

THE PUBLIC FINANCE MANAGEMENT ACT, 2018

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GOVERNMENT OF ZAMBIA

ACT

No. 1 of 2018

Date of Assent: 9th April, 2018

An Act to provide for an institutional and regulatory framework for management of public funds; the strengthening of accountability, oversight, management and control of public funds in the public financial management framework; responsibilities and fiduciary duties of controlling officers and Controlling bodies; enhancement of cash management systems to ensure efficient and effective utilisation of cash for the Government; the processes for efficient production of the Financial Report for the Republic; the management and control of public assets and stores; the repeal of the Public Finance Act No. 15 of 2004; and matters connected with, or incidental, to, the foregoing.

[11th April, 2018

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Public Finance Management Act, 2018, and shall come into operation on a date that the Minister may appoint by statutory instrument.

Short title and commencement

2. In this Act, unless the context otherwise requires

Interpretation

“accountable document” means a validated official document that has a monetary value and required to be accounted for by an accounting officer;

“Accountant-General” means a person appointed as Accountant-General to perform the function of head of Accounting services under section 8;

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- “accounting officer” means a person appointed as accounting officer under section 13;
- “advance” means a recoverable sum of money issued pursuant to section 38;
- “aided project” means any project which is partially financed through a loan, grant, donation or technical assistance and partially financed from public funds pursuant to section 40;
- “applicable accounting reporting framework” means a common set of accounting principles, standards and procedures provided by the treasury for use in compiling financial statements involving public monies;
- “appointed agent” means an institution engaged by Government to collect general revenues on its behalf and public funds;
- “appropriation-in-aid” means revenue assigned to and collected by public bodies which they are permitted by the Treasury to appropriate against expenditure approved by Parliament;
- “appropriate Minister” in relation to a public body means the Minister to whom responsibility for the ministry, Government institution, department, Government agency, state owned enterprises or statutory corporation, as the case may be, is assigned;
- “audit committee” means a committee established under section 19;
- Cap. 1 “Auditor-General” means the Auditor-General appointed in accordance with the Constitution;
- “bank account” means an account at a bank into which moneys are deposited and drawn;
- “cash resources” means cash in form of Bank notes or coins or cash equivalents that include stocks, bonds, etc.;
- “Central Government” means the Legislature, Executive and Judiciary, and excludes local authorities and entities in the private sector;
- “chief executive officer” means the chief executive officer of a parastatal, statutory body or a local authority;
- Cap. 1 “Commission” has the meaning assigned to the word in the Constitution;
- Cap. 1 “Consolidated Fund” means the consolidated fund established under the provisions of the Constitution;

- “Constitutional payment” means a payment authorised by the Constitution as a charge on the Consolidated Fund; Cap. 1
- “Controller of Internal Audit” means the officer appointed as the controller of internal audit under section 14;
- “controlling body” means a board of directors or commissioners or group of persons or person appointed to oversee the management and control of a public body;
- “controlling officer” means an officer designated as such pursuant to section 10;
- “dormant account” means an account which has had no transactions or activities for a period of at least six months;
- “executive authority” in relation to—
- (a) the Treasury means the warrant signed by the President to a Minister;
 - (b) ministries, provinces and departments means the Secretary to the Treasury who is the chief controlling officer of Government;
 - (c) local authorities means the Minister responsible for local authorities;
 - (d) in relation to statutory corporations and state owned enterprises means appropriate Minister responsible for that statutory corporation and state owned enterprise;
 - (e) the Board for Government Agencies and Grant aided institutions means the Permanent Secretary for the line ministry;
 - (f) the National Assembly means the Clerk of the National Assembly; and
 - (g) the Judiciary means the Chief Administrator;
- “financial institution” has the meaning assigned to the word in the Banking and Financial Services Act, 2017; Act No. 7 of 2017
- “financial misconduct” means wilful or negligent act or omission which permits an unauthorised, irregular or wasteful expenditure, theft, or misapplication of funds;
- “financial statement” means a statement of the general financial affairs and any note to that statement that constitutes a financial report under section 71 of this Act;
- “financial year” means the period of twelve months ending on 31st December in a year;
- “general revenues” includes income accruing to the Republic

through taxes, fees, fines, levies, charges, sale of Government property and shares, loans, donations and grants raised from within or outside Zambia due to the Republic;

“Government Agent” means an unincorporated person or body of persons to which functions exercisable on behalf of the Republic, involving the use or collection of public moneys or stores are delegated by or under any law and “Government Agency” shall be construed accordingly;

“Government building” means any building owned or occupied or under the control of the Republic and used for Government purposes;

“head of expenditure” means a head of expenditure shown in the estimates of revenue and expenditure in respect of a financial year approved by Parliament in accordance with the Constitution;

“idle funds” means funds which recurrently remain unutilised in a bank account for a period of six months or more;

“internal audit” means an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations and help an organisation to accomplish its objectives by bringing through a systematic, disciplined approach to evaluation and improvement of the effectiveness of risk management, control and governance processes;

“internal auditor” means an officer appointed as internal auditor under section 16;

“internal control” means a business practice, policy or procedure that is established within Government to create value or minimise risk;

“irregular expenditure” means expenditure, other than unauthorised expenditure, incurred in contravention of this Act or any other law including —

Act. No. 12
of 2008

Act. No. of
2018

(a) the Public Procurement Act, 2008, or any regulations made in terms of that Act; or

(b) National Planning and Budgeting Act, 2018;

“local authority” has the meaning assigned to the words in the Constitution;

“misapplication” means unauthorised application of budget provisions to a use on a programme other than for an approved programme;

“office holder” means a public officer, State officer, councillor, Constitutional office holder, judge or judicial officer;

“official use” means the use by a person of public funds, public property or public stores in connection with that person by a public officer in connection with that person’s exercise of an official duty in a public body;

“Privatisation Revenue Account” has the meaning assigned to the words in the Zambia Development Agency Act, 2006;

Act No. 11 of
2006

“property” includes any real or personal property, money or chose in action or other intangible or incorporeal property whether located in Zambia or elsewhere and property of corresponding value;

“public accounts” means all accounts required under this Act to be kept by public bodies in respect of transactions involving assets or liabilities of the Republic;

“public asset” means a resource with economic value that the Republic owns or controls with the expectation that it will provide future benefit and includes public stores and major state assets;

“public body” means the Government, any Ministry or department of the Government, the National Assembly, the Judicature, a local authority, parastatal, Commission or other body appointed by the Government or established by or under, any law, except a professional association or body and “public bodies” shall be construed accordingly;

“public debt” means financial, material and other resources including guarantees acquired or borrowed by a public body in the interest of the Republic;

“public funds” means funds received electronically or in any other form in person, through the bank or any other financial institution on behalf of the Central or local Government by an office holder by virtue of the office holder’s employment, and includes public monies;

“public monies” means money received by an office holder electronically or in any other form in the course of the office holder’s employment or any other person directly or indirectly for the purpose of the Central or local Government, and includes all stores, stamps, negotiable instruments, bonds, debentures, investments, donations and other securities raised by or received by or on behalf of, or for the benefit of the Republic;

Cap. 1

“public office” has the meaning assigned to the word in the Constitution;

Cap. 1

	“public officer has the meaning assigned to the word in the Constitution;
Act No. 3 of 2012	“public property” has the meaning assigned to the words in the Anti-Corruption Act, 2012;
Cap. 1	“public service” has the meaning assigned to the words in the Constitution;
	“public stores means all chattels of whatever nature purchased, forfeited or donated belonging to or in possession of, or under the control of the Republic and includes plant, vehicles, machinery and equipment;
Act No. 3 of 2012	“relative” has the meaning assigned to the word in the Anti-Corruption Commission Act, 2012;
Cap. 1	“Secretary to the Treasury” means the person appointed as Secretary to the Treasury in the Constitution;
	“State owned enterprise” means an enterprise in which the Government has sole control or controlling interest;
Act No. of 2018	“Sinking Fund” means a fund established under the Loans, Grants and Guarantee (Authorisation) Act, 2018;
Act No. of 2018	“Special Deposit Account” means the account established under the Loans, Grants and Guarantee (Authorisation) Act, 2018;
	“Sovereign Wealth Fund” means a strategic fund established by the Republic for investment purposes;
	“stock verifier” means an officer appointed as such under section 18;
	“supplementary provision” means an additional amount over and above the appropriated revenue or expenditure for each head in a financial year;
Cap. 87	“theft” has the meaning assigned to the word in the Penal Code and “steal” and cognate expressions shall be construed accordingly;
	“Treasury” means the Treasury established under section 4;
	“Treasury Account” means a treasury account domiciled at the Bank of Zambia;
	“Treasury Authority” means an assurance by the Treasury of the availability of financial resources in a financial year;
	“treasury minute” means a report on an action-taken by the Treasury in response to the recommendations contained in the report of the Parliamentary Committee on Public Accounts;

“Treasury Single Account” means a System as established under section 25;

“variation” means movement of the budget provision from one vote to another within the Appropriation Act;

“vote” means one of the main segments into which an appropriation Act is divided and which specifies the total amount for individual items which is appropriated per department in an appropriation Act and is separately approved by Parliament;

“wasteful expenditure” means unnecessary expenditure incurred as a result of undue care and attention; and

“working account” means an account established for the purposes defined in section 37 of the Act.

3. Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other law relating to management of public funds, the provisions of this Act shall prevail to the extent of the inconsistency. Supremacy of Act
Cap. 1

PART II

MANAGEMENT OF PUBLIC FINANCES

4. (1) There is established the Treasury which consists of — Establishment of Treasury
(a) the Minister, who is the head of the Treasury; and
(b) the Office responsible for financial and fiscal matters.

(2) The Minister shall make policy and other decisions of the Treasury, except for those decisions taken under delegation or instruction under section 7.

(3) The powers of the Treasury shall be exercised by the Secretary to the Treasury or any other office holder that may be authorised by the Secretary to the Treasury in writing.

5. (1) The Treasury shall— Functions and powers of Treasury
(a) promote and coordinate the Government’s national fiscal and macro-economic policy;
(b) receive, keep, receipt, manage and disburse public funds;
(c) regulate, prepare, implement, monitor and evaluate the national budget and matters relating to budgeting;
(d) recall funds from all public accounts to the Consolidated Fund;
(e) manage the national budget preparation process;
(f) promote and enforce transparency and effective management of revenue, expenditure, assets and liabilities of public body;

- (g) manage the Consolidated Fund;
- (h) manage public debt;
- (i) manage risk, promote good governance and control in public bodies for the effective functioning of the Treasury;
- (j) provide policy direction on the operation of state owned enterprises;
- (k) formulate and coordinate public investment policy;
- (l) oversee the design and implementation of financial management systems in all public bodies; and
- (m) perform such other functions as may be assigned to the Treasury under this Act.

(2) The Treasury shall, for purposes of performing its functions under subsection (1)—

- (i) prescribe uniform treasury norms and standards;
- (ii) enforce the provisions of this Act and any prescribed standards of budgeting, accounting and internal auditing practices and uniform classification systems in public body;
- (iii) monitor and assess compliance with this Act and any prescribed norms and standards by public bodies;
- (iv) develop the capacity of public bodies for efficient, effective and transparent financial management;
- (v) review any system of financial management and internal control in any public body;
- (vi) take administrative action against a person or public body that is in breach of this Act or refer that person or public body to a relevant institution to redress any serious or persistent breach of this Act by that public body;
- (vii) prescribe financial management systems;
- (viii) prescribe policies and procedures relating to the proper management of stores and assets of the Republic; and
- (ix) do any other things that are necessary or conducive to the performance of its functions.

Secretary to
Treasury
Cap. 1

6. The Secretary to the Treasury appointed under the provisions of the Constitution shall be the chief controlling officer of the Government.

Functions of
Secretary to
Treasury

7. (1) The Secretary to the Treasury shall—

- (a) Subject to the Constitution, designate a controlling officer in respect of each head of revenue and expenditure provided for in any financial year, as appropriated by Parliament;

- (b) manage the Government payroll and Constitutional payments in accordance with the Constitution; Cap. 1
- (c) prepare the annual consolidated statement of assets and liabilities including a statement of the public debt of the Republic as well as the consolidated revenue statement;
- (d) submit the statements under paragraph (c) to the Auditor-General for examination and certification;
- (e) consolidate audited annual revenue statements, appropriation accounts and statements of financial position for incorporation in the financial report to be laid before the National Assembly;
- (f) release funds from the Consolidated Fund for appropriation by controlling officers and Boards;
- (g) issue treasury authority to expend Public Funds;
- (h) implement the recommendations of the Parliamentary Committee on Public Accounts;
- (i) prepare the treasury minute in respect of the implementation of the recommendations of the Public Accounts Committee for submission to the National Assembly;
- (j) manage and administer the Consolidated Fund and other public funds established under this Act or any other law;
- (k) be responsible for opening, maintaining and closing accounting units in ministries, departments, Government Agencies, local authorities, provinces, districts, and projects;
- (l) subject to the approval of the Civil Service Commission, be responsible for seconding accounting and internal audit staff to the units referred to in paragraph (k) and ensure that they perform their duties in accordance with the provisions of this Act;
- (m) ensure that the annual appropriation accounts and annual consolidated statement of financial position of assets and liabilities of the Republic and consolidated revenue statements are promptly prepared by controlling officers or controlling body for certification by the Auditor-General in accordance with section 73 and included in the financial report as applicable;
- (n) ensure that consolidated financial statements for statutory corporations and state owned enterprises are prepared

in accordance with applicable accounting reporting framework and Government guidelines for each financial year;

- (o) compile financial statistics and aggregation concerning spheres of government operations in accordance with international standards and publish them in the *Gazette*;
- (p) ensure maintenance of a compatible, effective, efficient and transparent, financial management information systems in ministries, departments and Government agencies, local authorities and projects;
- (q) provide advice and guidance on matters relating to budgeting, accounting and internal auditing policy and general financial management;
- (r) monitor and inspect the operations of the decentralised accounting and internal audit units in public bodies to ensure value for money;
- (s) provide a regulatory framework for sound financial management and accounting in public bodies;
- (t) approve accountable documents to be utilised by public bodies;
- (u) appoint Audit Committee members and oversee their operations;
- (v) submit on a quarterly basis to the Minister, internal audit reports on the performance of public bodies with regard to internal controls, risk management and governance matters;
- (w) institute disciplinary action against controlling officers in breach of this Act;
- (x) design and implement effective controls, risk management and governance systems in public bodies;
- (y) ensure that risk management, internal control and governance systems are regularly reviewed in public bodies so as to enhance transparency and accountability; and
- (z) carry out any other functions that may be prescribed by the Minister or that may be considered reasonably necessary for proper financial management of the Republic.

(2) The Secretary to the Treasury or any other office holder authorised by the Secretary to the Treasury may inspect and have access to accounts, documents, books and records in electronic or any form, of any public body as is necessary for the exercise of the functions of the Treasury under this Act and shall be given available

information required with regard to the monies and property specified in section 5.

8. (1) There is an Accountant-General who is a public officer at the level of Permanent Secretary and the head of accounting services in Government.

Accountant-
General

(2) The Accountant-General shall be a person with qualifications and ten years' experience in accountancy and public financial management, and shall be a member of the Zambia Institute of Chartered Accountants.

(3) The Accountant-General may give general or specific directions to accounting officers in relation to the performance of the functions of accounting officers, in accordance with the provisions of this Act or any regulations that may be made under the Act.

(4) The office of the Accountant-General shall be deconcentrated to the ministries, provinces, departments and Government Agencies.

9. (1) The Accountant-General is responsible for—

Functions of
Accountant-
General

- (a) the design, implementation and monitoring and evaluation of financial management systems, policies and guidelines in accordance with this Act or any other law for the proper management of public resources;
- (b) policy guidance on financial management matters in local authorities;
- (c) research on financial management systems and review performance standards to improve service delivery in the public service;
- (d) compilation, management of accounts, custody, safety and integrity of public monies and stores of the Republic;
- (e) placement, rotation and seconding of accounting staff to ministries, departments and Government agencies subject to the approval of the Civil Service Commission;
- (f) bringing to account tax and non-tax revenues of the Government;
- (g) cash management and accounting for stores, assets and liabilities of the Government;
- (h) bringing to account revenues raised from the disposal of excess or obsolete public stores and assets;
- (i) consolidation of the financial report;

- (j) preparation of a memorandum in form of treasury minutes specifying the measures taken by Government to implement, in the ensuing financial year, the recommendations of Parliament in respect of the report of the Auditor-General with respect to this Act, the Public Audit Act or any other law;
- (k) following up on outstanding issues in respect of the report of recommendations of Parliament on the reports of the Auditor-General and for ensuing financial years;
- (l) procuring, securing, custody and distribution of accountable documents and equipment;
- (m) coordination of locksmith services in public bodies;
- (n) maintenance of a compatible, effective, efficient and transparent, nonelectronic or electronic financial management information systems in a public body; and
- (o) any other functions that may be assigned by the Secretary to the Treasury.

(2) Despite the provisions of any other law, the Accountant-General may, at the direction of the Secretary to the Treasury, establish internal control systems in any public body in order to ensure prudent financial management of public resources.

Controlling
officers

10. (1) A controlling officer designated by the Secretary to the Treasury under Section 7, shall be responsible and accountable for the proper financial management and expenditure of public monies appropriated to public bodies in respect of all public monies collected, received or disbursed and in respect of public stores or assets received, held or disposed of by or on behalf of the ministry or department or service for which such head is provided.

(2) The Secretary to the Treasury, in exceptional circumstances, may approve or instruct in writing that another functionary of a public body be the controlling officer for that public body and provide a copy of that approval or instruction to the Auditor-General.

(3) Subject to the Constitution, where a head of revenue and expenditure has two or more Permanent Secretaries or Chief Executive Officers, only one shall be designated as a controlling officer by the Secretary to the Treasury.

(4) The Secretary to the Treasury may at anytime withdraw an approval or instruction in terms of this section and provide a copy of that withdrawal of approval or instruction to the Auditor-General.

- 11.** (1) A controlling officer is responsible for planning and controlling of revenue collection and expenditure of public funds appropriated under that controlling officer's control including—
- (a) establishment and maintenance of an effective, efficient and transparent system of financial and risk management and internal control;
 - (b) maintenance of a system of internal audit under the direction of the controlling officers in accordance with this Act;
 - (c) taking immediate and appropriate action on internal and external audit observations and recommendations;
 - (d) preparation of quarterly action taken reports on internal and external audit observations and recommendations for submission to the Secretary to the Treasury;
 - (e) ensuring that written authority is obtained from the Secretary to the Treasury for use of revenue generated from within the institution;
 - (f) preparing and submitting to the Secretary to the Treasury a financial report for the Head of revenue and expenditure under the controlling officer's charge within one month of the end of the preceding financial year;
 - (g) certification of the correctness of the accounts under the control of the controlling officer and the propriety of any charge shown in the accounts;
 - (h) ensuring compliance with procurement requirements of the Public Procurement Act, 2008, and the budgeting and planning requirements of the National Planning and Budget Act, 2018 and any other law;
 - (i) ensuring effective, efficient, economic and transparent use of the resources under the control of a controlling officer;
 - (j) preventing irregular or wasteful expenditure, misapplication of funds, theft, or losses resulting from negligence or criminal conduct and immediately report, in writing, particulars of that wasteful expenditure, misapplication of funds, theft or loss to the Secretary to the Treasury;
 - (k) taking immediate, effective and appropriate disciplinary steps against an office holder in the ministry or department who contravenes or fails to comply with the provisions of this Act;
 - (l) not committing Government to expenditures in excess of monies appropriated by Parliament;
- General responsibilities of controlling officer
- Act No. 12 of 2008
Act No. of 2018

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- (m) taking effective and appropriate steps to collect revenues due to the Head of revenue and expenditure under their charge as appropriated by Parliament;
- (n) management and safeguarding of public assets and revenues;
- (o) maintenance of an effective system to—
- (i) account for liabilities; and
 - (ii) manage cash and ensure that accurate cashflow forecasts are submitted to the Treasury;
- (p) submitting of reports, returns, notices and other information to Parliament, the Auditor-General and the Treasury, as may be required by this Act or any other law;
- (q) preparing institutional annual budgets in accordance with the National Planning and Budget Act, 2018; and
- (r) appointment of the Secretary to the Audit Committee in their respective institutions.
- Act No. of 2018
- (2) A controlling officer shall, subject to the provisions of this Act or any other law and in consultation with the Treasury—
- (a) define in writing the extent to which the functions conferred or imposed upon that controlling officer may be exercised or performed by any accounting officer under the control of that controlling officer; and
 - (b) give to every accounting officer referred to in paragraph (a) such directions that may be necessary for the proper exercise or performance of such functions by the accounting officer.
- (3) A controlling officer shall, if required by the Secretary to the Treasury, certify, subject to any explanation or qualification that may be considered necessary, the correctness of the accounts under the control of the controlling officer and the propriety of any charge shown in those accounts.
- (4) A controlling officer shall, in respect of each financial year, prepare for the examination and certification of the Auditor-General, a detailed statement of revenue and appropriation accounts for each head of expenditure under the controlling officer's control, giving adequate explanations for variations between estimated expenditure and actual expenditure, if any.
- (5) A controlling officer shall, upon certification by the Auditor-General immediately submit a detailed statement of accounts referred to in subsection (5) to the Secretary to the Treasury for incorporation in the financial report required to be laid before the

National Assembly in accordance with the provisions of the Constitution.

Cap. 1

(6) A controlling officer shall respond promptly and fully to all audit queries and observations requiring the controlling officer's appropriate action.

(7) A controlling officer shall collect, account and promptly remit to the Treasury all monies due to the Government under the responsibility of the controlling officer.

(8) A controlling officer shall inform the Treasury on any intention to expand an existing establishment and allow the Treasury reasonable time to respond in writing on the availability of funds to support the proposed expansion.

(9) A controlling officer shall utilise the financial management information systems as determined by the Secretary to the Treasury.

(10) The Secretary to the Treasury may in respect of a controlling officer who fails to comply with this section—

(a) impose restrictions on the release of categories of payments to the public body until such time as the contents of this section are complied with; or

(b) revoke the appointment as controlling officer.

(11) A controlling officer that fails to comply with this section commits financial misconduct.

12. (1) A controlling officer or controlling body shall —

(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of a public body;

(b) act with fidelity, honesty, integrity and in the best interests of the public body in managing the financial affairs of the public body;

(c) on request, or in accordance with any other law, disclose to the Treasury, Auditor-General or the National Assembly, material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the Treasury, Auditor -General or the National Assembly; and

(d) seek, within the powers of that controlling officer or controlling body, to prevent any prejudice to the financial interests of the Republic.

(2) A controlling officer or a member of a controlling body, may not—

(a) act in a way that is inconsistent with the responsibilities

Fiduciary duties of controlling officer and controlling body

assigned to that controlling officer or in terms of this Act or any other law; or

(b) use the position or privileges of, or confidential information obtained as, controlling officer or a member of a controlling body, for personal gain or to improperly benefit another person.

(3) A controlling officer or a member of a controlling body shall —

(a) declare any direct or indirect personal or private business interest that member or spouse, partner or relative may have in any matter before that controlling officer or the controlling body; and

(b) withdraw from the proceedings when that matter is considered.

(4) The Secretary to the Treasury may, in respect of a controlling officer or a member of a controlling body who contravenes this section—

(a) suspend that controlling officer or member of the controlling body from performing their functions;

(b) refer the matter to relevant law enforcement agency; or

(c) recommend to the appropriate executive authority the dismissal of a controlling officer or member of a controlling body.

(5) The executive authority controlling body shall upon receipt of a recommendation under subsection (4) (c), respond to the Secretary to the Treasury in writing concerning actions taken in response to the recommendation within fourteen working days.

Appointment
and
responsibilities
of
accounting
officers

13. (1) There shall be appointed by the relevant Commission, as public officers, accounting officers that shall be necessary for the proper administration of this Act.

(2) Subject to subsection (1) an accounting officer shall perform such duties, keep such books and render such accounts as may be prescribed, or as may be directed by the Accountant-General.

(3) An accounting officer shall in the performance of duties under this Act—

(a) ensure that systems of financial management and internal control established for public body are implemented within the area of responsibility of that accounting officer;

(b) be responsible for the effective, efficient, economic and transparent use of financial and other resources within that accounting officer's area of responsibility;

- (c) take effective and appropriate steps to prevent, within that accounting officer's area of responsibility, any unauthorised, irregular and wasteful expenditure as may be prescribed;
- (d) manage and safeguard the public assets and public monies of the Republic and management of the liabilities within that accounting officer's area of responsibility;
- (e) account for public assets and stores under a Head of expenditure for subsequent inclusion into the annual financial report;
- (f) collect, receipt and bring to account, all public monies being the property of the Republic or entrusted to the Republic or to the accounting officer's custody, issue or pay public monies whether such monies are the property of the Republic or to the accounting officer in the accounting officer's capacity either alone or jointly with any other office holder or person;
- (g) issue or pay public monies whether such monies are the property of the Republic or are entrusted to the Republic or to the accounting officer in the accounting officer's capacity either alone or jointly with any other office holder or person;
- (h) ensure that prescribed financial management information systems are used in performing that accounting officer's duties as an accounting officer;
- (i) compile and submit monthly, quarterly, biannual and annual, financial management reports to the controlling officer; and
- (j) ensure that documents and information requested under this Act are submitted to the relevant authority.

14. (1) There is a Controller of Internal Audit who is a public officer at the level of Permanent Secretary and the head of internal audit services in Government.

Controller of
Internal
Audit

(2) The Controller of Internal Audit shall, in the performance of duties under this Act, be subject to the direction of the Secretary to the Treasury.

(3) The controller of Internal Audit shall be a person with qualifications and ten years' experience in auditing, accountancy and public financial management and shall be a member of an institution responsible for regulation of professional practice of internal auditing and any other relevant professional body.

(4) Despite the provisions of any other law and the existence of internal auditors in a public body, the Secretary to the Treasury

has power to assign internal auditors to carry out special audits in a public body as the case may be.

Functions of
Controller of
Internal
Audit

15. (1) The functions of the Controller of Internal Audit are to—

- (a) provide independent and objective assurance to the Secretary to the Treasury on—
 - (i) the proper financial management and expenditure of public monies appropriated to a public body;
 - (ii) public monies raised from sources within or outside Zambia by a public body; and
 - (iii) any system of internal controls, risk management and governance processes for proper management of public resources.
- (b) give general or specific guidelines to internal auditors in relation to the performance of internal audit services, in accordance with the Act, or regulatory framework relating to the practice of internal auditing;
- (c) be responsible for the seconding and rotation of internal audit staff of public bodies subject to the approval by the appropriate Service Commission;
- (d) audit the management systems that relate to the stocks, shares and stores of the Government;
- (e) conduct risk based financial, compliance, performance, Information, Communication and Technology (ICT), forensic and any other specialised audits in respect of public bodies;
- (f) provide assurance that monies appropriated by Parliament or raised by the Government are disbursed and applied for the purpose for which they were appropriated or raised and are expended efficiently, effectively and economically;
- (g) oversee timely verification of stock and assets in order to ensure accountability and value for money in the management of Government assets;
- (h) report on a quarterly basis and at any other time that may be necessary, to the Secretary to the Treasury and copied to the Minister, the appropriate Minister and public bodies, internal controls, risk management and governance for onward submission to Cabinet by the Minister;
- (i) provide independent advisory and consulting services to the chief controlling officer and to controlling officers;

- (j) subject to the direction of the Secretary to the Treasury obtain expert advice and assistance needed to perform all or part of the audit engagement as the case may be;
- (k) coordinate the operations of all audit committees of a public body; and
- (l) conduct special audit assignments in public bodies.

16. (1) There shall be appointed by the Civil Service Commission, as public officers, internal auditors as shall be necessary for the proper administration of this Act.

Appointment and powers of internal auditors

(2) An internal auditor shall in the performance of a duty under this Act, be subject to the direction of the Controller of Internal Audit and—

- (a) shall at all reasonable times have access to accounts, records, books, vouchers, financial and non-financial management systems, and documents relating to the accounts of any public body;
- (b) may require from the controlling officer of a public body any information and explanation that may be necessary; and
- (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management of public funds.

(3) An internal auditor shall submit reports to the Controller of Internal Audit, a controlling officer and the audit committee, and such reports shall be copied to the Minister, Accountant-General, Secretary to the Treasury, Auditor-General and the appropriate Minister.

17. (1) The functions of internal auditors are to—

Functions of internal auditors

- (a) ascertain that risk management and internal control systems are in place and continually being improved and optimised in response to an ever changing environment;
- (b) provide reasonable assurance to controlling officers and the Secretary to the Treasury that internal controls exist and are being complied with as required by this Act;
- (c) ascertain, evaluate and recommend improvements on governance processes put in place by management;
- (d) review and appraise the appropriateness, adequacy and application of authorisation of financial and non-financial controls;
- (e) promote effective controls at reasonable cost; and

(f) ascertain the extent of compliance with established policies, plans, procedures in this Act and any other law.

(2) Despite subsection (1), an internal auditor shall subject to the direction of the controller of internal audit, provide assurance and consulting services to the controlling officer and audit committee on all matters relating to internal controls, risk management, governance processes and submit quarterly reports to the controller of internal audit.

Appointment
and powers
of stock
verifiers

18. (1) There shall be appointed by the Civil Service Commission, as public officers, such stock verifiers as shall be necessary for the proper administration of this Act.

(2) A stock verifier shall in the performance of duties under this Act, be subject to the direction of the Controller of Internal Audit and is responsible for verifying Government stock and assets in order to ensure transparency and accountability in the management of public stores and assets or perform such duties as maybe prescribed.

Audit
committees

19. (1) There shall be established for each public body an audit committee which shall perform functions and exercise such powers as are imposed or conferred on the committee under this Act.

(2) An audit committee established under this section, except for an audit committee in a local authority, statutory corporation, or state owned enterprise shall report to the Secretary to the Treasury.

(3) An audit committee shall consist of five members appointed by the Secretary to the Treasury as follows:

(a) a former public officer with extensive knowledge and experience in auditing or accounting;

(b) a member of the Zambia Institute of Chartered Accountants;

(c) a member of the Law Association of Zambia;

(d) a representative from a professional institute responsible for internal auditors; and

(e) a member of any other relevant professional body;

(4) The audit committee for a local authority, a statutory corporation, state owned enterprise shall be appointed by the Board of that statutory corporation or state owned enterprises or local authorities and shall be comprised of non-executive members.

- (5) The functions of an audit committee are to—
- (a) receive reports from internal auditors;
 - (b) review audit policy and audit plans;
 - (c) evaluate the management procedures regarding—
 - (i) internal controls;
 - (ii) financial reporting;
 - (iii) external audit reports;
 - (iv) risk management;
 - (v) ethics and governance; and
 - (d) make recommendations to the Secretary to the Treasury or a controlling body.
- (6) The members of an audit committee shall be appointed for a term of three years and may be reappointed for a further term of three years.
- (7) A member of an audit committee shall be paid such allowance as the Emoluments Commission, may, on the recommendation of the Secretary to the Treasury approve.
- (8) An audit committee shall meet for the transaction of business at least once in every three months at such places and at such times as the chairperson may determine.
- (9) An audit committee shall invite any responsible office holder to provide responses to audit queries.
- (10) Subject to other provisions of this Act, an audit committee shall regulate its own proceedings.
- (11) A controlling officer or a controlling body shall appoint a suitable person within the institution to provide secretarial services to the audit committee.

PART III

CONTROL OF PUBLIC FINANCES

- 20.** Subject to the principles provided in the Constitution, the guiding principles of public finance include—
- (a) promotion of a public finance system that ensures that revenue is properly forecast taking into account other binding constraints within the macro-economic framework; and
 - (b) efficiency, effectiveness, transparency and accountability in the generation of revenue of the Republic.

- 21.** Subject to the Constitution, the Secretary to the Treasury shall, determine which public Funds shall be credited to the Consolidated Fund.

Additional principles of public finance
Cap. 1

Public funds to be credited to Consolidated Fund
Cap. 1

- Disbursement from Consolidated Fund
Cap. 1
- 22.** (1) A disbursement from the Consolidated Fund shall not be made except in accordance with the provisions of the Constitution and this Act.
- (2) The investment or lending of monies forming part of the Consolidated Fund shall not be considered a withdrawal from the Consolidated Fund in accordance with the Constitution.
- (3) The investments or lending referred to in subsection (2) includes—
- (a) readily marketable securities;
 - (b) deposits;
 - (c) Sinking Fund;
 - (d) Sovereign Wealth Fund;
 - (e) other secure investments with institutions approved by the Minister;
 - (f) loan or grant; and
 - (g) Guarantees.
- (4) A disbursement made from the Consolidated Fund within seven days before closure of the year shall be authorised by the Secretary to the Treasury.
- Issuance of warrant
Cap. 1
- 23.** (1) Subject to the Constitution, the President may after a general election, where the budget preparation falls into the next financial year, issue a warrant.
- (2) The President shall, immediately after signing a warrant, cause a copy of the warrant to be transmitted to the Auditor-General and the National Assembly.
- Donations and grants
Cap.1
- 24.** (1) Subject to the Constitution, where a public body receives a donation or grant that is not a charge to the Consolidated Fund, or authorised by a warrant signed by the President, an Appropriation Act or a Supplementary Appropriation Act, the Minister shall, after taking into consideration the implications of such donation or grant on the macro-economic objectives—
- (a) authorise the inclusion of such donation or grant to the Consolidated Fund; and
 - (b) authorise withdrawals from the Consolidated Fund.
- (2) Subject to subsection (1), where the Minister authorises withdrawals from the Consolidated Fund, the Minister shall, within the financial year, lay a Supplementary Appropriation Bill before the National Assembly for approval.

25. (1) There is established a Treasury Single Account— Treasury Single Account
(a) which shall serve as a unified structure of bank accounts to give a consolidated view of Government cash resources; and
(b) into which all Government cash including monies received by public bodies shall be deposited and from which all expenditure of Government and public entities shall be made.

(2) This section does not apply to statutory corporations, state owned enterprises and local authorities.

(3) The monies payable from the Consolidated Fund to a head of expenditure under an Appropriation Act or warrant signed by the President shall be deposited into a Treasury Account which shall be maintained at the Bank of Zambia within the Treasury Single Account system.

26. (1) An institution to which this Act applies shall not borrow money, issue a guarantee, indemnity, security, enter into a hire purchase or lease agreements or any other transaction that binds or may bind that institution or the Consolidated Fund to any future financial commitment, unless that borrowing, guarantee, indemnity, security, hire purchase, lease or other transaction— Borrowing and lending

(a) is authorised by the Constitution; or

(b) is authorised by the Loans, Grants and Guarantees (Authorisation) Act 2018 or any other law. Cap. 1 Act No. of 2018

(2) A public body shall not borrow and lend monies except with the written authority of the Secretary to the Treasury.

(3) Where the Secretary to the Treasury grants authority to borrow money under subsection (2), the public body shall not pledge any government asset as collateral without the written authority of the Secretary to the Treasury.

27. The following payments in connection with a loan under the Loans, Grants and Guarantees Act, 2018 are direct charges against the Consolidated Fund: Public debt chargeable to Consolidated Fund

(a) the repayment of money borrowed by the Minister in terms of section 9 of this Act; Act No. of 2018

(b) the interest payable on money borrowed; and

(c) any costs, charges and expenses incidental to the management of the debt.

General
revenues

28. (1) General revenues collected by appointed agents on behalf of Government shall be transmitted to the Consolidated Fund as prescribed by the Treasury.

(2) Subject to any express direction of the Secretary to the Treasury in respect of the operation of any Fund or working account, all monies received by an accounting officer or any office holder responsible for the collection of money shall be deposited into the Consolidated Fund not later than the next business day following the day of receipt, unless otherwise directed by the Secretary to the Treasury.

(3) A controlling officer or an office holder who without reasonable cause fails to deposit public monies received as provided under subsection (1) commits financial misconduct.

(4) A controlling officer shall invest public funds, subject to the approval of the Secretary to the Treasury, except that the details of investments made from public funds shall be copied to the Auditor-General.

(5) An office holder who fails to account for public monies, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(6) An appointed agent that fails to transmit funds to the Consolidated Fund in accordance with subsection (1) commits an offence and is liable, on conviction, to a penalty at the prevailing interbank lending rate applicable on the untransmitted amount for each day the amount remains unremitted.

(7) The Minister may, by statutory instrument, prescribe statutory corporation and state owned enterprises to which this section applies.

Generation
of revenue

29. (1) The Treasury shall set annual revenue targets for each ministry, department and Government agency that shall form part of the revenue for the national budget.

(2) Subject to subsection (1) every controlling officer shall be responsible for—

- (a) identification, optimisation and recommendation of potential revenue sources to the Treasury;
- (b) attainment of revenue targets as provided in the annual estimates of revenues and expenditure; and
- (c) preparation and submission of quarterly performance reports to the Treasury on revenue sources and collections.

(3) The revenues collected must be accounted for in accordance with Section 28 of this Act.

(4) The Secretary to the Treasury may in respect of a controlling officer who fails to comply with the contents of this section—

(a) impose restrictions on certain categories of expenditure to the public body until such time as the contents of this section are complied with; or

(b) revoke the appointment of the controlling officer.

(5) A controlling officer may, in consultation with the Secretary to the Treasury, initiate the establishment of an office or revenue collection centre and systems to enhance revenue collection.

30. (1) The Secretary to the Treasury shall as soon as the Appropriation Act has been passed by National Assembly or a warrant has been issued by the President under the Constitution—

Releases of funds

(a) cause to be released from the Consolidated Fund the amounts becoming payable during the ensuing month of statutory and Constitutional expenditure;

Cap. 1

(b) receive an annual consolidated cash and procurement plan from each controlling officer; and

(c) release from the Consolidated Fund amounts not exceeding in total the sums applied by the Appropriation Acts for the supply of goods and services during the financial year.

(2) Despite the Appropriation Act or the issue of a warrant, the Secretary to the Treasury may limit or suspend expenditure with or without cancellation of the warrant, if in the Secretary to the Treasury's opinion financial exigencies or public interest so require.

(3) The Secretary to the Treasury shall impose restrictions on the release of categories of payments to a public body which, contrary to the provisions of this Act or any regulations made under this Act—

(a) over commits government to expenditures in excess of appropriated funds; or

(b) does not submit to the Secretary to the Treasury and the Auditor-General returns including receipts and utilisation of grants or donations.

31. (1) All unspent balances standing to the credit of Government bank accounts at the end of each financial year shall be considered to be public money and shall be paid into the Consolidated Fund.

Bank balances at end of financial year

(2) Unspent funds at the end of the financial year shall be retained by the Treasury in a prescribed account and shall be released upon approval of a Supplementary Appropriation Bill by the National Assembly.

(3) This section does not apply to local authorities, statutory corporations and state owned enterprises.

Bank
accounts in
respect of
public
monies

32. (1) A person shall not open or close an account in respect of public monies with any bank without the written approval of the Secretary to the Treasury.

(2) A bank shall not without the written approval of the Secretary to the Treasury permit—

(a) an account in respect of public monies to be opened or closed; or

(b) an overdraft to be incurred on any bank account in respect of public monies.

(3) A person shall not permit a bank account in respect of public monies to be overdrawn or arrange for an overdraft without the written approval of the Secretary to the Treasury.

(4) A bank maintaining an account in respect of public monies shall submit to the account holders and the Accountant-General a statement that may be required from time to time.

(5) A transfer of public money shall not be made between accounts at the same bank or different banks without the written approval of the Secretary to the Treasury.

(6) Where the Treasury becomes aware that the bank account is dormant, the Treasury may close that account and any funds therein shall be transferred to the Consolidated Fund.

(7) Where funds are considered to be idle, the treasury shall transfer such funds to the Consolidated Fund.

(8) A person who contravenes the provisions of subsections (1) and (3) commits an offence.

(9) A contravention, by a bank, of the provisions of subsection (2) shall—

(a) result in all accounts containing public monies in that bank being closed and transferred to other banks; or

(b) make the bank liable for any loss suffered by Government as a result of the transactions conducted by the bank.

(10) This section shall not apply to a local authority, statutory corporation and state owned enterprise.

33. Interest accrued on funds released from the Consolidated Fund shall constitute general revenue and shall be paid into the Consolidated Fund.

Interest on bank accounts

34. (1) The Secretary to the Treasury, may in consultation with the Minister, authorise to be invested monies standing to the credit of the Republic in the Consolidated Fund which are not immediately required for any other purpose.

Investments Cap. 1

(2) The investments referred to in subsection (1) may include—

- (a) readily marketable securities;
- (b) deposits;
- (c) Sinking Fund;
- (d) Sovereign Wealth Fund;
- (e) other secure investments with institutions approved by the Minister; and
- (f) lending that maybe in form of a loan, grant or guarantee.

(3) The Secretary to the Treasury shall ensure that monies standing to the credit of the Republic in the Treasury Account or in any other bank account and not immediately required for any other purpose with a bank at call or subject to notice not exceeding twelve months or in any of the investments authorise a by law for the investment of such monies.

(4) Where any investment under subsection (1) is realised the proceeds shall be paid by the Treasury to the credit of the Treasury Account.

(5) Any investments made under this section shall form part of the Consolidated Fund.

35. (1) A deposit of money, other than public monies raised or received which may be deposited with any office holder authorised to receive such deposit, shall not form part of the Consolidated Fund and shall not, except as provided in subsections (2), (3) and (4), be applied for any public purposes.

Deposits excepted from Consolidated Fund

(2) Any interest accruing on a deposit in subsection (1) shall not be credited to the Consolidated Fund.

(3) Subject to the other provisions of this section, the Secretary to the Treasury may administer a deposit in a manner as the Secretary to the Treasury considers appropriate and may, in any appropriate case, refund a deposit or any part of it to a person entitled to it.

(4) A deposit which is unclaimed for over a year shall, subject to any other enactment, cease to be a deposit and accrue to the general revenues, except that if a genuine claim is received for refund of the deposit, such refund shall be made from the general revenues.

(5) Any deposit arising from seizures of money and property shall not constitute part of the general revenues until such cases are disposed of by courts of law or any other relevant authorities.

Appropriation
in aid
Cap. 1

36. (1) Non-tax revenue collected by a public body that is part of appropriation in aid shall form part of the Consolidated Fund.

(2) Subject to the Constitution, Funds earmarked for appropriation in aid shall not be released for any purpose other than the intended purpose.

(3) Procedures for eligibility, access and disbursement of appropriation in aid shall be prescribed.

Working
accounts

37. (1) Where the Secretary to the Treasury considers it expedient to do so, the Secretary to the Treasury may establish funds or working accounts for—

(a) the purchase of stores, equipment or livestock for subsequent use or re-sale;

(b) services rendered or to be rendered by any individual and it is desirable to recover the costs of such services from such other departments or individual; or

(c) the making of grants or loans for purposes specified in the estimates of expenditure, or where monies are made available from any other source for any of the purposes specified in paragraphs (a) or (b).

(2) The fund or working account established under subsection (1) shall be credited with its receipts, earnings and accruals and any monies—

(a) appropriated by Parliament for the purposes for which it was established; or

(b) which otherwise may be made available for the fund or working account.

(3) Monies may be expended from the fund or working account for the purpose for which it was established.

(4) The Secretary to the Treasury may give directions as to the manner in which any fund or working account established under subsection (1) may be operated.

(5) Except where the Secretary to the Treasury otherwise directs, the receipts, earnings or accruals of any fund or working account or any balance standing to the credit of that fund or working account at the end of the financial year shall not be paid into the Consolidated Fund but shall be retained in the fund or working account and that fund or working account shall not be closed.

(6) Where the Secretary to the Treasury is satisfied that a fund or working account established under subsection (1) has fulfilled its purpose or is not being operated for the purpose for which it was established, Secretary to the Treasury may direct that the fund or working account be closed and that the balance outstanding in such fund or working account be paid into the Consolidated Fund to the credit of general revenues.

Recoverable
advances

38. (1) The Secretary to the Treasury may at any time authorise the issue, from the Consolidated Fund, of sums of money which may be used to—

- (a) meet payments due for public services which for reasons the Secretary to the Treasury considers sufficient, cannot presently be charged to any vote;
- (b) provide imprest accounts for use of departments or individuals;
- (c) make payments for, and on behalf of another Government or person at the request of that Government or person and the amounts may be recoverable from that other Government or person;
- (d) make provision for any payment which has been made under any head of expenditure and which has been disallowed as a charge against the head of expenditure in the approved estimates; and
- (e) advance public money to a person where that advance is in the public interest and is —
 - (i) repayable at some future date;
 - (ii) subsequently chargeable against a head of expenditure; or
 - (iii) in part repayable under subparagraph (i) and in part chargeable under subparagraph (ii);and for such purposes, separate records (in this Act referred to as “advances account”) shall be maintained.

(2) The Treasury shall maintain a separate account for the purposes of subsection (1) (e).

(3) Subject to subsection (1) an advance shall not be made in anticipation of an appropriation by the National Assembly.

(4) Except where the Secretary to the Treasury otherwise directs, any balance outstanding and unpaid in any advance account at the close of any financial year shall not be charged to any expenditure vote.

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- Variation of funds
- 39.** Where additional expenditure on one item can be met from savings on another item within the appropriation, funds may be varied as shall be prescribed.
- Aided projects
- 40.** (1) All monies received for aided projects by way of loans, grants and donations shall constitute public monies and shall be paid into the Consolidated Fund.
- (2) The Secretary to the Treasury shall make provision in the budget estimates for loans, grants and donations receivable in cash in respect of aided projects.
- (3) Where the amount of the loan, grant or donation referred to in subsection (2) is not known, the Minister shall include a provision in the estimates and once the amount becomes known, a supplementary estimate to be raised for the amount involved.
- (4) Where loans, grants and donations are receivable in kind in respect of aided projects, the value of loans, grants or donations shall be determined and included in the estimates and reflected as expenditure in the financial year.
- (5) Monies received for specified projects which have been paid into the Consolidated Fund shall be disbursed when required to the appropriate project bank account.
- (6) The Secretary to the Treasury shall—
- (a) cause separate and proper books and records to be kept and maintained in respect of projects and for appropriate audited financial statements to be included in the financial report; and
- (b) ensure that whenever projects are completed, the project assets including cash, buildings, plant, vehicles, furniture, fittings and equipment are properly recorded, accounted for and handed over to Government or other appropriate authorities within the time frame provided for in that agreement.
- (7) Where a time frame is not provided for, project assets shall be handed over within six months from the date of completion of that project.
- (8) In the absence of any instructions to the contrary any unexpended balance standing to the credit of a project account six months after the completion of the project shall be paid into the Consolidated Fund.
- (9) Project assets handed over after completion of the aided project shall be distributed by a committee constituted by the Secretary to the Treasury.

41. (1) A controlling officer is responsible for the management of public assets and stores of the Head of expenditure.

Management of public assets and stores in ministries, and Government agencies

(2) A controlling officer shall keep a register of the public assets and stores in respect of every head of expenditure.

(3) A controlling officer shall cause the public assets and stores of a Head of expenditure to be inspected and prepare written reports on the general condition of those assets and stores and the storage facilities in which the assets and stores are kept.

(4) A controlling officer shall ensure that all public properties under the controlling officer's charge are secured with title deeds.

(5) A controlling officer shall ensure that all public assets and stores under that controlling officer's charge are—

(a) accounted for in each financial year as shall be specified by the Secretary to the Treasury; and

(b) managed and safeguarded in line with the provisions of this Act, Public Procurement Act, 2008 and any other law.

Act No. 12 of 2008

(6) A controlling officer shall submit reports on public assets and stores to the Treasury one month after the end of the current financial year.

(7) A controlling officer shall not pledge or otherwise encumber any public asset of a head of expenditure without the authorisation of the Minister.

(8) A controlling officer shall not place a public asset on lease without the authorisation of the Secretary to the Treasury.

(9) The Accountant-General shall issue guidelines for accounting, recording and reporting of Government assets and liabilities.

(10) An office holder who negligently fails to account for public assets and stores breaches the duty of reasonable care, skill and diligence commits financial misconduct.

42. (1) The Secretary to the Treasury may, where any public assets and stores are no longer required, may on the recommendation of the Committee of Survey or any delegated authority direct the disposal of the public assets and stores and payment of the proceeds of the sale, if any, into the general revenues of the Republic.

Disposal of public assets and stores by public bodies

(2) Subsection (1), does not apply to a local authority, statutory corporation and state owned enterprises.

Establishment
of committee
of survey

43. (1) A controlling officer shall constitute a committee of survey which shall consist of—

- (a) the head of human resource;
- (b) the head of accounting;
- (c) the head of internal audit or stock verification;
- (d) head of procurement and supplies unit;
- (e) three officers from the Ministry responsible for works;
- (f) Controller of Government Transport;
- (g) a representative of the ministry responsible for infrastructure; and
- (h) two public officers with specialised skills coopted by a controlling officer to effectively execute the Committee of Survey activities.

(2) The functions of the Committee of survey include—

- (a) examining the public assets of a head of expenditure, for the preceding financial year;
- (b) recommending to the Secretary to the Treasury, the disposal of the unserviceable or obsolete public assets or stores; and
- (c) rendering a report to the Secretary to the Treasury on any disposals made in the preceding financial year within thirty days of the end of the previous financial year.

(3) Despite subsection (1), the Secretary to the Treasury may appoint a special committee of survey for any ministry, department, Government agency.

Disposal of
public assets
and stores by
local
authority,
statutory
corporation,
and state
owned
enterprise

44. (1) The controlling body of a local authority, statutory corporation or state owned enterprise shall establish a Disposal Committee as and when need arises for the purpose of disposal of unserviceable, obsolete, obsolescent, or surplus stores, equipment or assets.

(2) The Disposal Committee is responsible for verification and processing of disposal recommendations.

(3) The Disposal Committee consists of the following persons appointed by the controlling body—

- (a) the head of human resource and administration, as the Chairperson;
- (b) the head of accounting; and
- (c) four members from within or outside the institution with skills, knowledge and experience relevant to the asset, valuation and disposal.

(4) All proceeds from disposal of public assets and stores except those that belong to local authorities and statutory corporations shall be transmitted to the Consolidated Fund.

(5) A State Owned Enterprise may keep the disposal proceeds from public assets and stores where that State Owned Enterprise is a limited liability company and the assets were procured from its own resources.

(6) A local authority, statutory corporation or state owned enterprise shall be required to submit to the Secretary to the Treasury a disposal of assets report within thirty days after conclusion of the disposal process.

45. (1) The Minister may make regulations for the disposal of unserviceable, obsolescent, obsolete or surplus assets by a Committee of survey or Disposal Committee.

(2) A relevant expert of the subject assets for disposal shall where appropriate, prepare a technical report that provides a valuation of the assets proposed for disposal.

(3) A Committee of Survey or a Disposal Committee shall meet to conduct an examination or review of the assets and recommend the best method and place of disposal to the controlling officer or the controlling body.

(4) Where a controlling officer or controlling body adopts the recommendations of a Committee of Survey, that controlling officer or controlling body shall submit to the Secretary to the Treasury, a request to dispose public assets and stores for approval.

(5) After approval by the Secretary to the Treasury, the Committee of Survey or Disposal Committee shall disclose the reserve price to the prospective bidders.

(6) Where there is no responsive bidder under subsection (5), the controlling officer or controlling body shall have powers based on the recommendations of the Committee of Survey or Disposal Committee to revise the reserve price or undertake such adjustments as maybe necessary to ensure expeditious disposal of assets.

(7) After receiving the recommendations of the Committee of Survey or Disposal Committee, controlling officer or controlling body may approve or reject the recommendation of the Committee of Survey or Disposal Committee.

(8) If the controlling officer or controlling body approves the recommendations of the Committee of Survey or Disposal Committee, the assets that became unserviceable, obsolete or surplus shall be disposed of in accordance with those recommendations.

Disposal
procedures
for public
assets and
stores in
public
bodies

(9) If the controlling officer or controlling body rejects the recommendations of the Committee of Survey or Disposal Committee the controlling officer or Board shall give further direction on the matter and refer the matter to the Secretary to the Treasury.

Methods of disposal of public assets and stores in public bodies

46. (1) Subject to the other provisions of this Act, a controlling officer or controlling body shall dispose public assets and stores in a prescribed manner that ensures accountability and transparency.

(2) The disposal method of public assets and stores by publication under subsection (1) includes—

- (a) transfer of public assets and stores to another public body or part of a public body, with or without financial adjustment;
- (b) sale by public tender;
- (c) sale by public auction;
- (d) sale to employees of a public body;
- (e) trade in;
- (f) waste disposal management; or
- (g) any other means that may be prescribed.

Restriction on disposal to employees

47. (1) A controlling officer or a controlling body shall not dispose of assets to an employee of that public body or a member of a committee of the public body except as prescribed.

(2) A person who disposes of assets to an employee of a public body or a member of a committee of a public body in contravention of subsection (1), commits financial misconduct.

Losses of monies or stores

48. (1) Subject to the provisions of this Act or any other law where—

- (a) any public monies have been lost or stolen; or
- (b) any public stores have been lost, damaged or stolen, then that loss may, with the approval of the Secretary to the Treasury, be charged against monies appropriated by Parliament for the purpose.

(2) The Secretary to the Treasury may—

- (a) write off deficits of public monies and the value of the deficient, damaged, condemned, unserviceable or obsolete public stores;
- (b) write off irrecoverable amounts of revenue, debts and over payments except where, by any other Act, such power is expressly conferred upon any other office holder in respect of any specified class of public revenue, debts or overpayments;

- (c) write off unused accountable forms including receipt forms which have been lost or damaged on being satisfied that they have not been fraudulently used;
- (d) delegate in writing to any office holder any powers which the Secretary to the Treasury is authorised to exercise under paragraphs (a), (b) and (c) setting out in each case the limits up to which such powers may be exercised; and
- (b) cause details of write offs and abandonments effected under paragraph (a) to be published in the annual financial report and *Gazette*.

PART IV

FINANCIAL MISCONDUCT

49. (1) A controlling officer or controlling body to whom power or duty is assigned, commits an act of financial misconduct if that controlling officer or controlling body wilfully or negligently makes or permits an unauthorised, irregular or wasteful expenditure or misapplication of funds or by an act or omission, causes the theft of public funds, public stores or public property.

Financial misconduct by controlling officers, committees and office holders

(2) A member of a controlling body or controlling body is individually and severally liable for any financial misconduct of the controlling body.

(3) The Secretary to the Treasury may where a controlling officer or controlling body has committed an act of financial misconduct—

- (a) require that a controlling officer, Committee or controlling body to make additional reporting to the Treasury on management and control of public monies under that controlling officer's Committee's or controlling body's charge;
- (b) require a controlling officer or controlling body to avail a financial management improvement plan to the Treasury for approval; and
- (c) impose restrictions over certain categories of expenditure.

(4) Where a controlling officer or a member of a controlling body, is found guilty of financial misconduct, the Secretary to the Treasury may revoke the appointment as controlling officer or a member of the controlling body and recommend to the Secretary to Cabinet or an appropriate executive authority any of the following:

- (a) suspension;

- (b) dismissal; and
- (c) prosecution.
- (5) Subject to the other provisions of this Act, a contravention of this Act by a—
- Cap. 16 (a) Member of Parliament or Minister constitutes misconduct for the purposes of the Ministerial and Parliamentary Code of Conduct Act; and
- Act No 13 of 1999 (b) Judge or Judicial officer constitutes misconduct for the purposes of the Judicial Code of Conduct Act.
- Disciplinary proceedings **50.** (1) A charge of financial misconduct against an office holder, a controlling officer, a member of a controlling body, shall be investigated, heard and determined in terms of the statutory or other conditions of appointment or employment applicable to that office holder, controlling officer, or member of a controlling body.
- (2) The disciplinary proceedings undertaken under subsection (1) shall not affect the right to institute criminal procedure.
- Surcharge for failure by controlling officer or controlling body to perform **51.** (1) Subject to the other provisions of this Part, the Secretary to the Treasury shall where a controlling officer or controlling body or an office holder fails to perform any financial duties assigned under this Act and such failure results in loss of public assets, monies or stores—
- (a) impose on that controlling officer or any other office holder a surcharge equivalent to the loss, wasteful expenditure incurred by Government; and
- (b) recommend to the Executive authority of the controlling body disciplinary action to be taken against the defaulting controlling officer which may include—
- (i) an appropriate surcharge;
- (ii) revocation of the appointment of the controlling officer; or
- (iii) such other disciplinary action as may be decided by the appropriate disciplinary authority.
- (2) The Secretary to the Treasury may, in addition to the disciplinary action under subsection (1), where there is a controlling body, recommend to the responsible minister to dissolve the controlling body or revoke the appointment of the controlling body.
- Surcharge for failure by office holder to perform duty assigned **52.** (1) Subject to the other provisions of this Part, the Secretary to the Treasury shall where an office holder fails to perform a duty assigned under this Act and the officer is found to have committed financial misconduct—

- (a) suspend or impose on that office holder a surcharge equivalent to the loss or wasteful or irregular expenditure incurred by Government; and
- (b) recommend to the relevant Service Commission, appropriate action to be taken which may include—
 - (i) demotion;
 - (ii) termination of employment; and
 - (iii) any other penalty as prescribed under any relevant regulation.

(2) An office holder is financially liable to the Government who, through any act of wilful default or gross neglect of duty—

- (a) whenever it is that office holder's duty to collect any monies due and owing to the Government, fails to collect the same and by reason of such failure the monies cannot be collected;
- (b) makes, causes or permits any improper payment of public monies, or any payment of the public monies which is not duly authorised or for which no funds have been provided;
- (c) causes or permits a loss or deficiency in respect of any public monies under that office holder's control and for which that office holder is bound to account;
- (d) causes or permits any damage to, or destruction or loss of any public stores;
- (e) causes or permits any personal injury or damage to property in circumstances which give rise to liability of the Republic to third persons in respect of that injury or damage;
- (f) causes or permits damage to or loss of any Government building, or any fixtures, fitting or furniture therein; or
- (g) makes negligent decisions which result in loss of public monies or property.

(3) An office holder referred to in subsection (2) is liable to Government in an amount that may be determined by the Secretary to the Treasury and, subject to the provisions of this section, any liability so determined may be recovered at the suit of the Attorney-General in that behalf.

(4) The Secretary to the Treasury may, where the Secretary to the Treasury establishes that a loss has been suffered by the Government because of any act or wilful default or gross neglect of duty of any office holder, under subsection (2), assess, as attributable to that act, an amount, being not greater than the actual loss suffered, and shall forward to the office holder, a notice in writing, of the assessment of claim and of the amount thereof.

(5) An office holder may within twentyone days after receipt by the office holder from the Secretary to the Treasury of a notice of assessment of claim under subsection (3), make representations to the Secretary to the Treasury, in writing, with respect to—

(a) the office holder's liability under subsection (2); or

(b) the amount assessed under subsection (3) attributable to the office holder's act of wilful default or gross neglect of duty.

(6) The Secretary to the Treasury shall give due consideration to any representation so made by the office holder.

(7) The Secretary to the Treasury may determine the amount of the liability of the officer and the amount assessed under subsection (3), or, if the Secretary to the Treasury considers just, at a lesser amount, and shall make demand in writing upon the office holder for payment of the amount so determined where—

(a) after the expiration of twentyone days from the date upon which notice of assessment of claim was forwarded to the office holder, in accordance with subsection (4), the Secretary to the Treasury receives no representation from the office holder in accordance with subsection (5); or

(b) after giving due consideration to any representation made by the office holder under subsection (5), the Secretary to the Treasury is of the opinion that the office holder should be held liable to the Government as stated in the notice of assessment of claim.

(8) Where, after giving due consideration to the representations made by the office holder under subsection (5), the Secretary to the Treasury establishes that the office holder did not commit any act of wilful default or gross neglect of duty in respect of the matters grounding the assessment of claim made under subsection (4), the Secretary to the Treasury shall cancel the assessment of claim and notify the office holder, in writing, of the cancellation.

(9) Subject to subsection (2), upon receipt of the demand for payment referred to in subsection (7), the office holder may, in writing—

(a) admit liability in the sum stated in the demand for payment for the recovery of the admitted or agreed sum by equal monthly instalments by way of deduction from the salary or pension of the office holder in a stated monthly sum, to be fixed by the Secretary to the Treasury, not exceeding one fourth of the monthly salary or pension, as the case may be, of the office holder; or

(b) deny liability in the sum stated in the demand for payment.

(10) Where an office holder has admitted liability in any admitted or agreed sum and consented to the recovery of that sum and the office holder's employment by the Republic is terminated, whether by resignation, dismissal, death or otherwise, before the entire sum admitted or agreed has been fully recovered the admission of liability shall be deemed to be, and shall have effect as a consent to judgement in favour of the Republic in the amount of any outstanding balance of the admitted or agreed sum remaining unpaid at the date of the termination of the office holders employment, and that consent to judgement shall be effective in any proceedings brought in respect of the liability against the office holder or the office holder's legal representatives, as the case may be.

(11) Where, after the expiration of ten days after receipt of demand for payment from the Secretary to the Treasury, the office holder has failed to admit liability, the Attorney-General may institute proceedings for the recovery of the amount so demanded.

(12) Anything done under this section is without prejudice to the exercise of disciplinary action over the office holder by any lawful authority in respect of any act of wilful default or gross neglect of duty.

53. (1) In any action brought for the recovery from any office holder of any liability to the Government under section 52, the court may, at any time after the action is brought, grant, on the *ex-parte* application of the Attorney General, an interim order of surcharge in accordance with to subsections (2) and (3).

Interim order
of surcharge

(2) An application for an interim order of surcharge under to subsection (1) shall be based on the affidavit of the Secretary to the Treasury setting out—

- (a) the facts upon which the claim is founded and exhibiting copies of the notice of assessment of claim and demand for payment, issued and forwarded to the office holder under section 52; and
- (b) the official status of the office holder, the office holder's length of service, the office holder's monthly salary, and how long the office holder was employed in the position the office holder held at the time when the alleged loss, incorrect payment, deficiency or damage occurred.

(3) An interim order of surcharge made in this section shall empower the Secretary to the Treasury to cause to be deducted from the salary of an office holder a stated sum each month, not exceeding one-fourth of the monthly salary of the office holder, and, pending the final determination of the action, to apply the deducted sums towards the liquidation of the amount claimed.

(4) If any action, in which an interim order of surcharge was obtained in accordance to this section, is discontinued, or is dismissed by the court, the interim order shall, on the filing of the notice of discontinuance, or on the judgement of dismissal becoming final, as the case may be, cease to have or effect, and the Secretary to the Treasury shall, within twenty one days thereafter, cause such sums as had been deducted from the monthly salary of the office holder on the authority of the interim order to be refunded to that office holder in full.

(5) Where in any action, in which an interim order of surcharge was obtained under this section and judgement is decreed in the amount claimed, or in any lesser amount, and costs, the court may, on the application of the Attorney-General, make an order of surcharge in respect of the balance due on the judgement after deducting from the judgement all sums up to the time of the judgement deducted from the monthly salary of the office holder under the interim order.

(6) An order of surcharge made under this subsection shall be in such terms as the court may consider fit and shall empower the Secretary to the Treasury to deduct from the salary of the judgement debtor a stated sum each month, not exceeding onequarter of the monthly salary of the judgement debtor, until all sums outstanding on the authority of the judgement and costs have been paid in full.

(7) If in any action judgement is decreed in an amount which together with any costs allowed is less than the total sum deducted under an interim order of surcharge made under this section, the Secretary to the Treasury shall, within twenty-one days after such judgement becomes final, cause to be refunded to the judgement debtor any sum deducted in excess of the amount of the judgement and costs.

(8) Where a final order for surcharge made under this section is in force in respect of an office holder, and the employment of the office holder by the Republic is terminated, whether by resignation, dismissal, death or otherwise, the Secretary to the Treasury may, against any monies payable to the office holder by the Government, set off any balance remaining unpaid on the authority of the judgement in respect of which the surcharge order was made.

(9) A judgement decreed under this section shall be without prejudice to the exercise of disciplinary action over such office holder by any lawful authority in respect of the act, wilful default or gross neglect of duty giving rise to the action in which such judgement was decreed.

54. (1) Where an office holder steals or converts to that office holder's own use any public funds or any public stores and an action is brought against that office holder at the suit of the Attorney-General for the recovery of such monies, property or stores or for damages for their loss, the Attorney-General may apply *ex-parte* to the court, either at the time of the institution of the action, or at any time thereafter until final judgement, for an order directing that a property belonging to the office holder shall be attached until the further order of the court, and such order of attachment shall be executed according to its tenor.

Attachment
of property
of office
holder as
security

(2) Where the property sought to be attached under subsection (1) is —

- (a) land, or an interest in land, the application shall contain a description of the land sufficient to identify the same for the purposes of registration of the order directing the attachment in the Lands registry together with a statement of the interest of the office holder therein required to be attached;
- (b) movable personal property, the application shall contain a description of the property required to be attached, the estimated value thereof so far as can reasonably be ascertained, and the place where the property may be found;
- (c) a bank or other financial institutions account, the application shall contain the name of the bank or other financial institutions and the address of the office or branch thereof at which the account is believed to be kept and, a statement of any reason why such account is believed to be the property of the office holder;
- (d) an account in any other financial institution, the application shall contain the name under which such account is kept, and if the account is not in the name of the office holder, the name in which it is kept and a statement of any reason why such account is believed to be the property of the office holder;
- (e) a debt owing to the office holder, the application shall contain the name and address of the debtor; and
- (f) shares in a company, the application shall contain the name of the company and the address of its registered Office.

(3) The Court may, in any order directing the attachment of property, direct the attachment of the whole of the property specified under subsection (2) or such portion of the property as the court considers sufficient to satisfy any judgement which may be passed in the action.

Cap. 185 (4) Where the property directed to be attached under this section is land or an interest in land, attachment shall be effected by lodging a certified copy of the order directing the attachment in the Registry of Lands and Deeds, for entry in the register, and any such attachment so effected shall be in the nature of a caveat by the Attorney-General in respect of the land attached, and the provisions of Part VI of the Lands and Deeds Registry Act shall apply to that attachment with necessary modification.

Cap. 185 (5) Where the action brought is one for the return of specific goods claimed to be public stores unlawfully detained by an office holder, the order made in accordance with subsection (1) may provide that the goods, upon being attached in accordance with the court order, be delivered to the Government to be retained by the Government until the further order of the court.

(6) A delivery shall not be ordered in accordance with this subsection unless the Attorney-General gives an undertaking on behalf of the Government that the goods shall be returned to the office holder in the event of the dismissal of the action.

(7) Attachments made under this section shall not affect the rights in the attached property of persons who are not parties to the action, and in the event of any claim being preferred to the attached property, the claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a judgement of the court.

(8) In cases of attachment under this section, the court shall, at any time, remove or discharge the order upon the office holder furnishing sufficient security to satisfy any judgement which may be ordered against the office holder in the action together with security for the costs of the attachment.

(9) Where in any action in which property is attached in accordance with subsection (1), final judgement is decreed—

(a) in favour of the office holder, the court shall remove the attachment, and order, where necessary, the restoration of the property to the office holder; or

(b) in favour of the Attorney-General, the court shall issue execution against the attached property to the extent of the judgement and costs, and upon execution being effected, the attachment shall cease to have any further effect.

(10) The Attorney-General may at any time, in the prescribed form consent to the removal from attachment, of the whole or any part of any property so attached, and such consent shall have effect according to its tenor.

(11) Where the order directing attachment has been registered in respect of any lands under subsection (4) any consent to the removal of the attachment under subsection (9) in respect of such land or any part of the land shall be registered and shall have effect as a withdrawal of the attachment of the lands, to the extent of the consent.

(12) The provisions of any Act or rule of law suspending any civil remedy in respect of the subject matter of any criminal proceedings pending the determination of those proceedings shall not apply so as to limit or suspend the obtaining of any order or attachment under this section.

PART V

CONTROL OF STATUTORY CORPORATIONS AND STATE OWNED ENTERPRISES

55. The Minister shall—

- (a) develop a supervisory and performance monitoring framework;
- (b) put in place an appropriate institutional arrangement for the coordination and supervision of statutory corporations and state owned enterprises;
- (c) develop a code of Government governance guidelines;
- (d) develop a regulatory framework for the establishment and management of the Sovereign Wealth Fund; and
- (e) formulate any other specific legislation relevant to control of statutory corporations and state owned enterprises.

Responsibilities of Minister in management of state owned enterprises and statutory corporations

56. The Minister may delegate the management and control of Government interest in statutory corporations and state owned enterprise to the Secretary to the Treasury or appoint or establish an appropriate executive authority to manage Government interest in State owned enterprises.

Management of statutory corporations and state owned enterprises

57. Despite the provisions of any other law, the Treasury shall ensure that Government is represented on all Boards by a Board of directors for the statutory corporations and state owned enterprises.

Representation in statutory corporations and state owned enterprises

58. (1) The Board of Directors of any statutory corporation or state owned enterprise referred to in section 57 shall through the appropriate executive authority, furnish the Secretary to the Treasury with reports covering the operations of such statutory corporation and state owned enterprise financial affairs at the end of every financial year.

Annual report and financial statements

(2) The responsibilities of a Board of Directors for statutory corporations and state owned enterprise under this section shall include—

- (a) submission to the Secretary to the Treasury, through the executive authority of financial statements for each financial year prepared in accordance with the applicable accounting reporting framework;
- (b) submission of financial statements within one month after the end of the financial year to the auditors of the statutory corporation or state owned enterprise for auditing;
- (c) the financial statements referred to in paragraphs (a) and (b) shall include details of financial performance for a statutory corporation or state owned Enterprise, its subsidiaries and other investments, if any; and
- (d) submission to the Secretary to the Treasury, through the executive authority responsible for that statutory corporation or state owned enterprise within four months of the end of a financial year and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General—
 - (i) an annual report on the activities of that statutory corporation or state owned enterprise during that financial year;
 - (ii) the audited financial statements for that financial year; and
 - (iii) the report of the auditors on those statements.

(3) The annual report and financial statements referred to in subsection (2) (c) must fairly present the state of affairs of the statutory corporation or state owned enterprise, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of that financial year, including the financial statements of any subsidiaries.

(4) The Minister shall submit the report and statements referred to in subsection (2) (d), and lay it before the National Assembly within five months after the end of the financial year.

(5) The Treasury may direct that, instead of a separate report, the audited financial statements of a statutory corporation or a state owned enterprise which is not a commercial enterprise must be incorporated in those of a department designated by the Treasury.

59. (1) The Board of Directors for a statutory corporation or state owned enterprise shall ensure that shareholders meetings are held at least once in a financial year. Shareholders meeting

(2) At the shareholders meeting referred to in subsection (1), —

(a) the external auditors shall present to the shareholders an audit opinion on the financial statements for the preceding financial year; and

(b) the Board of directors shall submit to the shareholders proposed dividends, if any, for approval.

60. (1) Before any grant is released to a statutory corporation or state owned enterprise, the Board of directors for the statutory corporation or state owned enterprise shall submit to the Treasury a statement indicating how they intend to utilise the grant. Conditions for appropriation of grants

(2) Subject to subsection (1), before any grant is released to a statutory corporation or state owned enterprise, the Secretary to the Treasury shall, in writing, set conditions for the appropriation of the grant and the statutory corporation or state owned enterprise shall comply with the conditions.

(3) The Secretary to the Treasury may, where a statutory corporation or state owned enterprise fails to comply with the conditions set in subsection (2)—

(a) restrict the release of further grants to the statutory corporation until such time as the conditions are complied with;

(b) invoke the provisions of section 49(4);

(c) recommend to the appropriate executive authority for the dissolution of the Board;

(d) recommend the appointment of a financial overseer for the management of the affairs of the statutory corporation or state enterprise; or

(e) take any other appropriate remedial, disciplinary or legal action subject to Part V of this Act or any other law.

61. (1) The Secretary to the Treasury shall ensure that grants released to statutory corporations and state owned enterprises are appropriated for the purposes for which they are released. Grants disbursed to statutory corporations and state owned enterprises

(2) The Board shall—

(a) upon receipt of the monthly grant acknowledge receipt of the grant to the Treasury; and

(b) submit to the Treasury monthly returns detailing application of the grant in the format as shall be prescribed.

(3) A Board of Directors that fails to comply with subsections (1) and (2) commits financial misconduct under Section 49.

Transfer of
assets to
statutory
corporations

62. (1) The Secretary to the Treasury shall where on the creation of a statutory corporation or state owned enterprise, it becomes necessary for Government assets to be vested in that statutory corporation or state owned enterprise, arrange for such assets to be valued and examined by a qualified valuer and the value of such assets shall be either reckoned as—

(a) Governments contribution to the share capital of the statutory corporation or state owned enterprise; or

(b) a Government loan to the statutory corporation or state owned enterprise under amortisation arrangements to be determined by the Treasury.

(2) On the transfer of assets referred to in subsection (1), the value of assets transferred shall be reflected in the financial report of a statutory corporation or state owned enterprise.

(3) A person who fails to comply with this section, shall be liable in accordance with this Act, or under any law.

Records of
investments
in statutory
corporations
or state
owned
enterprises
to be
maintained

63. The Secretary to the Treasury shall cause to be maintained record of monies invested in statutory corporations and state owned enterprises and ensure that the statutory corporations and state owned enterprises are managed efficiently so that state yield reasonable dividends to Government.

Inefficient
operations
of statutory
corporations
or state
owned
enterprises

64. (1) The Secretary to the Treasury shall, where the Secretary to the Treasury considers that the operations of the statutory corporation or state owned enterprise are not being carried out in an efficient manner, review the operations and recommend to the appropriate executive authority for appropriate action.

(2) The Secretary to the Treasury shall refer the matter to the Minister who may refer the matter to the responsible Minister recommending for suspension, dissolution or dismissal of the Board of directors, if, despite bringing the matter to the notice of the executive authority, there is no improvement in the operations of the statutory corporation or state owned enterprise within twelve months.

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(3) Where a responsible Minister fails to take action as prescribed in subsection (2), the Minister under the Minister of Finance (Incorporation) Act, may dissolve the Board of directors.

- 65.** (1) The Board of directors for a statutory corporation or state owned enterprise shall take such steps as are necessary to ensure that the assets of the statutory corporation and state owned enterprise are protected against theft, misuse, loss or any other risk.
- (2) A statutory corporation or state owned Enterprise shall not pledge any Government asset as collateral without the written authority of the Secretary to the Treasury.
- 66.** Statutory corporations and state owned enterprises shall be subjected to audit by the Auditor-General, Controller of Internal Audit or any other auditors appointed by the Secretary to the Treasury to carry out special audits in such statutory corporations or state owned enterprises as the case may be.
- 67.** The Secretary to the Treasury shall ensure that, on the privatisation of a statutory corporation or state owned enterprise, Government's interests in that statutory corporation or state owned enterprise are adequately protected and that the proceeds of sale of the statutory corporation or state owned enterprise are paid into the appropriate revenue account.
- 68.** Where monies stand receivable arising from the sale of a statutory corporation or state owned enterprise by Government from private investors under any law, the chief executive officer of the appropriate body responsible for privatisation and investment shall ensure that those monies are recovered and credited to the appropriate revenue account.
- 69.** (1) The Secretary to the Treasury shall constitute a committee comprising of not less than five members three of whom shall be Government officers, in the event of the dissolution of a statutory corporation or state owned enterprise which has been receiving grants from Government and where the Board of Directors of the statutory corporation or state owned enterprise has been dissolved, who shall, in collaboration with the Official Receiver, oversee the winding up of the affairs of the statutory corporation or state owned enterprise.
- (2) The committee appointed under subsection (1) shall ensure that—
- (a) the assets of such statutory corporation or state owned enterprise are properly inventorised, valued and disposed subject to the instructions of the Secretary to the Treasury;
- Protection of assets of statutory corporation or state owned enterprise
- Audit of statutory corporation or state owned enterprise
- Protection of Government interests on privatisation of statutory corporation or state owned enterprise
- Recovery of outstanding monies
- Dissolution of statutory corporation

- (b) all debts due to such statutory corporation or state owned enterprise are promptly recovered;
- (c) the affairs of the corporation or state owned enterprise are wound up in accordance with the applicable liquidation laws.
- (d) any balance remaining after the conclusion of the transactions referred to in paragraphs (b) and (c) is credited to the Consolidated Fund; and
- (e) any assets considered major and strategic by Government in the Public interest reverts to the ownership of the Government.
- Cap 349 (3) A person mandated to manage the dissolution of statutory corporations or state owned enterprise who fails to execute the dissolution process in line with the laid down procedures shall be liable in accordance with this Act or any other law.

PART VI

REPORTS

Financial
report of
Republic

70. (1) The Treasury shall prepare a financial report for each financial year, to account for public funds for that year's Appropriation Act.

(2) The Secretary to the Treasury shall cause to be consolidated financial statements submitted under subsection (5) within two months of receipt of the financial statements from the controlling officers into the Financial Report of the Republic.

(3) The financial report for the Republic prepared under subsection (1) shall include—

(a) information as provided in the Constitution; and

(b) notes to the financial report and any other information as may be prescribed by the Treasury.

(4) A controlling officer shall for each financial year, be required to prepare a financial report to account for all public funds appropriated to the head of expenditure for which that controlling officer is responsible.

(5) A controlling officer shall submit to the Secretary to the Treasury a financial report in respect of the controlling officer, head of expenditure for which that controlling officer is responsible within one month after the end of the preceding financial year.

(6) The financial reports referred to in subsections (1) and (4) shall be prepared in accordance with the applicable accounting

reporting framework and Government Accounting Guidelines as determined by the Secretary to the Treasury.

71. The financial year for a public body shall be a period of 12 months ending 31st December of each calendar year.

Financial year for public body

72. (1) A statutory corporation and state owned enterprise shall submit an annual financial report to the responsible Minister and the Secretary to the Treasury.

Financial reports for statutory corporations and state owned enterprises

(2) Subject to subsection (1), the financial report submitted by a statutory corporations and state owned enterprises to the appropriate Minister and the Secretary to the Treasury shall include a report on risk management, corporate governance and any other performance report.

(3) A Board of a statutory corporation or state owned enterprise that fails to comply with this section commits financial misconduct and is liable to penalties in accordance with this Act or any other law.

PART VII

EXTERNAL AUDIT

73. (1) The Auditor-General and an office holder, agent or specialist consultant authorised by the Auditor-General, shall in the performance of duties under the Constitution, the Public Audit Act, 2016, or any other law—

Mandate of Auditor-General Cap. 1 Act No. 29 of 2016

- (a) have access to all the books, records, returns, reports, other documents and financial management systems, in electronic or any other form, relating to the accounts of public bodies as the Auditor-General considers necessary;
- (b) access at any reasonable time of the day to the premises of any public body under audit examination or inspection;
- (c) power to call for relevant information from persons responsible for the financial administration of any public body under audit examination or inspection; and
- (d) access to all information, communication technology systems used in the management of public monies.

(2) Despite anything contained in subsection (1) and subject to subsection (3) the Auditor-General shall not authorise any agent or specialist consultant—

- (a) to have access to any books, records, return, reports, information, communication technology systems and

other documents, or to enter upon any premises, of any component of the Defence Force or the Zambia Security Intelligence Service; or

- (b) to have access to any books, records, returns, reports, information, communication technology systems and other documents, or to enter upon any premises other than those mentioned in paragraph (a), if such access or entry is likely to—
- (i) prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or
 - (ii) involve the disclosure of any matters or deliberations of a secret or confidential nature of the Cabinet or any subcommittee of the Cabinet.

(3) Despite subsection (2), the Auditor-General may, where the circumstances of an audit so require after obtaining the written consent of the President, authorise an agent or specialist consultant—

- (a) to have access to the books, records, returns, reports information, communication technology systems and other documents, or enter upon any premises, of any compound of the Defence Force or the Zambia Security intelligence Service; or
- (b) to have access to books, records, returns, reports information, communication technology systems and information and other documents, or enter upon any premises other than those referred to in paragraph (a).

Auditor-General may secure services of agents or specialist consultants, Act No. 29 of 2016

74. (1) The Auditor-General may in accordance with the provisions of the Public Audit Act, 2016 secure the services of agents or specialist consultants to assist the Auditor-General in the execution of duties under this Act.

PART VIII

GENERAL PROVISIONS

Prohibition of unauthorised incentives

75. (1) Except as provided under any law, a person is not entitled to any fiscal terms, fiscal incentives or tax exemptions.

(2) A Ministry or spending agency shall not enter into any agreement committing the Government to fiscal terms, fiscal incentives or tax exemptions otherwise than in accordance with any law.

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

76. (1) An office holder or any other person shall not use any public monies or public stores or other assets for any purpose not authorised by this Act or by any other law.

Unauthorised use of public money

(2) An office holder or any other person who contravenes subsection (1) commits an act of financial misconduct.

77. A person charged with financial misconduct under this Act shall be given an opportunity to make representations with respect to the charge.

Right to make representations

78. (1) The Secretary to the Treasury may, where the Secretary to the Treasury considers it expedient, in accordance with the provisions of the Public Procurement Act, 2008, engage the services of a consultant to advise on matters not expressly provided for in this Act.

Consultancy services Act No. 12 of 2008

(2) A controlling officer for a ministry, department, Government agency or local authority shall not contract or engage a consultant to provide accounting and related services without the written authority of the Secretary to the Treasury.

(3) An office holder who contravenes the provisions of subsection (2) commits financial misconduct and is liable to penalties prescribed under this Act, the Public Procurement Act, 2008, or any other law.

Act No. 12 of 2008

79. Except where express provision has been made in any other law for the time being in force, a person representing a public body shall not enter into an agreement or arrangement with any other person, organisation or a foreign Government committing the Government to receive, repay or forego monies in accordance with that agreement or arrangement unless that agreement or arrangement is authorised by the Minister.

Restrictions regarding agreements

80. (1) Subject to the Constitution and any other law, where there is an establishment or merger of ministries, departments or Government agencies—

Establishment or merging of government ministries, departments and Government agencies Cap.1

(a) accounting for resources in the year of establishment or merger shall be in accordance with the Appropriation Act; and

(b) accountability of the resources for the ministry, department or Government agency referred to in (a) shall be the responsibility of the controlling officer appointed in that fiscal year for the devolved function.

(2) Where a ministry, department and Government agency is established or merged, the Secretary to the Treasury shall appoint a Special Committee of Survey to—

- (a) quantify the cost of the established ministry, department and Government agency; and
- (b) examine and value the assets and liabilities of the merged ministry, department and Government agency.

Dissolution
of
government
ministries,
departments
and
Government
agencies
Cap.1

81. (1) Subject to the Constitution and any other law, in the event of dissolution of ministry, department or Government agency, the Secretary to the Treasury shall appoint a Special Committee of Survey to—

- (a) examine and value the assets and liabilities of the dissolved ministry, Department and Government agency; and
- (b) recommend the allocation or disposal of the assets and liabilities of the dissolved ministry, department or Government agency.

(2) The Secretary to the Treasury may, in consultation with the Ministry responsible for, works, and supply, designate the assets referred to in subsection (1) (b) among other ministries, departments and Government agencies sell the assets by public auction or tender.

Offences and
penalties

82. (1) A person commits an offence if that person, wilfully and without lawful authority—

- (a) opens or causes to be opened any bank account for public or official use;
- (b) borrows money on behalf of a public body, or repays or converts an existing loan;
- (c) issues public securities, or varies the terms and conditions of the issued public security;
- (d) lends money or any assets of a public body;
- (e) issues guarantees or indemnities on behalf of a public body;
- (f) issues securities for loans made to the public body;
- (g) disposes of, pledges, or encumbers property of a public body;
- (h) refuses or omits to pay any public money into a public or official bank account as may be required;
- (i) incurs unauthorised expenditures or makes unauthorised commitments;
- (j) fails to provide by the due date, any information the Secretary to the Treasury may reasonably require under this Act;

- (k) fails to provide any information that the Auditor-General, Accountant General, Controller of Internal Audit or a person authorised by the Auditor-General, Accountant General or Controller of Internal Audit may reasonably require under this Act;
- (l) fails to provide, or obstructs access to any item required under this Act;
- (m) fails to keep proper records or conceals or destroys information that is required to be recorded by this Act;
- (n) makes any statement or declaration, or gives any information or document, required under this Act, knowing it to be false or misleading;
- (o) alters or divulges data in electronic or other form; or
- (p) fails to comply with any requirement of this Act or to execute a duty or function imposed on that person under this Act.

(2) A person who steals public funds or public stores, or public property commits an offence.

(3) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or a term of imprisonment not exceeding five years, or to both.

(4) Subject to the other provisions of this Act, an offence under this part shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law.

Cap. 87

Cap. 88

(5) Nothing in this Act prejudices, limits or restricts—

- (a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines;
- (b) the remedies available to the State apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or to detain property which is exercisable by a police officer apart from this Act.

83. An office holder or other person who contravenes a provision of this Act for which a specific penalty is not provided, is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

General
penalty

Establishment, merging or dissolution of grant aided institutions	<p>84. The Secretary to the Treasury shall where the President establishes, merges or dissolves a grant aided institution, assess the financial implications and provide a road map for implementation.</p>
Form of document	<p>85. (1) The manner and form of a document under this Act shall be as prescribed.</p> <p>(2) A document prescribed under subsection (1) may be in hard copy or electronic form.</p>
Establishment of committees	<p>86. The Secretary to the Treasury may, for purposes of performing the functions under this Act, constitute a committee and delegate to the committee the functions of the Secretary to the Treasury as the Secretary to the Treasury considers necessary.</p>
Remuneration of committees	<p>87. The Secretary to the Treasury, may in consultation with the Emoluments Commission, prescribe the amount of either remuneration or allowances as maybe payable to members of a committee established in accordance with this Act.</p>
Forfeited assets Act No. 19 of 2010	<p>88. Subject to the Forfeiture of Proceeds of Crimes Act, 2010, the proceeds from forfeited assets in favour of the Republic shall constitute general revenues of the Republic and shall be credited to the Consolidated Fund.</p>
Conflict of interest	<p>89. (1) An office holder shall not act in a manner, or be in a position, where the personal interest of that office holder conflicts, or is likely to conflict, with the performance of the functions of that office holder's office.</p> <p>(2) Non-disclosure of interest by the office holder shall constitute financial misconduct.</p>
Regulations	<p>90. (1) The Minister may make such regulations as the Minister may consider necessary for the proper carrying out of the provisions of this Act.</p> <p>(2) Without prejudice to the generality of subsection (1) regulations made under this section may provide for—</p> <p>(a) the safety, economy and investment of public monies and property;</p> <p>(b) the collection, receipt, custody, issue, expenditure, due accounting for, care and management of public monies including donor funds and public stores except where and to the extent otherwise expressly provided in that behalf by law;</p> <p>(c) the keeping of records, the examination, inspection and checking of receipts and payments and the keeping of necessary books and accounts;</p>

- (d) the forms of accounts, books, records and other documents;
- (e) safe custody, issue, sale or other disposal or writing off of public assets and stores and proper accounting for, and stocktaking of, those public assets and stores;
- (f) the authorisation of rates of payment or receipt of public funds for specific purposes where such rates of payment are not provided by this or any other law;
- (g) the making of advances to office holders and other persons and the rates and limits of such advances and rates of interest thereon—
 - (i) the refund to persons of monies deducted or property seized from them in error; or
 - (ii) the appointment of persons other than office holders as financial or purchasing agents of the Republic;
- (h) the timely release of funds for public expenditure;
- (i) the administration of the Treasury Single Account;
- (j) management of the Consolidated Fund;
- (k) the control and management of investments in statutory corporations and state owned enterprises;
- (l) management or administration of committees, constituted under this Act;
- (m) the efficient handling of financial misconduct;
- (n) the establishment, management and control of a Sovereign Wealth Fund or a Sinking Fund;
- (o) offences and penalties not exceeding two thousand penalty units or imprisonment for a term not exceeding two years or to both; and
- (p) the better carrying out of the purposes of this Act.

91. (1) The Minister shall, on the commencement of this Act, by statutory instrument provide for balances standing to the credit of the Consolidated Fund together with other sums standing to the credit of the any other public account of the Government of Zambia which shall form part of the Consolidated Fund. Existing funds

(2) Nothing in this section shall apply to any sums of money held in trust by, or under the control of any court or officer of a court, the public trustee, the Administrator-General or the Official Receiver or to any sums of money held in trust by any other office holder for purposes other than the purposes of the Government.

(3) The investments held by the Treasury or by any other person

on behalf of the Republic on the date on which this Act comes into operation shall if the same are not already held on account of the funds held in the Consolidated Fund be considered to have been made out of monies from the Consolidated Fund.

Transitional
arrangements

92. A person who was serving as Accountant-General or Controller of Internal Audit before the coming into operation of this Act, shall continue to hold office as if appointed under this Act.

Repeal of
Act No. 15
of 2004

93. The Public Finance Act, 2004, is repealed.
