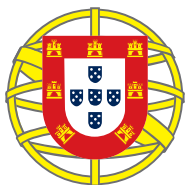


# Organization and Procedural Law



TRIBUNAL DE  
CONTAS



# Organization and Procedural Law of the Court of Auditors

Act 98/97, of 26 August (consolidated version)

## Amendments

1 <sup>st</sup> amendment:	Act 87-B/98, of 31 December
2 <sup>nd</sup> amendment:	Act 1/2001, of 4 January
3 <sup>rd</sup> amendment:	Act 55-B/2004, of 30 December
4 <sup>th</sup> amendment:	Act 48/2006, of 29 August
5 <sup>th</sup> amendment:	Act 35/2007, of 13 August
6 <sup>th</sup> amendment:	Act 3-B/2010, of 28 April
7 <sup>th</sup> amendment:	Act 61/2011, of 7 December
8 <sup>th</sup> amendment:	Act 2/2012, of 6 January
9 <sup>th</sup> amendment:	Act 20/2015, of 9 March
10 <sup>th</sup> amendment:	Act 42/2016, of 28 December
11 <sup>th</sup> amendment:	Act 2/2020, of 31 March
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ACT 98/97, of  
26 August

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ACT 98/97, of 26 August<sup>1</sup>

Organization and Procedural Law of the Court of Auditors

In accordance with the terms of articles 164, point d), 168, paragraph 1, point q), and 169, paragraph 3 of the Constitution, the Assembly of the Republic decrees the following:

**CHAPTER I**  
**Functions, jurisdiction and powers**

**Article 1**  
**Definition and jurisdiction**

1. The Court of Auditors examines the legality and regularity of public revenue and expenditure, assesses sound financial management and enforces liability for financial offences.
2. The Court of cos has jurisdiction and powers of financial control within the scope of the Portuguese legal system, whether on national territory or abroad.
3. Whenever there is a conflict of jurisdiction between the Court of Auditors and the Supreme Administrative Court, shall the Court of Appeal, presided over by the President of the Supreme Court of Justice and composed of two judges from each court, be responsible for deciding the respective conflict.

**Article 2**  
**Remit<sup>2</sup>**

1. The following entities are subject to the Court of Auditors jurisdiction and powers of financial control:
  - a) The State and its services;
  - b) The Autonomous Regions and their services;
  - c) Local authorities, their associations or federations and services, as well as metropolitan areas;
  - d) Public institutes;
  - e) Social Security Institutions.
2. **The following entities are also subject to the Court of Auditors jurisdiction and financial control powers<sup>3</sup>:**
  - a) Public associations, associations of public entities or associations of mixed public and private entities, which are mostly financed by public entities or subject to its management control;

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<sup>1</sup> With the amendments introduced by the Act 87-B/98, of 31 December, Act 1/2001, of 4 January, Act 55-B/2004, of 30 December, Act 48/2006, of 29 August, which republished it, Act 35/2007, of 13 August, Act 3-B/2010, of 28 April, Act 61/2011, of 7 December, Act 2/2012, of 6 January, Act 20/2015, of 9 March, which republished it, Act 42/2016, of 28 December, Act 2/2020, of 31 March, and Act 27-A/2020, of 24 July.

<sup>2</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*Article 2*  
*Objective and Jurisdiction*

<sup>3</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

2. *The following entities are also subject to the Court of Auditors powers of financial control:*

- b) **Public companies, including state owned companies;**<sup>4</sup>
  - c) **Regional, inter-municipal and municipal companies;**<sup>5</sup>
  - d) *Repealed;*<sup>6</sup>
  - e) *Repealed;*<sup>7</sup>
  - f) **Concessionaires companies for the management of the state-owned companies, companies with public share capital or mixed private and public companies controlled by the public sector, concessionaires or managers of public services, and the concessionaries of public works.**<sup>8</sup>
  - g) Private law foundations which annually and regularly receive funds from the State Budget or from the local authorities, as to the use of such funds.
3. **Entities of any nature are also subject to the Court of Auditors jurisdiction and financial control whenever the public sector owns part of their share capital or, in any manner, they benefit from public money or other public assets. Such control exists to the extent necessary for examination of the legality, regularity, and economic and financial accuracy of the mentioned public money and assets application.**<sup>9</sup>
4. *Repealed.*<sup>10</sup>

### Article 3 Headquarters, regional Chambers and delegations

1. The Court of Auditors has its headquarters in Lisbon.
2. Regional Cs operate in the Autonomous Regions of the Azores and Madeira, with headquarters in Ponta Delgada and Funchal respectively.
3. By law, the organization and functioning of the Court of Auditors may, as far as the continent is

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<sup>4</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*b) Public companies;*

<sup>5</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*c) Companies formed under commercial law by the State by other public entities or by both in association;*

<sup>6</sup> As repealed by Article 3 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*d) Companies formed under commercial law, whose capital is shared by the private and public sectors, from Portugal and abroad, where the public sector holds directly the majority of share capital;*

<sup>7</sup> As repealed by Article 3 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*e) Companies formed under commercial law, whose capital is shared by the private and public sectors, from Portugal and abroad, where the public sector has direct control of the respective management, namely when it can nominate the majority of the members of the boards of directors, of management or of audit, when it can nominate a director, or when it disposes of golden shares, under the terms of article 15 of Act 11/90, of 5th April;*

<sup>8</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*f) Concessionaires companies for the management of public companies, companies with public share capital or mixed private and public companies controlled by the public sector, and concessionaires or managers of public services.*

<sup>9</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*3. Entities of any nature are also subject to the Court of Auditors control whenever the public sector owns part of their share capital or, in any manner, they benefit from public money or other public assets. Such control exists to the extent necessary for examination of the legality, regularity, and economic and financial accuracy of the mentioned public money and assets application.*

<sup>10</sup> As repealed by Article 3 of the Act 48/2006, of 29 August. The original version was as follows:

*4. The financial control of the entities listed in the two previous points is subject to the terms of Act 14/96, of 20th April.*

concerned, be regionally decentralized.

4. The Court may, whenever necessary, establish the location of several of its support services in other places within national territory, constituting regional delegations for this purpose, without prejudice to the unity of the Court jurisdiction and powers as defined by law.

#### Article 4 Territorial Jurisdiction

1. The Court of Auditors, in its headquarters, accomplishes full powers of jurisdiction and financial control, deciding on questions which are not expressly attributed to the regional Chambers, and hears appeals against the respective decisions for matters of prior approval, financial liability and fines.
2. The regional Chambers carry out jurisdiction and powers of financial control in the area of the respective Autonomous Regions, namely in regard to the entities cited in article 2 with headquarters in the area, as well as to public services of the central authorities which exercise activities in the area and have been granted financial and administrative autonomy.

#### Article 5 Essential substantive powers

1. The Court of Auditors has the following special powers:
  - a) To issue opinion on the General State Account, including that of Social Security, as well as on the account of the Assembly of the Republic;
  - b) To issue opinion on the accounts of the Autonomous Regions, as well as on the accounts of the respective legislative assemblies;<sup>11</sup>
  - c) To control previously the legality and the budgetary cover for acts and contracts of any nature which generate expenses or are representative of any, direct or indirect, costs and responsibilities, for the entities cited in paragraph 1 and in points a), b) and c) of article 2, and for those of the entities of any nature created by the State or by any other public entities to carry out administrative functions originally incumbent on the Public Administration, when the correspondent costs are borne through direct or indirect funding, including the provision of guarantees, of the entity that created them;<sup>12</sup>
  - d) To verify the accounts of the bodies, services or entities which have to render accounts to the Court;
  - e) To judge the enforcement of financial responsibilities for anyone managing and profiting from public monies, irrespectively of the nature of the organization the latter belongs to in terms of the present law;<sup>13</sup>

---

<sup>11</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

1.

*b) To give opinion on the accounts of the Autonomous Regions, as well as the accounts of the respective Regional Assemblies;*

<sup>12</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

1.

*c) To control previously the legality and the budgetary provisioning for acts and contracts of any nature which generate expenses or are representative of any, direct or indirect, duties or responsibilities, for the entities cited in paragraph 1 of article 2 and for those of the entities of any nature created by the State or by any other public entities to carry out administrative functions originally incumbent on the Public Administration. These functions costs are incurred by the budget transfer of the entity that created them, whenever follows a subtraction of acts and contracts to the Court of Auditors a priori control;*

<sup>13</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

1.

*e) To judge the enforcement of financial responsibilities of the entities cited in paragraph 1 of article 2, through the judgement procedures of accounts or following audits, and also the setting of debits for the liable entities or the impossibility of verification or*

- f) To assess the legality, as well as the economy, effectiveness and efficiency, according to technical criteria, of the financial management of the entities referred to in paragraphs 1 and 2 of article 2, including the organization, functioning and reliability of the systems of internal control;
  - g) To audit of the entities cited in article 2, on its own initiative, or on the request of the Assembly of the Republic, or of the Government;
  - h) To examine, within the national remit, the collection of the own resources for the European Union and the allocation of financial resources provided by the European Union, in accordance with applicable legislation. The Court may act, in this area, in Cooperation with the appropriate European Union authorities;
  - i) To carry out any other powers bestowed by law on the Court;
2. The Court, through its standing committee, also has the powers to approve the opinions elaborated on the request of the Assembly of the Republic or the Government on legislative projects in financial matters;
3. **The accounts cited in points a) and b) of paragraph 1 are approved by the Plenary meetings of the Assembly of the Republic and of the Legislative Assemblies of the Autonomous Regions, respectively, which shall deliberate on the submission of the corresponding opinions of the Court of Auditors to the Public Prosecutor Service for the enforcement of eventual financial responsibilities, in accordance with the terms of articles 57, paragraph 1 and 58, paragraph 1.<sup>14</sup>**
4. **The control of the acts and contracts budget appropriation, practised or executed by the entities referred to in points a), b) and c) of paragraph 2 of article 2, is carried out by verifying the existence of a declaration of budgetary sufficiency and securing of the respective amounts, issued by the controlled entity <sup>15</sup>.**

## Article 6 Complementary substantive powers

In order to carry out its activities, the Court of Auditors also has the following powers:

- a) **Adopt the Court Internal Regulation<sup>16</sup>;**
- b) To issue instructions which are indispensable for the exercise of its powers, to be observed by the entities cited in article 2.
- c) To elaborate and publish the annual report of its activities;
- d) To propose legislative and administrative measures which the Court deems necessary for the exercise of its powers;
- e) To make an allowance to accountable parties for differences of amounts which do not exceed the national minimum wage, when they arise from involuntary error.

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*judgement of accounts. The Court may sentence liable entities to repay sums, and may also impose fines and other sanctions specified by law;*

<sup>14</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*3. The accounts cited in points a) and b) of paragraph 1 are approved by the Plenary meetings of the Assembly of the Republic and of the Regional Legislative Assemblies, respectively, which shall deliberate on the submission of the corresponding opinions of the Court of Auditors to the Public Prosecutor Service for the enforcement of eventual financial responsibilities, in accordance with the terms of articles 57, paragraph 1 and 58, paragraph 1, point b).*

<sup>15</sup> Paragraph added by Article 1 of the Act 61/2011, of 7 December.

<sup>16</sup> As amendment by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*a) Adopt the internal regulations necessary to the respective operation;*

## CHAPTER II Statutes and fundamental principles

### Article 7 Independence

1. The Court of Auditors is independent.
2. The independence of the Court of Auditors is guaranteed by self-government, irremovability, exemption from liability of its judges and the fact that its members are exclusively subject to the law.
3. Self-government is ensured by the terms of the present Act.
4. Only in the procedures specially foreseen by law may the judges be subject, as a result of the exercise of their functions, to civil, criminal or disciplinary liability.
5. With the exception of the procedures in which the fact constitutes a crime, liability for judicial decisions is always assumed by the State, having the State powers to bring a procedure against the judge in question.

### Article 8 Decisions

1. The judges of the Court of Auditors shall decide according to the Constitution and the law and are not subject to orders or instructions.
2. The jurisdictional decisions of the Court of Auditors are binding for all public and private entities.
3. **The execution of the condemnatory decisions, as well as the collection of emoluments and any other charges set by the Court of Auditors or by the Directorate General are included within the powers of the Tributary Courts of 1<sup>st</sup> Instance, in accordance with tax foreclosure procedure.**<sup>17</sup>

### Article 9 Publication of acts

1. **The judgements establishing jurisprudence are published in the 1<sup>st</sup> series of the Official Journal.**<sup>18</sup>
2. The following documents are published in the 2<sup>nd</sup> series of the Official Journal:
  - a) The report and opinion on the General State Account;
  - b) The reports and opinions on the accounts of the Autonomous Regions
  - c) The annual report of activities of the Court of Auditors;
  - d) The instructions and regulations of the Court of Auditors;
  - e) **The values and the list of entities mentioned in article 40, point a);**<sup>19</sup>

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<sup>17</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*3. The execution of the condemnatory sentences, as well as the collection of emoluments and any other charges set by the Court of Auditors or by the General-Direction are included in the remit of the Tributary Courts of 1<sup>st</sup> Instance, in accordance with tax foreclosure procedure.*

<sup>18</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. The judgements which fix the terms of jurisprudence are published in the 1<sup>st</sup> series-A of the Official Journal.*

<sup>19</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*2.*

- f) The reports and the decisions that the Court of Auditors believes should be published, after communication to the relevant entities.
3. The acts specified in point b), as well as those specified in points d), e) and f) of paragraph 2 in the regional Chambers are also published in the respective official journals.
4. The Court of Auditors may also decide to disseminate its reports through any media channel, after communication to the interested entities.

#### Article 10 Cooperation

1. In the performance of its functions, the Court of Auditors has the right to the cooperation of all public and private entities, by the same terms as judicial courts.
2. All the entities cited in article 2 should provide the Court with information on the breaches of law, which the Court should appreciate, and which they should recognize in the performance of their functions.

#### Article 11 Principles and forms of cooperation

1. Without prejudice to its independence in the performance of its jurisdictional duties, the Court of Auditors will cooperate with equivalent institutions, in particular with those of the European Union and its member States, in the defence of financial legality and a State based on democratic law. The Court may for this purpose develop joint initiatives where they prove necessary.
2. The Court will also cooperate, in matters of information, training initiatives and other suitable manners, with other State bodies, public entities and services, entities involved in the management and application of public monies, securities and assets, the media and other interested civic organization, particularly those which promote the defence of the rights and interests of tax-paying citizens. As a rule, the Court seeks to disseminate information via its support services in order to limit and avoid waste, illegality, fraud and corruption with regard to both national and European Union public monies and assets.
3. The auditing acts of the Court of Auditors form part of a control system, both at the national and European Union level, for whose structure and operation the bodies and departments of internal control are especially relevant, in particular the examinations and audits of the ministries and the autonomous services. The President of the Court is empowered to encourage acts which are necessary for the exchange, coordination of criteria and combining of forces between all entities charged with financial control, without prejudice to the independence of the Court and to the hierarchical and operational branch offices of the internal control services.
4. The Assembly of the Republic may request the Court of Auditors to provide it with information, reports or opinions related to the respective duties of financial control, namely with the presence of the President or of rapporteurs in committee sessions or by the technical collaboration of staff from the support services.

#### Article 12 Collaboration of the internal control bodies

1. **The internal control services, specifically the national inspectorates or any other control or auditing entity for the services and organization of Public Administration, as well as entities integrating the state-owned**

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e) *The values and the relations of entities cited respectively by article 38, paragraph 1, points a) and b) and article 40, point a);*

companies' sector, are also subject to a special obligation to collaborate with the Court of Auditors.<sup>20</sup>

2. The obligation to collaborate with the Court of Auditors, as cited in the previous point includes the following:
  - a) To communicate to the Court annual and multi-annual business plans and respective reports of activities;
  - b) To send reports of their actions following the decision of the minister or the competent body to judge them, whenever they can be of material interest for the Court action. Those reports should materialize the situations generating possible responsibilities with founded indication of the facts, the period they regard to, the full identification of the accountable parties, the violated rules, the involved amounts and the exercise of institutional and personal adversarial procedure, in accordance with the terms of article 13 of this law;<sup>21</sup>
  - c) To carry out acts, including the supervision of budgetary implementation and the management of entities subject to the Court powers of financial control, on the Court request, in consideration of the criteria and objectives set by the Court.
3. The decision mentioned in point b) of the previous paragraph may establish guidance for the internal control body which is responsible for the mentioned report as to a possible jurisdictional procedure, to be started under point c) of paragraph 1 of article 89.<sup>22</sup>
4. The President of the Court of Auditors may meet with the national-inspectors and auditors of the Public Administration in order to promote the exchange of information concerning the respective annual and multi-annual plans of activities and the harmonization of the criteria for internal and external control.<sup>23</sup>

### Article 13 Adversarial System

1. In the procedures subject to its assessment, the Court of Auditors shall hear the accountable parties and the services, bodies and any other interested entities, which are subject to its powers of jurisdiction and financial control.
2. Prior to constituting procedures to enforce the responsibilities as well as the fine procedures, it is granted to the accountable parties the right to be heard on the facts ascribed to them, the respective qualification, the legal system and the amounts to be returned or paid for. For this purpose, the mentioned accountable parties shall have access to the available information at the respective entities or bodies.<sup>24</sup>
3. Hearings will be held before the Court delivers a public judgement of simple advice, censorship or conviction.

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<sup>20</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. The internal control services, namely the general inspectorates or any other control or auditing entity for the services and organization of Public Administration, as well as entities integrating the public business sector, are also subject to a special obligation to collaborate with the Court of Auditors.*

<sup>21</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*b) To send reports of their actions, on the decision of the minister or the competent body, in accordance with the terms of article 10, whenever such reports contain material of interest for the Court action, concretising the legal and de facto situations, and including any possible financial infringements;*

<sup>22</sup> Paragraph added by Article 1 of the Act 48/2006, of 29 August.

<sup>23</sup> Former paragraph 3.

<sup>24</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*2. The accountable parties in procedures for the enforcement of responsibilities, and in procedures of fines, is ensured the right to be heard previously on the facts imputed to them, the respective qualification, the legal system to be applied and the sums to be repaid or paid.*



4. The allegations, answers or observations of the accountable parties, shall be referred to and summarized or transcribed in the documents, where they are commented on or in the acts of such individuals' judgement or sanction. In the case of reports on the General State Account, including that of Social Security, and on the accounts of the Autonomous Regions, those elements, together with the commentaries that they give rise to, should be published as an annex, and may also be published as an annex to other reports, whenever the Court judges this to be useful.
5. When, namely in procedures of internal examination, the Court limits itself to the appreciation of elements introduced in the cases by the accountable parties, and does not deliver upon them any judgment of criticism, censorship or conviction, the hearing is carried out at the moment of presentation to the Court of the case or the respective allegations.
6. The accountable parties may appoint a lawyer at law.

### CHAPTER III Structure and Organization of the Court of Auditors

#### SECTION I Structure and Organization

##### Article 14 Composition

1. The Court of Auditors is composed of the following:
  - a) In its headquarters, by the President and 16 Judges;
  - b) In each regional Chamber, by a Judge.
2. The Court has support services available in its headquarters and regional Chambers, which are indispensable for the fulfilment of its functions.

##### Article 15 Specialized Sections or Chambers

1. **The Court of Auditors comprises at its headquarters the following specialized Chambers which have the jurisdiction foreseen by this law:**
  - a) 1<sup>st</sup> Chamber
  - b) 2<sup>nd</sup> Chamber
  - c) 3<sup>rd</sup> Chamber<sup>25</sup>
2. The number of judges of the Chambers is set by a deliberation of the general plenary sitting.
3. The judges are placed in each of the Chambers by the general plenary sitting, after hearing the standing

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<sup>25</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*Article 15  
Specialised Sections*

1. *The Court of Auditors has three specialised sections in its headquarters:*
  - a) *The 1<sup>st</sup> Section, in charge of a priori control, may, in certain cases, exercise concomitant control;*
  - b) *The 2<sup>nd</sup> Section, in charge of concomitant and successive control of verification, control and auditing;*
  - c) *The 3<sup>rd</sup> Section, in charge of the judgement of enforcement procedures of responsibilities and of fines” was the original version.*

committee and the interested parties, and succeed in the cases attributed to the holder of the vacancy that they will fill.

4. The judges of the Court who come from the bench shall priority be placed in the 3<sup>rd</sup> Chamber.
5. Except in ponderous questions of a personal or functional nature, a judge may only change from Chamber after three years of permanency in the same one.
6. **In cases of vacancy, absence or impediment, the President of the Court, after consulting with the standing committee and the interested parties, may temporarily allocate, in accumulation, judges from other chambers as to allow the regular operation of the concerned chamber.**<sup>26</sup>

## SECTION II Judges of the Court of Auditors

### Article 16 Appointment and dismissal of the President

1. The President of the Court of Auditors is appointed in accordance with the terms of the Constitution.
2. When a judge of the Court itself is appointed as President, his respective place remains captive during his mandate as President.

### Article 17 Deputy President

1. The general plenary sitting of the Court will elect, from amongst its members, a Vice President, to whom the President may delegate powers and who is empowered to substitute the President in the exercise of his powers in the event of vacancy, absence or impediment.
2. The Vice President holds office for three years, and may be re-elected.
3. Election of the Vice President is made by secret ballot, where the judge who obtains over half the validly cast votes will be elected.
4. If no judge receives this number of votes, a 2<sup>nd</sup> ballot will be held, in which only the two judges with the highest number of votes will compete. In the event of a tied vote, the more senior of the two will be elected.
5. The standing committee may decide, on the proposal of the President, to reduce the terms of service to be attributed or allocated to the Vice President.

### Article 18 Recruitment of Judges

1. Judges will be recruited via a competitive examination, held before a jury presided over by the President of the Court of Auditors and also including the Vice President, the most senior judge and two university professors chosen by the Government, one trained in Law, the other in Economics, Finance, Organization and Management or Auditing.
2. The competition is valid during a year from the date of publication of the classification list.
3. Special competitions may be opened for the selection of judges for the regional Chambers.

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<sup>26</sup> Paragraph added by Article 2 of the Act 20/2015, of 9 March.

4. Judges coming from magistrature should be appointed to Regional Chambers with priority.<sup>27</sup>
5. The judges appointed to the regional Chambers who have served two years in office have right of preference to be appointed to the 1<sup>st</sup> vacancy which occurs in the headquarters.<sup>28</sup>
6. The general plenary sitting may decide, in the event of urgent need, that a judge in the headquarters may temporarily hold office in a regional Chamber, for no longer than six months, in order to compensate for the absence of the incumbent judge, provided that the latter gives his consent.<sup>29</sup>

#### **Article 19** **Appointment requirements**

1. Only individuals over 35 years of age may enter the competitive examination, and in addition to fulfilling the general requisites specified by law for the appointment of public officials they must also be:
  - a) Judges from administrative and fiscal courts or from the Public Prosecutor Service, appointed to higher courts, with at least 10 years of service in the respective office and a classification higher than “Good”, as well as judges from the Court of Auditors of Macao;
  - b) Doctors in Law, Economics, Finance or Organization and Management or in other areas suitable for the exercise of office;
  - c) Masters or graduates in Law, Economics, Finance or Organization and Management or in other areas suitable for the exercise of office, with at least 10 years of service in the Public Administration and classified as “Very Good”, and where at least 3 years were spent exercising administrative duties at the level of director general or its equivalent, or with teaching duties in higher university education in disciplines related to the matters dealt with by the Court of Auditors;
  - d) Graduates in the areas cited in the previous paragraph who have exercised duties as deputy director general or auditor coordinator or its equivalent in the Court of Auditors for a period of at least 5 years;
  - e) Masters or graduates in Law, Economics, Finance or Company Organization and Management of recognized merit with at least 10 years of service in management positions in companies and 3 years as a member of the board of directors, board of management, statutory audit committee, or examination committees.
2. Ranking will be made between the candidates in each of the recruitment areas listed in the previous paragraph.
3. Appointments are made by the ranking order of the candidates within each of the recruitment areas, whereby a vacancy will be filled by each of these areas in turn, in the order established in paragraph 1.

#### **Article 20** **Criteria for the competitive examination**

1. The jury will rank the candidates by relative merit.
2. In the competitive examination, the ranking will be made on the basis of the following general factors:
  - a) Academic and professional classifications;
  - b) Rankings obtained in competitions;
  - c) Scientific or professional work;

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<sup>27</sup> Paragraph added by Single Article of the Act 1/2001, of 4 January.

<sup>28</sup> As renumbered by Single Article of the Act 1/2001, of 4 January. In the original version it corresponded to paragraph 4.

<sup>29</sup> As renumbered by Single Article of the Act 1/2001, of 4 January. In the original version it corresponded to paragraph 5.

- d) Professional activity;
  - e) Any other factors which concern the suitability and capacity to adapt to the post to be filled.
3. The general plenary sitting of the Court may appeal against the definitive acts of examination and appointment of judges. The rapporteur will be a judge of the 1<sup>st</sup> or 3<sup>rd</sup> Chambers, selected by drawing lots.
  4. The appeal specified in the previous paragraph is subsequently subject to the system of appeal decisions of the Supreme Court.

#### Article 21 Form of appointment

1. The judges of the Court of Auditors tied to public office may be appointed on a definitive basis or as a permanent commission of service.
2. The time of commission of service in the Court is considered, for all effects and purposes, to be provided in the place of origin.

#### Article 22 Taking office

1. The President of the Court of Auditors takes office and makes an affirmation of honour before the President of the Republic.
2. The Vice President and the judges take office and make an affirmation of honour before the President of the Court of Auditors.

#### Article 23<sup>30</sup> Extra plan Judges

1. The appointment for other positions of Judges of the Court of Auditors, as a service commission, according to the law, requires the automatic creation of the same number of extra plan positions, which shall be extinguished when their holders are to occupy their plan positions.
2. The extra plan positions shall be occupied according to the list of the call for application qualifications during the respective duration period or by means of a call for candidates to be opened according to articles 18 to 20.
3. The judges appointed for extra plan positions shall occupy, according to the respective qualification, the vacant positions which may subsequently occur, even if the timeframe of the respective call for candidates has expired.
4. The number of extra plan judges may not exceed 25% of the positions foreseen in it.

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<sup>30</sup> As amended by Single Article of the Act 1/2001, of 4 January. The original version was as follows:

*Article 23  
Recruitment of assistant judges*

1. *The President may appoint, on the proposal of the standing committee, assistant judges for temporary service needs, after selecting candidates following the publication of the respective notice in the Official Journal.*
2. *The candidates should have the general and specific requirements needed for appointment to such posts, and selection is carried out by the standing committee applying the competitive examination's criteria, with the necessary adaptations.*
3. *The assistant judges are appointed under commission of service for one year, renewable for a maximum of three years.*

#### Article 24 Prerogatives

The judges of the Court of Auditors have honours, rights, category, treatment remuneration and other prerogatives equal to those of the Supreme Court. The full terms of the Statutes for Court Judges will be applied except when they are incompatible with the nature of the Court.

#### Article 25 Disciplinary Jurisdiction

1. The standing committee is responsible for the exercise of disciplinary authority over the judges, even in the case of acts performed in extrajudicial activities, as well as to initiate the disciplinary procedure, appoint the respective instructor, decide on any preventive suspension of duties, and apply the respective sanctions, with a possible appeal to the general plenary.<sup>31</sup>
2. *Repealed.*<sup>32</sup>
3. Except as provided for in paragraph 1, the disciplinary system established by law for judicial magistrates is applicable to the judges of the Court of Auditors.<sup>33</sup>

#### Article 26 Civil and criminal liability

The norms which regulate the enforcement of civil and criminal liability for judges of the Supreme Court will apply to the President and judges of the Court of Auditors, as well as the norms relative to the respective preventive imprisonment.

#### Article 27 Incompatibilities, impediments and suspicions

1. The President and judges of the Court of Auditors are subject to the same incompatibilities, impediments and suspicions as court judges.
2. The President and judges of the Court of Auditors may not exercise any duties in bodies of political parties, political associations or connected associations nor develop party- political activities of a public character; the status of any respective affiliation will be suspended while holding office in the Court.

#### Article 28 Distribution of official publications

1. The President and judges of the Court of Auditors have the right to receive Official Journal and the

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<sup>31</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*1. The general plenary is responsible for exercising disciplinary authority over the judges, even in the case of acts performed when exercising other functions, as well as, to initiate the disciplinary procedure, appoint the respective instructor, decide on any preventive suspension of functions, and apply the respective sanctions.*

<sup>32</sup> As repealed by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*2. The decisions concerning the disciplinary matter on judges shall be always taken in the 1<sup>st</sup> instance by the standing committee, with an appeal to the general plenary.*

<sup>33</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*3. Except as provided for in the preceding points, the disciplinary system established by law for judicial magistrates applies to the judges of the Court of Auditors.*

**Assembly of the Republic Journal free of charges.<sup>34</sup>**

2. The judges of the regional Chambers will also have the right to receive, free of charge, the Official Journal of the respective Autonomous Regions.

**SECTION III  
The Public Prosecutor Service**

**Article 29  
Intervention of the Public Prosecutor Service**

1. The Public Prosecutor Service is represented, within the headquarters of the Court of Auditors, by the Attorney General, who may delegate his functions to one or more of the assistant-attorney-generals.
2. In the regional Chambers, the Public Prosecutor Service is represented by the judge who has been appointed for this purpose by the Attorney General and who is replaced, in his absence or impediment, by his legal substitute.
3. In the collective body specified by paragraph 1 of article 42, the Public Prosecutor Service is represented by the judge placed in the regional Chamber who will prepare the opinion on the account of the Autonomous Region.
4. The Public Prosecutor Service shall intervene officiously and in accordance with the procedure norms of the 1<sup>st</sup> and 3<sup>rd</sup> Chambers, and shall be provided with all reports and opinions approved in the sequence of actions of verification, control and auditing at the time of the respective notification. The Public Prosecutor Service may request the delivery of all documents or cases which it deems necessary.
5. **The Public Prosecutor Service may attend the sessions of the 2<sup>nd</sup> Chamber, aiming at consulting the cases before the weekly ordinary session, and may issue an opinion on the legality of the issues resulting from them.<sup>35</sup>**
6. **The Public Prosecutor Service may endeavour all complementary measures deemed necessary with regard to the facts included in the reports sent to them, so as to start possible jurisdictional procedures.<sup>36</sup>**

**SECTION IV  
The support services of the Court of Auditors**

**Article 30  
Guiding principles**

1. The Court of Auditors has administrative and technical support services, constituted by the Office of the President and the Directorate General, including the support services of the regional Chambers.
2. The organization and the structure of the Directorate General, including the support services of the regional Chambers, are foreseen by decree-law and shall observe the following principles and rules:
  - a) Constitution of a special body for examination and control, integrating highly qualified careers of

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<sup>34</sup> As amended by Single Article of the Act 48/2006, of 29 August. The original version was as follows:

*1. The President and judges of the Court of Auditors have the right to receive, free of charge, the Official Journal, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> series and appendices and the Assembly of the Republic Journal, 1<sup>st</sup> and 2<sup>nd</sup> series.*

<sup>35</sup> Paragraph added by Article 1 of the Act 48/2006, of 29 August.

<sup>36</sup> Paragraph added by Article 1 of the Act 48/2006, of 29 August.

auditor, consultant and technical verifier who, in principle, will exercise their activities on an exclusiveness basis;

- b) The auditor shall carry out high-level control functions, namely the execution of audits and other control actions in the several areas of the Court of Auditors jurisdiction;
  - c) The consultant shall execute high-level consulting functions, namely scientific and technical study and investigation to support the Court and the auditing teams;
  - d) The technical verifier shall execute functions of study and application of scientific and technical methods and procedure, namely, in the scope of the instruction of a priori and successive control procedures.
  - e) The remunerative statute for the careers of auditor and consultant shall be on a parallel with that of the judges;
  - f) The remunerative statute for the careers of technical verifier shall not be inferior to that practised in the existing control and inspection services in Public Administration;
  - g) Technical support units shall be constituted in accordance with the jurisdiction of each Chamber and, within this one, according to specialized areas, to be approved by internal regulation;
  - h) Initial and permanent training shall be provided for all officials from those careers;
  - i) The support services in the headquarters are led by a director general, and assisted by deputy directors general;
  - j) In each regional Chamber, the support services shall be led by a deputy director general;
  - l) The Directorate General and each regional Chamber shall be also assisted by auditor coordinators and chief auditors, who for the purpose are on a parallel with directors of services and heads of Chamber, respectively;
  - m) The directing staff of the Directorate General and of the support services of the regional Chambers includes the special examination and control body foreseen by point a), and the regime for directing staff of the Civil Service will be subsidiary applied.
  - n) The staff of the careers which is not included in the special examination and control body foreseen by point a), shall have the right to a monthly supplement of permanent availability.
3. The structure, nature and attributions of the Office of the President, as well as the regime for the respective staff foreseen by decree-law.
  4. The Office of the President shall ensure administrative support for the judges and the representative of the Public Prosecutor Service, being, for this effect, granted the necessary units.
  5. Until the date when the decree-law, referred to in paragraph 2, takes effect the President of the Court of Auditors may attribute to the staff of the Directorate General a monthly supplement of permanent availability, up to a maximum of 20% of the gross salary, to be paid from the Court coffers.

## SECTION V

### The financial and administrative management of the Court of Auditors

#### Article 31

#### Administrative and budgetary autonomy

1. The Court of Auditors and its regional Chambers are granted administrative autonomy.
2. The installation and operating costs of the Court, including those of the regional Chambers, shall be paid by the State, through the respective budget.



3. The Court shall prepare a draft budget and present it to the Government within the deadlines established for the elaboration of the draft law of the budget, and shall also supply to the Assembly of the Republic the elements requested by the latter concerning this area.

### **Article 32** **Administrative and financial jurisdiction of the Court**

The Court, in general plenary sitting, has the following powers:

- a) To approve the draft of its annual budget, including those for the regional Chambers, as well as of the respective coffers, and the proposals for budgetary alterations, which do not fall within its powers;
- b) To present suggestions of legislative measures necessary for the Court operation, including that of the regional Chambers, and for the support services;
- c) To define the organization and operational guidelines for its technical support services, including those of the regional Chambers.

### **Article 33** **Administrative and financial powers of the President**

1. The President of the Court has the following powers:
  - a) To supervise and guide the support services, including personnel management and financial management of the Court and of its regional Chambers, within the framework of self-government, exercising the same administrative and financial powers as a government minister;
  - b) To guide the elaboration of the drafts of budget, as well as of the proposals for budgetary alterations which do not fall within his powers;
  - c) To provide the support services of the Court with the orders and instructions required to improve the execution of the guidelines defined by the Court and to its effective operation.
2. The exercise of the powers referred to in paragraph 1 may be delegated to the Vice President and to the judges of the regional Chambers.

### **Article 34** **Administrative Councils**

1. The Administrative Council is presided over by the director general and includes two voting members, who exercise leading duties within the Directorate General, one of which will be the responsible for the services of financial management.
2. The two voting members of the Administrative Council shall be appointed by the President, under proposal of the director general, and the respective substitutes should also be appointed.
3. In the regional Chambers the Administrative Council is presided over by the deputy director general and the two voting members, as well as the respective substitutes, shall be appointed by the judge, under proposal of the deputy director general.
4. The Administrative Councils are incumbent of the financial administration, which includes the normal management of the support services, and have, namely, the following powers:
  - a) To authorize the expenditure which do not require the authorization of the President;
  - b) To authorize the payment of expenditure, irrespective of the entity which authorized the respective expense;



- c) To prepare the drafts of budget for the Court and the regional Chambers and the budget for the respective coffers, as well as the proposals for budget alteration which prove necessary;
  - d) To manage the Coffer of the Court or of the respective regional Chambers.
5. The presidents shall have the casting vote.

#### **Article 35** **Coffers of the Court of Auditors**

1. The Court of Auditors has coffers in its headquarters and regional Chambers, which are constituted as corporate entities with financial and administrative autonomy and their own assets.
2. The revenue of the coffers are as follows:
  - a) The emoluments collected by the services of the Court or by the Directorate General;
  - b) The product from the sale of books or magazines edited by the Court or from the services provided by the Directorate General;
  - c) Other revenue to be fixed by statute;
  - d) Inheritances, bequests and donations.
3. The expenses of the coffers are as follows:
  - a) The current and capital expenditure which, in each year, cannot be covered by the appropriations inscribed in the State Budget;
  - b) The salaries of the assistant judges employed in addition to the number of permanent staff judges, as well as the supplements owed to judges;
  - c) The expenses resulting from the edition of books or magazines;
  - d) The expenses derived from the carrying out of studies, audits, expert inspection and other services, when they cannot be accomplished by the permanent staff of the support services.
4. All goods acquired using the appropriations inscribed in the budgets of the Court coffers are included in the respective own assets.

### **CHAPTER IV** **The forms of financial control of the Court of Auditors**

#### **SECTION I** **Planning**

#### **Article 36** **Budgetary examination**

1. The Court of Auditors examines the implementation of the State Budget, including that of Social Security, and may for this purpose request necessary information from any entity, whether private or public.
2. The information thereby obtained, either during the execution of the Budget or until the moment of the publication of the General State Account, may be communicated to the Assembly of the Republic, with whom the Court and its support services may agree the necessary proceedings for the coordination of the respective constitutional jurisdiction of examination over budgetary execution and for the

appreciation of the report on the General State Account, both during its preparation and after its respective publication.

3. The Assembly of the Republic may request intercalary reports from the Court on the results of the examination of the Budget during the year, as well as provision of any necessary clarifications for the appreciation of the State Budget and the report on the General State Account.
4. The preparation and examination of the execution of the budgets of the Autonomous Regions by the regional Chambers, in coordination with the regional assemblies, are applied to the terms of the previous points, with the necessary adaptations.

### Article 37 Three-year plan

1. The general plenary sitting of the Court of Auditors will approve the plan for acts of examination and control over a period of three years, by October 30 of the year immediately prior to the start of the three-year period.
2. In the headquarters the plan is established by the standing committee based on the three-year plans of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers.
3. The three-year plan of each regional Chamber is established by the respective judge and included as an appendix to the three-year plan of the headquarters.

### Article 38 Annual plan of the 1<sup>st</sup> Chamber

1. The plenary sitting of the 1<sup>st</sup> Chamber shall approve until December 15 of each year the respective annual plan, which is subordinated to the three-year action plan, and which namely includes:
  - a) The list of the organization or services which are partially or totally dispensed from a priori control in that year, based on the reliability of their decision system and internal control verified in the audits carried out by the Court;
  - b) The list of the services or organization which that year will be subject to concomitant control for expenditure arising from the acts or contracts which should not be delivered into a priori control.
2. The dispense from a priori control foreseen by point a) of the previous paragraph may be repealed at any time based on the unreliability of the decision system and internal control of the service or organization as stated in the audits carried out by the Court.
3. *Repealed.*<sup>37</sup>
4. *Repealed.*<sup>38</sup>

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<sup>37</sup> As repealed by Article 3 of the Act 48/2006, of 29 August. The original version was as follows:

*3. The dispense from a priori control does not prejudice the concomitant or successive control of the expenditure arising from the execution of the acts or contracts, nor to the eventual financial liability.*

<sup>38</sup> As repealed by Article 3 of the Act 48/2006, of 29 August. The original version was as follows:

*4. The attribution of the audit's direction to the judges, as referred to in point b) of paragraph 1, is made by drawing lots.*

### **Article 39** **Areas of responsibility of the 2<sup>nd</sup> Chamber**

1. Once the three-year plan of the Court is approved, the plenary sitting of the 2<sup>nd</sup> Chamber, before November 15 of this year, will decide upon areas of responsibility to be allocated to each judge, by drawing lots unless there is consensus.
2. The preparation of the report and opinion on the General State Account may constitute one or more areas of responsibility.
3. The technical support services should organization themselves in function of the area of responsibilities of the judges.

### **Article 40** **Annual plan of the 2<sup>nd</sup> Chamber**

The plenary sitting of the 2<sup>nd</sup> Chamber will approve before December 15 of each year, the respective annual plan, which is subordinated to the three-year plan, and which will specifically include:

- a) The report on the entities which are exempted from submission of accounts on the basis of previously defined criteria of auditing principles and current practises. The report will aim to achieve a suitable balance between financial risk and disclosure; the priority to control of accounts which are more recent or involve higher sums and financial risk; and a guarantee that all services and organization will be inspected at least once every four years;
- b) The report on the entities whose accounts will be subject to external auditing;
- c) The report on the entities whose accounts will be returned without internal examination by the support services, based on previously defined criteria;
- d) The value of the revenue or expenditure below which the entities subject to provision of accounts will be exempted from submitting accounts to the Court;
- e) The audits to be carried out independently of the verification of accounts cases;
- f) The acts to be carried out as part of the preparation of the report and opinion on the General State Account.

### **Article 41** **Report and Opinion on the General State Account**

1. In the report and opinion on the General State Account, including Social Security, the Court of Auditors will assess the financial activity of the State during the year covered by the Accounts, in the areas of revenue, expenditure, treasury, use of public borrowing and national assets, specifically concerning the following aspects:
  - a) Fulfilment of the Framework Law of the State Budget, and other complementary legislation concerning financial administration;
  - b) Comparison between the budgeted revenue and expenditure and those actually implemented;
  - c) The inventory and balance sheet of the State's assets and liabilities, as well as asset changes, specifically as a result of privatization procedures;
  - d) The financial flows between the State Budget and the business sector of the State, specifically concerning the legal destination of the revenue from privatization;
  - e) The implementation of multi-year plans of the State Budget, with special reference to the respective annual appropriation;

- f) The movement of funds for treasury operations, discriminated by type of operation;
  - g) The direct responsibilities of the State, as a result of the assumption of responsibilities or use of public borrowing, or indirect responsibilities such as the granting of guarantees.
  - h) The aid directly or indirectly provided by the State, specifically allowances, subsidies, tax benefits, credits, bonuses and financial guarantees;
  - i) The financial flows with the European Union, as well as the degree of observance of agreements held with the European Union.
2. The report and opinion on the General State Account delivers a judgement on the legality and financial correctness of the operations examined, and may comment on the economy, efficiency and effectiveness of management, and also on the reliability of the respective systems of internal control.
  3. The report and opinion on the General State Account may also include recommendations to the Assembly of the Republic or to the Government, in order to overcome deficiencies of budgetary management, treasury, national debt and state assets, as well as the organization and operation of services.

#### **Article 42** **Accounts of the Autonomous Regions**

1. The report and opinion on the accounts of the Autonomous Regions is prepared by the respective regional Chamber and, is subsequently, approved by a collective body established for this purpose by the President of the Court of Auditors and by judges of both regional Chambers.
2. The collective body referred to by the previous point meets in the headquarters of the regional Chamber responsible for the preparation of the report and opinion.
3. The report and opinion on the accounts of the Autonomous Regions are subject to the terms of article 41, with the due adaptations.

#### **Article 43** **Annual report**

1. The activity developed by the Court of Auditors and by its support services is included in a report.
2. The report is prepared by the President and approved by the general plenary sitting, after which it is published and presented to the President of the Republic, the Assembly of the Republic, to the Government and to the government bodies of the Autonomous Regions for the respective regional Chamber, before May 31 of the year following that for which the report is prepared.
3. For the preparation of the report cited in the previous paragraphs, the judges of the regional Chambers should submit to the President the respective report before April 30 of the year following that for which the report is prepared.

### **SECTION II** **A priori control**

#### **Article 44** **Prior approval finality. Legal basis for the prior approval refusal**

1. A priori control aims to verify whether the acts, contracts or other instruments, which generate

expenditure or represent direct or indirect financial liability, are according to the law and whether the respective duties are covered by the suitable budgetary appropriation.

2. For instruments which generate public debt, a priori control aims to verify, namely, the observance of the limits and sub-limits of indebtedness and of the respective purposes, established by the Assembly of the Republic.
3. Prior approval refusal must be founded on the discordance of the mentioned acts, contracts or any other instruments with the law which implies:
  - a) Nullity;
  - b) Duties without being covered by the suitable budgetary appropriation, or direct breach of financial norms;
  - c) Illegality which alters or could alter the respective financial result.
4. In the procedures foreseen by point c) of the previous paragraph, the Court, on the basis of a founded decision, may grant the prior approval and make recommendations to the services and organization in order to overcome or avoid the future occurrence of such illegalities.
5. **Repealed.**<sup>39</sup>

#### Article 45<sup>40</sup> Prior approval effects

1. The acts, contracts and other instruments subject to a priori control of the Court of Auditors may be effective before the prior approval or the compliance declaration, except as far as the payments resulting from them are concerned and notwithstanding the provisions of the following paragraphs.
2. In the procedures provided for in the previous paragraph, the prior approval refusal involves the jurisdictional ineffectiveness of the respective acts, contracts and other instruments only after the notification date of the respective decision to the interested services or organization.
3. The works carried out or the goods or services purchased after the celebration of the contract until the notification date of the prior approval refusal may be paid after the mentioned notification, provided

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<sup>39</sup> As repealed by paragraph 1 of Article 82 of the Act 87-B/98, of 30 December. The original version was as follows:

*5. No appointment or staff contract may be published in the Official Journal without mention of the date of the respective prior approval, express or tacit, or of the declaration of conformity with the law or of the fact that a priori control is not required.*

<sup>40</sup> As amended by paragraph 2 of Article 82 of the Act 87-B/98, of 30 December. However, paragraph 1 of the same Act repealed paragraph 4 of this article. The original version was as follows:

*1. No act, contract or juridical instrument subject to a priori control by the Court of Auditors may be executed or originate any payment before the prior approval or a declaration of conformity with the law, except when retroactive effects attributed to it in accordance with the law and the following paragraphs.*

*2. The following contracts may, however, take full effect before the prior approval, except the payment of the respective price:*

- a) *Contracts for public works;*
- b) *Contracts for acquisition of goods and services, in the event of manifest urgency declared in a founded dispatch of the entity holding the original authority to approve the respective expenditure;*
- c) *Contracts of adhesion.*

*3. The appointments and administrative employment contracts, in cases of urgent service convenience declared in a founded dispatch of the entity holding the original authority to the respective approval, may take effect before the prior approval, when they concern the start of office and the respective processing of allowances.*

*4. The loans raised in the external market may take effect before the prior approval, if they obtain a favourable opinion from the Bank of Portugal in relation to their urgency in the light of exchange and interest rates' favourable conditions.*

*5. In the cases foreseen by paragraphs 2, 3 and 4, the prior approval refusal implies juridical ineffectiveness of the respective acts, contracts and any other instruments only after the date of the respective decision's notification to the services or organization.*

*6. In the cases foreseen by paragraph 2, the accomplished works or the goods or services acquired after the celebration of the contract and till the date of the prior approval may be paid after such notification, provided that the sum does not exceed the financial planning contractually established for the same time period.*

*7. The authority for the declaration of urgency foreseen by paragraph 2, point b) and paragraph 3 may not be delegated.*

that the respective value does not exceed the programming established by contract for that period.

4. The acts, contracts, and other instruments subject to a prior control of the Court of Auditors whose value exceeds €950 000 are not effective before the prior approval or the compliance declaration.<sup>41</sup>
5. The provisions of the preceding paragraph do not apply to contracts directly awarded for reasons of extreme urgency that arise from unforeseeable events by the contracting authority, which are not attributable to it under any circumstances, and the timeframes inherent to other procedures provided for by law cannot be met.<sup>42</sup>

#### Article 46 Incidence of a priori control

1. The following items are subject to the a priori control of the Court of Auditors pursuant to point c) of paragraph 1 of article 5:<sup>43</sup>
  - a) All acts resulting in an increase of the funded public debt of the services and funds of the State and the Autonomous Regions with administrative and financial autonomy, and other entities mentioned in points c) to e) of paragraph 1 of article 2, as well as all acts which change the general conditions of the prior approved loans;<sup>44</sup>
  - b) The contracts for public works, acquisition of goods and services, as well as other purchase of assets involving expenses under the provisions of article 48, when put in writing according to the law;<sup>45</sup>
  - c) The drafts of contracts of an amount equal or greater than the one established in the budgetary laws according to the article 48, whose expenses, or part of them, have to be paid at the date of their signature.<sup>46</sup>
  - d) Acts or contracts that comprise objective amendments to prior approved contracts and which carry an increase in the respective financial costs or financial liabilities;<sup>47</sup>
  - e) Acts or contracts that comprise objective amendments to contracts without prior approval and which carry an increase in respective financial costs or financial liabilities exceeding the limit provided for in article 48.<sup>48</sup>

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<sup>41</sup> Paragraph added by Article 1 of the Act 61/2011, of 7 December.

<sup>42</sup> Paragraph added by Article 1 of the Act 61/2011, of 7 December.

<sup>43</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. In accordance with the terms of article 5, paragraph 1, point c), the documents, which represent, grant or execute the following acts and contracts, should be delivered to the Court of Auditors for a priori control purposes:*

<sup>44</sup> As amended by Article 76 of the Act 55-B/2004, of 30 December. The original version was as follows:

*1.*

*a) General bonds and all the acts which result in an increase in the public debt founded from the entities cited in paragraph 1 of article 2, and also the acts which modify the general conditions of prior approved loans;*

<sup>45</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1.*

*b) The contracts converted into the written form for public works, acquisition of goods and services, as well as other acquisition of assets which imply expenditure.*

<sup>46</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1.*

*c) The draft contracts of the same or superior value to the established by the budgetary laws in terms of article 48 which are celebrated by deed and whose charges must be paid at the time of its conclusion.*

<sup>47</sup> Point added by Article 1 of the Act 61/2011, of 7 December.

<sup>48</sup> Point added by Article 1 of the Act 61/2011, of 7 December.

2. According to points b), c), d) and e) of the previous paragraph, agreements, protocols, apostilles or other instruments that result or may result in financial or property costs are considered to be contracts.<sup>49</sup>
3. According to point e) of paragraph 1, it is considered that the amount exceeding that provided for in article 48 must result from the sum of the initial value and that of previous objective amendments.<sup>50</sup>
4. The Court and its support services exercise a priori control powers in an integrated manner with concomitant and successive control.<sup>51</sup>
5. A priori control is exercised through prior control approval or compliance declaration, being due emoluments in both cases.<sup>52</sup>
6. According to paragraph 1, documents representing, certifying or implementing acts and contracts therein listed are referred to the Court of Auditors.<sup>53</sup>

#### Article 47 A priori control: exemptions

1. From the provisions of the previous articles are exempted the following:
  - a) The acts and contracts performed or concluded by the entities referred to in points a), b) and c) of paragraph 2 of Article 2, and which do not fall within the final part of point c) of paragraph 1 of Article 5, with a value of less than €5 000 000, as well as acts of the Central and Regional Governments that do not determine budgetary or treasury costs and relate exclusively to the supervision and management of these entities;<sup>54</sup>
  - b) The definitive titles of contracts which are preceded by prior approved drafts.
  - c) The lease contracts, as well as those for the supply of water, gas and electricity or celebrated with companies providing cleaning services, security for premises or technical assistance;
  - d) Acts or contracts that, within the scope of public works contracts already a priori approved, entitle the execution of additional works or the correction of errors and omissions, and thereby are subject to concomitant and successive control;<sup>55</sup>
  - e) The contracts intended to establish conditions for recovery of State credits;
  - f) Contracts for the acquisition of services awarded to non-profit institutions regarding the health and social services mentioned in Annex II-B of Directive 2004/18/EC, of the European Parliament and of the Council, of March 31, as well as the contracts for the acquisition of services awarded to non-profit institutions concerning the education and professional training services previewed in the above-

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<sup>49</sup> As amended by Article 1 of the Act 61/2011, of 7 December. The previous version was as follows:

*2. According to points b) and c) of the previous paragraph, agreements, protocols or other instruments that result or may result in financial or property costs are considered to be contracts.*

<sup>50</sup> Paragraph added by Article 1 of the Act 61/2011, of 7 December.

<sup>51</sup> As renumbered by Article 1 of the Act 61/2011, of 7 December. It Corresponds to previous paragraph 3.

<sup>52</sup> As renumbered by Article 1 of the Act 61/2011, of 7 December. It Corresponds to previous paragraph 4.

<sup>53</sup> As renumbered by Article 1 of the Act 61/2011, of 7 December. It Corresponds to previous paragraph 5.

<sup>54</sup> As amended by Article 1 of the Act 2/2012, of 6 January. The previous version was as follows:

1.

a) *The acts and contracts performed or concluded by the entities referred to in points a), b) and c) of paragraph 2 of Article 2, with a value of less than €5,000,000, as well as the acts of the Government and Regional Governments that do not determine budgetary or treasury burdens and relate exclusively to the administrative supervision and management of these entities.*

<sup>55</sup> As amended by Article 1 of the Act 61/2011, of 7 December. The previous version was as follows:

1.

d) *The additional contracts to the prior approved contracts.*



mentioned annex which grant school or professional certification;<sup>56</sup>

- g) Contracts and other legal instruments whose object are the provision of project preparation and review services, an inspection of works, public works, or concessions for the promotion, rehabilitation, and purchase of buildings for affordable or public housing or student accommodation;<sup>57</sup>
  - h) Programme contracts, agreements and/or contracts for the delegation of powers, and respective execution acts, concluded between municipalities, as well as between a local authority and an entity of the municipal-owned business sector, through which competencies are transferred, a mandate for its implementation is given, or a commitment is assumed to the performing of certain activities or tasks;<sup>58</sup>
  - i) Other acts, diplomas, dispatches, or contracts already specifically provided for in the law.<sup>59</sup>
2. The acts, contracts, or documentation mentioned in point d) of the previous paragraph are referred to the Court of Auditors within 60 days from the beginning of their implementation.<sup>60</sup>

#### Article 48<sup>61</sup> Exemption of a priori control

1. The acts and contracts referred to in points b) and c) of paragraph 1 of article 46, whose value is below €750 000, excluding the amount of the due value added tax, shall be exempted of a priori control.
2. The limit referred to in the preceding paragraph, as to the overall value of acts and contracts that are or appear to be related to each other, is €950 000.

### SECTION III Concomitant control

#### Article 49 Concomitant control

1. The Court of Auditors may carry out concomitant control:
  - a) By means of audits by the 1<sup>st</sup> Chamber to the procedures and administrative acts involving staff expenses and to contracts which are not to be sent for a priori control according to the law, as well as the implementation of the prior approved contracts;<sup>62</sup>

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<sup>56</sup> Point added by Article 140 of the Act 3-B/2010, of 28 April.

<sup>57</sup> As amended by Article 402 of the Act 2/2020, of 31 March. The previous version was as follows:  
*g) Other acts, diplomas, dispatches, or contracts already specifically provided for in the law.*

<sup>58</sup> Point added by Article 402 of the Act 2/2020, of 31 March.

<sup>59</sup> Point added by Article 402 of the Act 2/2020, of 31 March. It Corresponds to previous point g).

<sup>60</sup> As amended by Article 1 of the Act 61/2011, of 7 December. The previous version was as follows:

*2. The contracts mentioned in point d) of the previous paragraph are referred to the Court of Auditors within 15 days from the beginning of their implementation.*

<sup>61</sup> As amended by Article 7 of the Act 27-A/2020, of 24 of July. The previous version was as follows:

#### *Article 48 Exemption of prior approval control*

*1. The budget laws establish, to be in force during each budgetary year, the contract value, excluding the amount of the value-added tax due, below which the contracts mentioned in points b) and c) of paragraph 1 of Article 46 are exempted from a priori control.*

*2. For the exemption foreseen in the previous paragraph, the considered amount is the global value of acts and contracts that are or appear to be related to each other.*

<sup>62</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:



- b) Through audits carried out by the 2<sup>nd</sup> Chamber on the financial activities exercised before the termination of the respective management.
2. If, in the procedures foreseen by the previous paragraph, there are findings of illegality in the pending procedures or in an act or contract which has not yet been executed, the entity responsible for authorizing the expense should be notified in order to send the mentioned act or contract to a priori control, and not execute it before the prior approval, on penalty of financial liability.
3. **The audit reports carried out under the terms of the previous paragraphs can be the instrument for the verification process of the respective account or serve as a basis for the enforcement of liabilities or fines procedures.**<sup>63</sup>

## SECTION IV Successive control

### Article 50 Successive control in general

1. Within the scope of the successive control, the Court of Auditors shall verify the accounts of the entities foreseen by article 2, evaluate the respective systems of internal control, appreciate the legality, economy, efficiency and effectiveness of the financial management and ensure the examination of the national co-partnership to the resources for the European Union, and the application of financial resources provided by the European Union.
2. **Within the scope of successive control related to the State direct public debt, the Court of Auditors verifies, namely, whether the indebtedness limits and other general conditions established by the Assembly of the Republic in each financial year have been observed.**<sup>64</sup>
3. **Loans and financial operations for the management of direct public debt, as well as the respective costs, arising, in particular, from capital amortization or interest payments, are subject to the Court of Auditors successive control.**<sup>65</sup>
4. **The Treasury and Public Debt Management Agency (IGCP, EPE) informs the Court of Auditors on a monthly basis about loans and financial operations for the management of the State direct public debt carried out under the terms provided for in this law.**<sup>66</sup>

### Article 51 The entities which render accounts

1. The following entities are subject to the elaboration and rendering of accounts:
- a) The Presidency of the Republic;
  - b) The Assembly of the Republic;
  - c) The courts;

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1.

a) *By means of audits of 1<sup>st</sup> Section to administrative procedures with regards to acts which involve staff costs and contracts which are not submitted to a priori control according to the law or a Court decision.*

<sup>63</sup> As renumbered by Article 82 of the Act 87-B/98, of 31 of December. It Corresponds to previous paragraph 4.

<sup>64</sup> Paragraph added by paragraph 2 of Article 82 of the Act 87-B/98, of 31 of December.

<sup>65</sup> Paragraph added by paragraph 2 of Article 82 of the Act 87-B/98, of 31 of December.

<sup>66</sup> Paragraph added by paragraph 2 of Article 82 of the Act 87-B/98, of 31 of December.

- d) The regional assemblies;
  - e) Other constitutional bodies;
  - f) The services of the State and of the Autonomous Regions, including those located abroad, whether corporate entities or not, irrespective of their juridical nature, endowed with administrative autonomy or administrative and financial autonomy, including autonomous funds and organization in the process of being installed;
  - g) The General Staff of the Armed Forces and the respective branches;<sup>67</sup>**
  - h) The Santa Casa da Misericórdia and its Gaming Department;
  - i) The Management Institute for Public Credit;
  - j) The National Pension Fund;
  - l) Tourism boards and regions;
  - m) Local authorities, their associations and federations and their autonomous services, metropolitan areas and district assemblies;
  - n) The Administrative Councils or administrative or management committees, boards of a permanent, transitory or eventual character, other directors or accountable parties for public funds or other state assets or of establishments which pertain to the State, even though they have their own revenue;
  - o) The entities foreseen by paragraph 2 of article 2;
  - p) Other entities or organization to be determined by law.
2. The following are also subject to the elaboration and rendering of accounts:
- a) The services which exercise functions as bank of the Treasury Directorate General, the Customs Directorate General and Excise Directorate General;
  - b) The establishments with treasury functions;
  - c) The coffers of any nature of all public organization and services, irrespective of the origin or destination of their revenue.
  - d) Entities required to prepare consolidated accounts, without prejudice to the rendering of separate accounts by the entities provided for in article 2 that are included in the respective consolidation perimeters.<sup>68</sup>**
3. The general plenary sitting of the 2<sup>nd</sup> Chamber may set the annual amount of revenue or expenditure below which the entities referred to in the previous paragraphs are dispensed from sending the accounts to the Court.
4. The plenary sitting of the 2<sup>nd</sup> Chamber may annually deliberate upon the dispense from sending the accounts by some of the entities referred to in paragraphs 1 and 2 based on the reliability of the decision and internal control systems, as stated in previous audits or in accordance with the selection criterion of the actions and entities to be included in the respective annual plan.
5. The accounts dispensed from sending to the Court under the terms of paragraphs 3 and 4 may be subject to verification and the respective entities subject to audits, through deliberation of the plenary sitting of the 2<sup>nd</sup> Chamber, during a period of five years.

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<sup>67</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

1.

*g) The General Staff of the Armed Forces and the respective branches, as well as the military units;*

<sup>68</sup> Point added by Article 2 of the Act 20/2015, of 9 of March.

## Article 52 Provision of accounts

1. The accounts will be provided for each economic year and will be prepared by the officials in charge of the respective board of directors, or if these have terminated their duties, by those who have replaced them, without prejudice to the duty of reciprocal collaboration.
2. In the event that within an economic year there is a substitution of the official in charge or of the totality of the officials in charge of the collective administrations, accounts will be provided in relation to each board of directors.
3. The partial substitution of the directors in collegiate administrations due to the presumption or finding or any financial offence will lead to the provision of accounts, which will end on the date on which the director was substituted.
4. **The accounts are remitted to the Court by April 30 following the year to which they relate, notwithstanding that the consolidated accounts can be sent by June 30.<sup>69</sup>**
5. In the procedures specified in paragraphs 2 and 3 the deadline for the presentation of accounts will be 45 days after the date of the substitutions of the officials in charge.
6. The accounts will be prepared and documented in accordance with the instructions approved by the Court.
7. **The unjustified rendering of the accounts within the deadlines set out in paragraphs 4 and 5, may, albeit the corresponding sanction, lead to an audit by the Court to ascertain the circumstances of the fault committed and the probable omission of the account's preparation. The said audit shall proceed with the reconstitution and examination of the respective financial management to set the debt to those responsible, when possible.<sup>70</sup>**

## Article 53 Internal verification

1. The accounts which are not subject to external verification under the terms of the following article may be subject to internal verification.
2. Internal verification includes the analysis and checking of the accounts only for numerical statement of the operations carried out, which integrate the debit and the credit of the management team with evidence of the opening and closing balances and, if that be the case, the declaration of extinction of the liability of secured treasurers.
3. Internal verification is carried out by the support services, which shall set the emoluments due. This verification shall be homologated by the 2<sup>nd</sup> Chamber.

## Article 54 External verification of accounts

1. External verification of accounts aims to appreciate, namely:

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<sup>69</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

*4. The accounts are delivered to the Court by the 30 April of the year following that to which they relate.*

<sup>70</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*7. The unjustified lack of the accounts delivery within the deadlines set out in paragraphs 4 and 5 may, without prejudice to the corresponding sanction, determine the accomplishment of an audit, to ascertain the circumstances of the fault committed and the possible omission of the preparation of the mentioned account. That audit shall proceed with the reconstitution and examination of the respective financial management to set the debt to those responsible, if possible.*

- a) Whether the operations carried out are legal and regular;
  - b) Whether the respective systems of internal control are reliable;
  - c) Whether the accounts and the financial statements elaborated by the entities, which have rendered them, faithfully reflect the entities' revenue and expenditure, as well as their financial and patrimonial situation;
  - d) Whether they are elaborated in accordance with the established accounting rules.
2. External verification of the accounts will be made using auditing methods and techniques decided, in each case, by the Court.
  3. The procedure of external verification of accounts is concluded by the elaboration and approval of a report, which must include, namely, the following elements:
    - a) The entity whose account is being verified and the financial period which it concerns;
    - b) The accountable parties for its presentation, as well as for the financial management, in the event that they differ;
    - c) The numerical statement referred in paragraph 2 of article 53;
    - d) The methods and techniques of verification used and the universe of selected operations;
    - e) The opinion of the accountable parties in the scope of the adversarial principle;
    - f) The judgement on the legality and regularity of the operations examined and, on the consistency, integrity and reliability of the accounts and the respective financial statements, as well as any on the impossibility of their verification, if that be the case;
    - g) The concreteness of legal and de facto situations, which integrate any eventual financial offences and their accountable parties, if that be the case;
    - h) The appreciation of the economy, efficiency and effectiveness of the financial management, if that be the case;
    - i) The recommendations in order to overcome the defects in the respective financial management, as well as in the organization and operation of the services;
    - j) The emoluments due and other charges to be borne by the audited entities.
  4. The Public Prosecutor Service will only be notified of the final approved report, without prejudice to the terms of article 29, paragraph 4 and article 57, paragraph 1.

#### **Article 55** **Audits**

1. The Court may, in addition to the necessary audits for external verification of the accounts, carry out at any moment, on its own initiative or on request from the Assembly of the Republic or from the Government, audits of any type or nature for specific acts, procedures or aspects of the financial management of one or more entities subject to its powers of financial control.
2. The auditing procedures shall be concluded by the elaboration and approval of a report, subject to the terms of article 54, paragraph 3, points d) to j) and paragraph 4.

#### **Article 56** **Recourse to auditing firms and technical consultants**

1. Whenever necessary, the Court of Auditors may outsource tasks deemed essential to perform its functions

**to auditing companies or technical consultants when the Court support services cannot perform them.<sup>71</sup>**

2. The auditing firms referred to in the previous paragraph, should be certified, and benefit from the same prerogatives as the administrative officials of the Directorate General in the performance of their tasks.
3. When the State Audit Curt carries out audits on request of the Assembly of the Republic or the Government, the payment due to the said companies and consultants will be paid for by the services or entities subject to examination, in addition to legally due emoluments.
4. The terms of the previous paragraph are applicable in cases in which the Court of Auditors needs to sign service agreements for cooperation in the audits to be carried out by its support services.
5. In the event that there are various entities inspected, the Court will set in relation to each a part-share of the payment for the services contracted.

## CHAPTER V Enforcement of financial liabilities

### SECTION I Types of procedure

#### Article 57<sup>72</sup> Reports

1. **Whenever the reports of the Court control actions, as well as those of the internal control bodies actions show facts constituting financial liability, the respective cases are sent to the Public Prosecutor Service, notwithstanding the provisions of paragraph 3 of article 5 and those of article 89.**
2. **The reports of the internal control bodies actions do not require the approval of the 1<sup>st</sup> or 2<sup>nd</sup> Chamber of the Court for the purposes of enforcing responsibilities by the 3<sup>rd</sup> Chamber, and are sent to Public Prosecutor Service by order of the competent judge.**
3. **When the Public Prosecutor Service declares that no jurisdictional procedure is required, the respective case is then returned to the sending entity.**
4. **The terms of paragraph 1 are also applicable to audits carried out as part of the preparation of the report and opinion on the General State Account and the accounts of the Autonomous Regions.**
5. **For the enforcement of responsibilities for the offences mentioned in paragraph 1 of article 66, other reports and information prepared by the Court support services may also serve as a basis to start the respective procedure, by means of an application submitted by the director general addressed to the competent Chamber.**

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<sup>71</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

1. *Whenever necessary, the Court of Auditors may outsource to auditing companies or technical consultants to carry out tasks essential to the exercise of its functions when these cannot be performed by the Court support services nor required to any of the entities mentioned in Article 2.*

<sup>72</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

#### Article 57 Reports

1. *Whenever the reports of external verification of accounts or audits relative to the entities cited in article 2, paragraph 1, demonstrate facts which constitute financial liability, the respective procedures should be sent to the Public Prosecutor Service, in order to facilitate the start of eventual jurisdictional procedures, without prejudice to the terms of paragraph 3 of article 5.*

2. *Whenever the results of acts of internal examination reveal acts which constitute financial liability, the Court may refuse to authorize the return of the accounts and decide to implement an audit of the respective entity.*

3. *The terms of paragraph 1 are also applicable to audits carried out as part of the preparation of the report and opinion on the General State Account and the accounts of the Autonomous Regions.*

## Article 58 Types of procedures

1. The enforcement of financial responsibilities takes place by means of judgement of accounts and of financial responsibilities procedures.<sup>73</sup>
2. The judgment of accounts procedure aims to enforce the financial liabilities underlined in external verification of accounts reports, with homologation, if applicable, of the numerical statement referred to in paragraph 2 of article 53.<sup>74</sup>
3. The judgment of financial responsibility procedure aims to enforce the financial liabilities arising from facts underlined in reports of the Court's control actions issued in the external verification of accounts procedure or in the internal control bodies reports.<sup>75</sup>
4. The fines mentioned in article 66 are applied in the respective procedures of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers or, if that is the case, in an autonomous procedure.<sup>76</sup>
5. *Repealed.*<sup>77</sup>

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<sup>73</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

1. *Financial responsibilities are enforced through the following procedures:*
  - a) *Judgement of accounts;*
  - b) *Judgement of financial responsibilities;*
  - c) *Setting of charges for the accountable parties or of the impossibility of judgement's declaration;*
  - d) *Fines.*

<sup>74</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

2. *The judgment of accounts procedure aims to enforce the financial liabilities evidenced in external verification of accounts reports, with type approval, if applicable, of the numerical statement referred to in paragraph 2 of Article 53.*

<sup>75</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

3. *The judgment of financial liability procedure aims to enforce the financial liabilities arising from facts evidenced in the Court control actions reports drawn up outside the external verification of accounts procedure or in the internal control bodies reports.*

<sup>76</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

4. *The setting of charges procedure for the accountable parties or the procedure of the impossibility of verification or judgement of the account declaration aims to enforce the financial responsibilities resulting from the failure to render accounts to the Court or, when they are rendered, to declare the impossibility of passing judgement on the consistency, reliability and completeness of the mentioned accounts and the eventual existence of facts, which constitute financial liability, and require the appropriate enforcement, in any case.*

<sup>77</sup> As repealed by Article 3 of the Act 48/2006, of 29 August. The original version was as follows:

5. *The autonomous procedures for fines are used in the situation foreseen by in Section III ("Sanctioning Liability") or other situations where fines may be applied as foreseen by the law and for which there is not separate procedure.*

## SECTION II Recovery financial liability

### Article 59<sup>78</sup>

#### Restitution for arrears, embezzlements and improper payments

1. In the event of arrears, embezzlement of monies or of public assets and also of undue payments, the Court of Auditors may condemn the accountable party to recover the sums comprised by the offence, without prejudice to any other type of liability in which the same person may incur.
2. There is arrear when, irrespectively of the agent's action to that purpose, sums of money or other assets belonging to the State or other public entities have disappeared.
3. Embezzlement of money or public assets occurs whenever their disappearance results from the voluntary action of any public agent who has access to the former due to the exercise of the public duties they are appointed at.
4. For restitution purposes, all illegal payments which may cause damage to the public treasury are considered to be improper payments, including those corresponding to an effective consideration which is not suitable or proportional to the carrying out of the powers of the entity in question or to the normal uses of a certain activity.
5. Whenever the violation of financial rules, including in the public procurement scope, results in the obligation for the public entity to pay a compensation, the Court may sentence the accountable parties with the repayment of the corresponding amounts.
6. The recovery procedure includes late payment interests on the respective amounts, as provided for in the Civil Code, calculated from the infringement date, or when unascertainable, from the last day of the yearly budget execution.<sup>79</sup>

### Article 60<sup>80</sup>

#### Restitution for non-collection of revenue

In cases of practice, authorization or sanctioning, with fraud or serious guilt, involving the non-liquidation, collection or delivery of revenue violating all applicable legal rules, the Court of Auditors may sentence the responsible subject with the repayment of the non-collected amounts to the prejudice of the State or public entities.

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<sup>78</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

1. ...

2. *Improper payments for the effect of restitution are considered to be illegal payments which cause damage to the State or the public entity for not having an effective consideration.*

3. *The restitution includes overdue interest on the respective amounts, which are calculated according to the system for tax debts, counted from the date of the infringement, or, if it is impossible to determine such a date, from the last day of the respective management.*

4. *There is no ground for restitution, without prejudice to the application of other sanctions foreseen by law, when the respective amount is compensated with the unfounded enrichment that the State benefits from the practice of the illegal act or its effects.*

<sup>79</sup> As amended by Article 2 of the Act 20/2015, 9 March. The previous version was as follows:

6. *The recovery includes interest for late payment on the respective amounts, to which the tax debt regime applies, calculated from the date of the infringement, or if it is not possible to determine it, since the last day of the respective management.*

<sup>80</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

#### Article 60

##### Restitution for non-collection of revenue

*In the cases of deceitful practice, authorization or sanctioning which imply the non-settlement, collection or delivery of revenue in breach of applicable legal norms, the Court of Auditors may convict the accountable party to recover the non-obtained sums which cause prejudice to the State or public entities.*



## Article 61 Accountable parties

1. In the cases cited in the previous articles, responsibility for the restitution of the respective amounts falls on the agent or agents in charge of the act.
2. **The responsibility in the preceding point lies with the Government's members and members of the municipalities' executive bodies under the terms and conditions established for civil and criminal liability in paragraphs 1 and 3 of Article 36 of Decree 22257, of 25 February 1933.<sup>81 and 82</sup>**
3. Recovery financial liability also applies to managers, directors or members of the bodies of administrative and financial management or their equivalents and revenue collectors for services, organization and other entities subject to the jurisdiction of the Court of Auditors.
4. This liability may also apply to officials or agents who in the information they provided to members of the Government or managers, directors or other administrators, did not clarify the matters that fell within their powers, in conformity with the law.
5. The liability specified in the previous paragraphs only applies if the act was carried out with guilt.
6. **It is incumbent on the aimed parties to ensure the procedural cooperation and good faith with the Court, and they are guaranteed the free access to all available information required for the exercise of the adversarial principle, for the purpose of making proof of the use of public money and other public assets at their disposal legally and regularly in compliance with the principles of sound financial management.<sup>83</sup>**

## Article 62 Direct and subsidiary liability

1. The liability enforced in accordance with the terms of the previous articles may be either direct or subsidiary.
2. Direct liability applies to the agent or agents of the action.
3. Subsidiary financial liability for restitution applies to members of the Government, managers, directors or members of the bodies of administrative and financial management or their equivalent, and revenue collectors for services, organization and other entities subject to the jurisdiction of the Court of Auditors, if such a person was unaware of the fact when:
  - a) As a result of his or her permission or order, the agent practised the offence without verification being made of the offence or impediment of the individual to whom the corresponding duties pertained;
  - b) As a result of his or her indication or appointment, a person already proved and recognized to be of low moral standing, was designated for the post through which the offence was practised;
  - c) In carrying out examination duties allocated to him or her, there were proceedings of grave error,

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<sup>81</sup> As amended by Article 248 of the Act 42/2016, of 28 December. The previous version was as follows:

2. *The responsibility provided for in the previous paragraph falls on the members of the Government under the terms and conditions established for civil and criminal liability in Article 36 of Decree 22257, February 25, 1933.*

<sup>82</sup> *Decree 22 257: "Article 36 – They are civilly and criminally responsible for all acts that they practice, order, authorize or sanction, referring to the liquidation of revenues, collections, payments, concessions, contracts or any other matters, whenever from these acts result or may result in damage to the State:*

*1<sup>st</sup> Ministers, when they have not heard the competent authorities or when these fully clarify them in accordance with the laws, have adopted a different resolution;*

*2<sup>nd</sup> All entities subject to the Court of Auditors control, when the legal precepts have not been complied with;*

*3<sup>rd</sup> Employees when informing Ministers do not clarify matters within their competence in harmony with the law."*

<sup>83</sup> Paragraph added by Article 1 of the Act 48/2006, of 29 August.



specifically when the recommendations of the Court in order to establish internal control were not respected.

### Article 63 Joint liability

Without prejudice to the terms of the next article, if there are various individuals financially responsible for the acts under the terms of the previous articles, their direct and additional liability is jointly held and the payment of the total sum to be recovered by any of the accountable parties cancels the proceedings underway or stops them from commencing, without prejudice to the right of appeal.

### Article 64 Assessment of guilt

1. **The Court of Auditors assesses the degree of guilt according to the circumstances of the case, taking into consideration the duties with regard to the post or nature of each accountable party main functions, the volume and funds involved, the material amount of the public money or funds damage, the compliance degree of possible Court recommendations and the human and material resources existing in the service, body or entity subject to the jurisdiction of the former.**<sup>84</sup>
2. When negligence is verified, the Court may reduce or discharge the liability incurred by the offender, and should include within the decision the reasons justifying such a reduction or discharge.

## SECTION III Sanctioning Liability

### Article 65 Sanctioning financial liabilities

1. The Court of Auditors may levy fines in the following cases:
  - a) The non-settlement, collection or delivery of revenue owed to the coffers of the State;
  - b) The breach of the norms on the elaboration and execution of budgets, as well as the assumption, authorization or payment of public expenditure or commitments;
  - c) The non-enforcement or improper retention of discounts, which by law must be made to staff;
  - d) The breach of legal norms or regulations relative to management and control of the budget, treasury and assets;
  - e) The advances on account of payments in cases which are not expressly foreseen by law;
  - f) The use of public loans for ends not foreseen by law, as well as the exceeding of legal limits for the capacity of indebtedness;
  - g) The improper use of funds moved for treasury operations in order to finance public expenditure;
  - h) For the execution of acts or contracts that have not been subject to a priori control although legally**

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<sup>84</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. The Court of Auditors will evaluate the degree of guilt in harmony with the circumstances of the case, and in consideration of the powers of office or the nature of the principal duties of each responsible, the volume of securities and funds moved, the material amount of injury to public funds or securities and the human and material means which exist in the service, organization or entity subject to the Court jurisdiction.*

subject to it or that have come into effect in violation of article 45;<sup>85</sup>

- i) For the use of money or other public assets for purpose rather than those legally provided for;<sup>86</sup>
  - j) For the continued and unjustified non-implementation of the Court recommendations;<sup>87</sup>
  - l) For the infringement of legal or regulatory norms relating to public procurement, as well as the recruitment of personnel;<sup>88</sup>
  - m) By not initiating the legal mechanisms relating to the exercise of the right of recourse, the enforcing of penalties or recoveries due to the public purse;<sup>89</sup>
  - n) For the unjustified lack of rendering of accounts to the Court or for its remittance with deficiencies such as to make it impossible or significantly difficult to verify.<sup>90</sup>
2. The fines referred to in the previous number have as a minimum limit the amount corresponding to 25 UC and the maximum limit corresponds to 180 UC.<sup>91</sup>
  3. If the responsible entity settles the fine before the trial request referred to in article 89, the amount to be paid corresponds to the minimum limit.<sup>92</sup>
  4. If the offence is committed through deceit, the minimum limit of the fine is equal to a third of the maximum limit.<sup>93</sup>
  5. If the offence is committed through negligence, the maximum limit will be reduced to half.<sup>94</sup>
  6. The application of fines does not prejudice the enforcement of liability for any recovered sums due, if that be the case.<sup>95</sup>
  7. The Court can significantly reduce the maximum and minimum limits of the fine by half when circumstances are found, prior or subsequent to the infringement that substantially diminish the illegality or guilt.<sup>96</sup>

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<sup>85</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

1.

*h) For the implementation of contracts with the prior approval refused or contracts that have not been subject to prior control when they were legally subject to it;*

<sup>86</sup> Point added by Article 1 of the Act 48/2006, of 29 August.

<sup>87</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

1.

*j) For the repeated and unjustified non-compliance with the injunctions and recommendations of the Court*

<sup>88</sup> As amended by Article 1 of the Act 61/2011, of 7 December. The previous version was as follows:

1.

*l) For the violation of legal or regulatory norms relating to the recruitment of personnel.*

<sup>89</sup> Point added by Article 1 of the Act 61/2011, of 7 December.

<sup>90</sup> Point added by Article 2 of the Act 20/2015, of 9 March.

<sup>91</sup> As amended by Article 1 of the Act 61/2011, of 7 December. The previous version was as follows:

*2. The fines referred to in the previous paragraph have the minimum limit corresponding to 15 UC and the maximum limit corresponding to 150 UC.*

<sup>92</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

*3. If the entity responsible pays the fine prior to the judgment, the amount to be paid is the minimum.*

<sup>93</sup> Paragraph added by Single Article of the Act 35/2007, of 13 August.

<sup>94</sup> Former paragraph 4.

<sup>95</sup> Former paragraph 5.

<sup>96</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

8. The Court may waive the fine when the defendant's fault is minor and no recovery procedure is applicable, or it has already been executed.<sup>97</sup>
9. The Court of Auditors 1<sup>st</sup> and 2<sup>nd</sup> Chambers may withdraw responsibility for financial liabilities only subject to a fine when:
  - a) It is sufficiently evidenced that the author's fault is due to negligence;
  - b) There has been no prior recommendation by the Court of Auditors or any internal control body to the audited entity in order to correct the irregularity of the adopted procedure;
  - c) It was the first time that the Court of Auditors or an internal control body had censured its author for such procedure.<sup>98</sup>

### Article 66 Other offences

1. The Court may also levy fines in the following cases:
  - a) **For the late and unjustified remittance of the accounts to the Court;**<sup>99</sup>
  - b) The unjustified absence to provide on time documents, which by law must be sent;
  - c) The unjustified absence to provide requested information, to send-requested documents or to appear for making a statement;
  - d) The unjustified absence of the due collaboration with the Court;
  - e) The non-observance of the legal periods of time for the refer to the Court of cases relative to the acts or contracts, which take effect before the prior approval;
  - f) The introduction within cases of elements, which may lead the Court into error in its decisions or reports.
2. **Fines mentioned in the previous paragraph have as a minimum limit the amount corresponding to 5 UC and as a maximum limit the amount corresponding to 40 UC.**<sup>100</sup>
3. **The financial liabilities previewed in this article, when committed by negligence, have their maximum limit reduced to half, and their responsibility may be withdrawn under the terms of paragraph 9 of the previous article.**<sup>101</sup>

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*7. The Court may, when there is no wilful misconduct of the responsible entities, convert the recovery into payment of a lower pecuniary amount fine, within the limits of paragraphs 2 and 3.*

<sup>97</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The previous version was as follows:

*8. The Court of Auditors 1<sup>st</sup> and 2<sup>nd</sup> Chambers may, from the outset, relieve the responsibility for a financial infringement only liable to a fine when:*

- a) *it is sufficiently evidenced that the author's fault is due to negligence;*
- b) *there has been no prior recommendation by the Court of Auditors or any internal control body to the audited entity to correct the irregularity of the adopted procedure;*
- c) *It was the first time that the Court of Auditors or an internal control body had censured its author for his practice.*

<sup>98</sup> Paragraph added by Article 2 of the Act 20/2015, of 9 March.

<sup>99</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

1.

- a) *For the unjustified failure to submit accounts to the Court, for the unjustified missing to deliver them promptly, or for their submission with deficiencies such that they make it impossible or truly difficult to verify them;*

<sup>100</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*2. The fines foreseen by paragraph 1 of this article have as minimum limit the amount of PTE 50,000 and as maximum the amount of PTE: 500,000.*

<sup>101</sup> As amended by Article 2 of the Act 20/2015, 9 March. The original version was as follows:

### Article 67<sup>102</sup> System

1. *Repealed.*<sup>103</sup>
2. The Court of Auditors classifies the fines taking into consideration the seriousness of the facts and their consequences, the degree of guilt, the material amount of the public funds damaged or at risk, the hierarchical level of the responsible subjects, their economic situation, the existence of past records and the compliance degree with possible Court recommendations.<sup>104</sup>
3. The sanctioning liability is subject, with the necessary modifications, to the terms of articles 61 and 62.
4. The provisions of titles I and II of the Criminal Code general section are complementarily applicable to the substantive regime of financial liability.<sup>105</sup>

### Article 68 Qualified disobedience

1. In the cases of non-production of accounts or documents, the decision establishes a reasonable deadline so that the accountable parties may deliver the them to the Court.<sup>106</sup>
2. The failure to fulfil the order specified in the previous paragraph constitutes a crime of qualified disobedience, and the Public Prosecutor Service is responsible for initiating the respective legal proceedings in the appropriate court.

## SECTION IV Causes of the termination of responsibilities

### Article 69 Termination of responsibilities

1. Procedures for financial liability of restitution are terminated at any time by the prescription and payment of the sum to be recovered.
2. Procedures for sanctioning responsibilities, in accordance with the terms of articles 65 and 66 are terminated:
  - a) By prescription;

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*3. If the infringements foreseen in this article is committed by negligence the fines have their maximum limit reduced to half.*

<sup>102</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*Article 67  
Procedures for fines*

<sup>103</sup> As repealed by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. The infringements specified in this section are subject to an autonomous procedure for fines, if they were not recognized in the executing procedures of financial responsibility specified in points a) to c) of paragraph 1 of article 58.*

<sup>104</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*2. The Court will rank the fines in consideration of the seriousness of the infringement and its consequences, the level of guilt, the material amount of the public securities injured or at risk, the hierarchical level of the accountable parties, their economic situation and the existence of precedents.*

<sup>105</sup> Paragraph added by Article 2 of the Act 20/2015, of 9 March.

<sup>106</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. In the case of the failure to present accounts or documents, the sentence will set a reasonable deadline in which the accountable party may deliver them to the Court.*

- b) By death of the responsible;
- c) By granting of an amnesty;
- d) **By payment.**<sup>107</sup>
- e) **By withdrawn of responsibility according to paragraph 9 of article 65.**<sup>108</sup>

#### Article 70 Deadline for the initiation of procedures

1. The deadline for the initiation of procedures is 10 years for recovery financial responsibilities and 5 years for sanctioning responsibilities.
2. The deadline for the initiation of procedures is calculated from the date of the offence, or in the event that it cannot be determined, from the last day of the respective board of directors.
3. The deadline for the initiation of procedures is suspended between the date when the accounts enter the Court or when the audit is commenced and the date that the account able party is heard. This suspension may not exceed two years.
4. **In the cases mentioned in paragraph 2 of article 89, the procedure deadline is suspended for the period lapsing until the exercise of the right to action or the possibility of that exercise, under the conditions mentioned there.**<sup>109</sup>
5. **The procedure deadline is interrupted with the notice of action to the defendant in the judicial process**<sup>110</sup>
6. **The procedure deadline occurs definitely when the time limits established in paragraph 1, accrued by half, have been reached.**<sup>111</sup>

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<sup>107</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

2.

*d) By payment during the jurisdictional stage.*

<sup>108</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

2.

*e) By the withdrawal of responsibility according to paragraph 9 of Article 65.*

<sup>109</sup> Paragraph added by Article 1 of the Act 48/2006, of 29 August.

<sup>110</sup> Paragraph added by Article 2 of Act 20/2015, of 9 March.

<sup>111</sup> Paragraph added by Article 2 of Act 20/2015, of 9 March.

## **CHAPTER VI Operation of the Court of Auditors**

### **SECTION I Meetings and decisions**

#### **Article 71 Meetings**

1. The Court of Auditors in its headquarters, meets in general plenary sitting, plenary sitting of the Chamber, in sub-Chamber and in daily session of prior approval assessment.
2. The general plenary sitting is composed of all the judges including those of the regional Chambers.
3. The plenary sitting of each Chamber is composed of all the judges that belong to the Chamber.
4. The sub-Chambers form part of the normal operations of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers and are composed of three judges, where one is the rapporteur and the other two assistants in the order of preference established by drawing lots annually in the general plenary sitting, except in the case of the terms specified by article 84, paragraph 3.
5. For the purposes of a priori control, two judges will meet every week in a daily session of prior approval assessment.

#### **Article 72 Sessions**

1. The Court of Auditors meets in general plenary sitting, after being convened by the President or on the request of at least a 3<sup>rd</sup> of its members, whenever it is necessary to decide upon matters that falls within the Court respective jurisdiction.
2. The Chambers meet in plenary sitting at least once a week and whenever convened by the President or on the request of its respective judges.
3. The examination sessions take place every working day, even during judicial holiday periods.
4. The sessions of the general plenary sitting and those of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers have the director general or deputy director general as secretary, who may intervene on the request of the President or any judge in order to present clarifications on the matters listed on the agenda, and who is also responsible for preparing the minutes.

#### **Article 73 Decisions**

1. The plenary sitting, general or of the Chambers, function and decide on the basis of at least half their members.
2. The Sub-Chambers of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers, as well as the collective body specified in article 42, paragraph 1 only function and decide on the basis of all their respective members, and when presided over by the President who will only vote in the case of a tied vote.
3. The daily session of prior approval assessment may only function when both judges are present.
4. In the absence of quorum for the plenary sitting of a Chamber, the President may appoint judges from the other Chambers necessary for its functioning and respective decisions.

## SECTION II Powers

### Article 74 Powers of the Court of Auditors President

1. The President of the Court of Auditors has the following powers:
  - a) To represent the Court and guarantee its relations with the other sovereign organization, the public authorities and the media;<sup>112</sup>
  - b) To preside over sessions of the Court, directing and guiding the proceedings;
  - c) To present proposals to the general plenary sitting and to the plenary sittings of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers for deliberation on the matters of the respective powers;
  - d) To schedule the ordinary sessions and convene extraordinary sessions after having heard the judges;
  - e) To order the organization of the task agenda for each session, taking into consideration the indications provided by the judges;
  - f) Vote the Opinion on the General State Account, the judgments establishing jurisprudence, the Internal Regulation of the Court and whenever there is a tied decision between judges;<sup>113</sup>**
  - g) To elaborate the annual report of the Court;
  - h) To exercise the powers of guidance and general administration of the support services of the Court, in accordance with the terms of article 33.
  - i) To preside over the collective body sessions where the reports and opinions on the accounts of the Autonomous Regions are approved and vote on them;
  - j) To appoint judges;
  - l) To allocate judges holidays, after hearing them;
  - m) To appoint, by choice, the management staff of the support services;
  - n) To perform the other functions foreseen by law.
2. The President is replaced, in the event of his absence and impediments, by the Vice President and, in his absence, by the most senior judge.

### Article 75 Jurisdiction of the general plenary sitting

The general plenary sitting has the following powers:

- a) To approve the report and opinion on the General State Account;
- b) To approve the annual report of the Court;
- c) To approve the budgetary drafts and three-year action plans;

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<sup>112</sup> In accordance with article 1 of the President's Executive Order 14/2017-GP, of 15 May, the Press Office was created, which operates on the direct functional dependence of the President.

<sup>113</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

1.

*f) Vote the Opinion on the General State Account, the judgments establishing jurisprudence, the Internal Regulation of the Court and whenever there is a tie between judges;*

- d) **Approve the Courts Internal Regulation, upon proposal of the Chambers in the related sections, as well as the instructions that do not fall within the competence of each of the Chambers;**<sup>114</sup>
- e) To exercise the disciplinary power over the judges;
- f) To establish jurisprudence in extraordinary appeal;
- g) To appreciate any other matters, whose importance or generality justify it;
- h) To perform the other functions foreseen by law.

#### Article 76 Standing committee

1. There will be a standing committee, presided over by the President and composed of the Vice President and a judge from each Chamber elected by their peers for a period of three years, in whose meetings the director general will act as secretary, without voting right.
2. The standing committee is convened by the President and has consultative and deliberative powers in the cases foreseen by law.
3. In cases of urgency, the powers referred to in the previous article, with the exception of points a), e) and f), may be exercised by the standing committee, convened for the purpose by the President, without prejudice to the subsequent ratification by the general plenary sitting.
4. The judges of the regional Chambers have sat in the standing committee, with voting right, whenever matters of their powers are being discussed.

#### Article 77 Jurisdiction of the 1<sup>st</sup> Chamber

1. The 1<sup>st</sup> Chamber in plenary sitting has the following powers:
  - a) To judge the appeals against the decisions of the sub-Chambers, regional Chambers and delegations, including the part relative to emoluments;
  - b) To approve instructions on the organization of a priori control procedures to be sent to the Court;
  - c) Propose to the General Plenary its functioning rules for approval and inclusion in the Internal Court Regulation;**<sup>115</sup>
  - d) To approve the reports of the audits when there is a lack of unanimity in the sub-Chamber or when, though, there is such unanimity the President considers to widen the discussion in order to establish uniform criteria;
  - e) To approve, under proposal of the President, the monthly scale of the two judges who, by turn, have to meet each week in daily session of prior approval;
  - f) To deliberate upon any other matters foreseen by the present Act.
2. The 1<sup>st</sup> Chamber in sub-Chamber has the following powers:

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<sup>114</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*d) Approve the Court Internal Regulations and Instructions that do not fall within the competence of each of the Chambers;*

<sup>115</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

1.

*c) Approve the regulation of its internal functioning;*



- a) To decide upon the prior approval refusal, as well as, in the cases in which there are not agreement amongst the judges, scaled by turn, on the grant, exemption or dispense of prior approval amongst the judges whose turn it is to meet every week in daily session of prior approval assessment;
  - b) To judge the appeals for setting emoluments by the Directorate General;
  - c) To order audits relative to the exercise of prior or concomitant control and to approve the respective reports;
  - d) To inform the Public Prosecutor Service of the cases of financial offences detected in the exercise of the prior or concomitant control.
3. In daily session of prior approval, the judges, scaled by turn, by mutual consent, may grant or recognize the exemption or dispense of the prior approval, as well as request additional elements or information of the respective services or organization.
4. **It is incumbent on the judges of 1<sup>st</sup> Chamber to apply the fines mentioned in paragraph 1 of article 66 with regard to cases where they are judges-rapporteurs.**<sup>116</sup>

#### Article 78 Jurisdiction of the 2<sup>nd</sup> Chamber

1. The 2<sup>nd</sup> Chamber in plenary sitting has the following powers:
  - a) To order the external verification of accounts or the carrying out of audits, which have not been included in the plan of action;
  - b) To order the audits requested by the Assembly of the Republic or by the Government and to approve the respective reports;
  - c) **Propose to the General Plenary its functioning rules for approval and inclusion in the Internal Court Regulation;**<sup>117</sup>
  - d) To approve the auditing manuals and the verification procedures to be adopted by the respective support services;
  - e) To approve the instructions on the manner in which the entities should organization their management accounts and supply the necessary elements or information for successive control;
  - f) To approve the reports of verification of accounts cases or of the audits when there is a lack of unanimity in the sub-Chamber or when, though, there is such unanimity, the relater or the President considers widening the discussion in order to establish uniform criteria;
  - g) To deliberate upon other matters foreseen by law.
2. The sub-Chamber of the 2<sup>nd</sup> Chamber has the following powers:
  - a) To approve the reports of external verification of accounts or of audits which should not be approved by the plenary sitting;
  - b) To homologate the internal verification of accounts which should be returned to the services or organization;
  - c) To order the external verification of accounts following internal verification;
  - d) To request the cooperation of bodies of internal control;

<sup>116</sup> Paragraph added by Article 1 of the Act 48/2006, of 29 August.

<sup>117</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

1.

c) *Approve the regulation of its functioning;*

- e) To approve the resource to auditing firms and technical consultants.
- 3. The attribution of the actions foreseen by point a) of paragraph 1 is allocated, by a deliberation of the plenary sitting, to the judge, whose area of responsibility integrates the respective entity or with whom its object has the most affinities.
- 4. The judge, in the scope of the respective area of responsibility, has, namely, the following powers:
  - a) To approve the plans and methods to be adopted in the procedures of external verification of accounts and in the audits;
  - b) To order and, if that be the case, to preside over the diligences required for the instruction of the respective procedures;
  - c) To present a founded proposal to the sub-Chamber in order to request the cooperation of the bodies of internal control or resource to auditing firms or technical consultants;
  - d) To coordinate the elaboration of the report draft for the external verification of accounts and for audits to be presented and approved by the sub-Chamber;
  - e) **To apply the fines mentioned in paragraph 1 of article 66.**<sup>118</sup>

#### Article 79 Jurisdiction of the 3<sup>rd</sup> Chamber

- 1. The 3<sup>rd</sup> Chamber in plenary sitting has the following powers:
  - a) To judge the appeals against the decisions reached by 1<sup>st</sup> instance, in the headquarters and regional Chambers, including those concerning emoluments;
  - b) To judge the appeals against the decisions of the emoluments set in the verification of accounts and audit cases of the 2<sup>nd</sup> Chamber and of the regional Chambers;
  - c) **To judge the appeals of the decisions to apply the fines sentenced in 1<sup>st</sup> and 2<sup>nd</sup> Chambers and regional Chambers;**<sup>119</sup>
  - d) **To judge the appeals against final decisions delivered by the plenary sitting or in 1<sup>st</sup> instance.**<sup>120</sup>
- 2. The judges of the 3<sup>rd</sup> Section have the powers to the preparation and judgement in 1<sup>st</sup> instance of the procedures foreseen by article 58.
- 3. The procedures which fall under the jurisdiction of the 3<sup>rd</sup> Chamber are decided in 1<sup>st</sup> instance by a single judge.

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<sup>118</sup> Point added by Article 1 of the Act 48/2006, of 29 August.

<sup>119</sup> Point added by Article 1 of the Act 48/2006, of 29 August.

<sup>120</sup> Former point c).

## CHAPTER VII Procedure in the Court of Auditors

### SECTION I Applicable legislation

#### Article 8o Applicable legislation

The Court of Auditors procedure is governed by the provisions of this Law, by the Court Internal Regulation and, complementarily, by the Civil Procedure Code<sup>121</sup>

### SECTION II A priori control

#### Article 81<sup>122</sup> Refer the cases to the Court

1. The cases to be remitted to Court of Auditors for a priori control should be informed by the services or bodies in compliance with the instructions published in 2<sup>nd</sup> series of Official Journal.
2. The cases regarding acts and contracts with effect before the prior approval are remitted to Court of Auditors within 20 days counting from the date it becomes effective, unless otherwise provided.
3. The President of the Court may, at the request of the interested entities, extend the deadlines up to 45 days, when there is a reason that justifies this.
4. Unless there be any adverse legal provision, or delegation of powers, it is incumbent on the most senior director of the service or the president of the executive body or the administration to refer the cases to a priori control, as well as subsequently sending the latter, under the terms of paragraph 2 of the following article.

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<sup>121</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*Article 8o  
Applicable law*

*The Court of Auditors procedure is governed by the provisions of this Law, and, additionally:*

- a) With regard to the 3<sup>rd</sup> Chamber, by the Civil Procedure Code;*
- b) By the Administrative Procedure Code, in relation to the administrative proceedings of the Court of Auditors Directorate General, except when this acts within the scope of supervision and financial control and in the preparation and implementation of judicial acts;*
- c) By the of Criminal Procedure Code, in sanctioning matters.*

<sup>122</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*Article 81  
Submission of procedures to the Court*

- 1. The procedures to be submitted to the Court of Auditors for a priori control should be managed by the respective services and organization in conformity with the instructions published in the Official Journal.*
- 2. The procedures relative to acts and contracts which take effect before the prior approval is granted, except where there is a ruling to the contrary, should be submitted to the Court of Auditors within a maximum of 30 days:*
  - a) The date on which the parties concerned took office, in the case of appointments and employment contracts;*
  - b) The date of consignment, in the case of a contract job;*
  - c) The date of the start of execution of the contract, in remaining cases.*
- 3. In the case of appointments and employment contracts of organization and services granted administrative autonomy and who are based outside the Lisbon metropolitan area, the deadline specified in the previous paragraph is 60 days.*
- 4. The President of the Court of Auditors may, on request of the interested entities, extend the stated deadlines to 90 days, when there is a justified cause.*

## Article 82 Examination of procedures

1. The preliminary examination of prior approval procedures by the Directorate General should be made within a maximum of 15 days after the date of recorded delivery and by chronological order, and the same cases may be returned to the services or organization for the provision of any informational service.
2. **In cases when the respective acts or contracts become effective before the prior approval, the returned cases are remitted to the Court again within 20 days counting from reception date.**<sup>123</sup>
3. After the deadline for preliminary examination has expired, the cases should be subject to a declaration of their conformity with the law, or in the event of doubts on the legality of the respective acts or contracts, these should be presented to the 1<sup>st</sup> daily session of prior approval assessment.
4. The failure to observe the deadline in paragraph 2 as well as those of article 81 do not provide foundations for the prior approval refusal, but they cause the immediate cessation of all expenditure arising from the acts or contracts, on penalty that the procedure will be enforced for the respective financial liability.

## Article 83 Declaration of conformity

1. Whenever the analysis of the procedure produces no doubts concerning the legality of the act or the contract, specifically when it is identical to others already certified, whether in relation to the de facto situation or the applicable norms, a declaration of conformity with the law may be issued by the Directorate General.
2. General obligations of established debt and the contracts and other instruments which contribute to public debt are not susceptible to a declaration of conformity with the law, nor are the acts or contracts submitted to the Court after expiry of the deadlines specified in article 81 and article 82, paragraph 2.
3. The list of the prior approval cases duly identified with the respective declaration of conformity will be ratified by the judges whose turn is to sit in the daily session of prior approval assessment.

## Article 84 Doubts concerning legality

1. The cases in which there are doubts of the legality of the respective acts, contracts and other legal instruments are presented in the 1<sup>st</sup> daily session of prior approval assessment with a report which should at least contain the following:
  - a) A brief description of the object of the act or contract subject to examination;
  - b) The permissible legal norms;
  - c) The concrete facts and the legal precepts which form the basis of the doubt or obstacle to the granting of a prior approval;
  - d) The identification of judgements or decisions of the Court in identical situations;
  - e) The indication of the decision deadline for the purposes of a possible tacit prior approval;
  - f) The emoluments due.

<sup>123</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*2. In the cases in which the respective acts or contracts take effect before the granting of the prior approval, the returned procedures should be submitted once more to the Court of Auditors within a deadline of 30 days after the date of their receipt.*

2. If there are grounds for the prior approval refusal, or if there is not agreement between the judges of the daily session as specified in paragraph 3 of article 77, the case will be submitted to the plenary sitting for decision.
3. In the sub-Chamber, the rapporteur of the case will be the judge who was the rapporteur in the daily session of prior approval assessment, the assistants will be the other judge of the daily sessions and the next judge who follows in the order of precedence.

#### Article 85 Tacit prior approval

1. The acts, contracts and other legal instruments submitted to the Court of Auditors for a priori control are considered to be certified or declared in conformity with the law if there is no decision of prior approval refusal within a deadline of 30 days after the date of its recorded delivery. The services and organization may start execution of the acts or contracts 5 working days after the end of the said time period, if they have not received any communication as specified in the following paragraph.
2. The decision of prior approval refusal, or at least a message to such effect, should be communicated on the same day on which it is made.
3. The time period for the tacit prior approval will extend during judicial holidays but will not include Saturdays, Sundays or public holidays, and is suspended on the date of written notice requesting any elements or informational service until the date of the recorded delivery at the Court of the written notice confirming satisfaction of this request.
4. The recorded dates specified in paragraphs 1 and 3 should be communicated to the services and organization.

#### Article 86 Plenary sitting of the 1<sup>st</sup> Chamber

1. The decisions of the plenary sitting of the 1<sup>st</sup> Chamber are taken on the basis of a majority of votes of the members of the sub-Chamber or Section, as appropriate.
2. In order to ensure the unity of the application of the law, and given the legal importance of the question, its novelty, the differences of opinion which it arouses, or when justified by other important reasons, the President may widen the discussion and the vote on the decision to the other judges.
3. **Repealed.**<sup>124</sup>

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<sup>124</sup> As repealed by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

3. *In the case referred to in the previous paragraph, the approved decision will be published in the Official Journal if the Court believes this to be appropriate.*

### SECTION III Successive control

#### Article 87 Procedures of successive control

1. The procedures for the preparation of the report and the opinion on the General State Account and the reports on the examination of the accounts and audits are included in the operational regulations of the 2<sup>nd</sup> Chamber.
2. The procedures for the verification of accounts and the audits adopted by the support services of the Court as part of the procedures referred to in paragraph 1 are included in the auditing manuals and examination procedures approved by the 2<sup>nd</sup> Chamber.
3. The adversarial principle in the verification of accounts and audits procedures is to be carried out in writing.
4. In the procedures of verification of accounts and audits, the Court may:
  - a) Order the appearance of the accountable parties in order to provide information or clarification;
  - b) Carry out examinations, checks, assessments or other services through the use of experts with specialized knowledge.

#### Article 88 Plenary sitting of the 2<sup>nd</sup> Chamber

The decisions of the 2<sup>nd</sup> Chamber are subject, with the necessary adaptations, to the terms of paragraphs 1 and 2 of article 86.

### SECTION IV Jurisdictional procedure

#### Article 89<sup>125</sup> Powers to request a trial

1. The trial of cases referred to article 58 based on the reports mentioned in article 57, irrespectively of the juridical qualifications of the facts included in the respective reports, may be requested:
  - a) By the Public Prosecutor Service;
  - b) By management bodies, superintendence or guardianship on the aimed entities, regarding the reports of the Court control actions;
  - c) By the internal control bodies responsible for the reports mentioned in point b) of paragraph 2 of article 12.
2. The right of action provided for in points b) and c) of the previous paragraph is of a subsidiary nature and can be exercised within 30 days counting from the publication of the order of the Public Prosecutor Service

<sup>125</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*Article 89  
Powers to request a trial*

*The Public Prosecutor Services has the power to request a judgement for the procedures referred to in article 58, independently of the legal qualifications of the facts contained in the respective reports.*

stating no jurisdictional procedure is required.

3. The entities mentioned in points b) and c) of paragraph 1 may be represented by individuals with a degree in law with duties of juridical support.

#### Article 90 Requisites of the request

1. The request should include the following:
  - a) Identification of the defendant, with an indication of the name, residence and place or registered office where the public organization or entity exercises the respective activity, as well as the respective net monthly salary;
  - b) The request and description of the facts and the legal reasons upon which the service of documents is founded;
  - c) Indication of the amounts that the defendant should be obliged to recover once convicted, as well as the precise amount of the fine to be applied;
  - d) In the event that there has been external examination of the accounts, an opinion on the ratification of the closing balance contained in the respective report.
2. The request may lead to cumulative requests, as well as for different offences, subject to the corresponding legal liability.
3. **The request shall present the available evidence indicative of facts which lead to financial responsibility and should not indicate more than ten witnesses.**<sup>126</sup>

#### Article 91 Finality, deadline and form of the service of documents

1. If there is no basis for preliminary denial, the defendant is the person served to either contest or pay the amounts demanded on a voluntary basis within a deadline of 30 days.
2. The service of documents is personal, and made through the delivery to the person to be served of a registered letter with recorded delivery, or through a personal act of an official of the Court, always with a copy of the service of documents delivered to the party served.
3. The service of documents and notifications are also subject to all the rules contained in the Code of Civil Procedure.
4. **The judge may, however, on the request of the person served, grant a reasonable extension of the deadline referred to in paragraph 1, up to the limit of 30 days, when the circumstances of the case in question, namely the complexity or the volume of the issues to be examined, justify it.**<sup>127</sup>
5. The voluntary payment of the amount demanded in the request of the Public Prosecutor Service within the time period for serving a notice of intention to defend is exempted from emoluments.

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<sup>126</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*3. The application shall present the available evidence that indicates the facts which cause liability and shall appoint no more than three witnesses for each fact.*

<sup>127</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*4. The judge may, however, on the request of the person to be served, grant a reasonable extension of the deadline referred to in paragraph 1, up to the limit of 30 days, when the circumstances of the case in question, namely the complexity or the volume of the issues to be examined, justify it.*

**Article 92**  
**Requisites of the pleading**

1. The pleading is submitted by articles.<sup>128</sup>
2. With the pleading the defendant must provide probative evidence, with the limitation foreseen in paragraph 3 of Article 90, regardless of the possibility to change or add them up to eight days before the trial date.<sup>129</sup>
3. Irrespective of the fact that the defendant formally contests the writ of summons, he or she may present evidence with an indication of the facts of the case, provided that this is done within the time period specified in the previous paragraph.
4. The failure to contest the writ of summons does not lead to sanctioning effects.
5. The defendant has to be represented by a lawyer to be appointed according to the applicable legislation if the former does not brief one.<sup>130</sup>

**Article 93<sup>131</sup>**  
**Hearing and trial**

1. The hearing and trial session is scheduled within 30 days and takes place before a single judge.
2. The defendant's attendance at the trial is not mandatory.

**Article 93-A<sup>132</sup>**  
**Judge Powers and Hearing Discipline**

1. The judge holds all the necessary powers to facilitate valuable and brief discussions and pronounce a fair decision for the cause.
2. The judge is in particular responsible for:
  - a) Directing the works and ensuring that these take place following the defined schedule;
  - b) Maintaining order and ensuring respect for the existing institutions, laws, and the court;
  - c) Ordering, by appropriate means, the appearance of any persons and the reproduction of any legally admissible statements, whenever deemed necessary for the discovery of the truth;
  - d) Guaranteeing the adversary system and preventing the formulation of legally inadmissible requests;
  - e) Directing and moderating the discussion, prohibiting, in particular, all acts and tactics that are manifestly impertinent or dilatory.

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<sup>128</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*1. The pleading is to be presented in writing and is not subject to special formalities.*

<sup>129</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*2. With the pleading, the defendant must provide probative evidence, with the rule and the limitation foreseen in paragraph 3 of article 90, without prejudice to change or add them up to eight days before the judgment.*

<sup>130</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

*5. The defendant may be represented by a lawyer.*

<sup>131</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*Article 93*  
*Hearing and Trial*

*The summary procedure regime of the Civil Procedure Code applies to the hearing and trial, with the necessary adaptations.*

<sup>132</sup> Article added by Article 3 of the Act 20/2015, of 9 March.



3. If the judge deems it necessary to produce evidence not included in the initial request or the pleading, he shall inform the procedural parties accordingly and determines its record in the minutes.

#### Article 93-B<sup>133</sup>

##### Publicity and hearing continuity

1. The hearing and trial are public and continuous and can only be interrupted for reasons of force majeure or absolute necessity.
2. If it is not possible to conclude the hearing on a given day, the judge suspends it and, by agreement of the parties, sets the continuation to the nearest date.
3. If the continuation does not occur within the next 30 days, due to an impediment of the Court or of the defendant's legal representation as a result of another judicial service already scheduled, the respective reason must be recorded in the minutes, expressly identifying the diligence and the procedure to which it relates.
4. For the purposes of the preceding point, the period of Court Holidays is not considered, nor the period in which, for reasons outside the court, the procedure is paused for further evidence recollection actions.
5. Those who have testified cannot leave the Trial session without the judge's authorization, who does not grant it whenever there is an objection from either party.

#### Article 93-C<sup>134</sup>

##### Order of acts to be performed at the hearing

1. The acts to be performed at the hearing should abide to following sequence:
  - a) Defendant's testimony, if requested;
  - b) Presentation of the means of proof indicated in the request referred to in article 90;
  - c) Presentation of the evidence referred to in paragraph 2 of article 92;
  - d) Oral arguments, in which the Public Prosecution office and the lawyers present the factual and legal conclusions, that have been extracted from the evidence produced, each lawyer being allowed to reply once.
2. Oral arguments cannot exceed, for each lawyer, one hour and subsequent replies, twenty minutes.

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<sup>133</sup> Article added by Article 3 of the Act 20/2015, of 9 March.

<sup>134</sup> Article added by Article 3 of the Act 20/2015, of 9 March.

Article 94<sup>135</sup>  
Sentence

1. Once the final hearing is closed, the procedure is assigned to the judge to issue a sentence within 30 days.
2. The sentence begins by identifying the applicant and respondent and summarily indicating the conclusions of the entity that requested the trial and those of the defense, if they have been presented.
3. The reasoning follows, in which the judge must establish the facts that he considers proven and those that he considers unproven, critically and concisely analyzing the evidence on which he based his conviction, as well as the applicable legal framework.
4. The sentence concludes with a final judgement, which contains:
  - a) The applicable legal provisions;
  - b) The condemnatory or acquittal decision;
  - c) The date and signature of the judge.
5. In cases of manifest simplicity, the sentence can be immediately dictated to the minutes and succinctly substantiated.
6. In the event of a conviction for recovery of amounts due to recovery financial liability, the condemnatory sentence sets the date from which the respective late payment interest is due.
7. In procedures where there was an external verification of the entity account, the sentence type-approves the closing balance contained in the report.
8. Concerning the procedures referred to in the previous paragraph, in the event of a conviction for recovery of funds, the closing balance type-approval and the respective responsibility extinction only occur after full payment.
9. The condemnatory sentence resulting in recovery of funds or fine determines the emoluments owed by the defendant.

Article 95  
Payment in instalments

1. The payment of the amount of the sentence may be authorized in up to four quarterly instalments, if requested before the adjudication of the sentence in res judicata, whereby each instalment will include the respective interest due, should this be the case.
2. The failure to pay any instalment will oblige the immediate payment of the other instalments and the subsequent commencement of tax foreclosure procedure.

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<sup>135</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

Article 94  
Sentence

1. *The judge is not bound by the amount indicated in the request and may condemn in greater or lesser amounts.*
2. *In the event of a conviction for recovery of amounts due to recovery financial liability, the condemnatory sentence will set the date from which the respective late payment interest is due.*
3. *In procedures in which there was an external verification of the management account, the sentence will type-approve the closing balance contained in the report.*
4. *Regarding the procedures referred to in the previous paragraph, in the event of a conviction for recovery of funds, the closing balance type approval and the respective responsibility extinction will only occur after their full payment.*
5. *The condemnatory sentence in recovery or fine will fix the emoluments owed by the defendant.*

## SECTION V Appeals

### Article 96 Ordinary appeals

1. The final decision of refusal, granting and exemption of prior approval, as well as decisions concerning emoluments, including those imposed by the regional Chambers, may be contested by an appeal to the 1<sup>st</sup> Chamber served by the following entities:
  - a) The Public Prosecutor Service, concerning any final decisions;
  - b) The author of the act or the entity which authorized the contract for which a prior approval was denied;
  - c) In the event of decisions on emoluments, the individuals subject to the charges.
2. Interlocutory orders for procedures which fall under the powers of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers may not be appealed against, and neither may the decisions which approve reports of verification of accounts or audits, except in the latter procedures, in relation to that which concerns the setting of emoluments and other charges.
3. **In the procedures of the 3<sup>rd</sup> Chamber, an appeal of the sentence and interlocutory decisions that suspend the trial on all or part of the request or regarding any of the defendants is admissible, with immediate effect.**<sup>136</sup>

### Article 97 Form and deadline for the presentation of an appeal

1. The appeal is presented by a statement of appeal sent to the President of the Court, which should include the legal and de facto foundations of the appeal and the conclusions which have been formed within a deadline of 15 days after notification of the decision against which the appeal is made.
2. The appeal is distributed by drawing lots amongst the judges of the respective Chamber, whereby the judge who served as the rapporteur of the decision to appeal may not be the rapporteur of the appeal itself, and also may not intervene in the respective trial.
3. After the appeal having been distributed, filed and attached to the case on which it was delivered the decision under appeal, the rapporteur is given forty-eight hours to decide whether to preliminarily accept or reject the appeal.
4. An appeal against final decisions of prior approval refusal or of conviction for liability sanctions has a suspending effect.
5. An appeal against a final decision of conviction for financial liability to recover funds only has a suspending effect if the judicial bond is paid.
6. **In appeals, it is always mandatory to appoint a lawyer.**<sup>137</sup>
7. In the event of the dismissal of the appeal, there is no prepayment of costs, but emoluments are due.

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<sup>136</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*3. In the procedures of the 3<sup>rd</sup> Chamber, appeals can only be made against the final decisions pronounced at the 1<sup>st</sup> Instance.*

<sup>137</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*6. It is not mandatory to appoint a lawyer, except for appeals under the jurisdiction of the 3<sup>rd</sup> Chamber.*

**Article 98**  
**Claim against non-admission of an appeal**

1. The appellant may make a claim to the plenary sitting of the Chamber against the order rejecting the appeal, within a deadline of 10 days, detailing the reasons why the appeal should be admitted.
2. The rapporteur may redress the dismissal order and facilitate the continuation of the appeal.
3. If the rapporteur supports the preliminary order of rejection of the appeal, he will order that the claim be sent to the plenary sitting.

**Article 99**  
**Procedure**

1. Once the appeal is admitted, the judicial actions are sent for examination to the Public Prosecutor Service for 15 days, in order to issue an opinion, provided that the Public Prosecutor Service is not the appellant.
2. If the Public Prosecutor Service is the appellant, and the appeal is admitted, the entity directly affected by the decision being appealed against should be notified to respond within 15 days.
3. If in the opinion of the Public Prosecutor Service new questions are raised, the appellant is notified to make a statement within 15 days.
4. Once the opinion has been issued or the deadline of the previous paragraph has expired, the judicial actions are only sent for examination for three days to the remaining judges if the actions have not been dispensed with.
5. At any time during the procedure the rapporteur may order the diligences which are indispensable for deciding the appeal.

**Article 100**  
**Trial**

1. The rapporteur presents the case to the session with a plan of judgement, the President presides over the discussion and has the casting vote.
2. In procedures of a priori control the Court may acknowledge questions relevant for the granting or refusal of the prior approval, even if not addressed in the decision being appealed against or in the allegations of the appellant, when such questions are raised by the Public Prosecutor Service in the respective opinion, in accordance with the terms of paragraph 3 of article 99.

**Article 101**  
**Extraordinary appeals**

1. **If in the context of the same legislation, within different procedures of the 1<sup>st</sup> or 3<sup>rd</sup> Chambers Plenary Sessions, two decisions are delivered, regarding granting or refusing a priori approval and financial responsibility, in which, about the same fundamental question of law, two opposing solutions are expressed, an extraordinary appeal may be filed against the last decision rendered to establish jurisprudence.<sup>138</sup>**

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<sup>138</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

*1. If in the context of the same legislation, within different procedures in the 1<sup>st</sup> or 3<sup>rd</sup> Chambers or in the Regional Chambers Plenary Sessions, two decisions are delivered, regarding granting or refusing a priori approval and financial liability, which, about the same fundamental question of law two opposing solutions are expressed, an extraordinary appeal may be filed against the last decision rendered to establish jurisprudence.*

2. In the appeal request, individual details should be provided of both the previous decision having obtained the force of res judicata which stands in opposition, and the decision being claimed against, on penalty of the request being rejected.
3. Extraordinary appeals are subject, with the necessary adaptations, to the system of ordinary appeal, except for the terms of the following articles.
4. **The provisions of the Civil Procedure Code apply to the extraordinary appeals referred to in point d) of paragraph 1 of article 79 for the appeal for review, with the necessary adjustments.**<sup>139</sup>

#### Article 102 Preliminary question

1. Once the appeal request has been distributed and filed, attached with the case containing the decision having obtained the force of res judicata which allegedly stands in opposition, the rapporteur has five days to decide whether to issue an order of preliminary admission or rejection.
2. If the appeal is given preliminary admission, the case is sent for examination to the Public Prosecutor Service in order to issue an opinion on the opposition of the decisions and the sense of jurisprudence to be set.
3. If the rapporteur judges that there is no opposition of the decisions, he will send the judicial procedures for examination by the judges of the Chamber, after which he will present a plan of judgement to the respective plenary sitting.
4. The appeal is considered to be finished if the plenary sitting of the Chamber determines that there is no opposition of decisions.

#### Article 103 Trial of the appeal

1. After the existence of opposition of the decisions having been verified, the procedures are sent for examination to the other judges of the general plenary sitting and to the President for five days, after which the rapporteur will present the procedures for trial in the 1<sup>st</sup> session.
2. The judgment of the Chamber which recognizes the existence of opposition between the decisions does not prevent the general plenary sitting from making the reverse decision.
3. The doctrine of judgement which fixes jurisprudence will be obligatory for the Court of Auditors while the law has not been changed.

### CHAPTER VIII Regional Chambers

#### Article 104 Substantive jurisdiction

The judge of the regional Chamber has the following powers:

- a) To exercise the powers specified in points b) and e) of article 6, with the necessary adaptations, within the scope of the respective autonomous region;

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<sup>139</sup> As amended by Article 1 of the Act 48/2006, of 29 August. The original version was as follows:

4. *The provisions of the Civil Procedure Code apply to the extraordinary appeals referred to in point c) of paragraph 1 of article 79 for the appeal for revision, with the necessary adjustments.*

- b) Draft and submit its functioning rules for approval of the General Plenary for further inclusion in the general rule of the Court, as well as, the a priori and successive control audit plans.<sup>140</sup>
- c) To exercise the other powers attributed to him by law.

#### Article 105 Ordinary session

1. The powers of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers are exercised, with the necessary adaptations, by the judge of the regional Chamber in ordinary weekly session, covering the procedures of prior and successive control, together with the obligatory assistance of the Public Prosecutor Service and the participation, as assistants, of the deputy director general and the auditor coordinator, or in their absence or impediment, the respective legal substitutes.
2. The Public Prosecutor Service and the assistants have the right to inspect the procedures before the ordinary weekly session, and may issue an opinion on the legality of the questions which therein arise.
3. The terms of the Act 23/81, of August 19 and the complementary legislation remain in force, in respect to the assistants of the regional Chambers provided that they do not conflict with the precepts of the present Act.

#### Article 106 A priori control

1. In matters of a priori control, the regional Chambers operate on a daily basis with the judge and two assistants, who alternate on a weekly basis, and procedures which give rise to doubts concerning the granting or refusal of prior approval, must be decided in ordinary weekly session.
2. Auditing reports which form part of concomitant control must be approved in ordinary weekly session, as well as any reports which serve as the basis for autonomous procedures to levy fines.
3. The procedures of prior and concomitant control are subject, with the necessary adaptations, to the system specified in this Act for the 1<sup>st</sup> Chamber, excepting the terms of article 83.

#### Article 107 Successive control

1. The following must be approved in ordinary weekly session:
  - a) Reports of verification of accounts and audits which provide evidence of financial responsibilities to be enforced through trial procedures, under the terms of article 57;
  - b) Audit reports carried out on request of the regional legislative assembly, or by the regional government, as well as audits which are not included in the respective annual plan;
  - c) Approval of any reports which serve as the basis for autonomous procedures to levy fines.
2. The other powers may be exercised by the judge of the regional Chamber on a daily basis, as part of the respective procedures.
3. Continuous and successive control procedures are subject, with the necessary adaptations, to the system specified in this Act for the 2<sup>nd</sup> Chamber.

<sup>140</sup> As amended by Article 2 of the Act 20/2015, of 9 March. The original version was as follows:

b) *To prepare and submit for approval to the general plenary sitting the internal regulations and annual plans of prior and successive control;*

### **Article 108** **Jurisdictional procedures**

1. The commencement and preparation of legal procedures for financial liability as specified in article 58 which concern the regional Chamber are subject to the terms of articles 89 and 95 of the present Act, with the adaptations specified in the following paragraphs.
2. After appeal has been made or the respective time period has expired, the judge of the regional Chamber will allocate the procedures to the judge of the other regional Chamber.
3. After submission of the procedures, photocopies of the main items of evidence should be sent to the judge to whom the procedures have been allocated.
4. A judge from the other regional Chamber is responsible for presiding over the hearing of production of evidence and will deliver the final sentence, travelling to the regional Chamber for this purpose whenever it proves necessary.

### **Article 109** **Appeals**

1. Appeals against final decisions are made in the regional Chamber, and the judge which delivered the decisions has the power to admit or reject the appeals.
2. If the appeal is admitted, the procedures are sent, under registered post, to the headquarters of the Court of Auditors, where they will be allocated, submitted to proceedings and judged.
3. Appeals are subject, with the necessary adaptations, to the terms of articles 96 onwards.

## **CHAPTER IX** **Final and transitional terms**

### **Article 110** **Pending procedures in the 1<sup>st</sup> Chamber**

1. In relation to prior approval procedures and requests for the reapplication of prior approval refusal which still do not have a final decision, the present Act takes effect from the day after its publication.
2. Pending procedures of annulment of prior approvals will be archived, and the possible illegalities of the respective acts or contracts may be appreciated through successive control.

### **Article 111** **Pending procedures in the 2<sup>nd</sup> Chamber**

1. The present Act applies to pending procedures in the jurisdictional stage of the powers of the 2<sup>nd</sup> Chamber, without prejudice to the terms of the following paragraphs.
2. The reports of the trial procedures of accounts and audits, with or without the intervention of the Public Prosecutor Service, which provide evidence of fraud or embezzlement of public funds or securities or improper payments, once approved in the plenary sitting of the sub-Chamber, must be presented to the Public Prosecutor Service, for the purposes of the terms of articles 89 onwards.
3. Financial liability for restitution of funds of article 60 may only be enforced by the Court in relation to facts which occur after the present Act takes effect.
4. The other types of pending procedures already allocated to a judge of the 2<sup>nd</sup> Chamber may only continue their terms if there is evidence of financial offences sanctioned by the prevailing legislation at the date



of the respective acts and by the present Act.

5. The financial offences specified in paragraphs 2 and 4 are subject to the most favourable system of liability which will be enforced in accordance with the terms of articles 89 onwards.
6. Pending appeals of decisions made in procedures which fall under the powers of the 2<sup>nd</sup> Chamber while the Act 86/89 of 8 September was in force will be reallocated and judged in the 3<sup>rd</sup> Chamber.
7. Pending procedures in the jurisdictional stage in the 2<sup>nd</sup> Chamber which are not specified in the previous paragraphs, as well as those which, although not yet in the jurisdictional stage, demonstrate evidence of financial offences covered by amnesty or statutory limitation, may be archived on the order of the judge of the respective area, after consultation with the Public Prosecutor Service.

#### Article 112 Deputy President

The mandate of the Vice Presidents presently holding office will terminate with the election of the Vice President in accordance with the terms of the present Act.

#### Article 113 Accounts of the Court of Auditors

The examination of the accounts of the Court of Auditors is subject to the terms of the law for all the accountable parties bearing financial liability, and is carried out in the following manner:

- a) Integration of the respective accounts related to the implementation of the State Budget in the General State Account;
- b) Annual external verification of the accounts of coffers and possible enforcement of financial responsibilities, by the relevant sub-Chambers and Chamber of the Court;
- c) Publication of consolidated accounts as an appendix to the report specified in article 43.
- d) Submission of the Court management to an audit by a specialized auditing firm, chosen by tender, whose report will be published together with the accounts referred to in the previous point.

#### Article 114 Temporary terms

1. In addition to the terms of article 46, submissions should be made to the Court of Auditors, on a temporary basis, for a priori control purposes, of documents which represent, act as deeds or grant execution of the following acts and contracts:
  - a) Until December 31, 1997 the draft contracts for amounts equal or above a sum to be fixed in accordance with the terms of article 48, as well as the acts relative to promotions, advancement, reclassification and transitions which result exclusively from restructuring of the services of central, regional and local administration, whenever this implies an increase in the respective salary scale;
  - b) Until December 31, 1998, administrative appointment contracts, as well as all 1<sup>st</sup> appointments to the full-time staff of the central, regional and local administration.
2. **As of January 1, 1998, the acts referred to in points a) and b) of paragraph 1 of article 46, as well as point b) of the preceding paragraph, may produce all their effects before the prior approval, except for the payment of the respective price, when applicable, applying to the prior approval refusal the provisions of**



**paragraphs 2 and 3 of article 45.<sup>141</sup>**

3. The following are excluded from the a priori control specified in the previous paragraphs:
  - a) Certificates of appointment issued by the President of the Republic;
  - b) The act of appointment of members of the Government, of regional governments and of the staff of the respective secretarial staffs;
  - c) The acts relative to promotions, advancement, reclassification and transitions of staff, excepting those which result from restructuring of the services of central, regional and local administration;
  - d) The appointment of judges of any court and judges of the Public Prosecutor Service;
  - e) Any appointment of military staff in the Armed Forces;
  - f) Certificates of permutation, transfer, detachment, requisition or other instruments of staff mobility;
  - g) Fixed term employment contracts.
4. For the purposes of point b) of paragraph 1 of article 46 of the present Act, submission to the Court of Auditors should only be made of contracts celebrated by the direct and indirect administration of the State, the direct and indirect administration of the Autonomous Regions and by local government, and municipal federations and associations which exceed an amount to be defined annually.
5. For 1997, the amount referred to in the previous paragraph is fixed at 600 times the sum which corresponds to the index 100 in the index scale of the general regime of public service, rounded up to the next highest amount of PTE 100,000.
6. **All assistant judges on duty at 31 December 2000 shall be appointed as extra establishment plan judges, and paragraph 3 of article 23 shall apply to them, notwithstanding the right of application of other better qualified candidates.<sup>142</sup>**

**Article 115  
Repealing Norm**

All legal rulings contained in any laws which are contrary to the terms of the present Act are repealed, specifically:

- a) The regulations of the Supreme Council of Financial Administration of the State, approved by the Decree 1831 of August 17, 1915;
- b) The Decree 18962 of October 25, 1930;
- c) The Decree 22 257 of February 25, 1933 excluding article 36.
- d) The Decree 26341 of February 7, 1936;
- e) The Decree 29174 of November 24, 1938;
- f) The Decree-Law 36 672 of December 15, 1947;
- g) The Decree-Law 146-C/80 of May 22;
- h) The Law 23/81 of August 19, without prejudice to the terms of article 105 of the present Act;
- i) The Act 8/82 of May 26;

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<sup>141</sup> As amended by Article 82, paragraph 2 of the Act 87-B/98, of 31 December. The original version was as follows:

*As of January 1, 1998, the acts referred to in points a) and b) of paragraph 1 of Article 46, as well as point b) of the preceding paragraph, may produce all their effects before the prior approval, except for the payment of the respective price, when applicable, applying to the prior approval refusal the provisions of paragraph 5 of article 45.*

<sup>142</sup> Paragraph added by Single Article of the Act 1/2001, of 4 January.

- j) The Decree-Law 313/82 of August 5;
- l) The Act 86/89 of September 8;
- m) Articles 41 and 42 of Decree-Law 341/83 of July 21.

Approved on June 26, 1997

President of the Assembly of the Republic, *António de Almeida Santos*.

Proclaimed on August 1, 1997.

Published as law.

President of the Republic, JORGE SAMPAIO.

Counter-celebrated on August 5, 1997.

Acting Prime-Minister, *António Manuel de Carvalho Ferreira Vitorino*.