

**MATJHABENG MUNICIPALITY**

**ADDENDUM  
ANNEXURES**

of the

**1<sup>ST</sup> ORDINARY COUNCIL MEETING  
FOR THE YEAR 2019**

convened for

**THURSDAY, 31 JANUARY 2019**

at

**17h00**

at the

**COUNCIL CHAMBERS, CIVIC CENTRE,  
WELKOM**



## MATJHABENG MUNICIPALITY –

## PUBLIC AUDIT AMENDMENT ACT WORKSHOP FOR COUNCILLORS

DATE: 15 January 2019  
 VENUE: TS Du Plessis Hall  
 TIME: 10:00

Name & Surname	Contact	Signature
Dipuo Mafa	071 071 4977	
SABATA Mashau	076 798 7297	
Memme Kabi	0720142749	
BONAKELE Tama	0671038593	
DYANTYI Akhona	0633 734213	
Ayung Manenje	0820286353	
Ntshabiseng Phofeni	076 348 5973	
Tumelo Nthako	0719042873	
GEBOMA Lushaba	079 3264161	
Spho Monese	0828608689	
Siumelehe Fairick Poco	0604653069	
Harmans. Mahlumbu	0719457652	
Selina Meli	0723612814	



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 TIME: 10:00

Name & Surname	Contact	Signature
Jim RAMALEFANE	072 078 0011	
SCHALL VAN SCHALWYK	073 077 9750	
VELAPHI MAWELEA	083 890 5849	
Xolile Masina	061 059 5920	
JOE MOSIA	083 730 6898	
Vicky Morris	073 832 0805	
MLOBOHATSO MOOKOMO	072 378 9870	
ANDRÉ STYGER	082 550 5804	
JAN MARAIS	082 801 6806	
Miniam Rukaki	078 371 0327	
Alice Jacobs	083 364 7137	
MOKHO NDEGOBO	078 714 9112	



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Name & Surname	Contact	Signature
Angeline Sithole	078 059 3475	
SUSAN Tshwane	082 886 9945	
LUTIKA PRESENTE	073 961 5154	
SEPHIRI LIPHOKO	062 232 7317	
Moeti Molefi	072 7587 971	
MAKARETENG SEBOTSAA	078 819 2600	
BANTUBAII BERENG NKONKA	073 812 6771	
Kabosha Maipatle	078 808 9869	
BONGANI NKULU	072 515 7106	



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## REPUBLIC OF SOUTH AFRICA

Vol. 641

Cape Town  
Kaapstad

20 November 2018

**No. 42045**

### THE PRESIDENCY

No. 1260

20 November 2018

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 5 of 2018: Public Audit Amendment Act, 2018

### DIE PRESIDENSIE

No. 1260

20 Novernber 2018

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 5 van 2018: Wysigingswet op Openbare Oudit, 2018

ISSN 1682-5843



9 771682 584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

Act No. 5 of 2018.

Public Audit Amendment Act, 2018

## GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)  
(Assented to 18 November 2018)

## ACT

To amend the Public Audit Act, 2004, so as to delete certain definitions and to insert new definitions; to provide for certainty regarding the discretion of the Auditor-General with regard to certain audits; to authorise the Auditor-General to undertake performance audits and to provide audit or audit related services to an international association, body, institution or organisation; to provide for the Auditor-General to refer suspected material irregularities arising from an audit performed under this Act, to a relevant public body for investigation; to empower the Auditor-General to take appropriate remedial action; to provide for the Auditor-General to issue a certificate of debt where an accounting officer or accounting authority failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt; to provide for the establishment, powers and functions of a remuneration committee; to provide for consultation between the Independent Commission for the Remuneration of Public Office-bearers and the remuneration committee; to provide for additional reporting requirements; to provide for the defraying of certain excess audit fees as a direct charge against the National Revenue Fund; to revise the provisions relating to the appointment of an audit committee for the Auditor-General; to provide that the Auditor-General makes regulations on specific issues; to substitute certain expressions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 25 of 2004, as amended by section 14 of Act 22 of 2014

1. Section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004) (hereinafter referred to as the “principal Act”), is hereby amended 5

(a) by the insertion before the definition of “audit” of the following definition:

“accounting authority” means a body or person defined as an accounting authority in the Public Finance Management Act, or any body or person designated as an accounting authority in terms of any other law, 10 as the case may be;

Wysigingswet op Openbare Oudit, 2018

Wet No. 5 van 2018

## ALGEMENE VERDUIDELIKENDE NOTA:

- [ ] Woorde in vet druk tussen vierkantige hakies, dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken)  
(Goedgekeur op 18 November 2018)

## WET

Tot wysiging van die Wet op Openbare Oudit, 2004, ten einde sekere omskrywings te skrap en nuwe omskrywings in te voeg; om voorsiening te maak vir sekerheid rakende die diskresie van die Ouditeur-generaal ten opsigte van sekere oudits; die Ouditeur-generaal te magtig om prestasie-oudits te onderneem en audit- of auditverwante dienste aan 'n internasionale vereniging, instansie, instelling of organisasie te verskaf; voorsiening te maak vir die Ouditeur-generaal om wesenlike onreëlmataighede wat vermoedelik voortspruit uit 'n audit wat ingevolge hierdie Wet uitgevoer is vir ondersoek na 'n tersaaklike openbare instansie te verwys; die Ouditeur-generaal te bemagtig om gepaste regstellende stappe te doen; voorsiening te maak dat die Ouditeur-generaal 'n skuldsertifikaat uitrek waar 'n rekenpligtige beampte of rekenpligtige gesag versuim het om verliese van 'n verantwoordelike persoon te verhaal en die betrokke uitvoerende gesag opdrag te gee om die skuld in te vorder; voorsiening te maak vir die instelling, bevoegdhede en funksies van 'n vergoedingskomitee; voorsiening te maak vir oorlegpleging tussen die Onafhanklike Kommissie vir die Vergoeding van Staatsamptenare en die vergoedingskomitee; voorsiening te maak vir bykomende verslagdoeningsvereistes; voorsiening te maak vir die afhandeling van sekere oortollige ouditgelde as 'n direkte las teen die Nasionale Inkomstefonds; die bepalings met betrekking tot die aanstelling van 'n ouditkomitee vir die Ouditeur-generaal te hersien; voorsiening te maak dat die Ouditeur-generaal regulasies uitvaardig oor spesifieke aangeleenthede; sekere uitdrukkings te vervang; en voorsiening te maak vir aangeleenthede wat daarmee verband hou.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 25 van 2004, soos gewysig deur artikel 14 van Wet 22 van 2014

1. Artikel 1 van die Wet op Openbare Oudit, 2004 (Wet No. 25 van 2004) (hierna die "Hoofwet" genoem), word hierby gewysig—  
 (a) deur na die omskrywing van "provinciale tesourie" die volgende omskrywings in te voeg:  
 "rekenpligtige beampte" 'n persoon omskryf as 'n rekenpligtige beampte in die Wet op Openbare Finansiële Bestuur of die Wet op

- (b) by the substitution for the definition of "accounting entity" of the following definition:  
 " 'accounting entity' means an accounting entity referred to in section 188(1)(c) of the Constitution;";
- (c) by the insertion before the definition of "auditee" of the following definition:  
 " 'accounting officer' means a person defined as an accounting officer in the Public Finance Management Act or the Municipal Finance Management Act, or any person designated as an accounting officer in terms of any other law, as the case may be;";
- (d) by the insertion after the definition of "audit fees" of the following definition: 10  
 " 'Auditing Profession Act' means the Auditing Profession Act, 2005 (Act No. 26 of 2005);";
- (e) by the insertion after the definition of "authorised auditor" of the following definition:  
 " 'Constitution' means the Constitution of the Republic of South Africa, 1996;";
- (f) by the insertion after the definition of "Deputy Auditor-General" of the following definition:  
 " 'executive authority' means the executive authority as provided for in any relevant legislation applicable to an auditee;";
- (g) by the insertion after the definition of "legislature" of the following definition:  
 " 'material irregularity' means any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in a material financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public;";
- (h) by the insertion after the definition of "oversight mechanism" of the following definition:  
 " 'prescribed' means prescribed by regulation made in terms of section 52;";
- (i) by the deletion of the definition of "Public Accountants' and Auditors' Act";
- (j) by the insertion after the definition of "relevant legislature" of the following definition:  
 " 'remuneration committee' means the remuneration committee established in terms of section 5(2)(bA);"; and
- (k) by the substitution for the full stop at the end of the definition of "supreme audit institution" of a semi colon and the insertion after that definition of the following definition:  
 " 'this Act' includes the regulations.".

## Amendment of section 4 of Act 25 of 2004

2. Section 4 of the principal Act is hereby amended—
- (a) by the insertion after subsection (3) of the following subsection:  
 " (3A) The discretion of the Auditor-General as contemplated in subsection (3) applies to any public entity contemplated in subsection (3)(a) and any other institution contemplated in subsection (3)(b) that meets prescribed criteria.>"; and
- (b) by the substitution for subsection (4) of the following subsection:  
 " (4) In the event of any conflict between [a provision of] this section and any other legislation, [existing when this section takes effect, the provision of] this section prevails.".

- Munisipale Finansiële Bestuur, of enige persoon wat ingevolge 'n ander wet as 'n rekenpligtige beampete aangewys is, na gelang van die geval; 'rekenpligtige entiteit' 'n rekenpligtige entiteit waarna in artikel 188(1)(c) van die Grondwet verwys word;  
 'rekenpligtige gesag' 'n instansie of persoon wat as rekenpligtige gesag in die Wet op Openbare Finansiële Bestuur, of enige instansie of persoon wat as rekenpligtige gesag ingevolge enige ander wet, aangewys is, na gelang van die geval.';
- (b) deur na die omskrywing van "ouditgelde" die volgende omskrywing in te voeg:  
 "Auditing Profession Act" die "Auditing Profession Act, 2005" (Wet No. 26 van 2005);
- (c) deur na die omskrywing van "geouditeerde" die volgende omskrywing in te voeg:  
 "Grondwet" die Grondwet van die Republiek van Suid-Afrika, 1996;
- (d) deur na die omskrywing van "Adjunk-ouditeur-generaal" die volgende omskrywing in te voeg:  
 "uitvoerende gesag" die uitvoerende gesag soos bepaal in enige tersaaklike wetgewing wat van toepassing is op 'n geouditeerde;
- (e) deur na die omskrywing van "wetgewer" die volgende omskrywing in te voeg:  
 "wesenlike onreëlmatigheid" enige nie-nakoming of oortreding van wetgewing, bedrog, diefstal of skending van 'n fidusière plig wat geïdentifiseer is tydens 'n udit wat kragtens hierdie Wet uitgevoer is, wat 'n wesenlike finansiële verlies, misbruik van of verlies aan 'n wesenlike openbare hulpbron of wesenlike skade aan 'n openbare sektor-instelling of die algemene publiek, tot gevolg gehad het of waarskynlik tot gevolg sal hê;
- (f) deur na die omskrywing van "toesighoudingsmeganisme" die volgende omskrywing in te voeg:  
 "voorgeskryf" voorgeskryf deur regulasie wat ingevolge artikel 52 uitgevaardig is;
- (g) deur die omskrywing van "Wet op Openbare Rekenmeesters en Ouditeurs" te skrap;
- (h) deur die volgende omskrywing na die omskrywing van "tersaaklike wetgewer" in te voeg:  
 "vergoedingskomitee" die vergoedingskomitee ingestel ingevolge artikel 5(2)(bA); en
- (i) deur na die omskrywing van "grondwetlike instelling" die volgende omskrywing in te voeg:  
 "hierdie Wet" ook die regulasies.

## Wysiging van artikel 4 van Wet 25 van 2004

## 2. Artikel 4 van die Hoofwet word hierby gewysig—

- (a) deur na subartikel (3) die volgende subartikel in te voeg:  
 "(3A) Die diskresie van die Ouditeur-generaal soos beoog in subartikel (3) is van toepassing op enige openbare entiteit in subartikel (3)(a) beoog en enige ander inrigting in subartikel (3)(b) beoog wat aan voorgeskrewe maatstawwe voldoen."; en
- (b) deur subartikel (4) deur die volgende subartikel te vervang:  
 "(4) In die geval van enige botsing tussen [n bepaling van] hierdie artikel en enige ander wetgewing [wat bestaan wanneer hierdie artikel in werking tree,] is [die bepaling van] hierdie artikel deurslaggewend."

## Amendment of section 5 of Act 25 of 2004

3. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Auditor-General may, at a fee, and without compromising the role of the Auditor-General as an independent auditor[, provide]— 5

(a) provide audit related services to an auditee referred to in section 4(1) or (3) or other body, which is commonly performed by a supreme audit institution on condition that—

(i) no services may be provided in respect of any matter that may subsequently have to be audited by the Auditor-General; 10

(ii) such service will not directly result in the formulation of policy; and

(iii) there must be full and proper disclosure of such services in terms of section 10(1)(b)[.];

(aA) perform an appropriate audit of any institution referred to in section 4(1) or (3) to determine whether appropriate and adequate measures have been implemented to ensure that resources are procured economically and utilised efficiently and effectively;

(aB) provide audit and audit related services commonly performed by an independent audit institution to an international association, body, institution or organisation on condition that— 20

(i) such service does not—

(aa) compromise the efficiency;

(bb) put an undue strain on the resources; or

(cc) detract from the constitutional functions,

of the Auditor-General; and

(ii) there must be full and proper disclosure of such services in terms of section 10(1)(b);

(b) provide advice and support to a legislature or any of its committees outside the scope of the Auditor-General’s normal audit and reporting functions; 30

(c) provide comments in a report on any responses by an auditee to reported audit findings, or responses by an auditee to a report of any legislature arising from its review of an audit report; or

(d) carry out an appropriate investigation or special audit of any institution referred to in section 4(1) or (3), if the Auditor-General considers it to be in the public interest or upon the receipt of a complaint or request.”; 35

(b) by the insertion after subsection (1) of the following subsections:

“(1A) The Auditor-General may, as prescribed, refer any suspected material irregularity identified during an audit performed under this Act to a relevant public body for investigation, and the relevant public body must keep the Auditor-General informed of the progress and the final outcome of the investigation.

(1B) The Auditor-General has the power to— 45

(a) take any appropriate remedial action; and

(b) issue a certificate of debt, as prescribed, where an accounting officer or accounting authority has failed to comply with remedial action, as set out in Part 1A of this Chapter.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) In addition to subsections (1), (1A) and (1B), the Auditor-General [may]—

(a) may co-operate with persons, institutions and associations, nationally and internationally;

## Wysiging van artikel 5 van Wet 25 van 2004

3. Artikel 5 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Ouditeur-generaal kan, teen betaling en sonder om die rol van die Ouditeur-generaal as onafhanklike ouditeur in die gedrang te bring—  
 (a) aan ’n geouditeerde bedoel in artikel 4(1) of (3), of aan ’n ander

liggaam, ouditverwante dienste verskaf wat normaalweg deur ’n opperste ouditinelling uitgevoer word, op voorwaarde dat—

(i) geen dienste verskaf mag word in verband met ’n aangeleenthed wat moontlik later deur die Ouditeur-generaal 10  
 geouditeer moet word nie;

(ii) sodanige diens nie regstreeks die formulering van beleid tot gevolg sal hê nie; en

(iii) volledige en behoorlike openbaarmaking van sodanige dienste moet wees ingevolge artikel 10(1)(b) sal geskied[.];

(aA) ’n toepaslike audit van enige inrigting doen waarna verwys word in artikel 4(1) of (3) om te bepaal of toepaslike en toereikende maatreëls in werking gestel is om te verseker dat hulpbronne ekonomies verkry word en doeltreffend en doelmatig aangewend word;

(aB) audit- en ouditverwante dienste verskaf wat gewoonlik deur ’n onafhanklike ouditinelling vir ’n internasionale vereniging, instansie, instelling of organisasie gedoen word, op voorwaarde dat—

(i) sodanige dienste nie—

(aa) die doeltreffendheid van die Ouditeur-generaal kompromitter nie;

(bb) onnodige druk op die hulpbronne van die Ouditeur-generaal plaas nie; of

(cc) afbreuk doen aan die grondwetlike funksies van die Ouditeur-generaal nie; en

(ii) daar ingevolge artikel 10(1)(b) volledige en behoorlike openbaarmaking van sodanige dienste moet wees;

(b) raad en steun verleen aan ’n wetgewer of enige van sy komitees buite die bestek van die Ouditeur-generaal se normale ouditerings- en rapporteringsfunksies;

(c) kommentaar lewer in ’n verslag oor enige reaksies van ’n geouditeerde op gerapporteerde ouditbevindings of op ’n verslag van ’n wetgewer voortspruitend uit dié se hersiening van ’n ouditverslag; of

(d) ’n gepaste ondersoek of spesiale audit doen van ’n instelling bedoel in artikel 4(1) of (3) indien die Ouditeur-generaal dit in die openbare belang ag, of nà ontvangs van ’n klage of versoek.”;

(b) deur na subartikel (1) die volgende subartikels in te voeg:

“(1A) Die Ouditeur-generaal mag, soos voorgeskryf, enige wesenlike onreëlmataigheid wat tydens ’n audit kragtens hierdie Wet gedoen is, verwys na ’n tersaaklike openbare instansie vir ondersoek, en die tersaaklike openbare instansie moet die Ouditeur-generaal op hoogte hou van die vordering en die finale uitslag van die ondersoek.

(1B) Die Ouditeur-generaal het die bevoegdheid om—

(a) enige gepaste regstellende stappe te doen; en

(b) ’n skuldsertifikaat uit te reik, soos voorgeskryf, waar ’n rekenpligtige beampie of rekenpligtige gesag versuim het om te voldoen aan regstellende stappe, soos uiteengesit in Deel 1A van hierdie Hoofstuk; en

(c) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) [Daarbenewens kan die Ouditeur-generaal] Die Ouditeur-generaal, benewens subartikels (1), (1A) en (1B)—

(a) kan nasionaal en internasional met persone, instellings en verenigings saamwerk;

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- (b) may appoint advisory and other structures outside the administration of the Auditor-General to provide specialised advice to the Auditor-General; [and]
- (bA) must establish a remuneration committee, consisting of not less than three and not more than five members of which the majority may not be in the employ of the Auditor-General, and who must be suitably qualified and experienced in human resource practices, including remuneration practices, to make recommendations to—
- (i) the Independent Commission on the salary, allowances and benefits of the Auditor-General; and
  - (ii) the Auditor-General on the conditions of employment, the remuneration, allowances and benefits of the employees of the Auditor-General contemplated in section 34;
- (bB) must appoint a chairperson of the remuneration committee from the members contemplated in paragraph (bA), who must not be in the employ of the Auditor-General; and
- (c) may do any other thing necessary to fulfil the role of Auditor-General effectively.”.

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## Insertion of Part 1A in Chapter 2 of Act 25 of 2004

4. The following part is hereby inserted in Chapter 2 after Part 1 of the principal Act: 20

*“Part 1A: Remedial Action*

## Taking remedial action

5A. (1) The Auditor-General must, within a reasonable time after the issuing of an audit report in terms of section 20, follow up on whether the accounting officer or accounting authority has implemented the recommendations contained in the audit report relating to any material irregularity, within the time-frame stipulated in the audit report.

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(2) If the accounting officer or accounting authority has failed to implement the recommendations contained in the audit report referred to in subsection (1), the Auditor-General must take appropriate remedial action to address the failure to implement the recommendations.

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(3) Where a material irregularity resulted in a financial loss to the State, and the accounting officer or accounting authority failed to implement the recommendations contained in the audit report referred to in subsection (1), the remedial action taken by the Auditor-General in terms of subsection (2) must include a directive to the accounting officer or accounting authority to determine the amount of the loss, if not yet determined, and to recover such loss as required in terms of any applicable legislation, from the responsible person.

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## Failure to comply with specific remedial action 40

5B. (1) Subject to subsections (4) and (5), where the accounting officer or accounting authority has failed to implement the remedial action referred to in section 5A(3), the Auditor-General must issue a certificate of debt, as prescribed, to the accounting officer or accounting authority requiring the accounting officer or accounting authority to repay the amount specified in the certificate of debt to the State.

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(2) The Auditor-General must submit a copy of the certificate of debt, referred to in subsection (1), to the responsible executive authority to collect the amount specified in the certificate of debt from the accounting officer or accounting authority in terms of the debt recovery process applicable to the executive authority.

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- (b) kan raadgewende en ander strukture buite die administrasie van die Ouditeur-generaal aanstel om die Ouditeur-generaal van gespesialiseerde raad te dien; [en]
- (bA) moet 'n vergoedingskomitee instel wat uit minstens drie en hoogstens vyf lede bestaan waarvan die meerderheid nie in diens van die Ouditeur-generaal mag wees nie en wat toepaslik gekwalifiseerd moet wees en ondervinding moet hê in menslike hulpbronpraktyke, met inbegrip van vergoedingspraktyke, om aanbevelings te doen aan—
- (i) die Onafhanklike Kommissie oor die salaris, toelaes en voordele van die Ouditeur-generaal; en
  - (ii) die Ouditeur-generaal oor die diensvoorwaardes, die vergoeding, toelaes en voordele van die werknemers van die Ouditeur-generaal soos beoog in artikel 34;
- (bB) moet 'n voorsitter van die vergoedingskomitee aanstel uit die lede soos in paragraaf (bA) beoog, wat nie in diens van die Ouditeur-generaal mag wees nie; en
- (c) kan enige ander ding doen wat nodig is om die rol van die Ouditeur-generaal op doeltreffende wyse te vervul.”.

Invoeging van Deel 1A in Hoofstuk 2 van Wet 25 van 2004

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4. Die volgende deel word hierby in Hoofstuk 2 na Deel 1 van die Hoofwet ingevoeg:

*“Deel 1A: Regstellende stappe*

## Doen van regstellende stappe

**5A.** (1) Die Ouditeur-generaal moet binne 'n redelike tydperk ná die uitreiking van 'n ouditverslag ingevolge artikel 20 nagaan of die rekenpligtige beampte of rekenpligtige gesag die aanbevelings vervat in die ouditverslag met betrekking tot enige wesenlike onreëlmataigheid in werking gestel het binne die tydraamwerk soos uiteengesit in die ouditverslag.

(2) Indien die rekenpligtige beampte of rekenpligtige gesag versuim het om die aanbevelings vervat in die ouditverslag bedoel in subartikel (1) in werking te stel, moet die Ouditeur-generaal gepaste toepaslike regstellende stappe doen om aandag te skenk betreffende die versuim om die aanbevelings in werking te stel.

(3) Waar 'n wesenlike onreëlmataigheid 'n finansiële verlies vir die Staat tot gevolg gehad het en die rekenpligtige beampte of rekenpligtige gesag versuim het om die aanbevelings vervat in die ouditverslag waarna in subartikel (1) verwys word, in werking te stel, moet die regstellende stappe deur die Ouditeur-generaal ingevolge subartikel (2) 'n lasgewing aan die rekenpligtige beampte of rekenpligtige gesag insluit om die bedrag van die verlies te bepaal, indien dit nog nie bepaal is nie, en om sodanige verlies te verhaal van die verantwoordelike persoon, soos vereis ingevolge enige toepaslike wetgewing.

## Versuim om te voldoen aan bepaalde regstellende stappe

**5B.** (1) Behoudens subartikels (4) en (5), waar die rekenpligtige beampte of rekenpligtige gesag versuim het om die regstellende optrede bedoel in artikel 5A(3) in werking te stel, moet die Ouditeur-generaal 'n skuldsertifikaat uitrek, soos voorgeskryf, aan die rekenpligtige beampte of rekenpligtige gesag, wat vereis dat die rekenpligtige beampte of rekenpligtige gesag die bedrag wat in die skuldsertifikaat gespesifieer word aan die Staat moet terugbetaal.

(2) Die Ouditeur-generaal moet 'n afskrif van die skuldsertifikaat, waarna in subartikel (1) verwys, aan die verantwoordelike uitvoerende gesag voorlê om die bedrag wat in die skuldsertifikaat gespesifieer is, van die rekenpligtige beampte of rekenpligtige gesag in te vorder ingevolge die skuldherstelproses van toepassing op die uitvoerende gesag.

(3) The executive authority must keep the Auditor-General informed of progress made in collecting the amount due by the accounting officer or accounting authority.

(4) The Auditor-General, in determining whether to issue a certificate of debt in terms of subsection (1), must consider the written representations, as prescribed, received from the accounting officer or accounting authority, and may have due regard to—

- (a) the progress or outcome of an investigation conducted by the Auditor-General in terms of section 29;
- (b) the progress or outcome of any investigation contemplated in section 5(1A); or
- (c) any other relevant factor.

(5) If the Auditor-General still intends to issue the certificate of debt after the consideration of the written representations, the Auditor-General must—

- (a) afford the accounting officer or accounting authority an opportunity to make an oral representation, as prescribed, to an advisory structure, established for this purpose in terms of section 5(2)(b); and
- (b) consider the written recommendations of the advisory structure referred to in paragraph (a) before issuing the certificate.

(6) The Auditor-General must submit a copy of the certificate of debt issued in terms of subsection (1) to the relevant legislature for tabling in the relevant legislature.”.

Amendment of section 7 of Act 25 of 2004, as amended by section 15 of Act 22 of 2014

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5. Section 7 of the principal Act is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) The Independent Commission must, when investigating or considering the salary, allowances and benefits of the Auditor-General, consult with—

- (a) the Cabinet member responsible for finance; and
- (b) the remuneration committee contemplated in section 5(2)(bA) and consider any recommendations made by the remuneration committee.”.

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Amendment of section 10 of Act 25 of 2004

6. Section 10 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
  - “(b) the categories of services provided in terms of section 5(1)(a), (aA) and (aB);”;
- (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (c); and
- (c) by the substitution in subsection (1) for the full stop at the end of paragraph (d) of a semi colon and by the addition after paragraph (d) of the following paragraphs:
  - “(e) any matters referred for investigation in accordance with section 5(1A);
  - (f) any remedial action taken in terms of section 5A(2); and
  - (g) any certificate of debt issued in terms of section 5B(1).”.

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Amendment of section 12 of Act 25 of 2004

7. Section 12 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

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- “(b) after consulting the oversight mechanism, issue a code of conduct for authorised auditors, [prescribing] setting out—”.

(3) Die uitvoerende gesag moet die Ouditeur-generaal in kennis stel van vordering wat gemaak is deur die rekenpligtige beamppte of rekenpligtige gesag met die invordering van die bedrag wat geskuld word.

(4) Die Ouditeur-generaal moet, waar bepaal moet word of 'n skuldsertifikaat ingevolge subartikel (1) uitgereik moet word, die skriftelike vertoë, soos voorgeskryf, ontvang van die rekenpligtige beamppte of rekenpligtige gesag oorweeg, en mag—

- (a) die vordering of resultate van die ondersoek wat deur die Ouditeur-generaal ingevolge artikel 29 ingestel is;
- (b) die vordering of resultate van enige ondersoek wat in artikel 5(1A) beoog word; of
- (c) enige ander tersaaklike faktor, behoorlik in ag neem.

(5) Indien die Ouditeur-generaal steeds van plan is om die skuldsertifikaat uit te reik na oorweging van die skriftelike vertoë, moet die Ouditeur-generaal—

- (a) die rekenpligtige beamppte of rekenpligtige gesag 'n geleentheid bied om, soos voorgeskryf, 'n mondelinge voorlegging te doen aan 'n raadgewende struktuur wat ingevolge artikel 5(2)(b) vir dié doel ingestel is; en
- (b) die skriftelike aanbevelings van die raadgewende struktuur bedoel in paragraaf (a) oorweeg voordat die sertifikaat uitgereik word.

(6) Die Ouditeur-generaal moet 'n afskrif van die skuldsertifikaat ingevolge subartikel (1) uitgereik aan die betrokke wetgewer vir tertiafellegging in die tersaaklike wetgewer voorlê.”

Wysiging van artikel 7 van Wet 25 van 2004, soos gewysig deur artikel 15 van Wet 22 van 2014

5. Artikel 7 van die Hoofwet word hierby gewysig deur subartikel (1A) deur die volgende subartikel te vervang:

“(1A) Die Onafhanklike Kommissie moet by die ondersoek of oorweging van die salaris, toelaes en voordele van die Ouditeur-generaal, oorleg pleeg met—  
 (a) die kabinetsslid wat verantwoordelik is vir finansies; en  
 (b) die vergoedingskomitee soos beoog in artikel 5(2)(bA) en enige aanbevelings van die vergoedingskomitee oorweeg.”

Wysiging van artikel 10 van Wet 25 van 2004

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6. Artikel 10 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:  
 “(b) die kategorieë dienste wat verskaf word ingevolge artikel 5(1)(a),  
 (aA) en (aB);”;
- (b) deur in subartikel (1) die woord “en” aan die einde van paragraaf (c) te skrap; en
- (c) deur in subartikel (1) die punt aan die einde van paragraaf (d) deur 'n kommapunt te vervang en deur die volgende paragrawe ná paragraaf (d) by te voeg:  
 “(e) enige aangeleenthede bedoel vir ondersoek ingevolge artikel 5(1A);  
 (f) enige regstellende stappe gedoen ingevolge artikel 5A(2); en  
 (g) enige skuldsertifikaat uitgereik ingevolge artikel 5B(1).”

Wysiging van artikel 12 van Wet 25 van 2004

7. Artikel 12 van die Hoofwet word hierby gewysig deur in subartikel (3) paragraaf (b) deur die volgende paragraaf te vervang:

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“(b) na oorlegpleging met die toesighoudingsmechanisme 'n gedragskode vir gemagtigde ouditeurs uitvaardig, [met voorskrifte rakende] wat uiteensit—”.

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## Amendment of section 13 of Act 25 of 2004

8. Section 13 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the frequency, nature and scope of such audits; and”;

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(b) by the insertion after subsection (1) of the following subsection:

“(1A) The Auditor-General must consult the National Treasury annually on the matters referred to in subsection (1)(b) to facilitate the determination of audit fees in terms of section 23.”.

## Amendment of section 20 of Act 25 of 2004

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9. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) An audit report must reflect such opinions and statements as may be required by any legislation applicable to the auditee which is the subject of the audit, [but] and must reflect [at least] an opinion, [or] 15 conclusion or findings on—(a) [whether] the [annual] financial statements of the auditee [fairly present, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date] in accordance with the applicable financial reporting framework and legislation;

(b) [the auditee's] compliance with any applicable legislation relating to financial matters, financial management and other related matters; and

(c) [the] reported [information relating to the] performance of the auditee against its predetermined objectives.”; and

(b) by the addition after subsection (3) of the following subsection:

“(4) An audit report may contain recommendations to address any matter raised in subsection (2).”.

## Amendment of section 23 of Act 25 of 2004

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10. Section 23 of the principal Act is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

“(6) [If] Subject to subsection (7), if—

(a) the audit fee of an auditee, other than a department as defined in section 1 of the Public Finance Management Act, exceeds one 35 percent of the total current and capital expenditure of such auditee for the relevant financial year [,]; and

(b) the National Treasury—

(i) was consulted, as required by subsection (1); and

(ii) is of the opinion that the auditee has financial difficulty to pay such excess,

such excess [must] is to be defrayed [from the National Treasury's vote, provided that the National Treasury is of the view that the auditee has financial difficulty to settle the cost. This excludes national and provincial departments] in terms of the Act that authorises the defrayment of the excess as a direct charge against the National Revenue Fund.”; and

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(b) by the addition after subsection (6) of the following subsection:

“(7) (a) The Auditor-General and the National Treasury must agree in writing on—

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(i) the annual date of consultation contemplated in section 13(1A) and subsection (1);

## Wysiging van artikel 13 van Wet 25 van 2004

8. Artikel 13 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:  
 “(b) die frekwensie, aard en die omvang van sodanige oudits bepaal; 5  
 en”; en
- (b) deur ná subartikel (1) die volgende subartikel in te voeg:  
 “(1A) Die Ouditeur-generaal moet die Nasionale Tesourie jaarliks  
 raadpleeg oor die aangeleenthede bedoel in subartikel (1)(b) om die  
 vasstelling van ouditgelde ingevolge artikel 23 te faciliteer.”.

## Wysiging van artikel 20 van Wet 25 van 2004

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9. Artikel 20 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:  
 “(2) 'n Ouditverslag moet 'n weerspieëling lever van die menings en  
 uitsprake wat vereis word deur enige wetgewing van toepassing op die  
 geouditeerde en wat die onderwerp van die audit uitmaak, [maar] en 15  
 moet [minstens] 'n mening, [of] gevolgtrekking of bevindinge weer-  
 spieël oor—  
 (a) [die vraag of] die finansiële [jaarstate] state van die geouditeerde  
 [in al die wesenlike aspekte] 'n redelike beeld gee betreffende die  
 finansiële posisie op 'n spesifieke datum en resultate van sy 20  
 bedrywigheede en kontantvloei vir die tydperk wat op daardie  
 datum geëindig het] ooreenkomsdig die toepaslike finansiële  
 [raamwerk] verslagdoeningsraamwerk en wetgewing;  
 (b) [die geouditeerde se] nakoming van wetgewing van toepassing op  
 finansiële aangeleenthede, finansiële bestuur en ander verwante 25  
 aangeleenthede; en  
 (c) [die] gerapporteerde [inligting in verband met die] prestasie van  
 die geouditeerde aan die hand van vooraf neergelegde doelwitte.”;  
 en  
 (b) deur die volgende subartikel na subartikel (3) by te voeg:  
 “(4) 'n Ouditverslag mag aanbevelings bevat sodat aandag geskenk  
 kan word aan enige aangeleenthed wat in subartikel (2) geopper word.”.

## Wysiging van artikel 23 van Wet 25 van 2004

10. Artikel 23 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (6) deur die volgende subartikel te vervang:

- “(6) [Indien] Behoudens subartikel (7), indien—  
 (a) die ouditgelde van 'n geouditeerde, behalwe 'n departement soos  
 omskryf in artikel 1 van die Wet op Openbare Finansiële Bestuur,  
 een persent van die totale lopende en kapitaalbesteding van 40  
 sodanige geouditeerde vir die tersaakklike boekjaar oorskry; en—  
 (b) die Nasionale Tesourie—  
 (i) geraadpleeg is, soos vereis deur subartikel (1); en  
 (ii) van mening is dat die ouditeur finansiële probleme ervaar ten  
 einde sodanige oorskot te vereffen,  
 moet sodanige oorskot [uit die Nasionale Tesourie se begrotingspos 45  
 wees, met dien verstande dat die Nasionale Tesourie van mening is  
 dat die geouditeerde finansiële probleme ervaar ten einde die koste te  
 vereffen. Dit sluit nasionale en provinsiale departemente in]  
 ingevolge die Wet wat die betaling van die dekking as 'n direkte las teen  
 die Nasionale Inkomstefonds magtig, gevorder word.”; en 50  
 (b) deur die volgende subartikel na subartikel (6) by te voeg:  
 “(7) (a) Die Ouditeur-generaal en die Nasionale Tesourie moet  
 skriftelik ooreenkomaan op—  
 (i) die jaarlikse datum van oorlegpling in artikel 13(1A) en 55  
 subartikel (1) bedoel;

- (ii) the criteria to be applied to determine whether an auditee has financial difficulty as contemplated in subsection (6)(b)(ii); and
  - (iii) a process to determine an estimate of the funds required annually as a direct charge for the audit fees referred to in subsection (6), read with the Act that authorises the excess as a direct charge against the National Revenue Fund.
- (b) If the Auditor-General and the National Treasury fail to conclude a written agreement within six months after the commencement of this subsection, the oversight mechanism must, after consultation with the Auditor-General and National Treasury, determine the annual date of consultation, the criteria to determine whether an auditee has financial difficulty and the process to determine the estimate of funds as referred to in paragraph (a).
- (c) The annual date of consultation, the criteria to determine whether an auditee has financial difficulty or process agreed to in terms of paragraph (a) or determined by the oversight mechanism in terms of paragraph (b), may be amended in writing by the Auditor-General and the National Treasury.”.

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## Amendment of section 27 of Act 25 of 2004

11. Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An auditor appointed in terms of section 25(1)(b) must perform the functions of office as auditor in terms of [section 20 of] the [Public Accountants’ and Auditors’] Auditing Profession Act and any other applicable legislation.”.

## Amendment of section 34 of Act 25 of 2004

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12. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) Persons appointed [as employees] in terms of this section are employed subject to the terms and conditions of employment determined by the Auditor-General, and must be paid the remuneration, allowances and benefits determined by the Auditor-General, subject to section 35 and after considering the recommendations of the remuneration committee.

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(b) Terms and conditions of employment contemplated in paragraph (a) must be consistent with the basic values and principles set out in section 195 of the Constitution.”.

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## Amendment of section 40 of Act 25 of 2004

13. Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The [Deputy] Auditor-General must—

- (a) establish an audit committee contemplated in section 43(3)(b)(ii); and
- (b) appoint the members of the audit committee [in consultation with the Auditor-General].”.

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## Amendment of section 41 of Act 25 of 2004

14. Section 41 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The financial statements must be in accordance with [South African Statements of Generally Accepted Accounting Practice or other] international best practice [approved by the oversight mechanism].”.

- (ii) die maatstawwe wat toegepas moet word ten einde te bepaal of 'n ouditeur finansiële probleme ervaar soos beoog in subartikel (6)(b)(ii); en
- (iii) 'n proses ten einde 'n raming te bepaal betreffende die fondse wat jaarliks benodig word as 'n direkte las vir die ouditfooie waarna in subartikel (6) verwys word, saamgelees met die Wet wat die oorskot as direkte las teen die Nasionale Inkomstefonds magtig.
- (b) Indien die Ouditeur-generaal en die Nasionale Tesourie versuim om binne ses maande na die inwerkingtreding van hierdie subartikel 'n skriftelike ooreenkoms aan te gaan, moet die toesighoudende meganisme, na oorlegpleging met die Ouditeur-generaal en die Nasionale Tesourie, die jaarlikse datum vir oorlegpleging bepaal, en die kriteria om vas te stel of 'n geouditeerde finansiële probleme ervaar en die proses ten einde die geraamde fondse te bepaal na verwys in paragraaf (a).
- (c) Die jaarlikse datum van oorlegpleging, die kriteria om te bepaal of 'n geouditeerde finansiële probleme ervaar of die proses waarvolgens ingevolge paragraaf (a) ooreengekom is of wat deur die toesighoudende meganisme ingevolge paragraaf (b) bepaal is, kan skriftelik deur die Ouditeur-generaal en die Nasionale Tesourie gewysig word."

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## Wysiging van artikel 27 van Wet 25 van 2004

11. Artikel 27 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Ouditeur aangestel ingevolge artikel 25(1)(b), moet die ampspligte van ouditeur uitvoer ingevolge [artikel 20 van] die Wet op [Openbare Rekenmeesters- en Ouditeurs] die Ouditberoep en enige ander toepaslike wetgewing."

## Wysiging van artikel 34 van Wet 25 van 2004

12. Artikel 34 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

"(3) (a) [Behoudens artikel 35 word persone as werknemers] Persone 30 ingevolge hierdie artikel aangestel, is onderhewig aan die diensvoorraades wat deur die Ouditeur-generaal bepaal word en word die besoldiging, toelaes en voordele betaal wat die Ouditeur-generaal bepaal, onderworpe aan artikel 35 en ná oorweging van die aanbevelings van die vergoedingskomitee.

(b) Diensvoorraades beoog in paragraaf (a) moet ooreenstem met die basiese 35 waardes en beginsels uiteengesit in artikel 195 van die Grondwet."

## Wysiging van artikel 40 van Wet 25 van 2004

13. Artikel 40 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die [Adjunk-ouditeur-generaal] Ouditeur-generaal moet— 40  
 (a) 'n ouditkomitee beoog in artikel 43(3)(b)(ii) instel; en  
 (b) [in oorleg met die Ouditeur-generaal] die lede van die ouditkomitee aanstel."

## Wysiging van artikel 41 van Wet 25 van 2004

14. Artikel 41 van die Hoofwet word hierby gewysig deur subartikel (2) deur die 45 volgende subartikel te vervang:

"(2) Die finansiële state moet in ooreenstemming wees met [die Suid-Afrikaanse Verklaring oor Algemeen Aanvaarde Rekenpligtige Praktyk of ander] internationale beste praktyk [deur die toesighoudingsmeganisme goedgekeur]."

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Act No. 5 of 2018

Public Audit Amendment Act, 2018

16

## Amendment of section 52 of Act 25 of 2004

15. Section 52 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The Auditor-General must, within 90 days of the date of commencement of the Public Audit Amendment Act, 2018, make regulations on—

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(a) the criteria to be considered in determining how to exercise his or her discretion contemplated in section 4(3);

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(b) the nature and category of matters in respect of which an investigation or special audit contemplated in section 5(1)(d) may be carried out;

(c) the criteria for the referral of matters contemplated in section 5(1A);

(d) the process, time-frames and form for the written and oral representations contemplated in section 5B(4) and (5); and

(e) the form and content of the certificate of debt issued in terms of section 5B(1).”; and

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(b) by the substitution for subsection (2) of the following subsection:

“(2) The Auditor-General must, after consultation with the oversight mechanism, submit any regulations made in terms of [subsection] subsections (1) and (1A) to the Speaker for tabling in the National Assembly.”.

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## Amendment of certain expressions in Act 25 of 2004

16. The principal Act is hereby amended—

(a) by the substitution for the expression “Public Accountants’ and Auditors’ Act”, wherever it occurs in the principal Act, of the expression “Auditing Profession Act”; and

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(b) by the substitution for the expression “executive authority within the meaning of the Public Finance Management Act”, wherever it occurs in the principal Act, of the expression “executive authority”.

## Amendment of arrangement of sections

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17. The arrangement of sections of the principal Act is hereby amended by the insertion after the reference to the heading to section 5 of the following Part:

*“Part 1A: Remedial Action*

5A Taking remedial action

5B Failure to comply with specific remedial action”.

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## Short title and commencement

18. (1) This Act is called the Public Audit Amendment Act, 2018, and subject to subsections (2) and (3), comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Section 5 of this Act will come into operation on the date when the Determination of Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014 (Act No. 22 of 2014), comes into operation or on the date contemplated in subsection (1), whichever date is the later.

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(3) Section 10 of this Act will come into operation when the Act envisaged in section 23(6) of the principal Act (as to be amended by this Act) takes effect.

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## Wysiging van artikel 52 van Wet 25 van 2004

15. Artikel 52 van die Hoofwet word hierby gewysig—

(a) deur na subartikel (1) die volgende subartikel in te voeg:

“(1A) Die Ouditeur-generaal moet binne 90 dae ná die datum van die inwerkingtreding van die Wysigingswet op Openbare Oudit, 2018, regulasies uitvaardig oor—

(a) die maatstawwe wat oorweeg moet word ten einde te bepaal hoe om sy of haar diskresie beoog in artikel 4(3) uit te oefen;

(b) die aard en kategorie van aangeleenthede ten opsigte waarvan ’n ondersoek of spesiale audit beoog in artikel 5(1)(d) uitgevoer mag word;

(c) die maatstawwe vir die verwysing van aangeleenthede beoog in artikel 5(1A);

(d) die proses, tydramwerke en vorm vir die skriftelike en mondelinge vertoë beoog in artikel 5B(4) en (5); en

(e) die vorm en inhoud van die sertifikaat van skuld uitgereik ingevolge artikel 5B(1).”; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Na oorlegpleging met die toesighoudingsmeganisme moet die Ouditeur-generaal enige regulasies wat ingevolge [subartikel] 20 subartikels (1) en (1A) uitgevaardig is, aan die Speaker voorlê vir tertafellegging in die Nasionale Vergadering.”.

## Wysiging van sekere uitdrukksings in Wet 25 van 2004

16. Die Hoofwet word hierby gewysig—

(a) deur die uitdrukking “Wet op Openbare Rekenmeesters en Ouditeurs”, waar dit ook al voorkom, deur die uitdrukking “Wet op die Ouditberoep” te vervang; en

(b) deur die uitdrukking “uitvoerende gesag binne in die betekenis van die Wet op Openbare Finansiële Bestuur”, waar dit ook voorkom, deur die uitdrukking “uitvoerende gesag” te vervang.

## Wysiging van rangskikking van artikels

17. Die rangskikking van artikels van die Hoofwet word hierby gewysig deur die invoeging van die volgende Deel ná die opskrif by artikel 5:

*“Deel IA: Regstellende Stappe*

5A Doen van regstellende stappe

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5B Versuim om te voldoen aan bepaalde regstellende stappe”.

## Kort titel en inwerkingtreding

18. (1) Hierdie Wet heet die Wysigingswet op Openbare Oudit, 2018, en, onderhewig aan subartikels (2) en (3), tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

(2) Artikel 5 van hierdie Wet tree in werking op die datum waarop die Wysigingswet op Wette Rakende Bepaling van Besoldiging van Ampsbekleërs van Onafhanklike Grondwetlike Instellings, 2014 (Wet No. 22 van 2014), in werking tree of op die datum beoog in subartikel (1), welke datum ook al die laaste is.

(3) Artikel 10 van hierdie Wet tree in werking wanneer die Wet beoog in artikel 23(6) van die Hoofwet (soos gewysig deur hierdie Wet) van krag word.





Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Contact Centre Tel: 012-748 6200. eMail: [info.egazette@gpw.gov.za](mailto:info.egazette@gpw.gov.za)  
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

The Public Audit Amendment Act: Groundbreaking for South Africa if properly implemented  
29 November 2018 | Katherine Butler

On 21 November 2018, the 2017/2018 consolidated national and provincial audit outcomes report was released, which indicated a discouraging fourth consecutive year of regressive compliance with laws and regulations. Fittingly, the long-awaited Public Audit Amendment Act, Act 5 of 2018 (“the Amendment Act”), which substantially amends the Public Audit Act, Act 25 of 2004 (“the Public Audit Act”), had been signed into law by President Cyril Ramaphosa three days earlier, on 18 November 2018. This article explains how the amendments will substantially expand the powers of the Auditor-General and explore what the potential significance of this new law could be for South Africa.

#### **The Public Audit Amendment Act in comparison to the Public Audit Act**

In a nutshell, the Public Audit Act of 2004 provided the Auditor-General with the authority to establish auditing functions, but the office lacked the necessary power to then enforce the implementation of its recommendations. In comparison, once the amendments come into force, in terms of section 3(1A) of the Amendment Act, the Auditor-General will be able to refer “suspected material irregularities” which arise from an audit, to a relevant public body for further investigation. Such public bodies would include the Hawks, the South African Police Service and the public protector.

Another significant amendment, as per sections 3(1B) and 4 of the Amendment Act, is that the Auditor-General’s office is under a duty to follow up on whether remedial action recommended in the audit report has been taken. If not, appropriate remedial action to address this failure is required. Where there has been a failure to recover lost funds arising from wasteful and fruitless expenditure, the relevant official or board must be directed to recover the loss from the responsible person. When the official or board fails to do so, in the absence of a satisfactory explanation, the Auditor-General must issue a certificate of debt requiring that official or board to personally pay the amount specified in the certificate to the State.

#### **Why these amendments are a crucial milestone for South Africa**

According to the director of the Public Service Accountability Monitor, Jay Kruuse, one of the primary reasons that the Auditor-General’s office had not previously been given the power to enforce its recommendations was due to a universal assumption that state-owned enterprises (SOEs) and governmental departments would react to audit reports and any negative findings. However, recommendations made by the Auditor-General to meet acceptable audit norms and standards were simply ignored and/or blatantly disregarded in the past, with non-compliance becoming the norm.

There is a direct impact on South Africa's already strained public finances. Over the past 13 years, audit outcomes have steadily declined. The 2017/2018 consolidated national and provincial audit outcomes report indicated that fruitless and wasteful expenditure, or spending in vain due to neglect, poor-decision-making or inefficiencies, increased to R2.5-billion. This was a 200% increase from the previous financial year. Unauthorised expenditure went up to R2.1-billion, of which R1.821-billion was due to overspending on pre-determined budgets. This resulted in 82 governmental departments failing to settle their debts by the end of the 2017/2018 financial year. Irregular expenditure increased to an alarming R51-billion, which excludes the R28.4-billion wasted by SOEs. It should be noted that irregular expenditure does not necessarily amount to fraud or wastage, but it does mean that procedures, regulations and laws were not followed and therefore further investigation is required.

The Amendment Act is aimed at changing this state of affairs, as now the Auditor-General's office has the power to ensure accountability in the management of public funds. The Auditor-General, Kimi Makwetu, has stated that the aim of the amendments was to provide his office with the necessary power "to directly impact" on audit outcomes. Of course, although the Amendment Act will now make provision for SOEs and provincial and national governments and their accounting officers to be held accountable for contraventions and non-compliance, a collective effort, from parliament and law enforcement, will be required to ensure that there is sufficient implementation of the new law.

Up until this point in South Africa's democratic history, there has been a chronic abuse of public finances by corrupt or incompetent politicians and bureaucrats. The fight against corruption and for governmental compliance in respect of spending policies was largely futile, due to a lack of accountability and consequences for those who transgressed the legislative and regulatory framework and for those who were tasked with overseeing governmental expenditure. It is hoped that national governmental departments, as well as both provincial and local authorities, will now feel pressure to comply with governmental objectives and that these amendments will over time lead to more positive developmental outcomes for South Africa.