

Law of Ukraine On Amendments to the Law of Ukraine “On Auditing”

**No. 140-V
14 September 2006**

The Supreme Rada of Ukraine hereby **r e s o l v e s**:

To amend the Law of Ukraine “On Auditing” (*Vidomosti Verkhovnoji Rady Ukrajiny* [Bulletin of the Supreme Rada of Ukraine], 1993, No. 23, page 243; 1995, No. 14, page 88; 1996, No. 9, page 44; 2003, No. 30, page 247; 2004, No. 45, page 501; 2005, No. 34, page 434; 2006, No. 14, page 117, No. 22, page 184), having restated this Law as follows:

“LAW OF UKRAINE On Auditing

This Law defines legal foundations for performance of auditing in Ukraine and is aimed at establishing a system of independent financial control with a view of protecting interests of users of financial and other economic information.

Section I GENERAL PROVISIONS

Article 1. Scope of the Law

This Law shall apply within the territory of Ukraine and shall extend onto all business entities, irrespective of their forms of ownership and types of activity.

This Law shall not apply to auditing carried out by government agencies, divisions and officials thereof that are empowered by the laws of Ukraine to exert State financial control.

Article 2. Legislation on Auditing

Auditing in the area of financial control shall be governed by the Commercial Code of Ukraine, this Law, other regulatory acts and auditing standards. In the event that an international treaty, to whose biding force the Supreme Rada of Ukraine has granted its consent, lays down rules other than those contained in this Law, the rules of the international treaty shall apply.

Specifics inherent in the performance of other types of auditing shall be governed by special legislation.

Article 3. Auditing

Auditing shall mean such business activity as includes organizational and methodical support of and for audits, the practical performance of reviews (audits) and the rendering of other auditing services.

An audit shall mean a review of data contained in accounting records and figures in financial statements of a business entity in order to issue an independent auditor's opinion on their authenticity in all material aspects and their compliance with requirements set out in the laws of Ukraine, accounting rules (standards) or other regulations (internal bylaws of business entities) according to users' demands.

Such information shall be regarded as essential which, if missed or incorrectly reflected, can impact economic decisions of users passed on the basis of financial statements.

An audit shall be carried out by independent persons (auditors), auditing firms that are authorized by business entities to carry out such an audit.

The audit may be carried out upon the initiative of business entities as well as in instances provided by law (an obligatory audit).

Auditors (auditing firms) may provide other auditing services relating to their professional activity, in particular services concerned with maintenance and restoration of accounting records, in the form of consultations on issues of accounting and financial reporting, expert examination and assessment of financial and business activities and other types of economic and legal support of and for business activities carried on by business entities.

The list of services, which may be provided by auditors (auditing firms), shall be determined by the Auditing Chamber of Ukraine pursuant to auditing standards.

Article 4. Auditors

A natural person, who has a certificate confirming such person's qualifications to engage in auditing in Ukraine, may be an auditor.

The auditor shall have a right to engage in auditing as a natural person, who is registered as a private entrepreneur, or within an auditing firm, subject to the requirements set out in this Law and other regulatory acts and rules.

The auditor shall have a right to engage in auditing as a natural person, who is registered as a private entrepreneur, only after such a person has been included into the Registry of Auditing Firms and Auditors.

Auditors shall be prohibited to directly engage in other types of business activity, which does not exclude their right to obtain dividends from shares and returns from other corporate rights.

A person, who has a non-expunged conviction for mercenary crimes, may not be an auditor.

Article 5. Auditing Firms

An auditing firm shall mean a legal entity established pursuant to law that is engaged exclusively into auditing.

The right to carry out auditing shall be enjoyed by auditing firms that are included into the Registry of Auditing Firms and Auditors.

The total amount of a shareholding in the charter capital of an auditing firm that is owned by founders (participants), who are not auditors, may not exceed 30%.

Only an auditor may be the manager of the auditing firm.

Article 6. Auditing Standards

In the course of auditing, auditors and auditing firms shall apply relevant auditing standards.

Auditing standards shall be adopted on the basis of auditing standards and ethics of the International Federation of Accountants subject to the requirements set out in this Law and other regulatory acts and rules.

The Auditing Chamber of Ukraine shall have an exclusive right to approve auditing standards. Auditing standards shall be confirmed with other subjects as and when provided by law.

Auditing standards shall be binding on auditors, auditing firms and business entities.

Article 7. An Auditor's Opinion and other Official Documents

An auditor's opinion shall mean a document which is drawn up in accordance with auditing standards and which contemplates granting confidence to users that financial statements or other information have followed conceptual foundations that were used in the course of their preparation. Laws and other regulatory acts of Ukraine, accounting rules (standards), internal requirements and regulations of business entities, other sources may be conceptual foundations.

Auditing services in the form of consultations may be provided in oral or written form, with issuing a statement or other official documents. Auditing services in the form of expert examinations shall be completed with an expert conclusion or a report.

Results of other auditing services rendered shall be set out pursuant to auditing standards.

If submitted officially to a Ukrainian institution, organization or business entity, an auditor's opinion of an auditor from a foreign country shall be subject to confirmation by a Ukrainian auditor, unless otherwise contemplated by an international treaty of Ukraine.

Article 8. Obligatory Performance of an Audit

An audit must be obligatorily performed for:

1) confirming the authenticity and completeness of annual financial statements and consolidated financial statements of open joint stock companies, enterprises that have issued bonds, professional operators on the stock market, financial institutions and other business entities whose statements must be officially published in accordance with Ukrainian law, except for institutions and organizations, which are fully financed out of the State budget;

2) verifying the financial condition of founders of banks, enterprises with foreign investments, open joint stock companies (except for natural persons), insurance companies and holding companies, mutual investment institutions, subsidiary companies and other financial intermediaries;

3) issuers of securities at the time they obtain a license permitting to engage in professional activities on the stock market.

An audit must be obligatorily carried out also as and when provided by the laws of Ukraine.

Article 9. Obligations of Business Entities during an Audit

Governing bodies of a business entity shall be obligated to create adequate conditions for an auditor (auditing firm) to perform an audit in the proper manner.

The governing bodies of the business entity shall be liable for the completeness and authenticity of documents and other information that are provided to the auditor (auditing firm) for performing the audit or rendering other auditing services.

Financial statements of the business entity, which by law is to undergo an audit, must be verified by an auditor and published pursuant to the requirements that are set out in the laws of Ukraine.

Section II

CERTIFICATION OF AUDITORS AND THE REGISTRY OF AUDITING FIRMS AND AUDITORS

Article 10. Certification of Auditors

The Auditing Chamber of Ukraine shall certify auditors (ascertain qualifications for engaging in auditing).

Procedures for certification of auditors who will audit banks shall be approved by the Auditing Chamber of Ukraine upon confirmation with the National Bank of Ukraine.

Natural persons, who have a university decree in economics or law, a document confirming which degree is recognized in Ukraine, have required knowledge in auditing, finances, economics and commercial law, experience of work for at least 3 years as an inspector, accountant, lawyer, financier, economist or assistant to an auditor, shall be eligible to obtain a certificate.

A written qualification test under a program approved by the Auditing Chamber of Ukraine shall be conducted to determine whether a person possesses the required scope of knowledge for obtaining the certificate.

The term of the certificate may not exceed 5 years.

The term of the certificate shall be extended in 5 years based on results of a test by specialization held pursuant to procedures laid down by the Auditing Chamber of Ukraine.

A fee shall be charged for certification in the amount specified by the Auditing Chamber of Ukraine based on the estimate of costs for financing the Auditing Chamber of Ukraine.

Article 11. The Registry of Auditing Firms and Auditors

The Registry of Auditing Firms and Auditors shall mean a database that contains information on auditing firms and auditors, who are engaged in auditing individually as natural persons that are registered as private entrepreneurs (hereinafter referred to as the “Registry”).

Registry maintenance procedures shall be laid down and carried out by the Auditing Chamber of Ukraine.

At least once a year the Registry shall be published in a specialized bulletin of the Auditing Chamber of Ukraine.

Auditing firms and auditors, who are natural persons registered as private entrepreneurs, shall have a right to engage in auditing only after they have been included into the Registry.

The auditing firms and auditors specified in Part 4 of this Article that have been included into the Registry shall be issued a certificate of an established form.

A fee for including into the Registry shall be charged in the amount specified by the Auditing Chamber of Ukraine.

Section III

AUDITING CHAMBER OF UKRAINE

Article 12. Powers of the Auditing Chamber of Ukraine

Powers of the Auditing Chamber of Ukraine shall be specified in this Law and the Charter of the Auditing Chamber of Ukraine.

The Charter of the Auditing Chamber of Ukraine shall be approved by two thirds of the votes from the total number of members of the Auditing Chamber of Ukraine.

The Auditing Chamber of Ukraine shall:

- 1) certify persons, who intend to engage in auditing;
- 2) approve auditing standards;
- 3) approve programs for training of auditors and, upon confirmation with the National Bank of Ukraine, programs for training of auditors who will audit banks;
- 4) maintain the Registry;
- 5) control that auditing firms and auditors comply with requirements set out in this Law, auditing standards, rules of professional ethics for auditors;
- 6) undertake measures aimed to ensure that auditors are independent in the course of audits performed by them, and to arrange for control over the quality of auditing services;
- 7) regulate relationships between auditors (auditing firms) in the course of auditing and, if necessary, apply sanctions against them;
- 8) discharge such other powers as are contemplated by this Law and the Charter of the Auditing Chamber of Ukraine.

On an annual basis, the Auditing Chamber of Ukraine shall receive from auditing firms and auditors their reports on the work performed by them, shall analyze such reports and submit generalized data on the condition of auditing in Ukraine to the Cabinet of Ministers of Ukraine.

Article 13. Establishment of the Auditing Chamber of Ukraine

The Auditing Chamber of Ukraine shall function as an independent body.

The Auditing Chamber of Ukraine shall be a legal entity and shall maintain relevant records and accounts.

The Auditing Chamber of Ukraine shall be a not-for-profit organization.

The Auditing Chamber of Ukraine shall acquire powers of the legal entity from the date of its registration with the Ministry of Justice of Ukraine on the basis of an application and the Charter approved pursuant to the procedure specified by this Law.

The Auditing Chamber of Ukraine shall be formed on a parity basis through delegation of auditors and representatives of government agencies to the Auditing Chamber of Ukraine.

The total number of members of the Auditing Chamber of Ukraine shall be 20 persons.

Each of the Ministry of Finances of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Economy of Ukraine, the State Tax Administration of Ukraine, the National Bank of Ukraine, the State Statistics Committee of Ukraine, the State Commission on Securities and the Stock Market, the State Commission for Regulation of Markets for Financial Services in Ukraine, the Chamber of Accounts and the Chief Control and Auditing Department of Ukraine shall delegate 1 person to the Auditing Chamber of Ukraine as representatives of government agencies.

On behalf of auditors, there shall be delegated 10 persons to the Auditing Chamber of Ukraine from among highly qualified auditors, who have been engaged in auditing for at least 5 years without interruption, and representatives of professional educational institutions and scientific organizations.

The right of auditors to elect representatives and to be elected as representatives to the Auditing Chamber of Ukraine shall be exercised through resolutions that will be passed by the Congress of Ukrainian Auditors.

Procedures for delegation of representatives to the Auditing Chamber of Ukraine shall be established by the Congress of Ukrainian Auditors, a panel formed by government agencies or any other highest governing body, respectively.

Article 14. Activities of the Auditing Chamber of Ukraine

Resolutions of the Auditing Chamber of Ukraine shall be passed at its meetings by a simple majority of votes, provided that more than a half of its members are in attendance, except for instances specified by this Law and the Charter.

Within the territory of Ukraine, the Auditing Chamber of Ukraine may establish regional divisions, whose powers will be determined by the Auditing Chamber of Ukraine.

The term of office of a member of the Auditing Chamber of Ukraine shall be 5 years. One and the same person may not be delegated to the Auditing Chamber of Ukraine more than for 2 terms in succession.

New members of the Auditing Chamber of Ukraine instead of those Chamber members who have left shall be appointed in accordance with the procedures specified by this Law.

The members of the Auditing Chamber of Ukraine, except for the Chairman of the Auditing Chamber of Ukraine, shall discharge their duties on a voluntary and *pro bono* basis.

Sources of funding of and for activities of the Auditing Chamber of Ukraine may be as follows:

fees payable for certification of natural persons as to their right to engage in auditing;

fees payable for inclusion into the Registry;

voluntary contributions that come from professional organizations of Ukrainian auditors;

other sources not prohibited by law.

In order to carry out its functions, the Auditing Chamber of Ukraine may form commissions consisting of its members. Experts, who are not members of the Auditing Chamber of Ukraine, may be retained to work at the commissions.

Current affairs within the Auditing Chamber of Ukraine shall be handled by a Secretariat that will be managed by a Head. The Head of the Secretariat shall be personally responsible for effectual use of property and funds of the Auditing Chamber of Ukraine as well as for establishment of adequate conditions for the Chamber's members to discharge their functional duties.

Article 15. The Chairman of the Auditing Chamber of Ukraine

The Chairman of the Auditing Chamber of Ukraine shall discharge his powers on a professional basis.

The Chairman of the Auditing Chamber of Ukraine shall be elected from among its members for the duration of his term of office as a member of the Auditing Chamber of Ukraine by a majority vote of the total number of the members of the Auditing Chamber of Ukraine.

The Chairman of the Auditing Chamber of Ukraine may be dismissed from his position prior to the lapse of his term of office by resolution of the Auditing Chamber of Ukraine and in other instances specified by Ukrainian law.

Powers of the Chairman of the Auditing Chamber of Ukraine shall be defined in the Charter of the Auditing Chamber of Ukraine.

The Chairman of the Auditing Chamber of Ukraine shall ensure formation of a new composition of the Auditing Chamber of Ukraine.

Section IV

PROCEDURES OF AUDITING AND RENDERING OF OTHER AUDITING SERVICES

Article 16. General Conditions for Performing an Audit and Rendering other Auditing Services

Audits shall be performed and other auditing services shall be rendered by auditors, auditing firms, who have obtained a right to engage in auditing pursuant to this Law.

General conditions for performing an audit and rendering other auditing services shall be defined by auditing standards approved by the Auditing Chamber of Ukraine.

Article 17. Grounds for Performing an Audit and Rendering other Auditing Services

An audit shall be performed on the basis of an agreement entered into between an auditor (auditing firm) and a client.

Other auditing services may be rendered on the basis of an agreement, a written or oral request from a client to an auditor (auditing firm).

A client shall have a right of free choice in selecting an auditor (auditing firm), subject to the requirements of this Law.

The agreement for performing an audit and rendering other auditing services shall contemplate the subject matter and the time period of the audit, the scope of auditing services, the amount of a fee and payment conditions, liability of parties thereto.

Auditing standards may provide for other essential terms and conditions of the agreement for performing an audit and rendering other auditing services.

Any provisions of the agreement that are aimed to release an auditor (auditing firm) in full from financial sanctions provided by law for the untruthfulness of an auditor's opinion or any other document, in which findings of the audit are reflected, shall be null and void.

Documents transferred by the client to the auditor (auditing firm) for an audit to be performed shall not be disclosed or taken without the client's consent.

Section V

RIGHTS AND OBLIGATIONS OF AUDITORS AND AUDITING FIRMS

Article 18. Rights of Auditors and Auditing Firms

Auditors in Ukraine shall have a right to unite in citizens' organizations by professional characteristics, in compliance with the requirements of this Law and other laws.

Professional organizations of auditors of Ukraine shall promote an increase in the professional level of auditors, protect social and professional rights of auditors, submit proposals as to further improvements of auditing, and shall discharge such other powers as are contemplated by their charters and bylaws.

In the course of auditing, auditors and auditing firms shall have a right:

1) to independently define forms of and methods for performing an audit and rendering other auditing services pursuant to effective law, auditing standards and terms and conditions of an agreement entered into with a client;

2) to obtain the necessary documents, which relate to the subject matter of the audit and are in possession of both the client and third parties.

Third parties who possess documents relating to the subject matter of the audit shall be obligated to provide them upon a demand of the auditor (auditing firm). The said demand must be officially attested by the client;

3) to obtain the necessary explanations in written or oral form from managers and employees of the client;

4) to verify the availability of property, money and valuables, to demand from the business entity's management to carry out checkups, measurements of works performed, determinations of quality of products, in respect of which documents are reviewed;

5) to retain various specialists for the audit on a contractual basis.

Article 19. Obligations of Auditors and Auditing Firms

Auditors and auditing firms shall be obligated:

1) to comply with and observe the requirements set out in this Law and other regulatory acts and rules, auditing standards, auditor independency principles and relevant resolutions of the Auditing Chamber of Ukraine in the course of auditing;

2) to duly perform audits and render other auditing services;

3) to notify owners, persons authorized by them, clients about defects in accounting and prepared financial statements that have been discovered in the course of the audit;

4) to keep in secret such information as has been obtained in the course of the audit and rendering of other auditing services, not to disclose data that are the subject matter of commercial secrets, and not to use same in their own interests or interests of third parties;

5) to be accountable to the client for breaches of the terms and conditions of the agreement in accordance with the agreement and law;

6) to restrict their activity to the rendering of auditing services and other types of works that are directly related to the rendering of auditing services, in the form of consultations, reviews or expert examinations;

7) to submit a report on their auditing activities to the Auditing Chamber of Ukraine in a timely manner.

Article 20. Special Requirements

It shall be prohibited to perform an audit:

- 1) by an auditor, who has direct family relations with members of governing bodies of a business entity being audited;
- 2) by an auditor, who has personal proprietary interests in the business entity being audited;
- 3) by an auditor, who is a member of the governing bodies, a founder or owner of the business entity being audited;
- 4) by an auditor, who is an employee of the business entity being audited;
- 5) by an auditor, who is an employee, a co-owner of a subsidiary enterprise, a branch or representative office of the business entity being audited;
- 6) if the amount of a fee for the rendering of auditing services does not take into account the time required for rendering such services in a proper manner, adequate skills, professional qualifications and the degree of the auditor's liability;
- 7) by an auditor in other instances when requirements for the auditor's independency are not ensured.

Members of administrative, governing and controlling bodies of auditing firms, who are not auditors, as well as founders, owners, participants of the auditing firms shall be prohibited to interfere in the practical performance of an audit in such a manner as violates the independency of the auditors who perform the audit.

Section VI

LIABILITY OF AUDITORS AND AUDITING FIRMS

Article 21. Civil-Law Liability of Auditors and Auditing Firms

An auditor (auditing firm) shall be subject to financial penalties and other civil-law liability for the improper fulfillment of their obligations pursuant to an agreement and law.

The amount of financial penalties for auditors (auditing firms) may not exceed losses actually inflicted upon a client due to their fault.

All disputes in respect of non-performance of an agreement as well as disputes of a financial nature between an auditor (auditing firm) and a client shall be resolved pursuant to procedures laid down by law.

Article 22. Other Types of Sanctions for Auditors and Auditing Firms

The Auditing Chamber of Ukraine may apply sanctions, in the form of a warning, suspension of a certificate for a term of up to 1 year or annulment of a certificate or exclusion from the Registry, against auditors (auditing firms) for their improper fulfillment of professional duties.

Procedures for application of the sanctions against auditors (auditing firms) shall be determined by the Auditing Chamber of Ukraine.

Resolutions of the Auditing Chamber of Ukraine to apply sanctions against auditors (auditing firms) may be challenged in court.

Other sanctions may be applied against auditors pursuant to law.

Section VII

FINAL PROVISIONS

1. This Law shall enter into force in 3 months from the date of promulgation hereof.
2. The Auditing Chamber of Ukraine and the Association of Auditors of Ukraine shall be charged, upon their consent, with undertaking organizational measures aimed to convene a Congress of Auditors.
3. Within a 3-month period from the date of the entry into force by this Law, the Cabinet of Ministers of Ukraine must:

submit proposals on how to bring legislative acts into conformity with this Law to the Supreme Rada of Ukraine;

ensure that Ministries, other central agencies of executive power bring their regulatory acts and rules into conformity with this Law.
4. Within a 3-month period from the date of the entry into force by this Law, the National Bank of Ukraine must bring its regulatory acts and rules into conformity with this Law.

5. Within a 3-month period from the date of the entry into force by this Law, the Auditing Chamber of Ukraine must initiate a procedure of establishing the Auditing Chamber of Ukraine subject to the requirements set out in this Law.

6. Within a 3-month period from the date of the entry into force by this Law, the government agencies specified in Article 13 of this Law must delegate their respective representatives to the Auditing Chamber of Ukraine pursuant to the procedures defined in this Law.”

V. Yushchenko
President of Ukraine
Kiev