

SAINT VINCENT AND THE GRENADINES

AUDIT ACT, 2005

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SAINT VINCENT AND THE GRENADINES

ACT NO. 29 OF 2005

I ASSENT

DR. FREDERICK BALLANTYNE
Governor-General
29th December, 2005

[L.S.]

AN ACT to reform the Law relating to the Office of the Director of Audit of Saint Vincent and the Grenadines and to provide for matters related or incidental thereto.

[30th December, 2005]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:-

PART I

PRELIMINARY

- | | | |
|----|---|---------------------------|
| 1. | This Act may be cited as the Audit Act 2005 and shall come into operation on such date as the Governor-General may by proclamation appoint. | Citation and commencement |
| 2. | (1) In this Act
"Audit Office" means the Audit Office of Saint Vincent and the Grenadines;
"Constitution" means the Constitution of Saint Vincent and the Grenadines;
"Director of Audit" means the Director of Audit appointed pursuant to section 82(1) of the Constitution to the | Interpretation |

office established under section 75(1) of the Constitution;

“Government” means the Government of Saint Vincent and the Grenadines;

“government owned or controlled corporation” means a corporation incorporated under the Companies Act 1994 that is controlled by the Government;

“Minister” means the Minister for the time being responsible for finance;

“Public Accounts Committee” means the Public Accounts Committee appointed under section 76 of the Constitution;

“recipient of government money” means a corporation, association, organization or other body

- (a) that has received, directly or indirectly, a grant, loan or advance from the Government;
- (b) to whom the Government has transferred property for no consideration or for a consideration substantially less than its fair market value; or
- (c) for whom the Government has guaranteed the performance of an obligation or given an indemnity,

but does not include a statutory body;

“statutory body” means statutory body as defined in the Finance Administration Act 2004.

- (2) In this Act, a corporation is controlled by the Government if
- (a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, other than by way of security only, by or for the benefit of the Government; and
 - (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

(3) Unless the context otherwise requires, the words or expressions defined in the Finance Administration Act 2004 have the same meaning in this Act.

(4) The responsibilities and powers of the Director of Audit under this Act are in addition to those prescribed by or under any other law.

(5) When a report is laid before the House of Assembly by the Minister or an appropriate minister under section 18 or transmitted to the Speaker by the Director of Audit or an auditor appointed under section 22, the report shall be accompanied by a sufficient number of copies for all the members of the House of Assembly.

PART II

DIRECTOR OF AUDIT AND AUDIT OFFICE

3. Section 82 of the Constitution applies to the appointment, vacation of office and removal from office of the Director of Audit and to the appointment of a person to act as Director of Audit if the office of Director of Audit is vacant or the Director of Audit is unable to exercise the functions of his office.

Appointment, vacation of office or removal of Director of Audit and appointment of acting Director of Audit

4. Section 73 of the Constitution applies to the salary, allowances and terms of service of the Director of Audit.

Salary, allowances and terms of service of Director of Audit

5. The Director of Audit has the responsibilities set out in section 75(2) of the Constitution and shall not in the exercise of his functions under section 75(2), (3), (4) or (5) of the Constitution be subject to the direction or control of any person or authority.

Responsibilities

6. The Director of Audit shall carry out his responsibilities on a full-time basis and shall not, while he holds that office, hold any other office of emolument.

Director of Audit to be full-time responsibility

7. In the exercise of his responsibilities under this or any other Act, the Director of Audit shall not be required to undertake

Protection of independence of Director of Audit

- (a) any responsibilities outside those pertaining to his office, if, in his opinion, such responsibilities are or may be incompatible with the responsibilities of his office; and
- (b) any examination of accounts partaking of the nature of a pre-audit and involving acceptance by him of responsibility that would preclude him from making an

objective examination of any accounting transaction after those transactions have been duly recorded.

Director of Audit to follow international audit standards

8. In the exercise of his responsibilities under this or any other Act, the Director of Audit shall follow recognised international audit standards with such modifications or additions as are necessary to comply with this Act and meet the circumstances of Saint Vincent and the Grenadines.

Delegation by Director of Audit

9. (1) The Director of Audit

(a) may delegate to

(i) an employee of the Audit Office, or

(ii) a professional auditor entitled by law to practice accounting in Saint Vincent and the Grenadines and engaged by the Director of Audit,

any responsibility or power that the Director of Audit has under this or any other Act, other than the responsibility to make a report to the Minister or to the appropriate minister under section 18 that is to be laid before the House of Assembly;

(b) may, on a fee basis, engage professional auditors and other persons to provide professional and other services; and

(c) with the approval of the Minister and the appropriate minister, if other than the Minister of Finance, may charge fees for his audit of a statutory body or government owned or controlled corporation.

(2) For the purposes of paragraph (1)(c), "appropriate minister", in relation to a statutory body or a government owned or controlled corporation, means the minister responsible for the statutory body or government owned or controlled corporation.

PART III

RESPONSIBILITIES OF THE DIRECTOR OF AUDIT

General responsibility to examine accounts of Government

10. (1) The Director of Audit is the auditor of the accounts of the Government and as such shall make such examination and inquiries as he considers necessary to enable him to report as required by this Act.

(2) In his examination and audit of the accounts of the Government, the Director of Audit may make such checks as he considers necessary to enable him to form an opinion as to whether a ministry, department or service has used its resources with economy, efficiency and effectiveness.

(3) Nothing in subsection (2) shall be interpreted to entitle the Director of Audit to question the merits of the policy objectives of any ministry, department or service.

11. The Director of Audit shall annually

- (a) examine the financial and other statements included in the Public Accounts; and
- (b) express his opinion as to whether they present fairly information;
 - (i) in accordance with stated accounting policies of the Government, and
 - (ii) on a basis consistent with that of the preceding year,

together with any reservations he may have.

Responsibility to
examine Public
Accounts
annually

12. (1) The Director of Audit shall submit to the Minister his annual report on the Public Accounts, not later than the date specified in subsection (3).

Annual report to
House of
Assembly

(2) The annual report shall include the results of the examinations by the Director of Audit, giving details of any reservation of opinion made in the report, and shall call attention to every case when

- (a) he did not receive all the information, reports and explanations required;
- (b) collections and receipts of public money
 - (i) have not been effected as required under the applicable Acts, regulations, orders, directives, financial instructions and other instruments,
 - (ii) have not been fully accounted for, or
 - (iii) have not been properly reflected in the accounts;
- (c) disbursements of public money;

- (i) have not been made in accordance with, or have not complied with, applicable Acts, regulations, orders, directives, financial instructions and other instruments, or
- (ii) have not been properly reflected in the accounts;
- (d) assets acquired, administered or otherwise held have not been adequately safeguarded or accounted for;
- (e) accounting systems and management control systems, including those systems designated to ensure economy and efficiency, that relate to revenue, disbursements, the preservation or use of assets or the determination of liabilities were not in existence, were inadequate or were not complied with; or
- (f) when appropriate and reasonable procedures could have been used to measure and report on the effectiveness of programs, those procedures were not established or not complied with,

and to any other case that the Director of Audit considers should be brought to the notice of the House of Assembly.

(3) Subject to subsection (4), the Director of Audit shall in each financial year, not later than 3 months after receipt of the certified Public Accounts for that year from the Accountant General under section 49(2) of the Finance Administration Act 2004 or any extension under subsection 49(3) of that Act, submit his report on the Public Accounts to the Minister.

(4) The Minister may, by direction in writing addressed to the Director of Audit, extend the time for the submission of the report of the Director of Audit, and the Minister shall, not later than seven days after the House of Assembly first meets after he has given the direction, lay it before the House.

(5) The Minister shall, not later than seven days after the House of Assembly first meets after he has received the report, lay it before the House.

(6) If the Minister fails to lay the report before the House of Assembly in accordance with subsection (5), the Director of Audit shall transmit the report to the Speaker who shall, as soon as practicable, present it to the House of Assembly.

13. (1) The Director of Audit shall, not later than six months after the end of each financial year, make such examinations and inquiries as he considers necessary to enable him to audit the accounts of each statutory body for the previous year and to report as required by this Act. Annual audit of statutory bodies
- (2) Sections 10 and 12(2) apply with appropriate modifications as the circumstances require to the examination, audit and report under subsection (1).
14. (1) The Director of Audit may submit a special report to the Minister on any matter of importance or urgency that he considers should not be deferred until the presentation of his annual report under section 12 or 13. Special reports
- (2) Sections 10 and 12(2) apply with appropriate modifications as the circumstances require to the examination and special report under subsection (1).
- (3) The Minister shall, not later than seven days after the House of Assembly first meets after he has received the special report, lay it before the House.
- (4) If the Minister fails to lay the special report before the House of Assembly in accordance with subsection (3), the Director of Audit shall transmit the special report to the Speaker who shall, as soon as practicable, present it to the House of Assembly.
15. (1) The Director of Audit may, if in his opinion such an assignment does not interfere with his primary responsibilities, whenever the House of Assembly or the Minister so requests, inquire into and report on any matter relating to the financial affairs of the Government, including, without limitation, its assets, a statutory body, a government owned or controlled corporation, a corporation in which the Government has an interest or a recipient or a prospective recipient of government money. Inquiry and report at request of House or Minister
- (2) Sections 10 and 12(2) apply with such modifications as are appropriate in the circumstances to an inquiry into and a report under subsection (1).
- (3) When the House of Assembly requests the inquiry and report, the Director of Audit shall submit the report to the Minister and, when he does so, sections 14(3) and (4) apply with such modifications as are appropriate in the circumstances.

(4) When the Minister requests the inquiry and report, the Director of Audit shall submit the report to the Minister who may transmit it to the House of Assembly if he is of the opinion that it is in the public interest to do so, and, when he is of that opinion, sections 14(3) and (4) apply with such modifications as are appropriate in the circumstances.

Advisory powers

16. The Director of Audit may in his discretion advise all or any of the following persons of matters discovered in conducting examinations and audits under this Act:

- (a) the Minister;
- (b) the minister or a senior public officer of the department affected, in the case of the audit of the accounts of the Government;
- (c) the minister responsible or the chairperson or chief executive officer, in the case of a statutory body.

Joint audit

17. When the Government or a statutory body spends money jointly with another government or agency of another government or an international or regional organisation, the Director of Audit may carry out a joint audit with that government or agency or an international or regional organisation.

Audit of recipients of government money and report to House of Assembly

18. (1) The Director of Audit may examine and audit the accounts of a recipient of government money in relation to government money received to enable him to report as required by this Act.

(2) The Director of Audit may require a recipient of government money to prepare and give financial statements to the Director of Audit and may require that the financial statements be audited or that they set out details of the disposition of the government money received or both.

(3) Sections 10 and 12(2) apply with such modifications as are appropriate in the circumstances to the examination and audit of and report on a recipient of public money under this section.

(4) The Director of Audit may rely on the report of an auditor appointed by the recipient of government money.

(5) Without delay after he has completed the audit report, the Director of Audit shall give it to the appropriate minister and the Minister of Finance, if he is other than the appropriate minister.

(6) The appropriate minister shall, not later than seven days after the House of Assembly first meets after he has received the report of the Director of Audit, lay it before the House of Assembly.

(7) If the appropriate minister fails to lay the report of the Director of Audit before the House of Assembly in accordance with subsection (6), the Director of Audit shall transmit the report to the Speaker who shall, as soon as practicable, present it to the House of Assembly.

(8) In this section, "appropriate minister" means the minister responsible for the ministry that provided the grant, loan or advance, authorised the transfer of the property or for whom the Government guaranteed the performance of an obligation or gave an indemnity.

PART IV

POWERS OF DIRECTOR OF AUDIT

19. (1) The Director of Audit is at all reasonable times and for any purpose related to carrying out his responsibilities under this or any other Act entitled to access to the records of, and electronic data processing equipment owned or leased by:

Access to
information

- (a) a ministry, department or other service;
- (b) a statutory body;
- (c) a recipient of government money;
- (d) a government owned or controlled corporation; or
- (e) any other organisation or body,

and is entitled to make copies of the records and may take them away for the purpose of doing so if he gives a receipt for them and returns them without delay.

(2) The following persons shall give to the Director of Audit any information, records or explanations that the Director of Audit considers necessary to enable him to carry out his responsibilities under this or any other Act:

- (a) present or former public officers;
- (b) present or former employees, officers or members of the board of management or board of directors or governing board or other similar body of
 - (i) a statutory body,
 - (ii) a recipient of government money,
 - (iii) a government owned or controlled corporation, or

(iv) any other organization or body.

(3) The Director of Audit may station any employee or professional auditor referred to in section 9(a) in the offices of

- (a) a ministry, department or other service;
- (b) a statutory body;
- (c) a recipient of government money;
- (d) a government owned or controlled corporation; or
- (e) any other organisation or body,

for the purpose of enabling the Director of Audit to carry out his responsibilities under this or any other Act more effectively.

(4) When the Director of Audit gives notice of his intent to station an employee or professional auditor referred to in section 9(a), the following shall provide the necessary office accommodation for the employee or professional auditor so stationed:

- (a) the ministry, department or the head of the other service,
- (b) the board of management or board of directors or governing board or other similar body or the chief executive officer, manager or other person in charge of
 - (i) the statutory body,
 - (ii) the recipient of government money,
 - (iii) the government owned or controlled corporation, or
 - (iv) any other organisation or body.

(5) The Director of Audit shall ensure that every employee or professional auditor stationed in an office under subsection (3) complies with any security requirements applicable to persons employed therein.

Evidence under
oath

20. (1) In conducting an examination or audit or carrying out any responsibility under this or any other Act, the Director of Audit may by a notice require any person

- (a) to attend before the Director of Audit to give evidence under oath or, where permitted by law, on affirmation with respect to any matter related to the examination or audit or other responsibility; and

- (b) to produce any records respecting the matter referred to in the notice.

(2) If a person fails or refuses to comply with a notice under subsection (1), the High Court, on the application of the Director of Audit, may issue an order requiring the person to attend before the Director of Audit in compliance with the notice.

- (3) If a person refuses

- (a) to give evidence in compliance with a notice under subsection (1);
- (b) to answer any questions before the Director of Audit pursuant to the notice; or
- (c) to produce any records referred to in the notice,

the High Court may commit the person for contempt in accordance with the Eastern Caribbean Supreme Court Civil Procedure Rules or any other law.

21. (1) Despite any other Act or law, unless the Director of Audit otherwise consents in writing, a person who

Non-compellable
persons

- (a) holds or formerly held the office of Director of Audit;
- (b) is or was an employee in the Audit office; or
- (c) is or was engaged by the Director of Audit as a professional auditor or to provide professional and other services under section 9(b),

shall not give or be required to give evidence relating to any record or other information obtained by that person in the course of carrying out the responsibilities or powers of the Director of Audit under this or any other Act.

(2) Despite any other Act or law, unless the Minister of Finance otherwise consents in writing, a person who

- (a) is or formerly was an auditor of the Audit Office; or
- (b) is or was an employee or person engaged by the auditor of the Audit Office under section 22(3);

shall not give or be required to give evidence relating to any record or other information obtained by that person in the course of carrying out the responsibilities or powers of the auditor of the Audit under this Act.

Audit of Audit
Office

22. (1) Each year an auditor entitled by law to practise accounting in Saint Vincent and the Grenadines who is appointed by the Minister, with the approval by resolution of the House of Assembly, shall examine and audit the accounts of Audit Office and prepare a report.

(2) The Minister shall not appoint any person who, within the two years preceding his appointment,

(a) is or was a public officer;

(b) is or was an employee, officer or member of the board of management, board of directors or other governing body of

(i) a statutory body, or

(ii) a government owned or controlled corporation.

(3) The auditor may delegate to an employee or person engaged by him any responsibility or power that the auditor has under this Act, other than the responsibility to make a report to the Minister under this section.

(4) Sections 10 and 12(2) and Part IV apply, with such modifications as are appropriate in the circumstances, in relation to the examination, audit and report.

(5) No later than 4 months after the end of the previous financial year, the auditor shall give the report to the Minister.

(6) The Minister shall, not later than seven days after the House of Assembly first meets after he has received the report of the auditor, lay it before the House of Assembly.

(7) If the Minister fails to lay the report of the auditor before the House of Assembly in accordance with subsection (6), the auditor shall transmit the report to the Speaker who shall, as soon as practicable, present it to the House of Assembly.

PART V

MISCELLANEOUS

Confidentiality of
information
received by
Director of Audit

23. (1) The Director of Audit, every employee and former employee of the Audit Office, every professional auditor or former professional auditor referred to in section 9(a), every other person engaged by the Director of Audit to provide professional and other services and the auditor or former auditor of the audit office and any employee or person engaged by him under section 22(3) who receives information from a

person whose right to disclose that information is restricted by law, holds that information under the same restrictions respecting disclosure as governed the person from whom the information was obtained.

(2) Nothing in subsection (1) limits the right of the Director of Audit or the auditor under section 23 to report under this Act on the conclusion of an examination or audit.

24. The working papers relating to an examination or audit by the Director of Audit, including those of an employee or former employee of the Audit Office, a professional auditor or former professional auditor referred to in section 9(a), the auditor or former auditor of the audit office or an employer or person engaged by an auditor of the Audit Office under section 22(3) are confidential and shall not be laid before the House of Assembly or any committee of the House of Assembly.

Confidentiality of
working papers of
Director of Audit

25. (1) When a report under this Act is laid before the House of Assembly by the Minister, an appropriate minister under section 18 or transmitted to the Speaker under this Act, the Speaker shall direct that copies be given to all members of the House of Assembly.

Tabling reports
in House and
referral to Public
Accounts
Committee

(2) A report of the Director of Audit laid before the House of Assembly by the Minister, an appropriate minister under section 18 or presented to the House of Assembly by the Speaker under this Act stands referred to the Public Accounts Committee.

26. (1) No person shall

Obstruction

(a) wilfully obstruct;

(b) knowingly provide false or misleading information to;
or

(c) wilfully conceal or destroy any records or things
relevant to an examination or audit by,

the Director of Audit, an employee or professional auditor referred to in section 9(a), an auditor of the Audit Office or an employee or person engaged by the auditor of the Audit Office under section 22(3) in conducting an examination or audit under this or any other Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

27. (1) In this section, "committee" means the committee appointed by the House of Assembly for the purposes of this section.

Estimates for
operating Audit
Office

(2) The Director of Audit shall, not later than six months before the beginning of each financial year, submit to the committee in respect of the financial year estimates of the sums of money that will be required to be provided by the Legislature to defray the expenses of the Audit Office in that financial year.

(3) The Committee shall without delay review estimates submitted pursuant to subsection (2) and, on the completion of the review, the chairman of the Committee shall transmit the estimates to the Minister for inclusion in the annual estimates.

Repeal of Cap.
182 sections 9
and 10

28. Sections 9 and 10 of the Finance and Audit Act are repealed.

Regulations

29. (1) The Director of Audit in consultation with the Minister, may make Regulations generally for the purpose of carrying out or giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) the Director of Audit may make Regulations prescribing the time for submission of any information, records or explanation that the Director of Audit may request pursuant to section 19 (2).

Transitional
regulations

30. The Director of Audit in consultation with the Minister, may make regulations providing for any transitional matter not dealt with or not sufficiently dealt with by this Act.

Passed in the House of Assembly the 3rd day of November, 2005.

NICOLE HERBERT
Clerk of the House of Assembly.

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