

INTERNAL AUDITING IN PUBLIC SECTOR, LAW

AUDITIMI I BRENDSHËM NË SEKTORIN PUBLIK, LIGJ

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Unofficial translation of the Law on the Internal Auditing in the Public Sector:

LAW

No 114/2015

ON INTERNAL AUDITING IN THE PUBLIC SECTOR

In reliance on Articles 78 and 83, point 1, of the Constitution, upon the proposal of the Council of Ministers,

ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED: CHAPTER I GENERAL PROVISIONS

Article 1

Scope of the law

This law regulates the activity of the internal auditing in the public sector and sets out the scope of activity, mission, principles, organisation, functioning and responsibilities.

Article 2

Internal auditing

Internal auditing is an independent activity providing objective safety and offering advice for the projected management to the effect of increasing value and improving the activity of the public units. The internal auditing assists the public unit to attain its objectives, by way of a disciplined and systematic activity, to evaluate and improve the usefulness of the risk management, as well as the processes of the control and governance.

Article 3

Scope of application of the law

This law is applied to the public sector units, whereby, under the law, encompassing:

- a) general governance units and any other institution assuming public functions;
- b) commercial companies, profit-making organisations and joint authorities, which are owned, controlled, financed or financially guaranteed by the general governance units;
- c) other units spending public funds under an international agreement.

Article 4

Definitions

The following terms in this law shall have the following meanings:

1. "Commitment of auditing" shall refer to a specific task of auditing, various tasks of auditing and revision, processes and activities, hereunder falling the security and advice services;
2. "Financial auditing" encompasses the evaluation of accuracy, comprehensiveness and legality of the financial transactions;
3. "Performance auditing" encompasses the evaluation of the economy, effectiveness and efficiency of the activity and utilisation of funds by the public sector unit in attaining the objectives;
4. "Compliance auditing" encompasses the assessment whether the activities of the public sector units are in compliance with the laws, bylaw acts and internal acts and regulations;
5. "Auditing of the internal control system" encompasses an in-depth evaluation of the compliance and effectiveness of the internal control system, equally in the financial and non-financial systems;
6. "Information technology auditing" includes the evaluation of the management controls in the information technology infrastructure, regarding the maintenance of assets, integrity of data and effective operation to attain the purposes and objectives of the public unit;
7. "Internal auditor" is the qualified and certified professional under the requirements provided for in this law;
8. "Public Financial Internal Control Board" has the same meaning and it functions under the provisions of the law "On financial management and control".
9. "Effectiveness" is the extent to which the objectives or the connection between the estimated and current impact for a certain activity are attained;
10. "Efficiency" is the best proportion between the outcome and the resources applied to attain them;
11. "Economy" is the minimisation of costs of the resources applied for carrying out the activity and preserving the quality;
12. "Auditing Charter" is an administrative act being approved upon the order of the head of the public unit, wherein determining the organisational status, purpose, mission, objectives of work, accountability and responsibilities of the internal auditing unit;

13. "Code of Ethics" is an administrative act being approved upon the order of the head of the public unit, wherein determining clearly the rules of conduct and principles to serve as guidance in the activity of the internal auditors. The Code of Ethics refers to the Code of Ethics published by the Internal Auditors Institute.

14. "Internal control" has the same meaning as in the law "On financial management and control";

15. "Financial management and control" has the same meaning as in the law "On financial management and control";

16. "General governance units" has the same meaning under the provisions of the law "On budget system management in the Republic of Albania";

17. "International standards on internal auditing" refers to the international standards on professional practices of internal auditors of the Internal Auditors Institute;

18. "Head of unit at commercial companies" is the forum responsible for determining the policies of the company, under the law on traders and commercial companies;

19. "Public unit head" is the head of the central body of the public unit. In the sense of this law, the head of the public unit being presided over by a collegial decision-making body, but not organised as a commercial company, shall be considered to be this body.

CHAPTER II

MISSION, ROLE AND PRINCIPLES OF INTERNAL AUDITING

Article 5

Mission

The internal auditing is in place to provide sufficient safety for the head of the public sector unit, in an independent and objective fashion, as well as advice for the improvement of the activity and effectiveness of the internal control system for the public sector unit.

Article 6

Role of internal auditing

The role of the internal auditing is to provide support to the head of the public unit to attain the objectives of the unit:

a) through drafting strategic and annual plans for the internal auditing, based on an objective risk evaluation, as well as on the performance of auditing in compliance with an approved plan;

b) through the evaluation of the appropriateness and effectiveness of the control systems, focusing mainly on:

i) identification, evaluation and risk management by the head of the public unit;

ii) compliance with the activity of the public unit with the regulatory framework;

iii) maintenance of assets;

iv) reliability and all-inclusiveness of the financial and operational information;

- v) accomplishment of the activity of the public unit with economy, effectiveness and efficiency;
- vi) accomplishment of tasks and attainment of objectives;
- c) through issuing recommendations for the improvement of the activity and effectiveness of the internal control system of the public unit;
- ç) through following up the implementation of recommendations being issued.

Article 7

General principles of the functioning of internal auditing

The internal auditing in the public sector shall be assumed and rely on the principle of:

- a) legality, implying the observation of the Constitution, Albanian legislation and international agreements, wherein the Republic of Albania is a party;
- b) impartiality, implying the objective, transparent and authentic reflection of all the facts and circumstances, pertaining to the activity of the audited public unit, thus being free of the personal interest or views of third parties;
- c) integrity, implying honesty, objectivity, capability, avoidance of the conflict of interests in assuming the auditing activity;
- ç) independence and objectiveness, implying independence in the course of carrying out the auditing activity in rendering objective opinions and judgments in the course of performance of auditing;
- d) professionalism and continuous professional development, requiring the implementation of standards with the appropriate professional care, as well as continuous attempts for the professional training and development, augmentation and improvement of knowledge of every auditor;
- dh) confidentiality, implying the observation of secrecy of the data and documents administered in the course of auditing as confidential.

CHAPTER III

STANDARDS AND METHODOLOGY OF INTERNAL AUDITING

Article 8

Standards and methodology of internal auditing

The activity of the internal auditing in the public sector shall be carried out in compliance with:

- a) international standards of internal auditing, admitted to be implemented in the Republic of Albania and approved upon the order of the Minister of Finance;
- b) this law and all the bylaw acts based on this law;
- c) Auditing Charta, Code of Ethics of the internal auditors, manual of internal auditing, as well as other specific acts for the performance of the auditing service.

Article 9

Types of services of internal auditing

Types of services of internal auditing shall be the security services and advisory services as follows:

1. An auditing commitment for the security services shall encompass an independent evaluation of the governance, risk management and processes of controlling a public sector unit, through the auditing of compliance, auditing of performance, financial auditing, information technology auditing and other types of internal auditing;
2. An advisory commitment shall encompass providing advice and opinions, to the effect of augmenting value and improving the governance of the public sector unit, improvement of control processes and risk management, where the internal auditing has no managerial responsibilities. An advisory commitment shall be initiated by the head of the public unit.

CHAPTER IV ORGANISATION OF INTERNAL AUDITING

Article 10

Organisation of internal auditing service

1. All the public units being referred to in Article 3 of this law shall take measures for establishing the internal auditing service, referring to the format determined hereunder:
 - a) accomplishment of the internal audit service by the internal audit unit, where ever such one is provided for in the organisational structure of the public unit;
 - b) accomplishment of the internal audit service by the internal audit unit of the superior institution, where no internal auditing unit has been provided for in the organisational structure of the public unit;
 - c) where, none of the options provided for in letters 'a' and 'b' of this Article is possible to apply, the internal auditing service shall be provided by the internal auditing unit of another public unit, based on an agreement among the heads of the respective public units. The agreement shall be approved in advance by the Minister of finance;
 - ç) the accomplishment of the internal auditing service based on contracting, under the provisions of the effective legislation.
2. The internal auditing unit is functionally independent and it shall directly report to the head of the public unit.
3. The internal auditing unit shall be established in compliance with the criteria approved upon the decision of the Council of Ministers, upon the proposal of the Minister of Finance.

Article 11

Hiring the internal auditors

1. The internal auditing unit shall be composed of internal auditors, being hired in compliance with the provisions of the effective legislation regulating civil service, as well as in compliance with the provisions of the Labour code of the public unit not being part of the civil service.

2. In addition to the general conditions, being provided in the effective legislation for the employees being hired with the internal auditing unit, the following specific conditions are required to be met:

- a) holding a second level university diploma in the economic, law sciences or other disciplines, referring to the needs of the sector being audited;
- b) the head of internal auditing unit shall be certified as “Internal Auditor” and have an experience of 5 years as internal or external editor;
- c) the internal auditor shall be certified as “internal Auditor” and have an experience of 5 years in the profession or as internal or external auditor;
- ç) the employee not holding the certificate as “Internal Auditor”, however having an experience of 3 years in the profession, shall be employed in the internal auditing unit and shall, during the 2 first years, work under the supervision of his direct superior. During this period, this employee shall mandatorily be subject to the procedure of being certified as “Internal Auditor”. Where the employee within this period is not certified as “Internal Auditor”, his employment relationship with the internal auditing nit shall cease and it shall be considered to cease due to this law.

3. The employees of the structure responsible for harmonising the internal auditing shall be hired in compliance with the provisions of the effective legislation for the civil employee and under the provisions of the letters “b” and “c” of point 2 of this Article.

Article 12

Responsibilities of the public unit heads

The heads of the public units shall be responsible for:

- a) ensuring the internal auditing service in compliance with the provisions of this law and other bylaw acts for its implementation;
- b) decision-making for the establishment of the Internal Auditing Committee at the respective public units;
- c) approving the Charta of Auditing by way of order;
- ç) approving the strategic and annual plan of the internal auditing unit;
- d) drafting, approving and following u the action plan for the implementation of the recommendations issued upon the completion of the auditing procedures by the internal auditing unit and/or upon the completion of the procedures of evaluation of the quality of the auditing by the structure responsible for harmonising the internal auditing, within 30 days of the date submitting the final report;
- dh) making available the entire documentation and necessary documentation that the auditor requires for carrying out the auditing commitment;
- e) identifying the cases provided for in letters “b” and “c”, of point 1, of article 22, of this law, whereon the Ministry of Finance is to be informed.

Article 13

Internal Auditing Committee

1. The Internal Auditing committee is an independent, monitoring and advisory body for the head of the public unit, as well as supportive of the internal auditing unit:

- a) through ensuring the independence of the internal auditor;
- b) through evaluating and providing feedback on the strategic and annual plan;
- c) through evaluating the appropriateness of the auditing resources;
- ç) through ensuring the monitoring for the implementation of the plan and auditing turnout;
- d) through monitoring the implementation of the recommendations being issued;
- dh) through providing advice on the issues related to risks, internal control and auditing system.

2. The Internal Auditing Committee, in the public unit where it is established, shall extend its authority over the entire dependent units.

3. The way of functioning, powers and composition of the Internal Auditing Committee shall be regulated upon the Decision of the Council of Ministers, upon the proposal of the Minister of Finance.

CHAPTER V

RIGHTS AND RESPONSIBILITIES OF THE INTERNAL AUDITORS

Article 14

Responsibilities of the head of the internal auditing unit

The head of the internal auditing unit shall be responsible for:

- a) organisation of internal auditing commitments, under the standards and methodology approved in compliance with Article 8 of this Law;
- b) drafting the Charta of Auditing, other specific acts for separate fields of internal auditing, in compliance with this law and other acts for its applicability, as well as sending them for feedback to the responsible structure for harmonising the internal auditing;
- c) drafting and implementing the strategic and annual plan for the activity of the internal auditing and sending them for feedback to the responsible structure for harmonising the internal auditing, following the approval by the head of the public unit;
- ç) preparing the annual report, being sent to the structure responsible for the harmonisation of the internal auditing and containing but not limited to the following data:
 - i) commitments of auditing carried out in the course of the reporting period;
 - ii) deviations from the plan, respective grounds and arguments;
 - iii) evaluation of the control systems within the public units and for the recommendations for improvement;
 - iv) arrangements made by the head of the public unit for implementing recommendations, as well as any recommendation not being applied;
- d) immediate reporting in writing to the head of the public unit and to the Minister of Finance, having the public financial inspection structure under its authority, upon finding out irregularities or acts, which, in the opinion of the auditing unit, consist a criminal offence.

Article 15

Rights of internal auditors

The internal auditors shall, in the course of performing their mission, have the following rights:

- a) assuming independently the function of auditing, thus leaving no room for intervention by the colleagues, supervisors, heads of the auditing units or audited party, with the exception of the mutual advising relations;
- b) requiring and ensuring the entire data of technical, economic, financial and managerial character of the unit being audited, committing themselves to preserving their confidentiality, under the effective legislation;
- c) obtaining from the employees of the audited unit, where ever deemed necessary, explanations, statements and copies of documents where the head of the audited public unit has put the note "authenticated", as well as materials being electronically transferable and falling under the scope of the internal auditing;
- ç) having the necessary premises, appropriate office and logistic resources for carrying out the activity of auditing, if auditing is carried outside the premises of the public unit;
- d) following up, sequentially, the continuous professional training, referring to the requirements of Article 20 of this law;
- dh) submitting the request to the head of the auditing unit about self-recusal in a certain auditing activity, upon deeming that, due to established grounds, the reliability and quality of auditing would be affected or where the auditing activity is under the circumstances of the conflict of interest.

Article 16

Responsibilities of internal auditors

Responsibilities of internal auditors shall be:

- a) knowing, observing and carrying out auditing activity in compliance with the effective legal and bylaw acts, as well as with the internationally accepted standards of internal auditing;
- b) assuming their functions objectively and with professionalism;
- c) acting in compliance with the requirements set out in the Code of Ethics, Charta of Auditing and rules of confidentiality for internal auditors;
- ç) carrying out auditing independently, oriented by the public interest, to the effect of strengthening the trust with the honesty, impartiality and effectiveness of service;
- d) maintaining confidentiality of data, facts or cases encountered in the course of assuming the auditing or bearing a connection to it, as well as safekeeping documents for each auditing commitment being carried out, based on the obligations stemming from the effective laws regarding the right for utilising and archiving the official information;
- dh) updating the knowledge and their professional skills regularly, in order to apply them efficiently and to guarantee the service quality;
- e) providing recommendations about the audited unit regarding the improvement of the activity, effectiveness of the internal control system and for the measures due to be taken in

the event of finding economic and financial harm regarding the damages and for reducing the possibility of recurrence;

ë) reporting immediately to the head of the auditing unit upon finding out irregularities or transactions, which in the opinion of the internal auditors consist criminal offences.

Article 17

Restrictions of the internal auditors activity

The internal auditors shall be barred to:

- a) get involved in assuming other functions or activities of the public unit, except the auditing activity;
- b) assume a political mandate or be elected to senior functions at the structures of the political parties;
- c) carry out any other gainful activity or involvement, or obtain other benefits of natures and forms, bringing about situations of conflict of interests with the assumption of auditing, except teaching and publications, in accordance with the rules contained in the effective legislation for the civil employees.

Article 18

Conflict of interests for the internal auditors

1. The auditor shall in advance inform the head of the internal auditing unit in writing about any eventual conflict of interest, in compliance with the respective legislation and emerging from his participation in the auditing of a public unit.

2. Under the conflict of interests regarding the activity of auditing, there shall, in addition to the cases provided for in the effective legislation for avoiding the conflict of interest, be understood also:

- a) employment during the 3 recent years with the public unit due to be audited, with the exception of the internal auditor function;
- b) employment of the spouse, relatives up to the second degree under the provisions contained in the Civil Code, in senior functions during the 3 recent years at the public unit due to be audited;
- c) holding by the auditor, the spouse, relatives up to the second degree under the provisions contained in the Civil Code, of shares or stocks of capital with the public unit due to the audited.

CHAPTER VI

QUALIFICATION CRITERIA FOR THE INTERNAL AUDITORS

Article 19

Certification of internal auditors

1. The certification of the internal auditors shall be organised by the structure responsible for harmonising the internal auditing, under the procedure approved upon the order of the Minister of Finance.
2. Entitled to apply with the process of certification shall be the individuals classified in letter “ç” of point 2, Article 11 of this Law.
3. The individuals holding a professional certificate recognised internationally in the field of internal auditing shall be subject to a specific certification procedure, set out in the order issued under point 1 of this Article.
4. The certificate “Internal Auditor in the Public Sector” shall be issued by the Minister of Finance.

Article 20

Continuous professional training of internal auditors

1. The continuous professional training shall be organised by the structure being responsible for harmonising the internal auditing, under the procedure approved by order of the Minister of Finance.
2. All the sitting certified auditors, referred to in letters “b” and “c” of point 2, Article 11, of this law, shall be subject to the continuous professional training at least 80 hours in two years.
3. The participation of the sitting internal auditors in internal auditing training, organised by national or international institutions, as well as the publications in fields related to the internal auditing, shall be recognised as continuous professional training and they shall be reported and recognised under the procedure provided for in the order issued under point 1 of this Article.

Article 21

Internal Auditors qualification Commission

1. The Internal Auditors Qualification Commission is responsible for the supervision of the certification and continuous professional training process of the internal auditors.
2. The way of organisation and functioning as well as the composition of the Internal Auditors Qualification Commission shall be determined upon the decision of the Council of Ministers, upon the proposal of the Minister of Finance.
3. The extent of remuneration of the members of Internal Auditors Qualification Commission shall be determined upon the decision of the Council of Ministers, upon the proposal of the Minister of Finance.

Article 22

De-registration of internal auditors

1. The de-registration of the internal auditor from the National Register shall occur upon:
 - a) the sitting internal auditor failing to follow the continuous professional training set out in Article 20 of this law, following the examination of each single case by the Internal Auditors Qualification Commission;

b) upon being established that he has participated in one or more auditing commitments under the circumstances of the conflict of interest, as provided for in points 1 and 2, Article 18, of this law;

c) upon a final judicial decision imposing the prohibition of the assumption of public functions.

2. The Internal Auditors Qualification commission shall propose to the Minister of Finance the case of de-registration of the internal auditors by the National Register upon the verification of the case provided for in letter “a”, point 1, of this Article.

3. The head of the public unit shall propose to the Minister of finance the cases of de-registration of the internal auditor from the National register upon establishing he cases provided for in letters “b” and “c” of point 1, of this Article.

4. The deregistration of an internal auditor from the National Register shall bring about the termination of the employment relations with the internal auditing unit, being considered to have been terminated due to this law.

CHAPTER VII COORDINATION AND HARMONISATION OF INTERNAL AUDITING

Article 23

Responsibilities of the Minister of Finance

The Minister of finance shall be responsible for:

a) overall coordination, harmonisation and monitoring the internal auditing activity at the public sector units, set out in Article 3 of this law;

b) setting out the criteria for setting up the internal auditing units and auditing committees in the public sector, proposing to the Council of Ministers the issue of the bylaw act to this effect;

c) approving the policies, manuals, procedures, instructions and regulations of the internal auditing for their adjustment and approximation to the internationally admitted standards of the internal auditing;

ç) appointment and release from office of the members of Internal Auditors Qualification Commission under Article 21 of this law;

d) submitting the annual report of internal auditing as a part of the consolidated annual report for the internal control in the public sector to the council of Ministers within May each year.

The Minister of Finance shall, to the effect of assuming these powers, be supported by the Public Internal financial Control Board and the structure responsible for harmonising the internal auditing of the Ministry of Finance.

Article 24

Responsibilities of the responsible structure for harmonising the internal auditing

The structure responsible for harmonising the internal auditing shall assume the following functions:

- a) developing, administering and implementing the harmonised strategy in the field of internal public auditing, as well as monitoring this activity at the national level;
- b) drafting and proposing the improvement of the primary and secondary legislation for the internal auditing in the public sector;
- c) drafting and proposing the policies, manuals, procedures, instructions and regulations for the internal auditing for adjusting and approximating them to the internationally admitted standards of the internal auditing;
- ç) preparing and administering the consolidated strategic and annual plan of the internal auditing activities in public units;
- d) submitting the report on the functioning of internal auditing at public sector, as part of the consolidated annual report for the internal control for the public sector, within may each year, to the Minister of Finance;
- e) administering the methods being drafted in compliance with the auditing manual for specific fields of internal auditing, submitted by the internal auditing units;
- ë) analysing the recommendations issued in annual reports of the internal auditing units;
- f) drafting, developing and administering the national policies for certifying the internal auditors, as well as the continuous professional training of the internal auditors, based on the contemporary practices in the fields of internal auditing;
- g) drafting and updating the National Register of certified internal auditors.

CHAPTER VIII OTHER PROVISIONS

Article 25

Relationship with the High State Audit

1. The structures being responsible for harmonising the internal auditing and the internal auditing units shall cooperate with the High State Audit based on the principles of continuous cooperation, commitment, understanding and mutual trust.
2. Based on these principles, the main fields of cooperation are:
 - a) sharing of consolidated auditing plan, to the effect of avoiding overlapping;
 - b) sharing of information and reports of auditing;
 - c) development of auditing methodologies and joint training.

Article 26

Issue of bylaw acts

1. The Council of Ministers shall be tasked to approve the bylaw acts, in compliance with the Articles 10, 13 and 21 of this law within three months of its entry into effect.
2. The Minister of Finance shall be tasked to approve the bylaw acts, in compliance with the Articles 19 and 20 of this law within three months of its entry into effect.

Article 27

Repeals

1. Law no 9720, dated 23/04/2007, "On internal auditing in the public sector", as amended shall be repealed.
2. Until the entry of this law into effect under Article 26, the bylaw acts issued in compliance with the law no 9720, dated 23.4.2007, "On internal auditing in the public sector", as amended, shall be applied to the extent that they do not run counter to the provisions of this law.

Article 28

Temporary provision

The functions of the Internal Auditing Committee shall lapse upon the expiry of the 30-day period of the entry of this law into effect.

Article 29

Entry into effect

This law shall enter into effect following its publication in the Official Journal.

Approved on 22.10.2015

Promulgated upon the Decree no 9309, dated 06/11/2015 of the President of the Republic of Albania, Bujar Nishani