

Responsibility of the entities of auditing activity in Ukraine

The article is made an attempt to generalize the information as to auditors' and audit firms' responsibility in Ukraine relying on valid normative documents mostly using legal and juridical aspects. Entities of auditing activity in Ukraine are responsible for improper fulfillment of their duties for client (customer), legal bodies that gave the permission for performing auditing activities, audit firm; third parties. According Ukrainian legislation an auditor, as any citizen of Ukraine who performs entrepreneurial activity, bears the juridical (legal) responsibility. Specific point on auditors' responsibility is liability for breakage.

auditor, audit firm, auditing activity, Auditing Chamber of Ukraine, juridical (legal) responsibility, criminal liability (responsibility), administrative (management) responsibility, disciplinary responsibility, labour contract, job instruction, legal-civil (property) responsibility, liability for breakage

Section VI of Law of Ukraine "On Auditing activity" is devoted responsibility to auditors and audit firms responsibility [9].

Article 21 of this Law considers a legal-civil responsibility the variety of with is property responsibility. Article 22 of the same Law tells about other kinds of responsibility where the significant consideration is given to professional responsibility to Auditing Chamber of Ukraine (ACU) and sanctions which can be applied by it to the subjects (entities) of auditing activity in Ukraine.

Academic books of audit have only grouping figure of kinds of auditors' responsibility which were made by Kulakovska L.P. [6,p.51]. Other scientists [1, p.40; 8, p.62; 11, p.222] in their researches just make reference to that figure or to Law "On auditing activity".

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That is why the author makes an attempt to generalize the information as to auditors' and audit firms responsibility relying on valid normative documents mostly using legal and juridical aspects.

Auditors are responsible for improper fulfillment of their duties for:

- client (customer);
- legal bodies that gave the permission for performing auditing activities (ACU);
- audit firm;
- third parties.

During the audit, responsibility for certain obligations is shared among the auditor, client and third parties (owners, shareholders, investors, creditors, suppliers, etc.) according to liabilities.

Auditor is responsible for his professional opinion to the customer, and customer is responsible for financial statements to auditor and opening balances on the accounts to the third parties in the order of debt paying off priority.

Article 22 Chapter VI from LU "On Auditing activity" states:

"Audit Chamber of Ukraine can apply to the auditor (audit firm) for improper fulfilment of professional duties

- penalty in the form of warnings;
- stopping the legal force of a certificate for a period of one year or

- Certificate revocation, exclusion from the Register.

Procedure of penalties application to auditors (audit firms) is determined by the Audit Chamber of Ukraine (ACU).

Decisions of Audit Chamber of Ukraine (ACU) on the application of penalties on auditors (audit firms) can be appealed to the court.”

By the decision of ACU from 26.04.2007 # 176/9.2 the Disciplinary Committee of ACU, its positions and main goals were approved.

According to the article 22 of Law of Ukraine “On Auditing activity” “other types of responsibilities can be applied to the auditors in accordance to the law.”

Therefore, the auditor, as any citizen of Ukraine who performs entrepreneurial activity, bears the juridical (legal) responsibility.

Juridical (legal) responsibility - is a duty of person to test certain limitations of state of the imperious character, which are statutory for the accomplished offences.

Overall, the essence of juridical responsibility is that a person who did not fulfil the imposed duty is assigned by a new one, which is connected with certain limits, adverse results of private character (e.g., deprivation of the right to occupy certain positions) or results of property character (e.g., obligation to compensate the damage done).

This is done to avoid possible violation of the law in the future (from the side of punished party and from the other parties’ sides) and to restore the rights of people, whose rights were violated (or course, if it is possible).

Juridical responsibility is divided into the following types:

- criminal;
- administrative (legal administrative, management);
- disciplinary;
- legal-civil (property).

The primary reason for institution of juridical responsibility proceedings against the person is a conduction of wrongful action (act or act of omission) by this person, but if this person is guilty. Only in certain cases the responsibility can be brought independently from the fault’s availability.

Also, the additional reason for the rise of liability for breakage (kind of property responsibility) is the adverse result of employee’s wrongful actions, which caused damages on the enterprise. Thus responsibility comes exceptionally at presence of causal connections between violation of labour duties and caused damage. From other side, available damage also very often acts as a necessary reason for bringing in to criminal responsibility.

Criminal liability (responsibility) - is responsibility of people, which accomplished acts, predicted by the Criminal Code of Ukraine (CCU).

Criminal liability always has the personal character (i.e. who has performed, he is who answers) and foresees guilt of person as obligatory reason of such responsibility.

CCU contains the exhaustive list of acts (compositions of crimes) for the conduction of which a person will be attracted to criminal liability, and as a rule, will be punished.

Articles of CCU which can bring the auditor to the criminal liability as a specific subject of law (and a specific subject of crime) – as an official (according to a note to the article 364 of CCU in the cases of appearance of legal relationships which are regulated by State tax administration, Ukrainian legislative uses other term “functionary”), are the followings:

A. Crimes in the field of economic activity (section VII of CCU):

- Article 218 «Fictitious bankruptcy»;
- Article 219 «Driving to bankruptcy»;
- Article 220 «Concealment of proof financial insolvency»;
- Article 222 «Frauds with financial resources»;

B. Crimes in the field of official activity (section XVII of CCU):

- Article 231 «Illegal collections with the purpose of the use or with the purpose of information's use which is a commercial or bank secret»;
- Article 232 «Disclosures of commercial or bank secret»;
- Article 364 «Abuses by power or official position»;
- Article 365 «Exceeding of power or official powers»;
- Article 366 «Official imitation»;
- Article 367 «Official negligence»;
- Article 368 «Receipt of bribe»;
- Article 369 «Giving the bribe»;
- Article 370 «Provocation of bribe» and other.

On the whole, official activity crimes are more socially dangerous than economic activity, and this is confirmed by the size of the sanctions from the appropriate articles from CCU.

Different periods of limitation (from 2 to 15 years) and different sanctions (types of punishment) are set for each of mentioned above crimes (articles) of CCU, namely:

- penalty;
- deprivation of the right to occupy certain positions or to be engaged in certain activities;
- correctional works;
- confiscation of property;
- restriction of liberty;
- arrest.

During the consideration of criminal liability of any employee, including auditor, it is necessary to stop on a term "commercial secret".

A commercial secret - is a right for the entities of entrepreneurial activity not to divulge, to keep in secret a list about own activity or activity with participation of other partners (production, scientific, trade, financial and other activity), if these information can inflict financial, material or moral losses.

According to Article 30 of Law of Ukraine "On information" [10], a commercial (business) secret is confidential information.

According to Part A Chapter 140 of Code of Ethics for Professional Accountants (CEPA) [5], the principle of confidentiality imposes an obligation on professional accountant (auditor) to refrain from:

"a) disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and

b) using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties."

The article 505 of CCU [6] determines that a commercial secret can be information of technical, organizational, commercial, production and other character, except for those which in accordance with a law can not be attributed to the commercial secret.

According to this, the Cabinet of the Ministers of Ukraine on 09.08.1993 adopted the resolution #611 «On the list of information which do not make a commercial secret», where the specific information, data and documentation were specified as that which does not contain the commercial secret, and its disclosure is not considered as a violation and can not be the reason of bringing someone in to responsibility.

For the illegal disclosure of commercial secret (acquaintance of the third parties with information which is a commercial secret, regardless of form of such acquaintance) employee can be brought to civil responsibility (on the basis of agreement signed between a employee

and enterprise on the nondisclosure of commercial secret), to administrative (article 164-3 of CUoAO) and criminal responsibility (articles 231 and 232 of CCU).

Administrative (management) responsibility - is responsibility of people, which accomplished acts, predicted by the legislation of Ukraine on administrative offences. Administrative responsibility is connected with the application of means of influence (comparatively less hard, than in case with criminal responsibility) that were foreseen by the law in relation to a person which accomplished administrative offence.

Basic part of compositions of administrative offences and sanctions for their commitment are predicted in a codified normative-legal act – Code of Ukraine on legal-administrative offences (CUoAO) [4]. But some of them are contained in other legislative acts.

Auditors and other employees of audit firms as the hired employees can be brought to *disciplinary responsibility*. Such responsibility comes as a result of violation of discipline, in this case – labour.

The basic normative document, which regulates labour relations, is the Labour Code of Ukraine (LCU) [3].

Owner or authorized body does not have the right to require implementation of work from a employee, that was not mentioned in Labour Contract (according the article 31 of LCU). In case of Labour Contract absence, the Job Instruction should be written and added to the Order on hire. This Instruction should clearly outline the circle of position requirements for definite employee. In this case the Job Instruction together with the Order on hire becomes the written labour contract between administration and employee.

Absence of Job Instructions markedly complicates the possibility for taking decisions on bringing employees to disciplinary, material (liability for breakage), and sometimes to administrative and criminal liability (responsibility) for violations, connected with non-fulfilment or improper implementation of functions.

For labour discipline violation only one of these penalties (article 147 of LCU) can be implemented:

- reprimand;
- dismissal.

Concrete articles of LCU identify the set of reasons which can cause the implementation of those penalties.

By a legislation, regulations and positions about discipline other disciplinary penalties can be foreseen for the separate categories of employees.

A disciplinary penalty is used by the owner or by authorized body directly after the exposure of fault, but not later than one month from the day of his exposure (except the time of discharge of employee from work because of the temporal incapacity or during the stay on the holiday).

A disciplinary penalty can not be imposed later than in six months from the day of commitment of the fault action (article 148 of LCU).

For every violation of labour discipline only one disciplinary penalty can be imposed.

Auditor carries *property responsibility* to a client and third parties.

In the article 21 of Section VI of Law of Ukraine «On audit activity» is defined:

“For improper implementation of own obligations auditor (audit firm) carries property and other civil responsibility in accordance to the Contract and Law. The size of property responsibility of auditor (audit firms) can not exceed the losses actually inflicted to the customer from auditor’s guilt. All disputes in relation to non-fulfilment of conditions of the Contract, and also the disputes of property character between auditor (audit firm) and customer (client) are decided in the order set by the law.”

Regardless of bringing in the person (hired employee) to criminal, administrative or

disciplinary liability (responsibility), this person can be obliged to recover damage that was caused to an enterprise (organization) as a result of the labour duties that were laid on the employee. It is the variety of property responsibility – *liability for breakage*.

The legislation of Ukraine states employees are considered liability for breakage if they concluded the Contract which is legitimately celled about full liability for breakage.

Such Contracts can be concluded only with certain employees, who hold positions that are specified in addition 1 to Resolution of the State Committee of USSR Council of Ministers on labour and social questions and in Secretariat of Union Central Council of Trade Unions from 28.12.1977 # 447/24.

If an Contract about full liability for breakage is concluded with a employee, who can not conclude such contracts, so that does not generate any law consequences, such contracts must not be accepted by courts. Such employee does not carry the status of liability for breakage person, but carries responsibility as an ordinary official for damage, inflicted to the enterprise, on general grounds, that – within the limits of his average monthly labour remuneration.

Consequently, auditor is not considered as liability for breakage person, but, as a rule, he carries the limited liability for breakage for damage inflicted to the enterprise by non-fulfilment or improper implementation of the duties.

However the possibility of attracting of auditor to full liability for breakage on other grounds according to the article 134 of LCU is not eliminated, when:

- property and other values were obtained by auditor on account of the auditing firm for the single one-time warrant or other one-time documents;
- damage is inflicted by the actions of employee, which have signs of acts, pursued in a criminal order.

In practice there are three ways of compensation of damage (losses):

- voluntary compensation (possibly both under the limited or full responsibilities);
- a penalty taken from an employee on the basis of order of head (possible only within the limits of the average labour remuneration);
- a penalty taken through a court (the limitation period - 1 year).

The employee may not agree with the decision to bring him to responsibility and to address the Commission on labour disputes or directly to the Court.

Conclusion. The article is made an attempt to generalize the information as to auditors' and audit firms responsibility in Ukraine relying on valid normative documents mostly using legal and juridical aspects.

According Ukrainian legislation an auditor, as any citizen of Ukraine who performs entrepreneurial activity, bears the juridical (legal) responsibility. This responsibility is divided into the criminal liability, administrative (legal administrative, management) responsibility, disciplinary responsibility and legal-civil (property) responsibility. Specific point on auditors' responsibility is a liability for breakage. Author has disclosed the main information about normative documents, peculiarities of using, types of punishment for every kind of responsibility for auditing activity entities.

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Відповідальність суб'єктів аудиторської діяльності в Україні

У статті була здійснена спроба узагальнити інформацію щодо відповідальності аудиторів та аудиторських фірм, спираючись на чинну нормативну базу, здебільше використовуючи правовий та юридичний аспекти. Суб'єкти аудиторської діяльності в Україні несуть відповідальність за неналежне виконання своїх обов'язків перед клієнтом, органами, що видали дозвіл на заняття аудиторською діяльністю, аудиторською фірмою, третіми особами. Згідно українського законодавства аудитор, як і будь-який громадянин України, що займається підприємницькою діяльністю, несе юридичну відповідальність. Специфічним питанням відповідальності аудитора є матеріальна відповідальність.

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Ответственность субъектов аудиторской деятельности в Украине

В статье была предпринята попытка обобщить информацию об ответственности аудиторов и аудиторских фирм, опираясь на действующую нормативную базу, в большей степени используя правовой и юридический аспекты. Субъекты аудиторской деятельности в Украине несут ответственность за ненадлежащее выполнение своих обязанностей перед клиентом, перед органами, которые выдали разрешение на занятие аудиторской деятельностью, перед аудиторской фирмой, перед третьими лицами. В соответствии с украинским законодательством аудитор, как и любой гражданин Украины, который занимается предпринимательской деятельностью, несет юридическую ответственность. Специфическим вопросом ответственности аудитора является материальная ответственность.

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