

# KWAZULU-NATAL INTERNAL AUDIT ACT ACT NO. 2 OF 2001

Assented to on.....

[English text signed by the Premier]

## ACT

To provide for the establishment of the Provincial Internal Audit Unit so as to regulate the internal audit function; and to provide for matters incidental thereto.

**BE IT ENACTED** by the Parliament of the Province of KwaZulu-Natal, as follows :

### Definitions

1. In this Act, unless otherwise stated, the expressions defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999) bear the same meaning, and :

“Audit Committee” means a committee appointed by the Minister under section 5;

“Audit Charter” means a statement of accountability, independence, responsibility, and authority for the KwaZulu-Natal Internal Audit Unit, prepared by the Internal Audit Unit and duly approved by the Audit Committee;

“Auditor-General” means the person appointed under section 193 (4) of the Constitution as an Auditor-General, or any other person designated by him or her to carry out the responsibilities under the Auditor-General Act, 1995 (Act No. 12 of 1995);

“Cabinet” means the Executive Council of the Province as contemplated in section 132 of the Constitution;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“Department” means a provincial department contemplated in Chapter 3 of the Public Service Act, 1994 (Proclamation R103 of 1994);

“Head of Department” means the head of a provincial department contemplated in Chapter 3 of the Public Service Act, 1994 (Proclamation R103 of 1994), and for purposes of the Gambling Board the expression “Chief Executive Officer” has a corresponding meaning;

“Head of Finance” means the head of the Department of Finance;

“Head of the Internal Audit Unit” means the head of the unit established under section 3;

“Internal Audit Unit” means the unit established under section 3;

“Minister” means the member of the Executive Council whose responsibility includes the administration of this Act;

“Parliament” means the Provincial Legislature of KwaZulu-Natal;

“Portfolio Committee” means the committee of Parliament dealing primarily with finance matters;

“Province” means the Province of KwaZulu-Natal as contemplated in section 103(1)(d) of the Constitution; and

“Provincial Government” means the Provincial Government of KwaZulu-Natal.

### **Purpose of this Act**

2. The purpose of this Act is :

- (1) to regulate the internal audit function, within the Provincial Government;
- (2) to regulate the degree to which transparency, accountability and sound and prudent management as contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999) or any other law has been achieved; and
- (3) to provide for the establishment and functions of the KwaZulu-Natal Provincial Audit Committee.

### **Establishment of the Internal Audit Unit**

3. (1) A unit to be known as the Internal Audit Unit is established in the Department of Finance.
- (2) The Internal Audit Unit is headed by the Head of the Internal Audit Unit, who is a public servant as contemplated in the Public Service Act, 1994 (Proclamation R103 of 1994) and takes direction from and reports all findings to the Head of Finance and the Audit Committee.
- (3) The Head of the Internal Audit Unit is assisted in the performance of his or her duties by internal audit staff appointed under the Public Service Act, 1994 (Proclamation R103 of 1994).

### **Powers and Duties of the Internal Audit Unit**

4. (1) The Internal Audit Unit has access to all Provincial Government records and any information in the custody and control of any person employed by the Province, that is necessary for the performance of its duties.

- (2) The Internal Audit Unit must :
- (a) examine and evaluate the business processes and related control systems of the Province and assist management in assessing risk;
  - (2) investigate any matter :
    - (1) it deems necessary;
    - (ii) referred to it in writing by Cabinet, any Member of Parliament or a Head of a Department; or
    - (iii) against a Head of Department which has been submitted directly to the relevant Minister by a public servant for referral to the Internal Audit Unit;
  - (c) prepare on an annual basis an audit plan to be approved by the Audit Committee;
  - (d) report to the accounting officer any irregularities or significant control weaknesses occurring in the Department of that accounting officer;
  - (e) make recommendations to the accounting officer to remedy any deficiencies occurring in the Department of that accounting officer;
  - (f) report to the Audit Committee the results of all audits, investigations or other projects undertaken by the unit, and the status of its completed work compared to the approved annual audit plan;
  - (g) provide a secretariat function to the Audit Committee;
  - (h) make any recommendations it deems fit for consideration by the Audit Committee; and
  - (i) prepare an Audit Charter for the Internal Audit Unit which must be approved by the Audit Committee.

#### **Establishment and Appointment of Audit Committee**

5. (1) (a) The Minister must establish a committee, which must be known as the KwaZulu-Natal Provincial Audit Committee.
- (b) The Minister must, on the advice of the Auditor-General and after consultation with the Cabinet and the Portfolio Committee, appoint appropriately qualified, fit and proper persons to serve as members of the Audit Committee.
- (c) The Minister must, at the time of appointment, determine the term of office of each member, up to a maximum period of five years.
- (2) The Audit Committee must consist of not fewer than five and not more than seven members, a majority of whom must not be staff of the Provincial Government appointed under the Public Service Act, 1994 (Proclamation R103 of 1994).

- (3) The Audit Committee must be chaired by a person appointed by the Minister from among its members not appointed under the Public Service Act, 1994, (Proclamation R103 of 1994), who in turn must nominate a member to chair committee meetings in his or her absence.

### **Disclosure of Interest**

6. (1) Every member, appointed, co-opted or full time employee of the Public Service, involved in the Audit Committee meetings, deliberation and resolutions, is obliged to declare any conflict of interest.
- (2) Every member of the Audit Committee is responsible for representing the interests of the Audit Committee and the Province as a whole.
- (3) A member of the Audit Committee may not :
- (a) use his or her position to promote any special financial or other interest, including but not limited to the interest of any individual, company or other entity;
  - (b) act in a manner that is inconsistent with his or her membership and the role of the Audit Committee;
  - (c) expose himself or herself to any situation involving the risk of a conflict between his or her official and / or professional responsibilities and a personal interest;
  - (d) use his or her position or any information entrusted to him or her or obtained as a result of his or her involvement in the Audit Committee to enrich himself or herself or improperly benefit any other person or entity; and
  - (e) act in a manner that may compromise the credibility, workings and integrity of the Audit Committee and that of the Provincial Department of Finance.

### **Removal from Office of Audit Committee Members**

7. (1) The Minister may remove a member of the Audit Committee from office if the member :
- (a) becomes incapacitated;
  - (b) contravenes any provision of this Act; or
  - (c) fails to attend three consecutive meetings without reasonable justification.
- (2) The Minister must remove a member of the Audit Committee from office if the member :
- (a) is convicted of an offence involving dishonesty, including but not limited to offences such as theft, fraud, forgery, perjury or an offence under the Corruption Act, 1992 (Act No. 94 of 1992); or

- (b) is convicted of an offence and sentenced to imprisonment without the option of a fine.

### **Powers, Duties and Functions of the Audit Committee**

- 8. (1) The Audit Committee is responsible for monitoring and evaluating the work of the Internal Audit Unit.
- (2) The Audit Committee must annually approve an audit plan to be implemented under the direction of the Head of the Internal Audit Unit, which must take into account -
  - (a) the priorities and plans of the Provincial Government;
  - (b) matters covered, and issues raised, in the Auditor-General's report;
  - (c) control deficiencies, however identified, which are known to the Audit Committee; and
  - (d) new or planned systems, initiatives or other proposed changes in Provincial Government, which could have a significant impact on the efficient and effective functioning of Departments.
- (3) The Audit Committee may -
  - (a) request the investigation of any matter and in this regard, the Audit Committee may request the Head of the Internal Audit Unit to amend the annual audit plan;
  - (b) as it deems necessary, direct the Head of the Internal Audit Unit to consider or to adopt specific practices, policies or methods in the performance of his or her duties to facilitate efficiency and effectiveness; and
  - (c) upon reasonable notice, request any accounting officer to attend a meeting to explain any matter relating to any audit undertaken.
- (4) The Audit Committee may direct any accounting officer to provide status reports detailing progress made in the implementation of the Audit Committee's resolutions.
- (5) The Audit Committee must -
  - (a) prepare reports to the Minister in respect of all the committee's activities undertaken during the year for inclusion in any report released under section 9 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (b) provide to affected accounting officers copies of audit reports, and related committee findings and recommendations from a meeting, within two (2) weeks of that meeting; and
  - (c) approve an Audit Charter for the Internal Audit Unit.
- (6) The Minister must table a report annually in Parliament on the activities of the Audit Committee.

### **Meetings of the Audit Committee**

9. (1) The Audit Committee must meet at least quarterly.
- (2) Subject to subsection (3), a quorum must consist of two-thirds of the total committee members.
- (3)(a) Whenever a quorum contemplated in subsection (2) cannot be achieved, the Chairperson must adjourn the meeting for up to fourteen days.
- (b) If at least 50% of the members are present at the adjourned meeting under paragraph (a), the Chairperson may deem the committee to be properly constituted even if a quorum is not present.
- (4) The Secretariat must take Minutes of all Audit Committee proceedings.

### **Reporting Requirement of Accounting Officers to the Audit Committee**

10. Every accounting officer must -
  - (a) submit to the Audit Committee all reports requested from him or her by the requested dates; and
  - (b) appear before the Audit Committee whenever the Audit Committee requests him or her to present reports or provide information.

### **Offences and Penalties**

11. A person who –
  - (a) without just cause refuses or fails to comply with any directive or instruction issued by the Audit Committee or refuses or fails to furnish particulars or information required by the Internal Audit Unit or the Audit Committee or gives false information to the Internal Audit Unit or the Audit Committee, knowing such information to be false;
  - (b) anticipates any findings of the Internal Audit Unit or Audit Committee regarding an investigation in a manner calculated to influence its proceedings or findings;
  - (c) does anything calculated to improperly influence the Internal Audit Unit or Audit Committee or any individual member in its proceedings or work;
  - (d) contravenes the provision of any law applicable to the performance of the functions of the Audit Committee or Internal Audit Unit;
  - (e) interrupts or interferes with the proceedings of the Audit Committee, or interferes with or obstructs the Internal Audit Unit or the Audit Committee, or any member thereof, in the performance or exercise of its, his or her powers, duties and functions; or
  - (f) fails to disclose an interest contemplated in section 6 and participates in the proceedings without disclosing the interest,

will be guilty of an offence and liable on conviction to a fine or term of imprisonment not exceeding five years or both a fine and imprisonment.

### **Duties of Departments and Public Entities**

12. Every Department or provincial public entity as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999) must afford the Internal Audit Unit or Audit Committee such assistance as may be required to meet the objectives of this Act.

### **Regulations**

13. The Minister may, after consultation with the Portfolio Committee, make regulations regarding :
  - (a) the powers, duties and conduct of members of the Audit Committee and the Internal Audit Unit;
  - (b) the procedure and criteria for conducting internal audits and dealing with matters arising from audit reports and investigations;
  - (c) the requirements for appointment to the Audit Committee, and
  - (d) in general, any matter which is not in conflict with this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999) which is reasonably necessary for giving effect to the objects of this Act.

### **Short Title**

14. This Act is called the KwaZulu-Natal Internal Audit Act, 2001.