

THE STATE AUDIT COMMISSION BILL, 2016

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the membership, functions, operations and financial management of the State Audit Commission; and
- (b) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

THE STATE AUDIT COMMISSION BILL, 2016

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A BILL

ENTITLED

An Act to provide for the membership, functions, operations and financial management of the State Audit Commission; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the State Audit Commission Act, 2016, and shall come into operation on such date as the Minister may appoint by statutory instrument.

Short title and commencement
2. In this Act, unless the context otherwise requires—

Interpretation
- “ associate ” has the meaning assigned to it in the Anti-Corruption Act, 2012;

Act No. 3 of 2012
- 10 “ Audit-or-General ” means the Auditor-General appointed under Article 249 of the Constitution;

Cap. 1
- “ Chairperson ” means the person appointed Chairperson of the Commission under section *five*;
- 15 “ Commission ” means the State Audit Commission established by Article 234 of the Constitution;

Cap. 1
- “ emoluments ” has the meaning assigned to it in the Constitution;

Cap. 1
- 20 “ Emoluments Commission ” means the Emoluments Commission established under Article 232 of the Constitution;

Cap. 1

Act No. 17 of 2010	“Engineering Institution of Zambia ” means the Engineering Institution of Zambia established under the Engineering Institution of Zambia Act, 2010;	
Cap. 31	“ Law Association of Zambia ” means the Law Association of Zambia established under the Law Association of Zambia Act;	5
	“ member ” means a person appointed as a member of the Commission under section <i>five</i> ;	
Act No. of 2016	“ National Audit Office ” means the National Audit Office established under the Public Audit Act, 2016;	10
Cap. 1	“ oath ” has the meaning assigned to it in the Constitution;	
	“ relative ” means—	
	(a) a person’s son, daughter, brother, sister, nephew, niece, parent, uncle, aunt, grandparent or cousin; and	15
	(b) a person’s spouse or the spouse of any of the persons mentioned in paragraph (a);	
	“ Secretary ” means a person appointed as Secretary of the Commission under section <i>nine</i>	
Cap. 1	“ State institution ” has the meaning assigned to it in the Constitution;	20
Cap. 1	“ State organ ” has the meaning assigned to it in the Constitution;	
	“ Vice-Chairperson ” means the person elected Vice-Chairperson of the Commission under section <i>five</i> ;	
Act No. 13 of 2008	“ Zambia Institute of Chartered Accountants ” means the Zambia Institute of Chartered Accountants continued under the Accountants Act, 2008; and	25
Act No. 11 of 1997	“ Zambia Institute of Human Resources Management ” means the Zambia Institute of Human Resources Management established under the Zambia Institute of Human Resources Management Act, 1997.	30

PART II

THE STATE AUDIT COMMISSION

3. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

Seal of
Commission

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Commission.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf of the Commission by the Secretary or any other person generally or specifically authorised by the Commission in that behalf.

(4) A document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

4. (1) The Commission shall perform the functions set out in Article 234 of the Constitution. (2) Without prejudice to the generality of subsection (1), the functions of the Commission are to—

Functions of
Commission
Cap. 1

(a) oversee the undertaking of the functions by the National Audit Office;

(b) appoint auditors and other staff as are necessary to assist the Auditor-General in the performance of the Auditor-General's functions under the Constitution, the Public Audit Act, 2016, and any other written law;

Cap. 1

(c) exercise disciplinary powers in relation to auditors and other staff of the National Audit Office;

Act No. of
2016

(d) promote auditors and other staff of the National Audit Office;

(e) receive and investigate complaints from any person relating to the performance of functions by the National Audit Office;

- (f) monitor and evaluate the performance of the National Audit Office;
- (g) review and recommend the approval of the budget estimates of the National Audit Office;
- (h) appoint external auditors to audit the National Audit Office; 5
and
- (i) do all such other things as are necessary or incidental to the performance of its functions under the Constitution and this Act.
- Cap. 1
- (3) The Commission may, in furtherance of its functions— 10
- (a) collect information that it considers relevant for the performance of its functions;
- (b) undertake consultations with stakeholders or hold inquiries for the purposes of performing its functions under this Act; and 15
- (c) receive written or oral statements from any person or organisation for purposes of its functions under the Constitution and this Act.
- Cap. 1
- Composition of Commission
5. (1) The Commission consists of the following part-time members appointed by the President: 20
- (a) the Chairperson;
- (b) a representative each of the—
- (i) Zambia Institute of Chartered Accountants;
- (ii) Law Association of Zambia;
- (iii) Zambia Institute of Human Resource 25
Management; and
- (iv) Engineering Institution of Zambia; and
- (c) the Auditor-General, as *ex officio* member.
- (2) The members shall elect the Vice-Chairperson from amongst themselves. 30
- (3) A person qualifies for appointment as Chairperson if that person—
- (a) holds a degree, or an equivalent qualification, from a higher education institution established, registered or declared under the Higher Education Act, 2013; and 35
- (b) has at least fifteen years' experience in—
- Act No. 4 of 2013

- 5 (i) accounting and auditing;
(ii) finance and administration;
(iii) economics;
(iv) human resource management;
(v) public management; or
(vi) law.

(4) A member of the Commission shall hold office for a term of five years and may be reappointed for a further term of five years.

- 10 (5) The office of a member becomes vacant if the member —
(a) dies;
(b) is absent without reasonable excuse, from three consecutive meetings of the Commission of which the member had notice;
15 (c) is adjudged bankrupt;
(d) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine;
(e) is removed by the President; or
20 (f) is mentally or physically incapable of performing the duties of a member.

(6) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four
25 months.

(7) Whenever the office of a member becomes vacant before the expiry of the term of office, the President may appoint another person to be a member in place of the member who vacates the office for the unexpired term of that office.

- 30 6. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

Proceedings
of
Commission

(2) The Commission shall meet for the transaction of its business at least once in every three months at such places and times as the Chairperson may determine.

- 35 (3) Three members shall form a quorum at a meeting of the Commission.

(4) There shall preside at a meeting of the Commission—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson;
and

(c) in the absence of the Chairperson and the Vice- 5
Chairperson, such other member as the members
present may elect for the purposes of that meeting.

(5) A decision of the Commission on any question shall be by
a majority of the members present and voting at the meeting and in
the event of an equality of votes, the person presiding at the meeting 10
shall have a casting vote in addition to that person's deliberative
vote.

(6) The Commission may invite a person, whose presence is
in its opinion desirable, to attend and to participate in the deliberations
of the meeting of the Commission, but that person shall have no 15
vote.

(7) The validity of any proceedings, acts or decisions of the
Commission shall not be affected by any vacancy in the membership
of the Commission or by any defect in the appointment of any
member or by reason that any person not entitled to do so took part 20
in the proceedings.

(8) The Commission shall cause minutes to be kept of the
proceedings of its meetings.

Committees 7. (1) The Commission may, for the purpose of performing its
functions under this Act, establish such committees as it considers 25
necessary and delegate to any of those committees such of its
functions as it considers fit.

(2) The Commission may appoint as members of a committee,
persons who are or are not members, except that at least one
member shall be a member of a committee. 30

(3) A person serving as a member of a committee shall hold
office for such period as the Commission may determine.

(4) Meetings of the committee shall be held at such times as
the committee may determine or as the Commission shall direct.

(5) Subject to any specific or general direction of the 35
Commission, a committee may regulate its own procedure.

(6) A committee shall keep minutes of its meetings and shall keep the Commission informed of its activities.

8. A member of the Commission or any committee of the Commission shall be paid such emoluments as the Emoluments Commission may determine.

9. (1) The Commission shall appoint the Secretary who shall— Secretary and other staff

(a) be the chief executive officer of the Commission;

(b) be responsible for the day-to-day administration of the Commission;

10 (c) be an *ex-officio* member of the Commission; and

(d) perform the functions conferred upon the Secretary by, or under, this Act.

(2) The terms and conditions of service of the Secretary shall be determined by the Emoluments Commission.

15 (3) The Commission shall appoint such other staff and officers of the Commission as are necessary for purposes of this Act on such terms and conditions as determined by the Emoluments Commission.

20 10. (1) A person who is present at a meeting of the Commission or any committee at which any matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

30 (3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

35 11. (1) A person shall not, without the consent, in writing, given by or on behalf of the Commission, publish or disclose to an unauthorised person, in the course of duties of that person, the contents of a document, communication or information, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act. Prohibition of publication or disclosure of information to unauthorised persons

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Oath on
appointment
Cap. 5

12. (1) A member of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

Cap. 5

(2) The officers of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

Immunity

13. An action or other proceeding shall not lie or be instituted against a member of the Commission, a member of a committee of the Commission or a member of staff of the Commission for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

PART III

FINANCIAL PROVISIONS

Funds of
Commission

14. (1) The funds of the Commission shall consist of such monies as may—

- (a) be appropriated to the Commission by Parliament;
- (b) be paid to the Commission by way of grants or donations;
- or
- (c) otherwise vest in or accrue to the Commission.

(2) The Commission may—

- (a) in consultation with the Minister accept monies by way of grants or donations from any source within or outside Zambia; and
- (b) subject to the approval of the Minister raise by way of loans or otherwise, such monies as it may require for the discharge of its functions.

- (3) There shall be paid from the funds of the Commission—
- (a) the emoluments of the members and staff of the Commission;
 - (b) such travelling and other allowances for the members of staff, and the members of a committee when engaged on the business of the Commission, at such rates as the Commission may approve; and
 - (c) any other expenses incurred by the Commission in the performance of its functions under this Act.
- (4) The Commission may, with the approval of the President, invest in such manner as it considers appropriate such funds of the Commission that it does not immediately require for the discharge of its functions.
- 15.** The financial year of the Commission shall be a period of twelve months ending on 31st December in each year. Financial year
- 16.** (1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts. Accounts and audit
- (2) The accounts of the Commission shall be audited annually by an external auditor appointed by the Auditor General.
- (3) The external auditor's fees shall be paid by the Commission.
- 17.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year. Annual report
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report—
- (a) an audited statement of financial position;
 - (b) an audited statement of comprehensive income; and
 - (c) such other information as the President may require.
- (3) The Minister responsible for finance shall cause to be prepared an annual statement of the income and expenditure of the Commission to be laid before the National Assembly.

PART IV

GENERAL PROVISIONS

Privileged
reports

18. A report, statement or other communication or record of a meeting, inquiry or proceeding of the Commission relating to the performance of its functions or a report, statement or other communication or record made by a member for the purposes of the Commission in the course of duty, and any application form, report or other communication dispatched to the Commission in connection with the performance of its functions, and in the possession of the Commission, is privileged and shall not be produced or compelled in any legal proceeding unless the Chairperson so directs in writing or a court so orders. 5 10

General
offences

19. A person who—

- (a) willfully publishes, causes or allows to be published in any manner, false or misleading information, otherwise than in the course of that person's duty; 15
- (b) directly or indirectly influences a decision of the Commission;
- (c) gives false or misleading information to the Commission, committee or the Secretary; and 20
- (d) hinders or obstructs the Commission in the performance of its functions under this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both. 25

Regulations

20. The Commission may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.