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## THE RIGHTS AND DUTIES OF AUDITORS UNDER THE LAW OF UKRAINE

*This paper investigates the nature of audit activity in Ukraine, the legal status of auditors, their tasks and functions. The analysis made it possible for the author to propose measures to improve the relationship with the auditor entities – potential customers audit and formulate the basic provisions for improving the existing legislation concerning the rights and duties of auditors.*

**Keywords:** auditing; audit; auditor; audit firm; entity.

*Досліджено сутність аудиторської діяльності в Україні, правовий статус аудиторів, їх завдання та функції. Запропоновано заходи щодо підвищення ефективності взаємовідносин аудиторів із суб'єктами господарювання – потенційними замовниками аудиту. Сформульовано основні положення щодо вдосконалення чинного законодавства стосовно прав та обов'язків аудиторів.*

**Ключові слова:** аудиторська діяльність; аудит; аудитор; аудиторська фірма; суб'єкт господарювання.

*Исследованы сущность аудиторской деятельности в Украине, правовой статус аудиторов, их задачи и функции. Предложены меры по повышению эффективности взаимоотношений аудиторов с субъектами хозяйствования – потенциальными заказчиками аудита. Сформулированы основные положения по совершенствованию действующего законодательства относительно прав и обязанностей аудиторов.*

**Ключевые слова:** аудиторская деятельность; аудит; аудитор; аудиторская фирма; субъект хозяйствования.

The transition to a market economy in Ukraine led to the emergence of audit activity, and therefore the subjects engaged in non-state control – independent auditors' audit firms. The nature of audit performed by independent auditors and audit firms, provides its wide use by business entities, investors, creditors, shareholders, and therefore especially important is a clear legislative strengthening the

rights and duties of auditors. But the presence of complex problems such as: lack of understanding of the functions of auditors, the lack of legislated auditor liability to third parties, the availability of audit risks are not clearly defined in the Law of Ukraine «On Auditing» rights and responsibilities, resulting in them due with auditing and providing other audit services, slowing its use. The above points to the need to improve existing legislation.

Review of scientific sources in this field indicates that the legislative establishment of rights and duties of auditors changed under the influence of scientific thought, economic and social relations. Analysis of recent research shows that they have started to solve the problem. The theoretical base articles scientific papers were members of the legal and economics of different periods are applied to the problems of auditing and auditing. Unquestionable influence in shaping the author's position had labor economists E. Huttsayt, N. Dorosh, L. Kulakovska, J. Picha, B. Longhorn and so on. Given the complex nature of audit activities within the article studied scientific handling of different areas of law: A. Andrewko, L. Voronova, M. Kucheriavenko, L. Sukharev, L. Savchenko and others.

The purpose of the article is to explore the nature of audit activity in Ukraine, the legal status of auditors, their tasks and functions, which in turn will make it possible to improve the procedure for interaction between auditors entities – potential customers audit and formulate the basic provisions for the improvement of existing provisions legislation concerning the rights and duties of auditors.

Thus, the Law of Ukraine «On Auditing» [1] developed and described in detail the rights of audit organizations and individual auditors. However, we would like to make some additions. In fact, the audit should adequately reflect all aspects of the audited entity. That is, to make a credible audit report, the auditor should obtain absolute assurance that the information contained in the accounting records and source documents, sufficient and credible. Therefore, it is necessary to amend Article 19 of the Law of Ukraine «On Auditing», providing the right auditors and audit firms to abandon an audit or expression of opinion on the likelihood of financial accounting in the audit report in case the failure by an entity required documentation, It also found during the audit of circumstances that may affect the audit

opinion of the organization or individual auditor's degree of probability of financial and accounting records audited entity.

Auditors can take measures to minimize their liability. So noteworthy deals L. Kulakovska and J. Pichy [5, p. 123], which can be considered practicing auditors. To minimize the Auditors, shall: only deal with honest clients, hiring qualified personnel should be adequately prepared and control, adhere to professional standards remain independent, to understand what business is the customer, it know the specifics of its business operations, maintain a high quality audit, properly document the work, get the documents that define the mutual responsibilities of the auditor and the client, to maintain the confidentiality of relations, that is not to disclose his client to third parties, to provide adequate insurance coverage, use a qualified legal advice. Therefore, it is advisable to amend Article 19 of the Law of Ukraine «On Auditing», providing the right auditors and audit firms to take measures to minimize their liability.

According to the legislation of Ukraine, the legitimate interests of owners should be protected so that the client has the undeniable right to elect an auditor. While it entitle the head of the audit firm to ensure that the circumstances in which the proposed replacement auditor acceptable.

Along with the rights of the legislator assumes the duties of statutory auditors and audit firms. [1] However, during the audit of listed services only legislator who must provide the auditor. But the main objective of the audit – is to express an opinion in the auditor's opinion. Therefore, article 19 «Duties of auditors and audit firms» Law of Ukraine «On Auditing» rule should be added that in the period established by the contract for the provision of audit services, the auditor shall transmit the audit report entity, which signed the agreement.

Expanding the scope of audit activities leading to the formation of separate business units in areas where auditors had not practiced because there is a need for a different audience, which has been operating in these areas. Thus, the scope of audit services continues to expand and often requires deep expertise. As one auditor can not learn experience in all areas of financial and economic activity, it has delegated some of the other auditor to audit that meets his professional competence. And it will get quality advice and proper decision-making. Therefore, in Article 19 «Duties

of auditors and audit firms» Law of Ukraine «On Auditing» should also specify that the auditor should not try in any way to limit the freedom of choice of the client in obtaining advice on specific issues. Moreover, it should encourage such intentions client.

Article 20 of the Law of Ukraine «On Auditing» provides a list of specific requirements that prohibit the audit [1]. This requirement prevents the relationship with an entity did not affect the independence of the auditor and that the auditor did not have a direct financial interest in its activities. From the above it is clear that the reason for the ban on auditing is the presence of factors that affect the auditor's independence. Indeed, the auditor should be independent of the client, its all the major companies and separate entities. Because the ban is unclear audit if the remuneration for audit services does not include necessary for quality performance of such services in time, proper skills, knowledge, professional skills and the degree of responsibility of the auditor [1]. It would seem that this situation may lead users of audit services to a violation of the independence of the audit conducted. However, it is unknown who will determine compliance with the remuneration for audit services skills and knowledge of the auditor. This fact, in our opinion, should be specifically provided in the contract. In addition, this provision would be appropriate to provide for rights among auditors in the Law of Ukraine «On Auditing». Therefore, we propose to include these documents in the article as follows: «The auditor may waive the audit if the remuneration for audit services does not include necessary for efficient performance of such services in time, proper skills, knowledge, professional skills and the degree of responsibility the auditor».

The Law of Ukraine «On Auditing» are just that auditors and audit firms are required to adequately provide audit services that auditors responsible for the proper quality is not installed. Auditor can not be held liable, as the N. Dorosh [4, p. 116], intricate schemes for detection of fraud and abuse, if the check did not have anything that would cause his suspicion. But if suspicious facts were found, and the auditor did not conduct a proper investigation of all the circumstances, it may be held responsible for negligence. Indeed, in this case there is a question of professional auditor and appropriateness him to engage in audit activity in general. Therefore,

it is necessary to establish liability of auditors for improper execution of these functions, and the more abuse while providing audit services along with an accountant of an entity, which has been audited, ensuring the quality of auditors.

In addition, Article 19. «The responsibilities of auditors and audit firms» Law of Ukraine «On Auditing» requires auditors and audit firms to keep secret the information obtained during the audit and performing other audit services not to disclose information that is the subject of a trade secret, and not use them to your advantage or benefit of others. Furthermore, the responsibility for disclosure of trade secrets provided for in Article 232 of the Criminal Code of Ukraine [2, p. 98–99]. With regard to the disclosure of trade secrets and bank auditor, this crime is different from other crimes against business that they are not subject to any person, and private auditors. Therefore, there is reason to include appropriate provision in the Law of Ukraine «On Auditing».

Meanwhile, the responsibility for the financial statements lies with the heads of the audited entity. According to the legislation of Ukraine, audit does not relieve management of an entity from liability [1]. Consequently, the auditor does not approve statements of entities not responsible for the same reporting, but expresses an opinion on the financial statements. The auditor's report shall be evidence of the accuracy of the information and the guarantee of its correctness, it can only confirm its accuracy. We subscribe to the idea of the moral weakness of the mechanism of regulation of the audit, which was confirmed by a series of scandals with Greater Western auditing firms, and the need to strengthen the administrative mechanism of regulation [3, p. 73–77], including the Introduction of administratively imposing penalties on audit firms. The fines can be defined in the fold of the amount of the fee received as the valuation of damage caused by low-quality services in auditing – a rather difficult task. On the other hand, the trial between the auditor and the client may affect the objectivity of the auditor's report. Violation of the trial in the case of an auditor can not provide unbiased performance test reports compiled entity.

The Treaty of auditing level specifies the responsibilities of the auditor and the client in order to avoid misunderstanding, namely, responsibility for quality of work, responsibility for

compliance with the principles of auditing the performance of work, responsibility for compliance with the terms of work, and other conditions of liability. This section is conditioned responsible for starting the first remnants of an audit or liability if the preliminary test performed by another auditor. This section should also be a note on the use of terms such liability, for example, within one year of the audit or audit services. Therefore, it is necessary to clarify the issue of quality of audit services. Indeed, there are cases where an audit firm providing audit report that contains false information, and receives a fee for it. The objectivity of the auditor's report is a prerequisite for the audit, which provides independence and dictated by the needs of users.

Article 9 of the Law of Ukraine «On Auditing» (which repealed) identified the range of subjects that can be users of financial statements. They have the right to act as clients to audit and perform other audit services, to determine the scope and direction of the audit within the powers granted by law, the constitutive documents or individual contracts. The new Law of Ukraine «On Auditing» [1] Related articles unexpected, although national legislation there is a problem auditor liability to third parties. Since third parties may also incur losses as a result of the lack of audit quality.

By law, the financial statements have been published for the information of shareholders to manage the affairs of the company and not to help the individual to speculate in shares to shareholders. In this audit must confirm the financial statements. Then the auditor's report falls into wide circulation , and can predict what it will be used as a partial basis for decision – making by a number of independent third parties for any of a large number of targets, predict that by the conclusion ( Auditor ) at the time of the grant can not . On the basis of N. Dorosh [4, p. 124] concludes acknowledgment irrelevance of third-party liability in such broad circumstances. However, auditors are invited not only to confirm the reliability of financial reporting, but also for a thorough analysis. Their conclusion may rely a great number of different people with different intentions unknown in business if they do not have the legal right to rely on the auditor, then it raises the question of their relevance to sit in a public registry.

Therefore, it seems more correct position L. Kulakovska and J. Picha [5, p. 120–121] that the usual civil-law agreements the

parties shall be liable only to one another, and the auditor is responsible to the client and to third parties who are users of the financial statements of the client, finding certified auditor. This specificity lies in the responsibility of the auditor intended Auditing certify the accuracy, completeness and legality of the information provided on actions and events of the entity in order to reduce risk to the lowest users of information. In addition, auditors are now realizing that one might ask what can be considered a reliable source of information for potential investors and lenders. Then maybe, potential users will use other more reliable source of information than the auditor's report. Thus, there is the problem of determining the scope and responsibilities of the auditor to third parties. In our opinion, if the auditor provides advice on the prospects in the management or forecasting financial performance of the entity, in this case it is purely his opinion and his own vision. However, if the auditor assesses the real state of the financial statements, the financial indicators can be either correct or not, so no matter who uses them and for what purpose.

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