

## PUBLIC AUDIT AMENDMENT ACT NO. 5 OF 2018

[ASSENTED TO 18 NOVEMBER, 2018]  
[DATE OF COMMENCEMENT: 1 APRIL, 2019]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 42317 dated 18 March, 2019.

### ACT

To amend the Public Audit Act, 2004, so as to delete certain definitions and to insert new definitions; to provide for certainty regarding the discretion of the Auditor-General with regard to certain audits; to authorise the Auditor-General to undertake performance audits and to provide audit or audit related services to an international association, body, institution or organisation; to provide for the Auditor-General to refer suspected material irregularities arising from an audit performed under this Act, to a relevant public body for investigation; to empower the Auditor-General to take appropriate remedial action; to provide for the Auditor-General to issue a certificate of debt where an accounting officer or accounting authority failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt; to provide for the establishment, powers and functions of a remuneration committee; to provide for consultation between the Independent Commission for the Remuneration of Public Office-bearers and the remuneration committee; to provide for additional reporting requirements; to provide for the defraying of certain excess audit fees as a direct charge against the National Revenue Fund; to revise the provisions relating to the appointment of an audit committee for the Auditor-General; to provide that the Auditor-General makes regulations on specific issues; to substitute certain expressions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows-

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 1. Amendment of section 1 of Act 25 of 2004, as amended by section 14 of Act 22 of 2014.-Section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004) (hereinafter referred to as the "principal Act"), is hereby amended-**

**1. Amendment of [section 1 of Act 25 of 2004](#), as amended by [section 14 of Act 22 of 2014](#).-[Section 1](#) of the Public Audit Act, 2004 ([Act No. 25 of 2004](#)) (hereinafter referred to as the "principal Act"), is hereby amended-**

(a) by the insertion before the definition of "audit" of the following definition-

" **'accounting authority'** means a body or person defined as an accounting authority in the Public Finance Management Act, or any body or person designated as an accounting authority in terms of any other law, as the case may be;

(b) by the substitution for the definition of "accounting entity" of the following definition:

" **'accounting entity'** means an accounting entity referred to in [section 188 \(1\) \(c\)](#) of [the Constitution](#)";

(c) by the insertion before the definition of "auditee" of the following definition-

" **'accounting officer'** means a person defined as an accounting officer in the Public Finance Management Act or the Municipal Finance Management Act, or any person designated as an accounting officer in terms of any other law, as the case may be";

(d) by the insertion after the definition of "audit fees" of the following definition-

" **'Auditing Profession Act'** means the Auditing Profession Act, 2005 ([Act No. 26 of 2005](#));

(e) by the insertion after the definition of "authorised auditor" of the following definition-

" **'Constitution'** means [the Constitution](#) of the Republic of South Africa, 1996";

(f) by the insertion after the definition of "Deputy Auditor-General" of the following definition-

" **'executive authority'** means the executive authority as provided for in any relevant legislation applicable to an auditee";

(g) by the insertion after the definition of "legislature" of the following definition-

" **'material irregularity'** means any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in a material

financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public;"

(h) by the insertion after the definition of "oversight mechanism" of the following definition-

" **'prescribed'** means prescribed by regulation made in terms of section 52;"

(i) by the deletion of the definition of "Public Accountants' and Auditors' Act";

(j) by the insertion after the definition of "relevant legislature" of the following definition-

" **'remuneration committee'** means the remuneration committee established in terms of section 5 (2) (bA);" and

(k) by the substitution for the full stop at the end of the definition of "supreme audit institution" of a semi colon and the insertion after that definition of the following definition-

" **'this Act'** includes the regulations."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 2. Amendment of section 4 of Act 25 of 2004.-Section 4 of the principal Act is hereby amended-**

**2. Amendment of [section 4 of Act 25 of 2004](#).**-Section 4 of the principal Act is hereby amended-

(a) by the insertion after subsection (3) of the following subsection-

"(3A) The discretion of the Auditor-General as contemplated in subsection (3) applies to any public entity contemplated in subsection (3) (a) and any other institution contemplated in subsection (3) (b) that meets prescribed criteria."; and

(b) by the substitution for subsection (4) of the following subsection-

"(4) In the event of any conflict between this section and any other legislation, this section prevails."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 3. Amendment of section 5 of Act 25 of 2004.-Section 5 of the principal Act is hereby amended-**

**3. Amendment of [section 5 of Act 25 of 2004](#).**-Section 5 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection-

"(1) The Auditor-General may, at a fee, and without compromising the role of the Auditor-General as an independent auditor-

(a) provide audit related services to an auditee referred to in section 4 (1) or (3) or other body, which is commonly performed by a supreme audit institution on condition that-

(i) no services may be provided in respect of any matter that may subsequently have to be audited by the Auditor-General;

(ii) such service will not directly result in the formulation of policy; and

(iii) there must be full and proper disclosure of such services in terms of section 10 (1) (b);

(aA) perform an appropriate audit of any institution referred to in section 4 (1) or (3) to determine whether appropriate and adequate measures have been implemented to ensure that resources are procured economically and utilised efficiently and effectively;

(aB) provide audit and audit related services commonly performed by an independent audit institution to an international association, body, institution or organisation on condition that-

(i) such service does not-

(aa) compromise the efficiency;

(bb) put an undue strain on the resources; or

(cc) detract from the constitutional functions, of the Auditor-General; and

(ii) there must be full and proper disclosure of such services in terms of section 10 (1) (b);

(b) provide advice and support to a legislature or any of its committees outside the scope of the Auditor-General's normal audit and reporting functions;

(c) provide comments in a report on any responses by an auditee to reported audit findings, or responses by an auditee to a report of any legislature arising from its review of an audit report; or

- (d) carry out an appropriate investigation or special audit of any institution referred to in section 4 (1) or (3), if the Auditor-General considers it to be in the public interest or upon the receipt of a complaint or request.";
- (b) by the insertion after subsection (1) of the following subsections-
- "(1A) The Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and the final outcome of the investigation.
- (1B) The Auditor-General has the power to-
- (a) take any appropriate remedial action; and
- (b) issue a certificate of debt, as prescribed, where an accounting officer or accounting authority has failed to comply with remedial action,
- as set out in Part 1A of this Chapter."; and
- (c) by the substitution for subsection (2) of the following subsection-
- "(2) In addition to subsections (1), (1A) and (1B), the Auditor-General-
- (a) may co-operate with persons, institutions and associations, nationally and internationally;
- (b) may appoint advisory and other structures outside the administration of the Auditor-General to provide specialised advice to the Auditor-General;
- (bA) must establish a remuneration committee, consisting of not less than three and not more than five members of which the majority may not be in the employ of the Auditor-General, and who must be suitably qualified and experienced in human resource practices, including remuneration practices, to make recommendations to-
- (i) the Independent Commission on the salary, allowances and benefits of the Auditor-General; and
- (ii) the Auditor-General on the conditions of employment, the remuneration, allowances and benefits of the employees of the Auditor-General contemplated in section 34;
- (bB) must appoint a chairperson of the remuneration committee from the members contemplated in paragraph (bA), who must not be in the employ of the Auditor-General; and
- (c) may do any other thing necessary to fulfil the role of Auditor-General effectively.".

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 4. Insertion of Part 1A in Chapter 2 of Act 25 of 2004.-The following part is hereby inserted in Chapter 2 after Part 1 of the principal Act-**

**4. Insertion of Part 1A in Chapter 2 of [Act 25 of 2004](#).**-The following part is hereby inserted in Chapter 2 after Part 1 of the principal Act-

"PART 1A  
REMEDIAL ACTION

**Taking remedial action**

**5A.** (1) The Auditor-General must, within a reasonable time after the issuing of an audit report in terms of section 20, follow up on whether the accounting officer or accounting authority has implemented the recommendations contained in the audit report relating to any material irregularity, within the time-frame stipulated in the audit report.

(2) If the accounting officer or accounting authority has failed to implement the recommendations contained in the audit report referred to in subsection (1), the Auditor-General must take appropriate remedial action to address the failure to implement the recommendations.

(3) Where a material irregularity resulted in a financial loss to the State, and the accounting officer or accounting authority failed to implement the recommendations contained in the audit report referred to in subsection (1), the remedial action taken by the Auditor-General in terms of subsection (2) must include a directive to the accounting officer or accounting authority to determine the amount of the loss, if not yet determined, and to recover such loss as required in terms of any applicable legislation, from the responsible person.

**Failure to comply with specific remedial action**

**5B.** (1) Subject to subsections (4) and (5), where the accounting officer or accounting authority has failed to implement the remedial action referred to in section 5A (3), the Auditor-General must issue a certificate of debt, as prescribed, to the accounting officer or accounting authority requiring the accounting officer or accounting authority to repay the amount specified in the certificate of debt to the State.

(2) The Auditor-General must submit a copy of the certificate of debt, referred to in subsection (1), to the responsible executive authority to collect the amount specified in the certificate of debt from the accounting officer or accounting authority in terms of the debt recovery process applicable to the executive authority.

(3) The executive authority must keep the Auditor-General informed of progress made in collecting the amount due by the accounting officer or accounting authority.

(4) The Auditor-General, in determining whether to issue a certificate of debt in terms of subsection (1), must consider the written representations, as prescribed, received from the accounting officer or accounting authority, and may have due regard to-

- (a) the progress or outcome of an investigation conducted by the Auditor-General in terms of section 29;
- (b) the progress or outcome of any investigation contemplated in section 5 (1A); or
- (c) any other relevant factor.

(5) If the Auditor-General still intends to issue the certificate of debt after the consideration of the written representations, the Auditor-General must-

- (a) afford the accounting officer or accounting authority an opportunity to make an oral representation, as prescribed, to an advisory structure, established for this purpose in terms of section 5 (2) (b); and
- (b) consider the written recommendations of the advisory structure referred to in paragraph (a) before issuing the certificate.

(6) The Auditor-General must submit a copy of the certificate of debt issued in terms of subsection (1) to the relevant legislature for tabling in the relevant legislature."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 5. Amendment of section 7 of Act 25 of 2004, as amended by section 15 of Act 22 of 2014.-Section 7 of the principal Act is hereby amended by the substitution for subsection (1A) of the following subsection-**

**5. Amendment of [section 7 of Act 25 of 2004](#), as amended by [section 15 of Act 22 of 2014](#).**-Section 7 of the principal Act is hereby amended by the substitution for subsection (1A) of the following subsection-

"(1A) The Independent Commission must, when investigating or considering the salary, allowances and benefits of the Auditor-General, consult with-

- (a) the Cabinet member responsible for finance; and
- (b) the remuneration committee contemplated in section 5 (2) (bA) and consider any recommendations made by the remuneration committee."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 6. Amendment of section 10 of Act 25 of 2004.-Section 10 of the principal Act is hereby amended-**

**6. Amendment of [section 10 of Act 25 of 2004](#).**-Section 10 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for [paragraph \(b\)](#) of the following paragraph-  
"(b) the categories of services provided in terms of section 5 (1) (a), (aA) and (aB);";
- (b) by the deletion in subsection (1) of the word "and" at the end of [paragraph \(c\)](#); and
- (c) by the substitution in subsection (1) for the full stop at the end of paragraph (d) of a semi colon and by the addition after paragraph (d) of the following paragraphs-  
"(e) any matters referred for investigation in accordance with section 5 (1A);  
(f) any remedial action taken in terms of section 5A (2); and  
(g) any certificate of debt issued in terms of section 5B (1)."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 7. Amendment of section 12 of Act 25 of 2004.-Section 12 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph-**

**7. Amendment of [section 12 of Act 25 of 2004](#).**-Section 12 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph-

"(b) after consulting the oversight mechanism, issue a code of conduct for authorised auditors, setting out-".

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 8. Amendment of section 13 of Act 25 of 2004.-Section 13 of the principal Act is hereby amended-**

**8. Amendment of [section 13 of Act 25 of 2004](#).**-Section 13 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for [paragraph \(b\)](#) of the following paragraph-  
"(b) the frequency, nature and scope of such audits; and"; and
- (b) by the insertion after subsection (1) of the following subsection-  
"(1A) The Auditor-General must consult the National Treasury annually on the matters referred to in subsection (1) (b) to facilitate the determination of audit fees in terms of section 23."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 9. Amendment of section 20 of Act 25 of 2004.-Section 20 of the principal Act is hereby amended-**

**9. Amendment of [section 20](#) of [Act 25 of 2004](#).-Section 20 of the principal Act is hereby amended-**

- (a) by the substitution for subsection (2) of the following subsection-  
"(2) An audit report must reflect such opinions and statements as may be required by any legislation applicable to the auditee which is the subject of the audit, and must reflect an opinion, conclusion or findings on-
  - (a) the financial statements of the auditee in accordance with the applicable financial reporting framework and legislation;
  - (b) compliance with any applicable legislation relating to financial matters, financial management and other related matters; and
  - (c) reported performance of the auditee against its predetermined objectives."; and
- (b) by the addition after subsection (3) of the following subsection-  
"(4) An audit report may contain recommendations to address any matter raised in subsection (2)."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 10. Amendment of section 23 of Act 25 of 2004.-Section 23 of the principal Act is hereby amended-**

**10. Amendment of [section 23](#) of [Act 25 of 2004](#).-Section 23 of the principal Act is hereby amended-**

- (a) by the substitution for subsection (6) of the following subsection-  
"(6) Subject to subsection (7), if-
  - (a) the audit fee of an auditee, other than a department as defined in [section 1](#) of the Public Finance Management Act, exceeds one percent of the total current and capital expenditure of such auditee for the relevant financial year; and
  - (b) the National Treasury-
    - (i) was consulted, as required by subsection (1); and
    - (ii) is of the opinion that the auditee has financial difficulty to pay such excess,such excess is to be defrayed in terms of the Act that authorises the defrayment of the excess as a direct charge against the National Revenue Fund."; and
- (b) by the addition after subsection (6) of the following subsection-  
"(7) (a) The Auditor-General and the National Treasury must agree in writing on-
  - (i) the annual date of consultation contemplated in section 13 (1A) and subsection (1);
  - (ii) the criteria to be applied to determine whether an auditee has financial difficulty as contemplated in subsection (6) (b) (ii); and
  - (iii) a process to determine an estimate of the funds required annually as a direct charge for the audit fees referred to in subsection (6), read with the Act that authorises the excess as a direct charge against the National Revenue Fund.

(b) If the Auditor-General and the National Treasury fail to conclude a written agreement within six months after the commencement of this subsection, the oversight mechanism must, after consultation with the Auditor-General and National Treasury, determine the annual date of consultation, the criteria to determine whether an auditee has financial difficulty and the process to determine the estimate of funds as referred to in [paragraph \(a\)](#).

(c) The annual date of consultation, the criteria to determine whether an auditee has financial difficulty or process agreed to in terms of [paragraph \(a\)](#) or determined by the oversight mechanism in terms of [paragraph \(b\)](#), may be amended in writing by the Auditor-General and the National Treasury."

(Date of commencement of [s. 10](#): 1 April, 2000.)

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 11. Amendment of section 27 of Act 25 of 2004.-Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection-**

**11. Amendment of [section 27](#) of [Act 25 of 2004](#).**-Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection-

"(1) An auditor appointed in terms of section 25 (1) (b) must perform the functions of office as auditor in terms of the Auditing Profession Act and any other applicable legislation."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 12. Amendment of section 34 of Act 25 of 2004.-Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection-**

**12. Amendment of [section 34](#) of [Act 25 of 2004](#).**-Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection-

"(3) (a) Persons appointed in terms of this section are employed subject to the terms and conditions of employment determined by the Auditor-General, and must be paid the remuneration, allowances and benefits determined by the Auditor-General, subject to section 35 and after considering the recommendations of the remuneration committee.

(b) Terms and conditions of employment contemplated in paragraph (a) must be consistent with the basic values and principles set out in [section 195](#) of [the Constitution](#)."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 13. Amendment of section 40 of Act 25 of 2004.-Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection-**

**13. Amendment of [section 40](#) of [Act 25 of 2004](#).**-Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection-

"(1) The Auditor-General must-

- (a) establish an audit committee contemplated in section 43 (3) (b) (ii); and
- (b) appoint the members of the audit committee."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 14. Amendment of section 41 of Act 25 of 2004.-Section 41 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection-**

**14. Amendment of [section 41](#) of [Act 25 of 2004](#).**-Section 41 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection-

"(2) The financial statements must be in accordance with international best practice."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 15. Amendment of section 52 of Act 25 of 2004.-Section 52 of the principal Act is hereby amended-**

**15. Amendment of [section 52](#) of [Act 25 of 2004](#).**-Section 52 of the principal Act is hereby amended-

(a) by the insertion after subsection (1) of the following subsection-

"(1A) The Auditor-General must, within 90 days of the date of commencement of the Public Audit Amendment Act, 2018, make regulations on-

- (a) the criteria to be considered in determining how to exercise his or her discretion contemplated in section 4 (3);
  - (b) the nature and category of matters in respect of which an investigation or special audit contemplated in section 5 (1) (d) may be carried out;
  - (c) the criteria for the referral of matters contemplated in section 5 (1A);
  - (d) the process, time-frames and form for the written and oral representations contemplated in section 5B (4) and (5); and
  - (e) the form and content of the certificate of debt issued in terms of section 5B (1).";
- and

(b) by the substitution for subsection (2) of the following subsection-

"(2) The Auditor-General must, after consultation with the oversight mechanism, submit

any regulations made in terms of subsections (1) and (1A) to the Speaker for tabling in the National Assembly."

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 16. Amendment of certain expressions in Act 25 of 2004.-The principal Act is hereby amended-**

**16. Amendment of certain expressions in [Act 25 of 2004](#).**-The principal Act is hereby amended-

- (a) by the substitution for the expression "Public Accountants' and Auditors' Act", wherever it occurs in the principal Act, of the expression "Auditing Profession Act"; and
- (b) by the substitution for the expression "executive authority within the meaning of the Public Finance Management Act", wherever it occurs in the principal Act, of the expression "executive authority".

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 17. Amendment of arrangement of sections.-The arrangement of sections of the principal Act is hereby amended by the insertion after the reference to the heading to section 5 of the following Part-**

**17. Amendment of arrangement of sections.**-The arrangement of sections of the principal Act is hereby amended by the insertion after the reference to the heading to [section 5](#) of the following Part-

"PART 1A  
REMEDIAL ACTION

- 5A.** Taking remedial action
- 5B.** Failure to comply with specific remedial action".

**National Legislation/ Amendment Acts/ P/ Public Audit Amendment Act, No. 5 of 2018/ 18. Short title and commencement.**-(1) This Act is called the Public Audit Amendment Act, 2018, and subject to subsections (2) and (3), comes into operation on a date fixed by the President by proclamation in the Gazette.

**18. Short title and commencement.**-(1) This Act is called the Public Audit Amendment Act, 2018, and subject to [subsections \(2\)](#) and [\(3\)](#), comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) [Section 5](#) of this Act will come into operation on the date when the Determination of Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014 ([Act No. 22 of 2014](#)), comes into operation or on the date contemplated in [subsection \(1\)](#), whichever date is the later.

(3) [Section 10](#) of this Act will come into operation when the Act envisaged in section 23 (6) of the principal Act (as to be amended by this Act) takes effect.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
1 April, 2000	<a href="#">S. 10</a> comes into operation when the Public Finance Management Act envisaged in s. 23 (6) of the principal Act (as to be amended by this Act) takes effect	1260	42045	20 November, 2018
1 April, 2019	Whole Act, except <a href="#">s. 10</a>	13	42317	18 March, 2019

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