

**Federative Republic of Brazil**  
**Organic Law of the Brazilian Court of Audit**  
*(Tribunal de Contas da União - TCU)*

**BTCU N. 38/96 - SPECIAL EDITION**

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**Law n. 8,443, of July 16 of 1992.**

Organic Law of the Brazilian Court of Audit and other measures.

**THE PRESIDENT OF THE REPUBLIC**

I let it be known that the National Congress decrees and I sanction the following Law:

## TITLE I

Nature, Competence And Jurisdiction

## Chapter I

Nature and Competence

**Article 1.** In accordance with the Federal Constitution and in the manner established in this Act, the Brazilian Court of Audit, an institution for external control, is competent to:

I - judge the accounts of administrators and other persons responsible for public money, goods and assets of the agencies of the branches of the Federal State and of entities of indirect administration, including foundations and societies instituted and maintained by the federal public power, and the accounts of those responsible for loss, deviation or any other irregularity which results in loss for the Treasury;

II - carry out, by its own initiative or at the request of the National Congress, of its Houses or its respective Committees, accounting, financial, budgetary, performance and property control of the agencies of the branches of the Federal State and of the other entities referred to in the previous clause;

III - examine the accounts rendered annually by the President of the Republic, in the terms of article 36 of this Act;

IV - follow up the collection of the revenue under the charge of the Federal State and of the other entities referred to in clause I of this article, through inspections or audits, or by means of its own statements, as prescribed in its Internal Regulation;

V - evaluate, for the purpose of registration, as prescribed in its Internal Regulation, the legality of the acts of admission of personnel, in any form, in direct and indirect administration, including the foundations instituted and maintained by federal public power, excluding the nominations to commissioned offices, as well as evaluate the granting of civil service and military retirement annuities and pensions, with the exception of the subsequent benefits which do not alter the basis of the concessive act;

VI - calculate, observing the relevant legislation, the quotas relative to the participation funds alluded in the sole paragraph of art. 161 of the Federal Constitution, controlling the delivery of the respective funds;

VII - issue, according to paragraph 2 of art. 33 of the Federal Constitution, a prior option regarding the accounts of the Government of a Federal Territory within sixty days of receipt, as prescribed in its Internal Regulation;

VIII - inform the competent power about detected irregularities or abuses, indicating the specific act and defining the responsibilities, including those of a Minister of State or authority of equal hierarchical level;

IX - apply to those responsible the sanctions prescribed in articles 57 to 61 of this Act;

X - draw up and alter its Internal Regulation;

XI - elect its President and Vice-President, and install them in office;

XII - grant leave of absence, vacation and other absences to the ministers of the Court, substitute ministers and members of the Public Prosecution Council within the Court. Leave of absence for medical treatment for a period of over six months will depend on an inspection by a medical board;

XIII - propose to the National Congress the establishment of the salaries of the ministers of the Court, substitute ministers and members of the Public Prosecution Council within the Court;

XIV - organize its Executive Office, as prescribed in its Internal Regulation, and provide it the positions and jobs, observing the relevant legislation;

XV - propose to the National Congress the creation, transformation and extinction of positions, jobs and functions of the Personnel Staff, as well as the establishment of the respective salaries;

XVI - rule on denunciations sent to it by any citizen, political party, association or labor union, as prescribed in articles 53 to 55 of this Act;

XVII - rule on inquiries formulated by a competent authority, regarding doubts arisen in the application of legal and regulatory provisions concerning matters of its competence, as prescribed in its Internal Regulation.

Paragraph 1 - In the judging of accounts and in the control activities under its competence, the Court shall decide on the legality, legitimacy and economy of management acts and of expenditures arising from them, as well as on the application of subventions and the tax expenditures.

Paragraph 2 - The response to the inquiry to which clause XVII of this article refers to has a normative character and constitutes a prejudgment of the thesis, but not of the fact or concrete case.

Paragraph 3 - The following will be an essential part of the Court's rulings or of those of its Chambers:

I - a report from the Rapporteur, which shall contain the conclusions of the analysis and preparation (of the Report by the auditing team or by the professional responsible for the analysis of the process, as well as of the opinion of the immediate superiors, of the Technical Unit), and from the Public Prosecution Council within the Court;

II - the legal basis with which the Rapporteur shall analyze the matters of fact and of law;

III - legal provision with which the Rapporteur shall decide on the merit of the process.

**Article 2.** For the performance of its duties, the Court shall receive, in every term, the roll of accountable officials and its alterations, and other documents or information which are deemed necessary, as prescribed in its Internal Regulation.

Sole Paragraph - The Court may request from the Minister of State of an area or from an authority of an equal hierarchical level other elements essential for the performance of its duties.

**Article 3.** The Brazilian Court of Audit, in the extent of its competence and jurisdiction, has regulatory power, thus being able to issue normative acts and instruction on matters of its duties and on the organization of the suits which should be submitted to it, ensuring compliance, under the penalty of responsibility.

## Chapter II Jurisdiction

**Article 4.** The Brazilian Court of Audit has its own and private jurisdiction, in all of the national territory, over the people and matters subject to its competence.

**Article 5.** The Court's jurisdiction encompasses:

I - any individual, organization or entity to which clause I of art. 1 of this Act refers to, who utilizes, collects, holds, manages or administers funds, goods or assets that are public or for which the State is responsible, or who, in its name, commits to obligations of a pecuniary nature;

II - those responsible for loss, deviation or another irregularity which results in loss for the public property;

III - the heads or liquidators of expropriated companies or of those under intervention or that in some manner shall become part, temporarily or permanently, of the State's property or of another federal public entity;

IV - the officials accountable for the national accounts of supranational corporations in which the Federal State has a participation in the capital stock, in a direct or indirect manner, in the terms of the constituting treaty;

V - the officials accountable for the entities endowed with legal status of private law which receive parafiscal contributions and render services of public or social interest;

VI - all those who must render accounts to it or whose acts are subject to its control by the express provision of the law;

VII - the officials accountable for the use of any resources transferred by the Federal State, by means of a pact, accord, agreement or other similar instruments, to a state, the Federal District, or a municipality;

VIII - the successors of administrators and accountable officials to which this article refers to, up to the limit of the value of the assets transferred, according to the terms of clause XLV of art. 5 of the Federal Constitution;

IX - the representatives of the Federal State or of the Public Power in the General Assembly of state-owned enterprises or corporations in whose capital the Federal State or the Public Power has a solidary participation, with the members of their Fiscal and Administrative Boards, for the practice of acts of ruinous management or liberality at the expense of the respective companies.

## TITLE II Judgment and Control

### Chapter I Judgment of Accounts

#### Section I Rendering of Accounts

**Article 6.** The officials indicated in clauses I to VI of art. 5 of this Act are subject to the rendering of accounts and, except for the provision of clause XXXV of art. 5 of the Federal Constitution, may only be relieved of this responsibility by a decision of the Brazilian Court of Audit.

**Article 7.** The accounts of administrators or accountable officials to which the previous article refers to shall be annually submitted to judgment by the Court, in the form of a rendering of accounts, organized according to the rules established in the internal rule.

Sole Paragraph - When rendering accounts to which this article alludes to, all the budgetary and extra-budgetary resources administered or not by the unit or the entity should be included.

**Article 8.** In view of neglect in the duty of rendering accounts, of non-corroboration of the application of the resources transferred by the State, as prescribed in clause VII of article 5 of this Act, of the occurrence of embezzlement or misplacement of public funds, goods or assets, or, still, of the practice of any kind of illegal, illegitimate or anti-economic act which results in loss to the Treasury, the competent administrative authority, under the penalty of joint liability, shall take immediate measures aimed at the institution of a special rendering of accounts for the detection of facts, identification of the accountable officials and quantification of the loss.

Paragraph 1 - If the provision of the heading of this article is not complied with, the Court will order the installation of a special rendering of accounts, establishing a deadline for the compliance to this ruling.

Paragraph 2 - The special rendering of accounts prescribed in the heading of this article and in its paragraph 1 shall be promptly sent to the Brazilian Court of Audit for judgment, if the loss caused to the Treasury is equal to or greater than the amount

established for this purpose by the Court every calendar year, in the manner established in its Internal Regulation.

Paragraph 3 - If the loss is of an inferior value to the amount referred to in the previous paragraph, the special rendering of accounts shall be annexed to the suit of the respective annual rendering of accounts of the administrator or accountable official, for judgment in conjunction.

**Article 9.** The following elements, among other established in the Internal Regulation, will be part of the rendering of accounts, including the special rendering of accounts:

I - management report;

II - report from the collector of accounts, when appropriate;

III - audit report and certificate, with the opinion of the head of the internal control agency, who shall mention any verified irregularity or illegality, indicating the measures adopted to correct the detected errors;

IV - statement of the Minister of State who supervises the area or of the official of an equal hierarchical level, according to art. 52 of this Act.

## Section II

### Rulings in the Process of Rendering of Accounts

**Article 10.** The ruling in the process of rendering accounts may be preliminary, definitive or terminative.

Paragraph 1 - Preliminary is the ruling through which the Rapporteur or the Court, before pronouncement on the merit of the accounts, decides to suspend the judgment, to order a citation or a hearing of the accountable officials, or, still, to order other searches necessary for the clarification of the process.

Paragraph 2 - Definitive is the ruling through which the Court judges the accounts regular, regular with restriction, or irregular.

Paragraph 3 - Terminative is the ruling through which the Court orders the closing of accounts which are considered unseizable, according to the terms in articles 20 and 21 of this Act.

**Article 11.** The Rapporteur will preside over the analysis and preparation of the process, determining, by means of a single order of his own will or through the invocation of the examining unit or of the Public Prosecution Council at the Court, the suspension of the judgment, the citation or the hearing of the accountable officials, or other measures considered necessary for the reparation of the records, establishing a deadline, as prescribed in the Internal Regulation, for the execution of searches, after which he shall submit the proceedings to the Full Court or the respective Chamber for the ruling of the merit.

**Article 12.** If an irregularity is verified, the Rapporteur or the Court:

I - shall define the individual or joint liability for the mismanagement act;

II - if there is a debt, shall order the citation of the accountable official so that, in the period established in its Internal Regulation, they may present a defense or collect the amount due;

III - if there is no debt, shall order a hearing of the accountable official to, in the period established in its Internal Regulation, present reasons of justification;

IV - shall adopt other appropriate measures.

Paragraph 1 - The accountable official whose defense is rejected by the Court shall be notified in order to, in a new and not extendible deadline established in its Internal Regulation, collect the amount due.

Paragraph 2 - If good faith is recognized by the Court, the timely liquidation of the monetarily updated debt shall clear the process, if no other irregularity in the accounts has been detected.

Paragraph 3 - The accountable official who does not answer the citation or the hearing shall be considered a defaulter by the Court, for all effects, and the process shall proceed.

**Article 13.** The preliminary ruling to which refers art. 11 of this Act could be, at the criteria of the Rapporteur, published in the "Daily Federal Gazette".

**Article 14.** The Court will judge the rendering of accounts until the year following that in which they were presented.

**Article 15.** When judging the accounts, the Court shall decide if they are regular, regular with restriction, or irregular.

**Article 16.** The accounts shall be judged:

I - regular, when they express, in a clear and objective manner, the exactitude of the accounting statements, the legality, legitimacy and economy of the management acts of the accountable official;

II - regular with restriction, when there is evidence of impropriety or any other type of fault of a formal nature which does not result in loss to the Treasury;

III - irregular, when there is proof of any of the following occurrences:

a) omission in the duty of rendering an account;

b) practice of an illegal, illegitimate, anti-economic management act or a violation of a legal or regulatory rule of an accounting, financial, budgetary, performance or property nature;

c) loss to the Treasury, due to an illegitimate or anti-economic management act;

d) embezzlement or misappropriation of public money, goods or assets.

Paragraph 1 - The Court may judge accounts to be irregular in the case of recurrence in non-compliance with a determination that the accountable official was aware of contained in the rendering of accounts suit.

Paragraph 2 - In the hypothesis of clause III, items c and d of this article, the Court when judging the accounts to be irregular shall establish the joint liability:

a) of the public official who practiced the irregular act; and

b) of the third party who, as party to contract or interested party in the practice of the same act, in any manner contributed towards the perpetration of the verified loss.

Paragraph 3 - If the occurrence provided by the previous paragraph is verified, the Court will take steps to immediately send a copy of the relevant documentation to the Public Prosecution Council, for the filing of the appropriate civil and penal suit.

#### Subsection I Regular Accounts

**Article 17.** When the accounts are judged regular, the Court shall bestow full acquittal to the accountable official.

#### Subsection II Regular Accounts with Restriction

**Article 18.** When the accounts are judged regular with restriction, the Court shall bestow acquittal to the accountable official and shall order him, or whoever succeeds him, to adopt the measures necessary to correct the improprieties or identified errors, in order to prevent the occurrence of other similar ones.

#### Subsection III Irregular Accounts

**Article 19.** When the accounts are judged irregular, if there is a debt, the Court shall condemn the accountable official to pay the monetarily updated debt, with the delay interest added, and may also apply the fine mentioned in art. 57 of this Act. The instrument of the ruling shall be considered a bond upon which to base the respective collection suit.

Sole paragraph - If there is no debt, but if any of the occurrences mentioned in items a, b and c of clause III of art. 16 is detected, the Court shall apply to the accountable official the fine mentioned by clause I of art. 58 of this Act.

#### Subsection IV Unsettable Accounts

**Article 20.** The accounts shall be considered unsettable when due to a fortuity or to force majeure, provenly alien to the will of the accountable official, it becomes materially impossible to judge the merit to which refers art. 16 of this Act.

**Article 21.** The Court shall order the closing of the accounts which are considered unsettable and the consequent filing of the suit.

Paragraph 1 - Within a period of five years beginning with the publication of the terminative ruling in the "Daily Federal Gazette", the Court may, in view of new elements

which it considers sufficient, authorize unfiled the suit and order that the respective accounts rendered be concluded.

Paragraph 2 - Once the deadline referred to in the previous paragraph has elapsed, without there being a new ruling, the accounts shall be considered concluded and the accountable official will be discharged from the responsibility.

### Section III Execution of the Rulings

**Article 22.** The citation, hearing, communication of a search or a notification shall be issued:

I - by informing the accountable official or the interested party, as prescribed in the Internal Regulation;

II - by mail, by means of a registered letter, with a notice of receipt;

III - by public announcement published in the "Daily Federal Gazette", when its addressee cannot be located.

Sole Paragraph - The communication of the rejection of the basis of the defense or of the reasons of justification shall be transmitted to the accountable official or interested party, as prescribed in this article.

**Article 23.** The definitive ruling shall be formalized according to the terms established in the Internal Regulation, through a sentence, whose publication in the "Daily Federal Gazette" shall constitute:

I - in the case of regular accounts, a certificate of full acquittal with the Treasury in favor of the accounting official;

II - in the case of regular accounts with restriction, a certificate of acquittal with determination, according to the terms of art. 18 of this Act;

III - in the case of irregular accounts:

a) the obligation of the accountable official in the period established in the Internal Regulation, to prove to the Court that he has returned to the Treasury the amount corresponding to the debt which he is liable for or to the fine imposed, as prescribed in articles 19 and 57 of this Act;

b) a bond by which the debt resulting from the debit or the fine may be collected judicially, if it was not collected in the established period by the accountable official;

c) legal basis for the competent authority to proceed in the execution of the sanctions mentioned in articles 60 and 61 of this Act.

**Article 24.** The Court's ruling, of which results the imputation of a debit or sanction of a fine, makes the debt incontestable and has the validity of a bond, according to the terms of item b of clause III of art. 23 of this Act.

**Article 25.** The accountable official shall be notified in order to, in the period established in the Internal Regulation, execute and prove the collection of the debt to which refers art. 19 and its sole paragraph of this Act.

Sole Paragraph - The notification shall be done as prescribed in art. 22 of this Act.

**Article 26.** In any phase of the process, the Court may authorize the payment in installments of the amount due, as prescribed in its Internal Regulation, incurring over each installment the corresponding legal increases.

Sole Paragraph - The non-payment of any installment shall imply in the anticipated maturity of the debt balance.

**Article 27.** When the entire payment is made and verified, the Court shall issue an acquittal of the debt or the fine.

**Article 28.** When the deadline to which refers the heading of art. 25 of this Act expires, and there is no manifestation by the accountable official, the Court may:

I - order the deduction integrally or in installments of the debt from the remuneration, salaries or revenue of the accountable official, observing the limits mentioned by the relevant legislation; or

II - authorize the judicial collection of the debt through the Public Prosecution Council within the Court, as prescribed in clause III of art. 81, of this Act.

**Article 29.** A terminative ruling, accompanied by its basis, shall be published in the "Daily Federal Gazette".

**Article 30.** The periods referred to in this Act begin from the date:

I - of the receipt by the accountable official or interested party:

a) of the citation or of the communication of a hearing;

b) of the communication of rejection of the basis of the defense or of the reasons of justification;

c) of the communication of a search;

d) of the notification;

II - of the publishing of the public announcement in the "Daily Federal Gazette", when, in the cases indicated in the previous clause, the accountable official or interested party cannot be located;

III - in all other cases, except if there is a legal provision expressing otherwise, of the publishing of the ruling or of the sentence in the "Daily Federal Gazette".

#### Section IV Appeals

**Article 31.** In all stages of the process of judgment of accounts there shall be assured to the accountable official or interested party full defense.

**Article 32.** Rulings delivered in an accounts suit are subject to appeals of:

- I - reconsideration;
- II - request for clarification;
- III - review.

Sole Paragraph - An appeal filed out of term shall not be recognized, except in case new facts come up, as prescribed in the Internal Regulation.

**Article 33.** The appeal of reconsideration, which shall have a suspension effect, shall be appreciated by whom delivered the ruling being appealed, as prescribed in the Internal Regulation, and may be formulated only once in writing, by the accountable official or the interested party, or by the Public Prosecution Council within the Court, within a period of fifteen days beginning in the manner prescribed in art. 30 of this Act.

**Article 34.** The requests for clarification are admissible to correct obscurity, omission or contradiction of the ruling appealed.

Paragraph 1 - The requests for clarification may be presented in writing by the accountable official or interested party or by the Public Prosecution Council within the Court, within a period of ten days beginning in the manner prescribed in art. 30 of this Act.

Paragraph 2 - The requests for clarification suspend the deadlines for the fulfillment of the ruling and for the presentation of the appeals mentioned by clauses I and III of art. 32 of this Act.

**Article 35.** The definitive ruling shall be subject to an appeal of review to the Full Court, without suspension effect, presented in writing, only once, by the accountable official, his successors, or by the Public Prosecution Council within the Court, within a period of five years, counted as prescribed in clause III of art. 30 of this Act, and shall be based on:

- I - a calculation mistake in the accounts;
- II - falsehood or insufficiency of documents on which the appealed ruling was based;
- III - appearance of new documents that affect the evidence produced.

Sole Paragraph - The ruling which grants an appeal of review shall occasion the correction of all and any verified mistake or error.

## Chapter II Control Under the Responsibility of the Court

### Section I Accounts of the President of the Republic

**Article 36.** The Brazilian Court of Audit is competent to, as prescribed in its Internal Regulation, examine the accounts rendered annually by the President of the Republic, by means of a prior opinion to be elaborated in sixty days after its receipt.

Sole Paragraph - The accounts shall consist of the general balances of the State and of the report of the internal control central agency of the Executive Branch on the execution of the budgets which paragraph 5 of art. 165 of the Federal Constitution addresses.

## Section II

### Control Exercised by Initiative of the National Congress

**Article 37.** (VETOED)

Sole Paragraph - (VETOED)

**Article 38.** The Court is also competent to:

I - carry out by initiative of the Chamber of Deputies, of the Federal Senate, of a Technical or Inquiry Committee, inspections and audits of an accounting, financial, budgetary, performance and property nature in the administrative units of the Legislative, Executive and Judicial Branches and in the entities of indirect administration, including the foundations and institutions created and maintained by the federal public power;

II - render the information requested by the National Congress, by any of its Houses, or by its Committees, on accounting, financial, budgetary, performance and property control and on the results of inspections and audits carried out;

III - issue, in the period of thirty days after the receipt of the request, a conclusive opinion on the matter submitted to its appreciation by the Permanent Joint Committee of Senators and Deputies, according to the terms of paragraphs 1 and 2 of art. 72 of the Federal Constitution;

IV - audit, by request of the Committee to which refers art. 166, paragraph 1, of the Federal Constitution, or of Technical Committees of any of the Houses of the National Congress, projects and programs authorized in the annual budget Act, evaluating their results as to the effectiveness, efficiency and economy.

## Section III

### Acts Subject to Registration

**Article 39.** Under the terms of articles 5, clause XXIV, 71, clauses II and III, 73 **in fine**, 74, paragraph 2, 96, clause I, item a, 97, 39, paragraphs 1 and 2, and 40, paragraph 4, of the Federal Constitution, the Court shall examine, for the purpose of registration or review, the acts of:

I - admission of personnel, in any form, in the direct or indirect administration, including the foundations instituted and maintained by the federal public power with the exception of the nominations to commissioned offices;

II - initial concession of civil service and military retirement annuities and pensions, as well as of subsequent benefits which alter the basis of the respective initial conceding act.

Sole Paragraph - The acts to which this article refers to shall be examined by the Court as prescribed in its Internal Regulation.

**Article 40.** The Rapporteur shall preside over the analysis and preparation of the suit, determining, by means of a single order, by his own and direct action, or by initiative of the examining unit or of the Public Prosecution Council within the Court, the adoption of measures considered necessary for the reparation of the records, establishing a deadline, as prescribed in its Internal Regulation, for the execution of searches, after which the proceedings shall be submitted to the Full Court or the respective Chamber for the decision of merit.

#### Section IV Control of Acts and Contracts

**Article 41.** In order to ensure the effectiveness of control and to provide information for the judgment of the accounts, the Court shall carry out the audit over the acts which result in revenue or expenditure, performed by accountable officials under its jurisdiction, being competent, for this purpose, especially:

I - to follow, through the "Daily Federal Gazette", or through another means established in the Internal Regulation:

a) the act relative to the plurianual plan, the act of budget guidelines, the annual budget act and the opening of additional credits;

b) the bid announcements, contracts, including administrative ones, pacts, agreements, settlements or other similar instruments as well as the acts referred to in art. 38 of this Act;

II - to carry out by its own initiative, as prescribed in its Internal Regulation, inspections and audits of the same nature of those mentioned in clause I of art. 38 of this Act;

III - to control, as prescribed in its Internal Regulation, the national accounts of supranational companies in whose capital stock the Federal State has a participation, in a direct or indirect manner, in the terms of the constituting treaty;

IV - to control, as prescribed in its Internal Regulation, the application of any type of resource transferred by the Federal State by means of a pact, agreement, settlement or other similar instruments, to a state, to the Federal District or to a municipality.

Paragraph 1 - The inspections and the audits which this Section addresses shall be regulated in the Court's Internal Regulation and shall be carried out by the staff of the Executive Office of the Court.

Paragraph 2 - The Court shall notify the competent authorities of the branches of the Federal State of the result of the inspections and audits it carries out, so they can take the measures to correct the identified improprieties or errors.

**Article 42.** No suit, document or information may be withheld from the Court in its inspections or audits, under any pretext.

Paragraph 1 - In the case of withholding of suits, documents or information, the Court shall establish a deadline for the presentation of the documents, information and clarifications judged to be necessary, notifying the fact to the Minister of State supervising the area or an authority of an equal hierarchical level, for the appropriate measures.

Paragraph 2 - Once the deadline has expired and the requirement is not fulfilled, the Court shall apply the sanctions prescribed in clause IV of art. 58 of this Act.

**Article 43.** When carrying out the control this Chapter addresses, the Rapporteur or the Court:

I - shall order the adoption of the measures prescribed in its Internal Regulation, when a violation to a legal or regulatory norm of an accounting, financial, budgetary, performance and property nature is not detected, or when only an error or impropriety of a formal nature is found;

II - if the occurrence of irregularities concerning legitimacy or economy is verified, shall order the hearing of the accountable official in order to, in the period prescribed in its Internal Regulation, present reasons of justification.

Sole Paragraph - If the basis of the rejection is not annulled, the Court shall apply to the accountable official the fine prescribed in clause III of art. 58 of this Act.

**Article 44.** In the beginning or throughout any investigation, the Court, by its own motion or at the request of the Public Prosecution Council within the Court, shall order, provisionally, the temporary removal of the accountable official, if there are sufficient indications that, if proceeding in the exercise of his functions, he may delay or hamper the audit or inspection work, caused new losses to the Treasury or render the recovery unfeasible.

Paragraph 1 - The superior competent official, who in the deadline established by the Court, does not obey the determination prescribed in the heading of this article shall be solidarily responsible.

Paragraph 2 - In the same circumstances of the heading of this article and the previous paragraph, the Court may, without impairment to the measures prescribed in articles 60 and 61 of this Act, order, for a period no greater than a year, the embargo of the assets of the accountable official, in the amount deemed necessary to ensure the recovery of the losses being investigated.

**Article 45.** If the illegality of an act or contract is verified, the Court, as prescribed in its Internal Regulation, shall establish a deadline for the accountable official to take the necessary measures for the full compliance to the law, expressly indicating the provisions to be observed.

Paragraph 1 - In the case of an administrative act, if the Court, if not complied to:

I - shall interrupt the execution of the contested act;

II - shall communicate the ruling to the Chamber of Deputies and to the Federal Senate;

III - shall apply to the accountable official the fine prescribed in clause II of art. 58 of this Act.

Paragraph 2 - In the case of a contract, the Court, if not complied to, shall communicate the fact to the National Congress, which has the competence to adopt the act of interruption and request, immediately, that the Executive Branch take the appropriate measures.

Paragraph 3 - If the National Congress or the Executive Branch, in the period of ninety days, does not take the measures prescribed in the previous paragraph, the Court shall decide on the interruption of the contract.

**Article 46.** Once the occurrence of proven fraud in a bidding process is verified, the Court shall declare the unsuitability of the fraudulent bidder to participate, during up to five years, of bidding in Federal Public Administration.

**Article 47.** When exercising the control, if the occurrence of embezzlement, misappropriation of assets or any other irregularity which result in loss to the Treasury is verified, the Court shall order, promptly, the conversion of the suit into a special rendering of accounts, expect in the hypothesis prescribed in art. 93 of this Act.

Sole Paragraph - The suit of special rendering of accounts to which this article refers to shall be handled separately from the respective annual accounts.

#### Section V Request for Re-examination

**Article 48.** The ruling delivered in suits concerning the matters addressed in Sections III and IV of this Chapter, shall be subject to a request for re-examination, which shall have a suspension effect.

Sole Paragraph - The request for re-examination follow the provisions of the sole paragraph of art. 32 and in art. 33 of this Act.

#### Chapter III Internal Control

**Article 49.** The Legislative, Executive and Judicial Branches shall maintain, in an integrated manner, a system of internal control, for the purpose of:

I - evaluating the fulfillment of the goals established by the plurianual plan, the execution of the government programs and of the Federal budgets;

II - verifying the legality and evaluating the results as to the effectiveness and to the efficiency of the budgetary, financial and property management in the agencies and entities of the federal administration, as well as the application of the public resources by entities with status of private law;

III - exercising the control over credit operations, surety bonds, and guarantees, as well as of the rights and properties of the State;

IV - supporting the external control in the exercise of its institutional mission.

**Article 50.** In support of external control, the agencies which integrate the system of internal control shall perform, the following activities, among others:

I - (VETOED)

II - audit the accounts of accountable officials subject to their control, issuing a report, a certificate of audit and an opinion;

III - formally warn the competent administrative authority to install a special rendering of accounts, whenever they have knowledge of any type of occurrences referred to in the heading of art. 8 of this Act.

**Article 51.** When the officials responsible for the internal control become aware of any irregularity or illegality, they shall bring it to the immediate attention of the Brazilian Court of Audit, under the penalty of joint liability.

Paragraph 1 - In notifying the Court, the head of the competent agency shall indicate the measures adopted to avoid similar occurrences.

Paragraph 2 – If, during an inspection or audit, or in the accounts judgement, an irregularity or illegality is detected which was not notified to the Court in a timely manner, and proven his omission, the head of the agency of internal control, as jointly liable, shall remain subject to sanctions prescribed for this in this Act.

**Article 52.** The Minister of State supervising the area or an authority of an equal hierarchical level shall issue an explicit and personal pronouncement about the accounts and the opinion of the internal control unit, in which he shall attest the fact that he is aware of the conclusions contained in the last one.

#### Chapter IV Denunciation

**Article 53.** Any citizen, political party, association or labor union is a legitimate party to denounce irregularities or illegalities to the Brazilian Court of Audit.

Paragraph 1 - (VETOED)

Paragraph 2 - (VETOED)

Paragraph 3 - The denunciation shall be investigated secrecy, until its basis is proven, and may only be filed after the relevant searches are performed, by means of a founded order by the Rapporteur.

Paragraph 4 - When the evidence which indicates the existence of an irregularity or illegality is gathered, the other acts of the process shall become public, ensuring to the accused the opportunity of legal defense.

**Article 54.** The denouncer may request from the Brazilian Court of Audit a certificate of the orders and of the facts verified, which shall be furnished in the maximum period of fifteen days after the receipt of the request, as long as the respective process of investigation has been concluded or filed.

Sole Paragraph - When the 90-day period expires, after the receipt of the denunciation, the certificate this article addresses must be compulsorily issued, even if the investigations are not concluded.

**Article 55.** In safeguarding individual rights and guarantees, the Court shall give secret treatment to the formulated denunciations, until the definitive ruling on the matter.

Paragraph 1 – In ruling, the Court shall have the power to maintain or not the secrecy as to the object and to the authorship of the denunciation.

Paragraph 2 - The denouncer shall not be subject to any type of administrative, civil or penal sanction, due to the denunciation, except in the case of proven malicious intent.

## Chapter V Sanctions

### Section I General Provision

**Article 56.** The Brazilian Court of Audit may apply to administrators or accountable officials, as prescribed in this Act and in its Internal Regulation, the sanctions prescribed in this Chapter.

### Section II Fines

**Article 57.** When the accountable official is judged in debit, the Court may also apply a fine of up to one hundred per cent of the updated value of the loss caused to the Treasury.

**Article 58.** The Court may apply a fine of up to Cr\$ 42.000.000,00 (forty two million cruzeiros), or the equivalent value in another currency which is adopted as the national currency, to those responsible for:

I - accounts judged to be irregular from which no debt resulted, in the terms of the sole paragraph of art. 19 of this Act;

II - an act carried out with serious violation of law or regulation of an accounting, financial, budgetary, performance or property nature;

III - an illegitimate or anti-economic act of management of which results unjustified loss to the Treasury;

IV - noncompliance, in the established period, without a justified reason, with a search order by the Rapporteur or with a Court ruling;

V - obstruction to the free execution of the ordered inspection and audits;

VI - withholding of suit, document or information, in inspections or audits carried out by the Court;

VII – recurrence of in noncompliance to the Court’s determinations.

Paragraph 1 - Those who do not comply with the Court's ruling, except for a justified reason, shall remain subject to the fine prescribed in the heading of this article.

Paragraph 2 - The amount established in the heading of this article shall be updated, periodically, by an administrative rule of the Presidency of the Court, based on the accumulated variation, during the period, by the rate used for updating tributary credits of the State.

Paragraph 3 - The Internal Regulation shall provide for the gradual increase of the fine prescribed in the heading of this article, according to the seriousness of the violation.

**Article 59.** The debt resulting from the fine applied by the Brazilian Court of Audit in the terms of art. 57 of this Act, when paid after its maturity, shall be monetarily updated on the date of the effective payment.

**Article 60.** Without prejudice to the sanctions mentioned in the previous Section and to the administrative penalties, applicable by the competent authorities, for irregularities verified by the Brazilian Court of Audit whenever the Court, through an absolute majority of its members, considers the violation committed as serious, the accountable official shall be considered unfit, for the exercise of a commissioned position or function of trust in the Public Administration for a period which varies from five to eight years.

**Article 61.** The Court may, through the mediation of the Public Prosecution Council within the Court, request from the Federal General Advocacy or, according to the case, from the heads of the entities under its jurisdiction, the necessary measures for the seizure of the assets of the accountable officials judged to be in debt, and must be consulted for the release of the seized assets and their restitution.

### TITLE III Organization of the Court

#### Chapter I Seat and Composition

**Article 62.** The Brazilian Court of Audit has its seat in the Federal District and is composed of nine ministers.

**Article 63.** The ministers, in their absence or impediment for reason of leave of absence, vacation or another legal absence, shall be substituted, by means of a summoning by the President of the Court, by the substitute ministers, observing the order of seniority in the office, or the older age, in case of identical seniority.

Paragraph 1 - The substitute ministers shall also be summoned to substitute ministers, for **quorum** effect, whenever the incumbents notify the President of the Court or of the respective Chamber the impossibility of their presence at the session.

Paragraph 2 - In the case of a vacancy of a minister's office, the President of the Court shall summon a substitute minister to exercise the functions inherent to the vacant office, until a new appointment is made, observing the criteria established in the heading of this article.

**Article 64.** A Public Prosecution Council functions within the Brazilian Court of Audit, as prescribed in articles 80 to 84 of this Act.

**Article 65.** The Brazilian Court of Audit shall have an Executive Office to perform the activities of technical and administrative support necessary for the exercise of its competence.

## Chapter II Full Court and Chambers

**Article 66.** The Full Court of the Brazilian Court of Audit, directed by its President, shall have its competence and functioning regulated in this Act and in its Internal Regulation.

**Article 67.** The Brazilian Court of Audit may be divided into Chambers, by means of deliberation of the absolute majority of its incumbent ministers.

Paragraph 1 - Matters of exclusive competence of the Full Court, to be defined in its Internal Regulation, shall not be the object of deliberation by the Chambers.

Paragraph 2 - The competence, the number, the composition, the presidency and the functioning of the Chambers shall be regulated in its Internal Regulation.

**Article 68.** The Court shall establish, in its Internal Regulation, the periods of operation of the sessions of the Full Court and of the Chambers and the recess it judges to be convenient, without causing an interruption of its activities.

## Chapter III President and Vice-President

**Article 69.** The ministers shall elect the President and the Vice-President of the Court for a term corresponding to one calendar year. Reelection is allowed only for one period of equal duration.

Paragraph 1 - The election shall be held in secret scrutiny, in the last ordinary session of the month of December or, in the case of eventual vacancy, in the first ordinary session after its occurrence, demanding the presence of at least five incumbent ministers, including the one which shall preside over the act.

Paragraph 2 - The Vice-President shall substitute the President in his absences or impediments and shall exercise the functions of Internal Affairs Officer, whose duties shall be established in the Court's Internal Regulation.

Paragraph 3 - In the absence or impediment of the Vice-President, the President shall be substituted by the senior minister in the exercise of his office.

Paragraph 4 - The member elected to a vacancy which is opened before the end of the term shall hold the office for the remaining period.

Paragraph 5 - A new election shall not be held if the vacancy occurs within sixty days prior to the end of the term.

Paragraph 6 - The election of the President shall precede that of the Vice-President.

Paragraph 7 - The minister who obtains the majority of the votes shall be considered elected. If the majority is not reached, a new scrutiny shall be held between the two most voted candidates. If neither manages to get a majority of votes, the decision will be made between them according to the seniority in the office of minister of the Court.

Paragraph 8 - Only the incumbent ministers, even when on a leave of absence, vacation or leave for a justified reason, may take part in the elections, as prescribed in the Court's Internal Regulation.

**Article 70.** The President, among other duties established in the Court's Internal Regulation, is competent:

I - to direct the Court;

II - to swear into office the ministers, substitute ministers, members of the Public Prosecution Council within the Court and the heads of the units of the Executive Office, as prescribed in the Court's Internal Regulation;

III - to issue acts of nomination, admission, exoneration, removal, discharge, retirement and other acts relative to the civil servants of the Personnel Staff of the Executive Office, which shall be published in the Daily Federal Gazette and in the Court's Bulletin;

IV – to manage directly or by delegation its own budget allocations and credits and to carry out the acts of financial, budgetary and property administration necessary for the functioning of the Court.

#### Chapter IV Ministers

**Article 71.** The ministers of the Brazilian Court of Audit shall be appointed from among Brazilians who meet the following requirements:

I - more than thirty five and less than sixty five years of age;

II – moral integrity and immaculate reputation;

III - notable judicial, accounting, economic and financial knowledge or of public administration;

IV - more than ten years of exercise of office or of actual professional activity related to the knowledge mentioned in the preceding clause.

**Article 72.** The ministers of the Brazilian Court of Audit shall be chosen:

I - one third by the President of the Republic, with the approval of the Federal Senate, being two of them chosen alternately among substitute ministers and members of the Public Prosecution Council within the Court, nominated in a list containing three names by the Full Court, in accordance with the criteria of seniority and merit;

II - two-thirds by the National Congress.

**Article 73.** The ministers of the Brazilian Court of Audit shall have the same guarantees, prerogatives, impediments, salaries and benefits as justices of the Superior

Court of Justice and may only retire with the benefits of the office if they have effectively held it for more than five years.

Sole Paragraph - The ministers of the Court shall enjoy the following guarantees and prerogatives:

I - life tenure, not losing their office except through a final judicial decision, not subject to appeals;

II – they cannot be moved to a different geographical area;

III – wages cannot be reduced, observing, as regards the remuneration, the provisions of articles 37, XI, 150, II, 153, III, and 153, paragraph 2, I, of the Federal Constitution;

IV - retirement, with full pay, mandatory at seventy years of age or through proven disability, and optional after thirty years of service, counted according to the law, observing the exception prescribed in heading, **in fine**, of this article.

**Article 74.** It is prohibited for a minister of the Brazilian Court of Audit:

I - to hold, even when on paid availability, another office or function, except for a teaching function;

II - to hold a technical position or one of management in a civil society, association or foundation of any nature or purpose, except in a union association, without remuneration.

III - to hold a commission remunerated or not, including in control agencies of direct or indirect administration, or in concessionaires of public service;

IV - to exercise a profession, private job, commerce, or participate in a commercial society, except as stockholder or shareholder without intervention;

V - to sign a contract with a legal entity of public law, state owned companies, foundation, society created and maintained by the public power or a company concessionaire of public service, except when the contract follows the uniform rules for all and every party to contract;

VI - to dedicate himself to political-partisan activity.

**Article 75.** (VETOED)

Sole Paragraph - (VETOED)

**Article 76.** Relatives, consanguineous or by affinity, in a direct or in a collateral lineage, up to the second degree, cannot occupy simultaneously offices of ministers.

Sole Paragraph - The incompatibility due to the restriction imposed in the heading of this article is resolved:

I - before the taking of office, against the last member nominated or against the youngest, if nominated on the same date;

II - after the taking of office, against that which has given cause to the incompatibility;

III - if both are responsible for the incompatibility, against the member with the least amount of time in office in the Court.

## Chapter V Substitute Ministers

**Article 77.** The substitute ministers, in a total of three, shall be nominated by the President of the Republic, from among the citizens which meet the requirements for the office of minister of the Brazilian Court of Audit, by means of a public contest consisting of tests and presentation of academic and professional credentials, observing the order of classification.

Sole Paragraph - The proof of effective exercise for more than ten years of an External Control career position in the Personnel Staff of the Court's Executive Office counts as a credential for the effect of public contest to which the heading of this article refers to.

### **Article 78 - (VETOED)**

Sole Paragraph. The substitute minister, when not summoned to substitute a minister, shall preside over the analysis and preparation of the suits which are given to him, reporting them with a proposal of ruling to be voted on by the members of the Full Court or of the Chamber to which they are designated.

**Article 79.** The substitute minister, after taking office, shall only lose the office through a final judicial decision, not subject to appeals;

Sole Paragraph - The prohibitions and restrictions prescribed in articles 74 and 76 of this Act apply to substitute ministers.

## Chapter VI Public Prosecution Council within the Court

**Article 80.** The Public Prosecution Council within the Brazilian Court of Audit, to which apply the institutional principles of unity, indivisibility and functional independence, is composed of an attorney general, three under attorneys general and four attorneys, nominated by the President of the Republic, from among Brazilians, bachelors of Law.

### Paragraph 1 - (VETOED)

Paragraph 2 - The career of the Public Prosecution Council within the Court is constituted by the offices of under attorney general and attorney, the latter being the initial office and the former the last level of the career, with the difference in salaries between them not exceeding ten percent, respecting the same difference between the offices of under attorney general and attorney general.

Paragraph 3 - Admission into the career shall occur in the office of attorney, by means of a public contest examination of tests and presentation of academic and professional credentials, ensuring the participation of the Brazilian Bar Association in its execution and observing, in the nominations, the order of classification. Promotion to the office of under attorney general shall occur, alternately, by seniority and merit.

**Article 81.** The attorney general within the Brazilian Court of Audit, in his mission of guardian of the law and comptroller of its execution, has the following prerogatives, besides all others established in the Court's Internal Regulation:

I - to promote the defense of the judicial order, requesting, before the Brazilian Court of Audit, the measures of interest to Justice, Administration and to the Treasury;

II - to participate in the Court sessions and to express a legal opinion, orally, or in writing, on all matters subject to a ruling by the Court, being mandatory his opinion in the suits of rendering of accounts and in those concerning the acts of admission of personnel and of granting of civil service and military retirement annuities and pensions;

III - to promote, before the General-Advocacy of the State or, according to the case, before the heads of the entities under the jurisdiction of the Brazilian Court of Audit, the measures prescribed in clause II of art. 28 and in art. 61 of this Act, sending them the necessary documentation and instructions;

IV - present the appeals permitted by law.

**Article 82.** The under attorneys general and attorneys are competent to, by delegation of the attorney-general, are competent to perform the functions prescribed in the previous article.

Sole Paragraph - In the case of vacancy and in their absence and impediments for reason of leave of absence, vacation, or another legal absence, the attorney-general shall be substituted by the under attorneys general and, in the absence of these, by the attorneys, observing, in both cases, the order of seniority in the office, or the oldest age, in the case of identical seniority. The substitutes will receive the salary of the office they are exercising.

**Article 83.** The Public Prosecution Council shall count on the administrative and personnel support of the Court's Executive Office, according to the organization established in the Court's Internal Regulation.

**Article 84.** The members of the Public Prosecution Council within the Brazilian Court of Audit shall be subject, in a subsidiary form, pertaining, to the provisions of the Organic Law of the Federal Public Prosecution Office to the rights, guarantees, prerogatives, vetoes, disciplinary regime and form of installation in the initial office of the career.

## Chapter VII Court's Executive Office

### Section I Objective and Structure

**Article 85.** The Executive Office is responsible for rendering technical support and executing the administrative services of the Brazilian Court of Audit.

Paragraph 1 - The organization, duties, and rules for the functioning of the Executive Office are the ones established in the Court's Internal Regulation.

Paragraph 2 - The Court may maintain units of its Executive Office in the Brazilian states.

**Article 86.** The civil servant who executes specific functions of external control in the Brazilian Court of Audit has the obligation:

I - to maintain, when in duty, an attitude of independence, serenity, and impartiality;

II - to report to his immediate superior, against those responsible for the agencies and entities under their control, in cases of errors and/or irregularities;

III - to propose the application of fines, in the cases prescribed in the Court's Internal Regulation;

IV - to maintain secrecy on data and information obtained due to the exercise of his functions and relevant to matters under his control, using them, exclusively, for the elaboration of opinions and reports addressed to the immediate superior.

**Article 87.** The following prerogatives shall be assured to the civil servant to which the previous article refers to, when accredited by the President of the Court or, through a delegation of his, by heads of the technical units of the Court Executive Office, to carry out functions of auditing, inspections, and searches expressly ordered by the Court or by its Presidency:

I - free access into agencies and entities subject to the jurisdiction of the Brazilian Court of Audit;

II - access to all of the documents and information necessary for the performance of his job;

III - competence to request, under the terms of the Court's Internal Regulation, from those responsible for the agencies and entities object of inspections, audits and searches, the information and documents necessary for the analysis and preparation of the suits and reports expressly assigned to him by his immediate superior.

**Article 88.** This Act hereby creates an institute, in the Executive Office, directly subordinated to the Presidency, responsible for:

I - the periodic execution of public contests consisting of tests or tests and presentation of academic and professional credentials for the selection of candidates to enroll in the training courses required for the admission into careers of the Court's Personnel Staff;

II - the organization and administration of courses of higher and secondary educational levels, for the training and final approval of candidates selected in the contests referred to in the previous clause;

III - the organization and administration of training and professional qualification courses for the civil servants of the Personnel Staff;

IV - the promotion and organization of symposiums, seminars, studies and research on matters related to the techniques of public administration control;

V - the organization and administration of the library and of the documentation center, national and international, on doctrine, techniques and legislation about control and correlated matters.

Sole Paragraph - The Court shall regulate by means of a Resolution the organization, duties and rules for operation of the Institute referred to in this article.

## Section II Budgets

**Article 89.** (VETOED)

Paragraph 1 - (VETOED)

Paragraph 2 - (VETOED)

Paragraph 3 - (VETOED)

## TITLE IV General and Temporary Provisions

**Article 90.** The accounting, financial, budgetary, performance and property control of the Brazilian Court of Audit shall be carried out by the National Congress, as prescribed in its Common Regulation.

Paragraph 1 - The Court shall send to the National Congress, quarterly and annually, a report of its activities.

Paragraph 2 - In the annual report, the Court shall present an analysis of the evolution of control costs and of its efficiency, effectiveness and economy.

**Article 91.** For the purpose prescribed in art. 1, clause I, item g, and in art. 3, both of the Act n. 64, of May 18, 1990, the Court shall send to the Electoral Public Prosecution Office, timely, the name of the accountable officials whose accounts have been judged to be irregular in the five years immediately preceding the holding of each election.

**Article 92.** The acts relative to classified expenditures shall be examined in secrecy by the Court which may, in view of the statements received, order the verification *in loco* of the corresponding corroborative documents, as prescribed in the Court's Internal Regulation.

**Article 93.** For administrative rationalization and procedural economy, and with the purpose of avoiding that the cost of collection be higher than the value of the reimbursement, the Court may order, immediately, the filing of the suit, without the canceling of the debt. Payment of the debt shall continue mandatory for the debtor, in order to give him acquittal.

**Article 94.** The ministers, substitute ministers, and members of the Public Prosecution Council within the Court are prohibited from intervening in a process of their own interest, of that of a spouse or a relative, consanguineous or by affinity, in a direct or collateral lineage, up to the second degree.

**Article 95.** The ministers, substitute ministers, and members of the Public Prosecution Council within the Court have a period of thirty days, after the publication of

the nomination act in the Daily Federal Gazette, extendible for a maximum of another sixty days, by means of a written request, to take office and begin exercise of their functions.

**Article 96.** The minutes of the Court sessions shall be published, in full, without charge, in the Daily Federal Gazette.

**Article 97.** The publications edited by the Court are those defined in its Internal Regulation.

**Article 98.** The Bulletin of the Brazilian Court of Audit is considered an official organ.

**Article 99.** The Internal Regulation of the Court may only be approved and altered by the absolute majority of its incumbent ministers.

**Article 100.** The Brazilian Court of Audit may sign cooperation agreements with the Courts of Audit of the states, of the Federal District, of the municipalities, or with the Councils or Courts of Audit of the municipalities, as prescribed by its Internal Regulation.

**Article 101.** The Brazilian Court of Audit, for the fulfillment of its institutional competence, may request from the federal agencies and entities, without any cost for the Court, the rendering of technical specialized services, executed in a period previously established. In case of non compliance the penalty prescribed in article 58 of this Act may be applied.

**Article 102.** The Brazilian Foundation Institute of Geography and Statistics – IBGE – or a similar entity shall publish in the “Daily Federal Gazette”, by the 31st of August of each year, the list of populations per states and municipalities, for the purposes prescribed in clause VI of art. 1 of this Act.

Paragraph 1 - The interested parties, within a period of twenty days of the publication, may submit founded complaints to the IBGE Foundation, which shall decide conclusively on the matter.

Paragraph 2 - By the 31st of October of each year the IBGE Foundation shall send to the Brazilian Court of Audit the list referred to in this article.

**Article 103.** The Brazilian Court of Audit shall render assistance to the joint committee of the National Congress in charge of examining the Brazilian external debt, according to the terms of art. 26 of the Temporary Constitutional Provisions Act.

**Article 104.** The accountable officials responsible for expenditures of the direct administration agencies, as well the heads of the entities of indirect administration and foundations and any official responsible for acts which result in public expenditures, shall send to the Brazilian Court of Audit, by request of the Full Court or of its Chambers, a copy of their income tax and assets statements.

Paragraph 1 - Non-compliance with the obligation established in this article shall lead to the application, by the Court, of a fine prescribed in art. 58 of this Act. The Court shall maintain in secrecy the content of the statements presented and may request

clarifications it considers to be convenient regarding the variation in the assets of those making the statements.

Paragraph 2 - The secrecy guaranteed by the previous paragraph may be breached by ruling of the Full Court, in a process in which illicit enrichment by the irregular exercise of the public function is proven.

Paragraph 3 - The breach of secrecy without authorization from the Full Court constitutes a functional violation punishable in the form of article 132, clause IX, of Act n. 8,112, of December 11, 1990.

Paragraph 4 – The provisions in this article apply to the authority referred to in art. 52 of this Act.

**Article 105.** The process of choosing a minister of the Brazilian Court of Audit, in case of a vacancy occurred or which shall occur after the enactment of the 1988 Constitution, obeys the following criteria:

I - in the first, fourth and seventh vacancies, the choice shall be made by the President of the Republic. The last two vacancies will be filled by a substitute minister and a member of the Public Prosecution Council within the Court, respectively;

II - in the second, third, fifth, sixth, eighth, and ninth vacancies, the choice shall be a prerogative of the National Congress;

III – as from the tenth vacancy, the process prescribed in the previous clauses shall reinitiate, observing the alternation as to the choice of a substitute minister and a member of the Public Prosecution Council within the Court, according to the terms of clause I of paragraph 2 of art. 73 of the Federal Constitution.

**Article 106.** As for the ministers of the Brazilian Court of Audit who, on the date of the enactment of the 1988 Federal Constitution, fulfilled the requirements necessary for retirement with the benefits of the office, the exception prescribed in art. 73, heading, **in fine**, of this article does not apply.

**Article 107.** The distribution of the suits shall observe the principles of publicity, of alternation and of luck of the draw.

**Article 108.** The ordinary sessions of the Brazilian Court of Audit shall be public.

Paragraph 1 - The Court may hold extraordinary sessions of a secret nature in order to address matters of an internal administrative nature or when the preservation of individual rights and of public interest demand it.

Paragraph 2 - In the hypothesis of the previous paragraph, the procedural acts shall count on the concurrence of the parties involved if their lawyers so desire, being able to consult the records and request a copy of documents and certificates of the same.

Paragraph 3 - No extraordinary session of a secret nature may be held without the mandatory presence of the representative of the Public Prosecution Council within the Court.

**Article 109.** The Brazilian Court of Audit shall adjust the examination of the processes underway to the provisions of this Act.

**Article 110.** In a period of ninety days, after the entry into effect of this Act, the Court shall send to the National Congress a bill concerning on the Personnel Staff of its Executive Office, observing the relevant constitutional principles and, especially, the following guidelines:

I – Sole Juridical Regime;

II – a plan of the respective organic structure and duties;

III - previous approval in a public contest consisting of tests or tests and presentation of academic and professional credentials, as well as in courses organized in the form prescribed in clause II of art. 88 of this Act, as an essential condition for installation in a position or job;

(1) IV - provision of commissioned positions and functions of trust by civil servants of the Court's Personnel Staff, with the exception of the ministers cabinets, of the attorney general and of the substitute ministers. In these last three cases, one assistant-of-cabinet and one assistant may be chosen freely by those authorities, obeying the legal and regulatory requirements;

V - prerogative of the Court to, in relation to commissioned positions and functions of trust:

a) establish for them a scale system, according to the relevant legislation;

b) transform and reclassify them in consonance with the parameters prescribed in the Act of Budget Guidelines;

VI - establishment of respective remuneration, observing the established budget limits, the levels of remuneration adopted by the civil servants of the Legislative Branch and, in what pertains, the regulatory principles of the Personnel System of the State.

(2) Sole Paragraph - It is prohibited to nominate for commissioned positions and designate for functions of trust, a spouse, companion, relatives, blood related kin or by affinity, in a direct or collateral lineage, up to the third degree, of a minister, substitute minister or member of the Public Prosecution within the Court, in activity or retired for less than five years, except if the person to be nominated belongs to the Personnel Staff by means of a public contest.

**Article 111.** The current offices of under attorneys general within the Brazilian Court of Audit shall integrate a roster of offices in extinction, ensuring the rights and observing the prohibitions applicable to their incumbents.

**Article 112.** This Act shall be effective as from the date of its publication.

**Article 113.** The provisions to the contrary are hereby revoked, especially, the Law-Decree n. 199, of February 25, 1967.

Brasília, July 16, 1992; 171<sup>st</sup> of the Independence and 104<sup>th</sup> of the Republic.

FERNANDO COLLOR

## Célio Borja

- Published in the “Daily Federal Gazette” of 7-17-1992, Section I.
- Amended in the “Daily Federal Gazette” of 4-22-1993, Section I.

(1) - Clause IV of art. 110 altered by Act n. 9.165, of 12-19-1995.

(2) - Sole paragraph of art. 110 added by Act n. 9.165, of 12-19-1995.

*The masculine gender is used in this law with no discrimination and solely for practical language purposes.*