

CHAPTER 348

THE PUBLIC FINANCE ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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SCHEDULE

CHAPTER 348

THE PUBLIC FINANCE ACT

An Act to repeal the Exchequer and Audit Ordinance in order to make better provisions for the more effective control, management, and regulation of the collection and use of the finances of the United Republic and for enhancing Parliamentary control and supervision of public funds and resources, and for related matters.

[1st July, 2001]

[G.N. No. 130 of 2001]

Act No. 6 of 2001

PART I

PRELIMINARY PROVISIONS (ss 1-4)

[PCh348s1]1. Short title

This Act may be cited as the Public Finance Act.

[PCh348s2]2. Act to bind the Government

This Act binds the Government of the United Republic.

[PCh348s3]3. Application

This Act shall apply to the business and operations conducted by the Treasury and under the supervision and authority of the operations of the Accountant-General and of the Controller and Auditor-General.

[PCh348s4]4. Interpretation

In this Act unless the context requires otherwise—

"Accountant-General" means the officer appointed under section 7;

"accounting officer" means any officer appointed by the Paymaster-General and charged with the duty of accounting for any service in respect of which money have been appropriated by the National Assembly or any person to whom issues are made from the Consolidated Fund;

"Appropriation Act" means any Act to apply a sum out of the Consolidated Fund to the service of a financial year;

"Consolidated Fund" means the Consolidated Fund of the Government of the United Republic referred to in section 11;

"Constitution" means the Constitution of the United Republic of Tanzania *;

"Controller and Auditor-General" means the officer referred to in Article 143 of the Constitution;

"department" in relation to a Ministry of the Government or other public authority or other body, includes any division or unit, by whatever name known, of that Ministry, authority or other body;

"financial year" means in relation to—

(a) the Government, other than local government authority, a period of twelve months ending on 30th June of each year;

(b) a local government authority, the same meaning ascribed to it in the local Government Finances Act *;

(c) a public authority or other body, the period specified by or under the relevant law or instrument relating to that authority or body or as determined by the competent authority of that authority or body;

"generally accepted accounting practice" means accounting practices and procedures recognised by accounting profession authorities as appropriate for reporting financial information relating to Government, a Ministry or Department, a Fund, an Agency or other reporting unit, being practices and procedures that are consistent with this Act and any relevant Appropriation Act;

"Minister" means the Minister responsible for finance;

"officer" or "public officer" means a public servant employed by the Government or any officer of a Government authority, parastatal organisation or any other Government institution;

"outputs" means goods produced or services provided;

"Paymaster-General" means the officer referred to in section 6(7) and vested with the power to control the issue of public money to accounting officers;

"Permanent Secretary" means the Permanent Secretary to the Treasury;

"public authority" means a body of persons, whether or not corporate, established by or under any written law, other than the Companies Act *, whose functions are of a public nature and are exercised in furtherance of the public policy determined by the Government;

"public moneys" include:

- (a) the public revenues of the United Republic;
- (b) any trust or other money held, whether temporarily or otherwise, by an officer in his official capacity, either alone or jointly with any other person, whether an officer or not;

"resources" includes moneys, stores, property, assets, loans and investments;

"statutory expenditure" means expenditure charged by an Act of Parliament, including this Act, on the Consolidated Fund, but does not include the expenditure of moneys appropriated or granted by an appropriation Act or a supplementary appropriation Act;

"subsidiary legislation" means any order, proclamation, rule, rule of court, regulation, notice, by-law, instrument or directions made or issued under this Act or other lawful authority;

"supplementary appropriation Act" means any Act, the purpose of which is to supplement the appropriation already granted by an Appropriation Act;

"the office" means the public national audit office established by section 26 (1);

"the Treasury" means the Minister, and includes such officer or officers as may be deputed by the Minister to exercise powers and to perform duties under this Act.

PART II

CONTROL AND MANAGEMENT OF PUBLIC FINANCE (ss 5-17)

(a) Duties and Powers of Minister and the Treasury (ss 5-10)

[PCh348s5]5. Control, management and supervision of public finances

(1) It shall be the duty of the Minister—

(a) to develop and implement a macroeconomic and fiscal policy framework for the United Republic and shall, for that purpose—

(i) supervise and monitor the finances of the United Republic;

(ii) coordinate international and inter-governmental financial and fiscal relations;

(b) to advise the Government on the total of resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes within that sector.

(2) For the purposes of the full discharge of the duties set out in subsection (1), the Minister shall ensure—

(a) that full and transparent accounts are from time to time and not less than annually made to the National Assembly indicating the current and projected state of the economy and finances of the United Republic and the fiscal policy of the Government;

(b) that systems are established throughout Government for planning, allocating, and budgeting for the use of resources and approve all requests for the issue of public moneys prior to their inclusion in any estimates of expenditure for submission to the National Assembly in accordance with the provisions of this Act; and

(c) that the control of the National Assembly over such resources and public moneys is maintained and transparent systems are established and maintained which–

(i) provide a full account to the National Assembly for the use of resources and public moneys;

(ii) ensure the exercise of regularity and propriety in the handling and expenditure of resources and public money.

(3) For the purposes of the full exercise of supervision over the finances of the United Republic, the Minister shall, subject to this Act and to any other written law, have the management of the Consolidated Fund and the supervision, control and direction of all matters relating to the financial affairs of the United Republic.

[PCh348s6]6. Role of Permanent Secretary and the Paymaster-General

(1) The Permanent Secretary shall be responsible to the Minister for ensuring the effective application of this Act and any subsidiary legislation made or issued under it.

(2) For the purposes of discharging the responsibility referred to in subsection (1), the Permanent Secretary may be consulted by Accounting Officers on any matter concerning the application of the provisions of this Act, and he shall promptly appraise the Minister concerning

any defect in this Act or any subsidiary legislation which might result in a diminution of control over the assets and finances of the Government, and he may, subject to this Act, give any directions and instructions which he may consider necessary for the safety, advantage, economy and efficient use of public resources.

(3) The Permanent Secretary shall ensure that—

(a) there is established and operated an effective system for the collection of information to ensure that timely and effective preparation of the annual estimates of expenditure for consideration and approval by the Minister and submission to the National Assembly; and

(b) such estimates are prepared in conjunction with any general or specific direction of the Minister and reflect, as can best be ascertained at the time, good value for money and the effective use of Government's resources.

(4) The Permanent Secretary may, by writing under his hand, from time to time require any accounting officer or any entity whose accounts are required by law to be audited by the Controller and Auditor-General or any entity that manages an asset or liability of the Government to supply such information as he considers necessary for the purposes of section 5, and may in such writing specify the date by which and the manner in which the information required is to be provided, and the date specified being reasonable regard being had to the information required.

(5) The Permanent Secretary and any officer deputed by him, shall be entitled to inspect all offices and to be given access to them at all reasonable times of the day, and be given all available information he may require with regard to the moneys and records in respect of them,

so far as may, in any way, be necessary for the purpose of compliance with the provisions of this Act.

(6) Nothing in this Act or any subsidiary legislation made or issued under it shall be construed as requiring any person to do anything in respect of moneys held on trust which contravenes or is inconsistent with the terms of that trust.

(7) The Permanent Secretary shall be also the Paymaster-General who shall, in that capacity and subject to the directions of the Treasury, control the issue of public moneys to ministries and departments of the Government, and perform such other functions as the Minister may by regulations under this Act, prescribe.

[PCh348s7]7. The Accountant-General

(1) There shall be an Accountant-General under the Permanent Secretary, who shall be appointed by the President from amongst senior professional accountants and auditors on such terms and conditions as shall be specified in the appointment.

(2) The Accountant-General shall be responsible to the Permanent Secretary for the compilation and management of the accounts and the custody and safety of the public money and public property of the Government, and for that purpose the Accountant-General may, in the manner prescribed by the Minister, and with the prior consent of the Permanent Secretary, give such instructions of a general or specific character to accounting officers as may be necessary for the effectual implementation of the purposes and provisions of this Act.

(3) Without prejudice to the generality of the provisions of subsection (2), the Accountant-General shall—

(a) specify for every Ministry, division, department, fund, agency or other reporting unit the basis of the accounting to be adopted and the classification system to be used there and ensure that a proper system of account is established in each of them, and that all money received and paid by the Government is brought promptly and properly to account;

(b) refuse payment on any voucher which is wrong or deficient in content, or that contravenes any subsidiary legislation or instructions properly made or given in pursuance of the provisions of the Constitution *, this Act or of any other written law for the management of public money, or that is in any way unacceptable in support of a charge on public funds;

(c) report in writing any apparent defect in departmental control of revenue, expenditure, cash, stores and other property of the Government and any breach or non-observance of financial regulations, directions or instructions which may come or be brought to his attention;

(d) ensure, in so far as is practicable, that adequate provisions exist for the safe custody of public money, securities and accountable documents; and

(e) take precautions, by the maintenance of efficient checks including surprise inspections, against the occurrence of fraud, embezzlement or carelessness.

[PCh348s8]8. Accounting officers

(1) There shall be appointed by name and office and in writing by the Paymaster-General an accounting officer in respect of each expenditure vote, who shall control and be accountable for the expenditure of money applied to that vote by an Appropriation Act and for all revenues and other public moneys received, held or disposed of, by or on account of the department or service for which the vote provides.

(2) An accounting officer may, and shall if so required by any subsidiary legislation under this Act, define in writing the extent to which the powers and duties conferred and imposed on him may be exercised or performed on his behalf by any public officer under his control and give such directions as may be necessary to ensure the proper exercise or performance of those powers and duties, although the delegation of powers and duties shall not abate or abridge the personal accountability of the accounting officer.

(3) Every accounting officer shall comply with any subsidiary legislation made or issued under this Act and all instructions that may from time to time be given by the Accountant-General in respect of the custody and handling of, and the accounting for public money, public stores, investments, securities or negotiable instruments, whether the property of the Government on deposit with or entrusted to the Government or to any public officer in his official capacity or any other person.

[PCh348s9]9. Regulations and directions.

(1) The Minister may make such regulations or give such directions as may appear to him to be necessary or expedient for the proper carrying out of the objects, purposes and provisions of

this Act, and the assuring of the safety, economy and advantage of the public revenue and public property.

(2) The Minister shall take all proper steps to ensure that any directions given under this section are brought to the notice of all persons directly affected by them, and such regulations or directions may be published in any manner which is proper and efficient and in addition to publication in the Gazette.

[PCh348s10]10. Penalties and surcharge

(1) The Minister may by regulations prescribe penalties, notwithstanding that such penalties exceed the limits prescribed by section 32 of the Interpretation of Laws Act *, for any failure to comply with or the contravention of any provision of this Act or any subsidiary legislation made or issued under the Act.

(2) If a person contravenes or fails to comply with any provision of this Act or any subsidiary legislation made or issued under it and the Act or legislation declares that such contravention or failure to comply is an offence, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding that prescribed by the Minister under subsection (1).

(3) Where there occurs a loss of or deficiency in public money or other money that has been advanced to or was under the control of a public officer or where a loss or destruction of or damage to public property or other property occurs while the property was in the care of a public

officer and the Minister is satisfied after due enquiry that the negligence or misconduct of the officer caused or contributed to such loss or deficiency, then—

- (a) the amount of such loss or deficiency; or
 - (b) the value of the property lost or destroyed; or
 - (c) the cost of replacing or repairing the damage to that property, as the case may be,
- shall be a debt due to the Government and may be recovered from the officer in accordance with the Public Officers (Recovery of Debts) Act *.

(4) Where the negligence or misconduct of a public officer was not the sole cause of any loss, deficiency damage or destruction resulting in an action under subsection (3), the amount recoverable from the officer may be restricted to so much only of the cost of, or the cost of replacing or repairing, the loss, deficiency, damage or destruction as the Minister considers, after due enquiry, to be just and equitable having regard to the contribution made by the officer to that loss, deficiency damage or destruction.

(5) In this section a reference to a public officer includes a person who has been such a public officer.

(b) The Consolidated Fund and Other Public Funds (ss 11-17)

[PCh348s11]11. The Consolidated Fund

Subject to the provisions of Article 135 of the Constitution *, all revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for any specific

purpose or that may, by or under any law, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form a Consolidated Fund.

[PCh348s12]12. Special funds

(1) The Minister may by order published in the Gazette, establish special funds which shall not form part of the Consolidated Fund; and the receipts, earnings and accruals of such funds at the end of the financial year shall not be repaid to the Consolidated Fund but shall be retained by the funds for the purposes for which they were established.

(2) Any order made under subsection (1) shall—

- (a) state the purposes for which the special fund is being established; and
- (b) identify the Accounting Officer responsible for its operations,

and that order shall be laid before the National Assembly and shall be subject to annulment by the National Assembly and shall cease to have effect when so annulled but without prejudice to the making of a further order.

(3) No expenditure will be incurred by a special fund except under the authority of a warrant under the hand of the Permanent Secretary addressed to the responsible accounting officer and no such warrant shall be issued in respect of any financial year unless estimates of the income and expenditure of the special fund for that financial year, approved by the Minister, have been laid before the National Assembly.

(4) The funds set out in the Schedule to this Act shall be deemed to have been established under this section and for the purposes specified in that Schedule.

(5) Subject to subsection (3), the Minister may make Regulations and issue directions for the management and control of any Fund established under this section.

(6) The Minister shall have the power at any time to wind up any fund established under this section and any funds standing to the credit of such fund at the time of winding up shall be paid into the Consolidated Fund.

[PCh348s13]13. Investment of moneys in the Consolidated Fund

(1) Any sums standing to the credit of the Consolidated Fund may, subject to compliance with authorized procedures, be—

(a) kept in cash or in such bank accounts as the Accountant-General may from time to time determine;

(b) invested with a bank at call or subject to notice not exceeding twelve months or in an investment authorised by law for the investment of trustee funds and approved by the Minister.

(2) For the avoidance of doubt, the investment of such funds shall not constitute a withdrawal from the Consolidated Fund in terms of section 16 of this Act.

[PCh348s14]14. Moneys raised or received to exclude deposits or trust funds

For the avoidance of doubt any reference to moneys raised or received by the Government does not include moneys received on deposit or moneys held on trust by or under the control of any court, officer of a court, the Public Trustees, the Attorney-General or the Official Receiver or any sums of money held on trust by any other officer for purposes other than the purposes of the Government.

[PCh348s15]15. Bank accounts

No public or official account shall be opened in any bank without the authority in writing of the Accountant-General.

[PCh348s16]16. Issues from the Consolidated Fund

(1) Subject to Article 139 of the Constitution *, no money shall be withdrawn from the Consolidated Fund except upon the authority of a warrant under the hand of the Paymaster-General addressed to the Accountant-General.

(2) No warrant shall be issued by the Paymaster-General for the purpose of meeting any expenditure unless a grant of credit sufficient to cover the sum involved has been issued by the Controller and Auditor-General and—

(a) the expenditure has been authorised for the financial year during which the withdrawal is to take place—

(i) by an Appropriation Act; or

(ii) by a Supplementary Appropriation Act; or

(iii) by Warrant issued under section 21(1) of this Act; or

(b) it is expenditure (referred to in this part as statutory expenditure) that is charged on the Consolidated Fund by the provisions of the Constitution * or any other law; or

(c) for the purpose of repaying any moneys that are received in error by the Consolidated Fund; or

(d) for the purpose of paying such sums as may be required for any advance, refund, rebate or drawback where the payment of such advance, refund, rebate or drawback is provided for in this or any other Act.

(3) The Minister may suspend, withdraw or limit any Warrant or other authority issued by the Permanent Secretary, provided that he is satisfied that such action is required by reason of financial exigencies or the public interest.

[PCh348s17]17. Accountant-General's warrant

(1) The Accountant-General shall, subject to this Act, by warrant under his hand authorise accounting officers to incur expenditure up to the limits and for the purposes and subject to the conditions contained therein.

(2) No warrant shall be issued by the Accountant-General unless the sum and purpose for which it is issued have been included in a warrant issued by the Paymaster-General under section 16(2) and every warrant issued by the Accountant-General shall be subject to such limits and conditions as the Minister may determine.

(3) The Accountant-General may not make any payment or accept any charge in his accounts, and an accounting officer may not incur any commitment or expenditure, unless and until authorised by warrant so to do.

(4) For the purposes of subsection (3), "commitment" means a contract or other arrangement providing for a payment.

PART III

ESTIMATES OF REVENUE AND EXPENDITURE (ss 18-24)

[PCh348s18]18. Estimates of Revenue and Expenditure

(1) Subject to article 137 of the Constitution *, the Minister shall cause to be prepared and laid before the National Assembly as soon as practicable before the commencement of each financial year—

(a) estimates of the revenues, expenditure and financing requirements for the Government of Tanzania for that year;

(b) for each vote of expenditure a statement of the classes of outputs expected to be provided from that vote during the year and the performance criteria to be met in providing those outputs.

(2) Notwithstanding subsection (1), if the National Assembly is dissolved less than three months before the commencement of any financial year, the estimates for that year may be laid before the House as soon as practicable after the commencement of that year.

(3) The votes of expenditure contained in the estimates (other than statutory expenditure) shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into the National Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums to the purposes specified therein.

(4) If in respect of any financial year it is found that the amount appropriated by an Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act, a supplementary estimate, showing the amount required, shall be laid before the National Assembly and the votes of expenditure shall be included in a Supplementary Appropriation Bill to be introduced in the House to provide for the appropriation of those sums.

[PCh348s19]19. Excess expenditure

(1) If at the close of account for any financial year it is found that moneys have been expended—

(a) on any expenditure vote in excess of the amount appropriated for it by an Appropriation Act;

(b) for a purpose for which no moneys have been voted and appropriated; or

(c) on any subhead of an expenditure vote in excess of the sum assigned thereto in the estimates of expenditure for the financial year and to which no further sum has been applied under any provision of this Act or any subsidiary legislation issued under it,

the amount of the excess expended or not appropriated as the case may be shall be included in a statement of expenditure in excess which shall be laid before the National Assembly.

(2) Where the National Assembly shall, by means of a motion allows any excess or any amount expended but not appropriated to stand charged to public funds, the sum required to meet such excess or such amount as shall be allowed, shall be included in a Supplementary Appropriation Bill for appropriation.

[PCh348s20]20. Grants of Credit

The Controller and Auditor-General shall, from time to time, by Warrant under his hand issue Grants of Credit on the Consolidated Fund to the Minister—

(a) for the amounts becoming payable during the ensuring three months for statutory expenditure; and

(b) for the amounts becoming payable for the service of a financial year under the authority of an Appropriation Act or under the provisions of sections 16(2)(c) and (d), 21(1) and 22 of this Act.

[PCh348s21]21. Provision of Appropriation Act not in force

(1) Subject to Article 139 of the Constitution *, and to subsection (2) of this section, if the Appropriation Act has not come into force at the commencement of any financial year, the President may, by Warrant under his hand addressed to the Minister, authorise a withdrawal from the Consolidated Fund for the purposes of meeting the expenditure necessary to carry on the

services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of that Act, whichever is earlier.

(2) Any sum so authorised shall not exceed the sum specified for such service in the estimates presented for the current year or one-third of the sums provided in the Appropriation and Supplementary Appropriation Acts of the previous year, whichever is the lesser, and shall be set off against the amounts respectively provided in the Appropriation Act upon the same coming into operation.

[PCh348s22]22. Minister may authorise advances

The Minister may, by Warrant under his hand addressed to the Accountant-General authorise the issue of advances from the Consolidated Fund—

(a) to special funds if those advances are repayable not later than the end of the financial year in which they were issued;

(b) to public officers, for the purpose of funding approved expenditure, if those advances are repayable not later than the end of the financial year in which they were issued.

[PCh348s23]23. Duration of appropriations and warrants

Every appropriation by the National Assembly of public moneys for the service of a financial year and every Warrant or other authority issued under this Act in respect of such financial year, shall lapse and cease to have any effect at the close of that year and the unexpended balance of any moneys withdrawn from the Consolidated Fund shall be repaid to the Consolidated Fund.

[PCh348s24]24. Development project contracts

Where for the purposes of any development project which has been approved by the National Assembly by resolution or otherwise a contract for the supply of goods or services is entered into on behalf of the United Republic which provides that any payment (other than a payment charged on the Consolidated Fund by virtue of the provision of this or any other Act) is to be made on or after the first day of July next following, the Minister shall as soon as possible after the making of such contract give notice thereof to the National Assembly and every such notice shall specify—

- (i) the names of the contracting parties;
- (ii) the nature of the goods or services to be supplied;
- (iii) the total amount payable by the United Republic in respect of such goods or services and the date or dates on which payment is to be made;
- (iv) the development project to which such contract is referable.

PART IV

PREPARATION AND EXAMINATION OF ACCOUNTS (ss 25-36)

(a) Submission of Accounts and Reports (s 25)

[PCh348s25]25. Annual accounts

(1) The Accountant-General shall, within a period of six months or such longer period as the National Assembly may by resolution appoint after the end of each financial year, prepare

and transmit to the Minister and to the Controller and Auditor-General—

- (a) a balance sheet showing the assets and liabilities of the Consolidated Fund;
- (b) a statement of the source and application of funds for the Consolidated Fund showing the revenues, expenditures and financing of the Fund for the year;
- (c) a summary statement of revenue and expenditure, being a summary of all the statements signed by accounting officers under subsection (2)(a) and (2)(c) of this section;
- (d) a statement of the amounts outstanding at the end of the year in respect of the Public Debt;
- (e) a statement of the amounts guaranteed by the Government at the end of the financial year in respect of bank overdrafts, loans, public loan issues and other contingent liabilities;
- (f) a statement of the amount outstanding at the end of the year in respect of loans issued by the Government;
- (g) a summary statement of Arrears of Revenue for each revenue Head being a summary of the Statements of Arrears of Revenue signed by accounting officers under subsection (2)(d) of this section;
- (h) a summary statement of commitments outstanding for the supply of goods and services for each Vote at the end of the financial year being a summary of the amount included

for such commitments in the statement signed by accounting officers under subsection (2)(b) of this section;

(i) a summary statement of stores and other assets for each Vote being a summary of the Statement of assets signed by accounting officers under subsection (2)(e) of this section; and

(j) such other statements and in such form as the National Assembly may from time to time require.

(2) Each accounting officer shall, within a period of four months after the end of each financial year prepare and transmit to the Controller and Auditor-General in respect of the past financial year and in respect of the votes, revenues and moneys for which he is responsible—

(a) an Appropriation Account signed by the accounting officer showing the services for which the moneys expended were voted, the sums actually expended on each service, and the state of each vote compared with the amount appropriated for that vote by the National Assembly;

(b) a statement signed by the accounting officer and in such form as the Accountant-General may direct containing the amount of commitments outstanding for the supply and goods and services at the end of the financial year and such other information as the Minister may require;

(c) a statement of revenues received signed by the accounting officer and in such form as the Accounting-General may direct showing the amount contained in the estimates of

revenue for each source of revenue and the amount actually collected, and containing an explanation for any variation between the revenues actually collected and the amount estimated;

(d) a statement of arrears of revenue signed by the accounting officer showing the amount outstanding at the end of the financial year for each source of revenue and containing such information and in such form as the Accountant-General may direct, a nil return should be submitted if appropriate;

(e) a statement of assets signed by the accounting officer containing details and values of all unallocated stores under his control at the end of the financial year together with the details and values of such other classes of assets under the control of the accounting officer as the Accountant-General may from time to time determine; and

(f) a statement of performance in providing each class of outputs provided during the year signed by the accounting officer, being a statement that—

(i) compares that performance with the forecast of the performance contained in the estimates laid before the National Assembly pursuant to section (18)(1)(b); and

(ii) gives particulars of the extent to which the performance criteria specified in the estimates in relation to the provision of those outputs were satisfied.

(3) Any public officer administering a fund established or deemed to have been established under section 12, and any public officer administering any agency, trust or other fund or account not provided for in this section, shall prepare, sign and transmit to the Controller and

Auditor-General an account of that agency, fund or account in the form which the Accountant-General may from time to time direct.

(4) All accounts submitted under this section shall—

(a) be prepared in accordance with generally accepted accounting practice and in accordance with any instructions approved by the Permanent Secretary and issued by the Accountant-General; and

(b) state the basis of accounting used in their preparation and identify any significant departures therefrom and the reason for that departure.

(b) Audit Authorities (ss 26-29)

[PCh348s26]26. Offices and officers of Controller and Auditor-General

(1) There shall continue in existence a public national audit office which shall be headed by the Controller and Auditor-General appointed by the President.

(2) The Controller and Auditor-General shall, in addition to the terms and conditions specified in the Constitution *, hold office on such other terms and conditions as may be provided in any written law or as may be determined by the President and set out in the instrument of his appointment.

(3) There shall be appointed by the Controller and Auditor-General in accordance with the provisions of laws governing employment in the public service such number and categories of officers and employees of the Government of such qualifications as may be considered

necessary to assist the Controller and Auditor-General in the performance of the functions of his office.

(4) Any person who, immediately before the commencement of this Act, holds or is acting in any office in the department shall, upon the commencement of this Act, be deemed to have been appointed to or to act in that office in the department in accordance with the provisions of this Act.

[PCh348s27]27. Appointment of acting Controller and Auditor-General

(1) Subject to the following provisions of this section, the President may, appoint a qualified person to act as Controller and Auditor-General during the temporary absence or incapacity of the Controller and Auditor-General.

(2) If the office of Controller and Auditor-General becomes vacant for reasons other than the suspension of the holder in connection with proceedings for his removal from office, the President shall take all reasonable steps to ensure that another person is appointed to that office within sixty days of the office becoming vacant.

(3) The President shall appoint a qualified person to act as Controller and Auditor-General if—

(a) the temporary absence or incapacity of the Controller and Auditor-General is expected or intended to or may last more than three months;

(b) the Controller and Auditor-General is suspended from office in connection with proceedings for his removal; or

(c) the office of Controller and Auditor-General becomes vacant.

[PCh348s28]28. Independence of officers and employees

(1) All officers and employees in the Office and any other persons authorised by the Controller and Auditor-General to perform any functions under this Act shall be under his control and direction and shall perform those functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.

(2) The Permanent Secretary, public authorities and all other entities and authorities shall provide such assistance and co-operation as may be required to ensure the effective discharge of the purpose and provisions of this section.

[PCh348s29]29. Appointment and control of officers

(1) Subject to the provisions of relevant laws governing the recruitment, appointment and termination of employment of public officers, the Controller and Auditor-General shall be responsible for the management, control and discipline of officers and employees of the Office.

(2) For the better and more effectual performance of the functions of the Office, the Controller and Auditor-General may establish branches of the Office at appropriate administrative levels and may assign officers of the Office or other persons authorised by him to a ministry, department or public authority or body to which this Act applies and the ministry, department, public authority or body shall provide suitable office accommodation and related facilities to the person assigned to it.

(3) Anything which is required by this Act or any other written law to be done by the Controller and Auditor-General, other than the certifying and reporting of accounts for the National Assembly, may be done by any officer of the staff of the Office so authorized by him.

(4) For the purposes of this Act, all references in all written laws to the Director or Audit shall be construed as references to the Controller and Auditor-General.

(c) Functions of Controller and Auditor-General (ss 30-36)

[PCh348s30]30. General responsibility of the Controller and Auditor-General

(1) In addition to the functions assigned to the Controller and Auditor-General by the Constitution *, the Controller and Auditor-General shall be responsible for examining, inquiring into, auditing and reporting on the accounts of—

- (a) all Ministries and departments of Government and their accounting officers;
- (b) all persons entrusted with the collection, receipt, custody, issue or payment of public monies or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other public property;
- (c) all public authorities and other bodies,
- (d) any authority or body which receives funds from the Consolidated Fund or from public moneys for a public purpose;
- (e) any authority or body which is authorised by law to receive money for a public purpose; and

(f) any authority or body required by law to be audited by the Controller and Auditor-General.

(2) The Controller and Auditor-General shall submit to the Minister all audit reports issued under subsection (1), and the Minister shall promptly submit them to the National Assembly and to any other relevant authorities as required by this Act or any other written law and, except as may otherwise be provided by law or by a resolution of the National Assembly, those reports shall thereupon be made public.

[PCh348s31]31. Functions of Controller and Auditor-General

(1) The Controller and Auditor-General shall, on behalf of the National Assembly, examine, inquire into and audit the accounts submitted to him under section 25 of this Act and perform any other functions which he is authorised to perform by or under this Act.

(2) In exercising his powers of inquiry, examination and audit of accounts, the Controller and Auditor-General shall, in addition to satisfying himself as to the matters specified in that behalf in the Constitution * and any other written law, satisfy himself that—

(a) all accounts referred to in subsection (1) have been kept in accordance with generally accepted accounting practice as required by section 25 of this Act;

(b) all reasonable precautions have been taken to safeguard—

(i) the collection of revenue; and

(ii) the receipt, custody, disposal, issue and proper use of public property, and that the law, directions and instructions applicable thereto have been duly observed.

(c) all expenditure of public monies has been properly authorised and applied to the purposes for which they were appropriated and that the law, directions and instructions applicable thereto have been duly observed and provide an effective check of the assessment and collection of revenue; and

(d) economy, efficiency and effectiveness have been achieved in the use of public moneys resources.

(3) Notwithstanding the provisions of this section, the Controller and Auditor-General shall not be required to examine, inquire into or audit the accounts of any trust or other fund or account not provided for in section 25 of this Act unless the officer administering such fund or account has been directed by the Accountant-General, as provided in subsection (3) of that section, to prepare, sign and transmit to the Controller and Auditor-General an account of such fund or account.

[PCh348s32]32. Powers of Controller and Auditor-General

(1) In the performance of his functions to audit and examine accounts, the Controller and Auditor-General may—

(a) call upon any public officer for any explanation and information which the Controller and Auditor-General may require in order to enable him to perform those function;

(b) summon and examine on oath any person as he may determine in connection with the receipt or expenditure of public moneys or the receipt or issue of any public property affected by the provisions of this Act and in connection with any matter necessary for the proper performance of his functions;

(c) authorise any person eligible to be appointed as an auditor of a company or to be registered as an accountant or an auditor under the Accountants and Auditors (Registration) Act * or any public officer to conduct an inquiry, examination or audit on his behalf and that person or officer shall report thereon to the Controller and Auditor-General;

(d) without payment of any fee, cause search to be made in and extracts to be taken from any book, document or record in any public office;

(e) seek the professional opinion or advice of the Attorney-General or any other qualified person on matters of a legal nature or of any qualified person on any accounting, auditing or other matter;

(f) from time to time, acquire the services of any person, whether or not that person is a public officer, qualified for the purpose and on such terms and conditions as may be agreed upon;

(g) accept as correct without further examination, or rely upon, a certificate of any other person as he thinks fit, on the accounts of any other person entrusted with the collection, receipt, custody, control or payment of public moneys or public property or with the issue, sale, transfer or delivery of public property.

(2) If at any time it appears to the Controller and Auditor-General that—

- (a) any payment has been made without due authority according to law;
- (b) any irregularity has occurred in the receipt, custody, control, issue, transfer or delivery of any public property;
- (c) any deficiency or loss occasioned by negligence, misconduct, fraud, or corruption has occurred;
- (d) any failure to observe a policy of the highest thrift has occurred; or
- (e) any sum which ought to have been, has not been, brought to account,

he shall—

- (a) in the case of expenditure of or by the accounting officer, the Judiciary or National Assembly, disallow the expenditure as a charge on public funds; or
- (b) in any other case, call in question the sum concerned.

(3) Where any of the matters referred to in paragraphs (a) to (e) of subsection (2) relate to expenditure of or by the Government, the Judiciary or the National Assembly, the Controller and Auditor-General shall submit to the President every report he makes, and the provisions of subarticle (4) of Article 143 of the Constitution * shall apply to every such report, but nothing in this subsection shall be construed as preventing the Controller and Auditor-General from submitting a report to the President of any audit matter relating to any public authority or other body.

(4) In every case, where the Controller and Auditor-General makes a report under this section, he shall notify the Treasury or the appropriate accounting officer or authority whether it is appropriate that the person or persons involved in the use of public funds or property entailing any of the matters in subsection (2) should make good the loss or deficiency resulting therefrom and whether disciplinary, surcharge, or legal proceedings, or all of them, should be instituted against the person concerned.

(5) In the exercise of his duties the Controller and the Auditor-General or any person duly authorised by him in writing, shall have access to all records, books, vouchers, documents, cash, stamps, securities, stores or public property in possession of any officer or any other person who has received or dealt with public money or property.

(6) Subject to any duty imposed on him by any written law, the Controller and Auditor-General shall have complete discretion in the discharge of his functions and, in particular, in determining whether to carry out an examination under part V of this Act and as to the manner in which such examination is carried out; but in determining whether to carry out any such examination he shall take into account any proposals made by the Public Accounts Committee, the Local Authorities Accounts Committee and any other Committee of the National Assembly.

(7) The Controller and Auditor-General may charge fees for auditing the accounts of any person or body.

[PCh348s33]33. Value for money audits

(1) The Controller and Auditor-General may, for the purposes of establishing the economy, efficiency and effectiveness of any expenditure or use of resources by any Ministry or department in respect of which Appropriation Accounts are required to be prepared under this Act or any public authority or other public body to which section 41 applies, enquire into, examine, investigate and report, insofar as he considers necessary, on—

(a) the expenditure of public moneys and the use of resources by such Ministries, departments and all such public authorities and other bodies;

(b) the conduct of and the performance of their functions by accounting officers, head of department and Chief Executives of all such departments and public authorities and other bodies;

(c) any other activity undertaken by such Ministries, departments, public authorities and other bodies.

(2) Every report prepared by the Controller and Auditor-General as a result of the examinations, enquiries and investigations under this section shall be laid by the Minister before the National Assembly.

(3) The provisions of section 38 shall apply to any examinations, enquiries and investigations conducted by the Controller and Auditor-General in the performance of his functions under this section.

(4) Nothing in this section shall be construed as entitling the Controller and Auditor-General to question the merits of the policy objectives of any Ministry, department, public authority or other body in respect of which an examination is carried out.

[PCh348s34]34. Power to make recommendations

The Controller and Auditor-General may, from time to time, for the purpose of—

- (a) preventing or minimising the unproductive expenditure of public moneys;
- (b) maximising the collection of public revenues;
- (c) averting loss by negligence, carelessness, theft, dishonesty, fraud, corruption relating to public moneys and resources,

make such recommendations and submit such proposals to the Minister as he considers necessary for the better management of public moneys and resources including the revision of any regulations, directives or instructions issued under this Act.

[PCh348s35]35. Annual and other reports

(1) On receipt of the accounts prescribed in section 25 of this Act, the Controller and Auditor-General shall cause them to be examined and audited and shall, within a period of nine months or such longer period as the National Assembly may by resolution appoint after the end of the year to which the accounts relate—

- (a) certify, in respect of each account, the result of the examination and audit;
- (b) prepare a report upon the examination and audit of all such accounts; and

(c) submit to the President and the Minister the report, either complete from time to time in parts, as may be convenient, together with copies of the relevant accounts certified.

(2) If at any time it appears the Controller and Auditor-General desirable that any matter relating to public monies or public property should be drawn to the attention of Parliament without undue delay, he shall prepare a special report relating to such matter and transmit the report to the President, with a copy to the Minister.

(3) A special report in terms of subsection (2) may be made in relation to any matter incidental to the powers and duties of the Controller and Auditor-General under this Act or any other written law.

(4) The provisions of Article 143 of the Constitution * shall apply to the submission of reports under this section.

[PCh348s36]36. Reports under this Part to be laid before National Assembly

(1) Every report made under this Part shall be laid by the Minister before the National Assembly within seven days of the next sitting of the Assembly after he has received it.

(2) Where the Minister or the appropriate Minister does not lay the report before the National Assembly in accordance with subsection (1), the Controller and Auditor-General shall transmit the report to the Speaker of the National Assembly who shall lay it before the National Assembly.

PART V

AUDIT OF PUBLIC AUTHORITIES AND OTHER BODIES (ss 37-38)

[PCh348s37]37. Audit of public authorities, etc.

(1) Subject to subsection (2) and (3), this section applies to—

(a) any public authority or body—

(i) established by a written law or other instrument which is in receipt of a contribution from, or the operations of which may, under the law or instrument relating thereto, impose or create a liability upon, public funds;

(ii) executing a Government project in respect of which a foreign Government or institution or an international organisation provides, any money, goods or services, whether or not it is specifically provided in relevant agreement for the project that the accounts of the public authority or body are subject to audit by the Controller and Auditor-General;

(iii) whose accounts are, by or under a written law, required to be audited, or are open to inspection, by the Controller and Auditor-General.

(b) any body which has, in any of its financial years, received more than half of its income from public funds; and for the purpose of this paragraph, no money shall be considered as having been received from public funds if it is paid as consideration for the acquisition of property or the supply of goods or services or as remuneration, pensions, allowances or similar benefits for or in respect of a person as the holder of an office.

(2) In the exercise of his duties under this section, the Controller and Auditor-General shall have the same powers in relation to the moneys, stamps, securities, stores and other

property of the bodies referred to in subsection (1) and the officers and employees of such bodies of such as are conferred upon him by section 35 of this Act, as if the moneys, stamps, securities, stores or other property of those bodies were public moneys, stamps, securities, stores or other public property and as if their officers and employees held public office.

(3) Where the functions of the Controller and Auditor-General in relation to any authority or body falling within paragraph (a) (ii) and (iii) of subsection (1) are by the relevant law or agreement restricted to particular activities of the authority or body, any examination under this section in respect of that authority or body shall be correspondingly restricted.

(4) Notwithstanding anything to the contrary in any law in force, the accounts of any body to which this section applies shall be audited by the Controller and Auditor-General.

(5) The Controller and Auditor-General may authorise any person eligible to be appointed as an auditor of company or any officer to inspect, examine or audit on behalf of the Controller and Auditor-General the books and accounts of any body which the Controller and Auditor-General may be required to audit pursuant to the provisions of this section and such person or officer shall conduct the audit and report thereon to the Controller and Auditor-General in such manner as the Controller and Auditor-General may direct.

[PCh348s38]38. Reports on audit

(1) The Controller and Auditor-General shall prepare a report on the audit of the accounts referred to in this section and shall transmit the same to the Minister and to the body concerned, and the body may within twenty-one days transmit to the Minister its observations on such report,

in which case it shall transmit a certified copy of such observations to the Controller and Auditor-General.

(2) The Minister shall, within forty two days of the receipt of a report prepared by the Controller and Auditor-General under subsection (1), cause the same, and any observations made on it by a body under the provisions of subsection (1) and any observations by the Minister, to be laid before the National Assembly.

(3) The Controller and Auditor-General may raise the charge on any body audited or reported on under this section for the costs of conducting the audits and preparing the reports and such charges shall be payable by the body concerned on demand.

PART VI

FINANCES AND AUDIT OF THE OFFICE OF THE CONTROLLER AND AUDITOR-GENERAL AND RELATED PROVISIONS (ss 39-42)

[PCh348s39]39. Funds for the Controller and Auditor-General

- (1) The funds and resources for the Office shall consist of moneys—
- (a) appropriated by Parliament for the purposes of the Office;
 - (b) earned in connection with the services rendered in accordance with this Act or any other law;
 - (c) accruing to the Office from any other source;

(d) which are donations or bequests and the terms of which are acceptable to the Controller and Auditor-General.

(2) The full amount of moneys from time to time appropriated by the Parliament under paragraph (a) of subsection (1) shall be paid by the Treasury out of the Consolidated Fund into an Audit Revenue Fund, into which all other monies received by, or accruing to the Office shall be paid; and the Fund shall be independent of the control of any person or authority other than the Controller and Auditor-General.

[PCh348s40]40. Accountability

(1) The Controller and Auditor-General shall—

(a) keep full and proper records of all revenue and expenditure and of all the assets, liabilities and financial transactions of the Office;

(b) satisfy himself that all reasonable management measures have been taken to ensure that resources which are necessary for achieving the objectives of the Office are as far as possible, obtained, safeguarded and utilized in the most economic, efficient and effective manner;

(c) prepare appropriation accounts for the Office in accordance with the provisions of section 25 of this Act.

(2) The provisions of section 8 of this Act shall, with appropriate modifications apply to the Controller and Auditor-General as the accounting officer of the Office.

[PCh348s41]41. Estimate of revenue and expenditure

(1) The Controller and Auditor-General shall, in respect of the first financial year of the Office under this Act and for each subsequent financial year, prepare and submit to the Minister who shall submit to the National Assembly, estimates of the revenue and expenditure of the Office.

(2) In considering the estimates submitted to it under subsection (1), the National Assembly shall have regard to the advice of the Public Accounts Committee and that of the Minister.

[PCh348s42]42. Audit of accounts of the controller and Auditor-General

(1) The accounts of the Office shall be audited, at least once in every financial year, by a person appointed by the Minister from amongst persons who are registered as auditors (herein referred to as "the auditor") under the Accountants and Auditors (Registration) Act *, or possessing such other qualifications as the Minister may determine, at such remuneration and on such other terms and conditions as the Minister may determine.

(2) The remuneration of the auditor appointed under subsection (1) shall be defrayed from the funds of the Office.

(3) In the performance of his functions as such, the auditor shall have the same powers as the Controller and Auditor-General has in respect of the audit of public authorities and other bodies under section 37 of this Act.

(4) Upon completion of his examination of the accounts of the Office, the auditor shall certify the accounts of the office and submit his report to the Minister, who shall then lay that

report before the National Assembly within three months, or at the next meeting of the Assembly, after he has received the report.

PART VII

MISCELLANEOUS PROVISIONS (ss 43-45)

[PCh348s43]43. Abandonment of claims, etc., and write-off of public money and stores

(1) The National Assembly may, by resolution, authorise the Minister to the extent specified in the resolution to abandon and remit any claims by or on behalf of the Government or any service thereof and to write off losses of moneys or stores belonging to the Government or provided for the public service.

(2) The Minister may by writing under his hand delegate to any officer any powers which he is authorized to exercise by resolution of the National Assembly under this section.

[PCh348s44]44. Offences

(1) A person commits an offence against this Act if—

(a) without reasonable cause fails to provide by the due date, such information as the Permanent Secretary may reasonably require under section 6(4);

(b) without reasonable cause hinders, obstructs the Permanent Secretary or any officer or refuses entry or access to any office for the purposes of inspecting such office in accordance with subsection (5) of section 6 of the Act;

(c) contrary to section 15 causes to be opened any bank account for public or official use without the permission of the Accountant-General;

(d) contrary to paragraph (a) or (b) of subsection (1) of section 32, fails to provide the Controller and Auditor-General or a person authorised by him with all such explanation and information as the Controller and Auditor-General or that person may reasonably require;

(e) without reasonable cause fails to provide, or wilfully obstructs access to any item as required by subsection (2) of section 32; or

(f) contrary to subsection (1) of section 28, interferes with or exerts undue influence on any officer or employee of the Office or on any person authorised by the Controller and Auditor-General to perform function under this Act.

(2) Any person convicted of an offence against this Act is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

[PCh348s45]45. Repeal of R.L. Cap. 439

(1) [Repeals the Exchequer and Audit Ordinance.]

(2) Upon the commencement of this Act, the provisions of the Interpretation of Laws and General Clauses Act shall apply to the repeal of the Exchequer and Audit Ordinance, and all references to that Ordinance in any written law, instrument or document shall, in so far as they relate to the Controller and Auditor-General, his functions or other matter, be construed as references to this Act unless the context requires otherwise.

SCHEDULE

(Section 12 (4))

African Productivity Loan Fund.

Civil Contingencies Fund.

Government Bursaries Fund.

Hides and Skins Cess Fund.

Karimjee Scientific Bursaries Fund.

Lint and Seed Marketing Board Loan Sinking Fund.

Rewards and Fines Fund.

Sinking Funds.

Stock Transfer Stamp Duty Fund.

Support Fund.