

Proposed amendments to the Constitution: Strengthening of the National Audit Office's Legal Framework



N A O
National Audit Office
MALTA

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Scope of the Report

01. The report has been prepared in view of the public consultation process launched by the Office of the President on the reform of the Constitution. The scope of the review is aimed at appraising the legal framework in which the National Audit Office (NAO) is embedded and to assess the extent that this requires change in the light of modern challenges, as well as in consideration of the experience the Office obtained in the course of its function. The scope of the report is to identify and recommend potential changes to the Constitution as may be perceived necessary in order to strengthen and to render the Office more effective.

Background to the role of the Auditor General and his Office

02. The NAO is an essential cog in the machinery of parliamentary control of public finances, and consequently, of essence to parliamentary democracy. The Office of the Auditor General was provided for in the Malta Independence Constitution and naturally retained in the Constitution of the Republic. The Constitutions only provided for the appointment of an Auditor General who would occupy a safeguarded post under the Constitution. They did not really provide for the administrative office of the Auditor General. Under the 1964 and 1973 constitutional arrangements, the Auditor General would be appointed by the President of the Republic on advice from the Prime Minister of the day, after consultation with the Leader of the Opposition. In order to secure his necessary independence from the government of the day, it was provided that he could only be removed from Office on an address to the President by the House, supported by the votes of at least two-thirds of the members thereof, praying for his removal on the grounds of proved misbehaviour or proved incapacity to perform his Office. This remained the position up to 1997. Henceforth, the Office of the Auditor General was equated to that of a Judge of the Superior Courts in constitutional terms.
03. Before the 1997 amendments, the Leader of the Opposition was only consulted when it comes to the appointment of the Auditor General. What constituted effective consultation was never defined, either in constitutional terms or in legal terms. Did this amount to taking into serious account the views of the Leader of the Opposition, or did it also require his consent to the appointment? The way this article was interpreted was that a bare meaning was given to the term 'consultation', barely amounting to information of an intended appointment. This was clearly unsatisfactory as we are here dealing with a key role to the working of parliament. This problem was tackled and effectively resolved through the amendments of 1997, which clearly made the appointment necessarily a bipartisan one. It does, however, introduce a new problem to the scene: what happens where in a bipartisan parliament the sides fail to agree on the appointment of a future Auditor General. On this matter, the Constitution does not provide for this situation and Malta had to pass through the unfortunate experience of remaining without an Auditor General for several months when the Prime Minister and the Leader of the Opposition failed to agree on a future appointment. This is a lacuna which is being tackled in these proposals.
04. As a result of the 1997 constitutional and legislative amendments, the position of the Auditor General was considerably strengthened. The position was amended in the following ways:
 - a. the Office of a Deputy Auditor General was created;
 - b. an independent, administrative Office was set up under the Auditor General and National Audit Office Act;

- c. the posts of Auditor General and Deputy Auditor General were to be appointed by the President of the Republic after a resolution of the House supported by two-thirds of the members thereof;
 - d. the constitutional mechanism and safeguard for their removal from office was retained; and
 - e. the Public Accounts Committee, as a select Committee of the House responsible for the oversight of public finances, was set up.
05. This scenario enabled the Auditor General to function more effectively. The key to the whole arrangement is the independence and autonomy of the Auditor General and his Office from the government of the day, in order to enable him to adequately report on public finances and any shortcomings met in audits undertaken. The essence of the Auditor General's role lies in his ability to exercise critical judgements. As he is to report on public finances, then his autonomy, as well as that of his Office, must be adequately safeguarded in order to secure his independence and to insulate him from political controversy, so that he may express a balanced and impartial opinion on public finances. The Constitution safeguards this by making provisions for his salary to be charged on the Consolidated Fund. It also provides for the Office to be independent from the Civil Service and answerable only to the Auditor General and making the financing of his Office independent from the national budget.
06. The tasks attributed to the Auditor General and his Office by the Constitution and the Auditor General and National Audit Office Act (hereinafter referred to as the Act) are the following: auditing the accounts of all departments and offices of government and of such other bodies administering, holding or using public funds, in the latter case as may be prescribed by any law for the time being in force in Malta. The Auditor General is also enabled to report on the propriety of the accounts kept by government, on whether expenditure is as authorised by Parliament and whether public monies have been spent economically or otherwise. He may report to the Public Accounts Committee, either on his own initiative, or as instructed by the Committee or the Minister of Finance. He may also be required to report on matters concerning public finances by any three members sitting on the Committee. The latter provision enables an Opposition to demand such reports on financial matters as it may deem necessary. In summary, the main functions of the Auditor General are to audit public finances and report on matters pertinent to such public finances as may be required from time to time.

Proposed Amendments to the Constitution

07. The functions of the Office as laid down in the Constitution consist mainly in the audit of public accounts. However, the NAO, together with the audit of the accounts of public bodies administering or funded by public monies, also reports on the value for money of public funds, essentially analysing the economy, efficiency, and effectiveness of such funds. This Office feels that the latter type of reports is not clearly provided for in the Constitution, since the Constitution in sub-article 5 refers specifically to the audit and reporting of the accounts. In view of this, a new article reflecting the provisions present in the Act is being proposed:

(5)(a) The Auditor General or any person authorised by him shall have the right to audit all the Ministries, departments and offices of the Government of Malta, including the Office of the President, the House of Representatives, and the Superior and Inferior Courts of Malta.

08. The Office has come across situations whereby it felt the need for the functions of the NAO to be extended to audit and report on any persons or body corporate in receipt of public funds, irrespective of whether they are controlled by Government. The issue to be addressed would allow the NAO to drill down to the level of the individual, institution or company in receipt of public funds. The NAO is presently unable to exercise the right to inquire how public funds were utilised at the beneficiary level. The inappropriate utilisation of public funds by beneficiaries certainly bears impact on economy, efficiency and effectiveness considerations, as well as raising compliance concerns in terms of adherence to the relevant funding agreements. The fact that such public funds may also be funds of the European Union would make such an extension even more necessary.

09. In order not to overburden the Office, it is suggested that the undertaking and effecting of such audits would be left at the discretion of the Auditor General. The choice of which funds to audit in this respect would be largely based on the percentage and/or materiality of the public funds allocated. Moreover, the Auditor General should be given the function to follow the entire trail of expenditure incurred from public funds and determine to what extent such expenditure has been successful in achieving the intentions or objectives such funds have been allocated for. Hence, for public funds to be audited effectively and comprehensively, a new sub-article (5) (b) is being proposed:

(5)(b) The Auditor General shall also have the right in his discretion to audit bodies incorporated by law, as well as all other public authorities, agencies under the direction and control of Government and any other person, body corporate or other bodies administering, holding or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law for the time being in force in Malta.

10. In fulfilment of the Office's commitment to provide assurance to Parliament and the taxpayer on government's performance, the Auditor General is open to receive requests put forward to the Office to undertake audits on particular subject-matters. Notwithstanding this, the Office is of the understanding that the Auditor General should have the discretion not to affect an audit when so requested, if he is of the opinion that the subject-matter of the audit is, among other things, lacking in materiality or represents no risk to public funds.

(5)(c) Without limiting the generality of the functions conferred on the Auditor General by law, the Auditor General may in his discretion decide not to affect an audit.

11. From an audit-based perspective, the facility to drill down to the beneficiary level as proposed under the new sub-article 5 (b) would certainly require access to all the information and allow for the precise verification of detailed facts should circumstances so necessitate. With this purpose in mind, the below new sub-article is being proposed:

(5)(d) The Auditor General or any person authorised by him shall have the right to obtain information from any recipients of public funds in relation to any audit being undertaken by the Office.

12. In furtherance to the above, a new sub-article 5 (e) is being proposed to allow the Auditor General and his Office unrestricted access to all evidence and documentation.

(5)(e) In view of the powers conferred on the Auditor General in terms of article 108 (5) (a) (b) and (d) above, the office of the Auditor General shall be provided with unrestricted access to all information, without prejudice to the generality of the above, in particular to agreements, books, contracts, records, returns, electronic data and other documents relating to the subject matter being audited.

13. One of the issues hampering the Office's ability to audit emerges in respect of entities that do not provide the information requested, citing provisions in their enabling legislation that prohibit them from divulging information. In this context, the NAO is of the understanding that a new sub-article must be introduced in the Constitution to address this matter. In addition, article 6A of the Professional Secrecy Act, Chapter 377 of the Laws of Malta, should be amended to include 'a person disclosing information to the Auditor General or his Office' to be in line with the proposed amendment.

(6) In view of the powers conferred on the Auditor General as per sub-articles 5 above, the Professional Secrecy Act or any other law restricting access to information, including that which is commercial sensitive in nature, shall not apply to information requested by the office of the Auditor General. The Auditor General shall not be hindered in any way from obtaining the required information, unless expressly stipulated otherwise in another law with specific reference to this article.

14. The NAO is at times faced with situations where witnesses do not come forward to provide the Office with relevant information relating to the audit. The inability to obtain the necessary information would seriously hinder the Office in coming to meaningful conclusions and curtail its powers to audit. It is also unfortunate as the inquiries conducted by the Auditor General are not criminal ones and are not meant to secure a conviction or otherwise for any wrongdoing committed. The Office is mainly concerned with the proper use of public finances. Such inquiries are meant at discovering any malpractice with a view to bringing these to the attention of Parliament. A potential solution to this problem would be to provide in the law that the identity of the person who discloses information would be safeguarded. A new sub-article 7 is being proposed:

(7) No court or any authority shall require the office of the Auditor General to disclose the identity of the person who discloses information to the National Audit Office.

15. Another matter that warrants address relates to when the office of the Auditor General becomes vacant. This situation may arise when the political forces present in the House fail to agree on the person to be appointed to office. In one case, the Office remained without an Auditor General for a considerable period. This presents several complications as the Office must continue functioning

and therefore, there must be a person who will take responsibility for the functioning of the Office under such circumstances. The idea of having a Deputy Auditor General was meant to meet such an eventuality; however, it could very well happen that the term of office of the Auditor General and his Deputy lapse at the same time. To prevent this situation from happening, it is being suggested that when the office of the Auditor General and his Deputy lapse on the same date, the Auditor General and his deputy would retain office until the appointment of their successor, however for not longer than one year. This will ensure continuity with respect to the headship of the NAO in nearly all eventualities. Moreover, if at any moment in time there is no person occupying the Office of Auditor General, it is being proposed that the most senior employee in office will be appointed as chief executive officer in charge of running the Office until the appointment of an Auditor General.

(12) If at the end of tenure of the office of the Auditor General or the Deputy Auditor General both offices are vacant, the incumbent officers shall hold office until the successor is appointed or for not longer than one year, whichever occurs first.

Provided there is no incumbent officer as provided above, the most senior officer shall become chief executive officer and shall only be responsible for the administration of the Office until the appointment of an Auditor General.

16. Another issue that needs to be addressed in the law is litigation in relation to reports, statements and other communications made by the NAO. This issue has already been raised in court as an individual sought to sue a former Auditor General on the basis of libel. Naturally, the possibility of such litigation would considerably curtail the freedom of expression of the Auditor General and his officers, and it is important that such communications be considered as privileged in order to ensure that the Auditor General has the greatest freedom and latitude to express his opinions in his reports. In the above-mentioned case, the court found for the Auditor General and dismissed the claim brought against him. The point for reform is that this matter should be expressly and explicitly provided in the law so that no doubt whatsoever may persist on the issue.

(16) No civil or criminal proceedings may be instituted against the Auditor General or any officers of the National Audit Office in respect of acts connected to the performance of their duties.

17. In order to better secure the independence of the NAO, it is suggested that once enacted, any further amendment to the Act should only be made after consultation with the Auditor General, in order to ensure that the independence of his remit and the autonomy of his Office are not reduced in the future. To further safeguard the Act, it is also being proposed that any amendments to the Act are made only by means of a two-thirds majority of the House. Hence, a new sub-article 17(a) is being proposed, and an amendment to article 66 (2) of the Constitution is deemed required to include the Act as another law to be amended with a two-thirds majority.

17(a) Parliament may only alter any provisions of Chapter 396 of the Laws of Malta, following consultation with the Auditor General. A bill for an Act of Parliament amending the Act shall be passed in the House of Representatives, in the manner established in article 66 (2) of the Constitution.

66. (2) *In so far as it alters –*

(a) [...]

(b) [...]

(c) [...]

(d) *the Auditor General and the National Audit Office Act*

a bill for an Act of Parliament under this article shall not be passed in the House of Representatives unless at the final voting thereon in that House it is supported by the votes of not less than two-thirds of all the members of the House.

18. This Office has come across several instances whereby the legislation of certain government authorities or bodies provide the office of the Auditor General with additional tasks. At times, the Auditor General may not even be aware of such responsibilities. To avoid this situation, it is being recommended that whenever any additional responsibilities are assigned to the Auditor General and his Office, the Auditor General would be consulted prior to the introduction of the new legislation.

(17) (b) The Auditor General shall be consulted before any new legislation is introduced in any other Act which would assign additional responsibilities or affect in any way the duties of the Auditor General and his Office.

Annex 1: Proposed amendments to Article 108 of the Constitution of Malta

108. (1) There shall be an Auditor General whose office shall be a public office who shall have the functions as provided in the following provisions of this article.

(2) The Auditor General shall be an officer of the House of Representatives and shall be appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members in the House:

Provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives, he shall not be treated as a member of the House for the purpose of establishing the majority required by this sub-article.

(3) (a) Subject to the provisions of sub-article (4) of this article the Auditor General shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment for one further period of five years.

(b) Where the Auditor General has been appointed from among public officers and at the end of his appointment is below the retiring age in the public service, the person so appointed shall revert to the public service and shall continue to enjoy the salary and allowances referred to in sub-article (8).

(c) It shall not be lawful for the Auditor General, during his tenure of such office, to hold any other office of profit or otherwise with the Government of Malta or with any commercial or professional venture whatsoever.

(4) (a) The Auditor General may at any time be removed or suspended from his office by the President, upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members in the House, praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the provisions of the proviso to sub-article (2) of this article shall also apply for the purpose of establishing the majority required under this sub-article.

(b) At any time when Parliament is not in session, the Auditor General may be suspended from his office by the President, acting in accordance with his own deliberate judgement, for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next session of Parliament.

- (5) (a) The Auditor General or any person authorised by him shall have the right to audit all the Ministries, departments and offices of the Government of Malta, including the Office of the President, the House of Representatives, and the Superior and Inferior Courts of Malta.
- (b) The Auditor General shall also have the right in his discretion to audit bodies incorporated by law, as well as all other public authorities, agencies under the direction and control of Government and any other person, body corporate or other bodies administering, holding or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law for the time being in force in Malta.
- (c) Without limiting the generality of the functions conferred on the Auditor General by law, the Auditor General may in his discretion decide not to affect an audit.
- (d) The Auditor General or any person authorised by him shall have the right to obtain information from any recipients of public funds, in relation to any audit being undertaken by the Office.
- (e) In view of the powers conferred on the Auditor General in terms of article 108 (5) (a) (b) and (d) above, the office of the Auditor General shall be provided with unrestricted access to all information, without prejudice to the generality of the above, in particular to agreements, books, contracts, records, returns, electronic data and other documents relating to the subject matter being audited.
- (6) In view of the powers conferred on the Auditor General as per sub-articles 5 above, the Professional Secrecy Act or any other law restricting access to information, including that which is commercial sensitive in nature, shall not apply to information requested by the office of the Auditor General. The Auditor General shall not be hindered in any way from obtaining the required information, unless expressly stipulated otherwise in another law with specific reference to this article.
- (7) No court or any authority shall require the office of the Auditor General to disclose the identity of the person who discloses information to the National Audit Office.
- (8) (a) There shall be paid to the Auditor General such salary and such allowances as may from time to time be prescribed or allowed for a Judge of the Superior Courts.
- (b) Such salary and allowances shall be a charge on the Consolidated Fund and the provisions of sub-article (3) of article 107 of the Constitution shall apply to such salary.

- (9) The Auditor General shall not enter upon the duties of his office unless he has taken and subscribed before the President the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.
- (10) Parliament may by law from time to time provide for the manner in which the reports of the Auditor General shall be made.
- (11) (a) There shall also be a Deputy Auditor General whose office shall be a public office and who shall have such functions as the Auditor General may from time to time delegate to him and who shall, whenever the office of Auditor General is temporarily vacant, and until a new Auditor General is appointed, and whenever the holder of the office is absent from Malta or on vacation or is for any reason unable to perform the functions of his office, perform the functions of Auditor General.
- (b) The provisions of sub-article (2), paragraphs (a) and (c) of sub-article (3), sub-article (4), paragraph (b) of sub-article (8) and sub-article (9) of this article shall apply to the Deputy Auditor General.
- (c) There shall be paid to the Deputy Auditor General such salary and such allowances as may from time to time be prescribed or allowed to a Magistrate of the Inferior Courts.
- (d) Where the Deputy Auditor General has been appointed from among public officers and at the end of his appointment is below the retiring age in the public service, the person so appointed shall revert to the public service and shall continue to enjoy the salary and allowances referred to in this sub-article.
- (12) If at the end of tenure of the office of the Auditor General or the Deputy Auditor General both offices are vacant, the incumbent officers shall hold office until the successor is appointed or for not longer than one year, whichever occurs first.
- Provided there is no incumbent officer as provided above, the most senior officer shall become chief executive officer and shall only be responsible for the administration of the Office until the appointment of an Auditor General.
- (13) (a) There shall be a National Audit Office consisting of the Auditor General, who shall be the head of that office, the Deputy Auditor General and such other officers, appointed by the Auditor General, as the Auditor General may consider necessary to assist him in the proper discharge of his office, and the provisions of article 110 of this Constitution shall not apply to the officers appointed to the National Audit Office.
- (b) Parliament may from time to time by law provide for the manner in which funds shall be allocated to the National Audit Office and in the manner whereby the accounts of the National Audit Office shall be audited and reported upon.

- (14) Nothing in this article shall be construed as precluding the grant of any other functions or powers on the Auditor General or the National Audit Office by or under any law for the time being in force.
- (15) In the exercise of their functions under the Constitution the Auditor General and the Deputy Auditor General shall not be subject to the authority or control of any person.
- (16) No civil or criminal proceedings may be instituted against the Auditor General or any officers of the National Audit Office in respect of acts connected to the performance of their duties.
- (17) (a) Parliament may only alter any provisions of Chapter 396 of the Laws of Malta, following consultation with the Auditor General. A bill for an Act of Parliament amending the Act shall be passed in the House of Representatives, in the manner established in article 66 (2) of the Constitution.
- (b) The Auditor General shall be consulted before any new legislation is introduced in any other Act which would assign additional responsibilities or affect in any way the duties of the Auditor General and his Office.

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66. (1) Subject to the provisions of this article, Parliament may alter any of the provisions of this Constitution and (in so far as it forms part of the law of Malta) any of the provisions of the Malta Independence Act, 1964.
- (2) In so far as it alters –
- (a) this article; or
- (b) article 1, sub-article (2) of article 2, sub-article (1) of article 3, sub-article (1) of article 5, article 6, articles 32 to 48 (inclusive), articles 51, 52, 56, 57, 60, 61 and 64A, sub-article (3) of article 65, sub-article (2) of article 75, article 76 (other than sub-article (2) thereof), articles 77 and 78, article 80, article 91, articles 95, 96, 96A, 97, 98, 99, 100, 101A, 101B, articles 102 to 110 (inclusive), articles 113, 114, 115A, 118, 119 or 120 of this Constitution; or
- (c) article 124 of this Constitution in its application to any of the provisions specified in paragraph (a) or (b) of this sub-article,
- (d) the Auditor General and the National Audit Office Act
- a bill for an Act of Parliament under this article shall not be passed in the House of Representatives unless at the final voting thereon in that House it is supported by the votes of not less than two-thirds of all the members of the House.

Annex 2: Article 108 of the Constitution of Malta highlighting the proposed amendments

108. (1) There shall be an Auditor General whose office shall be a public office who shall have the functions as provided in the following provisions of this article.

(2) The Auditor General shall be an officer of the House of Representatives and shall be appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members in the House:

Provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives, he shall not be treated as a member of the House for the purpose of establishing the majority required by this sub-article.

(3) (a) Subject to the provisions of sub-article (4) of this article the Auditor General shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment for one further period of five years.

(b) Where the Auditor General has been appointed from among public officers and at the end of his appointment is below the retiring age in the public service, the person so appointed shall revert to the public service and shall continue to enjoy the salary and allowances referred to in sub-article (68).

(c) It shall not be lawful for the Auditor General, during his tenure of such office, to hold any other office of profit or otherwise with the Government of Malta or with any commercial or professional venture whatsoever.

(4) (a) The Auditor General may at any time be removed or suspended from his office by the President, upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members in the House, praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the provisions of the proviso to sub-article (2) of this article shall also apply for the purpose of establishing the majority required under this sub-article.

(b) At any time when Parliament is not in session, the Auditor General may be suspended from his office by the President, acting in accordance with his own deliberate judgement, for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next session of Parliament.

- (5) (a) The Auditor General or any person authorised by him shall have the right to audit all the Ministries, departments and offices of the Government of Malta, including the Office of the President, the House of Representatives, and the Superior and Inferior Courts of Malta.
- (b) The Auditor General shall also have the right in his discretion to audit bodies incorporated by law, as well as all other public authorities, agencies under the direction and control of Government and any other person, body corporate or other bodies administering, holding or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law for the time being in force in Malta.
- (c) Without limiting the generality of the functions conferred on the Auditor General by law, the Auditor General may in his discretion decide not to affect an audit.
- (d) The Auditor General or any person authorised by him shall have the right to obtain information from any recipients of public funds, in relation to any audit being undertaken by the Office.
- (e) In view of the powers conferred on the Auditor General in terms of article 108 (5) (a) (b) and (d) above, the office of the Auditor General shall be provided with unrestricted access to all information, without prejudice to the generality of the above, in particular to agreements, books, contracts, records, returns, electronic data and other documents relating to the subject matter being audited.

(5) The accounts

(a) of all departments and offices of the Government of Malta, including the office of the Public Service Commission, and the office of the Clerk of the House of Representatives and of all Superior and Inferior Courts of Malta, and

(b) of such other public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law for the time being in force in Malta,

shall be audited and reported upon by the Auditor General to the House of Representatives and for that purpose the Auditor General or any person authorised by him in that behalf shall have access to all particular, books, records, returns and other documents relating to those accounts.

- (6) In view of the powers conferred on the Auditor General as per sub-articles 5 above, the Professional Secrecy Act or any other law restricting access to information, including that which is commercial sensitive in nature, shall not apply to information requested by the office of the Auditor General. The Auditor General shall not be hindered in any way from obtaining the required information, unless expressly stipulated otherwise in another law with specific reference to this article.

- (7) No court or any authority shall require the office of the Auditor General to disclose the identity of the person who discloses information to the National Audit Office.**
- (8) (a) There shall be paid to the Auditor General such salary and such allowances as may from time to time be prescribed or allowed for a Judge of the Superior Courts.
- (b) Such salary and allowances shall be a charge on the Consolidated Fund and the provisions of sub-article (3) of article 107 of the Constitution shall apply to such salary.
- (9) The Auditor General shall not enter upon the duties of his office unless he has taken and subscribed before the President the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.
- (10) Parliament may by law from time to time provide for the manner in which the reports of the Auditor General shall be made.
- (11) (a) There shall also be a Deputy Auditor General whose office shall be a public office and who shall have such functions as the Auditor General may from time to time delegate to him and who shall, whenever the office of Auditor General is temporarily vacant, and until a new Auditor General is appointed, and whenever the holder of the office is absent from Malta or on vacation or is for any reason unable to perform the functions of his office, perform the functions of Auditor General.
- (b) The provisions of sub-article (2), paragraphs (a) and (c) of sub-article (3), sub-article (4), paragraph (b) of sub-article (8) and sub-article (9) of this article shall apply to the Deputy Auditor General.
- (c) There shall be paid to the Deputy Auditor General such salary and such allowances as may from time to time be prescribed or allowed to a Magistrate of the Inferior Courts.
- (d) Where the Deputy Auditor General has been appointed from among public officers and at the end of his appointment is below the retiring age in the public service, the person so appointed shall revert to the public service and shall continue to enjoy the salary and allowances referred to in this sub-article.
- (12) If at the end of tenure of the office of the Auditor General or the Deputy Auditor General both offices are vacant, the incumbent officers shall hold office until the successor is appointed or for not longer than one year, whichever occurs first.**

Provided there is no incumbent officer as provided above, the most senior officer shall become chief executive officer and shall only be responsible for the administration of the Office until the appointment of an Auditor General.

(13) (a) There shall be a National Audit Office consisting of the Auditor General, who shall be the head of that office, the Deputy Auditor General and such other officers, appointed by the Auditor General, as the Auditor General may consider necessary to assist him in the proper discharge of his office, and the provisions of article 110 of this Constitution shall not apply to the officers appointed to the National Audit Office.

(b) Parliament may from time to time by law provide for the manner in which funds shall be allocated to the National Audit Office and in the manner whereby the accounts of the National Audit Office shall be audited and reported upon.

(14) Nothing in this article shall be construed as precluding the grant of any other functions or powers on the Auditor General or the National Audit Office by or under any law for the time being in force.

(15) In the exercise of their functions under the Constitution the Auditor General and the Deputy Auditor General shall not be subject to the authority or control of any person.

(16) No civil or criminal proceedings may be instituted against the Auditor General or any officers of the National Audit Office in respect of acts connected to the performance of their duties.

(17) (a) Parliament may only alter any provisions of Chapter 396 of the Laws of Malta, following consultation with the Auditor General. A bill for an Act of Parliament amending the Act shall be passed in the House of Representatives, in the manner established in article 66 (2) of the Constitution.

(b) The Auditor General shall be consulted before any new legislation is introduced in any other Act which would assign additional responsibilities or affect in any way the duties of the Auditor General and his Office.

66. (1) Subject to the provisions of this article, Parliament may alter any of the provisions of this Constitution and (in so far as it forms part of the law of Malta) any of the provisions of the Malta Independence Act, 1964.

(2) In so far as it alters –

(a) this article; or

(b) article 1, sub-article (2) of article 2, sub-article (1) of article 3, sub-article (1) of article 5, article 6, articles 32 to 48 (inclusive), articles 51, 52, 56, 57, 60,

61 and 64A, sub-article (3) of article 65, sub-article (2) of article 75, article 76 (other than sub-article (2) thereof), articles 77 and 78, article 80, article 91, articles 95, 96, 96A, 97, 98, 99, 100, 101A, 101B, articles 102 to 110 (inclusive), articles 113, 114, 115A, 118, 119 or 120 of this Constitution; or

- (c) article 124 of this Constitution in its application to any of the provisions specified in paragraph (a) or (b) of this sub-article,

(d) the Auditor General and the National Audit Office Act

a bill for an Act of Parliament under this article shall not be passed in the House of Representatives unless at the final voting thereon in that House it is supported by the votes of not less than two-thirds of all the members of the House.