



MONTSERRAT

## **CHAPTER 17.08**

### **AUDIT ACT**

**Revised Edition**  
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

#### **AUDIT ACT**

Act 7 of 2001 .. in force 1 January 2002 (S.R.O. 13/2002)

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**CHAPTER 17.08**

**AUDIT ACT**

*(Act 7 of 2001)*

AN ACT TO REPEAL AND REPLACE THOSE PROVISIONS OF THE FINANCE (CONTROL AND AUDIT) ACT, RELATING TO THE OFFICE OF THE AUDITOR GENERAL, THE AUDIT OF PUBLIC ACCOUNTS, AND MATTERS RELATED OR INCIDENTAL THERETO.

**Commencement**

*[ 1 January 2002 ]*

**Short title**

1. This Act may be cited as the Audit Act.

**PART I**

**PRELIMINARY**

**Interpretation**

2. In this Act unless the context otherwise requires—

**“Accountable Officer”** means any officer, including an Accounting Officer, concerned in or responsible for the collection, receipt, custody, issue of payment of public moneys, stores, stamps, investments, securities or negotiable instruments whether the same are the property of the Government or on deposit with or entrusted to the Government or to any public officer in his official capacity either alone or jointly with any other public officer or any other person;

**“Accountant General”** means the Accountant General of Montserrat;

**“Accounting Officer”** means any public officer appointed under the provisions of this Act and charged with the duty of accounting for any service in respect of which moneys have been appropriated;

**“Appropriation Act”** means any Act to apply a sum out of the Consolidated Fund to the service of a financial year, and includes a Supplementary Appropriation Act;

**“Auditor General”** means the Auditor General of Montserrat appointed under section 3;

**“Consolidated Fund”** means the Consolidated Fund of Montserrat established by section 7 of the Finance (Administration) Act;

**“Development Programme Account”** means the development programme account referred to in section 15 of the Finance (Administration) Act;

**“Financial Secretary”** means the officer directly responsible to the Minister for the management of the Department of Finance;

**“Financial Year”** means the twelve months ending on the thirty-first day of December in any year;

**“Government Company”** for the purpose of this Act includes—

- (a) Companies under the control and supervision of Government;
- (b) Companies in which Government holds stock, shares or bonds; or
- (c) Companies or institutions in which Government has a financial interest;

**“Legislative Council”** means the Legislative Council of Montserrat;

**“Minister”** means the member of Executive Council to whom has been assigned for the time being responsibility for matters relating to finance;

**“Officer”** means an employee of the Government including a public officer and a police officer;

**“Public Accounts Committee”** means the Standing Committee for the examination of the Public Accounts of Montserrat appointed by the Speaker of the Legislative Council in accordance with Legislative Council Standing Order No. 65;

**“Public Body”** for the purposes of this Act includes the Government, Government Ministries, Departments, Offices and Units;

**“Public Moneys”** includes—

- (a) all revenues or other moneys raised or received for the purpose of the Government; and
- (b) any other moneys or funds held, whether temporarily or otherwise, by any public officer in his official capacity, either alone or jointly with any other person, whether a public officer or not;
- (c) any other public property which come within the scope of this Act and those of Public Bodies, Statutory Bodies and Government Companies;

**“Public Service”** means the service of the Crown in a civil capacity in respect of Government;



“**Public Stores**” means all chattels of whatsoever nature the property of, or in possession of, or under the control of the Government;

“**Receiver of Revenue**” means the Accountant General or any officer designated by him for the purpose of receiving moneys, securities or other financial instruments collected by collectors of revenue;

“**Speaker**” means the Speaker of the Legislative Council and includes the Deputy Speaker;

“**Statutory Body**”, for the purposes of this Act, means any Corporation, Company, Board, Commission, Authority or other Body established by or under an Act to provide goods and services to the public; and which meets one or more of the following criteria—

(a) all or part of its appropriations for operating purposes are provided from public funds; or

(b) its operations may under the Act establishing the same, or under any Act relating thereto, impose or create a liability upon such public funds;

“**Supplementary Appropriation Act**” means any Act the purpose of which is the appropriation of moneys in supplementation of the appropriation already made by an Appropriation Act.

## PART II

### THE AUDITOR GENERAL

#### **Appointment of Auditor General**

3. The Governor in his discretion with the prior approval of a Secretary of State shall appoint in writing an officer, to be styled the Auditor General, who shall not be capable while holding the office of Auditor General, of holding any other office of profit under the Crown.

#### **Tenure of office**

4. (1) The Auditor General shall be deemed to be an officer in the Public Service of the Crown and, save as is otherwise provided in section 5 and section 6(1), the provisions of the law and regulations in force relating to the Public Service shall apply to him:

Provided that the terms and conditions of office applicable to the Auditor General upon his appointment shall not be made less favourable to him during the currency of his appointment.

(2) The Auditor General shall hold office during good behaviour, and may be removed only by the Governor with the prior approval of a

Secretary of State; and in any such case a full statement of the circumstances shall at the first opportunity be made to the Legislative Council.

### **Vacancy in office of Auditor General**

5. In the event of the office of Auditor General becoming vacant the Governor in his discretion, after consultation with the Public Service Commission, may appoint in writing a public officer to act as Auditor General pending the appointment of an Auditor General in accordance with the provisions of section 3.

### **Acting Auditor General**

6. (1) If, in the opinion of the Governor, the Auditor General is likely to be unable to exercise his powers or perform the duties of his office during any period by reason of absence or inability to act from illness or any other cause, the Governor in his discretion, after consultation with the Public Service Commission, may appoint in writing a public officer to act as Auditor General during such period.

(2) Every person appointed to act as Auditor General pursuant to the provisions of section 5 or subsection (1) of this section shall have and may exercise all the powers and authority and shall perform all the duties by this Act conferred and imposed upon the Auditor General.

(3) Notwithstanding the provisions of section 4(1), every public officer appointed to act as Auditor General under the provisions of section 5 or of subsection (1) of this section shall, for the period for which such public officer acts as Auditor General, be paid an allowance at an annual rate equal to the difference between the annual salary of his substantive appointment in the Public Service and the annual salary granted to the Auditor General under section 7.

### **Salary and allowance of Auditor General**

7. (1) The annual salary and allowances of the Auditor General shall be at a rate not less than the average rate paid to Departmental Permanent Secretaries.

(2) The Legislative Council may by Resolution increase the salary payable under this section, and the person holding the office of Auditor General at the date on which such Resolution is passed shall as from the date or such other date as may be specified in the Resolution be entitled to the salary at the increased rate as if it had been duly granted to him under this section.

(3) The salary and allowances payable to the Auditor General by virtue of this section shall be charged on and issued out of the Consolidated Fund.

PART III

DUTIES AND POWERS OF AUDITOR GENERAL

**Duties of Auditor General**

**8. (1)** The Auditor General shall inquire into, audit and report in an impartial manner on the accounts of Public Bodies, Statutory Bodies and Government Companies, and in his audit shall make such examination as he may deem necessary to satisfy himself whether—

- (a) accounts have been faithfully and properly maintained in accordance with generally accepted accounting standards, and that all reasonable precautions have been taken to safeguard the collection and custody of public moneys, and that these have been fully accounted for or paid, where so required by law, into the Consolidated Fund;
- (b) moneys which have been appropriated and disbursed have been applied to the purposes for which they were appropriated, and that expenditure has been made only as authorised;
- (c) moneys other than those which have been appropriated have been dealt with in accordance with proper authority;
- (d) all reasonable precautions have been taken to safeguard the receipt, custody, issue and proper use of cash, stamps, securities and public stores, and that the regulations, directions and instructions relating thereto have been duly observed;
- (e) sufficient relevant and reliable audit evidence is obtained to support the issue of a professional audit opinion on the financial statements of the organisations subject to audit;
- (f) expenditure is achieving value for money;
- (g) adequate regulations, directions or instructions exist for the guidance of Accounting Officers and Accountable Officers, and are complied with;
- (h) proper returns have been submitted by Accounting Officers in accordance with the Finance (Administration) Act;
- (i) the accounts are in agreement with the books of accounts and returns.

**(2)** In the conduct of his duties the Auditor General shall comply with professional Auditing Standards to deliver a high quality audit service operating to best current practice.

### **Advisory Role to Public Accounts Committee**

**9. (1)** The Auditor General shall act in an advisory capacity to the Public Accounts Committee in the execution of its duties and powers provided for in section 4 of Order No. 65 of the Standing Order of Montserrat Legislative Council (S.R.O. 6 of 1972).

**(2)** In accordance with the provision of subsection (1), the Auditor General shall—

- (a)* advise the Chairman of the Public Accounts Committee on the matters selected for examination, and if requested to do so, explain the accounting principles involved to the whole Committee;
- (b)* brief the Chairman of the Public Accounts Committee, and if requested, the whole Committee, on the items appearing in the Statements of Expenditure in Excess; and
- (c)* brief the Committee on the Treasury minute and on progress made in implementing the Committee's previous recommendations.

**(3)** In performance of his advisory functions the Auditor General shall not be subject to any directions or instructions given by the Committee.

### **Access to information**

**10. (1)** In the exercise of duties imposed upon him by this Act the Auditor General may upon request—

- (a)* have access to all records, registers, books, documents, data, vouchers, cash, stamps, securities, stores or other Government property of any kind whatsoever in the possession of any public officer;
- (b)* call upon any officer for any explanations and information which he may require in order to enable him to discharge his duties;
- (c)* without the payment of any fee cause search to be made in and extracts taken from any public office;
- (d)* authorize any person publicly carrying on the profession of accountant, auditor, or public officer, including members of his staff, to conduct on his behalf any inquiry, examination or audit, including surprise checks of cash and stores, and such person or officer shall report thereon to the Auditor General.

**(2)** If in the opinion of the Auditor General, a public officer, in response to a request made under subsection (1) denies access or fails to provide any or sufficient information or explanations, he may so advise the Government who shall thereupon direct the officer of the body or company

to furnish the Auditor General with such information and explanations, and to give him access to those accounting records and documents which are in the opinion of the Auditor General, necessary for him to fulfill his duties and responsibilities.

**Auditor General not to be required to undertake pre-audit or any duties incompatible with his office**

**11. (1)** The Auditor General shall not be required to undertake any examination of accounts partaking of the nature of a pre-audit which involves the acceptance by him of responsibility which would preclude him from full criticism of any accounting transaction after each transaction has been duly recorded.

**(2)** The Auditor General shall not be required to undertake any duties outside those pertaining to his office if in his opinion such duties are incompatible with the responsibilities and duties of that office.

**Requests by Government**

**12.** The Auditor General may, if in his opinion such an assignment does not interfere with his primary responsibilities, whenever the Government so request, inquire into and report on any matter relating to the financial affairs of Montserrat or to public property, or to inquire into and report on any organisation that has received aid from the Government of Montserrat, or, in respect of which, aid from the Government of Montserrat is sought.

**Advisory powers**

**13.** The Auditor General may, if requested to do so by any entity whose accounts he audits render to that entity any technical advice or assistance that he is competent to render by virtue of his professional qualifications and experience.

**Notification of irregularities to Financial Secretary and Attorney General**

**14.** If at any time it appears to the Auditor General that substantial irregularities have occurred in the receipt, custody, issue or expenditure of public moneys or in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other Government property, or in the accounting for the same, he shall immediately bring the matter to the notice of the Financial Secretary.

**Auditor Officers not to be appointed to Boards**

**15.** Neither the Auditor General nor any member of his staff may be appointed as Chairman or member of any Board of Survey, Tenders Board or Board of Enquiry, and he shall not be required to take part in any actual or apparent investigation into suspected losses, fraud or irregularities.

However, subject to the provisions of section 11(2), he or any member of his staff may provide technical advice and services if requested to do so.

### **Legal advice**

**16.** In the exercise of his duties imposed upon him in this Act the Auditor General may lay before the Attorney General a case in writing as to any question regarding the interpretation of any Act or regulation concerning the powers of the Auditor General or the discharge of his duties, and the Attorney General shall give a written opinion upon the interpretation required.

### **Powers of Auditor General not subject to direction**

**17.** In the exercise of his powers of audit of and reporting on accounts the Auditor General shall not be subject to the direction or control of any person or authority.

### **Staff resources**

**18. (1)** The staff required to assist the Auditor General in the performance of his duties shall be composed of such qualified officers as the Governor may from time to time appoint.

**(2)** Anything which, under the authority of this Act, is directed to be done by the Auditor General, other than the certifying of and reporting on accounts, may be done by any officer of his staff so authorised by him.

### **Use of professional services**

**19.** The Auditor General may within the total budget approved for his office in the annual Appropriation Act, contract for professional services at such remuneration and on such terms and conditions as approved by the Minister for Finance.

### **Accommodation to be made available for outside audits**

**20.** If in order to carry out his duties more effectively, the Auditor General considers it necessary or desirable to station any person employed in or by his office in the premises occupied by any Government Ministry, Department, Office or Unit, Public Body, Statutory Body, Government Company, or other organisation established by law for public purposes, the auditee shall make every effort to provide the necessary office accommodation for any person so stationed.

### **Sanctions for improper disclosure**

**21.** Disciplinary action, as provided for in section 106 of General Orders and, in serious cases, legal action, may be instituted against the Auditor General or, any Auditor in his department, or any person engaged by him in accordance with the provisions of section 10(1)(d), for improperly disclosing information obtained during the course of an audit.

### **Other Auditor**

**22. (1)** Notwithstanding section 8(1), the Auditor General is not required to audit the books and accounts of a Statutory Body or Government Company for which another Auditor is appointed in accordance with the provisions of its constituting Act or of the Act that governs its operations, and may, in order to fulfill his auditing responsibilities, rely on the report of the duly appointed Auditor of the Statutory Body or Government Company.

**(2)** The Auditor of the books and accounts of a Statutory Body or Government Company, must provide to the Auditor General, a copy of—

- (a)* the annual financial statements;
- (b)* his report on these statements; and
- (c)* any other report he makes to the Board of Directors, the executive or the management of the Statutory Body or Government Company, as the case may be, on his findings and recommendations.

**(3)** The Auditor mentioned in subsections (1) and (2) shall make available on request to the Auditor General, the working papers, and other documents and reports in respect of his audit as well as any other information and explanation which the Auditor General may require in respect of that audit and its results.

**(4)** When the Auditor General is of the opinion that the information, explanation, documents and reports provided by the Auditor mentioned in subsections (1) and (2) are insufficient or that additional audit work should be carried out, he may conduct or cause to be conducted such additional audit or investigation as he considers necessary of the books, accounts and operations of the Statutory Body or Government Company.

### **Funding of the Audit Office**

**23. (1)** The Auditor General shall annually prepare an estimate of the sums that will be required to be provided by the Legislative Council for the payment of the salaries, allowances and expenses of his office during the next ensuing fiscal year.

**(2)** The Auditor General shall apprise the Governor in writing in the event that the amounts provided in the Annual Estimates to be submitted by the Ministry of Finance to the Legislative Council are, in his opinion, inadequate to enable him to fulfill the duties and responsibilities of his office.

### **Audit of office of Auditor General**

**24.** The Auditor General shall prepare accounts in respect of work of his office during each financial year, and those accounts shall be audited by such Auditor appointed by the Minister of Finance after consultation with the Public Accounts Committee.

## PART IV

## THE AUDIT AND EXAMINATION OF PUBLIC ACCOUNTS

**Annual Accounts**

**25.** Within a period of six months (or such longer period as the Legislative Council may by Resolution appoint) after the end of each financial year there shall be transmitted to the Auditor General by the Accountant General accounts showing fully the financial position of Montserrat at the end of the year, which shall include the statements listed in section 17(2), and section 18 of the Finance (Administration) Act. Any delay in submitting these statements to the Auditor General must be authorised by a Resolution of the Legislative Council.

**Report on Annual Accounts and Special Reports**

**26. (1)** On receipt of the accounts prescribed by section 25 the Auditor General shall cause them to be examined and audited and shall, within a period of nine months (or such longer period as the Legislative Council by Resolution may appoint) after the end of the financial year to which the accounts relate, certify each account, and shall within the aforesaid period prepare, sign and transmit to the Minister a report on the examination and audit of all such accounts, together with copies of the accounts, certified as aforesaid. In this certification of the accounts the Auditor General shall express his opinion as to whether they present fairly, information, in accordance with accounting policies of the Government together with any reservation he may have.

**(2)** The Auditor General may at any time if it appears to him desirable transmit to the Minister a special report on any matter incidental to his powers and duties under this Act.

**Minister to lay documents transmitted to him by Auditor General**

**27. (1)** The Minister shall cause a copy of every document transmitted to him under the provisions of section 26 to be laid before the Legislative Council at its next meeting following the date on which such documents were received by him.

**(2)** If the Minister fails to lay any document before the Legislative Council as required by subsection (1) the Auditor General shall forthwith transmit a copy thereof to the Speaker to be by him presented to the Legislative Council.

**Documents laid in accordance with section 27 to be dealt**

**28.** Every document laid before the Legislative Council in accordance with the provisions of section 27 shall be dealt with in the manner prescribed by Legislative Council Standing Orders.



**PART V**

**EXAMINATION AND AUDIT OF THE ACCOUNTS OF STATUTORY  
CORPORATIONS, BOARDS, COMMISSION AND BODIES**

**Examination and audit of accounts of Statutory Corporations and similar bodies**

**29.** As provided for in section 8(1), but subject to the provisions of section 26(1), the accounts of any Statutory Corporation, Board, Commission or Body shall be examined and audited by the Auditor General.

**Duties and powers**

**30.** In relation to such Statutory Corporation, Board, Body or Commission and its members, officers and employees, the same or similar duties powers and discretion as are conferred upon the Auditor General in regard to the audit of Government accounts apply.

**Preparation of report**

**31.** Subject to the provisions of the provisions of section 25, the Auditor General shall prepare a report on the examination and audit of the quasi-Government accounts for which he is appointed Auditor, and shall transmit such report to the Minister under whose portfolio a particular entity lies for presentation to the Legislative Council.

**Minister to obtain observations on report of Auditor General**

**32. (1)** On receipt of any account and the report by the Auditor General, the Minister shall obtain the observations of the Statutory corporation, Board, Body or Commission concerned on any matter to which attention has been drawn by the Auditor General in such report, and such observations shall be presented to the Legislative Council with the said report.

**(2)** If the Minister fails within a reasonable time to present such account and report to the Legislative Council, the Auditor General shall transmit a copy of the account and report to the Speaker to be by him presented to the Legislative Council.

**Audit Fees to be charged**

**33.** Any Statutory Corporation and any Board, Body or Commission the accounts of which are audited by the Auditor General under the provisions of section 31 shall in respect of such audit pay such fee as may be determined by the Auditor General. Any such fee shall be paid into the Government Treasury as public money:

Provided that the Financial Secretary may, in any case in which it shall appear to him to be in the public interest that some lesser fee shall be paid, instruct the Auditor General to levy such lesser fee.

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