

Functions of
the
Committee.

7. The functions of the Committee are to

- (a) establish standards and procedures for the effective conduct of internal audits by the Department;
- (b) advise the Department in relation to the performance of its functions under this Act;
- (c) advise the Department on policies and procedures for the development, maintenance, and improvement of systems of internal control for Public Authorities;
- (d) in respect of each financial year, advise the Department on an audit programme for implementation by the Department, which shall include
 - (i) the Public Authorities to be audited within the financial year;
 - (ii) the intended manner in which the Public Authorities will be audited;
 - (iii) any Government programme or policies which are relevant to the Public Authorities to be audited; and

(iv) any internal audit control deficiencies relating to the Public Authorities, known to the Department;

(e) review audit reports forwarded by the Director.

8. (1) The Cabinet shall upon the recommendation of the Minister, appoint the members of the Committee which shall comprise of

Composition and meetings of the Committee.

(a) a Chairperson, who is a person of good standing in the accounting or auditing profession;

(b) the Director, as an *ex officio* member;

(c) the Financial Secretary or the Deputy Financial Secretary as an *ex officio* member;

(d) a senior public officer; and

(e) a member who is not a public officer, to be determined by the Minister.

(2) A member of the House of Assembly shall not be appointed as a member of the Committee.

(3) The Chairperson of the Committee, on the recommendation of the Director, shall appoint an auditor or officer from within the Department to be the Secretary to the Committee.

(4) The Committee shall have at least one meeting every quarter but shall otherwise determine its own procedures.

(5) The Committee shall be accountable to the Minister for the conduct of its business.

Terms of appointment.

9. (1) A member of the Committee, other than an *ex-officio* member, shall hold office for a period not exceeding three years, and is eligible for reappointment upon the expiration of his or her term.

(2) A member of the Committee may resign as a member of the Committee by giving one month's written notice to the Minister.

(3) The Cabinet, following consultation with the Minister, may remove a member of the Committee

- (a) for mental or physical disability, incompetence, neglect of duty or conduct, that impairs the performance of the member's duties;
- (b) if the member is an undischarged bankrupt or has compounded with his or her creditors;
- (c) if the member is absent without leave from two consecutive meetings of the Committee of which the member has had notice; or
- (d) for the commission of an act or omission that in the opinion of the Minister
 - (i) makes it inappropriate for the member to continue as a member; or
 - (ii) may adversely affect the functioning of the Committee.

(4) The Minister, upon the approval of the Cabinet, may pay to a member who is not a public officer, remuneration or an allowance in respect of the performance of the member's duties.

Special
Committees.

10. Notwithstanding the provisions of this Part, the Minister may at any time appoint a Special Committee to render advice on any specific matter he or she may consider necessary.

PART II DUTIES AND POWERS OF THE DIRECTOR AND AUDITORS

Duties of the
Director.

11. Subject to the policy directives of the Minister, the Director shall be responsible for

- (a) the management and administration of the Department and implementation of this Act;
- (b) overseeing the implementation of each audit plan, and supervising any other assignment requested by the Committee or a Public Authority;
- (c) presenting oral and written reports to the Committee on the management and operations of the Department; and
- (d) performing any other duty the Committee may direct.

12. In relation to a Public Authority which is being audited, the Director or an auditor may, during the course of an internal audit

General powers of auditors.

- (a) access any Government asset or property belonging to a Public Authority which is in the possession of or under the control of a public officer or an employee of the Public Authority;
- (b) enter and inspect any premises of the Public Authority;
- (c) search or inspect any document, record or information of the Public Authority, and obtain extracts or copies of the documents, record or information; and
- (d) request from any public officer or employee of the Public Authority any information or document, including electronic data, which is relevant for purposes of an internal audit.

13. With respect to an approved audit plan for a financial year, the Director shall

Procedure for internal auditing.

- (a) utilising best practices, carry out internal audits in respect of the Public Authorities specified in the audit plan; and
- (b) as soon as practicable after concluding an internal audit, submit to the Committee, the head of the Public Authority and the Permanent Secretary responsible for the Public Authority, an audit report of the findings of the audit prepared in accordance with Schedule 2.

Schedule 2

14. If deemed necessary to do so, the Committee may advise the Director to carry out an *ad hoc* investigation of a Public Authority, and the Director shall, upon the completion of this investigation, prepare and submit a report to the Committee.

Ad hoc investigations.

15. (1) The Director may conduct follow-up reviews after an internal audit of a Public Authority to assess any progress made concerning any problem or deficiency identified within the Public Authority by the Department in an audit report.

Follow-up reviews.

(2) In carrying out a follow-up review under subsection (1), the Director may request the head of a Public Authority to submit to the Department a response pertaining to the measures to be taken by the Public Authority with respect to any recommendation made by the Department in an audit report.

Suspicion of irregularity or fraud.

16. (1) If the head of a Public Authority suspects that an irregularity or fraud may have occurred in respect of any Government asset, or property of a Public Authority, he or she shall immediately refer the matter to the Department and shall also submit to the Department all information relating to the suspected irregularity or suspected fraud which he or she may possess.

(2) If during the course of an internal audit the Director or an auditor suspects that an irregularity or fraud concerning a Government asset or property of a Public Authority may have occurred or is occurring, the Director shall immediately inform the Permanent Secretary responsible for the Public Authority, the Auditor General and the Committee about his or her findings.

(3) Where the Director or an auditor reports to the Committee that an irregularity or fraud concerning a Government asset or property of a Public Authority may have occurred, the Committee may inform the Minister of these findings if the Committee considers that the matter should be brought to the attention of the Minister.

(4) In any case where the suspected irregularity or suspected fraud concerning a Government asset or property of a Public Authority appears to be an offence against any law, the Committee shall submit all information that has been submitted to it by the Director to the Commissioner of Police for investigation.

Powers of the Director to give technical advice.

17. The Director may, upon a request by a Public Authority that is being audited or is likely to be audited, render technical advice to that Public Authority on any matter relative to an internal audit.

PART III MISCELLANEOUS

Annual report.

18. (1) The Director shall prepare and submit to the Committee an annual report on the activities of the Department.

(2) The Director shall submit an annual report under subsection (1) at least ninety days after each financial year to the Minister, who shall within three months of receipt thereof lay the report before the House of Assembly.

Independence of the Director and auditors.

19. The Director and the auditors shall not

- (a) have direct responsibility for or take part in the operations of,
- (b) be subject to any direct or indirect influence of, or
- (c) exercise any influence or control over

a Public Authority which is being audited, and shall at all times operate independently of any entity being or likely to be audited.

20. The Director or an auditor shall immediately disclose any conflict which he or she may have concerning an audit, and should disassociate himself or herself from any dealings with that audit.

Conflict of interest.

21. The Director or an auditor shall not be personally liable for any damage suffered by any person in consequence of any act or thing done which is done in good faith or omitted to be done in the course of the exercise or performance of a power, duty or function under this Act.

Personal liability.

22. A member of the Committee, the Director, auditors and any other person appointed to the Department under this Act shall keep confidential all information which comes to their knowledge in the discharge of their duties under this Act.

Confidentiality.

23. A person who

Offences.

- (a) without legitimate excuse, fails to provide any information within his or her knowledge which is relevant to an audit being carried out by the Director or an auditor;
- (b) without legitimate excuse, fails to provide information required by the Director or an auditor or in any way intentionally prohibits the provision of such information;
- (c) deliberately provides inaccurate information or evidence; or
- (d) by any means, impedes the Director or any person involved in an audit, in the performance of their duties under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or imprisonment for a term not exceeding one year, or both.

24. The Minister may, in consultation with the Committee, make Regulations.

Regulations.

- (a) prescribing fees that may be required under this Act;
- (b) prescribing penalties for offences under this Act; and

- (c) for generally carrying out the purposes of this Act.

SCHEDULE 1

[Section 5]

OATH OF CONFIDENTIALITY

I, solemnly swear/affirm that I will honestly and diligently fulfill my duties as Director/ an auditor/an officer of the Internal Audit Department in accordance with the requirements of the Internal Audit Act, 2011, and that I will not, except as provided by law, at any time disclose or make known any matter which comes to my knowledge by reason of my service as an officer of the Department.

So help me God. (if swearing)

.....
Signature of person taking oath/affirming

Sworn and signed before me this day of,20....

.....
Notary Public/Commissioner for Oaths

SCHEDULE 2

[Section 13(b)]

MATTERS WHICH SHALL BE CONTAINED IN AN AUDIT REPORT

An audit report shall

- (a) where necessary, have attached to it copies of audited accounts relating to the report;
- (b) set forth details of an opinion, including a qualification or reservation, if any;
- (c) include, where the Director was unable to form an opinion due to a limitation on the scope of the audit, a reservation by the Director in the form of a denial of opinion on the accounts;
- (d) where the audit report contains a reservation of opinion by the Director, a statement by the Director stating reasons for the reservation, including any deficiency observed and the effect of the deficiency on the accounts;
- (e) state any improper use or misuse of public assets;
- (f) include a statement reflecting relevant accounts, where Government assets have not been accounted for;
- (g) include the name of any person who refused to disclose information when requested to do so by the Director or an auditor;
- (h) state any absence or inadequacy of or non-compliance with systems of internal control; and
- (i) include a statement as to whether or not the audit was conducted in accordance with generally accepted auditing standards.

Passed by the House of Assembly this 21st day of February, 2011.

(Sgd.) ROY HARRIGAN,
Speaker.

(Sgd.) PHYLLIS EVANS,
Clerk of the House of Assembly.