

Federal Audit Service Commission Bill

The objectives of the Bill are to:

- Establish the office of the Auditor-General for the Federation and provide additional powers and functions to the office;
- Establish the Federal Audit Service Commission;
- Repeal the Audit Act 1956, the Public Accounts Committees Act; and
- Enact the Federal Audit Service Bill, 2015.

NUMBER OF CLAUSES/PARTS

The Bill has 53 Clauses including citation and interpretation. It has a schedule, which is in 4 parts

GENERAL CONTENTS OF THE BILL

OBJECTIVE ONE: Establish The Office Of The Auditor-General For The Federation And Provide Additional Powers

1. Establishment of the Office of the Auditor-General for the Federation: -

Subject to the provisions of the Constitution, there is established an office known as the office of the Auditor-General for the Federation ("the Office"). The Office shall be headed by the Auditor-General for the Federation ("the Auditor-General"), who shall be of the same rank as the Head of Service of the Federation (Clause 1).

2. Staff of the Office: -

The Auditor-General shall have 2 Deputy Auditors-General, who shall be the same rank with permanent secretaries in the public service or its equivalent and other staff as may be appointed by the Federal Audit Service Commission on the recommendation of the Auditor-General. The Auditor-General, the 2 Deputy Auditors-General and other staff of the Office shall be public servants.

3. Qualification of the Auditor-General and Auditors-General: -

Subject to the qualification of the Constitution, a person shall be qualified to be appointed as Auditor-General if the person is:-

- A qualified accountant of not less than 15 years' cognate experience;
- Registered with the Financial Reporting Council of Nigeria;
- Not a convict of any offence involving dishonesty by a law court or found guilty of any professional misconduct involving dishonesty by any professional body established by law in Nigeria; and
- of proven professional ability and expertise.

Where an applicant is from the public service, he shall have at least 4 years to serve before he is due for retirement. If the applicant is not from the public service, he shall not be less than 45 years and not more than 50 (fifty) years old at the date of appointment.

The Deputy Auditors-General to be appointed from the serving Directors in the Office must meet the above listed criteria (Clause 2).

4. Procedure for Appointment: -

The vacant position of the Auditor-General shall be filled by the appointment of the most qualified person with cognate experience in the service of the Office of the Auditor-General or in the public service of the Federation or State (Clause 3).

In a situation where there is no qualified person in the service of the Office or in the public service of the Federation or State, the vacancy shall be filled by the appointment of any person, not being a public servant, who meets the qualifications specified in the Bill.

Where more than one person is qualified for the appointment as the Auditor-General, the procedure for appointing the Auditor-General shall be uniform, transparent and competitive (Clause 3(3)). This applies to the appointment of Deputy Auditor-General as well.

5. Salary and Allowances: -

The Auditor-General shall be paid such salary and allowances as may be determined by the National Assembly on the recommendation of the Revenue Mobilization Allocation and Fiscal Commission. The salary and allowances of the Auditor-General shall be charged to the Consolidated Revenue Fund of the Federation. Any person who holds office as Auditor-General shall be entitled to pension for life at a rate equivalent to the annual salary of the incumbent Auditor-General, except such a person was removed from office for misconduct or convicted for any offence involving dishonesty.

Severance allowance of the Auditor-General shall be similar to those of the Head of Service of the Federation.

6. Tenure of Office: -

The Auditor-General for the Federation shall serve a term of 4 years and may be reappointed to serve for another 4 years and no more (Clause 5).

7. Cessation of Office: -

The Auditor-General shall cease to hold office when he:

- Attains the age of 65 years or has served in the public service of the Federation for 35 years, depending on which one comes first;
- Voluntarily retires by writing a letter in his own handwriting indicating his intention to retire addressed to the President through the Federal Civil Service Commission;
- Is found incapable of discharging the functions of his office either arising from infirmity of mind or body or any other cause or for misconduct (Clause 6).

8. Removal from Office: -

A person holding the Office of the Auditor-General shall be removed from the Office in accordance with the provision of Section 87 of the Constitution of the Federal Republic of Nigeria.

Section 87 of the 1999 Constitution of Nigeria (as amended):

“A person holding the office of the Auditor-General for the Federation shall be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of his-office (whether arising from infirmity of mind or body or any other cause) or for misconduct.”

To initiate proceedings to remove a person holding office as Auditor-General, the Senate shall:

- Serve him with a copy of the allegation or misconduct; and
- Give him at least 14 days to prepare his defense to the allegation and make representation to the Senate either in person or by his legal representative

Any resolution to remove a person occupying the Office of the Auditor-General from office, on grounds of misconduct by the Senate, shall require approval by two-thirds majority of the members.

9. Structure of the Office: -

The Office shall consist of such Directorates, Departments, Divisions and Units as may be determined by the Federal Audit Service Commission on the recommendation of the Auditor-General

The Audit Commission on the recommendation of the Auditor-General shall from time to time, review the administrative structure of the Office to meet the prevailing needs and where it so reviews, the new structure shall not be valid unless published in the official Gazette (Clause 8)

10. Functions of the Auditor-General: -

Subject to the Constitution, the functions of the Auditor-General shall include:

- Expressing an opinion on whether the financial statement prepared by the government of the federation fairly represent or otherwise the financial position and results of operation;
- Carrying out audit, except when the Constitution provides otherwise, of all revenues accruing to the Federation and all expenditures of the Federation from all sources;

- Carrying out audit, except otherwise provided by the Constitution, of donations, grants and loans accruable to the Federal Ministries, departments and agencies or other public entities;
- Carrying out performance audit by ensuring that Federal Government and its agencies business is economically, efficiently and effectively performed;
- Carrying out audit on classified expenditure;
- Carrying out forensic audit;
- Carrying out audit of international institutions to the extent of Nigeria's contribution to such bodies;
- Carrying out audit of all Federal government and its agencies subsidies and their application;
- Carrying out audit of all federal government and its agencies' counterpart funded projects in the country;
- Carrying out audit of all Nigerian embassies, consulates and foreign missions;
- Carrying out audit of performance information;
- Carrying out audit of disaster related grants and aids; and
- Carrying out audit of public private partnership entered into by the Federal government and its agencies assets and promote good governance.

The Auditor-General shall not participate in person in any action or decision in any activity in which he is seen as an interested party.

11. Powers of the Auditor-General: -

- Power to select the methodology to be adopted in respect of an audit;
- Power to determine the nature and extent of audit to be carried out and request details, account statements and financial statements, that he considers necessary;
- Request in writing, any person in the employ of the Federal ministries, departments and agencies and international institutions whose accounts are being audited by the Office of the Auditor-General to make an appearance at a specified place and time; or produce such records, books, vouchers and documents under the control of that person;
- Power to investigate and make extracts from any record, book, document and other information of any federal ministries, department and agencies or international institutions whose accounts are being audited by the Office of the Auditor-General;
- Power to liaise with persons, federal ministries, departments and agencies or other entities and international institutions in Nigeria or outside Nigeria, on such conditions as he deems fit for the proper performance of his functions;
- Power to surcharge the amount of any expenditure which has not been duly brought into account or the amount of any loss or deficiency incurred;
- Power to revoke any surcharge imposed by the Office of the Auditor-General;
- Power to direct the withholding of the emoluments and allowances of persons who

fail or refuse to reply to audit queries in 30 days and for as long as the person fails to comply;

- Power to have restricted access to persons, documents, records and other information necessary for proper discharge of statutory obligations;
- Power to audit all money accruing to the nation or federal ministries, agencies and departments or other public entities and international institutions;
- Power to audit donations, grants, loans and other forms of assistance accruable to the federal government agencies, ministries and departments.

ADDITIONAL POWERS

12. Power to Issue Summons and Warrant of Arrest: -

- The Auditor-General may in the course of performing his duties summon a person as witness to give evidence either orally or in writing;
- Where a summoned person refuses or fails to appear without reasonable excuse, the Auditor-General may issue a warrant to the Police for the arrest of such a person;
- The Auditor-General may administer oath or affirmation to any person who appears before him to give evidence or being examined as a witness by him;
- A person who intentionally gives false evidence either orally or in writing commits the offence of perjury;
- Except as authorized by law or the Auditor-General, any witness who refuses to take oath or affirmation prescribed in accordance with the Bill (when it becomes law) commits an offence

13. Independence of Auditor-General: -

Subject to the Constitution, the Auditor-General in exercising his powers or performing his functions under this Bill (when it becomes law), shall not be under the direction or control of any authority or person.

This Clause is in line with Section 85(6) of the 1999 Constitution (as amended), which states:

“In the exercise of his functions under this Constitution, the Auditor-General shall not be subject to the direction or control of any other authority or person”

14. Internal Audit Reports: -

The internal audit reports of any Ministries, Departments and Agencies (MDAs) or other public entities and international institutions subject to internal audit by the Auditor-General, shall within 7 working days of receipt of the report, present the report to the Auditor-General (Clause 13).

Any responses by accounting officers of these MDAs, public entities or international institutions shall be presented to the Auditor-General within 7 working days of receipt of the Audit Report.

15. Operations of the Auditor-General: -

In the exercise of his function or powers under the Constitution or this Bill (when it becomes law), the Auditor-General shall express an independent opinion on the results of each audit

and shall state the following:

- Whether the accounts are in conformity with the requirements of the Finance (Control and Management) Act, and other financial Acts and Regulations;
- Whether all funds appropriated or disbursed have been expended and applied for the purpose intended and that such expenditure conforms to the authority which governs it;
- Whether the financial affairs of the MDAs or other public entities and international institutions audited, and all revenues received and public money under its control have been duly managed with integrity by the accounting officer responsible for such;
- Whether all reasonable precautions have been taken to safeguard the resources and property; and that all regulations and instructions have been duly complied with;
- Whether the accounts reflected fairly, the financial position of the MDAs or other public entities and international institutions audited;
- Whether money has been expended with due regard to the economy, efficiency and effectiveness;
- Whether financial regulations exist for accounting and financial operations in the Federation and that they are fully observed, and
- Whether satisfactory procedures have been adopted to measure and report the effectiveness of programme, where such procedure could appropriately and reasonably be implemented.

16. Financial Reporting: -

- Within 90 days of receipt of the financial statements from the Accountant General, the Auditor-General shall submit his report to each House of the National Assembly and the report shall be considered by a Committee of each House responsible for Public Accounts.
- After due consideration of the report submitted by the Auditor-General at a plenary session, the National Assembly shall submit the report to the President or Chief Justice of Nigeria, who may within 1 (one) month pass it to the Public Accounts Implementation Tribunal for immediate action.
- The Auditor-General shall follow up the implementation of the recommendations of the National Assembly arising from the reports submitted to it under the Bill (when it becomes law) and shall report back to the National Assembly on any outstanding issues.
- The Auditor-General may at any time, submit to the National Assembly, a special report on any matter incidental to his powers and functions under this Bill (when passed into law).
- The reports of the Auditor-General shall become public documents as soon as they are submitted to the National Assembly. The reports may be placed on the official website, published in the official bulletin of the office and displayed in the office library.

Though the report is posted on the website and published in the official bulletin, it shall not be used unless with the approval of the National Assembly.

17. Operations Procedure: -

Clause 15 of the Bill provides for the standard procedure to be observed by the Auditor-General. The Auditor-General shall:

- Draw the attention of the appropriate authorities to any irregularity observed during the audit as soon as the facts are established and confirmed;
- Raise queries and observations addressed to the Accountant General with regards to the audit conducted by him or any other accounting officer, and call for such accounts, vouchers, statements, documents and explanations as he deems fit;
- Specify to the appropriate officer or head of any MDA or public entities and international institutions the amount due from any person upon whom he had made surcharge and the reason for the surcharge; and report the circumstances of the case to the accounting officer of the affected institution or entity;
- Hold exit conference with the accounting officer on observations raised and the parties to the conference shall sign as being present and having agreed with the observation or sign as being present and having disagreed with the observations state reasons. The Auditor-General or any person authorized by him may hold this exit conference. The refusal of the accounting officer to sign the audit observations shall not render the audit report invalid.
- Make a report to the National Assembly on anyone or more audits conducted by or on behalf of him, which shall set out –
 - o Reasons for the opinions expressed;
 - o Any recommendations arising out of the audit that he deems fit to make;
 - o Request to the accounting officer or appropriate head of MDAs, other public entities and international institutions in writing for submissions or comments before a specified date; being –
 - ◇ At least 15 working days after the draft report or part is given to the accounting officer or head of the MDA, in the case of a draft report on performance audit; or
 - ◇ At least 30 working days after the draft report or part is given to the authority, in the case of a draft report or any other audit.
- After preparing a draft report give a copy or part of it to –
 - o The accounting officer or the appropriate head of federal Ministries, Departments and Agencies (MDAs), other public entities or international institutions to which the draft report or part relates or that, in the Auditor-General's opinion, has a special interest in the draft report or part, and
 - o The appropriate head of MDAs or other entities and international institutions for which the Minister administering that section is responsible, in the case of a draft report or part of a draft report on a performance audit referred to under Clause 22 of this Bill.

(Clause 22 provides that the Auditor-General may carry out special audits, investigations or any other audit considered necessary by him)

The Auditor-General shall include in the report to the National Assembly, any submission(s)

or comments made before the specified date or a summary of them in a form determined by him.

18. Auditing Standards and Code of Ethics: -

Under Clause 16 of the Bill, the Auditor General shall determine the auditing standards, guidelines and code of ethics specific to the audits performed by the Office of the Auditor-General.

- In the performance of his duties and functions, the Auditor-General shall apply the auditing standards and code of ethics recommended by the Financial Reporting Council of Nigeria.
- Where the Financial Reporting Council of Nigeria is silent on an issue, the Auditor-General may apply the auditing standards and code of ethics recommended by the International Organization of Supreme Audit Institutions (INTOSAI) and /or African Organization of English Speaking Supreme Audit Institutions (AFROSAI-E).

19. Specific Issues to be Addressed in Audit of MDAs:

The Auditor-General while exercising powers conferred under this Bill (when it becomes law), shall have the power to or authorize persons under him to draw attention to the following:

- Profitability, liquidity, stability and solvency of the parastatals, corporations or agencies and also the corporation on the capital market, where applicable;
- Any delay (if any) in payment of the government's portion of any declared dividend into the Consolidated Revenue Fund of the Federation;
- Any significant case of fraud or losses and if so, their underlying causes and persons responsible for such fraud or losses;
- Any internal control weakness identified and general corporate performance indicating:
 - o Achievements against set targets and objectives; and
 - o Whether the finances of the body have been conducted with due attention to economy, efficiency and effectiveness, having regard to the resources utilized

20. Audit of Public Money in Private Organizations and Bodies:-

The Auditor-General may inquire into, examine, investigate or report as he considers necessary, on the expenditure of public funds advanced or guaranteed to a private organization or body in which Federal Government has controlling interest (Clause 18).

21. Reporting Fraud

In the course of conducting a compliance or audit function or any emerging audit, if staff from the Office of the Auditor-General or appointed auditors under this Bill (when it becomes law) discover any criminal, fraudulent or corrupt acts, they shall immediately notify the Auditor-General (Clause 19).

Where the Auditor-General is satisfied that sufficient evidence exists to warrant special investigation, he shall carry out detailed investigation and make a special report on his findings to the National Assembly or the Police.

22. Reference to the National Assembly: -

The Auditor-General shall send a report to the National Assembly, where he becomes aware of:

- Any payment made without due authority
- Any deficiency or loss occasioned by negligence or misconduct
- Any sum which ought to have been but was not brought to account; he shall in the case of expenditure, disallow the sum as a charge upon public funds and in all cases, call in question the sum concerned and makes a report on the sum to the National Assembly which shall refer the report to the committees of both Houses responsible for public finance.

23. Performance Audit:

For the purpose of enhancing the economy, efficiency and effectiveness of the operations of the MDAs or other entities in respect of which appropriation or other accounts are required to be prepared under any Act of the National Assembly, the Auditor-General shall examine, investigate or undertake performance audits and report as he considers necessary on:

- The expenditure of public funds and use of public resources by MDAs or other entities and international institutions;
- The conduct and performance of their functions by accounting officers, heads of MDAs, other public entities and international institutions;
- The extent to which MDAs or other public entities and international institutions established by an Act of the National Assembly, is carrying out its activities;
- Any act of omission of MDAs or other public entities and international institutions to determine whether waste has resulted or may have resulted or may result
- Any act showing or appearing to show a lack of probity or financial prudence by MDAs, other public entities, international institutions or any of its members, office holders and employees; and
- Any other activity undertaken by the MDAs or other public entities and international institutions

Any report prepared by the Auditor-General as a result of an examination, enquiry or investigation under Clause 21 of the Bill, shall be laid before the National Assembly.

24. Special Audits and Investigations:

The Auditor-General may carry out special audits, investigation or any other audit considered necessary by him

OTHER OPERATIONS

25. Submissions of Financial Statements:-

Clause 23 of the Bill provides that the financial statements of the Federal Government shall be submitted to the Auditor-General not later than June 30th of the following financial year.

- Subject to the 1999 Constitution (as amended), accounting officers of all MDAs, statutory corporations, parastatals, authorities, commissions, including all persons or bodies established by an Act of the National Assembly shall submit their financial statements not later than 90 days following the end of the financial year;
- Any person who contravenes the provisions of Clause 23 (1,2,3) of the Bill (when it becomes law) commits an offence and on conviction shall be personally liable to a fine of not less than N500,000 (Five Hundred Thousand Naira)
- Any Ministry, Department or Agency, other public entities or international institutions that contravene the provisions under Clause 23 of the Bill (when it becomes law), notwithstanding the provision of Clause 23(4), that body or entity shall be caused to make a representation to the National Assembly

26. Submission of Audited Annual Financial Statements to the National Assembly: -

Subject to the Constitution, the Auditor-General shall within 90 days of receipt of the Accountant-General's financial statement, submit his reports to the President of the Senate and the Speaker of the House of Representatives and each House shall cause the reports to be considered by a Committee of the House of the National Assembly responsible for public accounts.

After the Committee responsible for Public Accounts has examined the reports, it shall be presented at the plenary sessions of the two Houses. The National Assembly shall publish its findings on the Auditor-General's report on the Accountant-General's financial statement within 120 days of receiving such a report. The report may include information and recommendation(s) that the Auditor-General thinks fit:

- For the effective and efficient management of public resources;
- For the keeping of proper accounts and records of the transactions relating to public resources

27. Publication of Audit Reports

According Clause 25, all reports issued by the Auditor-General shall be considered public documents after the reports are presented to the National Assembly. The Auditor-General may provide copies of his published reports to the National Archives and website of the Federal Government, government press and approved print and electronic media.

No person shall disclose information obtained in the course of an audit without written consent of the Auditor-General, other than when required by law or by a Court of competent jurisdiction.

Only the Auditor General after due consideration to public interest and an auditor's professional obligations with regards to confidentiality of information, may determine what information can appropriately be disclosed

28. Public Accounts Committee Review of Audit Reports: -

The Committee responsible for the Public Accounts may consider each report from the Auditor-General, which is tabled before the National Assembly (Clause 26). The Committee responsible for public accounts shall make recommendations on the basis of this consideration and shall monitor their implementation after the House approves it at the plenary session.

29. Estimates of Revenue and Expenditure: -

The Auditor-General shall prepare and submit to the National Assembly 6 (six) months to the end of every financial year, the estimates of Revenue and Expenditure of the office for

the following financial years, which shall be included in the appropriation Bill (Clause 27).

30. Expenses of the Office of Auditor-General: -

All funds approved by the National Assembly to defray expenses incurred by the office of the Auditor-General shall be a first line charge on the Consolidated Revenue Fund of the Federation. Any amount standing to the credit of the office of the Auditor-General in the annual budget shall be paid directly to the Auditor-General for management and disbursement as approved by the National Assembly.

31. Annual Report: -

In accordance with Clauses 15 and 16 of this Bill (which provide for auditing procedure, standards and codes of ethics), the Auditor-General shall prepare and submit the following to the National Assembly:

- Annual financial statements of his office prepared in accordance with generally accepted accounting principles,
- List of MDAs or other public entities and international institutions whose financial statements were audited by the Auditor-General;
- List of MDAs or other entities and international institutions that fail to comply with the procedure listed under Clause 15 of this Bill;
- Annual reports in accordance with the provisions of this Bill;
- Performance audit report on Programme, projects; and
- Annual audit report on taxes and other revenue collections

These reports in addition to other reports listed under Clause 23 of the Bill shall be submitted to the National Assembly.

32. Protection from Litigation

The Auditor-General or an employee of the Office or a person authorized to act as Auditor-General shall not be personally liable for any action or omission committed in good faith in the performance of the functions of the office (Clause 30).

All documents presented by the Auditor-General to the National Assembly shall be deemed to be National Assembly reports and documents and shall be accorded the same rights and privileges enjoyed by the reports and other documents emanating from the National Assembly by the Legislative Houses (Powers and Privileges) Act.

No civil or criminal proceedings shall be instituted against the Auditor-General on the basis of any actions or omissions committed by him or any report submitted to the National Assembly.

33. Power to Appoint Private Auditors:-

The Auditor-General may appoint, subject to the Public Procurement Act, private auditors to assist him in the performance of his functions under the Bill (Clause 31). Any auditor appointed for this purpose shall be supervised by the Auditor-General.

The Auditor-General may in the performance of his functions, engage the services of or work in consultation with the professionals or technical experts or consultants to enhance the performance of the office of the Auditor-General.

34. Independent Auditor for the Auditor-General's Office:-

The accounts of the Auditor-General shall be audited and reported upon every financial year by an independent auditor appointed by the National Assembly, subject to the Public Procurement Act (Clause 32(1)). The independent auditor shall serve for a maximum of 3 (three) years.

35. Appointment of Independent Auditor for the Office of the Auditor-General:

A person shall be qualified for appointment as an independent auditor if:

- He holds a valid practicing license whether within or outside Nigeria for at least a period of 10 (ten) years before the appointment;
- He has proven track records of performance and integrity;
- He is not involved or has not audited any federal Ministry, Department or Agency, or other public entities and international institutions that are subject to audit by the office of the Auditor-General for at least a period of 3 (three) years before such appointment;
- He has not been a consultant to the office of the Auditor-General or Audit Commission for at least 3 years before such appointment.

Notwithstanding anything to the contrary in any law, the office of the Auditor-General shall within 3 months after the end of its financial year, prepare and submit to the independent auditor, its financial statements.

The auditor shall have access to all books, vouchers, documents and other records of the Office of the Auditor-General and is entitled to any information required in relation to those records.

36. Oath/Affirmation of Office: -

No person shall assume the office as Auditor-General unless the person takes an oath or affirmation specified under part A of the Schedule to the Bill. Every person who is appointed to the services of the office of the Auditor-General shall take the oath or affirmation of secrecy (under part B of the Schedule to the Bill)

37. Offences and Penalties: -

1) It shall be an offence if a person:

- Unlawfully hinders, willfully obstructs or resists the Auditor-General or any person authorized by him in the performance of his functions;
- Without lawful justification, refuses or fails to comply with any lawful request, order or directives of the Auditor-General or his authorized designee;
- Unlawfully refuses or fails to allow access to books, documents, records, etc. to the Auditor-General or any person authorized to do so;
- Knowingly presents to the Auditor-General or any person authorized by him, a false or fabricated document or make a false statement with the intent to deceive or mislead the Auditor-General;
- Unlawfully presents himself as having authority under the Bill

Any person who commits any of the above listed offence, on conviction shall be liable to

a fine not less than N300,000 or a jail term of not less than 3 years or both. In the case of a corporate entity, a fine not less than N5,000,000.

2) A person working in the Office of the Auditor-General commits an offence is he:

- Misuses any information obtained while performing his official function or exercising his official power;
- Colludes with any accounting officer or internal auditor or other public officers in the conduct of his function to commit an act or omission, which leads to loss of public funds.

Any person who commits these offences, shall on conviction be liable to a fine not less than N300,000 or a jail term of not less than 3 years or both.

3) Where the Bill provides for an offence and no penalty is prescribed for the offence, any person who is convicted of any of such offences, shall be liable to a fine not exceeding N200,000 or a term of imprisonment not exceeding 2 years or both.

OBJECTIVE TWO: ESTABLISHMENT OF A FEDERAL AUDIT SERVICE

38. Establishment of the Federal Audit Service Commission:

Clause 35 of the Bill provides for the establishment of the Federal Audit Service Commission, which shall be a corporate body with a common seal and perpetual succession.

The Bill proposes that the Audit Commission shall consist of a Chairman, 6 Commissioners, a representative of the Head of Service not below the level of a Director, 2 retirees from the office of the Auditor-General that attained at least Deputy Auditor-General and 2 persons appointed to represent two professional accounting bodies in Nigeria.

Membership of the Commission shall be on a part-time basis.

Except the ex-officio members, other members shall be appointed by the President subject to the confirmation of the Senate.

However, a serving board member of any government agency, body or commission cannot be appointed as a member of the Audit Commission.

Except for ex-officio members, a member of the Audit Commission may be removed from the office by the President, subject to the approval of the Senate for inability to perform the functions of his office, arising from physical infirmity or infirmity of mind or misconduct.

39. Composition of the Audit Commission:

The Audit Commission shall have a Secretary and other staff as may be determined by the Audit Commission. The Secretary shall be on the same rank with a Director-General or its equivalent in public service and shall be responsible to the Chairman for the daily running of the Audit Commission.

The Secretary shall serve for a term of 4 years and shall be eligible for re-appointment for another term of 4 years and no more.

40. Functions of the Audit Commission: -

- Determine the administrative structure of the office of the Auditor-General on the recommendation of the Auditor-General;

- Appoint persons to offices in the office of the Auditor-General and Audit Commission, except the position of the Auditor-General;
- Handle all matters of recruitment, promotion and discipline of members of staff of the office and the Audit Commission;
- Determine in consultation with relevant government agencies, the salaries and other conditions of services of members of staff of the office of the Auditor-General and Audit Commission
- Make rules and regulations, which shall not be inconsistent with the intendment of this Bill, in order to realize the objectives of this Bill.

41. Delegation of Power: -

Clause 39(2) provides that the Audit Commission shall have authority to delegate its powers to the Auditor-General or any other person in the service of the office of the Auditor-General or the Audit Commission

42. Length of Service of Staff of the Office of the Auditor-General and the Audit Commission:-

Notwithstanding the provisions of any other Act, a staff of the Office of the Auditor-General or Audit Commission shall retire from service when he attains the age of 65 years or has served for 35 years in the public service of the federation, depending on which comes first.

The Bill stipulates that notwithstanding the provisions of this Bill, any staff of the office of the Auditor-General or Audit Commission who has served for 8 cumulative years as a Director or Deputy Auditors-General shall retire from the service.

It is notable that Clause 40(3) provides that the retirement guidelines in the public service shall be apply to any staff going on retirement.

43. Oath of Secrecy, Tenure of Office and Resignation of Members:-

Clause 41 provides that the staff of the Audit Commission shall take an oath of secrecy in the performance of their duties with the form provided in part B of the Schedule to the Bill

Staff of the Audit Commission (except ex-officio members) shall serve for a term of 4 years, renewable for another 4 years and no more (Clause 42).

A position may become vacant if a member resigns, dies or is removed from office. A member of the Audit Commission may resign by writing to the President through the Chairman of the Commission. However, if a member dies, the Chairman shall inform the President in writing, and the President shall appoint another person subject to the approval of the Senate

OPERATIONS OF THE AUDIT COMMISSION

44. Meetings of the Audit Commission:

The Audit Commission shall meet ordinarily for the transaction of business at such place and time, which it shall fix, at least once every quarter. A special meeting may be convened upon a written request of the Chairman or by a majority decision of members addressed to the Secretary of the audit Commission

Meetings shall be presided over by the Chairman or any appointed member in his absence. Decisions are made by a simple majority vote; where there is a tie, the presiding officer shall have a casting vote.

A quorum shall be one-third of the total members including the Chairman. Anyone may be co-opted to attend meetings with the Audit Commission, however shall not participate in voting.

45. Cessation of Membership of the Audit Commission:-

Except the ex-officio members, any member who is absent for 3 (three) consecutive meetings, without written notice shall cease to be a member.

46. Interest Declaration:

Any member with an interest in any matter before the Commission shall disclose the nature of such interest in writing (Clause 45). Such a person shall be removed from the matter in line with the provision of Clause 45(2) of the Bill.

Failure to declare an existing interest in a matter before the Commission by a member who has an interest shall result in the removal of that member and a possible prosecution.

47. Appointment of Committees and Engagement of Consultants:

The Audit Commission may appoint committees in the exercise of its functions, made up of its members and non-members, in accordance to the terms of reference given by the Audit Commission. The Chairman of a Committee shall be a member of the Commission (Clause 46).

Furthermore, the Commission may engage consultants subject to the Public Procurement Act in the discharge of its functions.

48. Independent Auditors for the Audit Commission:

The National Assembly may appoint independent auditors for the Audit Commission subject to the Public Procurement Act (Clause 48). The independent auditor shall serve for a period of 3 years.

The independent auditor shall be a valid practicing license holder in Nigeria or abroad for at least 10 years, with a proven track record and integrity. He shall meet the same criteria as the independent auditor for the office of the Auditor-General

49. Statements of Accounts: -

The Audit commission shall submit its statements of accounts and report of performance for the previous year to the National Assembly at least 6 months after the end of the financial year. The independent auditor to be appointed by the National Assembly as provided under Clause 48 of the Bill

50. Transition and Savings:

The Bill provides under Clause 50 that the Auditor-General and existing staff of the office of the Auditor-General shall remain valid upon coming into force of the Federal Audit Service Commission Bill

OBJECTIVE THREE: - REPEAL OF THE AUDIT ORDINANCE OF 1958 AND THE PUBLIC ACCOUNT COMMITTEE ACT, 2004

51. Repeal:-

Clause 51 of the Bill proposes the repeal of the Audit Ordinance of 1958 and the Public Account Committee Act, CAP P35 LFN 2004, at the commencement of this Bill (when it becomes law)

CONCLUDING ISSUES

The Federal Audit Service Commission Bill has been in the works for a long time in the National Assembly since the 7th Assembly. The need for this Bill cannot be over-emphasized. The Bill has been passed by the House of Representatives and is currently awaiting concurrence and passage at the Senate.

The Bill is divided into two major parts - Office of the Auditor-General of the Federation and Federal Audit Service Commission. The Schedule to the Bill contains the oaths of secrecy (Parts A & B) required to be taken by the person who shall occupy the Office of the Auditor-General and the staff of both the office and the Audit Commission (Clauses 33 and 41). Other issues to note are:

1. Powers of the Auditor-General:

However, as part of its objective to grant more powers to the office of the Auditor-General, the Bill seeks to give some adjudicatory powers to the Auditor-General as provided under Clause 11. The Auditor-General shall have the power to issue warrant to the Police to make an arrest, and shall have the power to constitute a hearing where a person can testify as a witness orally or in writing, and also tender evidence. The Bill did not clarify whether this hearing is of the same coordinate jurisdiction with any Court of competent jurisdiction and whether anyone can appeal a decision made by the Auditor-General and to which Court.

2. Errors

Clause 29(1)(a) makes reference to Clause 33 of the Bill, which provides for the oath of secrecy required for the office of the Auditor-General, as relating to acceptable accounting principles. Under the same Clause, paragraph (d) references Clause 11 which provides for the power to issue warrant and not related to the annual report, as is stipulated in the Bill.

Clause 49(2) references Clause 53 of the Bill, which provides the short title of the Bill as the part that provides for the appointment of an independent auditor for the Audit Commission.

Clause 15(5)(ii) requires a correction of the word "parties". The correct paragraph should read - "... in the case of a draft report on any other audit - at least 30 working days after the draft report or part is given to the authority."

3. Ambiguity

Clause 39(2) states as follows - "The Audit Commission shall have authority under this section to delegate its powers under this section to the Auditor-General or any other person in the service of the office of the Auditor-General or the Audit Commission."

This provision needs to be reviewed for clarity.

Clause 44(2) provides that a majority decision by members addressed to the Secretary of the Commission can convene a special meeting. Is the requirement valid where all members are present or simply a majority of all the members? This Clause needs to be clarified as well.

Clause 42 stipulates that except the ex-officio members, other members have a tenure of 4 years to serve, renewable once and no more after. Shall the ex-officio members serve for life? This provision requires clarity.

Clause 47(3) provides that no provision in the Bill empowers the Audit Commission to interfere with the operations of the office of the Auditor-General, or engage any consultant or any body or person in that regard. However, As part of the functions of the Audit Commission under Clause 39(b), the Commission shall appoint persons to the offices in the office of the Auditor-General and Audit Commission. This requires clarification.

4. Senate Approval on Appointments: -

The Senate is empowered constitutionally to approve the appointment of the Auditor-General (Section 86 of the Constitution) and the Bill under Clause 36(2) seeks to include the members of the Audit Commission (except ex-officio) to the list of appointees requiring Senate approval.

Clause 38 proposes to include the removal of any member of the Audit Commission on the list of processes requiring Senate approval. With the constitutional mandate of carrying out representation, oversight and law making, adding these appointee approvals to the tasks of the Senate could be daunting and over stretching.

This Bill specifies dates and stipulated time frame for submission of reports and audit period unlike the 1958 Ordinance. This Bill is long over due as the deliberation has been on since the 7th Assembly and so passage by the Senate is highly recommended.



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About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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