

Zambia

Finance (Control and Management) Act, 1969 Chapter 347

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1969/24/eng@1996-12-31

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Finance (Control and Management) Act, 1969
 Contents

Part I – Preliminary 1

 1. Short title 1

 2. Interpretation 1

Part II – Control and management of public finance 2

 3. Functions of Minister 2

 4. Controlling officers 2

 5. Accounting officers 3

 6. Bank accounts 3

 7. Gross revenues to be paid into bank accounts 3

 8. Establishment of funds and working accounts 3

 9. Recoverable advances 4

 10. Losses of money or stores and disposal of stores 4

Part III – Surcharge of salaries and pensions and security attachments 5

 11. Surcharge 5

 12. Interim and final orders of surcharge 7

 13. Security attachment of property of officer 7

Part IV – Miscellaneous 9

 14. Secretary to the Treasury to have access to accounts 9

 15. Internal audit 9

 16. Functions of Auditor-General in respect of statutory corporations, etc. 9

 17. Unauthorised use of public moneys or public stores 10

 18. Regulations 10

Zambia

Finance (Control and Management) Act, 1969

Chapter 347

Commenced on 8 August 1969

[This is the version of this document at 31 December 1996.]

[24 of 1969; 7 of 1980; 31 of 1996]

An Act to provide for the control and management of the public finances of the Republic of Zambia and for matters connected therewith.

Part I – Preliminary

1. Short title

This Act may be cited as the Finance (Control and Management) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**accounting officer**" has the meaning ascribed to it by section five;

"**advance**" means any recoverable sum of money issued pursuant to section nine;

"**appropriate Minister**" means the Minister administering any statutory board, commission or fund established under any written law;

"**Auditor-General**" means the Auditor-General appointed pursuant to the Constitution;

[Cap. 1]

"**controlling officer**" means any officer designated as such pursuant to section four;

"**Government agency**" means any unincorporated person or body of persons to which functions exercisable on behalf of the Republic, involving the use of public moneys or stores, are delegated by or under any written law;

"**Government building**" means any building owned or occupied by the Republic and used for governmental purposes, but does not include any building used and occupied as residential quarters by officers or military personnel;

"**head of expenditure**" means a head of expenditure shown in the estimates of revenue and expenditure in respect of a financial year approved by the National Assembly pursuant to the Constitution;

[Cap. 1]

"**imprest**" means a fixed sum advance, disbursements from which are repaid at specified intervals;

"**internal auditor**" means any person designated as such pursuant to section fifteen;

"**officer**" means any public officer;

"**public accounts**" means all accounts required under law to be kept by Ministries, Departments or statutory corporations in respect of transactions involving assets or liabilities of the Republic;

"**public moneys**" includes—

- (a) all revenues and all moneys raised or received for the purposes or benefit of the Republic; and

- (b) all stamps, bonds, debentures and other securities raised or received by or on behalf of or for the benefit of the Republic;

"**public stores**" means all chattels of whatsoever nature belonging to or in the possession of or under the control of the Republic; and

"**Secretary to the Treasury**" means the Secretary to the Treasury of the Ministry responsible for finance and economic development.

[As amended by Act [No. 31 of 1996](#)]

Part II – Control and management of public finance

3. Functions of Minister

The Minister shall, subject to the provisions of the Constitution and this Act, have the management, supervision, control and direction of all matters relating to the financial affairs of the Republic which are not by law assigned to any appropriate Minister.

[Cap. 1]

4. Controlling officers

- (1) The Minister shall designate, in respect of any head of expenditure provided for in any financial year, an officer who shall be a controlling officer.
- (2) Every controlling officer shall be charged with the duty of controlling, subject to any directions by the Secretary to the Treasury, the expenditure on any service in respect of which public funds have been appropriated under that head.
- (3) Every controlling officer shall be the Chief Accounting Officer in respect of all public moneys collected, received or disbursed and in respect of all public stores received, held or disposed of by or on account of the Ministry or Department or service for which such head is provided.
- (4) Every such controlling officer shall, subject to the provisions of this or any other written law, define in writing the extent to which the functions conferred or imposed upon him may be exercised or performed on his behalf by any accounting officer under his control and shall give to every such accounting officer such directions as may be necessary to secure the proper exercise or performance of such functions by such accounting officer.
- (5) Every such controlling officer shall, if so required by the Secretary to the Treasury, to the extent that he is responsible for the control of public moneys, certify under his hand, subject to such explanation or qualification as he may think necessary, the correctness of such accounts as may be under his control, and the propriety of any charge shown therein.
- (6) Every controlling officer shall, in respect of each financial year, prepare for the examination and certification of the Auditor-General, appropriation accounts for each head of expenditure under his control, giving adequate explanations for variations between estimated expenditure and actual expenditure, if any.
- (7) Upon certification by the Auditor-General, the controlling officer shall submit forthwith the appropriation accounts referred to in subsection (6) to the Secretary to the Treasury for incorporation in the financial report required to be laid before the National Assembly under Article 124 of the Constitution.

[Cap. 1]

- (8) Every controlling officer shall, in respect of each financial year, prepare for the examination and certification of the Auditor-General, a classified statement of revenue for heads of accounts under his control, giving full details of the appropriate heads and sub-heads of revenue, the actual

revenue collected during the year in relation to the estimated revenue yield, and any excess or short-fall.

- (9) Upon certification by the Auditor-General, the controlling officer shall submit forthwith the classified statement of revenue referred to in subsection (8) to the Secretary to the Treasury for incorporation in the financial report specified in subsection (7).

[As amended by Act Nos. 7 of 1980 and 31 of 1996]

5. Accounting officers

Every officer or other person concerned with or responsible for the collection, receipt, custody, issue or payment of public or other moneys, stores, stamps, investments, securities or negotiable instruments, whether the property of the Republic or entrusted to the Republic or to any officer in his capacity either alone or jointly with any other officer or person, shall be an accounting officer who shall, subject to the provisions of this Act, perform such duties, keep such books and render such accounts as may be prescribed, or as may be directed by the Secretary to the Treasury.

[As amended by Act No. 31 of 1996]

6. Bank accounts

No person shall, in respect of public moneys, open any account with any bank without the written approval of the Secretary to the Treasury or pursuant to the provisions of section seven, and no bank shall permit an overdraft on any such account unless such overdraft has been authorised in writing by the Secretary to the Treasury.

[As amended by Act No. 31 of 1996]

7. Gross revenues to be paid into bank accounts

- (1) Subject to any express direction of the Secretary to the Treasury in respect of the operation of any fund or working account established pursuant to section eight, moneys received by any accounting officer shall be deposited at the earliest opportunity with such bank or banks as the Secretary to the Treasury may direct.
- (2) All moneys paid into a bank pursuant to subsection (1) shall be deemed to be public moneys, the property of the Republic lent by the Republic to the bank.
- (3) Moneys standing to the credit of the Republic with any bank and not immediately required for any other purpose may be invested by the Secretary to the Treasury, subject to such directions in that regard as may from time to time be given by the Minister.

[As amended by Act No. 31 of 1996]

8. Establishment of funds and working accounts

- (1) Where the Secretary to the Treasury deems it expedient so to do, he may establish funds or working accounts for the purpose of—
- (a) the purchase of stores, equipment or livestock for subsequent use or resale; or
- (b) services rendered or to be rendered by any Department to any other Department or to any individual where it is desirable to recover the cost of such services from such other Department or individual; or
- (c) the making of grants or loans for purposes specified in the estimates of expenditure, or where moneys are made available from any other source for any of the above stated purposes, and to each such fund or working account shall be credited its receipts, earnings and accruals, together with any moneys appropriated by Parliament for the purposes for which it was established and also any moneys which otherwise may be made available

therefor; and moneys may be expended therefrom on the purposes for which it was established.

- (2) The Secretary to the Treasury may give directions as to the manner in which any fund or working account established pursuant to subsection (1) may be operated.
- (3) Save where the Secretary to the Treasury otherwise directs, the receipts, earnings or accruals of any fund or working account established pursuant to this section, and any balance standing to the credit of any such fund or working account at the close of each financial year, shall be retained in the said fund or working account, as the case may be, and the said fund or working account shall not be closed.

[As amended by Act [No. 31 of 1996](#)]

9. Recoverable advances

- (1) The Secretary to the Treasury may, from time to time, authorise the issue, from the general revenues of the Republic, of sums which shall be reasonable and which may be used for the following purposes:
 - (a) to meet payments due for public services which, for reasons the Secretary to the Treasury deems sufficient, cannot presently be charged to any vote;
 - (b) to provide imprest accounts for the use of departments or individuals;
 - (c) to make payments for and on behalf and at the request of any other government or any person, the said amounts so paid to be recoverable from such other government or person;
 - (d) to make provision for any payment which has been made under any head of expenditure and which has been disallowed as a charge against the head of expenditure in the approved estimates;
 - (e) to advance public moneys to any person where such advance is in the public interest and is either—
 - (i) repayable at some future date; or
 - (ii) subsequently chargeable against any head of expenditure; or
 - (iii) in part repayable as provided by sub-paragraph (i) and in part chargeable as provided by sub-paragraph (ii); and, for such purposes, separate records (herein referred to as "advance accounts") shall be maintained:

Provided however that any such advance shall not be made in anticipation of an appropriation by the National Assembly.

- (2) Save where the Secretary to the Treasury otherwise directs, any balance outstanding and unpaid in any advance account at the close of any financial year shall not be charged to appropriated expenditure in respect of that financial year.

[As amended by Act [No. 31 of 1996](#)]

10. Losses of money or stores and disposal of stores

- (1) Where—
 - (a) any public moneys have been lost or misappropriated; or
 - (b) any public stores have been lost or misappropriated;

then, subject to the express provisions of this or any other written law, such loss may, with the approval of the Secretary to the Treasury, be charged against moneys appropriated by the National Assembly for the purpose.

- (2) The Secretary to the Treasury shall—
- (a) have power to—
- (i) write off deficiencies of public moneys and the value of deficient, condemned, unserviceable or obsolete public stores;
- (ii) abandon irrecoverable amounts of revenue, debts and overpayments, save where, by any other Act, such power is expressly conferred upon any other public officer in respect of any specified class of public revenue, debts or overpayments;
- (b) cause details of all write-offs and abandonments effected by him pursuant to paragraph (a) to be published in the annual financial report.
- (3) Where any public stores are no longer required, the Secretary to the Treasury may direct the sale thereof by public auction or public tender and payment of the proceeds of sale into the general revenues of the Republic:

Provided that the Minister, in his absolute discretion, may direct that any item of such public stores be donated to any educational or charitable institution, welfare association or co-operative society specified by him, and a record of such donations shall be included in the financial reports. If, however, any intended donation under this proviso exceeds in value ten million kwacha, the Minister shall obtain the prior approval thereof of the National Assembly.

[As amended by Act [No. 31 of 1996](#)]

Part III – Surcharge of salaries and pensions and security attachments

11. Surcharge

- (1) If through any act of wilful default or gross neglect of duty any officer—
- (a) whenever it is his duty as such officer to collect when due any moneys owing to the Government, fails to collect the same and by reason of such failure such moneys cannot be collected; or
- (b) makes, causes or permits any improper payment of public moneys, or any payment of such public moneys which is not duly vouched; or
- (c) causes or permits any loss or deficiency in respect of any public moneys under his control and for which he is bound to account; or
- (d) causes or permits any damage to or destruction or loss of any public stores; or
- (e) causes or permits any personal injury or property damage in circumstances which give rise to liability of the Republic to third persons in respect of such injury or damage; or
- (f) causes or permits damage to or loss of any Government building, or any fixtures, fittings or furniture therein;

the said officer shall be liable to the Government in such amount in respect of such failure to collect, improper payment, loss, deficiency, damage or destruction, as the case may be, as may be determined pursuant to subsection (4) and, subject to the provisions of this section, any liability so determined may be recovered at the suit of the Attorney-General in that behalf.

- (2) If the Secretary to the Treasury is of opinion that loss has been suffered by the Government because of any act of wilful default or gross neglect of duty of any officer, as referred to in subsection (1), he may assess, as attributable to such act, an amount, being not greater than the actual loss suffered, and he shall forward to the said officer a notice in writing of his said assessment of claim and of the amount thereof.

- (3) Within twenty-one days after the receipt by him from the Secretary to the Treasury of a notice of assessment of claim pursuant to subsection (2), the said officer may make representations direct to the Secretary to the Treasury, in writing, with respect to—
- (a) his liability under subsection (1); or
 - (b) the amount assessed pursuant to subsection (2) as attributable to his act of wilful default or gross neglect of duty; and the Secretary to the Treasury shall give due consideration to any representation so made by the said officer.
- (4) If—
- (a) after the expiration of twenty-one days from the date upon which notice of assessment of claim was forwarded to the said officer, pursuant to subsection (2), the Secretary to the Treasury receives no representation from such officer pursuant to subsection (3); or
 - (b) after giving due consideration to any representation made by the said officer pursuant to subsection (3), the Secretary to the Treasury is of opinion that the said officer should be held liable to the Government as stated in the notice of assessment of claim;
- the Secretary to the Treasury may determine the amount of the liability of the said officer at the amount assessed pursuant to subsection (2), or, if he deems fit, at a lesser amount, and shall make demand in writing upon the said officer for payment of the amount so determined.
- (5) If, after giving due consideration to the representations made by the said officer pursuant to subsection (3), the Secretary to the Treasury is of opinion that the said officer was not guilty of any act of wilful default or gross neglect of duty in respect of the matters grounding the assessment of claim made pursuant to subsection (2), he shall thereupon cancel the said assessment of claim and notify the said officer, in writing, of the said cancellation.
- (6) Upon receipt of the demand for payment referred to in subsection (4), the said officer may, in writing—
- (a) admit liability in the sum stated in the demand for payment, or in such lesser sum as may be agreed by the Secretary to the Treasury; and
 - (b) consent to the recovery of the said admitted or agreed sum by equal monthly instalments by way of deduction from the salary or pension of the said officer in a stated monthly sum, to be fixed by the Secretary to the Treasury, not exceeding one-fourth of the monthly salary or pension, as the case may be, of the said officer.
- (7) Where any officer has admitted liability in any admitted or agreed sum and consented to the recovery of such sum as provided by subsection (6), and his employment by the Republic is terminated, whether by resignation, dismissal, death or otherwise, before the entire sum admitted or agreed has been fully recovered, the said admission of liability shall be deemed to be, and shall have effect as a consent to judgment in favour of the Republic in the amount of any outstanding balance of the said admitted or agreed sum remaining unpaid at the date of the termination of his said employment, and such consent to judgment shall be effective in any proceedings brought in respect of the said liability against the said officer or his legal representatives, as the case may be.
- (8) If, after the expiration of ten days after receipt of the demand for payment referred to in subsection (4), the said officer has failed to admit liability pursuant to subsection (6), the Attorney-General may institute proceedings for the recovery of the amount so demanded.
- (9) Anything done in pursuance of this section shall be without prejudice to the exercise of disciplinary control over such officer by any lawful authority in respect of such act of wilful default or gross neglect of duty.

[As amended by Act [No. 31 of 1996](#)]

12. Interim and final orders of surcharge

- (1) In any action brought for the recovery from any officer of any liability to the Government under the provisions of section eleven, the court may, at any time after action brought, grant on the *ex parte* application of the Attorney-General an interim order of surcharge pursuant to subsections (2) and (3).
- (2) An application for an interim order of surcharge pursuant to subsection (1) shall be grounded upon the affidavit of the Secretary to the Treasury setting out the facts upon which the claim is founded and exhibiting copies of the notice of assessment of claim and demand for payment, issued and forwarded to the defendant pursuant to subsections (2) and (4), respectively, of section eleven. The affidavit shall further disclose the official status of the defendant, his length of service, his monthly salary, and how long he was employed in the position he held at the time when the alleged loss, incorrect payment, deficiency or damage occurred.
- (3) An interim order of surcharge made pursuant to this section shall empower the Secretary to the Treasury to cause to be deducted from the salary of the defendant a stated sum each month, not exceeding one-fourth of the monthly salary of the defendant, and, pending the final determination of the action, to apply the said deducted sums towards the liquidation of the amount claimed.
- (4) If any action, in which an interim order of surcharge was obtained pursuant to this section, is discontinued, or is dismissed by the court, the said interim order shall, upon the filing of the notice of discontinuance, or upon the judgment of dismissal becoming final, as the case may be, cease to have any force or effect, and the Secretary to the Treasury shall, within seven days thereafter, cause such sums as had been deducted from the monthly salary of the defendant on foot of the said interim order to be refunded to the said defendant in full.
- (5) Where in any action, in which an interim order of surcharge was obtained pursuant to this section, judgment is decreed in the amount claimed, or in any lesser amount, and costs, the court may, on the application of the Attorney-General, make an order of surcharge in respect of the balance due on the said judgment after deducting therefrom all sums theretofore deducted from the monthly salary of the defendant pursuant to the said interim order, and any order of surcharge made pursuant to this subsection shall be in such terms as the court may deem meet and shall empower the Secretary to the Treasury to deduct from the salary of the judgment debtor a stated sum each month, not exceeding one-fourth of the monthly salary of the judgment debtor, until all sums outstanding on foot of the said judgment and costs have been paid in full.
- (6) If in any such action judgment is decreed in an amount which together with any costs allowed is less than the total sum deducted pursuant to an interim order of surcharge made under this section, the Secretary to the Treasury shall, within seven days after such judgment becomes final, cause to be refunded to the judgment debtor any sum deducted in excess of the amount of the said judgment and costs.
- (7) Where a final surcharge order made pursuant to this section is in force in respect of any officer, and the employment of the said officer by the Republic is terminated, whether by resignation, dismissal, death or otherwise, the Secretary to the Treasury may, against any moneys payable to the said officer by the Government, set-off any balance remaining unpaid on foot of the judgment in respect of which the said surcharge order was made.
- (8) Any judgment decreed pursuant to this section shall be without prejudice to the exercise of disciplinary control over such officer by any lawful authority in respect of the act of wilful default or gross neglect of duty giving rise to the action in which such judgment was decreed.

[As amended by Act [No. 31 of 1996](#)]

13. Security attachment of property of officer

- (1) Where any officer wrongfully steals or converts to his own use any public moneys or any public stores and an action is brought against him at the suit of the Attorney-General for the recovery of

such moneys or stores or for damages for their loss, the Attorney-General may apply *ex parte* to the court, either at the time of the institution of the action, or at any time thereafter until final judgment, for an order directing that any property belonging to the defendant shall be attached until the further order of the court, and such order of attachment shall be executed according to its tenor.

- (2) Where the property sought to be attached pursuant to subsection (1) is—
- (a) land, or any interest in land, the application shall contain a description of the land sufficient to identify the same for the purposes of registration of the order directing the attachment in the Lands Registry pursuant to subsection (4), together with a statement of the interest of the defendant therein required to be attached;
 - (b) movable personal property, the application shall contain a description of the property required to be attached, the estimated value thereof so far as can reasonably be ascertained, and the place where the said property may be found;
 - (c) a bank or building society account, the application shall contain the name of the bank or building society and the address of the office or branch thereof at which the said account is believed to be kept and, if the said account is not in the name of the defendant, the name in which it is kept and a statement of any reason why such account is believed to be the property of the defendant;
 - (d) a Post Office Savings Account, the application shall contain the name under which such account is kept, and if the said account is not in the name of the defendant, the name in which it is kept and a statement of any reason why such account is believed to be the property of the defendant;
 - (e) a debt owing to the defendant, the application shall contain the name and address of the debtor;
 - (f) shares in a company, the application shall contain the name of the company and the address of its registered office in Zambia.
- (3) In any order directing the attachment of property pursuant to subsection (1), the court may direct the attachment of the whole of the property specified pursuant to subsection (2) or such portion thereof as the court deems sufficient to satisfy any judgment which may be decreed in the action.
- (4) Where the property directed to be attached pursuant to this section is land or an interest in land, such attachment shall be effected by lodging a certified copy of the order directing the attachment in the Registry of Lands and Deeds, for entry in the register, and any such attachment so effected shall be in the nature of a caveat by the Attorney-General in respect of the lands attached, and the provisions of Part VI of the Lands and Deeds Registry Act shall apply, *mutatis mutandis*, to any such attachment.

[Cap. 185]

- (5) Where the action brought is one for the return of specific goods claimed to be public stores unlawfully detained by an officer, the order made pursuant to subsection (1) may provide that the said goods, upon being attached pursuant to the court order, be delivered to the Government to be retained by the Government until the further order of the court:

Provided that no such delivery shall be ordered pursuant to this subsection unless the Attorney-General gives an undertaking on behalf of the Government that the said goods shall be returned to the defendant in the event of the dismissal of the said action.

- (6) Any attachments made pursuant to this section shall not affect the rights in the attached property of persons who are not parties to the action, and in the event of any claim being preferred to the said attached property, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a judgment of the court.

- (7) In all cases of attachment pursuant to this section, the court shall, at any time, remove the same upon the defendant furnishing sufficient security to satisfy any judgment which may be decreed against him in the action together with security for the costs of the attachment.
- (8) Where in any action in which property is attached pursuant to subsection (1) final judgment is decreed—
 - (a) in favour of the defendant, the court shall remove the attachment, and order, where necessary, the restoration of the property to the defendant;
 - (b) in favour of the plaintiff, the court shall issue execution against the said attached property to the extent of the judgment and costs, and upon such execution being effected the attachment shall cease to have any further force or effect.
- (9) The Attorney-General may at any time, in the prescribed form, consent to the removal from attachment, pursuant to this section, of the whole or any part of any property so attached, and such consent shall have effect according to its tenor.
- (10) Where the order directing attachment has been registered in respect of any lands pursuant to subsection (4), any consent to the removal of such attachment pursuant to subsection (9) in respect of such lands or any part thereof shall be registered and shall have effect as a withdrawal pro tanto of the said attachment of the said lands.
- (11) The provisions of any Act or rule of law suspending any civil remedy in respect of the subject-matter of any criminal proceedings pending the determination of such proceedings shall not apply so as to limit or suspend the obtaining of an order of attachment pursuant to this section.

Part IV – Miscellaneous

14. Secretary to the Treasury to have access to accounts

- (1) Save where otherwise expressly precluded by any written law, the Secretary to the Treasury shall have full access to all such accounts, documents, books and records of any Ministry, Government Department, Government agency or statutory corporation as is necessary for the exercise of his functions under this Act or any other written law.
- (2) In the event of any dispute arising as to whether access to any account, document, book or record is necessary for the exercise by the Secretary to the Treasury of any of his functions under this Act or any other written law, the dispute shall be referred to the Secretary to the Cabinet for adjudication and the decision of the Secretary to the Cabinet thereon shall be final.

[As amended by Act [No. 31 of 1996](#)]

15. Internal audit

The Secretary to the Treasury may designate as internal auditors officers or persons who are not members of the staff of the Auditor-General, to exercise such powers of the Secretary to the Treasury as are delegated to them by him in respect of any particular Ministry, Government Department, Government agency or statutory corporation to whose accounts, documents, books and records the said Secretary to the Treasury has access pursuant to section fourteen.

16. Functions of Auditor-General in respect of statutory corporations, etc.

- (1) Where under any written law a statutory corporation is established and no provision is made in such law for the appointment of auditors to such corporation, the Auditor-General shall be, and is hereby appointed as, auditor to such statutory corporation and as such he shall audit the accounts of such corporation at such times as he deems fit so to do, and shall, at all times, have access to all such accounts, documents, books and records of such corporation as he deems necessary for the exercise of his functions under this subsection.

- (2) The Auditor-General shall have full access to all such accounts, documents, books and records of any statutory corporation or Government agency as he deems necessary for the exercise of his functions under the Constitution or any written law.

[Cap. 1]

17. Unauthorised use of public moneys or public stores

No officer or other person shall use any public moneys or public stores for any purpose not authorised by this Act or by any other written law.

18. Regulations

The Minister may, by regulations made by statutory instrument, provide for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) the collection, receipt, custody, issue, expenditure, due accounting for, care and management of all public moneys and public stores, save where and to the extent otherwise expressly provided in that behalf by any written law;
- (b) the keeping of records, the examination, inspection and checking of all receipts and payments and the keeping of all necessary books and accounts;
- (c) the forms of accounts, books, records and other documents required pursuant to this Act;
- (d) the purchase, safe custody, issue, sale or other disposal or writing-off of public stores and the proper accounting for, and stock-taking of, such public stores;
- (e) the preparation and form of estimates of the revenues and expenditure of the Republic;
- (f) the authorisation of rates of payment of public funds for specific purposes, where such rates of payment are not provided by this or any other written law;
- (g) the making of advances to public officers and other persons and the rates and limits of such advances and the rates of interest thereon;
- (h) the refund to persons of moneys or property retained from them in error;
- (i) the appointment of persons other than officers as financial or purchasing agents of the Republic.