

VIRGIN ISLANDS

AUDIT ACT, 2003

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**No. 13 of 2003
Islands**

Audit Act, 2003

Virgin

I Assent

THOMAS MACAN,

Governor

17th October, 2003

VIRGIN ISLANDS

No. 13 of 2003

An Act to prescribe the powers and duties of the Auditor General and to provide for other matters connected therewith.

[Gazetted 6th November, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

- | | |
|-------------------------|---|
| Short title. | 1. This Act may be cited as the Audit Act, 2003. |
| Interpretation. | 2. In this Act, unless the context otherwise requires,

"Auditor General" means the person appointed as such under section 4; |
| U.K. S.I. 1976 No. 2145 | "Constitution" means the Virgin Islands (Constitution) Order, 1976; |
| Cap. 175 | "financial year" has the meaning assigned to it by section 2 of the Finance Ordinance; and

"Minister" means the Minister responsible for the administration of this Act. |

Application.

3. This Act binds the Crown.

PART I APPOINTMENT OF THE AUDITOR GENERAL

Appointment of
Auditor General.

4. Whenever the office of Auditor General is vacant, the Governor shall, acting after consultation with the Public Service Commission, appoint to hold that office a person the Governor considers to be suitably qualified.

Terms of appointment
of Auditor General.

5. The person holding the office of Auditor General holds that office on terms of appointment from time to time determined in accordance with sections 19 (1) (d) and 65 of the Constitution.

U.K. S.I. 1976 No. 2145

Determination of
appointment of
Auditor General.

6. (1) The appointment of a person to hold the office of Auditor General shall not be revoked by the Governor except on the grounds of disability, neglect of duty or misconduct after the Governor has consulted the Public Service Commission.

(2) Subsection (1) does not prohibit

- (a) a person being appointed to hold the office of Auditor General for a specified period; or
- (b) the appointment of a person to hold the office of Auditor General from providing that the appointment is to determine when the person reaches a specified age, being an age not less than sixty years and not more than seventy years.

Auditor General not to
hold other office.

7. The person holding the office of Auditor General ceases to hold that office if he becomes the holder of any other office of emolument under the Crown.

Appointment of Acting
Auditor General.

- 8.** (1) Where
- (a) the office of Auditor General is vacant, or
 - (b) the Governor is satisfied that the person

holding the office of Auditor General is unable to perform the duties of the office,

the Governor may appoint a public officer to be the Acting Auditor General.

(2) A person appointed to be the Acting Auditor General

- (a) holds the office on such terms and conditions as the Governor may determine; and
- (b) while holding office
 - (i) shall perform all the duties of the Auditor General; and
 - (ii) may exercise all the powers of the Auditor General.

Auditor General's staff.

9. The Governor may, at the request of the Auditor General and after consultation with the Public Service Commission, appoint such number of public officers as the Auditor General may consider necessary to assist the Auditor General in the performance of his duties.

Exercise of powers and performance of duties on behalf of the Auditor General.

10. (1) A duty of the Auditor General, other than the duty to issue an audit report to the Minister in accordance with section 66(3) of the Constitution, may be performed by

- (a) a member of staff of the Auditor General authorised to do so by the Auditor General; or
- (b) a person appointed to do so by the Auditor General.

(2) A person authorised or appointed to perform a duty under this Act is not subject to the direction or control of any other person other than the Auditor General when performing that duty.

(3) A power of the Auditor General may be exercised

by

- (a) a member of staff of the Auditor General authorised to do so by the Auditor General; or
- (b) a person appointed to do so by the Auditor General.

PART II DUTIES OF THE AUDITOR GENERAL

Duties of the Auditor
General – annual audit.
U.K. S.I. 1976 No. 2145

11. (1) The Auditor General, acting in accordance with section 66(2) of the Constitution, shall undertake an audit of the accounts of the Legislative Council and all Government departments and offices, including the Public Service Commission, for each financial year.

(2) The audit shall be undertaken in accordance with good auditing practices and standards generally accepted as applicable to the auditing of the accounts of governments.

(3) At the conclusion of each audit the Auditor General shall submit a report on the audit to the Minister.

(4) The report shall include

- (a) a certificate stating that the audit of the accounts for the financial year has been completed;
- (b) an opinion as to whether those accounts present properly
 - (i) the assets and liabilities of the Legislative Council and all Government departments and offices, including the Public Service Commission, at the end of the financial year; and
 - (ii) the receipts and payments of the Legislative Council and all Government departments and

offices, including the Public Service Commission, during the financial year; and

- (c) such other information as the Auditor General considers necessary or appropriate to assist in a consideration of the audited accounts for that financial year.

Duties of the Auditor General – supplementary audit.

12. (1) The Auditor General shall submit to the Minister a supplementary audit report in respect of each annual audit.

(2) The report shall contain

- (a) details of any instance when a public officer or other person did not fully comply with a requirement by the Auditor General;
- (b) details of any instance the Auditor General considers significant where
 - (i) money was not collected, paid or accounted for in accordance with the law; or
 - (ii) other property was not received, held, issued, sold, transferred, destroyed, or accounted for in accordance with the law; and
- (c) such other comments or observations as the Auditor General considers relevant to the audit including, in particular, comments or observations on
 - (i) any matter relating to the performance of his duties or the exercise of his powers;

- (ii) the records that are being kept or should be kept; and
- (iii) whether resources are being used with proper regard to economy, efficiency and effectiveness.

(3) The Auditor General shall submit the report to the Minister within six months after the conclusion of the relevant annual audit.

(4) The Minister shall, within three months after the receipt of the report, lay the report before the Legislative Council.

Other duties of the Auditor General.

13. The Auditor General shall perform such other duties as are prescribed by any other law.

Principles to be followed by the Auditor General.

14. In performing his duties under this Act, the Auditor General shall, in particular, satisfy himself

- (a) that funds have been used for purposes approved by law and for no other purposes;
- (b) that each payment and receipt was made or received in accordance with the law;
- (c) that adequate instructions have been given to ensure
 - (i) that money is collected, paid and accounted for in accordance with the law, and
 - (ii) that property is received, held, issued, sold, transferred, destroyed, and accounted for in accordance with the law,

and that those instructions are being complied with; and

- (d) that adequate records are being kept
 - (i) of the collection and payment of money; and
 - (ii) of the receipt, custody, issue, sale, transfer or destruction of property.

Auditor General to report offences.

15. If in the course of carrying out his duties it appears to the Auditor General that an offence has been committed, he shall report that fact to the Financial Secretary and the Attorney General.

Disclosure of information.

16. (1) The Auditor General shall not disclose information obtained in the course of performing his duties or exercising his powers.

(2) A person performing a duty on behalf of the Auditor General or exercising a power of the Auditor General shall not disclose information obtained in the course of performing the duty or exercising the power.

(3) Subsections (1) and (2) do not apply to a disclosure

- (a) required or permitted by this or any other enactment;
- (b) lawfully required or permitted by a court;
- (c) which, in the opinion of the Auditor General, should be made known to the Financial Secretary and the Attorney General in accordance with section 15; or
- (d) which the Police may require in the course of conducting investigations into an offence.

(4) A person, other than a public officer, who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Auditor General to provide annual estimate of cost of running office.

17. (1) Prior to the start of each financial year the Auditor General shall prepare and submit to the Minister and the Financial Secretary an estimate of the money that needs to be approved by the Legislative Council for the expenses of his office during that financial year.

(2) Where the Auditor General is of the opinion that the amount proposed for the expenses of his office in the Government's estimates submitted to the Legislative Council is insufficient to allow him to carry out his duties, he may submit a report in respect of the insufficiency to the Speaker of the Legislative Council.

(3) The Speaker shall send a copy of the report to each member of the Legislative Council.

(4) The Auditor General shall at the same time as submitting the report to the Speaker submit a copy of the report to the Minister and the Financial Secretary.

(5) The members of the Legislative Council shall, in discussing the Government's estimates, take into account the report submitted by the Auditor General.

Limit on the Auditor General undertaking work outside his duties.

18. The Auditor General shall not undertake work outside his duties except with the written approval of the Governor.

PART III POWERS OF THE AUDITOR GENERAL

Powers of the Auditor General.

19. (1) The Auditor General has all the powers necessary to enable him to perform his duties.

(2) In particular, the Auditor General has power to require a public officer

(a) to conduct, on behalf of the Auditor General, an inquiry, examination or audit and to report his findings to the Auditor

General;

- (b) to give the Auditor General access to property that is in the public officer's possession or under his control as a result of the officer's duties;
- (c) to search and provide extracts from Government records or records to which the Government has access; or
- (d) to give or provide to the Auditor General any explanation or information the Auditor General considers necessary to enable him to perform his duties.

(3) A public officer shall comply with a requirement under subsection (2).

Auditor General may submit special report.

20. (1) The Auditor General may at any time prepare and submit a special report to the Governor if he is satisfied that there is a matter that should be brought to the attention of the Governor.

(2) The Governor shall, within three months of the receipt of the special report, cause the report to be laid before the Legislative Council.

(3) The Auditor General shall at the same time as submitting the special report to the Governor submit a copy of the special report to the Minister and the Financial Secretary.

Auditing of accounts of bodies corporate, etc.

21. (1) Where by virtue of any enactment the Auditor General is appointed to audit the accounts of a body corporate or other body established by such enactment, he

- (a) shall have, in relation to the body corporate or other body and its members, officers and employees, the same discretion and powers as are conferred upon him under this Act in relation to the accounts of the body corporate or other body; and
- (b) may authorise any person who appears to him suitable to inspect, examine or audit the books,

accounts and other records of the body corporate or other body and submit a report to him upon the completion of the inspection, examination or auditing.

(2) Any person authorised under subsection (1)(b) shall be subject to the provisions of section 16(2) and (4).

(3) Notwithstanding subsection (1) or anything to the contrary contained in any enactment, the Auditor General may, in the public interest, audit the accounts of any body corporate, or other body established or funded, in whole or in part, by the Government, and in the performance of that duty the Auditor General shall have the same discretion and powers as are conferred upon him by this Act.

(4) Where the Auditor General audits the accounts of a body corporate or other body under subsection (3), he may, upon the completion of the audit, prepare and submit a report to the Governor who shall, within three months of the receipt thereof, cause the report to be laid before the Legislative Council.

(5) The fee for any inspection, examination or audit effected in accordance with this section shall be determined by the Auditor General and be charged upon the funds of the body corporate or other body concerned.

PART IV MISCELLANEOUS

Repeal.
Cap. 173

22. The Audit Ordinance, 1970 is repealed.

Transitional
provision.

23. (1) The person, if any, who immediately before the commencement of this Act held the position of Chief Auditor under the Audit Ordinance, 1970 holds as from that commencement the office of Auditor General as if the person had been appointed to that office in accordance with this Act.

U.K. S.I. 1976 No. 2145

(2) Until the Governor otherwise determines in accordance with section 19 (1) (d) of the Constitution or his salary or other remuneration is otherwise prescribed by or under a law enacted in accordance with section 65(1) of the Constitution, the terms and conditions of service of a person to whom subsection (1) applies are the terms and conditions

applicable to that person immediately before the commencement of this Act.

(3) Subsection (2) is subject to section 65(3) of the Constitution.

Amendment of
Interpretation Act.
Cap. 136

24. Section 43 of the Interpretation Act is amended by deleting the words "Chief Auditor" and the definition assigned thereto and substituting the following in the appropriate alphabetical order:

““Auditor General” means the Auditor referred to in section 66 of the Constitution and appointed under section 4 of the Audit Act, 2003;”.

Passed by the Legislative Council this 30th day of September, 2003.

V. INEZ ARCHIBALD,
Speaker.

DENNISTON FRASER,
Clerk of the Legislative Council.