

CHAPTER 54:01
FINANCE AND AUDIT
ARRANGEMENT OF SECTIONS

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An Act to make further and better provision for the control and management of public moneys and public supplies, for the audit of public accounts and the accounts of certain statutory corporations, for the powers and duties of the Auditor-General and for matters connected therewith and incidental thereto. [Date of Commencement: 23rd January, 1970]

PART I
Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Finance and Audit Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"**Accountant-General**" means the Accountant-General acting in accordance with the provisions of section 3(2);

"**accounting officer**" means a person designated as an accounting officer under the provisions of section 5;

"**Appropriation Act**" means an Act of Parliament the purpose of which is an appropriation of public revenues pursuant to section 118(2) of the Constitution;

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

"Consolidated Fund" means the Fund established by section 117 of the Constitution;

"Development Fund" has the meaning assigned to it under section 23;

"development revenue" means the heads of revenue as detailed in the annual Development Fund Estimates;

"Director of Internal Audit" means the public officer designated by the Permanent Secretary to guide, direct and co-ordinate the activities of officers appointed by the Permanent Secretary under section 8; 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;

"financial year" means any period of 12 months ending on the 31st March;

"General Orders" means the General Orders issued from time to time by the Government defining the conditions of service of public officers;

"Permanent Secretary" means the Permanent Secretary of the Ministry for the time being responsible for finance;

"public fund" means any fund or account of public moneys;

"public moneys", subject to the provisions of subsection (2), means-

- (a) public revenues; and
- (b) any trust or other moneys, stamps or securities received or held, whether temporarily or otherwise, by any public officer in his official capacity either alone or jointly with any other person;

"public officer" means, subject to the provisions of subsections (3) and (4), any person employed by Government and includes any teacher employed in a Government school;

"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;

"Special Fund" has the meaning assigned thereto in section 24;

"statutory expenditure" means expenditure charged on the Consolidated Fund under section 118(1)(a) of the Constitution.

(2) Where the Minister is of the opinion that adequate provision exists outside this Act for the management and audit of moneys forming part of any trust fund of which a public officer is a trustee, he may by order published in the *Gazette* direct that such moneys shall not be public moneys for the purposes of this Act.

(3) For the purposes of this Act, a person shall not be considered to be a public officer by reason only of the fact that he is in receipt of any remuneration or allowance from public revenues, and the provisions of section 127(3) and (4) of the Constitution shall have effect in relation to this Act as they have in relation to the Constitution.

(4) A public officer acting otherwise than in his official capacity shall not be regarded as a public officer for the purposes of this Act:

Provided that where there is any doubt as to the capacity in which a public officer acts he shall be deemed to be acting in his official capacity unless the contrary is proved.

3. Administration

(1) All or any of the functions conferred by this Act on the Permanent Secretary (excluding the functions conferred by this section) may, subject to the general or special directions of the Permanent Secretary, be carried out by any other public officer in his Ministry for the time being designated by him for that purpose.

(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.

PART II

Control and Management of Public Moneys and Public Supplies (ss 4-13)4. Powers and duties of Ministers

The Minister shall so supervise the finances of Botswana as to ensure that a full account thereof is made to the National Assembly, and that its financial control is maintained, and for such purposes shall, subject to the provisions of the Constitution and this Act, have the control and management of the Consolidated Fund, the Development Fund and all other public funds, and the supervision, control and direction of all matters relating to the financial affairs of Botswana.

5. Accounting responsibility

(1) The Minister shall, when laying the annual estimates of revenue and expenditure of the Consolidated Fund in respect of each head thereof, designate a public officer to be the accounting officer for such head.

(2) Notwithstanding anything contained in subsection (1) the Minister may, if he thinks it desirable-

- (a) designate different public officers in respect of different parts of a head of revenue or expenditure; and
- (b) at any time designate a public officer to be the accounting officer for any head or part thereof and include such designation in the next appropriate supplementary estimates of expenditure or revenue.

(3) Where a public officer has been designated in respect of a part of a head of revenue or expenditure the provisions of subsection (4) shall apply to such officer in respect of such part of the head of revenue or expenditure for which he is designated.

(4) A public officer designated under this section shall be responsible for-

- (a) the control of expenditure;
- (b) the collection of revenue and the payment thereof into the Consolidated Fund;
- (c) the control, custody, issue and use of all public supplies; and
- (d) control and custody of public moneys,

for the head in respect of which he is designated.

6. Duties of public officers

Every public officer concerned in or responsible for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies, shall comply with financial or other instructions and any directions not inconsistent therewith which may from time to time be issued by the Permanent Secretary in respect of the procedure to be followed in such matters, and the accounting for the same.

7. Powers of Permanent Secretary

The Permanent Secretary or any other public officer deputed by him in writing-

- (a) shall be entitled to inspect all Government offices and shall be given access at all times thereto; and
- (b) shall be given all available information he may require with regard to public moneys collected, held or disbursed or public supplies received, held, issued or used therein or therefrom and to all documents and records in respect thereof;
- (c) shall be entitled at any time to inspect such moneys, supplies, documents and records so far as may in any way be necessary for the purpose of ensuring compliance with the financial instructions or any directions issued under section 6.

8. Internal audit examinations (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.

9. Banking, etc., of public moneys

(1) Money at the credit of any public fund, other than day-to-day cash requirements, shall be kept in any account at the Bank of Botswana which shall disburse the same on behalf of the Government:

Provided that such money may be kept in an account at or disbursed through some other financial institution in Botswana, in such cases, on such terms and subject to such conditions as may be prescribed by the Minister in consultation with the Bank of Botswana.

(2) No public officer shall open any public or official account at any bank without the authority in writing of the Accountant-General.

10. Power to borrow (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 9 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.

11. Imprests

The Permanent Secretary may authorize the Accountant-General to issue imprests to public officers for any purpose for which moneys have been appropriated from the Consolidated Fund.

12. Deposits

(1) Except when acting in pursuance of a duty imposed on him by or under any law, no public officer shall receive any deposit unless the Accountant-General has authorized the receipt of that deposit or of deposits of the class to which that deposit belongs.

(2) The Accountant-General shall open such deposit accounts as he may deem necessary for recording the receipt of deposits and shall in relation to every such account specify a public officer who shall control the account.

(3) Deposits may be invested in like manner to that permitted by section 9 in respect of the Consolidated Fund.

(4) Unless the Minister otherwise directs, any interest or dividend received in respect of any deposit shall be credited to the Consolidated Fund.

(5) Any public officer controlling a deposit account shall refund or pay out, as the case may be, any deposit to a person claiming the same if such person proves to the satisfaction of that officer that he is entitled thereto.

(6) Subject to the provisions of any other written law, any deposit which is unclaimed for five years shall be paid into the Consolidated Fund:

Provided that if any person entitled thereto subsequently proves his claim to the satisfaction of the Permanent Secretary, the amount of the deposit shall be refunded to him and the payment of any such refund shall be a charge on the Consolidated Fund.

(7) In this section, "deposit" means any moneys, not being public revenues, held or received by a public officer on behalf of some other person, whether known or unknown.

13. Public officers as trustees

No public officer shall accept appointment as a trustee without the written authority of the Minister and any appointment contrary to this section shall be void.

PART III

Expenditure (ss 14-22)

14. Withdrawals from the Consolidated Fund

(1) No moneys shall be withdrawn from the Consolidated Fund except upon the authority of a warrant under the hand of the Minister, and no such warrant shall be issued unless the withdrawal may lawfully be made in accordance with section 118(1) of the Constitution.

(2) The unspent balance of any warrant issued under this section may at any time be withdrawn or reduced by the Minister if in his opinion the exigencies of the financial situation render such withdrawal or reduction expedient.

15. Warrants to lapse at end of year

Every warrant issued under section 14 in relation to any financial year shall lapse and cease to have any effect after the end of that year.

16. Withdrawals from other public funds

(1) No moneys shall be withdrawn from other public funds unless the issue of those moneys has been authorized by or under a written law.

(2) In this section "other public funds" means public funds other than the Consolidated Fund and trust funds not established by law.

17. Provision if Appropriation Act not in operation

(1) If it appears to the President that the Appropriation Act for any financial year will not come into operation by the beginning of that financial year, the President, subject to subsection (2), may by warrant under his hand authorize the withdrawal from the Consolidated Fund of moneys for the purpose of meeting expenditure necessary to carry on the Government of Botswana from the beginning of that financial year until the expiration of four months thereafter or the coming into operation of the Appropriation Act whichever is the earlier.

(2) No provision shall be made under subsection (1) for any service-

- (a) for which no provision was made during the previous financial year; or
- (b) in excess of one-third of the provision made for that service during such previous financial year.

(3) On the coming into operation of the Appropriation Act for any financial year, any warrant issued under subsection (1) in respect of that financial year shall cease to have effect and any moneys withdrawn from the Consolidated Fund for any service under the authority of such a warrant shall be set off against the amount provided for that service by the said Act.

18. Contingencies Fund

(1) There shall continue to be the Contingencies Fund for the purpose of enabling advances to be made in accordance with the provisions of subsection (2) and such Fund shall consist of such moneys as may from time to time be appropriated by law for the purposes of the Fund.

(2) If at any time the President is satisfied that there has arisen an urgent and unforeseen need for the expenditure of public revenues for which no other provision exists and that the circumstances are such that the expenditure cannot or cannot without injury to the State be postponed until adequate provision is made by Parliament, the President may by warrant authorize advances from the Contingencies Fund in such amounts as may from time to time be necessary to meet that need:

Provided that the total value of warrants issued in any financial year and not yet replaced under the provisions of subsection (3) shall at no time exceed the total of the Fund.

(3) When pursuant to section 121(2) of the Constitution the National Assembly has approved a supplementary estimate replacing any amount advanced from the Contingencies Fund under this section the warrant issued under subsection (2) (hereinafter referred to as the "Contingencies Fund warrant") shall be replaced by a warrant issued pursuant to the said estimates and expenditure under the Contingencies Fund warrant shall be deemed to have been incurred under the said estimates and shall be accounted for accordingly.

19. Other advances

(1) Subject to the provisions of this section the Minister may authorize the issue from public funds of advances-

- (a) on behalf of, and recoverable from, other governments;
- (b) to or on account of trust or other funds administered by the Government, or to or on behalf of public bodies, institutions or individuals, where in the opinion of the Minister such advances are in the public interest;
- (c) to public officers for the purposes and under the conditions set out in General Orders or for such other purposes as may be authorized by the Permanent Secretary;
- (d) to meet expenditure which has been approved by Parliament and is to be financed from the proceeds of a loan the raising of which is authorized by law and which a lender has agreed to make;
- (e) to purchase unallocated supplies.

(2) The total advances outstanding under-

(a) subsection (1)(b) shall not at any time exceed P20 000 000;

(b) subsection (1)(c) shall not at any time exceed P5 000 000,

or, in either case, such higher amount as the National Assembly may authorize 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 financial year in respect of which it was given.

20. Re-allocation within a head

(1) No surplus arising from under-expenditure (or anticipated under-expenditure) on any subdivision of a head of expenditure for which financial provision has been made by an Appropriation Act or supplementary estimate shall be applied in aid of any other subdivision of such head, except as may be permitted by or under the financial instructions.

(2) In this section, "subdivision", in relation to a head of expenditure, means any subdivision of that head shown in the estimates relating thereto.

21. Losses

Where a loss has occurred of any moneys forming part of the public funds, then to the extent that it is not recovered, such loss shall be charged against expenditure and accounted for accordingly, provision in respect thereof being made by the Appropriation Act or supplementary estimate in accordance with the provisions of the Constitution and this Act.

22. Guarantees

No guarantee involving a financial liability shall be binding upon the Government unless entered into with the written authority of the Minister or in accordance with a written law.

PART IV

Development Fund and Special Funds (ss 23-28)

23. Development Fund

(1) For the purpose of financing projects of the Government for economic and social development, the Development Fund shall continue in force as a fund not forming part of the Consolidated Fund but kept in a separate account with the Account-General.

(2) The Development Fund shall consist of-

- (a) any moneys standing to the credit of the Fund, whether such moneys have been paid into a deposit account pending transfer to development revenue or have been so transferred;
- (b) moneys brought to account from the following sources-
 - (i) any moneys appropriated by law for the purposes of the Fund;
 - (ii) any loans raised by the Government for the purposes of the Fund;
 - (iii) any grants made to the Government by any other government, body or person for the purposes of projects to be financed from the Fund, or generally for the purposes of the Fund; and
 - (iv) unless the Minister otherwise directs, moneys earned by or received in reimbursement of expenditure under any project.

(3) The Development Fund shall be administered and expenditure therefrom regulated in accordance with the rules set out in the First Schedule.

24. Definition of "Special Fund"

(1) For the purposes of this Act-

- (a) any fund of public revenues established by or under any written law for some specific purpose;
- (b) any trust fund held by the Government; and
- (c) any fund created by the Minister in exercise of the powers conferred upon him by section 25,

shall, subject to the provisions of subsection (2), be deemed to be a Special Fund.

(2) The Contingencies Fund, the Development Fund and any fund or account of deposits established under section 12, shall not be regarded as Special Funds for the purposes of this Act.

25. Establishment of Special Funds, etc.

(1) The Minister may, by order published in the *Gazette*, establish additional Special Funds.

(2) Every order made under subsection (1) shall state the purpose of and the revenue to be paid into the Special Fund established thereby and the public officer responsible for the administration of the Fund.

(3) Every order made by the Minister under this section shall be laid before the National Assembly at the next meeting commencing after such order has been made.

26. Existing Special Funds

(1) Each of the existing Special Funds shall continue to be maintained for the purpose for which it was established until such time as it is dissolved.

27. Administration, etc., of Special Funds

(1) A Special Fund shall be administered and expenditure therefrom authorized in the manner provided by the written law or trust instrument establishing the Fund, or any other written law relating thereto.

(2) If in respect of any Special Fund no such written law or trust instrument exists, or the Minister considers provision therein inadequate, he may, by regulations, make provision or additional provision, as the case may be, for such matters in relation to that Fund.

(3) A Special Fund shall be kept in separate accounts by the Accountant-General or, where by virtue of any written law some other public officer is responsible for the administration of the Fund, by that other public officer:

Provided that it shall be lawful for the Accountant-General to keep the accounts on behalf of any such other public officer.

(4) Subject to the provisions of this section and of any other written law for the time being in force, any moneys held in a Special Fund which are not required for immediate use may be invested in like manner to that permitted by section 9 in respect of the Consolidated Fund.

(5) Except where the Minister otherwise directs, any interest or dividend received in respect of any investment of moneys belonging to a Special Fund shall not be paid into the Consolidated Fund, but shall be paid into that Special Fund.

28. Dissolution of certain Special Funds

(1) If-

- (a) the moneys forming part of any Special Fund (not being a Fund constituted by or under a written law other than this Act) are exhausted; and
 - (b) no legal provision exists whereby any further moneys may be paid into the Fund,
- the Minister may, by order, dissolve the Fund.

(2) If before the moneys forming part of a Special Fund are exhausted the objects for which such Special Fund (not created by or under a written law other than this Act) are fulfilled or cease to exist and in the opinion of the Minister there is no likelihood that any objects for which the Fund could be lawfully used will arise in the future the Minister may, by order, dissolve

the Fund and the moneys remaining in such Fund shall thereupon be paid into and form part of the Consolidated Fund.

PART V
Audit and Accounts (ss 29-38)

29. Duties of Auditor-General

(1) In discharging his duties under section 124(2) and (3) of the Constitution, the Auditor-General shall satisfy himself-

- (a) that all reasonable precautions have been taken to safeguard the collection and custody of public moneys and that the laws, instructions and directions relating thereto have been duly observed;
- (b) that the disbursement of public moneys has taken place under proper authority and for the purposes intended by such authority;
- (c) that all reasonable precautions have been taken to safeguard the receipt, custody, issue and proper use of public supplies, and that the instructions and directions relating thereto have been duly observed; and
- (d) that adequate instructions or directions exist for the guidance of officers responsible for the collection, custody, issue and disbursement of public moneys or the receipt, custody, issue and disbursement of public supplies.

(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.

30. Duties not to be undertaken

(1) The Auditor-General shall not undertake any examination of accounts having the nature of pre-audit where in his opinion this would preclude the proper exercise of his functions under the Constitution or this Act.

(2) The Auditor-General shall not undertake any duties outside those he is required by or under the Constitution or this Act to perform if he considers that such duties are incompatible with the responsibilities of his office.

31. Delegation of authority

Anything which, under the authority of the Constitution, this Act or any other law, may be done by the Auditor-General other than the certifying of and reporting on accounts to the National Assembly may be done by-

- (a) any public officer; or
- (b) any person publicly carrying on the profession of accountant, authorized by him.

32. Powers of Auditor-General

(1) In carrying out his duties, the Auditor-General may in addition to exercising his powers under section 124(2) of the Constitution-

- (a) require any person to produce to him such books, records, reports or other documents in that person's custody as he may consider it necessary or expedient to examine in order fully to discharge those duties;
- (b) require any public officer to give him any explanation or information;
- (c) with the concurrence of the departmental head concerned, require any public officer to conduct on his behalf any enquiry, examination or audit and report thereon to him,

and any person so required shall comply with that requirement.

(2) The Auditor-General may lay before the Attorney-General a case in writing as to any question regarding the interpretation of any provision of the Constitution or of any written law concerning the powers of the Auditor-General or the discharge of his duties; and the Attorney-General shall give to the Auditor-General a written opinion upon any such case.

(3) The Auditor-General may, without payment of any fees, cause search to be made in and extracts to be taken from any book, record, report or other document in any public office.

(4) In the performance of his duties, the Auditor-General shall have access, at all reasonable times, to all offices, stores, workshops and other premises whatsoever and sites subject to his audit.

33. Reporting of frauds, losses or irregularities

If at any time it appears to the Auditor-General that any fraud or serious loss or irregularity has occurred in the collection, custody or disbursement of public moneys or in the receipt, custody, issue or use of any public supplies, or in the accounting therefor, he shall, unless the fraud, loss or irregularity has already been so reported, immediately bring the matter to the notice of the Minister.

34. Annual public accounts

(1) Within a period of four months after the close of each financial year, any officer other than the Accountant-General who, by virtue of any law, is responsible for the administration of any Special Fund, shall prepare, sign and transmit to the Auditor-General and the Accountant-General an account of such Fund in respect of that financial year containing such information and in such form as the Minister may direct.

(2) Within the period of eight months after the close of each financial year, the Accountant-General shall prepare, sign and transmit to the Auditor-General, for the purpose of auditing, the accounts and statements specified in the Second Schedule in relation to that financial year, together with such other accounts and statements in relation to that year as the Minister may specify for the purposes of this subsection.

(3) As soon as the Auditor-General has completed his examination of the accounts and statements transmitted to him in accordance with subsection (2), he shall return the same, together with his certificate thereon, to the Accountant-General who shall, within the period of four weeks after their return to him, submit them, together with the Auditor-General's certificate thereon, to the Minister.

(4) The Minister shall, within the period of 30 days after the submission to him of the accounts and statements in accordance with subsection (3), lay the same, together with the Auditor-General's certificate thereon, before the National Assembly.

35. Report on the public accounts

Within-

(a) 12 months after the end of the financial year to which the accounts and statements relate; or

(b) four months after his receipt of accounts and statements under section 34(2), whichever expires later, the Auditor-General shall send to the Minister his report upon the audit of those accounts and statements and related matters.

36. Laying of audit records

(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.

(2) If the Minister does not, as required by subsection (1), lay any report mentioned in this section before the National Assembly, the Auditor-General shall send such report to the Speaker and the Speaker shall present the report to the National Assembly.

37. Special reports

The Auditor-General may at any time, if it appears to him to be desirable, send a special report on any matter incidental to his powers and his duties under the provisions of this Act to the Speaker of the National Assembly.

38. Accounts of statutory bodies

(1) Where, by virtue of such a written law as is referred to in the proviso to section 124(2) of the Constitution, the Auditor-General is required to exercise any functions in relation to

the accounts of any body corporate directly established by law he-

- (a) shall have, in relation to that body and its members, officers, employees and property, in addition to the powers conferred upon him by any other written law, the same duties and powers as are imposed and conferred upon him by the Constitution and this Act in relation to public moneys and public supplies;
- (b) may authorize any person publicly carrying on the profession of accountant or, with the consent of the service head of a public officer's department, any suitable public officer to examine or audit the books and accounts of that body and such person or officer shall report thereon to the Auditor-General in such manner as the Auditor-General may direct.

(2) The Auditor-General shall report on his audit of the accounts referred to in this section and shall send such report to the appropriate Minister and a copy thereof to the Minister of Finance and Development Planning, and the appropriate Minister shall present the report to the National Assembly as if such report were in all aspects one which the Minister is required to present in accordance with section 36:

Provided that-

- (i) the appropriate Minister shall obtain the observations of the body concerned in any matter to which attention has been called by the Auditor-General in his report, and such observations shall be presented by him to the National Assembly with the said report;
- (ii) if the appropriate Minister fails within a reasonable time to present such report to the National Assembly, the Auditor-General shall transmit such report to the Speaker of the National Assembly; and
- (iii) nothing in this subsection shall require the appropriate Minister to present any accounts of, or reports on, any authority or body to the National Assembly if the written law establishing such body provides to the contrary.

(3) A body corporate whose accounts have been audited under the provisions of this section shall, in respect of such audit, pay such fees as may be determined by the Auditor-General, with the approval of the appropriate Minister, and such fees shall be paid into the Consolidated Fund.

(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.

(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.

(7) A corporation which gives any information, explanation or access to any records pursuant to this section shall not give information 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.

(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 Director of Public Prosecutions.

(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

PART VI **Surcharge (ss 39-43)**

39. Power of surcharge

(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 unauthorized, 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.

(2) Where a person is liable to surcharge under subsection (1), and if within a period specified by the Permanent Secretary an explanation satisfactory to the Permanent Secretary is not furnished by such person in respect of the act or omission rendering him liable to surcharge, the Permanent Secretary may surcharge against such person the amount not collected or the amount by which the public revenue has suffered as a result of such act or omission, as the case may be, or such lesser amount as the Permanent Secretary may determine.

(3) Notwithstanding subsections (1) and (2), where the Minister is of the opinion that the liability for any surcharge made under those subsections was incurred wholly or partially by reason of the lack of supervision by the accounting officer of the person who was surcharged, the Minister may recommend to the President that such accounting officer be surcharged.

(4) Where a recommendation has been made to the President under subsection (3),

the President shall call for an explanation from the accounting officer concerned, and if, after considering such explanation, he is satisfied that the liability for surcharge was incurred wholly or partially by reason of lack of supervision, he shall instruct the Permanent Secretary to surcharge against such accounting officer either in place of or in addition to the person supervised.

(5) Any surcharge made under subsection (4) shall not, when added to any surcharge imposed on the person supervised, exceed the amount not collected, or the amount by which the public revenue has suffered, as the case may be.

40. Notification of surcharge

The Permanent Secretary shall cause the person surcharged, the accounting officer concerned, the Auditor-General and the Accountant-General to be notified of any surcharge made under section 39.

41. Withdrawal of surcharge

The President or the Permanent Secretary, as the case may be, may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and in any such event the Permanent Secretary shall notify the persons specified in section 40 of such withdrawal.

42. Appeals

(1) Any person who is dissatisfied with any surcharge made against him under section 39 may, within the period of 30 days after he has been notified of the surcharge, appeal in writing to the Public Service Commission or to the Judicial Service Commission, as is appropriate in his case.

(2) Where a person lodges an appeal under this section, he shall, at the same time, transmit a copy of his appeal to the Permanent Secretary.

(3) Before deciding an appeal under this section, the Commission in question-

- (a) shall give both the appellant and the Permanent Secretary the opportunity to call additional evidence and to make oral and written submissions to it; and
- (b) may itself call additional evidence.

(4) After considering an appeal under this section, including all additional evidence and every submission which may have been called or made to it under subsection (3), the Commission in question shall either-

- (a) dismiss the appeal and confirm the surcharge; or
- (b) allow the appeal, wholly or in part, and accordingly set aside the surcharge or vary its terms to such extent as the Commission considers just and reasonable in all the circumstances.

(5) On deciding an appeal under this section, the Commission in question shall cause the Permanent Secretary to be notified of the terms of its decision and the Permanent Secretary shall thereupon cause the appellant, the accounting officer concerned, the Auditor-General and the Accountant-General to be so notified.

43. Recovery of surcharge

(1) The amount of any surcharge made or confirmed under the provisions of this Part shall be due and payable on the expiration of the period within which, by virtue of section 42(1), the person surcharged may appeal or, if he has appealed, on the final determination of such appeal.

(2) Any amount thereof not paid within 30 days of becoming due and payable shall be recovered by the Accountant-General by such deductions from the salary or pension of the person surcharged as the Permanent Secretary may direct:

Provided that-

- (i) no one such deduction shall exceed one-sixth of the person's gross monthly salary or pension, as the case may be; and
- (ii) where the person surcharged is due to be paid any moneys of whatever description by

the Government other than by way of salary or pension the Permanent Secretary may cause the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he considers fit.

(3) The powers of the Permanent Secretary under this section are without prejudice to the powers of the Attorney-General under the State Proceedings (Actions by or against Government or Public Officers) Act.

PART VII **Supplementary (s 44)**

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

FIRST SCHEDULE **RULES FOR OPERATION OF THE DEVELOPMENT FUND**

(section 23(3))

ARRANGEMENT OF RULES

RULE

1. Definitions
2. Use of Fund
3. Authority for withdrawal
4. Annual estimates to be prepared
5. Accounting officers
6. Appropriation Bill
7. Issue of moneys before commencement of Appropriation Act
8. Supplementary estimates
9. Special warrant
10. Supplementary Appropriation Bill
11. Accounting and use of moneys constituting Fund
12. Conditions to be observed

1. Definitions

In this Schedule-

"**approved project**" means a project contained in a Development Plan;

"**Development Plan**" means a plan of economic and social development, including any amendment of or addition to such plan, prepared by the Government and approved by the National Assembly by resolution;

"**new project**" means a project which is not contained in a Development Plan;

"**project**" means a project of the Government for social or economic development.

2. Use of Fund

Except as provided by rule 9 provision shall not be made for expenditure from the Fund for any purpose other than the purpose of an approved project.

3. Authority for withdrawal

(1) No moneys shall be disbursed from the Fund except upon the authority of a warrant under the hand of the Minister; and no such warrant shall be issued unless the disbursement of those moneys is in respect of an approved or new project.

(2) Notwithstanding subrule (1), where moneys have been paid into the Fund in respect of a project and that project has thereafter been financed from some other source, those moneys may be withdrawn from the Fund without warrant and credited to the deposit account from which they were originally withdrawn.

4. Annual estimates to be prepared

(1) The Minister shall cause to be prepared in each financial year, estimates of the revenue and expenditure of the Fund for the next following financial year (which estimates are hereinafter referred to as "the annual estimates").

(2) The annual estimates shall be so prepared as to show the provision made for each project provided for therein under a separate subhead and the various subheads shall be grouped under heads

of expenditure corresponding to the Departments responsible for the projects.

(3) The annual estimates shall show, in relation to each project, an estimate of the total cost of the project in addition to the estimate of sums required during the financial year.

(4) The annual estimates shall be appended to the estimates of the Consolidated Fund for the same financial year laid before the National Assembly.

(5) The annual estimates shall be accompanied by a statement showing the estimated balance of the Fund at the commencement of the next following financial year and the anticipated revenue accruing to and total expenditure from the Fund during that financial year.

5. Accounting officers

(1) When laying the annual estimates before the National Assembly, the Minister shall, in respect of each project provided for therein, designate a public officer as the accounting officer for that project:

Provided that the Minister may, if he considers it desirable to do so-

- (i) designate at that time different public officers as the accounting officers for different parts of any such project; and
- (ii) at any other time, designate a public officer as the accounting officer for any such project or part thereof, in which case the designation shall be included in the next appropriate supplementary estimates of the Fund.

(2) In respect of the project or part thereof for which he has been designated as the accounting officer under subrule (1), every accounting officer shall be responsible for

- (a) the control of expenditure;
- (b) the control, custody, issue and use of all public supplies; and
- (c) the custody of public moneys.

6. Appropriation Bill

The Appropriation Bill for any financial year shall authorize the issue from the Fund of the total amount necessary to meet expenditure on all projects for which provision has been made in the annual estimates for that financial year approved by the National Assembly without containing heads of expenditure corresponding to the heads of expenditure in the annual estimates or any other particulars in respect of the appropriation or application of that total amount.

7. Issue of moneys before commencement of Appropriation Act

(1) If the Appropriation Act for any financial year has not come into operation by the beginning of that year, the President shall direct the Minister to issue a warrant authorizing the issue of moneys from the Fund to meet such expenditure as may be necessary for the continuation of projects financed from the Fund in the immediately preceding financial year until the expiration of four months from the beginning of the new financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

(2) All moneys disbursed from the Fund in pursuance of this rule shall be deemed to have been disbursed in anticipation of the enactment of an Appropriation Act and, on the coming into operation of that Act, any warrant issued under this rule shall cease to have effect and disbursements thereunder shall be deemed to have been made by virtue of the Act and shall be accounted for accordingly.

8. Supplementary estimates

If it is found-

- (a) that the total estimated cost of a project, as shown in the annual estimates and approved by the National Assembly, is insufficient to enable that project to proceed in the current financial year;
- (b) that the total amount appropriated for all projects in the current financial year is insufficient;
- (c) that a need has arisen to proceed with an approved project which has not been included in the annual estimates for the current financial year; or
- (d) that a need has arisen to proceed with a new project,

a supplementary estimate shall be laid before the National Assembly for approval by resolution.

9. Special warrant

(1) If in any financial year any of the circumstances referred to in rule 8 arise and, in the judgment of the President, expenditure up to the level of the new or revised total estimated cost of a project is so urgently required that it cannot, without serious detriment to the public interest, be postponed until a new or revised total estimated cost is approved by the National Assembly, the President may direct the Minister to issue a special warrant authorizing that expenditure.

(2) At the next meeting of the National Assembly after the issue of a special warrant under subrule (1), the Minister shall submit a new or revised total estimated cost for the project in question, as the

circumstances require, to the National Assembly for its approval by resolution.

10. Supplementary Appropriation Bill

Where expenditure in excess of the total amount appropriated in any financial year has been approved by the National Assembly under rule 8 or 9, a Supplementary Appropriation Bill shall be introduced in the National Assembly, not later than the end of the financial year next following, authorizing the issue from the Fund of the additional moneys so approved.

11. Accounting and use of moneys constituting Fund

Moneys received for the purposes of the Fund shall be brought to the account of the Fund in such a manner as to identify the source from which they came and shall be used to offset expenditure incurred by and disbursed from the Fund in respect of projects for which the moneys were approved and allocated.

12. Conditions to be observed

Where the grantor attaches, to any grant of money which, by virtue of section 23(2)(b), is paid into the Fund, conditions relating to the use of the grant, those conditions shall be observed and these Rules shall be applied in such manner as to ensure that observance.

SECOND SCHEDULE ACCOUNTS AND STATEMENTS TO BE PREPARED BY THE ACCOUNTANT-GENERAL

(Section 34(2))

- (a) A statement of Assets and Liabilities showing the balances of the various funds held by the Botswana Government and the assets relating thereto, to which shall be appended a list of any public asset or liability, contingent or actual, not reflected in the statement. For the purposes of this paragraph the expression "public asset" does not include any Government buildings, plant, machinery, vehicles, furniture, equipment, stores or similar items.
- (b) A detailed Statement of Revenue showing the sums received set out against the sums shown in the Estimates of Revenue of the Consolidated Fund and the Development Fund.
- (c) A detailed Statement of Expenditure showing the sums disbursed set out against the sums shown in the Estimates and Supplementary Estimates of Expenditure of the Consolidated Fund and the Development Fund.
- (d) A Statement of the Contingencies Fund summarizing the appropriations to the Fund and the withdrawals from the Fund.
- (e) Statements of account of Special Funds (other than Special Funds the administration of which is, by virtue of any written law, the responsibility of some public officer other than the Accountant-General.
- (f) A Statement of Investments.
- (g) A Statement of Public Debt and Sinking Funds.
- (h) A Statement of Outstanding Loans financed from public revenue.
- (i) A Statement of Deposit Account Balances.
- (j) A Statement of Advances Outstanding in each of the categories of Advances specified in section 19(1).
- (k) A Statement of Cash and Bank Balances.
- (l) A Statement of Arrears of Revenue.
- (m) A Tabular Summary of Unallocated Supplies.
- (n) A Statement of Losses of Public Moneys and Supplies Written-off and Claims Abandoned during the year.
- (o) A Statement of Losses of Public Moneys and Supplies reported during the year, whether written-off or not.