

REPUBLIC OF SOUTH AFRICA

DRAFT PUBLIC AUDIT AMENDMENT BILL

(As initiated by the Standing Committee on the Auditor-General, as a Committee Bill, for introduction in the National Assembly (proposed section 75); prior notice of introduction published in Government Gazette No. of)

(The English text is the official text of the Bill)

(STANDING COMMITTEE ON THE AUDITOR-GENERAL)

[B— 2017]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Audit Act, 2004, so as to insert new definitions; to provide for certainty on the discretion of the Auditor-General with regard to certain audits; to authorise the Auditor-General to provide audit or audit related services to an international association, body, institution or organisation; to provide for the Auditor-General to refer undesirable audit outcomes, arising from an audit performed under the Act, to an appropriate body for investigation; to provide for the Auditor-General to recover losses in certain instances against the responsible persons; 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 a maximum amount or percentage of audit fees that can be defrayed from the vote of National Treasury; to revise the provisions relating to the appointment of an audit committee for the Auditor-General; to empower the Auditor-General to make regulations on specific issues; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 25 of 2004, as amended by section 14 of Act 22 of 2014

1. 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 definitions:

“ ‘**accounting authority**’ means a body or person defined as an accounting authority in the Public Finance Management Act, or means any body or person designated as an accounting authority in terms of any other law, as the case may be, and includes former members of an accounting authority, former Chief Executive Officers or other persons formerly appointed as an accounting authority;

‘**accounting entity**’ means an accounting entity referred to in section 188(1)(c) of the Constitution;

‘**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, and includes any former accounting officer;”;

(b) by the deletion of the definition of “accounting entity” after the definition of “audit”;

(c) by the insertion after the definition of “authorised auditor” of the following definition:

“ **‘Constitution’** means the Constitution of the Republic of South Africa, 1996;”;

(d) by the insertion after the definition of “constitutional institution” of the following definitions:

“ **‘debt’** means the amount owed by the debtor as specified in the certificate issued by the Auditor-General in terms of section 5(1B)(b);

‘debtor’ means the —

(a) accounting officer; or

(b) accounting authority or individual members of the accounting authority,

identified in the certificate issued by the Auditor-General in terms of section 5(1B)(b) as liable for the debt either individually or jointly and severally, as the case may be;”;

(e) by the insertion after the definition of "oversight mechanism" of the following definition:

“ **‘prescribed’** means prescribed by regulations;”;

- (f) 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

- (g) 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 definitions:

" **‘this Act’** includes the regulations;

‘undesirable audit outcome’ means any act or omission identified from an audit performed under this Act that causes, or is likely to cause, a loss of public resources or which resulted in or is likely to result in public resources not being used for its lawful purpose."

Amendment of section 4 of Act 25 of 2004

2. Section 4 of the principal Act is hereby amended—

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

"(3A) Despite the provisions of any other law, 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 **[a provision of]** this section and any other legislation, **[existing when this section takes effect, the provision of]** this section prevails."

Amendment of section 5 of Act 25 of 2004

3. 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**[, provide]—**

(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) prior approval of the oversight mechanism is obtained;
 - (ii) such service does not compromise the efficiency, or put an undue strain on the resources, of the Auditor-General; and
 - (iii) 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 refer any undesirable audit outcome to an appropriate body for investigation, and the relevant body must keep the Auditor-General informed of progress and the final outcome of the investigation.

(1B) (a) The Auditor-General must recover from the responsible accounting officer, accounting officers, accounting authority or accounting authorities, as the case may be, any loss resulting from unauthorised, irregular, fruitless and wasteful expenditure, as defined in any applicable legislation relevant to the auditee, and any other losses suffered by the auditee, including—

(i) money due to the State, which has not been collected; or

(ii) money which has been improperly paid,

if, in his or her opinion, a satisfactory explanation for the failure to recover the loss is not furnished, within the prescribed period, by the relevant accounting officer or accounting authority.

(b) In the absence of a satisfactory explanation contemplated in paragraph (a), the Auditor-General must issue a certificate in the prescribed form to the relevant accounting officer or

accounting authority specifying the amount due and the reason for the recovery.

(c) The amount specified on the certificate referred to in paragraph (b), subject to the provisions of paragraph (g), constitutes a debt due to the State.

(d) The debtor must pay the debt to the Auditor-General within 180 days, or in accordance with any agreed timeframe, after receipt of the certificate referred to in paragraph (b).

(e) Upon receipt of payment by the debtor, the Auditor- General must, as prescribed, deposit the money received into the National Revenue Fund or the Provincial Revenue Fund, as the case may be.

(f) The Auditor- General may —

(i) where the debtor is entitled to a payment, other than remuneration, from an organ of state or an institution funded by public money, subject to any written agreement between the Auditor-General and the debtor, recover the debt by way of a claim against such organ of state or institution;

(ii) where the debtor is entitled to remuneration from his or her employer, subject to any written agreement between the Auditor-General and the debtor and any laws regulating the labour relations between the

debtor and the employer, recover the debt by way of a claim against his or her remuneration in such instalments as agreed; or

(iii) institute civil proceedings to recover the debt from the debtor.

(g) A debtor aggrieved by the Auditor-General's decision to recover any loss contemplated in paragraph (a), may approach the High Court for a judicial review of the decision in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(h) The Rules Board for Courts of Law may, in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), issue rules for purposes of civil proceedings contemplated in paragraph (f)(iii), failing which the existing rules of the relevant court applies.

(i) In any proceedings for the recovery of a debt, the certificate issued in terms of paragraph (b) is prima facie evidence of the facts, the identity of the debtor or debtors and the debt due.

(j) The Auditor-General may not, without the prior approval of the National Assembly, withdraw the certificate issued in terms of paragraph (b)."; and

(c) by the substitution for subsection (2) of the following subsection:

"(2) In addition to subsections (1), (1A) and (1B), the Auditor-General **[may]**—

(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; **[and]**

(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."

Amendment of section 7 of Act 25 of 2004, as amended by section 15 of Act 22 of 2014

4. 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."

Amendment of section 10 of Act 25 of 2004

5. 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 insertion in subsection (1) after paragraph (c) of the following paragraphs:

"(cA) any matters referred for investigation in accordance with section

5(1A);

(cB) the certificates issued in terms of section 5(1B)(b);

(cC) the details of the monies recovered and monies deposited into the
National Revenue Fund and the Provincial Revenue Fund in terms
of section 5(1B)(e); and".

Amendment of section 20 of Act 25 of 2004

6. Section 20 of the principal Act is hereby amended 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, but must reflect **[at least]** an opinion, **[or]** conclusion or findings on—

(a) **[whether]** the **[annual]** financial statements of the auditee **[fairly present, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date]** in accordance with the applicable financial reporting framework and legislation;

- (b) **[the auditee's]** compliance with any applicable legislation relating to financial matters, financial management and other related matters; and
- (c) **[the]** reported **[information relating to the]** performance of the auditee against its predetermined objectives."

Amendment of section 23 of Act 25 of 2004

7. Section 23 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) 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 is of the opinion that the auditee has financial difficulty to pay such excess,

such excess must be defrayed from the National Treasury's vote [,

provided that the National Treasury is of the view that the auditee

has financial difficulty to settle the cost. This excludes national and

provincial departments] up to an amount not exceeding such amount or

percentage as the National Treasury and the Auditor-General agree

annually."

Amendment of section 34 of Act 25 of 2004

8. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) Persons appointed **[as employees]** 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."

Amendment of section 40 of Act 25 of 2004

9. Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The **[Deputy]** Auditor-General must—

- (a) establish an audit committee contemplated in section 43(3)(b)(ii);
- and
- (b) appoint the members of the audit committee **[in consultation with the Auditor-General]**."

Amendment of section 52 of Act 25 of 2004

10. Section 52 of the principal Act is hereby amended—

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

“(1) The Auditor-General may make regulations pertaining to any matter to facilitate the application of this Act including, but not limited to, regulations—

(a) setting out the criteria to be considered in determining how to exercise his or her discretion contemplated in section 4(3);

(b) regarding 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 and the manner in which decisions relating to such matters are made; and

(c) on the manner in which the referral of matters contemplated in section 5(1A) must be carried out.”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The Auditor- General must make regulations regarding —

(a) the manner and time-frames within which a satisfactory explanation contemplated in section 5(1B)(a) must be provided;

(b) the format and content of the certificate issued in terms of section 5(1B)(b); and

(c) the process and timeframes within which any payments recovered must be deposited into the National Revenue Fund, or the Provincial Revenue Fund, as the case may be.”.

Short title and commencement

11. This Act is called the Public Audit Amendment Act, 2018, and comes into operation on 1 April 2019.

**MEMORANTAMO WA MAIKALELO A MAMETLELELO YA MOLAOTLHOMO WA
THUNO YA SETŠHABA, 2018**

1. MATSENO

- 1.1 Molao wa Setšhaba wa Thuno, 2004 (Molao Nr. 25 wa 2004) (oo fano o itsegeng jaaka “Molao mogolo”), o neela bokao go karolo 188 le 189 tsa Molaotheo wa Rephaboliki ya Aforika Borwa, 1996 (“Molaotheo”) ka go tlhoma le go neela ditirokgolo tsa go runa go Morunikakaretso. Go tsewa tsia metho e e mo Molaotheong, buisa Molao mogolo, Morunikakaretso o na le dithata tse dintsi tsa boikemedi, tseo di letlang kgololosego go tlhophisa ditsela tse di nonofileng go gaisa go dira taolelo ya yona go ya ka Molaotheo.
- 1.2 Le fa go le jalo, Molao mogolo ga o neele Morunikakaretso taolo ya go tsenya tirisong dikatlenegiso tsa yona tsa go batlisisa dipelo tse di sa siamang tsa go runa kgotsa go bona ditatlhegelo dingwe le dingwe tse di ka diragalelang Puso. Mo ntlheng eno, Morunikakaretso o ikaegile ka khuduthamaga go tsenya tirisong dikatlenegiso tseno.
- 1.3 Mo sebakeng sa dingwaga di le 13 tse di fetileng e sale go simologa ga Molao mogolo, maiteko a Morunikakaretso go neela ditlamorago go tsamaiso e e bokoa ya ditšhelete le tiragatso ka go dirisa dipegelo tsa yona tsa go runa di tlhagisitse maikutlo a a fapaaneng. Ngwaga le ngwaga Morunikakaretso o bega dilekanyo tse di kwa godimo go gaisa tse di sa letlelelwang, di se mo molaong le ditshenyegelo tsa tshenyo ebile di sena mosola.

2. MAIKAELELO A MOLAOTLHOMO

Ka jalo, maikaelelo a Mametlelelo ya Molaotlhomo wa Setšhaba wa Thuno, 2018 (eo fano e itsegeng jaaka “Molaotlhomo”), e batla go mametlelela Molao mogolo, *magareng ga tse dingwe*, neelana ka ditiro tlaleletso go

Morunikakaretso go bona ditshenyegelo tse di wetseng Puso ga mmogo le dipoelo tse di sa namatseng tsa thuno go batlisiswa; go tlhalosa taolelo ya Morunikakaretso go dira tiro ya boditšhabatšhaba a go runa le go dira dithuno tsa tiragatso; le go tsamaisa dithulaganyo tsa bolaodi jwa Morunikakaretso go tiragatso e e botoka ya ga jaana.

3. DITENG TSA MOLAOTLHOMO

3.1 Polelwana 1 ya Molaotlhommo e tsenya ditlhaloso tse dintšhwa mo Molao mogolo.

3.2 Polelwana 2 ya Molaotlhommo e tsenya karolwana (3A) mo go karolo 4 ya Molao mogolo eo e nayang Morunikakaretso dithata tsa go tlhalosa maemo a tsela ya go dirisa tshwetso ya gagwe fa a diragatsa dithuno tsa itlhophelo tse go buiwang ka tsona mo karolo 4(3) ya Molao mogolo. Polelwana 2 ya Molaotlhommo e mametlelela karolo 4(4) ya Molao mogolo e neelana ka gore itlhophelo ya Morunikakaretso e ama go sa kgathalesege molao mongwe le mongwe o o farologaneng.

3.3 Polelwana 3 ya Molaotlhommo e mametlelela karolo 5 ka go neelana ka ditiro tlaleletso go Morunikakaretso.

Polelwana 3 e mametlelela karolo 5(1) ya Molao mogolo ka go tsenya metheo eo e laelang Morunikakaretso go dira dithuno tsa tiragatso le go neelana ka thuno le ditirelo tse di amanang le go runa go mekgatlho ya boditšhabatšhaba, ditlhopha, ditheo kgotsa mekgatlho ntle fela le fa maemo a a rileng a fitlheletswe.

Polelwana 3 gape e tsenya dikarolwana (1A) le (1B) mo go karolo 5 ya Molao mogolo. Karolwana (1A) e ntšhwa e naya Morunikakaretso dithata go romela dipoelo tse di sa siamang tsa thuno go setheo se se maleba go ka batlisisiwa. Karolwana (1B) e ntšhwa e neela Morunikakaretso dithata

go bona go tswa go motlhankedi wa moarabedi, batlhankedi ba boarabedi, bothati jwa boarabedi kgotsa bathati ba boarabedi ba ba rweleng maikarabelo, jaaka go ka tswa go ntse, ditatlhegelo dingwe le dingwe tse Puso e di boneng fa go sena tlhaloso e e kgotsofatsang ya gore goreng tatlhegelo e e jalo e sa tshwanelwa go bonwa.

Go ya pele, polelwana 3 e mametlelela karolo 5(2) ya Molao mogolo ka go neelana ka go tlhomiwa le ditiro tsa komiti ya dituelo.

3.4 Polelwana 4 ya Molaotlhommo e mametlelela Molaotlhommo e mametlelela karolo 7(1A) ya Molao mogolo ka go neelana ka gore Khomishene e e Ikemetseng, fa e tsaya tsia tuelo ya Morunikakaretso, e tshwanetse gape e buisane le komiti ya dituelo e e sa tswang go tlhomiwa.

3.5 Polelwana 5 ya Molaotlhommo e mametlelela karolo 10 ya Molao mogolo ka go neelana ka gore Morunikakaretso jaanong o tshwanetse go tlisa dipegelo tsa dithuno tsa tiragatso le dithuno tsa boditšhabatšhaba, tseo jaanong di ka diriwang, tlisa dipegelo ka ga merero mengwe le mengwe go setheo se se maleba go batlisisiwa, romela dipegelo ka ga disetifikeiti tse di rebotsweng go bona ditatlhegelo le gape dintlha tsa ditšhelete tse di bonweng le ditšhelete tse di tsentsweng mo Letloleng la Bosetšhaba la Lekgetho le Letlole la Lekgetho.

3.6 Polelwana 6 ya Molaotlhommo e mametlelela karolo 20(2) ya Molao mogolo go leba gape diteng tsa pegelo ya thuno go go lebeletswe dipolelo tsa ditšhelete.

3.7 Polelwana 7 ya Molaotlhommo e mametlelela karolo 23 ya Molao mogolo ka go neelana ka tumelano mo selekanyo se se kwa godimo kgotsa poresente ya dituelo tsa thuno go tswa go tlhopho ya Lefapha la Matlotlo a Bosetšhaba.

3.8 Polelwana 8 ya Molaotlhommo e mametlelela karolo 34 ya Molao mogolo go neelana ka gore Morunikakaretso o tshwanetse, mo go boneng dituelo, madi a itshetso le dikatso tsa badiri go tswa go mothapi, isa tlhogong dikatlenegiso tsa komiti ya dituelo.

3.9 Polelwana 9 ya Molaotlhommo e mametlelela karolo 40(1) ya Molao mogolo ka go neelana ka gore Morunikakaretso, go na le Motlatsa Morunikakaretso, o tshwanetse go tlhoma le go thapa maloko a komiti ya thuno.

3.10 Polelwana 10 ya Molaotlhommo e mametlelela karolo 52 ya Molao mogolo ka go tlhalosa sentle mefuta ya melao e e tshwanetseng kgotsa e e ka dirwang ke Morunikakaretso.

3.11 Polelwana 11 e neelana ka setlhogo se se khutshwane le letlha la tshimololo.

4. BOKAO GO SETHEO LE BADIRI

Go lebeletswe gore maloko a mararo a badiri a tlaleletso a tlhoka go thapiwa gore go tle go tsenngwe tirisong ditiro tsa tlaleletso.

5. BOKAO JWA TSA DITŠHELETE GO NAGA

Ditshenyegelo tse di lekanyeditsweng go tsenya tirisong dithata tsa tlaleletso tsa Morunikakaretso e lekanyeditswe go R33 956 979 ka ngwaga tebang le dingwaga tsa ntlha tse tharo tsa ditšhelete go latela tshimologo ya Molaotlhommo. Palo eno e tla baakanngwa fa ditsamaiso tse dintšhwa di ntse di gola mo nakong. Dimametlelelo tse di setseng ga di kitla di tlholela Puso ditshenyegelo.

6. MAFAPHA, MEKGATLHO KGOTSA BATHO BA GO BUISANENG LE

BONA

Go buisanwe le baamegi ba ba latelang:

- Morunikakaretso;
- Lefapha la Bosetšhaba la Matlole

7. TSAMAISO YA PALAMENTE

7.1 Komiti e tshitsinya gore Molaotlhommo o tshwanetse go mekamekanngwa go ya ka tsamaiso e e tlhomilweng ke karolo 75 ya Molaotheo ka e sena metho eo ditsamaiso di beilweng ka teng mo karolo 74 kgotsa 76 ya Molaotheo e amang teng.

7.2 Komiti e nagana gore ga go botlhokwa go kaela Molaotlhommo ono go Ntlo tsa Bosetšhaba ya Baeteledipele ba Setso go latela karolo 18(1)(a) ya Molao wa Letlhomeso la Boeteledipele le Bolaodi jwa Setso, 2003 (Molao Nr. 41 wa 2003), ka fa e sena tetelelo go latela molaotlwaelo kgotsa ditlwaelo tsa baagi ba setso.