

ICPAK ANALYSIS OF THE PUBLIC AUDIT ACT 2015

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BACKGROUND

The enactment of the Public Audit Act is a big step in empowering the Office of the Auditor General to effectively deliver on his mandate to audit and report on the accounts of any entity that is funded from public funds both at the national and county levels as enshrined in Article 229 of the Constitution of Kenya 2010.

While participating in the enactment process, the Institute sought to address two important issues. First, the need to improve efficiency and effectiveness of public audit process. This was based on the fact that, the Office of the Auditor General (OAG) has had to deal with the shortage of technical staff to undertake audits of inadequately presented accounts and financial records. This resulted in delayed audit reports which in effect hampered Parliament scrutiny of the government accountability reports.

Secondly, the independence of the Office of the Auditor General was a key proposal in ICPAK submissions. Indeed, Article 249 (2) (b) of the Constitution, is express in providing for the independence of the office, that it shall not be subject to direction and control of any person or authority.

The Institute therefore, argued in its submissions that, to assure independence of the Office of the Auditor General for efficiency and effectiveness, Public Audit law should provide for both functional and financial autonomy of the Office of the Auditor General. This paper provides a brief overview of the new public audit law while pointing areas that need further engagement to strengthen the office of the Auditor General.

MAIN HIGHLIGHTS OF THE PUBLIC AUDIT ACT 2015

1. The Act establishes the Office of the Auditor General under Part II. The office shall comprise the Auditor General as its statutory head and all other staff appointed by the Auditor óGeneral.
2. **Additional functions (Section 7 and 8):** It sets out additional functions and to those stipulated in Article 229 of the Constitution. For instance, the OAG has a responsibility to give assurance on the effectiveness of internal controls, risk management and overall governance at national and county level.

3. **Independence (Section 10):** The Act emphasizes the independence of the Auditor General that the office shall not be subject to direction or control by any person or authority in carrying out his or her functions.
4. **Vacancy in the Office of the Auditor General (Section 11) :** In case of vacancy in the office of the Auditor-General, the president shall constitute a selection panel comprising a chairperson and one representative from-
 - a) Ministry responsible for matters relating to finance
 - b) The Office of the Attorney General
 - c) The Ministry responsible for matters relating to public service
 - d) **The Institute of Certified Public Accountants of Kenya**
 - e) Association of Professional Societies of East Africa, and
 - f) The Law Society of Kenya

The above selection panel shall consider the applicants and select at least three persons qualified for appointment as Auditor General

5. **Budgeting (Section 20):** - The Act provides that the budget estimates of revenue and expenditure of the OAG shall be submitted to the Cabinet Secretary for responsible for Finance not later than 30th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and the National Assembly, shall pursuant to Article 249(3) of the Constitution, allocate adequate funds to the office of the Auditor General
6. **Power to obtain information (Section 21) :** The Act further gives the Auditor General powers to require a public body or any person employed by the public body to produce any official document in the body's or person's custody, care or control; and provide the Auditor-General with information or an explanation about any official information, system or asset.
7. **Power to examine Bank Accounts (Section 22) :** The Auditor-General may in the course of exercising his or her functions, duties or powers, track a transaction into the account of any person in any bank through an order of the courts, if the Auditor-General has reason to believe that the money belonging to a public body has been fraudulently or wrongfully paid into such person's account
8. **Outsourcing of Audit Services (Section 23):** - For purposes of carrying out his or her functions, the Auditor-General may outsource audit services from duly registered audit firms whose partners and staff are not employees of the Office of the Auditor-General and the public service to assist in an examination and audit of accounts.

9. It affirms that only a person registered and practising as an accountant under the **Accountants Act, 2008**, shall be qualified for the purpose of provision of a financial audit opinion under this section.
10. **Audit Advisory Board:** The Act under Part III establishes the Audit Advisory Board to advise the Auditor General on the exercise of his or her powers and the performance of his or her functions. The Audit Advisory Board shall comprise of :
 - (a) the Auditor-General or a person nominated by him or her;
 - (b) the Attorney-General of Kenya or a person nominated by him or her;
 - (c) a **nominee of the Institute of Certified Public Accountants of Kenya**;
 - (d) a nominee of the Association of Professional Societies of East Africa;
 - (e) a nominee of the Law Society of Kenya; and
 - (f) the Chairperson of the Public Service Commission or his or her nominee.
11. **Use of internal audit work(Section 33)** , the Act provides that the final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor General.
12. **On Government Policy (Section 42)**, the new Public Audit Law states that the Auditor shall not question the merits of a policy objective of the national government or county government or any other public entity.
13. **Code of Conduct and Ethics:** Part VII empowers the Auditor General to determine the code of conduct and ethics for all public office holders in the office of the Auditor General. This should be in line with those prescribed by the Constitution, the Public Audit Act 2015, and the Public Officers Ethics Act 2003.

AREAS THAT NEED FURTHER ENGAGEMENT

Despite the gains in the new Public Audit law, some few areas still need further engagement with a view to strengthening the independence and capacity of the Auditor General, namely:

1. The Auditor General is still limited in exercise of his administrative powers by provisions of section 8 of the Act. The section stipulates that the Office of the Auditor General shall only exercise its administrative powers in relation to disciplinary control and establishment of human capital compliment to the extent that it is permissible by the powers of the Public Service Commission as per Art 234 of the Constitution. This might compromise his functional independence.
2. **Financial independence-** In our submissions, we were of the opinion that to address the gaps in Law, the Public Audit Law can be used to provide for financial independence of the Office of the Auditor General by empowering the Office of the Auditor General to submit

its annual budget estimates directly to the National Assembly. This model has been implemented in other jurisdictions successfully. In this section we assess the model applied in United Kingdom.

Conclusion

It is imperative to note that from the analysis above, the new Public Audit Act 2015 has considerable gains for the accountancy profession and the economy at large. For ICPAK, the Act has established opportunities for accountants to participate in the public audit process through three avenues:

- (i) The Institute is part of the selection panel in considering applications and selecting competent persons to the position of the Auditor General in case of any vacancy;
- (ii) The Institute will also have representation in the Audit Advisory Board;
- (iii) The Act has dealt with inadequacy of staff at OAG's office by mandating it to outsource audit services. In addition, it affirms that only a person registered and practising as an accountant under the Accountants Act, 2008, shall be qualified for the purpose of provision of a financial audit opinion under this section.

Annex 1: ICPAK Scorecard

Section		Public Audit Act 2015	Proposal(s) in ICPAK submissions to the Bill	Comments
1.	Section 5:- Qualification for appointment as Auditor General	Section 5 (1) provides for the qualification for appointment to the Office of the Auditor General. Sub Section (e) provides that one must be a member of good standing of a professional body of accountants recognized by law.	The Institute has proposed amendments to subsection 5(1)(e) to read.... is a practising member of good standing of a professional body of accountants recognized by law	The section was retained as it was in the Bill. However, this can be ground for further engagement to ensure that Regulations refer and recognize the Institute as the sole body on registration and issuance of audit practising certificate.
2.	Section 8: Administrative Powers of the Office of the Auditor General	Section 8 (c) and (d) provides that the Office of the Auditor General shall only exercise its administrative powers in relation to disciplinary control and establishment of human capital compliment of to the extent that it is permissible by the powers of the Public Service Commission as per Art 234 of the Constitution.	The Institute was concerned that this provision and its attendant limitations could hamper the functional independence of the Office of the Auditor General. We argued that for the OAG to protect sovereignty of the people as envisioned in Art 249(1)(b) , executive control should be limited. This will also be in line with Art. 249(2) that guarantees functional independence of commissions and holders of independent offices	The section was retained as it was in the Bill. We still believe that these provisions limit the executive control of OAG.
3.	Section 15(1) Recruitment of the Senior Deputy Auditor General	The Act provides that there shall be a Senior Deputy Auditor General who shall be competitively recruited by the Advisory Board and appointed by the Auditor General	In the earlier versions of the Bill, the appointment of the Senior Deputy Auditor General was to be done by the Public Service Commission. We argued that this becomes one of the powers of the Advisory Board hence re-word to have the Advisory Board recruit and recommend names to the Auditor General for formal appointment	ICPAK proposals incorporated. Article 252(1)(c) provides that each Commission, and each holder of an independent office shall recruit its own staff, therefore this provision is in order. It builds on independence and competence of the persons appointed to the Office of Auditor General.

Section		Public Audit Act 2015	Proposal(s) in ICPAK submissions to the Bill	Comments
4.	Section 20: Budget estimates and plans of the Office of the Auditor General	Section 20 provides for OAG to submit budget to Cabinet Secretary for responsible for Finance not later than 30 th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and the National Assembly, shall pursuant to Article 249(3) of the Constitution, allocate adequate funds to the office of the Auditor General	Our proposal hinged on the fact that this provision impedes financial independence. Financial independence of the Office of the Auditor General is a key consideration to realize functional independence of the office and entrench the space for the holder to conduct annual examination of financial records of all government agencies without fear of reprisal at the budgeting stage.	Financial independence of the Office of the Auditor General is a key consideration to realize functional independence of the office and entrench the space for the holder to conduct annual examination of financial records of all government agencies without fear of reprisal at the budgeting stage.