

# AUDITOR GENERAL

## INTRODUCTION

This chapter identifies the core elements of the Auditor General position through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to the position or activities of an Auditor General and provides sample language parties may wish to consider when drafting provisions establishing an Auditor General.

Many states establish a government office or official, often called a Comptroller or Auditor General, tasked with overseeing and auditing expenditures of the government. The Comptroller or Auditor General is typically responsible for conducting independent government expenditures audits and reporting to the legislative branch of government. Many states establish this position in the constitution and provide for the roles and responsibilities of the office in enabling legislation.

The Darfur Peace Agreement (DPA) briefly lists the National Audit Chamber as one of six institutions responsible for implementing the fiscal aspects of the DPA.<sup>1</sup>

## CORE ELEMENTS

### Position of Auditor General

A state's Auditor General is usually the head of a government or quasi-governmental office that carries out the audits of government expenditures. For instance, the United States Auditor General oversees the Government Accountability Office (GAO), an independent non-partisan institution; the Indian Comptroller and Auditor General directs the Indian Audit and Accounts Department; and the Comptroller and Auditor General of the United Kingdom heads the National Accounting Office (NAO).<sup>2</sup>

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<sup>1</sup> Darfur Peace Agreement, art. 18, para. 134, May 5, 2006, *available at* [http://www.unmis.org/english/2006Docs/DPA\\_ABUJA-5-05-06-withSignatures.pdf](http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf) (last accessed Sept. 20, 2007).

<sup>2</sup> Canada General Auditor's Act, art. 3 (Canada, 1985) *available at* <http://laws.justice.gc.ca/en/a-17/text.html> (last accessed Oct. 1, 2007); INDIA COMPTROLLER AND AUDITOR GENERAL, "ORGANIZATION OF THE INDIAN AUDIT AND ACCOUNTS DEPARTMENT," *available at*

The President or head-of-state often appoints an Auditor General, or the equivalent official. Removal of the Auditor General, however, typically requires the approval by the state's legislative branch,<sup>3</sup> or a ruling by the state's highest court.<sup>4</sup>

## Audits

Auditor Generals in most states have broad discretion to conduct audits of federal government ministries, offices, and agencies. Some states, including India<sup>5</sup> and Pakistan,<sup>6</sup> also provide the authority to conduct review of provincial and municipal spending. Alternately, the United Kingdom has established a separate body to audit local government spending.<sup>7</sup>

An Auditor General may also be responsible for auditing independent or non-government entities. In the United Kingdom, for instance, the Comptroller and Auditor General audit approximately half of the public bodies that are public in nature but are not official departments of the government.<sup>8</sup> South Africa's Auditor General has the authority to review the expenditures of other institutions that obtain government funding or resources for public purposes.<sup>9</sup>

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<http://cag.nic.in/html/aboutusorganization.htm> (last accessed Sept. 30, 2007); GOVERNMENT ACCOUNTABILITY OFFICE: "THE BACKGROUND OF THE GAO."

<sup>3</sup> SOUTH AFRICA CONST. art. 194 (1996), *available at* <http://www.constitutionalcourt.org.za/site/constitution/english-web/ch5.html> (last accessed Sept. 20, 2007).

<sup>4</sup> INDIA CONST. art. 148 (1950), *available at* <http://lawminindiacode.nic.in/coiweb/coifiles/part.htm> (last accessed Sept. 20, 2007); PAKISTAN CONST., art. 168 (1973), *available at* <http://www.pakistani.org/pakistan/constitution/> (last accessed Sept. 20, 2007).

<sup>5</sup> INDIA CONST. art. 151 (1950).

<sup>6</sup> PAKISTAN CONST. art. 171 (1973).

<sup>7</sup> NATIONAL AUDIT OFFICES, THE ROLE OF THE NATIONAL AUDIT OFFICE, *available at* <http://www.nao.org.uk/about/role.htm> (last accessed Sept. 29, 2007). In the United Kingdom, the Comptroller and Auditor General, through the National Audit Office (NAO), is responsible for auditing government department and agencies related to national policies. The Audit Commission is responsible for reviewing local expenditures in England and Wales; Ireland, Scotland and Wales also have their own auditing offices.

<sup>8</sup> NATIONAL AUDIT OFFICES, THE ROLE OF THE NATIONAL AUDIT OFFICE. These institutions are known as "arms-length" public bodies, or non-Departmental public bodies. Examples include the Legal Services Commission and the Regional Development Agencies.

<sup>9</sup> SOUTH AFRICA CONST. art. 188 (1996).

## Reporting

The Auditor General typically submits reports to the legislative branch, as well as to the Executive and the ministry, agency, or other government entity that was audited, as is the case in South Africa<sup>10</sup> and the United States.<sup>11</sup> In states that allow audits of provincial offices and agencies, such as India,<sup>12</sup> Pakistan,<sup>13</sup> and South Africa,<sup>14</sup> the Auditor General submits the report to the provincial legislature and appropriate executive office within the provincial government.

## Additional Roles

The activities of the Auditor General are not typically restricted to auditing government expenditures. Many state's Auditor Generals also take on other responsibilities within the realms of investigating allegations of inappropriate expenditures and assisting government agencies to ensure responsible spending. For instance, the United States Government Accountability Office (GAO) promulgates accounting principles related to GAO standards and works with federal ministry officials to develop their accounting systems.<sup>15</sup> The United Kingdom's National Audit Office regularly publishes reports on good practices and briefing documents for Parliament as well as the public.<sup>16</sup>

## Organization of Auditor General Office or Agency

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<sup>10</sup> SOUTH AFRICA CONST. art. 188 (1996); South Africa Auditor-General Act No. 12 of 1995, art. 4(2), (South Africa) *available at* <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN005186.pdf> (last accessed Sept. 30, 2007).

<sup>11</sup> GOVERNMENT ACCOUNTABILITY OFFICE, THE BACKGROUND OF THE GAO, *available at* <http://www.gao.gov/about/history.html> (last accessed Sept. 29, 2007).

<sup>12</sup> INDIA CONST. art. 151 (1950).

<sup>13</sup> PAKISTAN CONST. art. 171 (1973).

<sup>14</sup> South Africa Auditor-General Act No. 12 of 1995, art. 4(5).

<sup>15</sup> United States Budget and Accounting Procedures Act of 1950, *available at* <http://uscode.house.gov/download/pls/31C35.txt> (last accessed Sept. 30, 2007).

<sup>16</sup> NATIONAL AUDIT OFFICES: "ABOUT US: THE ROLE OF THE NATIONAL AUDIT OFFICE."

The Auditor General in most states is the head of an agency or office that carries out the related responsibilities in auditing and monitoring federal expenditures. Such offices are often organized by topic to facilitate a wide spectrum of activities.

In Canada, for instance, the Office of the Comptroller General is divided into the following offices: (1) Financial Management Branch; (2) Financial Reporting and Advisory Services; (3) Internal Audit and Advisory Services; (4) Corporate Compliance and Controls Monitoring Branch and Corporate Operations; and (5) Procurement Governance Office.<sup>17</sup>

### **DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) lists the National Audit Chamber as one of six institutions responsible for implementing the fiscal aspects of the DPA.<sup>18</sup> Other than this reference, the DPA does not address the position or activities of an Auditor General.

### **SAMPLE LANGUAGE**

#### **Article XXX**

#### **Auditor General of Sudan**

There shall be an Auditor General of Sudan who shall be selected without regard to political affiliation and on the basis of integrity, proven leadership, training and experience in accounting, auditing, financial analysis, management analysis, public administration or related fields.<sup>19</sup> The terms of selection shall be regulated by law.

**OR**

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<sup>17</sup> OFFICE OF THE COMPTROLLER GENERAL, *available at* <http://www.fin.gov.bc.ca/ocg.htm> (last accessed Sept. 30, 2007).

<sup>18</sup> Darfur Peace Agreement, art. 18, para. 134.

<sup>19</sup> This is drawn from the Iraq Board of Supreme Audit Law of 2004 article 1 (Third) which provides for these qualifications, *available at* [http://www.cpa-iraq.org/regulations/20040425\\_CPAORD\\_77\\_Board\\_of\\_Supreme\\_Audit.pdf](http://www.cpa-iraq.org/regulations/20040425_CPAORD_77_Board_of_Supreme_Audit.pdf) (last accessed Oct. 2, 2007).

- (1) There shall be an Auditor General of Sudan who shall be appointed by the Prime Minister [and who shall hold his office for no more than two five-year terms, whether or not the terms are consecutive].
- (2) The Auditor General shall not be eligible during his tenure, to hold any other executive, legislative, or judicial position or practice any other profession except teaching at the university and publishing personal works.
- (3) The Auditor General and Deputies may only be removed for clear incompetence, incapacity, or on grounds of unlawful conduct, after a finding to that effect by legislative resolution.<sup>20</sup>
- (4) At any time when the office of the Auditor General is vacant or the Auditor General is absent or is unable to perform the functions of his office due to any cause, [the Deputy Auditor General][any person as the Prime Minister may direct] shall act as Auditor General and perform the functions of that office.<sup>21</sup>

### **Article XXX**

#### **Duties and Powers of the Auditor General**

- (1) The Auditor General must audit and report on the accounts, financial statements, and financial management of:<sup>22</sup>
  - (a) The national, provincial, and municipal government agencies and administrations;
  - (b) Any other institution as stipulated by law.
- (2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor General may audit and report on the accounts, financial statements, and financial management of:<sup>23</sup>
  - (a) Any institution funded by government revenue;

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<sup>20</sup> This language is similar to that provided in the IRELAND CONSTITUTION article. art. 33 (5), for the removal of the Comptroller and Auditor General

<sup>21</sup> This language is drawn from the PAKISTAN CONST. art. 168(6) (1973). It should be noted that the means for this may be established in enacting legislation rather than inserted as a constitutional amendment but should be drafted keeping in mind who ultimately is granted the authority to appoint the Auditor General.

<sup>22</sup> This language is drawn from the SOUTH AFRICA CONST. art. 188(1) (1996).

<sup>23</sup> This language is drawn from the SOUTH AFRICA CONST. art. 188(1) (1996).

- (b) any institution that is authorized in the terms of any law to receive money for a public purpose;
  - (c) Any other institution as stipulated by law.
- (3) The reports of the Auditor General relating to the accounts of the federal government shall be submitted to any legislature that has a direct interest in the audit, and to any other authority prescribed by law. All reports must be made public.<sup>24</sup>

**OR**

- (1) The Auditor General must submit audit reports [annually][quarterly] to the President who shall cause them to be laid before the legislature. If the audit relates to a provincial government authority, the audit report must be submitted to the [Governor] of the province who shall cause them to be laid upon the provincial legislature.<sup>25</sup>
- (2) The Auditor General has the additional powers and function prescribed by national legislation.<sup>26</sup>

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<sup>24</sup> This language is drawn from the SOUTH AFRICA CONST. art. 188(3) (1996).

<sup>25</sup> This language is drawn from the SOUTH AFRICA CONST. art. 188(3) (1996).

<sup>26</sup> This language is drawn from the SOUTH AFRICA CONST. art. 188(4) (1996).