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## LAW No. 9/2011

### Organic Law of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court

#### Introduction

Good governance is one of the priorities of the Democratic Republic of Timor-Leste, and the financial management of the country should be governed by principles of rigour, transparency and accountability given that it is an instrument that will lead to the enhancement of democracy.

In order to achieve such an objective it is necessary to ensure that the transparency of public administration, the capacity to document the accounts of its different services, the institution of a rigorous culture in the management of public financial resources in order to progressively improve the confidence and the access of people, economic agents, national and international, private and public institutions, and of civil society in Timorese public services.

The Supreme Audit Institutions are the organisations which promote the transparency of public accounts and are also responsible for ensuring accountability. Therefore, it budget is within this context and following the Strategic Plan for the Justice Sector 2011-2030, that is included the approval of the present diploma which establishes the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court.

Under the terms of the Constitution, the Administrative, Fiscal, Auditors High Court is the sole body responsible for the supervision of the legality of the public expenses and the examination of the State accounts. The Fundamental Law also determines that, within the scope of the economic and financial organisation, *the implementation of the Budget is supervised by the Administrative, Fiscal, Auditors High Court and the National Parliament.*

The transitional regime are set out in compliance with the provisions of article 164, no. 1 of the Constitution under the terms of which the Supreme Court of Justice, after it becomes

operational and until the courts referred to in article 129 are created, shall be responsible for performing its corresponding duties, and no. 2 of that article also sets out that, until the installation and onset of duties of the Supreme Court of Justice, all the powers assigned by the Constitution to this Court shall be exercised by the Maximum Judicial Body of the judicial organisation existing in Timor-Leste, i.e., the Court of Appeal.

It is within this constitutional framework that the Court of Appeal shall accommodate the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court given that this High Court is still to be established.

In turn, the Budget and Financial Management Law, Law no. 13/2009 of 21 October in covering accountability for budgetary and financial implementation, expressly attributes to the Administrative, Fiscal, Auditors High Court financial responsibilities, pursuant to the applicable legislation, which typify criminal and financial offences and their corresponding sanctions, as well as regulate procedural aspects concerning the issuing, by that Court, of Opinions on the legality of public expenditure to which the aforementioned article 129 of the Constitution refers.

Within this framework, it has become indispensable to proceed to the establishment of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court, and legally define its scope of intervention and its duties and powers, and regulate financial accountability by simultaneously

introducing the necessary alterations to the aforementioned Law no. 13/2009 of 21<sup>st</sup> October in order to render both regimes compatible.

The forms of control to be used and set out in the present diploma shall be the prior surveillance of expenses or any acquisition of assets of over 500,000.00\$, concurrent monitoring, i.e., the control of procedures which are still underway, and successive monitoring to be carried out on accounts of previous financial years.

As far as financial accountability is concerned, penalties shall be those basically established for situations of violation of rules on the preparation and implementation of budgets and the return of funds, being the most serious and applicable in cases of importance, such as the misappropriation or the embezzling of public moneys or funds and also of undue payments.

*Therefore, the National Parliament, under the terms of no. 1 of Article 95 and Sub-paragraphs f) and g) of article 96 of the Constitution of the Republic, hereby decrees that the following be law:*

## **CHAPTER I**

### **OBJECT, JURISDICTION AND POWERS**

#### **Article One**

##### **Object**

The present laws shall establish the powers, the organisation and functioning of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court and the status of the corresponding judges.

## **Article Two**

### **Jurisdiction and Powers**

1. The Administrative, Fiscal, Auditors High Court shall, through its Chamber of Auditors, exercise its powers of public financial control, with jurisdiction and powers of financial control within the scope of the legal system of the Democratic Republic of Timor-Leste, both on the national territory in relation to services and abroad in relation to State bodies or representations.

2. The Administrative, Fiscal, Auditors High Court, through its Chamber of Auditors, supervises the legality of the revenues and public expenditure, examines the financial management and summons those responsible for financial offences.

## **Article Three**

### **Scope of Competence**

1. The following entities shall be subject to the jurisdiction and financial control of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court:

- a) The State and its services, whether autonomous or not;
- b) Public institutes;
- c) Municipalities and their associations;

d) Autonomous services and funds and special funds established in the Budget and Financial Management Law.

2. The following entities shall also be subject to the jurisdiction and financial control of the Chamber of Auditors:

a) Public associations, associations of public authorities or associations of public and private authorities which are mostly funded by public bodies or subject to its management control;

b) Public companies;

c) Companies incorporated under the terms of the commercial law by the State, by other public bodies or by both as an association;

d) Companies incorporated in compliance with commercial law in which national and foreign, private and public capital are associated, as long as the public part directly or indirectly holds most of the share capital or the control of its management;

e) Concessionary companies managing public companies, public stock corporations or semi-public companies controlled by public authorities, concessionary companies or those which manage public services and concessionary companies of public works.

3. For the purposes of the present law, management control shall mean, when the public part directly controls the corresponding management, particularly when it can appoint a member of the board of directors, or the majority of the members of the supervisory board, or when it has preferred shares.

4. The following shall also be subject to the jurisdiction and financial control of the Chamber of Auditors:

a) Foundations established under private law which annually and regularly receive funds from the State Budget or from other public authorities, with regard to the use of those funds;

b) Entities of any nature which have public capital participation or in any way beneficiaries of moneys or other public values shall have such moneys and public values supervised as is necessary in terms of their legality, regularity and economic and financial correctness;

c) Accounts of Political Parties.

#### **Article Four**

##### **Head Office**

The head office of the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court shall be located in Dili.

## **CHAPTER II**

### **LEGAL STATUS FUNDAMENTAL PRINCIPLES**

#### **Article Five**

##### **Independence**

1. The Chamber of Auditors shall exercise its powers in an independent manner.

2. The guarantees of independence to which paragraph 1 above refers shall be the self-governance, irremovability and

irresponsibility of its judges and their exclusive subjection to this law.

3. Only in cases especially established in legislation can judges be subject to civil, criminal or disciplinary liability, for reasons related to their duties.

4. With the exception of cases where the facts constitute a crime, responsibility for judicial decisions always lies with the State, the State having the right of recourse against such judge.

#### **Article Six**

##### **Decisions**

1. The judges of the Chamber of Auditors shall decide in accordance with the Constitution and the Law and they shall not be subject to orders or instructions from any other sovereign body.

2. The decisions taken by the Chamber of Auditors concerning matters subject to their jurisdiction and area of competence shall be mandatory for all public and private authorities and shall prevail over those of any other authority.

3. The enforcement of sentences shall comply with the common procedures.

#### **Article Seven**

##### **Publishing of Documents**

1. The following shall be published in the Official Journal:

a) The report and opinion on the General Account of the State;

b) Judgements which establish jurisprudence;

c) The yearly report of activities of the Chamber of Auditors;

d) The instructions and rules and regulations of the Chambers of Auditors;

e) The lists of entities dispensed from providing accounts or subject to documenting the accounts under the simplified arrangements, indicating the corresponding values;

f) The reports and decisions that the Chamber of Auditors understands should be published, upon notification to the interested parties.

2. The Chamber of Auditors may also decide to publish its reports by way of any of the media, upon notification to the interested parties.

### **Article Eight**

#### **Assistance**

1. In the performance of its duties, the chamber of Auditors shall be entitled to be assisted by all and any private and public entities, under the same terms as the judicial courts.

2. All public entities and agents shall provide the Chamber of Auditors with information on offences which it shall examine and which it shall be informed of during the performance of its duties.

### **Article Nine**

#### **Principles and Forms of Cooperation**

1. All public entities and agents shall provide the Chamber of Auditors with information on offences which it shall examine and which it shall be informed of during the performance of its duties.

2. Without prejudice to the independence of the performance of its duties, the Chamber of Auditors shall cooperate with its counterpart institutions in the defence of the financial legality and the democratic Rule of Law, for this purpose any joint actions which may be considered necessary may be undertaken.

3. The Chamber of Auditors shall also cooperate, in terms of information, in training actions and other forms which prove to be appropriate, with other sovereign bodies, public services and authorities, entities interested in the management and application of public moneys, assets and values, social communication and also interested civic organisations, in particular those which promote the defence of rights and interests of taxpayers, by endeavouring, normally through its Support Services, to disseminate the information necessary to avoid and repress squandering, illegality, fraud and corruption in relation to both national and international public moneys and values.

4. The Chamber of Auditors may also be requested by National Parliament to provide it with information, reports or opinions, regarding its respective financial auditing duties, notably by way of the presence of the President or by way of the technical cooperation of the personnel of the Support Services.

### **Article Ten**

#### **Cooperation with the Internal Auditing Bodies**

1. The internal auditing bodies and services of the entities referred to in

article 3 shall also be subject to a special duty to cooperate with the Chamber of Auditors.

2. The duty to cooperate with the Chamber of Auditors referred to in the paragraph above encompasses:

a) Notification to the Chamber of Auditors of their annual and multi-annual programmes of activities and corresponding activity reports;

b) The submission of the reports of its actions, whenever they contain matters of interest for the work of the Chamber of Auditors, such as in situations resulting in possible financial offences with indications founded on facts, period of time, full identification of those responsible, rules broken, amounts involved, the right to institutional and individual adversary system;

c) The undertaking of actions, including the monitoring of budgetary implementation and management of entities subject to their financial auditing powers, at the request of the Chamber of Auditors, taking into account the criteria and objectives set by it.

### **Article Eleven**

#### **Adversary System**

1. In the cases subject to its appraisal, the Chamber of Auditors hears the individuals responsible from the services, bodies and other interested entities under its jurisdiction and subject to its financial control.

2. These individuals are given the right to be heard on the facts imputed to

them, the respective qualification, the legal regime and the amounts to be returned or to be paid, and for this purpose having access to the information available in their respective entities or bodies.

3. The hearing takes place before the Chamber of Auditors makes a declaration, censures or condemns.

4. The allegations, responses or observations of those individuals are mentioned and summarised or transcribed in the documents in which they are commented on or in the proceedings or sanction documents, and should be attached hereto, with the aforementioned comments, and may also be attached to other documents, when the Chamber of Auditors considers this useful.

5. Those individuals may instruct a lawyer.

## **CHAPTER III**

### **JURISDICTION**

#### **Article Twelve**

##### **Material Jurisdiction**

1. The Chamber of Auditors shall be especially responsible for:

a) drawing up opinions on the General Accounts of the State;

b) previously supervising the legality and the budgetary approach of the documents and contracts of any nature which generate expenditure or represent

any direct or indirect costs and responsibilities for the entities referred to in no. 1 of article 3 and those of entities of any nature created by the State or by any other public authority for the performance of administrative duties directly and indirectly supported by the corresponding budgets;

c) verifying the accounts of the bodies, services or entities subject under their responsibility;

d) examining the financial accountability of those who generate and use public moneys, regardless of the nature of the entity they belong to, under the terms of the present law;

e) appraising the legality, as well as the economy, efficacy and efficiency, according to technical criteria, of the financial management of entities referred to in article 3, including the organisation, operation and reliability of the internal auditing systems;

f) auditing, at its own initiative or at the request of the National Parliament or the Government, entities under its jurisdiction and competence;

g) supervising, at the national level, the collection of its own resources and the application of financial resources coming from abroad, in accordance with the applicable law, in this area acting in cooperation with the competent supervisory bodies;

h) fulfilling the other duties assigned to it by law.

2. Every year National Parliament may decide to audit a specific entity giving the reasons for its respective choice.

3. The Chamber of Auditors shall also be responsible for approving in plenary session opinions drawn up at the request of National Parliament or the Government on draft legislation with financial relevance.

4. The accounts referred to in subparagraph a) of paragraph 1 shall be approved by National Parliament which shall forward the corresponding opinions issued by the Chamber of Auditors on possible financial accountability to the Public Prosecutor's Office.

### **Article Thirteen**

#### **Complementary Material Jurisdiction**

The Chamber of Auditors shall also be responsible for:

a) approving the internal rules of procedure required for its functioning;

b) issuing the instructions indispensable for the exercise of its powers, notably as regards the way the accounts and processes shall be submitted to its examination;

c) drawing up and approving the annual and triennial activity plans;

d) drawing up and publishing its annual activity report;

e) proposing legislative and administrative measures which it considers necessary for the exercise of its powers;

f) paying those responsible amounts of no higher than the national minimum

wage, when these differences result from involuntary errors.

## **CHAPTER IV ORGANISATION**

### **SECTION I ORGANISATION**

#### **Article Fourteen**

##### **Composition**

1. The Chamber of Auditors shall consist of the President of the Administrative, Fiscal, Auditor High Court who shall chair it and by at least another two judges.
2. The Chamber of Auditors shall be provided with Support Services which are indispensable for the performance of its duties.

### **SECTION II PRESIDENT AND JUDGES OF THE CHAMBER OF AUDITORS**

#### **Article Fifteen**

##### **Appointment of Judges**

1. The President of the Administrative, Fiscal, Auditor High Court shall be elected for a term of office of four years from among and by the respective judges and appointed by the President of the Republic.
2. The Judges of the Chamber of Auditors shall be appointed by the

President of the Administrative, Fiscal, Auditor High Court.

3. The time of service in the Chamber of Auditors shall be considered, for all due effects and purposes, as carried out in the place of origin.

#### **Article Sixteen**

##### **Recruitment of Judges**

1. The recruitment of judges to the Chamber of Auditors is carried out through public tender, by way of a CV evaluation and interview, conducted before a jury consisting of the President of the Administrative, Fiscal, Auditor High Court, who shall preside, two judges appointed by the President, by a member of the Supreme Judicial Council and by a university professor of Economics, Finance, Organisation and Management or Auditing appointed by the Government.

2. The tender shall be valid for one year from the date of publication of the classification list.

3. The jury shall score the candidates by way of an overall appraisal of the following factors:

- a) Academic qualifications and professional experience relevant for their duties;
- b) ethical and moral profile for the performance of their duties;
- c) Technical preparation for the performance of their duties;
- d) Scientific or professional work undertaken;

e) Other relevant factors for the position.

4. The final decisions taken on the tender and the appointment of the judges may be appealed to the plenary of the Administrative, Fiscal, Auditor High Court, with subsidiary application on the appeal regime regarding the decisions of the Supreme Judicial Council, in whose decision the judges who had intervened in the contested act may not intervene.

### **Article Seventeen**

#### **Requirements**

1. Individuals may be appointed judges of the Chamber of Auditors who are over 35 years of age, in addition to having the generally established legal requirements for the appointment of public officials, such as:

a) Judicial magistrates or public prosecutors or public defender, with a score of higher than Good;

b) Doctors of Law, Economics, Finance or Organisation and Management or in other areas suitable for the performance of their duties;

c) Masters or graduates in Law, Economics, Finance or Organisation and Management or in other areas suitable for the performance of their duties, with experience in Public Administration or teaching duties in higher university education in disciplines associated with those addressed by the Chamber of Auditors;

d) Masters or Graduates in Law, Economics, Finance or Organisation and Business Management of

recognised merit with experience in positions of company administration or as member of the Board of Directors or management, fiscal councils or supervisory boards.

2. In addition to the requirements set out in paragraph 1 above, the candidate must have an ethical and moral profile suitable to the performance of the duties of a judge of the Chamber of Auditors.

### **Article Eighteen**

#### **Secondment to the Sections**

1. When the service so requires, other judges from the Administrative, Fiscal, Auditor High Court may be temporarily seconded to the Chamber of Auditors with or without release from service.

2. Secondment shall be decided on by the President of the Administrative, Fiscal, Auditor High Court, once the other judges have been heard, and may be for the full exercise of duties or not.

### **Article Nineteen**

#### **Prerogatives**

The Judges of the Chamber of Auditors shall have honours, rights, categories, treatments, remunerations and other prerogatives equal to those of the Judges of the Supreme Court of Justice, and shall be applied to them in all aspects that are not incompatible with the nature of the Chamber of Auditors, and the provisions set out in the Statutes of the Judicial Magistrates.

### **Article Twenty**

#### **Disciplinary Regime**

The disciplinary regime governing the Chamber of Auditors shall be exercised under the same terms as those established by law for judicial magistrates.

### **Article Twenty-One**

#### **Civil and Criminal Liability**

The rules and regulations that govern civil and criminal liability of judges of the Supreme Court of Justice, as well as rules regarding corresponding preventive detention, shall apply to the judges of the Chamber of Auditors, with the necessary adjustments.

### **Article Twenty-Two**

#### **Incompatibilities, Impediments and Suspicions**

1. The judges of the Chamber of Auditors shall be subject to the same compatibilities, impediments and suspicions as judicial magistrates.

2. The judges of the Chamber of the Auditors may not perform any duties in bodies belonging to parties, political associations or associations connected with them nor develop party political activities of a public nature, their political status being suspended resulting from such membership during the period of time they perform their duties as judges in the Chamber of Auditors.

## **SECTION III**

### **PUBLIC PROSECUTOR'S OFFICE**

#### **Article Twenty-Three**

### **Intervention by the Public Prosecutor's Office**

1. The Public Prosecutor's Office shall be represented at the Chamber of Auditors by the Attorney-General of the Republic who may delegate his duties to another magistrate of the Public Prosecutor's Office.

2. The Public Prosecutor's Office shall act on its own initiative in the proceedings, and should be submitted all reports and opinions approved following acts of verification, control and audit upon notification and, at its request, be submitted all the documents or files it considers necessary.

3. The Public Prosecutor's Office may take complementary measures on facts revealed in proceedings in order to determine financial accountability.

## **SECTION IV**

### **SUPPORT SERVICES TO THE CHAMBER OF AUDITORS AND SUPERVISION OF THE ACCOUNTS OF THE ADMINISTRATIVE, FISCAL, AUDITOR HIGH COURT**

#### **Article Twenty-Four**

##### **Guidelines**

The Chamber of Auditors shall be provided with technical and administrative Support Services, whose organic structure, status of staff, career structure and respective functional

content shall be contained in decree-law to be approved by the Government.

### **Article Twenty-Five**

#### **Supervision of Accounts of Administrative, Fiscal, Auditor High Court**

The Supervision of the accounts of the Administrative, Fiscal, Auditor High Court shall be subject to the provisions set out by law for all those financially responsible and shall take the following shape:

- a) integration of the respective accounts regarding the implementation of the Budget of the State in the General Accounts of the State;
- b) submission of the management of the Administrative, Fiscal, Auditor High Court to the audit of a specialised company, chosen by public tender, the report of which shall be attached to the Activity Report of the Chamber of Auditors.

### **CHAPTER V**

#### **FORMS OF FINANCIAL CONTROL OF THE CHAMBER OF AUDITORS**

### **SECTION I**

#### **SCHEDULE**

### **Article Twenty-Six**

#### **Plans**

The activity of the Chamber of Auditors shall be governed by the drafting of a

triennial strategic plan, which shall include the supervisory programmes to be carried out.

### **Article Twenty-Seven**

#### **Annual Report**

1. The activity undertaken by the Chamber of Auditors and by its Support Services shall be included in an annual report.
2. The report shall be drawn up by the President and shall be approved by the plenary and shall be submitted to the President of the Republic, the National Parliament and the Government by the 31<sup>st</sup> May of the year following that to which it refers, and shall be published in the Official Journal.

### **SECTION II**

#### **BUDGETARY SUPERVISION AND OPINION ON THE GENERAL ACCOUNTS OF THE STATE**

### **Article Twenty-Eight**

#### **Budgetary Supervision**

1. The Chamber of Auditors shall supervise the implementation of the State Budget and for this purpose may request from any public or private entity the necessary information.
2. The information thus obtained, either during the implementation of the Budget or up to the moment of publication of the General Accounts of the State, may be communicated to the National Parliament, with which the

Chamber of Auditors and its Support Services may agree on the necessary procedures for coordinating their respective constitutional powers regarding the supervision of budgetary implementation and the examination of the report on the General Accounts of the State, both during their drafting and after their publication.

3. The National Parliament may request the Chamber of Auditors to draw up interim reports on the results of the supervision of the Budget throughout the year, as well as to provide any necessary explanations regarding the examination of the State Budget and the report on the General Accounts of the State.

### **Article Twenty-Nine**

#### **Report and Opinion on the General Accounts of the State**

1. In the report and opinion on the General Accounts of the State, the Chamber of Auditors shall examine the financial activity of the State in the year to which the Accounts refer, in the area of revenues, treasury, access to public credit and property, namely in the following aspects:

a) compliance with the Budget and Financial Management Law, as well as other complementary legislation regarding applicable financial administration;

b) comparison between revenues and expenses budgeted and those actually realised;

c) inventory and the balance and State assets, as well as property adjustments;

d) the implementation of multi-annual programmes of the State Budget, with special reference to the corresponding yearly part;

e) the movement of funds by treasury operations, described by types of operations;

f) direct responsibilities of the State resulting from the acceptance of the liabilities or access to public credit, or indirect responsibilities, namely granting guarantees;

h) financial flows abroad, and the level of compliance with the commitment of such transactions.

2. In the report and opinion on the General Accounts of the State, the Chamber of Auditors shall issue a judgement on the legality and financial correctness of the operations examined, and may give its opinion on the economy, efficiency and efficacy of the management and especially on the reliability of their corresponding internal audit systems.

3. In the report and opinion on the General Accounts of the State, the Chamber of Auditors may also make recommendations for the National Parliament or the Government with a view to suppressing the shortcomings of budgetary management, treasury, public debt and property, as well as the organisation and functioning of the services.

4. The report and opinion on the General Accounts of the State shall be submitted to –national Parliament by the end of the year following that to which the Accounts refer.

## **Article Thirty-Two**

### **Incidence of Prior Surveillance**

1. Those documents which represent or implement the following acts or contracts shall be subject to the prior surveillance of the Chamber of Auditors:

a) All acts which result in an increase of public debt based on State services and funds with administrative and financial autonomy and other entities referred to in the law, as well as acts which alter the overall conditions of the loans covered;

b) Contracts of any nature when entered into by entities subject to the jurisdiction of the Chamber of Auditors which exceed the amount of 500,000.00\$ (five hundred thousand US dollars);

c) Contracts of a value of over 500,000.00\$ (five hundred thousand US dollars) which shall be entered into by public deed or whose costs, or parts of which, must be met at the time such deed is signed, and concern the entities referred to in sub-paragraph b) above.

d) Additional contracts other than the contracts covered.

2. For the purposes of sub-paragraphs b), c), and d) of paragraph 1 above, contracts shall be considered as those agreements, protocols or other instruments which result or may result in financial or economic costs.

3. The tasks involved in prior, concurrent and successive surveillance shall be carried out by the Chamber of

## **SECTION III**

### **PRIOR SURVEILLANCE**

#### **Article Thirty**

##### **Purpose of Permission and Grounds for its Refusal**

1. The purpose of prior surveillance is to ascertain whether acts, contracts, or other instruments resulting in expenses or representing direct or indirect financial accountability are in compliance with the laws in force and whether such costs have been considered in budget funds.

2. In instruments resulting in public debt, the purpose of prior surveillance is to ascertain notably whether limits or sub-limits of indebtedness and their corresponding aims have been observed, as established by National Parliament.

3. Grounds for refusal of permission are the lack of budgetary funds in the appropriate budget heading, or the non-conformity of the aforementioned acts, contracts or other instruments with the law in force.

#### **Article Thirty-One**

##### **Effects of Permission**

Acts, contracts or other instruments subject to the prior surveillance of the Chamber of Auditors, unless stated otherwise, may only have any contractual or financial effect upon permission being granted.

Auditors and its support Services in an integrated manner.

4. Prior Surveillance shall be carried out by way of a permission certificate.

5. For the purposes of paragraph 1 the Chamber of Auditors shall be forwarded the documents which represent the acts or contracts listed in such paragraph.

### **Article Thirty-Three**

#### **Prior Surveillance: Exemptions**

The following shall be exempt from the provisions set out in the preceding paragraph:

- a) Acts or documents practiced or entered into by entities referred to in no. 4 of article 3.
- b) Acts or documents practiced or entered into by entities referred to in the law, as well as acts of Government, which do not result in budget, economic or treasury costs;
- c) Definitive titles of contracts preceded by the models concerned;
- d) Lease agreements, as well as those for the supply of water, gas and electricity;
- e) Contracts entered into for the establishment of conditions for the recovery of State credits;
- f) Other acts, legal diplomas, ministerial dispatches or contracts especially established by law.

### **Article Thirty-Four**

#### **Exemption from Prior Surveillance**

In exceptional, unpostponable and duly founded situations and in the interests of the service, the acts or contracts subject to prior surveillance may take immediate effect, being reviewed within the time limit set within the scope of article sixty-two.

## **SECTION IV**

### **CONCURRENT MONITORING**

1. The Chamber of Auditors may perform concurrent monitoring:

- a) by way of auditing administrative processes regarding acts which involve staff expenses and contracts which should not be subject to prior surveillance pursuant to law, as well as the execution of the contracts covered;
- b) by way of auditing financial activity carried out before the closure by the corresponding management.

2. The audit reports drafted within the terms of the paragraphs above may be instruments of an examination procedure of the respective account or to serve as basis for an accountability process.

## **SECTION V**

### **SUCCESSIVE MONITORING**

#### **Article Thirty-Six**

#### **Successive Monitoring in General**

1. Within the scope of successive monitoring, the Chamber of Auditors

verifies the accounts of the entities established in the present law, evaluates the corresponding internal control systems, appraises the legality, economy, efficiency and efficacy of its financial management and guarantees the monitoring of the application of the financial resources coming from abroad.

2. Within the scope of the successive monitoring of the direct public debt of the State, the Chamber of Auditors verifies, namely if the limits of indebtedness and other general conditions established by National Parliament in each budget yearly have been complied with.

3. Loans and the financial operations of direct public debt management, as well as the corresponding costs resulting from capital depreciation or payment of interest, are subject to successive monitoring by the Chamber of Auditors.

### **Article Thirty-Seven**

#### **Entities which shall Present Accounts**

1. The entities referred to in paragraphs 1, 2 and 4 of article 3 shall present accounts, notably:

a) The President of the Republic;

b) The National Parliament;

c) The Courts;

d) Other Constitutional Bodies;

e) State-run services, including those located abroad, be they personalised or not, whatever their legal nature be, and whether they have administrative autonomy or administrative and financial autonomy;

f) Services which perform cash functions;

g) Establishments with treasury functions;

h) Special autonomous services and funds set out in the Budget and Financial Management Law of all public bodies and services, whatever the origin and destination of the revenues are.

2. The Chamber of Auditors may, under the terms to be defined by resolution, set an annual amount of revenue or expenditure under which the entities referred to in paragraph 1 above are subject to a simplified accounting regime or exempt from this same regime.

3. The Chamber of Auditors may on a yearly basis decide on the dispensation to present accounts by a number of the entities referred to in paragraph 1 above based on the reliability of the decision making and internal control systems as verified in previous audits or in accordance with selection criteria of actions and entities to be included in the corresponding annual schedule.

4. The dispensation to present accounts to the Chamber of Auditors under the terms of the preceding paragraphs, does not preclude their being monitored at any time which for this purpose such accounts may be required.

### **Article Thirty-Eight**

#### **Presentation of Accounts**

1. The accounts shall be presented by economic years and shall be drawn up by those responsible for the

management or, if these have ceased their duties, by those who have succeeded them, without prejudice to their duty of mutual cooperation.

2. When, within an economic year, there has been a replacement of one of the administrators or all of the administrators, the accounts shall be presented in relation to each area of management.

3. The partial substitution of managers in bodies of administration for reasons allegedly related to or discovered to be resulting from a financial offence shall result in the presentation of accounts, which shall be closed on the day on which such replacement takes place.

4. The accounts shall be submitted to the Chamber of Auditors up to 31<sup>st</sup> May of the year following that to which they refer.

5. In the cases established in paragraphs 2 and 3 above, the time limit to present the accounts shall be of 90 days from the date of such replacement or replacements.

6. The accounts shall be drawn up and documented in accordance with the law, the Chamber of Auditors being in a position to approve specific instructions for the effect.

7. The unjustified non-presentation of accounts within the time limit established in paragraphs 4 and 5 may, without prejudice to the corresponding sanction, result in an audit, with a view to ascertaining the reasons why the accounts were not presented and to the possible omission of the drafting of the aforementioned account, by proceeding

to the reconstitution and examination of the corresponding financial management in order to discover who is responsible, if possible.

### **Article Thirty-Nine**

#### **Internal Verification**

1. Those accounts which are not subject to audit under the terms of the following article may be the object of an internal verification.

2. The internal verification shall cover the analysis and confer the numerical part of the account in terms of the operations carried out, which include the debit and the credit of the management demonstrating the opening and closing balances, and should this be the case, the statement waiving the liability of the treasurers.

3. The internal verification shall be undertaken by the Support Services and shall be authorised by the Chamber of Auditors.

### **Article Forty**

#### **Audits**

1. The Chamber of Auditors may perform, at any time, at its own initiative or at the request of National Parliament or Government, audits of any kind or nature on certain acts, procedures or aspects of financial management concerning one or more entities subject to its powers of financial control.

2. The purpose of the audits are to appraise, namely:

a) whether the operations carried out are legal and regular;

b) whether the financial management is governed by principles of economy, efficiency and efficacy;

c) whether the corresponding internal control systems are reliable;

d) whether the accounts and the financial statements drawn up by the entities which present them faithfully represent their revenues and expenses, as well as their financial and economic situation;

e) whether the accounts are drawn up in accordance with the established accounting rules.

3. The audits shall be performed by using audit methods and techniques decided on, in each case, by the Chamber of Auditors?

4. The audits shall be completed by the drafting and approval of a report, which shall include, namely:

a) The entity whose account is the object of the audit and the financial period to which it refers;

b) Those responsible for the presentation of the accounts, as well as those responsible for the financial management, if they are not the same people;

c) The audit methods and techniques used and the operations selected;

d) The opinion of those responsible within the scope of the contradictory regime;

e) The judgement on the legality and regularity of operations examined and one the consistency, integrity and reliability of the accounts and corresponding financial statements, as well as on the impossibility to verify them, should this be the case

f) The accomplishment of factual or legal situations involving possible financial offences and those responsible, should this be the case;

g) The appraisal of the economy, efficiency and efficacy of the financial management, should this be the case;

h) The recommendations in order, the shortcomings to be suppressed from the corresponding financial management and from the organisation and functioning of the services.

5. The Public Prosecutor's Office shall be notified of the approved final report, without prejudice to an ex officio intervention in the reports and opinions approved following verifications, controls and audits and processes for the purposes of determining financial accountability.

### **Article Forty-One**

#### **Resorting to Auditing Companies and Technical Consultant Companies**

1. Whenever necessary, the Chamber of Auditors may resort to auditing companies or technical consultants to perform tasks indispensable for their duties, when these cannot be carried out by the Support Services or requested to Internal Control bodies, under the terms of article 10.

2. The, duly authorised, audit companies referred to in the preceding paragraph enjoy the same prerogatives as the Support Service officials of the Chamber of Auditors in the performance of their missions.

3. When the Chamber of Auditors conducts audits at the request of the National Parliament or the Government, the payment due to the above mentioned companies and consultants shall be borne by the services or entities subject to the monitoring.

4. The provisions set out in paragraph 3 above shall be applicable in the cases where the Chamber of Auditors need to enter into service provision agreements to assist in audits to be conducted by its support Services.

5. As there are a number of entities audited, the Chamber of Auditors sets, in relation to each one of them, a part of the payment of the price of the services contracted.

## **CHAPTER VI**

### **FINANCIAL ACCOUNTABILITY**

#### **SECTION I**

#### **PROCEDURAL FORMS**

##### **Article Forty-Two**

##### **Reports**

1. Whenever reports on auditing activities undertaken by the Chamber of Auditors, and reports on internal control

activities, reveal facts consisting of financial accountability, the corresponding cases shall be forwarded to the Public Prosecutor's Office.

2. The provisions set forth in paragraph 1 above shall also apply to those audits held within the scope of the preparation of the report and the opinion on the General Accounts of the State.

#### **Article Forty-Three**

##### **Procedural Forms**

1. Financial accountability takes place by way of the return of funds process of judging financial accountability or the sanctions accountability form of judgement.

2. The return of funds process of judging financial accountability gets its facts from audit activity reports drawn up by the Chamber of Auditors.

3. The sanctions accountability process aims to apply a fine for offences as set out in articles 50 and 51 and other legal provisions.

#### **SECTION II**

#### **RETURN OF FUNDS FINANCIAL ACCOUNTABILITY**

##### **Article Forty-Four**

##### **Replacement due to Misappropriation, Embezzlement and undue Payments**

1. In the cases of misappropriation, embezzlement of public moneys or values and undue payments, the

Chamber of Auditors may condemn the entity responsible to replace the amount covered by the offence, without prejudice to any other type of liability such entity may have incurred.

2. Misappropriation exists when, regardless of the action of the agent, money or other values belonging to the State or other public entities have disappeared.

3. Embezzlement of public moneys or values exists when they have disappeared by way of a voluntary action carried out by a public agent who has access to such moneys and values due to his position as a public official.

4. Undue payments are considered for the purpose of returning such amount as illegal payments which have caused damage to the public sphere, including those which correspond to a counter payment and are not appropriate or proportional to the attributes of the entity in question or to the normal uses of a given activity.

5. Whenever the violation of financial standards, including the area of public tenders, results in the obligation for the public entity to compensate, the Chamber of Auditors may condemn those responsible to replace the corresponding amounts.

6. The amounts replaced shall include the interest in arrears on the respective amounts, to which shall be applied the fiscal debt regime, as from the date of the offence, or, should this not be possible, to determine it, from the last day of the corresponding management.

#### **Article Forty-Five**

### **Replacement due to Non-Collection of Revenue**

In the cases of practice, approval or sanctioning, intentionally or with serious guilt, of acts and omissions which imply the non payment, collection or delivery of revenues with violation of the applicable legal norms, the Chamber of Auditors may oblige the entity responsible to replace the amounts not collected and which caused a loss to the State or public authorities.

#### **Article Forty-Six**

#### **Entities Responsible**

1. In the cases referred to in the preceding paragraphs, the responsibility for the replacement of the corresponding amounts falls on the agents or agents who carried out the action.

2. The responsibility established in the paragraph above falls on the members of the Government under the terms and conditions set out for civil and criminal liability.

3. Return of funds financial accountability also falls on managers, leaders or members of administrative and financial management bodies or equivalent of services, organisms or other authorities subject to the jurisdiction of the Chamber of Auditors.

4. That responsibility may also fall on officials or agents who, in their information to the members of Government or to managers, leaders or other administrators, do not clarify the affairs of their areas of competence in harmony with the law.

5. The responsibility established in the preceding paragraphs only occurs if the action or omission takes place intentionally or with guilt.

6. Those notified shall cooperate in procedural good faith with the Chamber of Auditors and shall be guaranteed, for the purposes of demonstrating the use of public moneys and other public values legally, regularly placed at their disposal and in compliance with the principles of good management, access to all information required for the exercise of the contradictory system.

### **Article Forty-Seven**

#### **Direct and Subsidiary Responsibility**

1. The responsibility assumed under the terms of the preceding articles may be direct or subsidiary.

2. Direct responsibility falls on the agent or agents of the action.

3. Return of funds financial responsibility of members of the Government, managers, leaders or members of administrative and financial management bodies or equivalent of services, organisms or other authorities subject to the jurisdiction of the Chamber of Auditors is subsidiary, if they are unrelated to the fact, when:

a) by their permission or order, the agent carried out the fact without checking the fault or impeding him from performing those duties;

b) By their indication or nomination, the person lacking in moral character, and recognised as such, has been appointed to the post and during which time practiced the act;

c) In the performance of the monitoring duties assigned to him, they were carried out negligently, notably when the recommendations of the Chamber of Auditors were not respected regarding the existence of internal control.

### **Article Forty-Eight**

#### **Joint Responsibility**

Without prejudice to the following article, if several are responsible under the terms of the preceding articles, their responsibility, both direct and subsidiary, shall be joint, and the payment of the total amount to be replaced by any of them shall extinguish the procedure initiated or precludes its initiation, without prejudice to the right of recourse.

### **Article Forty-Nine**

#### **Assessment of Guilt**

1. The Chamber of Auditors shall assess the degree of guilt in accordance with the circumstances of the case, taking into consideration the powers held in the post or the nature of the main duties of each person responsible, the amount of the values and funds involved, the material amount of the injury of the public moneys or values, the degree of respect of possible recommendations of the Chamber of Auditors and the human and material resources in the services, organism or entity subject to its jurisdiction.

2. When there is negligence, the Chamber of Auditors may reduce or increase the responsibility of the offender, in which case the decision

shall contain the reasons justifying such reduction or increase.

### **SECTION III**

#### **SANCTIONATORY FINANCIAL ACCOUNTABILITY**

##### **Article Fifty**

##### **Sanctionatory Financial Accountability**

1. The Chamber of Auditors may apply fines:

a) for the non-payment, collection or delivery to the State coffers of due revenues;

b) for the violation of rules on the drawing up and implementation of budgets, as well as the assumption, approval or payment of public expenses or commitments;

c) for not withholding or unduly withholding legally mandatory discounts from personnel;

d) for the violation of legal rules or regulations regarding budgetary, treasury and asset control and management;

e) for advances made against payments in the cases not expressly set out in the law;

f) for the use of public loans for ends different from those legally established, as well as exceeding legal limits regarding debt capacity;

g) for the undue use of funds gone into treasury operations to finance public expenses;

h) for the violation of legal or regulatory norms regarding issues concerning personnel;

i) for the repeated and unjustified lack of respect of its recommendations.

2. The value of the fines referred to in the preceding paragraph shall be fixed within the amount which shall have a minimum limit of the amount corresponding to half the net monthly salary and a maximum limit of half the net yearly income of those responsible, or, when those responsible do not receive salaries, take into account the list of salaries of the entity in which the person responsible performs his duties.

3. Should the person responsible wish to voluntarily proceed to the payment of the fine before the trial, the amount to be paid shall be the minimum amount, as long as the requirements set out in paragraph 8 of this article have been met.

4. Should the offence be committed intentionally, the minimum limit shall be equal to a third of the maximum limit.

5. Should the offence be committed out of negligence, the maximum limit of the fine shall be reduced by half.

6. The application of fines shall not affect the responsibility for replacement when it is due.

7. The Chamber of Auditors may, when those responsible did not act intentionally, convert the replacement

into payment of a lower monetary fine, within the limits of paragraphs 2 and 3.

8. The Chamber of Auditors may take into account liability for a financial offence only subject to a fine when:

a) there is sufficient evidence that the act can only be imputed to its author by way of negligence;

b) there had been no prior recommendation from the Chamber of Auditors or any internal control body to the audited service to correct the irregularity of the adopted procedure;

c) it had been the first time that the Chamber of Auditors or an internal Control body had censured its author for his practice.

### **Article Fifty-One**

#### **Other Offences**

1. The Chamber of Auditors may also apply fines:

a) for the unjustified fault in the presentation of accounts to the Chamber of Auditors, for the unjustified fault in the timely presentation or for its presentation with shortcomings such as those which render it impossible or seriously difficult to audit;

b) for the unjustified fault in the timely dispatch of the documents which is required by law;

c) for the unjustified lack of provision of information requested, presentation of documents requested or appearance in order to give statements;

d) for the unjustified lack of cooperation due to the Chamber of Auditors;

e) for the non-compliance of legal deadlines to present files to the Chamber of Auditors with regard to acts or contracts which take effect before approval;

f) for the introduction in files of information which may lead the Chamber of Auditors in error in their decisions or reports.

2. The provisions set out in paragraphs 2 to 5 of the preceding article shall apply to the fines set out in paragraph 1 of this article.

### **Article Fifty-Two**

#### **Processes whereby Fines are Applied**

1. The offences established in this Section are the object of an autonomous process for the application of fines, if they are not part of the financial accountability processes.

2. The Chamber of Auditors grades the fines by taking into account the severity of the fact and its consequences, the degree of guilt, the material amount of the public values injured or at risk, the hierarchical level of those responsible, his economic situation and the existence of a past record and the degree of respect for possible recommendations of the Chamber of Auditors.

3. The return of funds financial accountability regime shall apply to the sanctionatory accountability, with the necessary adjustments.

4. Many of the decisions which apply shall appeal to the plenary of the Chamber of Auditors.

### **Article Fifty-Three**

### **Qualified Disobedience**

1. In the cases of lack of presentation of accounts or documents, the decisions shall set a reasonable deadline for the entity responsible to proceed to their submission to the Chamber of Auditors.
2. The non-fulfilment of the order referred to in the preceding paragraph constitutes a crime of qualified disobedience, which the Public Prosecutor's Office shall be responsible for initiating the respective proceedings in the competent court.

## **SECTION IV**

### **CAUSES FOR THE TERMINATION OF RESPONSIBILITIES**

#### **Article Fifty-Four**

##### **Termination of Responsibilities**

1. The procedure for return of funds financial accountability shall terminate at end of limitation period and on payment of the amount to be replaced at any time.
2. The sanctionatory accountability procedure shall terminate:
  - a) at end of limitation period;
  - b) on the death of the person responsible;
  - c) on payment;
  - d) by withdrawing the responsibility.

#### **Article Fifty-Five**

### **Limitation Period for Proceedings**

1. The limitation period for proceedings for the return of funds financial accountability shall be of 10 years and the limitation period for sanctionatory accountability shall be of 5 years.
2. The limitation period for proceedings shall start from the date of the offence or, in the event it is not possible to determine such date, from the last day of the respective management.
3. The limitation period for proceedings shall be suspended with the arrival of the accounts in the Chamber of Auditors or with the onset of the audit and until the hearing of the person responsible, which may not exceed a period of two years.

## **CHAPTER VII**

### **HOW THE CHAMBER OF AUDITORS WORKS**

#### **SECTION I**

##### **MEETINGS AND DELIBERATIONS**

#### **Article Fifty-Six**

##### **Meetings**

The Chamber of Auditors shall work

- a) In plenary, with all its judges, in numbers of no less than three;
- b) With one single judge.

#### **Article Fifty-Seven**

##### **Sessions**

1. The Chamber of Auditors shall meet in plenary, at the summons of its president or at the summons of any of its members, whenever it is necessary to decide on affairs of their competence.
2. The regular sessions take place every working day, even during court holidays.
3. Plenary sessions shall have as their secretary the leader of the Support Services or his legal substitute, who will draw up the minutes and, at the request of the President or any other Judge, intervene in order to present clarification on matters included on the agenda.

### **Article Fifty-Eight**

#### **Deliberations**

1. Plenary shall function with the presence of all its members and deliberations shall be taken by majority vote.
2. The regular daily session shall function with one Judge
3. In order to fill the plenary quorum judges from other Sections of the Administrative, Fiscal, Auditors High Court may be summoned

## **SECTION II**

### **POWERS**

#### **Article Fifty-Nine**

##### **Powers of the President**

1. The President of the Administrative, Fiscal, Auditors High Court or another judge from the Chamber of Auditors appointed by him, shall be responsible:

a) for representing the Chamber of Auditors and to ensure their relations with other sovereign bodies, public authorities and the media, without prejudice to his power of general representation as the President of the Administrative, Fiscal, Auditors High Court;

b) for presiding over sessions, by running and orienting the works;

c) for submitting proposals to the plenary for deliberation on matters of their competence;

d) set ordinary sessions and summon extraordinary sessions, once the judges have been heard;

e) for having the working agenda of the Chamber of Auditors organised, taking into consideration the indications provided by the judges;

f) for drawing up the annual report of the Chamber of Auditors;

g) for exercising the powers to guide and generally administer the support Services of the Chamber of Auditors;

h) for distributing judges' holidays, once they have been heard;

i) for appointing, by selection, the leading personnel of the Support Services;

j) for performing the other duties established by law.

2. The President of the Administrative, Fiscal, Auditors High Court shall be substituted, in his absence or when otherwise engaged, by another judge of the Chamber of Auditors appointed by him.

### **Article Sixty**

#### **Powers of the Plenary and of the Judge**

1. The Plenary of the Chamber of Auditors shall be responsible:

- a) for approving the report and opinion on the General Accounts of the State;
- b) for approving the annual report of the Chamber of Auditors;
- c) for approving draft budgets and triennial and annual action plans;
- d) for approving internal rules of procedure and instructions of the Chamber of Auditors;
- e) for appraising any other matter which due to its importance or general interest, so justifies,
- f) for knowing the resources;
- g) for deliberating on the refusal of approval;
- h) for appraising and approving the audit and internal account verification Reports.

2. A Judge shall be responsible:

- a) for granting approval;
- b) for making judgements to which articles 67 to 72 refer and to practice other acts of the declaratory and executive procedure;

c) for performing duties not assigned to the plenary or to the section.

## **CHAPTER VIII**

### **PROCEDURE IN THE CHAMBER OF AUDITORS**

#### **SECTION I**

#### **APPLICABLE LAW**

##### **Article Sixty-One**

##### **Applicable Law**

The procedure in the Chamber of Auditors shall be governed by the provisions set out in the present law and also by the norms:

- a) in the Civil Code and Civil Procedure regarding procedures of return of funds financial accountability; and
- b) the Criminal Code and the Criminal Procedure regarding procedures of sanctionatory accountability.

#### **SECTION II**

#### **PRIOR SURVEILLANCE**

##### **Article Sixty-Two**

##### **Submission of Files to the Chamber of Auditors**

1. The cases to be submitted to the Chamber of Auditors for prior surveillance shall be initiated by the

corresponding services or bodies in compliance with the instructions published in the Official Journal.

2. The cases related to the acts and contracts and other instruments which take or do not take effect before approval shall be forwarded to the Chamber of Auditors, except when otherwise stated, within a time limit of twenty (20) days from the date of signing these documents, contracts and other instruments.

3. In the case of organisms or services provided with administrative autonomy with offices outside the capital, the time limit referred to in the preceding paragraph shall be of forty (40) days.

4. The President may, at the request of the services involved, extend the time limits involved to up to ninety (90) days, should there be reasons justifying such an extension.

5. Except when otherwise legally determined or when powers have been delegated, the leader of the service or the president of the executive body or the administration shall be responsible for sending the cases for prior surveillance and for the subsequent submission of such cases, under the terms of paragraph 3 of the following article.

### **Article Sixty-Three**

#### **Verification of Cases**

1. Preliminary verification of approval procedures undertaken by the support Services shall be undertaken within a time limit of twenty (20) days as of date of reception and in chronological order

and may be returned to the services or organisms for any preparatory inquiries.

2. The chronological order and time limit referred to in the preceding paragraph may be altered, by way of dispatch of the President of the Chamber of Auditors in duly founded urgent situations through an application submitted by such services or organisms.

3. The procedures returned under the terms of paragraph 1, whether acts, contracts and other instruments take effect or not before approval is granted, shall once again be submitted to the Chamber of Auditors within a time limit of 20 days as of date of reception.

4. Upon preliminary verification, the procedures shall be submitted to the first daily regular session.

5. The non-observance of the deadline set out in paragraph 3 above, as well as those set out in article 62, shall not be grounds for refusal of approval, but shall lead to the immediate termination of all expenses resulting from acts or contracts, under penalty of proceeding to assuming financial accountability.

6. A declaration of conformity shall be issued whenever from the analysis of the process there is no doubt as to the legality of the act or contract, namely regarding its identity already confirmed by others, regarding the factual situation and the applicable rules, all the information regarding paragraph 1 of the following article, with the exception of the corresponding sub-paragraph c) being included in the corresponding report.

## **Article Sixty-Four**

### **Doubts regarding Legality**

1. The processes in which there are doubts as to the legality of the respective acts, contracts and other legal instruments, as well as those which raise doubts of that nature, shall be submitted to the first regular daily session with a report which shall contain, among other things:

- a) a brief description of the object of the act or contract subject to approval;
- b) Permissive legal requirements;
- c) The concrete facts and legal requirements which are the basis of the doubt or obstacle to the granting of the approval;
- d) The identification of judgements or deliberations of the Chamber of Auditors in identical situations;
- e) The indication of the end of the deadline of the decision for effects of the possible tacit approval.

2. Should there be doubts on the matter of the process or grounds to refuse approval. The process shall be taken to the plenary session of the Chamber of Auditors for a decision.

## **Article Sixty-Five**

### **Tacit Approval**

1. Acts, contracts and other legal instruments submitted to the Chamber of Auditors for prior surveillance shall be considered confirmed if there has not been a decision to refuse approval within a time limit of 30 days upon the date of registration, the services or

organisms, should they want, may initiate the execution of those acts or contracts is, within 5 days after the end of such deadline, they have not been communicated of the decision of refusal of approval.

2. The decision to refuse approval, or at least its sense, shall be communicated on the same day on which it was pronounced.

3. The deadline for tacit approval shall terminate on the date of the letter requesting information or preparatory inquiries up to the date of registration in the Chamber of Auditors of the letter satisfying such request.

## **SECTION III**

### **SUCCESSIVE MONITORING**

## **Article Sixty-Six**

### **Monitoring Procedure**

1. The processes whereby the report and opinion on the General Accounts of the State and the reports of the control and audits of the accounts are drawn up are included in the rules of procedure of the Chamber of Auditors.

2. The control and audits of the accounts processes adopted by the Support Services of the Chamber of Auditors within the scope of the processes referred to in paragraph 1 are part of the audit and control procedure manuals approved by the Chamber of Auditors.

3. The contradictory principle in the accounts control and audits processes shall be undertaken in writing.

4. In the accounts control and audits processes the Chamber of Auditors may:

a) Order the appearance of those responsible to provide information or explanations;

b) To give examinations, surveys, evaluations or take other measures, by resorting to experts with specialised knowledge.

c) by the internal control bodies with regard to the reports of the accounts control processes.

2. The right of action as set out in subparagraphs b) and c) of the preceding paragraph is of a subsidiary nature, and may be exercised within a time limit of 20 days as of publication of the Dispatch from the Public Prosecutor's Office which declares that no court proceedings are required.

3. The entities referred to in the subparagraphs b) and c) of paragraph 1 above may be represented by graduates in Law with legal support functions.

#### **SECTION IV**

### **COURT PROCEEDINGS**

#### **Article Sixty-Seven**

##### **Power to Request Trial**

1. The legal proceedings, in order to assume financial accountability or to apply a fine, based on the reports of the control processes carried out by the Chamber of Auditors or an internal control body, regardless of the legal qualifications of the facts contained within the corresponding reports, may be requested:

a) by the Public Prosecutor's Office;

b) by management, superintendent or administration body's of those notified, with regard to the reports of the accounts control processes of the Chamber of Auditors;

#### **Article Sixty-Eight**

##### **Requirements for the Application**

1. The application for the trial shall include:

a) The identification of the respondent, with indication of the name, residence and place or head office, where the organism or public entity carries out its respective activity and other contact information, as well as the corresponding monthly net salary;

b) The request and description of the facts and legal reasons on which it is based;

c) Indication of the amounts that the respondent shall be condemned to replace, as well as the specific amount of the fine to be applied;

d) Having externally controlled the accounts, an opinion on the approval of the closing balance of the respective report.

2. The application may list cumulative requests, even if for different offences, with the corresponding subjective attributability.

3. The application shall be submitted with the available prove indicating the facts resulting in liability, and no more than three witnesses may be indicating for each fact.

### **Article Sixty-Nine**

#### **Aim, Deadline and Formalism of Summons**

1. As there are no reasons for preliminary rejection, the respondent shall be summoned to contest or voluntarily pay within a time limit of 20 days.

2. The summons shall be served personally, by way of delivery to the person summoned by recorded delivery registered post, or by a personal act delivered by an employee of the Chamber of Auditors, always however delivered with a copy of the application to the person summoned.

3. All the rules included in the Code of Civil Procedure shall also apply to summons and notifications.

4. The judge may, upon the request of the person summoned, grant an extension of the time limit referred to in paragraph 1 above up to the maximum limit of 20 days, whenever circumstances of the specific case so justify, for example, the complexity or the volume of the issues to be analysed.

5. The voluntary payment of the amount requested in the Public Prosecutor's Office's application within the time

limit of the contestation shall be free from costs.

### **Article Seventy**

#### **Requirements for Contestation**

1. Contestation shall be submitted in writing and drawn up in articles.

2. With the contestation the respondent shall submit all the means of proof, with the rule and the limit of three witnesses for each fact, without prejudice to being able to alter it up to 8 days before the trial.

3. Even if the respondent does not contest, he may submit proof indicating the facts aimed at such contestation, as long as this is done within the time limit set out in the paragraph 2 above.

4. The lack of contestation leads to no kind of injunction.

5. The respondent shall obligatorily be represented by counsel, and counsel shall be appointed where the person has not chosen one.

### **Article Seventy-One**

#### **Audience for Discussion and Trial**

1. The audience for discussion and trial and sentence shall subsidiarily be applied with the necessary adjustments to:

a) The process exclusively aimed at return of funds accountability, the common declaratory civil procedure regime;

b) In the exclusively sanctionatory accountability processes or together

with the return of funds processes, the common criminal procedure regime.

2. The respondent shall be notified for the audience for discussion and trial but his presence in such act is not obligatory.

### **Article Seventy-Two**

#### **Sentence**

1. In the event of a conviction to replace amounts for financial accountability, the sentence shall set a date from which the interest in arrears shall be due.

2. In the processes in which there was an external audit of the management accounts, the sentence shall approve the closing balance included in the corresponding report.

3. In the processes referred to in paragraph 2 above, and there was a conviction to replace the amounts, the approval of the closing balance and the termination of the corresponding responsibility shall only take place after its full payment.

4. The conviction to replace or fine shall establish the costs due by the respondent, under the terms of the Code of Legal Costs, to be calculated based on the value to be replaced and/or fine to be applied.

## **SECTION V**

### **CHALLENGE OF JUDGEMENTS**

#### **Article Seventy-Three**

##### **Ordinary Appeal**

The final judgements to refuse, grant and exempt approvals may be challenged by way of an appeal to the plenary of the Chamber of Auditors:

a) by the Public Prosecutor's Office, with regard to any final judgements;

b) by the author of the act or the entity which authorised the act, contract or other instrument whose approval had been refused.

#### **Article Seventy-Four**

##### **Form and Deadline for Appeal**

1. The appeal shall be made by application addressed to the President, in which shall be explained the factual and legal reasons on which it is based and conclusions shall be drawn up within a time limit of 15 days as of notification of the judgement contested.

2. The process shall be drawn among the judges of the Chamber of Auditors, the judge of the judgement contested not being permitted to take part.

3. Once distributed or documented, the process shall be submitted with conclusions to the Judge-Rapporteur for, within forty-eight hours, a preliminary admission or rejection of the appeal.

4. The appeal of the final judgements of the refusal to approve or conviction for sanctionatory accountability shall have suspensive effect.

5. The appeal of the final judgements to convict return of funds accountability shall only have suspensive effect if bail is granted at an amount to be set by the Judge-Rapporteur.

6. It is not mandatory to appoint counsel, except in the appeals of court proceedings.

### **Article Seventy-Five**

#### **Claim against Non-Admission of Appeal**

1. It is possible to claim to the plenary against the dispatch which does not admit challenge within a time limit of 10 days in which shall be explained the reasons which justify its admission.
2. The Judge-Rapporteur may withdraw such rejection from the dispatch and thus proceed with the process.
3. Should the Judge-Rapporteur maintain the preliminary rejection in the dispatch, then the claim shall move on to the plenary.

### **Article Seventy-Six**

#### **Procedure**

1. Once the appeal is admitted, it shall be notified to the Public Prosecutor's Office so that in 15 days an opinion shall be issued, unless it is the appellant.
2. Should the Applicant be the Public Prosecutor's Office, and the appeal has been admitted, it notify the entity directly affected by the decision to respond within 15 days, should it so wish.
3. If in the opinion the Public Prosecutor's Office raises new questions, the impugned shall be notified to give their opinion within a time limit of 15 days.
4. Once the opinion or the response has been submitted and the time limit for

the effect has lapsed, the documents will only leave with a seal of approval for 3 days to the other judges, if this has not been exempted.

5. At any time of the process, the Judge-Rapporteur may order that steps be taken indispensable for the judgement.

### **Seventy-Seven**

#### **Trial**

1. The Judge-Rapporteur shall submit the process to the session with a draft ruling.
2. In the prior surveillance processes the Chamber of Auditors may know relevant issues in order to grant or refuse approval, even when not addressed in the impugned judgement or in the allegations, if brought up by the Public Prosecutor's Office in the corresponding opinion.

### **Seventy-Eight**

#### **Extraordinary Appeal**

1. If, within the scope of the same legislation, two judgements are pronounced in different proceedings, in terms of granting or refusing approval and financial accountability which, in relation to the same fundamental legal question, are based on contrary solutions, an extraordinary appeal may be made of the judgement pronounced in last place, for the development of case-law.
2. In the application of the appeal both the preceding final judgement which is contrary and the contested judgement shall be individually explained, under penalty of not being admitted.

3. The extraordinary appeal shall be judged by the plenary of the Administrative, Fiscal, Auditors High Court, the Judge-Rapporteur being one of the judges of the Chamber of Auditors.

### **Article Seventy-Nine**

#### **Preliminary Issue**

1. Once the application for the appeal is distributed and documented, and the allegedly contrary final judgement process is pronounced, the conclusions shall be open to the Judge-Rapporteur to, within 5 days, pronounce admission or preliminary rejection.

2. Once the appeal has been preliminarily admitted, the Public Prosecutor's Office shall be notified in order to issue an opinion within 15 days on the opposition (*oposição de julgados*) and sense of jurisprudence to be established.

3. Should the Judge-Rapporteur decide there is no opposition (*oposição de julgados*) he shall submit a draft ruling to the plenary of the Chamber of Accounts.

4. The appeal shall be considered final when the plenary of the Chamber of Auditors deliberates that there is no opposition (*oposição de julgados*).

### **Article Eighty**

#### **Appeal Trial**

1. Having verified the existence of opposition to the judgements, the process shall go with approvals to the other judges of the Administrative, Fiscal, Auditors High Court and to its

President with a time limit of 5 days, at the end of which the Judge-Rapporteur shall submit it for trial.

2. The ruling which recognised the existence of opposition to the judgements does not prevent judgements going in the opposite direction.

3. The doctrine of the ruling which establishes jurisprudence shall be obligatory for the Chamber of Auditors until the law has been altered.

## **SECTION VI**

### **Payments of the Amounts to be Replaced, of the Fine and the Costs**

#### **Article 81**

##### **Payment and Execution**

1. The payment of the amount to be replaced, of the fine and the costs shall be done within a time limit of 10 days as of the final conviction.

2. Should the payment not be made within the time limit set out in the preceding paragraph or should the payment in instalments not be granted, such fact shall be notified to the Public Prosecutor's Office to take steps to initiate the competent execution under the terms of the common civil procedure.

#### **Article 82**

##### **Payment in Instalments**

1. Payment of the amount of the conviction may be authorised up to four quarterly instalments, each instalment

including the corresponding interest in arrears, should this be the case.

2. The lack of payment of any of the instalments shall mean that all the other instalments shall immediately fall due and the subsequent execution process shall be initiated.

3. The payment request shall be made within the time limit for payment.

## **CHAPTER IX**

### **FINAL AND TRANSITORY PROVISIONS**

#### **Article Eighty-Three**

##### **Counting of Deadlines**

1. Unless other legal provisions take precedence:

a) The deadlines set out in the present diploma shall run continuously and during court holidays;

b) The deadlines set out in the processes established in Sections IV, V and VI of Chapter VIII do not run during court holidays.

2. The end of the deadline for the practice of the act which terminates on a weekend day, public holiday, days allowed off between public holiday and weekend, shall be transferred to the first following working day.

#### **Article Eighty-Four**

##### **Installation and Functioning of Chamber of Auditors**

1. Up to the installation and functioning of the Administrative, Fiscal, Auditors High Court and the Supreme Court of Justice, the duties assigned by this law to the Chamber of Auditors shall be performed by the Court of Appeal.

2. The organic law of the courts which shall eventually be approved shall proceed to revise the present law by regulating all the material common to the organisation of the courts in general and the Administrative, Fiscal, Auditors High Court in particular.

3. The installation period from the onset of its functioning and up to the full operationalisation of the Chamber of Auditors shall be of 5 years.

4. The Chamber of Auditors shall begin operations upon publication in the Official Journal of Regulations, Resolutions, and Instructions necessary for the effective performance of its duties and powers, which shall occur within a maximum time limit of 6 months as of the date of entry into force of the present law.

#### **Article Eighty-Five**

##### **Aggregation of Judges**

Whenever it is necessary, namely to complete the quorum required for the trial and judgement proceedings of the Chamber of Auditors, a judge from another Court may be temporarily added by decision of the President of the Court of Appeal.

#### **Article Eighty-Six**

##### **Recruitment of International Judges and Technicians**

1. Whenever necessary the President of the Court of Appeal may appoint as Judge of the Chamber of Auditors non-national candidates who have the necessary requirements as set out in article 17 in the present law to be selected by way of public tender.

2. Whenever necessary the President of the Court of Appeal may appoint non-national technicians to the Chamber of Auditors services to be selected by way of public tender.

3. The judge of the tender for the selection to which the preceding paragraphs refer shall be appointed by the President of the Court of Appeal who shall also be responsible for defining the terms of the tender.

#### **Article Eighty-Seven**

#### **Alteration of Law no. 13/2009, of 21 October**

1. Articles 42, 44 and 45 of Law no 13/2009, of 21 October shall read as follows:

#### **“Article Forty-Two”**

#### **Opinion in the General Accounts of the State by the Administrative, Fiscal, Auditors High Court**

The Administrative, Fiscal, Auditors High Court or until this body has been established, the entity established in article 164 of the Constitution, shall forward to the remit of the National Parliament, under the terms of the organic law of the Chamber of Auditors of that Court, the report and opinion on the General Accounts of the State.

#### **Article Forty-Four**

#### **Quarterly Reports on Budgetary Implementation**

1. The Government shall submit to the National Parliament and the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court reports on the progress of the budget concerning the first three, six and nine months of each financial year.

2. (...)

3. (...)

#### **Article Forty-Five**

#### **Report on the General Accounts of the State**

1. The Government shall submit to the National Parliament and to the Chamber of Auditors of the Administrative, Fiscal, Auditors High Court the Report on the General Accounts of the state, within a time limit of five months as of the end of the financial year, a report containing the financial balance sheets compiled by the Treasury compatible with the international accounting standards.

2. The reports to which the preceding paragraph refers shall contain the following information:

a) An overall view of the most important real general revenues and expenses;

b) Details on the way the budgetary deficit was financed or how the budgetary surplus was invested;

c) The real revenues compared to the revenues set out in the Budget;

d) The real revenues allotted and received during the financial year;

e) The real expenses effected from budgetary allocations from allocated revenues;

f) The number of permanent or temporary Government employees paid from budgetary allocations in the financial year in euros;

g) The payment of interest on a debt incurred by the Government and the reimbursement of the debt;

h) Expenses regarding each category of budgetary allocation an corresponding budgetary heading compared to:

*i)* Budgetary allocation for that category;

*ii)* Expenses for that category in the previous financial year;

*iii)* Details of additional budgetary allocations made within the scope of a budget rectification.

i) Details of all beneficiaries of public subsidies granted in the financial year and the amount they received;

j) Details of contingency expenses;

k) Details of all adjustments and budgetary allocations made under the terms of the present law;

l) Revenues from rates and taxes;

m) Information on the execution of special funds;

n) Other information considered necessary.

3. Information on assets and liabilities contains:

a) Details on investments on public moneys made during the financial year;

b) Details on any change made under the terms of paragraph 2 of article 21 for loans for the preceding financial year;

c) Details of any loans granted by the Government during the financial year;

d) Details of any loans taken out by the Government during the financial year;

e) Details of differences between the amount of the guarantees and loans established by the Government during the financial year and the guarantees really granted and the loans really taken out;

f) Details of the difference between the amount established for the Government's contingency liabilities and the amount of the contingency liabilities which really existed;

g) The accounting of the assets at the end of the financial year, including the value of property and other assets belonging to the State;

h) The commitments taken on by the State resulting from multi-annual programmes and contracts:

g) Other information considered necessary.

### **Article Eighty-Eight**

#### **Repeal**

Article 48 of Law no. 13/2009 of 21 October shall be repealed.

## **Article Eighty-Nine**

### **Transitional Provision**

The provisions set out in articles 42 to 48 in Law no. 13/2009 of 21 October shall be applied to the General Accounts of the State.

## **Article Ninety**

### **Entry into Force**

The present law shall enter into force in the day immediately following that of its publication.

Approved on 6<sup>th</sup> July 2011

The President of National Parliament, in Office

**Vicente da Silva Guterres**

Promulgated on 12/08/2011

The President of the Republic

**José Ramos-Horta**

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