

## **Law on the *Tribunal de Comptes*<sup>1</sup>**

Seeing that the *Consell General*<sup>2</sup> in session on 13 April 2000 has passed the following

### **Law on the *Tribunal de Comptes***

#### **Explanation of reasons**

The Constitution of the Principality of Andorra proclaims as the principles which should motivate State action the respect and enhancement of freedom, equality, justice, tolerance, the defence of human rights and the dignity of the person. The fundamental law thus includes a modern vision of the public authorities as guarantors of the conditions of equality in which citizens may enjoy their freedom. In an advanced society, the growing weight of public administration and the constant evolution of economic and financial relations require public accounts to be clear and balanced. On the other hand, the democratic control of public authorities must enable citizens, who are increasingly more aware, to judge political choices also in view of the results of their management, and this requires the creation of proper tools and mechanisms to control the movements of public funds and the management of public monies.

In accordance with the political system of parliamentary co-principality which Andorra has adopted, the Constitution attributes to the *Consell General*, the representative of the people of Andorra, the power to initiate and control the political action of the Government. On the other hand, in the general explanation of reasons of the General law on public finance of 19 December 1996 there is a recommendation for the setting up of the *Tribunal de Comptes* to supervise in an independent and technical fashion the compliance with legal provisions in economic affairs and, in particular, with the obligations arising out of that law itself.

The inspection body which this law proposes to set up is called the *Tribunal de Comptes*.

The *Tribunal de Comptes*, organically linked to the *Consell General*, is an independent technical body which inspects public expenditure and also checks the transparency of the economic, financial and accounting management of the public administration, examining its compliance with all the legal provisions in force; it also issues reports and opinions on the accounts and economic and financial management of the Andorran public administration.

The full independence of the body in its subordination to legal provisions must be noted. The sphere of its competence includes the general administration, the

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<sup>1</sup> *Audit Court*

<sup>2</sup> *Parliament of the Principality of Andorra*

*Comuns*<sup>3</sup>, the semi-public or public law bodies, the public companies and any body formed by the Andorran public administration in accordance with Article 13 of the Administrative Code as well as all organizations, physical individuals and legally constituted bodies, which receive subsidies, credits, aids and guarantees from them.

## **Chapter I. Definition, competence and sphere of action**

### Article 1

The *Tribunal de Comptes* is an independent, technical body:

1. It is the technical body which inspects the economic, financial and accounting management of the public administration. In the exercise of its duties it shall base itself on the criteria of legality, efficacy, efficiency, economy and equity.
2. It is an independent body in its internal working and answers to the *Consell General* which appoints its members and holds the power to order and receive inspection reports.

### Article 2

The capacities of the *Tribunal de Comptes* are:

1. Capacity for inspection
  - a) To inspect the economic and financial activity of the public administration, seeing to it that this is in accordance with legal provisions.
  - b) To inspect the subsidies, credits and aids charged to the budgets of the public bodies noted in Article 8 and also the guarantees and direct personal tax exemptions granted by these bodies.
  - c) To inspect the contracts signed by the public administration in cases in which this is prescribed or the *Tribunal de Comptes* considers it appropriate.
  - d) To inspect the state and alterations in the capital of the public administration.
  - e) To inspect extraordinary credits, supplements, inclusions, enlargements, transfers, advances of funds and other changes to initial budgetary credits.
  - f) To analyse the use of resources available with criteria of efficiency and set out proposals tending to improve the services provided by the public administration.

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<sup>3</sup> Organ of self-government, representation and management of the Parish

g) To inspect the efficacy of the objectives proposed in various budgetary programs and memoranda of subsidies, credits, aids and guarantees, and note when necessary the reasons for lack of fulfilment.

## 2. Advisory capacity

To issue opinions and decide on questions put to it by the public bodies noted in Article 8 with regard to matters of public accounting.

## Article 3

1. The *Tribunal de Comptes* fulfils its function by drawing up reports or memoranda which, once passed by the Plenum together with the submissions and justifications presented by the bodies inspected and the recommendations proposed for the improvement of their management, shall be set out as part of a memorandum which the *Tribunal* shall submit annually to the *Consell General*.

2. In the annual memorandum on its activities the results of all work carried out shall be included, especially:

a) The inspection of the accounts of the *Comuns* and bodies answering to them.

b) The inspection of the accounts of the *Quarts*<sup>4</sup> and bodies answering to them.

c) The inspection of the economic and financial activity of public companies.

d) The inspection of all organizations and bodies which manage public monies or receive a subsidy from the public administration.

e) The inspection of the accounts of the *Consell General* and the bodies linked to it.

3. The *Tribunal de Comptes* shall also draw up annually and submit to the *Consell General*:

a) The report on the yearly settlement of the budgets of the general administration and each of the semi-public bodies.

b) The report on the yearly settlement of the expenditure incurred by the *Comuns* and charged to the transfers received from the general administration.

4. The *Tribunal de Comptes* shall draw up an inspection report on the public electoral expenditure and subsidies whenever elections are held.

5. When so required by the *Consell General* or whenever it considers it appropriate, the *Tribunal de Comptes* shall likewise issue reports, memoranda or any other technical survey related to the functions defined in this law.

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<sup>4</sup> Subdivision of some of the parishes

6. The *Tribunal de Comptes* shall signal in all its reports or memoranda the infringements, excesses or irregular practices which it has observed, indicate the liabilities incurred in its opinion and also the measures to be taken to have such liabilities answered. If such acts show signs of accounting, disciplinary or criminal liability, it shall send the report to the competent authority in the matter.

#### Article 4

1. In the exercise of its duties, the *Tribunal de Comptes* shall act in subordination to legal provisions and totally independent of the public organizations and bodies which are subject to its inspection.

2. The *Tribunal de Comptes* shall be organized in accordance with its internal working rules which shall also make provision for sanctioning in cases of obstruction, absenteeism or low productivity by any of its members.

3. The *Tribunal de Comptes* draws up its budget, which shall be included in the General State Budget under a specific, separate heading, and submits it for the approval of the *Consell General* and charging to its budgets.

#### Article 5

1. To carry out its tasks, the *Tribunal de Comptes* may require the co-operation of all the bodies referred to in Article 8 and they shall give it.

2. The *Tribunal de Comptes* determines on the criteria, principles and standards of audit and accounting in accordance with current legislation.

3. The bodies noted in Article 8 may contract for an audit or any task related to public finance by a private audit company.

4. The bodies wishing to proceed in accordance with the preceding paragraph shall beforehand request the *Tribunal de Comptes* to set the criteria, principles and audit rules to be born in mind. The *Tribunal* shall provide these in writing.

5. The bodies contracting for an audit by a private company shall pass on a copy of the relevant report to the *Tribunal de Comptes*.

6. Contracts of public bodies with audit firms shall include a compulsory clause to the effect that the survey shall be made in accordance with the rules prescribed by the *Tribunal de Comptes*.

#### Article 6

Any audit carried out under the direction of the Office of the Comptroller shall be handed over to the *Tribunal de Comptes*.

## Article 7

The *Tribunal de Comptes* acts on its own initiative in accordance with its annual work plan and on the initiative of the *Consell General* when the latter charges it with the carrying out of technical and inspection reports in accordance with the time limit set out in Article 30.

## Article 8

1. For the purposes of this law, the bodies subject to inspection by the *Tribunal de Comptes* are:

- a) The *Consell General* and the bodies linked to it.
- b) General Administration and the bodies under its control.
- c) The *Comuns* and the bodies answering to them.
- d) The *Quarts* and the bodies answering to them.
- e) The autonomous organizations or public law or semi-public bodies.
- f) Public companies, whether general or of the *Comuns*, if the participation in company capital is a majority or sufficient to control them.
- g) In general, any body managing public monies or receiving subsidies from the public administration.

2. The *Tribunal de Comptes* is competent to inspect public sector subsidies, credits and guarantees and aids received by private individuals or legally constituted bodies.

## Article 9

1. The competent body shall inform the *Tribunal de Comptes* of the results of its inspection of electoral finance and expenditure within two months of the holding of elections.

2. The *Tribunal de Comptes* shall submit the final report on checking electoral activity and the adjudication of subsidies to the *Consell General* within two months of receiving the report from the relevant body.

## Chapter II. Working and Structure

### Article 10

1. The *Tribunal de Comptes* carries out its inspection duties by drawing up the reports noted in Article 3 which shall be presented to the *Consell General* once approved by the Plenum of the *Tribunal*, together with the submissions and justifications which may have been presented by the bodies inspected within at most fifteen days of being notified.
2. The *Tribunal de Comptes* hands a copy of its reports to the public body concerned together with the proposed improvements for management and recommendations and the time limit laid down for their implementation.
3. The bodies inspected shall reply in writing to the *Tribunal de Comptes* on the effective implementation of the suggested recommendations within the individual time limit allowed in each inspection report.

### Article 11

The *Consell General* shall present its accounts and those of the bodies linked to it directly to the *Tribunal de Comptes* before April 1 in the year following the closure of the financial year. The *Tribunal de Comptes* shall examine, approve and pass them on as an integral part of the annual memorandum to the *Consell General*.

### Article 12

1. The Government shall present to the *Tribunal de Comptes* before April 1 in the year following the closure of the financial year the budgetary and financial statements of the Government, the semi-public or public law bodies and the public companies which answer to it.
2. The *Tribunal de Comptes* shall examine and check the general accounts of the general administration, the semi-public or public law bodies and the public companies which answer to it, within five months of receiving them. The report deriving from the inspection shall be submitted to the *Consell General*.

### Article 13

1. The *Comuns* and the *Quarts* shall present their accounts and those of the bodies and public companies which answer to them directly to the *Tribunal de Comptes* before April 1 in the year following the closure of each financial year.
2. The *Tribunal de Comptes* shall examine and check the accounts making up the general account of the *Comuns*, the *Quarts*, bodies and public companies

which answer to them within five months of receiving them. The report deriving from the inspection shall be submitted to the *Consell General* as an integral part of the annual memorandum.

3. The *Comuns* shall also before February 15 each year provide a resumé of all movements, drawn up in accordance with current legislation, in the budget heading referring to the use of the amount received as a transfer quota. The *Tribunal de Comptes* shall examine and check this within five months of receiving it and submit the report deriving from the inspection to the *Consell General*.

#### Article 14

Public companies with a financial year other than the calendar year shall present their accounts to the appropriate body. The accounts shall be passed on in their turn to the *Tribunal de Comptes* within the two months following the closure of their company financial year.

#### Article 15

1. The members of the *Tribunal de Comptes* and by delegation the staff at their service may present themselves in person at the offices of any of the bodies subject to their inspection under this law.

2. Before so presenting themselves, they shall give prior notice of seven calendar days. The bodies which it is intended to visit may not object to this and shall provide all the documents and technical infrastructure which the members of the *Tribunal de Comptes* or the staff at their service and delegated by them may consider appropriate and needful during the whole time which they deem proper for carrying out their task.

#### Article 16

The inspection reports referred to in Article 3 shall deal with:

a) The respect of the Constitution and the laws regulating the revenue and expenditure of the public administration, particularly the regulations affecting its economic, financial and accounting activity.

b) The fulfilment of the provisions and execution of the budgets submitted to it for inspection.

c) Rationality in expenditure and public management based on criteria of efficacy, efficiency, economy and equity.

d) The carrying out of action, investment and financing programs and other plans and provisions which govern the actions of companies linked to the public

administration, the use or application of subsidies charged to the budgets of the bodies of the public administration and the tax exemptions granted.

#### Article 17

The bodies of the *Tribunal de Comptes* are:

- a) The Plenum
- b) The chairman

#### Article 18

1. The Plenum comprises one chairman and two members.
2. The decisions of the Plenum are taken by majority vote. The chairman has the casting vote in a case of stalemate.
3. Any member of the *Tribunal de Comptes* may express private opinions on the inspection reports approved and propose recommendations which shall be added to the reports.
4. The Plenum is called by the chairman on his own initiative or whenever requested by any member.

#### Article 19

The Plenum is empowered:

- a) To appoint a secretary from among its members.
- b) To take the steps necessary to accomplish the goals charged to the *Tribunal de Comptes* under this law.
- c) To exercise the inspecting and consultative role.
- d) To draw up the draft budget for the *Tribunal de Comptes* and pass it on to the *Sindicatura*<sup>5</sup>.
- e) To approve the annual action memorandum and the reports, memoranda, proposals, opinions and consultations drawn up by members of the *Tribunal de Comptes*.
- f) To define the organization of the *Tribunal de Comptes* and allocate inspection tasks among its members.

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<sup>5</sup> Board of the Parliament

g) To approve the annual work plan of the *Tribunal de Comptes*.

#### Article 20

The chairman is qualified:

a) To represent the *Tribunal de Comptes* at any instance.

b) To summon and preside over the Plenum.

c) To exercise the higher inspection of the *Tribunal de Comptes*.

d) To exercise the direction and set out the working system for the staff of the *Tribunal de Comptes*.

e) To propose the annual action memorandum of the *Tribunal de Comptes* to the Plenum.

f) To manage the needs for expenditure as fixed by the general law of public finance.

g) To appear before the authorized Commission when the latter deems proper or at his own initiative.

#### Article 21

Apart from the duties proper to a member of the *Tribunal de Comptes*, the secretary shall see to drawing up the minutes of Plenum sessions, delivering the relevant certificates, and in general carry out all other tasks entrusted to him by the Plenum.

### **Chapter III. The members of the *Tribunal de Comptes* and the staff at their service**

#### Article 22

1. The chairman and the two members of the *Tribunal de Comptes* are appointed individually by the *Consell General* in separate votes with the ayes of two thirds of its members at first vote for a single non-renewable period of six years.

2. If the majority required in the preceding paragraph is not attained at first vote, the candidate who obtains the ayes of an absolute majority of the *Consell General* at second vote shall be appointed.

3. Once appointed, the members of the *Tribunal de Comptes* shall swear or promise to respect their office before the *Síndic General*<sup>6</sup> in the manner provided for by the regulations of the *Consell General*.

4. Once their period of office has come to an end, the members of the *Tribunal de Comptes* continue in office until the new members are sworn in. This period may not exceed six months.

#### Article 23

1. The appointment as a member of the *Tribunal de Comptes* shall be made among persons of Andorran nationality with a higher university degree in the economic, legal, financial and/or accounting fields and recognized experience and knowledge of at least four years. In any case the appointment of a member shall include sufficient reasons to guarantee the suitability of the person for the charge.

2. The members of the *Tribunal de Comptes*, whose appointment is irrevocable, shall carry out their tasks independently and on a full time basis.

3. The appointment of members of the *Tribunal de Comptes* is published in the *Butlletí Oficial del Principat d'Andorra*<sup>7</sup>.

#### Article 24

The office of member of the *Tribunal de Comptes* is incompatible:

a) With being a member of the *Consell General*.

b) With the carrying out of any other public office attached to any institution in the public administration, whether by election, appointment, civil service or contract.

c) With any office in political parties, trade unions and associations, boards of governors and professional colleges, whether these be national or foreign.

d) With any managerial or executive post in political parties, trade unions and associations, boards of governors and professional colleges, whether these be national or foreign.

e) With any activity which might endanger independence and impartiality in the execution of his tasks in the opinion of the *Consell General*.

f) With the exercise of his profession or any other remunerated activity.

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<sup>6</sup> *The President of the Parliament*

<sup>7</sup> *Official Gazette of the Principality of Andorra*

## Article 25

Within ten days following taking possession of his office, each member of the *Tribunal de Comptes* shall present a statement to the *Sindacatura* to the effect that none of the grounds for incompatibility or incapacity noted by the law exist. If during his time in office any of these grounds occur, he shall immediately notify the Plenum of the *Tribunal de Comptes* and the *Sindacatura*. In such a case, the *Consell General* shall proceed to replace him.

## Article 26

1. The following grounds for abstention or rejection hold good for members of the *Tribunal de Comptes*:

a) Having a personal interest in the matter or company or body in question or having some litigious matter pending or service relationship with someone concerned.

b) Having blood kinship to the fourth degree or kinship by marriage to the second degree with any presenter of accounts or administrators of the public bodies subject to control by the *Tribunal de Comptes*.

c) Having a close friendship or notorious enmity with any of the persons mentioned in the foregoing paragraph.

2. If more than one of the members of the *Tribunal de Comptes* abstain or are rejected, the Board of Chairmen of the *Consell General* shall appoint substitutes for them to carry out the specific task in question.

## Article 27

1. Apart from the grounds for abstention or rejection regulated by the foregoing article, the members of the *Tribunal de Comptes* shall abstain from inspecting any action or dossier in which they may have had a part before their appointment as members of the *Tribunal* and which, in accordance with Article 2 of this law, may fall within the competence of the *Tribunal*.

2. The abstention referred to in the foregoing paragraph shall apply in particular to members of the *Tribunal de Comptes* who may have previously found themselves in any of the following cases:

a) The authorities or civil servants charged with the management, inspection or audit of the revenue and expenditure of the public administration.

b) The chairmen, directors and members of the boards of directors of the bodies and companies incorporated in the public administration.

- c) The private individuals who exceptionally administer, collect or hold public funds or stocks.
  - d) The receivers of subsidies charged to public funds.
  - e) Any other person liable to present accounts to the *Tribunal de Comptes*.
  - f) The beneficiaries of guarantees or direct personal tax exemptions granted by any of the bodies noted in Article 8.
3. Persons who in the previous four years have held high office in the Ministry of Finance may not be appointed as members of the *Tribunal de Comptes*.

#### Article 28

The members of the *Tribunal de Comptes* shall cease to be such for the following reasons:

- a) On account of death.
- b) On account of specific resignation given in writing to the *Síndic General*.
- c) On account of the ending of their period of office.
- d) On account of incapacity declared by firm legal sentence.
- e) On account of being debarred from the exercise of political rights by firm legal sentence.
- f) On account of a condemnation for an offence by firm legal sentence.
- g) On account of failure to comply with the duties of the office declared by legal resolution.

#### Article 29

1. The staff in the service of the *Tribunal de Comptes* shall hold appropriate qualifications and be subject to the statutory system of the civil service.

2. The staff in the service of the *Tribunal de Comptes* is obliged to keep secret the questions, matters and affairs dealt with and the decisions taken and, in general, all information which they may know in the course of their duties until such time as the relevant memorandum or report have been made public and the question under examination has been definitively decided. The matters under debate and the voting of the members of the *Tribunal de Comptes* are always confidential.

3. The *Tribunal de Comptes* may use the services of private audit offices to assist it in carrying out its activity.

#### **Chapter IV. Relations between the *Tribunal de Comptes* and the *Consell General***

##### Article 30

1. The annual memorandum of the *Tribunal de Comptes* and the other annual inspection reports shall be presented to the *Consell General* before September 30 each year. Their parliamentary handling shall be done in accordance with the regulations of the *Consell General*.

2. The *Consell General* may order the carrying out of inspection reports and/or technical surveys on any of the bodies mentioned in Article 8 of this law. The order sent to the *Tribunal de Comptes* for preparing inspection reports or technical surveys shall include the time limit for their production and presentation to the *Consell General*.

3. The chairman and the members of the *Tribunal de Comptes* may be required to appear, in accordance with the procedure laid down in the regulations of the *Consell General*, before a commission to clear up any doubt related to the reports and/or memoranda of the *Tribunal de Comptes* relating to matters falling within its competence.

##### Article 31

The *Consell General* is empowered to examine the accounts of the *Tribunal de Comptes* and they shall be sent to it for this purpose in the form of an appendix to the annual memorandum.

##### Article 32

1. The competent commission appointed by the Parliament's Board of Chairman shall draw up and send on the report to the *Consell General* on the annual memorandum and inspection reports drawn up by the *Tribunal de Comptes*.

2. The *Consell General* shall publish the reports of the *Tribunal de Comptes* in the *Butlletí del Consell General*<sup>8</sup> together with the decision taken, without prejudice to other forms of publication which may be prescribed.

3. In its decisions, the *Consell General* shall summon the bodies of the administration to implement the measures for management proposed and shall decree the provisions. In accordance with the regulations of the *Consell General*, the members of the Government and those responsible for the public bodies subject to inspection shall appear before the Commission to report on the execution of the measures indicated.

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<sup>8</sup> *Official Gazette of the Parliament*

## Additional provision

Beginning from the coming into force of this law the *Tribunal de Comptes* shall carry out the yearly audits referred to in Article 19 of the qualified law<sup>9</sup> on transfers to the *Comuns* and Article 34 of the General law on public finance.

## Transitional provisions

### First

The *Consell General* shall within three months of this law coming into effect appoint the members of the *Tribunal de Comptes* in accordance with the procedure laid down by the Regulations of the *Consell General*.

### Second

Once established, the *Tribunal de Comptes* shall draw up its own internal working regulations within a period of three months.

### Third

The *Consell General* shall before the setting up of the *Tribunal de Comptes* approve a bill for an extraordinary credit enabling the expenses required for the proper setting up and working of the *Tribunal* to be met.

### Fourth

The *Tribunal de Comptes* shall not assume the competence specified in point 4 of Article 3 of this law nor shall it carry out the provisions of Article 9 until such time as a specific regulation for the financing of elections exists.

## Final provision

This law shall come into force on the day on which it is published in the *Butlletí Oficial del Principat d'Andorra*.

Casa de la Vall, 13 April 2000  
*Francesc Areny Casal*  
*Síndic General*

We the Co-Princes sanction it, we promulgate it and we order the publication in the *Butlletí Oficial del Principat d'Andorra*.

Jacques Chirac  
President of the French Republic  
Co-Prince of Andorra

Joan Martí Alanís  
Bishop of Urgell  
Co-Prince of Andorra

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<sup>9</sup> [Law that requires a majority reinforced for its approval]