

TCU and the Brazilian Constitution – 1988 (updated – Jul 2016)

Article 71. External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Court of Accounts, which shall:

I – examine the accounts rendered annually by the President of the Republic, by means of a prior opinion that shall be prepared in sixty days counted from receipt;

II – evaluate the accounts of the administrators and other persons responsible for public monies, assets and values of the direct and indirect administration, including foundations and companies instituted and maintained by the Federal Government as well as the accounts of those who have caused a loss, misplacement or other irregularity resulting in losses to the public treasury;

III – examine, for the purpose of registration, the lawfulness of acts of admission of personnel, on any account, in the direct and indirect administration, including the foundations instituted and maintained by the Federal Government, with the exception of the appointments to commission offices, as well as the granting of civil and military retirement and pensions, except for subsequent improvements which do not alter the legal fundamentals of the conceding act;

IV – carry out, on its own initiative or on that of the Chamber of Deputies, of the Federal Senate, or of a technical or inquiry committee, inspection and audits of an accounting, financial, budgetary, operational or property nature in the administrative units of the Legislative, Executive and Judicial Powers and other entities referred to in item II;

V – control the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect interest, as set forth in the acts of incorporation;

VI – control the use of any funds transferred by the Union, by means of an agreement, arrangement, adjustment or any other similar instrument, to a state, the Federal District or a municipality;

VII – render the information requested by the National Congress, by either of its Houses or by any of the respective committees concerning accounting, financial, budgetary, operational and property control and the results of audits and inspections made;

VIII – in case of illegal expenses or irregular accounts, apply to the responsible parties the sanctions provided by law, which shall establish, among other comminations, a fine proportional to the damages caused to the public treasury;

IX – determine a period for the agency or entity to take the necessary steps for the strict compliance with the law, if an illegality is established;

X – if not heeded, stop the execution of the impugned act, notifying the Chamber of Deputies and the Federal Senate of such decision;

XI – present a formal charge to the competent Power on any irregularities or abuses verified.

Paragraph 1. In the case of a contract, the restraining act shall be adopted directly by the National Congress, which shall immediately request the Executive Power to take the applicable measures.

Paragraph 2. If the National Congress or the Executive Power, within ninety days, do not take the measures provided for in the preceding paragraph, the Court shall decide on the matter.

Paragraph 3. Decisions of the Court resulting in the imposition of a debt or fine shall have the effectiveness of an execution instrument.

Paragraph 4. The Court shall, quarterly and annually, forward to the National Congress a report on its activities.

Article 72. In view of indications of unauthorized expenditure, even if in the form of non-programmed investments or non-approved subsidies, the permanent joint Committee referred to in article 166, paragraph 1, may request the responsible Government authority to render the necessary explanation, within five days.

Paragraph 1. If the explanations are not rendered or are considered insufficient, the Committee shall request the Court to make a conclusive statement on the matter within thirty days.

Paragraph 2. If the Court deems the expense irregular, the Committee shall, if it considers that the expenditure may cause irreparable damage or serious injury to the public economy, propose to the National Congress that it be suspended.

Article 73. The Federal Court of Accounts, formed by nine Justices, shall have its seat in the Federal District, its own staff and jurisdiction throughout the national territory, and shall exercise, insofar as pertinent, the incumbencies provided for in article 96. (CA No. 20, 1998)

Paragraph 1. The Justices of the Federal Court of Accounts 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 spotless reputation;

III – notable knowledge of the law, accounting, economics and finances or of public administration;

IV – more than ten years of exercise of office or of actual professional activity that requires the knowledge mentioned in the preceding item.

Paragraph 2. The Justices of the Federal Court of Accounts shall be chosen:

I – one-third by the President of the Republic with the approval of the Federal Senate, two of them being alternately chosen from among auditors and members of the Public Prosecution at the Court, as indicated in a triple list by the Court, in accordance with criteria of seniority and merit;

II – two-thirds by the National Congress.

Paragraph 3. The Justices of the Federal Court of Accounts shall have the same guarantees, prerogatives, impediments, remuneration, and advantages as the Justices of the Superior Court of Justice, their retirement pensions and other pensions being ruled by the provisions of article 40.

Paragraph 4. The auditor, when substituting for a Justice, shall have the same guarantees and impediments as the incumbent Justice, and, when in exercise of the other duties of the judicature, those of a Judge of a Federal Regional Court.

Article 74. The Legislative, Executive and Judicial Powers shall maintain an integrated system of internal control for the purpose of:

I – evaluating the attainment of the goals established in the plurennial plan, the implementation of government programs and of the budgets of the Union;

II – verifying the lawfulness and evaluating the results, as to effectiveness and efficiency, of the budgetary, financial and property management in the agencies and entities of the federal administration, as well as the use of public funds by private legal entities;

III – exercising control over credit transactions, collateral signatures and guarantees, as well as over the rights and assets of the Union;

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

Paragraph 1. The persons responsible for internal control shall, upon learning of any irregularity or illegality, inform the Federal Court of Accounts about it, subject to joint liability.

Paragraph 2. Any citizen, political party, association or labour union has standing under the law to denounce irregularities or illegalities to the Federal Court of Accounts.