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**REPUBLIC OF ALBANIA
THE ASSEMBLY**

LAW

No. 10 294 dated 1 July 2010

ON PUBLIC FINANCIAL INSPECTION

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

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

D E C I D E D:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object of the law

This law defines the purpose, principles and rules of financial inspection in public units, as well as the duties and responsibilities of the structures included in the process.

Article 2

Purpose of the law

The purpose of the law is the protection of the financial interests of public units against serious financial mismanagement, fraud and corruption.

Article 3

Field of application of the law

The public units and individuals that are subject to public

financial inspections for the public funds that they use according to this law include:

1. Units of general government.

2. Commercial companies, not-for-profit organisations and joint authorities that are owned, controlled, financed or guaranteed financially by a unit of general government or in which a unit of general government owns or controls a part of the assets that gives the owner the right of control¹.

3. Every unit or individual only for funds that it obtains from the State Budget or funds on the basis of an international agreement.

Article 4 Definitions

In this law, the following terms have these meanings:

1. "Public funds" are all funds, including funds of the European Union and other donors, which are collected, deposited, kept, distributed and spent by the units of the public sector and which consist of income, expenses, loans and grants for the public units.

2. "Units of general government" are the units of central and local government and of special funds, the meaning of which is the same as that provided in law no. 9936 dated 26 June 2008 "On the management of the budgetary system in the Republic of Albania".

3. "Financial guarantee" is an agreement signed by the unit of general government to secure the fulfilment of a contract or other actions undertaken by a third party.

4. "Serious financial mismanagement" is an action or failure to act of a head or employee of a unit that might result or has resulted in the unit's financial inability to pay or an important loss, beyond the losses/projections in the approved budget.

¹ Tr. note: The Albanian word "control" meaning auditing or checking is used in this paragraph and elsewhere in this law (and in other Albanian laws) as a translation for the English word "control" meaning having power over something.

5. "Fraud", the meaning of this term is the same as that provided in the Criminal Code of the Republic of Albania.

6. "Irregularity" is the failure to implement or the wrong implementation of the laws or other rules, which has an origin in actions or failures to act of the user of public funds, which have or might have harmful consequences for the public funds, regardless of whether it affects the income/entries, expenses/outflow, funds turned back, assets or financial obligations.

7. "Corruption", the meaning of this term is the same as that provided in the Criminal Code of the Republic of Albania.

8. "Public commercial company and joint authorities", their definition is given in full in the law "On commercial persons and commercial companies" and in the law "On small and medium enterprises".

9. "Not-for-profit organisations", their definition is given in the Civil Code of the Republic of Albania and in law no. 8788 dated 7 May 2001 "On not-for-profit organisations".

10. "Public financial inspector" is a civil servant of the public administration who is designated temporarily by the Minister of Finance to perform the duty of public financial inspection.

11. "Property damage", the meaning of this term is the same as that provided in the Civil Code of the Republic of Albania.

12. "Audit activities" are audits before the fact and audits after the fact.

13. "Audits after the fact" are audits from time to time exercised after the end of a transaction, according to a plan or pursuant to a request. Audits after the fact check whether public funds are deposited and spent with legality, according to the purpose and the time periods specified and in compatibility with the obligations undertaken, as well as for the achievement of the results expected from the use of public funds.

14. "International agreements" are agreements, the meaning of

which is given in the law on the conclusion of treaties and international agreements.

Article 5

Principles of public financial inspection

Public financial inspection is accomplished through the implementation of the principles, of which the most principal ones [sic] are:

1. The principle of legality, which requires that public financial inspectors apply and hold to the legal boundaries.

2. The principle of objectivity, which requires the facts and circumstances related to the fulfilment of the activity of public financial inspection to be precisely established.

3. The principle of confidentiality, which has to do with the prohibition of the financial inspectors to give information about the process of the fulfilment of official duties, except for the cases permitted according to law.

4. The principle of the hierarchy of evidence, which has to do with establishing, on the initiative of the financial inspectors, all the facts and circumstances related to the financial and economic activities of the unit or individual who is the object of the inspection.

Article 6

Minister of Finance

1. The Minister of Finance is responsible for the regulation of the centralised functioning of public financial inspection and the selection of public financial inspectors, as well as licensed outside experts.

2. The Minister of Finance determines the specific criteria for the selection of public financial inspectors and licensed outside experts.

3. The Minister of Finance issues orders and determines the methodology related to the criteria that should be taken account of

before taking a decision to initiate a financial investigation, for the process of selection and qualification of the financial inspectors, for checking the quality and fulfilment of financial inspection according to this law, as well as entering into cooperation agreements with the heads of public units for permitting their employees to be part of the inspection group and to perform public financial inspection.

4. Based on the request of the first authorising civil servant, according to article 7 of this law, the Minister of Finance designates, case by case (*ad hoc*) one or more public financial inspectors, selected ahead of time according to the requirements of article 13, points 2 and 3 of this law.

5. The Minister of Finance takes a final decision after the evaluation of the reports of the financial inspectors and the receipt of the opinion from the first authorising civil servant.

Article 7

Responsible authority for beginning public financial inspection

1. The first authorising civil servant has the right to inspect, at any time, every document related to the inspection, as well as every financial system of the public units that are related to the inspection.

2. The first authorising civil servant evaluates the basis of the information that he receives, according to article 8 of this law, and submits a request to the Minister of Finance to designate financial inspectors.

3. Before taking a decision to initiate an inspection, the first authorising civil servant may ask for the performance of a preliminary investigation by the head of the respective unit.

4. The first authorising civil servant submits one copy of all the reports of financial inspections to the Minister of Finance and to High State Control.

5. The first authorising civil servant follows the implementation of the decision of the Minister of Finance by the public units or individuals who are the objects of inspection.

6. The first authorising civil servant submits an annual report to the Minister of Finance about [his] activity.

7. The first authorising civil servant is supported by the Directorate of Financial Inspection in the fulfilment of his duties.

Article 8

Basis for starting a public financial inspection

1. The first authorising civil servant initiates a financial inspection only on the basis of a request, information or complaints and not on the basis of predetermined plans or programmes.

2. The sources of a request may be:

a) reports or other documents in connection with a violation of the procedures of financial management approved by the Minister of Finance;

b) reports of management and financial control;

c) reports of internal auditing;

ç) requests of High State Control;

d) requests from the Council of Ministers;

dh) requests from the Minister of Finance;

e) requests from the heads and authorising civil servants of public units;

ë) requests from the General Prosecutor.

Article 9

Activities of financial inspection

Financial inspection is an after-the-fact audit activity for the regularity of transactions and other activities of public financial management, performed under the responsibility of public units and individuals, so as:

1. To determine violations of the normative acts as well as suspicions of fraud that has been committed.

2. To discover irregularities and damage caused to the property of public units.

3. To analyse the reasons and conditions of violations of

financial discipline and to propose to the first authorising civil servant the measures that should be undertaken to avoid them or prevent their commission.

4. To identify violations and the individuals responsible for the irregularities discovered.

CHAPTER II DIRECTORATE OF PUBLIC FINANCIAL INSPECTION

Article 10 Structure of the Directorate of Public Financial Inspection

1. The Directorate of Public Financial Inspection is created in the structure of the Ministry of Finance.

2. The employees of this directorate are civil servants and the rules and procedures for appointing and discharging them are subject to law no. 8549 dated 11 November 1999 "Status of the civil servant".

Article 11 Functions of the Directorate of Public Financial Inspection

The Directorate of Public Financial Inspection fulfils these functions:

1. It examines request and complaints, according to article 8 of this law, and gives an opinion to the first authorising civil servant as to whether it is essential to initiate a financial inspection or not.

2. It coordinates and oversees the fulfilment of the activities of inspection and exercises quality control.

3. It checks the legality of implementation of the duties.

4. It analyses the reasons and conditions of violations of financial discipline reported by the financial inspectors and gives an opinion to the first authorising civil servant about the measures proposed.

5. It proposes for approval to the Minister of Finance methodological instructions for checking the quality of and accomplishing financial inspection, according to the provisions of this law.

6. It coordinates the service against fraud and corruption for funds of the European Union and serves as a contact point of the European Office against Fraud.

7. It identifies the needs for training for the inspectors and coordinates the respective training programmes.

8. It cooperates and exchanges information with other public units.

Article 12

Criteria for appointment of the director of the Directorate of Public Financial Inspection

1. The activity of public financial inspection is directed by the director of financial inspection appointed according to the requirements of law no. 8549 dated 11 November 1999 "Status of the civil servant".

2. The special criteria for the employment of an individual to the position of director of financial inspection are these:

a) to have a university diploma of the second level of studies or the equivalent in the economic or legal sciences;

b) to have at least 10 years professional experience of which at least three of the ten years shall be in a management position.

Article 13

Criteria for the financial inspectors and civil servants of the Directorate of Public Financial Inspection

1. Financial inspection is performed by civil servants of the public administration who are designated by order of the Minister of Finance, case by case (*ad hoc*). In special cases, when there are no experts in the public administration for the field/issue that is being inspected, the Minister of Finance seeks expertise from outside experts, licensed according to the criteria defined in point 2 of article

6 of this law.

2. The employees of the Directorate of Public Financial Inspection and the public financial inspectors should meet the general criteria defined in law no. 8549 dated 11 November 1999, "Status of the civil servant", as well as these special criteria:

a) employees of the Directorate of Public Financial Inspection shall have a university diploma of the second level of studies or the equivalent to it in the economic or legal sciences, as well as at least five years professional experience in public units;

b) public financial inspectors shall have a university diploma of the second level of studies or the equivalent to it in the economic or legal sciences, as well as at least five years professional experience in public units.

3. A financial inspector may be suspended from the mission of inspection by order of the Minister of Finance before the end of the mission:

a) on the written request of the inspector or when the existence of the conditions according to point 2 of article 17 of this law is found;

b) when he has been convicted by final judicial decision for the commission of a criminal offence or when he takes on the quality of a defendant for a criminal offence that is related to his duty;

c) for repeated errors during the performing of an inspection or incapacity to complete the financial inspection.

Article 14

Compensation of public financial inspectors

1. The compensation of public financial inspectors for the performance of financial inspection is regulated by a decision of the Council of Ministers, proposed by the Minister of Finance.

2. During the performance of the mission of inspection, necessary working conditions and transport conditions are created for public financial inspectors to facilitate the performance of the inspection.

Article 15

Obligation to give information

The Directorate of Public Financial Inspection may give information on financial inspections he has performed only after the end of the inspections, when the information is requested by authorities to whom the right is given by law.

Article 16

Rights of a public financial inspector

In the performance of their official duties, public financial inspectors have the right of:

1. Unrestricted entry to all information related to the inspection, including classified information, according to their level of access, as well as all documents, including those in electronic format, which are kept in the unit or by the individual who is the object of the inspection.

2. Unrestricted entry to the premises of the unit that is the object of the inspection.

3. Checking the acts and obligations, the system of accounting and all the documents, including electronic documents.

4. Asking employees of the units and individuals who are the object of the inspection for original documents, official copies of documents, information and references, as well as other documents that have a connection to the financial inspections, for specified time periods.

5. Asking employees of the units and individuals who are the object of the inspection for declarations about all bank accounts, both in the country and outside it, for specified time periods.

6. Seeking in certain time periods and learning about reports of internal auditors, reports of High State Control and other audit authorities that are kept in the unit or by the individual that is the object of the inspection.

7. The exercise of controls and seeking of official copies of documents, information and references from natural and legal

persons outside the unit or individual that is the object of the inspection in connection with the performance of the financial inspection.

8. Being informed by the courts of first instance and the courts of appeal in connection with materials collected during judicial proceedings, as well as about judicial decisions related to inspection activities.

9. The prevention of entry of responsible individuals to safes, warehouses and other articles that are the objects of the inspection, sealing them in the presence of an official from the unit that is the object of the inspection.

Article 17 **Obligations of a public financial inspector**

1. In the performance of official duties, public financial inspectors are obligated:

a) to identify themselves with an official identification document and the order designating the performance of the duty of the financial inspection;

b) to report objectively and in an accurate manner the results of the activity of the inspection performed, the irregularities and damage found, the reasons they occurred and the violations, on the basis of the facts and circumstances officially checked by them;

c) to keep secret every fact or circumstance obtained during the process of implementation of their duties, except for the cases permitted by law;

ç) to interrupt the undertaking of every action that might lead to a criminal prosecution as a consequence.

2. At the end of the activity of the inspection, the financial inspector delivers a final report to the inspected subject and to the head of the respective unit.

3. The financial inspectors designated by the Minister of Finance are obligated to withdraw from an inspection when, in the past three years:

a) they have worked for the unit or for the individual that is the object of the inspection;

b) they have been participants in managing or supervisory authorities of the units and/or individuals, according to letter “a” of this point;

c) they have personal interests in the activities that are the object of the inspection;

ç) a spouse, a direct relative and a relative up to the second generation have been previously employed as reporting officials or have worked with the managing or supervisory authorities of the unit or individual that is the object of the inspection, the activity of which would constitute a conflict of interest.

4. The circumstances of point 3 of this article should be reported by the financial inspector in writing to the Minister of Finance after they have occurred.

5. The director of financial inspection should evaluate the reasons for withdrawal according to letter “c” of point 3 of this article, and propose to the Minister of Finance to suspend the inspector from the inspection or not.

Article 18

Obligations of the units or individuals who are objects of the inspection

1. Every public unit or individual that is the object of an inspection according to article 3 of this law is obligated:

a) to cooperate with and not to hinder the financial inspectors in the process of execution of their duties;

b) to offer the financial inspectors the right of unrestricted use of the premises where they will work and all the documentation that is related to the object of the inspection;

c) to deliver, within the time periods determined by the financial inspectors, documents, official copies of documents, information and declarations about every bank account and written explanations, as well as reports according to point 6 of article 16 of this law;

ç) to deliver, within the time periods determined by the financial inspectors, accurate data, declarations and official copies of documents that have a connection to the object of the inspection.

2. No individual, according to point 1 of this article, has the right [lit. “Every individual...does not have the right] to refuse to give

information, referring to prior inspections, audits by other units or banking secrets, or information classified as a state secret or professional secret.

Article 19

Fulfilment of financial inspection

1. Financial inspection is performed on the basis of instructions issued by the Minister of Finance.

2. For the results of the mission of financial inspection, the financial inspector should draw up a report, which should contain findings and recommendations, objections in writing from the head of the unit or the individual who is the object of the audit, as well as justified conclusions of the inspector in writing.

3. When the conditions exist to ask for indemnification of property, according to this law, the financial inspectors should draw up official written records [minutes] of the damage, which should be supported in documentation that proves the causing of the damage.

4. The report and official written records of the damage, in conformity with points 2 and 3 of this article, are delivered to the first authorising civil servant for examination.

5. After examining the report, the first authorising civil servant may decide on the performance of other inspection activities or the submission of his opinion to the Minister of Finance on the measures that should be taken.

Article 20

Decisions of the Minister of Finance

1. In reliance on the report of the financial inspection and the measures proposed by the first authorising civil servant, the Minister of Finance may:

a) propose to the head of the unit to undertake the appropriate measures for the review of the systems of financial management, for the purpose of ending the irregularities and/or avoiding the negative consequences of those activities;

b) propose to the Prime Minister to undertake further actions that are necessary in serious cases, when the responsible individual is a minister or the head of a central unit;

c) ask the competent authorities to prohibit activities that lead to irregularities or cause damage to the units and individuals that are the object of the control;

ç) ask the competent authorities or the heads of the units and individuals that are the object of the control to repeal an internal administrative act issued in violated of the legal framework in force;

d) ask the competent authorities to take measures for the material indemnification or disciplinary measures, according to the respective procedures, as well as reporting on their realisation within a determined time period;

dh) block the use of budgetary funds, determined in the annual law on the State Budget, for the respective year, at the level of the programme, the line or the project;

e) block the bank accounts of the public units related to the funds where irregularities were discovered, until the elimination of the irregularities.

2. In the cases referred to in point 1 of this article, within a period of two months after notification of the decisions, the heads of the units and the individuals that are subjected to the control are obligated to inform the first authorising civil servant in writing for the measures taken.

Article 21

Informing the authorities

1. Information about the results of a financial inspection performed in the units of central government and the units spending public funds should be delivered to a unit of a higher level, when it contains irregularities.

2. In the case of a financial inspection of the local organs and their units spending public funds, the information should also be sent to the council of the local organ, when irregularities are founds

3. Information about the results of a financial inspection, as is referred to the units or individuals according to article 3 of this law, when irregularities are found, should be sent to the authority that

exercises the right of state or local property with [lit. to or at] the capital of the unit or individual who is controlled.

4. When a financial inspection is exercised in a commercial company in the process of bankruptcy or liquidation, when irregularities are found, the information should be sent to the authority that is exercising the rights of ownership of the state or local unit.

5. For all public units and individuals financed by state companies, when irregularities are found, the information should also be sent to the financing authority.

6. Information about the results of a financial inspection, in cases of violations found by individuals who are employees in the public administration, is sent to the Department of Public Administrative for registration in the personnel records of the employee.

CHAPTER III VIOLATIONS AND SANCTIONS

Article 22 Responsibility for causing damage

1. For all damage caused to public units and individuals according to article 3 of this law found during a financial inspection according to this law which is the direct or indirect consequence of the conduct of the violators, full responsibility should be taken, when:

- a) the damage was caused deliberately;
- b) the damage was caused by negligence during or in connection with the process of execution of official duties.

2. If the damage was caused by several individuals, they are jointly responsible [lit. put before responsibility], on the basis of the provisions of the Civil Code.

3. Every individual who has ordered or permitted payments in violation of the laws in force has financial responsibility.

Article 23

Administrative infractions

1. A violation or failure to fulfil the obligations provided by the provisions of this law by a financial inspector and licensed outside expert constitutes an administrative infraction and is punished by a fine of from 40 000 (forty thousand) to 70 000 (seventy thousand) lek.

2. The decision of an administrative infraction according to point 1 of this article is issued by the Minister of Finance.

Article 24

Disciplinary measures for inspectors

When a financial inspector commits other violations during the period when he turns out to be punished administratively, in conformity with point 1 of article 23 of this law, a disciplinary proceeding begins against him.

Article 25

Criminal violations

When the data show the existence of a criminal offence, the first authorising civil servant sends a copy of the report according to article 19 of this law, together with the documentation attached to that report, to the Minister of Finance and makes a denunciation in writing to the General Prosecutor.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 26

Transitional period for implementing the law

The Minister of Finance is charged, within one year from the entry of this law into force, with regulating the functioning of public financial inspection, as well as issuing subordinate legal acts in implementation of article 6 of this law.

Article 27

Entry into force

This law enters into force 15 days after publication in the Official Journal.

S P E A K E R
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