

# CURRENT LEGISLATION OF INDEPENDENT AUDITING AND DIRECTIONS OF PERFECTION

by Dr. HÀ THỊ NGỌC HÀ

**D**evelopment of the market economy in all countries requires adjustment of national legislation of auditing to international practices and national conditions approved by the international community. In the past 18 years in Vietnam, the independent auditing business has made remarkable contribution to the national development, but the legal infrastructure of this business is limited to the only Decree by the Government, which doesn't match the importance and development of the business. That is why an auditing law is much necessary now to regulate and orient the independent auditing in the coming years toward industrialization, modernization, and international integration.

To carry out Resolution of the NA of the 12th term of law making program in the years 2007-2011 and in 2008 in particular, the Government has directed the Ministry of Finance (MoF) to co-operate with related ministries and agencies to prepare an Independent Auditing Bill.

Promulgation of this Independent Auditing Law is a matter of urgency to Vietnam today and it requires a re-estimate of regulations of the auditing business in the past 18 years (demand for this service appeared in 1991) that helps clarify necessity of making the Independent Auditing Law.

## 1. Achievements

Establishment and development of the independent auditing, as part of the economy, is objectively inevitable in the market economy and essential to the macroeconomic management and social progress through its supply of financial statement auditing service to all clients as required by law or by organizations and individuals.

The independent auditing is necessary for financial disclosure because of interests of companies, investors, owners, creditors, and the government as well. Users of auditor's reports are assured that information provided is objective, honest and reliable, and very useful for their decisions and management tasks.

To make the best use of this service, the Government has tried to develop the independent auditing business and created favorable conditions for its development.

Up till now, four Decrees on the independent auditing have been issued by the Government, and 16 decisions and circulars by the MoF on conditions for incorporation and establishment of auditing firms and qualifications of auditors, registration and management of these firms, and service quality control. These documents serve as a basis for formation of the VACPA (Vietnam Association of Certified Public Accountants) and a system of 38 professional and ethical standards for the independent auditing business. The bulk of legislation as a basis for the formation, development and management of the business took shape through two phases:

Phase 1: The independent auditing business came into operation in 1991 when the market economy came into being and foreign investment was encouraged and demand for this service made its appearance. The Decree 07-CP establishing the statute of the independent auditing business was issued on Jan. 29, 1994. The MoF has issued many guidelines on implementation of the said Decree: Circular 22-TC/CDKT dated March 19, 1994 on the implementation of the Decree 07-CP; Decision 237/TC/QĐ/CDKT dated March 9, 1994 on recruitment and issue of auditor's certificate.

Phase 2: From 1998 on, the foreign investment rose quickly, the Government stopped investigating financial and tax reports of companies before they were audited as required by law, which made the demand for auditing service increase over years.

Safe and healthy development of companies in the market economy requires reliable supply of accounting, auditing and financial services of high quality from independent and honest firms. To facilitate the development of the independent auditing business and ensure high quality for its services, from 2004 on, three Decrees and related documents have been issued by the Government and MoF which are as follows:

- Decree 105/2004/NĐ-CP dated March 30, 2004 on the independent auditing (or Decree 105 for short).

- Decree 133/2005/NĐ-CP dated Oct. 31, 2005 and Decree 30/2009/NĐ-CP dated March 3, 2009 providing amendments to the Decree 105 (Decrees 133 and 30 respectively for short)

- Circular 64/2004/TT-BTC issued on June 29, 2004 by MoF to provide guidelines on the implementation of the Decree 105.

- Circular 60/2006/TT-BTC dated June 28, 2006 by the MoF setting standards, conditions of incorporation and operation of auditing firms.

- MoF Decision 32/2007/QĐ-BTC dated May 15, 2007 providing "Regulations of accounting and auditing services quality control."

- MoF Decision 59/2004/QĐ-BTC dated July 9, 2004 and Decision 94/2007/QĐ-BTC dated Nov. 16, 2007 setting regulations of recruitment and issue of Accountant and auditor certificates.

- MoF Decision 89/2007/QĐ-BTC dated Oct. 24, 2007 on selection auditing firms to audit organizations that issue and list shares and trade in securities.

- MoF Decision 47/2005/QĐ-BTC dated July 14, 2005 on transfer of some tasks of controlling accounting and auditing firms to associations of auditing firms.

- From 1999 to 2005, the MoF issued eight Decisions on 38 professional and ethical standards for auditors and accountants.

The bulk of legislation of the auditing business in the past 18 years has been perfected and beefed up with a view to making it more appropriate to

international standards and the market economy, thereby orienting the accounting and auditing service towards international agreements signed by Vietnam. In fact, perfection of the bulk of legislation of the auditing business has helped with development of the infant finance market in Vietnam.

With close direction from the Government, the MoF and local authorities and effort from auditing firms, the bulk of legislation has helped with enhancing service quality, ensuring financial disclosure by companies, improving the business environment, struggling against corruption and waste, discovering and preventing violations of laws, and beefing up economic management by both companies and governmental agencies.

## 2. Shortcomings

Although a bulk of legislation of the auditing business has come into being and produced encouraging results, it still needs more perfection because this business has extended legal effects and helped improve the business environment and financial transparency. In the international integration, the bulk of legislation reveals various shortcomings, and the following are some of them:

- a. Decree on the independent auditing is not perfect and fails to beef up the position of this business in the economy:

The bulk of legislation lacks regulations appropriate to international practices and existing conditions in Vietnam that are needed for orienting the future development of the business. Some of imperfect contents of regulations are: organizations to be audited as required by law; scope of operation for auditing firms; fees charged and kinds of tasks undertaken by auditors; rights, responsibility and obligations of auditing firms, their clients and users of auditor's reports; and operations of the association of auditors.

To cope with diverse development of economic activities and beef up the state control, most fields of management have been regulated by laws, such as Companies Law, Investment Law, Commerce Law, Banking Institutions Law, Securities Law, Insurance Law, and State Auditing Law, etc. while the independent auditing business is only regulated by Decrees and MoF guidelines, which doesn't match its importance and development of this conditional business and fails to provide a legal

basis for the supply of "verification" by this business as expected by the present law system.

b. Decrees on the independent auditing business lack contents necessary for improvement in service quality up to international standard:

Decrees on independent auditing lacks many internationally-accepted regulations needed for improvements in the service quality, such as: standards and conditions required from auditing firms; required auditing techniques; control over quality of auditing service and related ones; sanctions against violations, dispute settlement, complaints and compensations; issue and revocation of business license; and criteria for estimating auditor's services and reports.

c. Some regulations set by the Decrees are not appropriate to international practices and market demand in Vietnam:

- Decrees on the independent auditing fail to set regulations of formation and operations of branches of foreign auditing firms; standards and qualifications of auditors and their assistants; joint ventures between local firms and between foreign and local ones; and trans-border supply of services (without presence of natural person) according to commitments accepted by Vietnam when it got accession to the WTO.

- Auditors and auditing firms supplying conditional services should have working licenses, such as auditor certificate, price assessor card, or license to practice as tax consultant. According to foreign practices, certified auditors should get membership, register and have their practices supervised by their independent professional associations. Governmental agencies don't directly control their businesses. Regulations about state control over such conditional services as those of independent auditor, accountant, tax consultant and price assessor, are not well-studied and reasonable enough to manage them effectively, simplify procedures and make them appropriate to international practices.

d. Decrees only require a limited number of kinds of organizations to have their financial reports audited annually and fail to set regulations about audit for public interest:

According to these Decrees, only certain kinds of organizations are forced to have their financial reports audited and many others are not included

in these groups, such as private businesses, limited companies, and issuers of unlisted shares. This regulation is not appropriate to international practices and agreements signed by Vietnam. Many of these companies have big size, if they mobilize idle capital with publicizing audited financial statements, investors can face various risks and transparency of companies is damaged.

Organizations with public interests, such as banking and financial institutions, insurance companies, issuers of shares, and securities broker firms, etc., have great effects on the public. Auditing as required by law is one of factors that ensure reliability of information offered by corporate financial reports and statements from these organizations. Collapses of international giants during the global crisis after their financial statements were approved by auditors and auditing firms force all governments to beef up and amend regulations on audit of financial statements by companies with public interests.

In Vietnam, however, Decrees on the independent auditing business set nothing about this matter with the result that they can't ensure transparent disclosure of financial information and a healthy business environment with a view to developing the finance market. Moreover, they didn't clarify responsibility of auditors and auditing firms when auditing financial documents for organizations with public interests, along with their work ethics and independence. They also fail to set regulations on quality control and public supervision on auditing service and cooperation with foreign supervision bodies.

e. In the MoF program to implement WTO commitments, there is a plan to make an Independent Auditing Law in order to control this service during the international integration, especially when Vietnam has promised to open fully this business.

This imperfect situation has affected unfavorably the independent auditing business. To deal with obstacles to a healthy development of this business, Vietnam needs an Independent Auditing Law to clarify entities regulated by this law, rights and duties of auditors and auditing firms along with their professional associations and governmental bodies, and organizations that should be audited strictly, in order to ensure the role of this business in the open market economy■