FINANCE AND AUDIT (AMENDMENT) ACT, 1997

No. 21 **of 1997**

ARRANGEMENT OF SECTIONS

An Act to amend the Finance and Audit Act.

Date of Assent: 15/12/97.

Date of Commencement: 24/12/97

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Finance and Audit (Amendment) Act, 1997. Short title

2. Section 2 of the Finance and Audit Act (referred to in this Act as "the Act") is amended — Amendment of section 2 of Cap 54:01

(*a*) by inserting in subsection (1) thereof, in their correct alphabetical order, the following new definitions —

"Auditor-General" means a public officer whose office is created and defined in section 124 of the Constitution;

"public supplies" means property of any description (other than money, stamps and securities) belonging to, in the possession of, or under the control of Government;

"Director of Internal Audit" means the public officer designated by the Permanent Secretary to guide, direct and coordinate the activities of officers appointed by the Permanent Secretary under section 7A; and

"Director of Supply" means the public officer designated by the Permanent Secretary to be responsible for the procurement,. receipt and issue of public supplies, as well as the care, custody and management of such supplies;

(*b*) by deleting, therefrom, the definition of the words "Crown Agents" and "public stores"; and

(*c*) in subsection (3) thereof by deleting therefrom, the words "Chief or tribal employee" which appear therein.

Amendment of section 3 of the Act

3. Section 3 of the Act is amended by substituting for subsection (2) thereof, the following new subsection —

"(2) In the exercise of their functions under this Act, the Accountant-General and the Director of Supply shall act in accordance with the general or special directions of the Permanent Secretary."

Amendment of section 5 of the Act

4. Section 5 of the Act is amended in subsection (4) thereof by substituting, for paragraph (*d*) thereof, the following new paragraph —

"(*d*) control and custody of public moneys,".

Amendment of section 6 of the Act

5. Section 6 of the Act is amended by inserting therein immediately after the word "financial", the word "or other".

Insertion of new section 7A in the Act

6. The Act is amended by inserting therein immediately section 7 thereof, the following new section —

"Internal audit examinations

7A (1) The Permanent Secretary shall, in writing, appoint such number of public officers as he deems necessary to carry out such internal audit examinations as he deems appropriate, which officers shall report to their respective accounting officers.

(2) The accounting officers referred to in subsection (1) shall forward or cause to be forwarded, to the Director of Internal Audit, copies of their reports."

Amendment of section 8 of the Act

7. Section 8 of the Act is amended in subsection (1) thereof by deleting paragraph (ii) thereof.

Amendment of section 9 of the Act

8. Section 9 of the Act is amended by substituting therefor, the following new section —

"Power to Borrow

9 (1) Subject to the provisions of this section, the Minister may borrow by means of a bank overdraft or advances from any bank or any public institution in Botswana, such moneys as he may need to meet current requirements.

(2) The total outstanding amount of money borrowed under subsection (1) shall not at any time exceed five percent of the total revenue credited to the Consolidated Fund in the previous financial year or such higher amount as the National Assembly may approve by resolution.

(3) A resolution of the National Assembly under subsection (2) shall cease to have effect on the expiration of four months after the end of the financial year in respect of which it was given.

(4) No person shall overdraw any account such as is referred to in section 8 without the permission of the Minister except in cases where the overdrawing is less than P10,000 for a period less than 30 days, the Permanent Secretary may authorise or ratify such overdrawing.

(5) Repayment of the principal and payment of interest on all moneys borrowed under this section shall be charged on and shall be paid out of the Consolidated Fund."

9. Section 11 of the Act is hereby repealed. Repeal of section 11 of the Act

10. Section 19 of the Act is amended — Amendment of section 19 of the Act

(*a*) in subsection (1) thereof, by deleting therefrom, the words "by warrant under his hand" which appear therein; and

(*b*) in subsection 2 (*c*) and (*b*) thereof by substituting, for the words "P1 000 000" and "P800 000" which appear therein, the words "P20 000 000" and "P5 000 000" respectively.

11. Section 29 of the Act is amended by substituting, for subsection (2) thereof, the following new subsection — Amendment of section 29 of the Act

"(2) In addition to his duties under section 124 (2) and (3) of the Constitution (as read with subsection (1) of this section), the Auditor-General shall, where he considers it necessary or desirable, examine the economy, efficiency or effectiveness with which any officer, authority or institution of Government falling within the scope of his audit has, in the discharge of his or its official functions, applied or utilised the public moneys or public supplies at his or its disposal, and shall forward a report of his findings thereon to the Minister."

12. Section 36 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection — Amendment of section 36 of the Act

"(1) The Minister shall, within 30 days of the receipt by him of the Auditor-General's reports forwarded to him in accordance with sections 29 (2) and 35, lay the same, without any alteration thereto, before the National Assembly."

13. Section 38 of the Act is amended — Amendment of section 38 of the Act

(*a*) by substituting, for subsections (4), (5) and (6) thereof, the following new subsections —

"(4) Notwithstanding any other written law, where the Auditor-General considers that it is in the public interest to carry out investigations into the finances of any corporation established by a written law or any corporation registered in accordance with the Companies Act, in which Government owns all the equity, he may carry out such investigation. Cap 42:02

(5) The Auditor-General may, in carrying out an investigation under this section, request such information as he considers necessary from any corporations referred to in that subsection.

(6) If so requested by the Auditor-General, a corporation referred to in subsection (4) shall give the Auditor-General access to, or provide him with such records, information or explanation in respect of itself as the Auditor-General may require for the purposes of an investigation under this section; and the Auditor-General shall be entitled to make copies of or take extracts from any such records." and

(*b*) by inserting, immediately after subsection 6, the following new subsections —

"(7) A corporation which gives any information, explanation or access to any records pursuant to this section shall not give infomation or an explanation or access to records which it knows to be false or misleading.

(8) The Auditor-General shall, for purposes of carrying out an investigation under this section, have all the powers conferred by subsection (1) in relation to the corporation in question and to its members, officers, employees and property, and shall have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Enquiry Act, and the provisions of that Act shall, *mutatis mutandis,* apply in relation to the investigation and to any person summoned to give evidence or giving evidence at the investigation.

Cap 05:02

(9) The Auditor-General shall, on the conclusion of an investigation under this section, submit a report to the Minister on that investigation.

(10) If, after the conclusion of an investigation under this section, the Minister is of the opinion that there are reasonable grounds for suspecting that any person has committed an offence, he shall refer the matter to the Attorney-General.

(11) Any corporation which contravenes the provisions of subsections (6) and (7) of this section shall be guilty of an offence, and shall be liable to a fine of not less than P10 000,00 and not more than P20 000,00."

Amendment of section 39 of the Act

14. Section 39 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

"(1) Where it appears to the Permanent Secretary that any person who is or was at the relevant time a public officer, or any person who, although not a public officer, is or was at the relevant time paid from public funds or is or was at the relevant time responsible for the custody, safekeeping or collection of public or other property or public or other moneys"

(*a*) has failed to collect any moneys owing to the Government for the collection of which such person is or was responsible;

(*b*) has made or caused or permitted to be made in any way (including fraud, forgery, misappropriation, theft, burglary or any other way whatsoever) any unauthor ized, unvouched, improper, nugatory, unnecessary or otherwise incorrect payment of public money for which he was at the relevant time responsible;

(*c*) has caused or permitted any deficiency in, or damage to, or the loss or destruction of any public moneys, stamps, securities, public buildings, equipment, vehicles, stores, fittings, furniture or other Government property;

(*d*) has caused or permitted the misuse of any Government property whereby the public revenue has suffered loss;

(*e*) has by wilful default or negligence caused or permitted any personal injury, damage to or loss of property in circumstances which render Government liable to third parties in respect of such injury, loss or damage;

(*f*) has committed or incurred, or has authorized or required a person under his control to commit or incur expenditure in excess of any amount duly authorized at the time of such committal expenditure;

(*g*) has been negligent in the handling or safekeeping of public moneys or other property for which he was at the relevant time responsible; or

(*h*) has, by reason of negligence, wilful default or lack of supervision, caused or made possible the commission of, by any officer or other person under his supervision or control, any act referred to in this subsection;

and loss of public moneys or property or damages to Government have thereby resulted, that person shall be liable to surcharge under this Part."

Amendment of section 42 of the Act

15. Section 42 of the Act is amended in subsection (1) thereof by substituting, for the word "21" which appears therein, the word "30".

Amendment of section 44 of Act

16. Section 44 of the Act is amended by substituting, therefor, the following new section —

"Regulations 44. The Minister may make regulations for the better carrying out of the provisions of this Act."

Substitution of certain words in the Act

17. The words "public stores" shall be substituted by the words "public supplies" wherever they appear in the Act.

PASSED by the National Assembly this 9th day of December, 1997.

C.T. MOMPEI,
Clerk of the National Assembly.