

Law on State Audit Institution

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I GENERAL PROVISIONS

Subject of law

Article 1

This Law regulates the establishment of the State Audit Institution (hereinafter referred to as: the Institution) and determines its rights, obligations and working method.

Legal status

Article 2

The Institution is an independent supreme state audit body.

No one shall influence a Member of the Senate of the Institution in performing his/her duties as provided by this Law.

Seat of the Institution

Article 3

The Institution has a status of a legal entity with its seat in Podgorica.

The Institution has a stamp with the coat of arms of Montenegro and the inscription: “Montenegro – State Audit Institution – Podgorica”.

II ACTIVITIES AND TASKS OF THE INSTITUTION

Audited Entities

Article 4

Audited entities are the authorities and organizations managing the budget or state property and of the local self-government units, the funds and other legal entities being founded by the state or in which the state is a majority shareholder or holds a majority stake (hereinafter referred to as: audited entities).

The Institution shall also audit the entities which execute parts of the budget, manage state property, receive subsidies, grants or guarantees from the State, or do business with an audited entity or use EU funds and funds of other international organizations or institutions for financing public needs.

Tasks of the Institution

Article 5

„In audit procedures, the Institution:

- 1) performs examination of the documents, transactions, internal control and internal audit systems, accounting and financial procedures and other records of the audited entities with aim to ensure whether financial statements are true, objective and prepared in compliance with accepted accounting standards.
- 2) determines regularity of the financial and other activities of the audited entities with aim to evaluate compliance with applicable laws and other regulations.
- 3) determines performance of the level of the achievement of the set objectives of the operations or of a specific financial transaction, programmes, projects, usage of human, financial and other resources of the audited entities as well as the ratio between the planned and achieved effects of the objectives and results.

The audit shall be performed in a way and in accordance with the procedures determined by the framework of the auditing standards of the International organization of supreme audit institutions and the professional Code of ethics.

Article 6

The audit shall be performed in order to provide essential information on management of the budget, property and economic activities, the legality of the audited entity's action, the improvement of its ability for successful performance of tasks and prevention of unlawful acts.

When adopting the budget of Montenegro and the Final Budget Accounts of Montenegro, the Institution shall submit to the Parliament of Montenegro (hereinafter referred to as: the Parliament) the overview of its findings on the budget and state of property, pointing out the causes and consequences of any major errors and irregularities and proposing measures for their elimination.

Within its mandate set out by this Law and other regulations, the Institution shall provide its expert assistance to the Parliament, the Government of Montenegro (hereinafter referred to as: the Government) and other state bodies of Montenegro in reaching decisions.

Subjects to audit

Article 7

In accordance with the Article 5 of this Law, the Institution shall audit documents and activities of the audited entity, which have or may have financial effect on:

- 1) revenues and expenditures;
- 2) state property;
- 3) debt level, granting of guarantees and super-guarantees;
- 4) efficient use of funds allocated to the audited entities.

Audit of Entities Outside of the Public Administration

Article 8

In regards to audited entities which have been given credits, guarantees, or other sureties by the State, the Institution may examine whether appropriate measures were taken in order to avoid any detrimental consequence to the State.

Business operations of legal entities using funds referred to in paragraph 1 of this Article shall be audited according to the law.

Scope, Time and Method of Auditing

Article 9

The Institution shall decide independently regarding the audited entities, subject to audit, scope and type of audit, time and method of auditing, unless otherwise provided by this Law.

The Institution has the obligation to audit the Final Budget Accounts of Montenegro once a year.

The annual audit plan shall be adopted by the end of the current year for the following year.

The Institution shall start the audit procedure by informing the audited entity on the subject to audit, scope, type and time of audit. The Institution shall reserve the right to start the audit without prior announcement.

The Institution shall inform the audited entity upon completion of the audit.

Access to Documentation and Information

Article 10

Upon request of the Institution, the audited entity has the obligation to make available without delay all documents, financial statements, reports, financial records, findings of the internal control and other records (hereinafter referred to as: the documentation) to the Institution, or its authorized person who is carrying out the audit.

The audited entity has the obligation to make available to the Institution or its authorized person the documents or information of confidential nature or documents which are classified as confidential or other secrets, according to the law.

Confidentiality of Information

Article 11

Information and findings obtained during the audit procedure shall be confidential, unless otherwise provided by the law.

Information considered official or other secrets shall be treated according to the law.

Audit Report

Article 12

The Institution shall present the results of the audit in an audit report. The audit report shall include the findings, opinion and recommendations for the elimination of irregularities, which may possibly be found.

Recipients of the Audit Report

Article 13

The audit report shall be submitted to the audited entity and, if appropriate, to other authorities when the Institution deems it necessary. Should the audit report referred to in paragraph 1 of this Article include findings, which are of particular importance or have significant financial effect, it shall also be submitted to the ministry in charge of finances.

Article 14

The audit report shall represent the documentation basis for issuing annual and special audit reports and for giving expert opinions and recommendations according to the provisions of this Law.

Opinion of the Audited Entity

Article 15

The audited entity has the right to express its opinion about the audit report, within the time frame set by the Institution.

The Institution shall report to the Parliament and the Government, as a rule, after the audited entity has expressed its opinion on the findings of the audit.

The Institution may report to the Parliament or the Government, prior to the audited entity having expressed its opinion, in cases where a delayed submission of the report would cause damage, or the findings are prematurely disclosed to the public, or if the audited entity has not expressed its opinion within due time.

Audited entity is obliged to submit its report on implementation of the recommendations given in the audit report, within the time frame set by the Institution.

Damage, referred to in paragraph 3 of this Article, is defined as financial loss to state property or prevention of its increase.

Political Decisions

Article 16

Should the audit affect a political decision, the Institution shall refrain from making judgments or decisions and limit itself to informing and advising the recipient of the report on important facts and possible consequences.

Third Parties Rights

Article 17

The Institution shall determine the method of auditing in a way that the rights of third parties, to which the activities in the procedure of audit relate, are protected.

Parties referred to in paragraph 1 of this Article are physical persons or legal entities, which are not audited entities according to this Law, but do business with an audited entity.

The Institution shall make it possible for the persons or entities referred to in paragraph 2 of this Article to express their opinion on the audit findings, if the audit report contains or may give cause to negative evaluation and may be used in the procedure of public reporting.

Reporting to the Parliament and Government

Article 18

The Institution shall report to the Parliament and the Government:

- 1) by submitting the Annual Report;
- 2) by submitting special reports;
- 3) by giving advice based on the findings gained through the audit.

Annual Report

Article 19

The annual report shall contain in particular:

- 1) an assessment on whether the amounts in the financial statements of the budget correspond to the amounts quoted in the records, and whether the controlled revenues, expenditures and properties are correctly documented according to the regulations and general standards;
- 2) an assessment regarding important cases where the rules and regulations on the budget and economic activities of the State are not complied with;
- 3) important comments regarding the found errors of the audited entity;
- 4) recommended measures.

The Annual Report may present conclusions on previous findings and recommendations for the upcoming fiscal years.

The Annual Report shall be submitted to the Parliament and the Government by the end of October.

The President of Montenegro, the President of the Parliament and the Prime Minister shall be informed about circumstances of confidential nature, which have caused or may cause financial or other damage of larger extent.

Special Reports

Article 20

The Institution shall inform the Parliament and the Government on particularly important issues through special reports.

Advising

Article 21

Based on the findings gained through the audit, the Institution may advise the Parliament and the Government on financially significant measures and important projects.

The Institution, in case it has found out that the existing laws produce or may produce negative consequences, or that they do not lead to expected results, may give recommendations for their amendments.

Claiming Damages

Article 22

The Institution shall, without delay, inform the audited entity if reasons for claiming damages have been found.

If any activity of the audited entity has caused damage to state property, the Institution shall, without delay, inform the public prosecutor.

Should the claim for damages be withdrawn, the public prosecutor shall inform the Institution.

The Institution shall inform the Parliament and the Government the reasons for withdrawing the claim for damages.

Bringing Criminal Charges

Article 23

The Institution shall, without delay, bring criminal charges, if during the audit procedure it determines that there is reason to suspect that criminal act has been committed.

Acting upon Request

Article 24

The Institution shall decide independently on requests for providing information or making documents available, according to the law.

Informing the Institution

Article 25

The audited entity shall, without delay, inform the Institution concerning:

- 1) proposals of laws, other regulations, general acts, rules, orders and instructions, - adopted on the basis of laws - which relate to the management and use of budget funds or which may have consequences for the revenues and expenditures of the state budget or of the municipalities' budget.
- 2) the establishment or termination of operation of an audited entity, or any major change in the organizational form of an audited entity;
- 3) conclusion of a contract which involves the use of budget funds or state property between the audited entities and a legal or physical person for amount exceeding 15,000 Euros.

Consideration of the Annual Report

Article 26

During the procedure of adoption of the Final Budget Accounts of Montenegro, the Institution shall report to the Parliament on the audit of the Final Budget Accounts.

On the basis of essential facts and circumstances pointed out in the Annual Report of the Institution, the Parliament shall decide on proposed measures and time limit for their implementation.

The Parliament may request from the Institution additional clarification of specific facts and circumstances.

Article 27

Information from existing reports of the Institution is an integral part of the documentation in the procedure of adoption of laws, other regulations and general acts which relate to the management and use of budget funds and state property.

Annual Financial Statement

Article 28

The Parliament may, through a special act, entrust an appropriate professional organization with the audit of the annual financial statement of the Institution.

If the Parliament does not entrust an appropriate professional organization with the audit of the annual financial statement of the Institution, the Senate of the Institution may initiate the selection procedure for a certified auditor or audit company.

III ORGANIZATION AND BODIES OF THE INSTITUTION

Organization

Article 29

The Institution shall be organized in sectors.

Departments shall be organized as parts of a sector.

A special service shall be organized for carrying out administrative tasks and providing support.

Bodies of the Institution

Article 30

The Institution shall have a Senate and Auditing Boards.

Senate

Article 31

The Senate shall have five members.

A Member of the Senate shall be the Leader of one sector.

Requirements for Appointment of a Member of the Senate

Article 32

Only a, lawyer or an economist of Montenegrin citizenship may be appointed as a Member of the Senate, who, in addition to the general requirements determined by the law, meets one of the following requirements:

- 1) has passed the bar exam or the state auditor exam and minimum 10 years of working experience in practice or has at least 10 years of working experience in conducting responsible legal works in civil service;
- 2) has passed the state auditor exam and has at least 10 years of working experience or at least 10 years of working experience in conducting responsible works in public finance.

At least two Members of the Senate shall be lawyers.

Appointment of the Members of Senate and the President

Article 33

Members of the Senate shall be appointed and relieved from duty by the Parliament on recommendations of the Parliament's competent working body in charge of finances.

The Parliament shall appoint the President of the Senate from among the Members of the Senate for a period of nine years. The same person cannot be reappointed as President.

Permanency of Office

Article 34

The office of Member of the Senate shall be permanent.

The office of Member of the Senate shall be terminated upon his/her request or when he/she meets the legal requirements for retirement or if he/she is sentenced to imprisonment.

The Member of the Senate shall be relieved from office if he/she is sentenced for an offence which makes him/her unworthy of holding office, or if he/she exercises the office in an unprofessional or unscrupulous manner or if he/she permanently loses the ability to exercise office.

The Senate shall inform the Parliament of circumstances described in paragraph 2 and 3 of this Article.

Incompatibility of Office

Article 35

A Member of the Senate may not be a Member of the Parliament or hold any other public office, or be engaged in any other professional activity.

Article 36

A Member of the Senate may not be a member of a political party.

Decision-Making in the Senate

Article 37

The Senate shall decide by majority of votes of the total number of all Members of the Senate.

The Competence of the Senate

Article 38

The Senate shall:

- 1) adopt the Annual Report and special reports;
- 2) adopt the annual audit plan;
- 3) make decisions in cases where no decision can be made in accordance with Article 44, paragraph 3 of this Law;
- 4) adopt instructions on the methodology of work (auditing standards);
- 5) review, upon request of an Auditing Board, the Senate's previously adopted decisions and decisions adopted by the Auditing Board;
- 6) adopt the Rules of Procedure of the Institution;
- 7) 6a) adopt a Program and Rulebook on state auditor exam;
- 8) adopt the Act on Internal Organization and Systematization;
- 9) adopt the Annual financial statement of the Institution;
- 10) carry out other activities determined by this Law and by general acts of the Institution.

The Rules of Procedure referred to in paragraph 1, item 6 of this Article shall regulate in detail the work method, carrying out of activities and decision-making.

Acts from paragraph 1 item 4, 6 and 6a of this Article shall be published in the "Official Gazette of Montenegro".

President of the Senate

Article 39

The President of the Senate shall chair the Senate and represent and act for the Institution. In the event of his/her absence or impediment, the eldest member of the Senate shall take his/her place.

Schedule of Duties

Article 40

The schedule of duties within the Institution shall be determined by the President in agreement with the Members of the Senate.

Prohibition of Membership in Management Boards and Other Exclusionary Matters

Article 41

A Member of the Senate may not be a member of the management board of a company or any other legal entity.

A Member of the Senate may not participate in decision making or activities provided in this Law in cases where he/she has any family member directly involved in this matter.

Should there be reasons which lead or may lead to questioning the objectivity or impartiality of a Member of the Senate, the Member's exclusion from the decision-making shall be determined by the Senate.

A Member of the Senate shall inform the President of the Senate of circumstances described in paragraph 2 and 3 of this Article.

Obligation to Keep Secrets

Article 42

Members of the Senate and employees of the Institution have the obligation to keep business and other secrets regardless of the manner in which they learnt about them.

Secretary of the Institution

Article 43

The Institution shall have a Secretary who is in charge of providing services for administration and support.

The Secretary shall be appointed and dismissed by the Senate, based on a public announcement, for a period of five years with a chance of being reelected.

The Secretary shall be a lawyer or an economist, who has passed the official exam for public administration and has at least five years of work experience.

The Secretary shall be accountable for his/her work to the Senate.

Auditing Board

Article 44

The Auditing Board shall be in charge of and supervises the auditing procedure, and is responsible for the results of the audit.

The Auditing Board shall consist of two Members of the Senate, one of which is the Head of the sector conducting the audit.

In the event that the Auditing Board cannot reach a decision, the decision shall be made by the Senate.

State Auditors

Article 45

The audit is performed by State Auditors (hereinafter referred to as: the Auditors).

The Auditor is employed on the basis of public announcement.

An Auditor may be a person, who in addition to the general conditions provided by the law, meets the following requirements: university degree, minimum of five years of expert work experience and passing of the State Auditors Exam.

The provisions of Article 41 of this Law relating to Members of the Senate shall be applied accordingly to the Auditors. The decision on exemption from the audit procedure shall be made by the Auditing Board.

Article 45a

The state auditor is arranged to a salary grade number 4 and is entitled to a salary according to the stipulated coefficient for this salary grade by the law on salaries of civil servants and state employees.

According to the law, the Senate determines the conditions, assignment and amount of the audit salary supplements for the employees of the Institution.

Engagement of External Expert

Article 46

The Institution may involve external experts during an audit procedure if the audit requires specific expertise.

External experts as described in paragraph 1 of this Article have the obligation to keep business and other secrets.

Officers and Employees

Article 47

Administrative and expert work as well as other tasks of the Institution shall be carried out by officers and other employees.

Article 48

More detailed requirements for employment shall be provided in the Act on Internal Organization and Systematization.

The Senate of the Institution shall decide on the employment agreements, rights, duties and responsibilities of the employees in the Institution in accordance with the law.

Rights, Duties and Disciplinary Responsibilities of the Employees

Article 49

The provisions of the law regulating the position of state officers and employees shall be accordingly applied to the rights, duties and disciplinary responsibilities of the employees.

IV INFORMING THE PUBLIC

Article 50

The Institution has the obligation to make the Annual Report available to the public.

The Rules of Procedure of the Institution shall describe in more details the manner of informing the public.

V FINANCING

Article 51

The funds for the work of the Institution shall be provided in the budget of Montenegro.

Senate shall propose and submit a draft budget of the Institution to the competent working body of the Parliament in charge of finances.

The Competent working body of the Parliament in charge of finances shall determine the draft budget of the Institution and submit to the Government.

If the Government, in the Proposal of Annual Law on budget, makes any changes in the draft budget of the Institution described in the paragraph 3 of this Article, it shall give written explanation to the Parliament.

VI PENAL PROVISIONS

Article 52

The audited entity which does not make the documentation available to the Institution or its authorized person or does not provide required information and clarification, or gives incorrect data (Article 10) shall be fined for misdemeanor in the amount from 1.000 Euros to 20.000 Euros.

The authorized person within legal entity shall be fined for misdemeanor as described in paragraph 1 of this Article in the amount from 50 Euros to 1.000 Euros.

Article 53

The legal entity - audited entity, which does not inform the Institution about the circumstances described in Article 25 of this Law, shall be fined for misdemeanor in the amount from 1.000 Euros to 20.000 Euros.

The authorized person within legal entity shall be fined for misdemeanor described in paragraph 1 of this Article in the amount from 50 Euros to 1.000 Euros.

Article 54

The auditor, who publishes data of confidential nature before completion of the audit procedure (Article 11), shall be fined for misdemeanor in the amount from 1.000 Euros to 20.000 Euros.

The authorized person within legal entity shall be fined for the misdemeanor described in paragraph 1 of this Article in the amount from 50 Euros to 1.000 Euros.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 55

Deleted ("Official Gazette of Montenegro, No 31/14).

Article 56

Deleted ("Official Gazette of Montenegro, No 31/14).

Article 57

Deleted ("Official Gazette of Montenegro, No 31/14).

Article 58

The President of the Senate is entitled to salary equal to the amount of the President of the Constitutional Court. Member of the Senate is entitled to salary equal to the amount of the judge of the Constitutional Court, as well as other rights, which belong to the bearers of the constitutional and judicial function.

Article 59

On the day when the first Annual Report of the Institution is submitted, the provision provided in Article 51, paragraph 2, item 1 of the Law on Budget ("Official Gazette of the Republic of Montenegro", No. 40/01) shall cease to be valid.

Article 60

This Law shall enter into force on the eighth day after its publication in the "Official Gazette of Montenegro".