

Audit (Amendment) Bill

Bill No. 33/2017.

Read the first time on 11 September 2017.

A BILL

intituled

An Act to amend the Audit Act (Chapter 17 of the 1999 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Audit (Amendment) Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 **New section 4A**

2. The Audit Act is amended by inserting, immediately after section 4, the following section:

“Follow-the-dollar audits

10 **4A.**—(1) Subject to subsections (2) and (3), the Auditor-General may audit and report on an individual or a person in relation to —

(a) the giving by any public authority, the Supreme Court, any subordinate court or Parliament of —

15 (i) a grant, a subsidy, an advance of money or a loan, a guarantee for the performance of an obligation or an indemnity; or

(ii) financial assistance as a result of the taking of an interest in any property or person;

20 (b) a supply of any goods or services (or both) under an agreement to which any public authority, the Supreme Court, any subordinate court or Parliament is party, or under a relevant subcontract relating to the public authority, Supreme Court, subordinate court or Parliament; or

25 (c) the collection or disbursement of money for or on behalf of any public authority, the Supreme Court, any subordinate court or Parliament.

(2) An audit under this section must be limited to whether the terms and conditions applicable in respect of any of the following have been complied with:

30 (a) the receipt by an individual or person of a grant, a subsidy, an advance of money or a loan, a guarantee,

an indemnity or financial assistance mentioned in subsection (1)(a);

(b) a supply by an individual or person of goods or services (or both) mentioned in subsection (1)(b);

(c) the collection or disbursement of money mentioned in subsection (1)(c) by an individual or person. 5

(3) An audit under this section may be undertaken by the Auditor-General only if the Minister, where satisfied that it is in the public interest that an audit under this section ought to be undertaken, directs the Auditor-General to undertake the audit. 10

(4) For the purpose of subsection (1)(b), a contract is a relevant subcontract in relation to a public authority, the Supreme Court, any subordinate court or Parliament if the performance of the contract fulfils, or contributes to the fulfilment of, an obligation to supply any goods or services (or both) to the public authority, Supreme Court, subordinate court or Parliament (as the case may be) in another contract.”. 15

Amendment of section 5

3. The Audit Act is amended by renumbering section 5 as subsection (1) of that section, and by inserting immediately thereafter the following subsection: 20

“(2) Without affecting subsection (1), in an audit under section 4A of an individual or a person, the Auditor-General must in his audit make such examination as he considers necessary to ascertain whether all reasonable steps have been taken to ensure that the terms and conditions applicable in respect of any of the following have been complied with: 25

(a) the receipt by the individual or person of a grant, a subsidy, an advance of money or a loan, a guarantee, an indemnity or financial assistance, as mentioned in section 4A(1)(a); 30

(b) a supply by the individual or person of any goods or services (or both) under an agreement or a relevant subcontract mentioned in section 4A(1)(b);

(c) a collection or disbursement of money mentioned in section 4A(1)(c) by the individual or person.”.

Amendment of section 6

4. Section 6 of the Audit Act is amended —

5 (a) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

 “(b) may enter and remain on, and search for and copy or take extracts from any book, document or record in, any premises —

10 (i) occupied by any public authority, the Supreme Court, any subordinate court or Parliament;

 (ii) occupied by any individual or person subject to an audit under section 4A; or

15

 (iii) occupied by the other person in subsection (1B)(b) with whom an individual or a person or body mentioned in sub-paragraph (i) or (ii) has an arrangement to have possession or custody of any record, information or document belonging to that individual, person or body, as the case may be;”;

20

25 (b) by inserting, immediately after paragraph (c) of subsection (1), the following paragraph:

 “(ca) may seize any equipment, record, information, document or other thing in any premises mentioned in paragraph (b) if —

30

 (i) a notice under subsection (1A)(a) has been given in respect of the record, information or document and the

period mentioned in that notice has expired; or

(ii) the Auditor-General considers it necessary to do so for the purpose of obtaining evidence of the contravention of any written law;”;

5

(c) by inserting, immediately after subsection (1), the following subsections:

“(1A) The power under subsection (1)(a) to call upon any person for any explanation and information includes the power —

10

(a) to require a person by written notice to produce, within a reasonable time, specified records, information or documents, or records, information or documents of a specified kind, which are within the custody or under the control of that person;

15

(b) to require that person to provide an explanation of the record, information or document mentioned in paragraph (a);

20

(c) if the record, information or document is not provided, to require that person to state, to the best of the person’s knowledge and belief, where it is; and

(d) if the information is recorded otherwise than in legible form, to require the information to be made available to the Auditor-General in legible form.

25

(1B) For the purposes of subsection (1A), a person or body is taken to have “control” of any record, information or document if —

30

(a) the person has possession of the record, information or document; or

(b) the person has the record, information or document in the possession or custody of some other person.

5

(1C) Without prejudice to the generality of subsection (1)(b), the Auditor-General may, while in any premises mentioned in that provision —

(a) inspect, examine, photograph or film anything in the premises mentioned in subsection (1)(b);

10

(b) take into the premises any individual, equipment or material that the Auditor-General reasonably requires to discharge his duties; and

15

(c) require any person in those premises to give to the Auditor-General reasonable assistance in relation to the exercise of any of his powers under this section.

(1D) The Auditor-General is entitled, without payment, to —

20

(a) enter and remain on any premises mentioned in subsection (1)(b); and

25

(b) search for any record, information or document, and keep any record, information or document, or any copy or extract of it, furnished to the Auditor-General under subsection (1) or (1A) or obtained under subsection (1)(ca).”; and

30

(d) by deleting subsection (3) and substituting the following subsection:

“(3) Any person who is required by the Auditor-General, or a person or public officer authorised under subsection (2), to provide any explanation or information, produce any record, information or document or answer any question must provide the explanation or information, produce the record, information or document or answer the question, as the case may be.”.

5

New section 6A

5. The Audit Act is amended by inserting, immediately after section 6, the following section:

10

“Self-incrimination

6A.—(1) An individual cannot rely on —

- (a) the common law privilege against self-incrimination or exposure to the imposition of a penalty; or
- (b) any rule of law relating to legal professional privilege or any other privilege, or the public interest,

15

to refuse to provide the explanation or information, produce the record or document or answer the question, required under section 6 by the Auditor-General or an authorised person or public officer, as the case may be.

20

(2) However —

- (a) any information, document or thing obtained, directly or indirectly, because of the giving of the explanation or information; or
- (b) the fact of the production of the record or document or the answer to a question,

25

is not admissible in evidence against the individual in any civil or criminal proceeding other than a proceeding for an offence under section 177 of the Penal Code (Cap. 224) or an offence relating to the falsity of the answer, if the explanation, information or answer, or the fact of the production of the record or document, might in fact tend to incriminate the individual.

30

(3) Disclosure or production of, or access to, information or a record or document under section 6 does not otherwise affect the operation of a rule of law relating to legal professional privilege or other privilege or the public interest in relation to the disclosure of the information or the production of the record or document.”.

Amendment of section 7

6. Section 7(2) of the Audit Act is amended by inserting, immediately after the words “guilty of an offence”, the words “, or liable to a financial penalty,”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Audit Act (Cap. 17) to empower the Auditor-General to undertake what is commonly called “follow-the-dollar audits”, and to enhance the powers exercisable for the purposes of any audit under the Act.

Clause 1 relates to the short title and commencement.

Clause 2 introduces a new section 4A to enable the Auditor-General to undertake audits of private sector individuals or persons who receive funding from the Government or other Singapore public sector agencies in circumstances where there is a corresponding or reciprocal responsibility to deliver specified outcomes in accordance with agreed arrangements, or what is commonly called “follow-the-dollar audits”.

Under the new section 4A, the Auditor-General may audit and report on an individual or a person in relation to the giving by any public authority, the Supreme Court, any subordinate court or Parliament of —

- (a) a grant, a subsidy, an advance of money or a loan, a guarantee for the performance of an obligation or an indemnity; or
- (b) financial assistance as a result of the taking of an interest in any property or person.

In addition, the Auditor-General may audit and report on an individual or a person in relation to a supply of any goods or services (or both) under an agreement to which any public authority, the Supreme Court, any subordinate court or Parliament is party or under a relevant subcontract relating thereto, or the collection

or disbursement of money for or on behalf of any public authority, the Supreme Court, any subordinate court or Parliament.

Examples of the individuals or persons who may be subject to a “follow-the-dollar audit” are restructured hospitals, autonomous universities, voluntary welfare organisations to whom public moneys in the form of grants or subsidies are given, and contractors which are an integral element of Singapore public sector service delivery, or with whom a public authority has an agreement to buy goods or services from.

To limit the regulatory burden for businesses contracting with Singapore public sector agencies and in order not to discourage the businesses seeking Singapore public sector business, the audit under the new section 4A may be undertaken only on the direction of the Minister and is limited in scope.

The Minister may give such a direction where he or she is satisfied that it is in the public interest that a “follow-the-dollar audit” be undertaken.

For example, the audit of external entities and contractors may be necessary in the public interest where the entity’s or contractor’s performance is significant in the context of the audit of a public authority.

A “follow-the-dollar audit” under the new section 4A is limited to whether the terms and conditions applicable in respect of the following have been complied with:

- (a) the receipt by an individual or person of a grant, a subsidy, an advance of money or a loan, a guarantee or an indemnity given by any public authority, the Supreme Court, any subordinate court or Parliament;
- (b) the receipt by an individual or person of financial assistance given by any public authority, the Supreme Court, any subordinate court or Parliament as a result of the taking of an interest in any property or person;
- (c) a supply by an individual or person of any goods or services (or both) under an agreement to which any public authority, the Supreme Court, any subordinate court or Parliament is party or under a relevant subcontract relating to the public authority, Supreme Court, subordinate court or Parliament;
- (d) the collection or disbursement of money for or on behalf of any public authority, the Supreme Court, any subordinate court or Parliament, by an individual or person.

Clause 3 amends section 5 to describe the nature of a “follow-the-dollar audit” in the new section 4A. For such an audit, the Auditor-General is required to undertake such examination as is necessary to ascertain whether all reasonable steps have been taken to ensure that the terms and conditions applicable in respect of a grant, a

subsidy, an advance of money or a loan, a guarantee or an indemnity given, the financial assistance, supply of goods or services (or both), or collection or disbursement of money mentioned in the new section 4A, have been complied with.

Clause 4 amends the powers of the Auditor-General in section 6 for the purposes of discharging his or her duties under the Act.

The new powers include entering and remaining on, and causing search to be made of, and copying of or taking of extracts from any book, document or record in, any premises occupied by any public authority, the Supreme Court, any subordinate court or Parliament, occupied by any individual or person subject to a “follow-the-dollar audit” under the new section 4A, or occupied by persons with whom the audited individual or person has an arrangement to have possession or custody of any record, information or document belonging to that individual or person, such as commercial storage providers.

The Auditor-General is further empowered to seize any equipment, record, information, document or other thing in any of those premises if a notice has been issued under the authority of the Auditor-General in respect of the record, information or document and the period mentioned in that notice has expired, or if the Auditor-General considers it necessary to do so for the purpose of obtaining evidence of the contravention of any written law.

The Auditor-General is expressly conferred power, while in those premises, to inspect, examine, photograph or film anything in those premises, and to require any person in those premises to give to the Auditor-General reasonable assistance in relation to the exercise of any of his or her powers. This may include copying a document file to a data storage device or assisting in accessing data held in or accessible from a computer in the premises. The Auditor-General is further allowed to take into the premises any individual, equipment or material that the Auditor-General reasonably requires to discharge his or her duties.

Finally, section 6 is amended to expand the duty on an individual or a person to provide any explanation or information, produce any record, information or document or answer any question where required by the Auditor-General, commensurate to the wider powers conferred. A person may be required by written notice to produce, within a reasonable time, specified records, information or documents, or records, information or documents of a specified kind, which are within the custody or under the control of that person, and if the information is recorded otherwise than in legible form, to make the information available to the Auditor-General in legible form.

A person is taken to have “control” of any record, information or document if the person has possession of the record, information or document, or the person has the record, information or document in the possession or custody of some other person. For example, a person is taken to have control of data held by the person in storage

with a commercial storage provider (which may include a storage provider who provides cloud storage facilities).

Clause 5 introduces a new section 6A that makes it clear that the privilege of self-incrimination or other privileges at common law (like legal professional privilege) cannot be invoked or form an excuse for an individual to refuse to give an explanation or information or produce a record or document to, or answer a question of, the Auditor-General or any person or public officer authorised by the Auditor-General exercising powers under section 6.

This will help ensure that the efficiency of the audit process is not diminished by the Auditor-General and the persons and public officers authorised by the Auditor-General having to engage in time-consuming negotiations about the provision of privileged documents.

The information or answer given or record or document produced cannot be used as evidence against the individual in civil or criminal proceedings other than proceedings for an offence of not providing information or giving false information.

Finally, the new section 6A also provides that information or a record or document does not cease to become the subject of legal professional privilege just because it is produced in response to a requirement by the Auditor-General to produce information under the Act.

Clause 6 amends section 7(2) to provide that a person will not be guilty of an offence and is not liable to a financial penalty by reason of anything done by the person for the purposes of section 6. For example, the disclosure of personal data by an organisation in response to the Auditor-General's requirement under section 6 in connection with a "follow-the-dollar audit" will not result in the organisation being liable to a financial penalty under the Personal Data Protection Act 2012 (Act 26 of 2012) even though the disclosure is made without the consent of the data subject.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
