

LAW ON FINANCIAL INSPECTION IN THE PUBLIC SECTOR

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I. GENERAL PROVISIONS

1. Subject of regulation

Article 1

This Law shall regulate the purposes, principles, competence, organization of the financial inspection in the public sector (hereinafter: the financial inspection), as well as the procedure for performing the financial inspection.

2. Purpose of the Law

Article 2

The purpose of this Law shall be to safeguard the financial interests of the entities in the public sector against seriously bad financial management, fraud, and corruption.

3. Scope of the financial inspection

Article 3

Financial inspection shall be conducted at the users of funds of the Budget of the Republic of Macedonia, the funds, the municipalities and the City of Skopje, the agencies and the other institutions established by law, the public enterprises, the public institutions and the other legal entities which are owned by the state or by the municipalities and the City of Skopje, or where the state or the municipalities and the City of Skopje are shareholders, as well as at the non-profit organizations and the other legal entities and natural persons solely for the part of the received public funds or guarantees (hereinafter: entities which are subject to financial inspection).

4. Principles of financial inspection

Article 4

The financial inspection in the public sector shall be conducted in accordance with the principle of legality, equality, impartiality, and objectivity, material truth, hearing the entities which are subject to supervision, publicity, proportionality, and subsidiarity pursuant to the Law on Inspection and the principle of confidentiality which consists of a prohibition on providing information in the course of financial inspection, except for the cases envisaged by law.

5. Definitions

Article 5

The terms used in this Law shall have the following meaning:

1. "Financial inspection" means an ex post activity for controlling the regularity of the transactions and the other activities in the field of financial management and control conducted at the entities which are subject to inspection;

2. "Public funds" means all financial and material funds paid, received, acquired, granted, and spent by the entities which are subject to inspection, including also the budget revenues, claims, expenditures and subsidies;

3. "Public sector entities" means the users of funds of the Budget of the Republic of Macedonia, the funds, the municipalities and the City of Skopje, the agencies and the other institutions established by law, the public enterprises, the public institutions, and the other legal entities owned by the state or where the state is a shareholder;

4. "Seriously bad financial management" means actions or omissions made by the head or another person in the entity which could or have led to losses and/or damage;

5. "Fraud" means any deliberate act or omission related to the use or presentation of false, inaccurate, or incomplete statements or documents resulting in unlawful acquisition or unjust retention of public funds, funds from the European Union, and funds from other domestic and foreign sources, nondisclosure of information by which a particular obligation having the same effect is violated, and inappropriate use of the funds for purposes other than the ones for which they have been initially granted; and

6. "Irregularity" means non-compliance or wrongful application of the laws and the other regulations, as well as the international agreements, arising from the work or the omissions of the public funds users, and which has or could have harmful effect on the Budget of the Republic of Macedonia, the European Union funds, and the funds of other domestic and foreign sources, irrespective of whether they are revenues/incomes, expenditures/expenses, returns, inheritance or liabilities.

II. ORGANIZATION AND COMPETENCES FOR CONDUCTING FINANCIAL INSPECTION IN THE PUBLIC SECTOR

Article 6

(1) The activities related to financial inspection shall be carried out by the Sector for Financial Inspection in the Public Sector (hereinafter: the Sector), as a special internal organizational unit within the Ministry of Finance.

(2) The operations of the Sector shall be managed by the Chief Financial Inspector (hereinafter: chief inspector) who is directly accountable to the minister of finance.

Article 7

(1) The financial inspection shall be conducted by an inspector of public finances (hereinafter: the financial inspector).

(2) The financial inspector shall conduct financial inspection based on an authorization signed by the chief inspector.

1. Chief inspector

Article 8

The Chief Inspector shall carry out the following:

- manages the operations of the Sector,
- oversees the execution of the inspection activities,
- verifies the request, the information or the applications referred to in Article 10 of this Law and, on the basis of the established risk, issues the authorization for commencing the financial inspection,
- proposes methodological instructions and manuals for carrying out the inspection activities approved by Minister of Finance,
- engages external experts under the conditions and procedures established in an internal act,
- determine the needs of training of the inspectors and coordinate the relevant training programs, and
- cooperate and exchange information with other entities in the public sector and other relevant international institutions.

2. Financial inspector

Article 9

The financial inspector shall carry out the following activities:

- conduct financial inspection of the public funds management in accordance with the law,
- establish violations of laws, in particular those related to fraud and corruption, which cause financial damage to the public sector entities,
- analyze the causes and the circumstances which have led to violation of laws,
- determine the persons responsible for the occurrence of the discovered irregularities and determine the direct (indirect) responsibility,
- submit requests for initiation of a misdemeanor, that is criminal procedure and property and legal claim for offenders, when there are legal preconditions,
- file requests for initiation of a misdemeanor, that is, criminal procedure and property liabilities for the offenders, in the cases of legal prerequisites,
- control the implementation of the measures approved by the chief inspector related to the conducted financial inspection, and
- analyze the causes and the circumstances which have led to violation of the financial discipline, that is, non-performance, negligent, and untimely performance of the works when managing the public funds and make a proposal to the chief inspector for taking measures.

3. Basis for initiation of financial inspection

Article 10

Financial inspection shall be conducted on the basis of the following:

- request, information, or report of legal entities and natural persons supported by evidence,
- notification on, or records of violation of the procedures for financial management and control,

- report in the field of financial management and control,
- internal audit report,
- report of the State Audit Office,
- request by the Government of the Republic of Macedonia,
- request by ahead or an employee at the public sector entity,
- request by the Public Prosecution of the Republic of Macedonia, and
- request by the European Anti-Fraud Office (OLAF - Office Europeen de Lutte Anti-Fraude).

4. Criteria for exemption from conducting financial inspection

Article 11

(1) The financial inspector shall be exempted from conducting financial inspection if:

- in the last three years, he/she has worked or has been a member of a governing or supervisory board in the entity which is subject to financial inspection,
- in the last three years, his/her spouse or relative up to second degree has been a member of a governing or supervisory board in the entity which is subject to financial inspection,
- there are reasonable reasons that he/she has personal interests in the activities that are subject to control, and
- there are other reasons which raise suspicion regarding his/her impartiality.

(2) The financial inspector, immediately after disclosing the existence of one of the reasons for exemption referred to in paragraph (1) of this Article, shall, without any delay, terminate the inspection and he/she shall immediately notify, in writing, the chief inspector who decides upon the exemption or the continuance of conducting the financial inspection.

5. Status and salaries

Article 12

(1) The Chief Inspector and the Financial Inspectors have the status of administrative servants.

(2) The titles of financial inspectors are junior inspector, inspector, senior inspector and assistant chief inspector and chief inspector.

(3) A junior inspector may be an officer who meets the requirements for the title of Senior Associate under the Law on Administrative Servants. Junior Inspector may participate in the work of the inspection team, but cannot independently carry out a financial Inspection.

(4) An inspector may be an officer who meets the requirements for the title of Adviser from the Law on administrative servants.

(5) A senior inspector may be an officer who meets the requirements for the title of Head of Unit from the Law on Administrative Servants.

(6) Assistant Chief Inspector may be a servant who meets the requirements for the title Head of Department under the Law on Administration servants.

(7) The Chief Inspector may be a servant who meets the requirements for the title of the head of Department from the Law on Administrative Servants.

(8) The decisions for determining the titles of the paragraph (1) and (2) of this Article shall be adopted by the Minister of finance.

(9) Chief Inspector and Financial Inspectors have the right to a salary allowance, in the amount of 30% of the basic salary.

Article 12-a

Within the Department are also established working posts for performing expert-administrative affairs with titles Junior associate and Associate.

Article 13

A person may be appointed as chief inspector which meets the following conditions:

- is a citizen of the Republic of Macedonia,
- has not been sentenced with a final court decision for prohibition of performing a profession, activity or duty,
- has acquired at least 240 credits according to ECTS or completed VII / 1 degree economic or law faculty,
- at least five years of work experience in the field of finance or internal or external audit of which at least two years on managerial working post in the public sector, that is at least eight years of work experience in the field of finance or internal or external audit of which the at least three years on a managerial post in a private sector,
- active knowledge of one of the three most commonly used languages of the European Union (English, French, German), active knowledge of computer office programs for office work, passed exam for administrative management and other special working competencies set out in the systematic job positions for the respective work post and
- has a license for a financial inspector.

Articles 13-a

A financial inspector may be a person who:

- is a citizen of the Republic of Macedonia,
- has not been sentenced with a final court decision for prohibition of performing a profession, activity or duty,
- has acquired at least 240 credits according to ECTS or completed VII / 1 degree economic or law faculty,
- meets the other requirements set out in the Systematization Act,

- active knowledge of one of the three most commonly used languages of the European Union (English, French, German), active knowledge of computer office work programs and other work competences set out in the Systematization Act for the respective work post and
- has a license for a financial inspector.

Article 13-b

(1) Assistant Chief Inspector and Senior inspector, in addition to the conditions referred to in Article 13-a of this Law, shall have four years work experience in finance or internal or external audit out of which at least one year in public sector work post, i.e. at least six years work experience in the field of finance or internal or external audit out of which at least two years in a managerial post in a private sector.

(2) In addition to the conditions referred to in Article 13-a of this law, the Inspector shall have three years of work experience in the area of finance or internal or external audit.

(3) The junior inspector, in addition to the requirements of the Article 13-a of this law shall have two years of working experience in the field of finances or internal and external audit.

Article 13-c

(1) To obtain a license for financial inspector, the candidate shall take the exam for financial inspector.

(2) A condition for taking an exam for an inspector is the candidate must have at least two years of work experience in finance or internal or external audit after graduation.

(3) The exam is conducted under a Program on the way of taking the exam for obtaining a license for financial inspector.

(4) The program referred to in paragraph (3) of this Article shall be adopted the Minister of Finance.

(5) The exam for the financial inspector shall be conducted by the Ministry of Finance.

(6) The license for financial inspector shall be issued by the Minister of Finance.

(7) The license referred to in paragraph (2) of this Article shall be valid for a period of five years.

(8) Six months before the expiry of the validity of license the inspector again takes the exam.

(9) The exam referred to in paragraph (3) of this Article the inspector shall has the right to take it twice, and at the latest until the expiration date of the validity of the existing license.

(10) The financial inspector who shall not pass the exam is allocated to the working post corresponding to the title he has.

(11) The manner of taking the exam for the inspector as well as the form and content of the request for taking the exam and the license for the inspector are prescribed by the Minister of Finance.

Article 14

In the course of conducting the financial inspection, the financial inspector shall have the right to:

- unlimited access to all information and documents relevant to the inspection, including those classified with the highest degree, which are kept at the entity which is subject to inspection,
- unlimited access to the premises and the assets of the entity which is subject to financial inspection,
- carry out control of the lawful spending of the funds and the fund sources (assets and liabilities), the accounting systems and all documents, including those in electronic form,
- request from the entity which is subject to financial inspection certified copies of the documents related to the financial inspection within the set deadlines based on the written request referred to in Article 16 paragraph (2) of this Law,
- to require legitimization and hand-signed statements in case of irregularities,
- request from the entities which are subject to financial inspection to provide an insight into the banking accounts in the country and abroad within specified deadlines,
- request, within set deadlines, reports of the internal auditors, reports of the State Audit Office and other control bodies, which are kept at the entity which is subject to financial inspection,
- control and request information and certified copies of the documents from the legal entities or the natural persons outside the entity which is subject to financial inspection, related to the financial inspection,
- be informed by the competent court about the adopted decisions in relation to the measures taken based on the inspection activities, and
- prevent access of responsible persons to safe boxes, warehouses and other objects which are subject to the financial inspection, by sealing them in the presence of an official from the entity which is subject to the inspection.

7. Obligations of the financial inspector

Article 15

(1) The financial inspector shall act lawfully, timely and in accordance with The Code of Ethics for Administrative Servants and The Code of Ethics of the Inspectors.

(2) In the course of conducting the financial inspection, the financial inspector shall be obliged to inform the responsible person in the entity which is subject to financial inspection about the legal basis for conducting the inspection, the commencement of the inspection, except if otherwise determined by a law or except if the efficiency of the inspection is diminished by such notice, or for the purpose of protecting the public interest, life, and health of the people and property.

(3) The financial inspector shall inform the responsible person in the entity which is subject to financial inspection in an objective and clear manner about the results of the conducted inspection, the established irregularities and damages, and the reasons for their occurrence, as well as about the misdemeanors established on the basis of the facts and the circumstances.

(4) The financial inspector shall respect the confidentiality of all facts or circumstances that he/she has established during the process of conducting his/her duties, except in the cases established by law.

(5) In the event of the commencement of an investigative procedure from a competent authority in the inspection entity, the financial inspector stops taking any actions that may impede the investigation activities.

8. Obligations of the entity which is subject to financial inspection

Article 16

The entity in which the financial inspection is carried out is obliged to allow the financial inspector to perform the inspection unobstructed and to put on insight the information and documents needed for carrying out the inspection including:

- to provide him with the necessary conditions for an unobstructed work and determination of the actual situation and
- to allow him in a certain period of time the access to premises, products, documents or any other mean subject to the financial inspection.

(2) The entity which is subject to financial inspection shall be obliged, upon a written request of the financial inspector, within the deadline specified in the request of the inspector, to deliver or prepare accurate and complete data, reports, materials or other documents which are necessary for conducting the financial inspection.

(3) The financial inspector may order the entity which is subject to financial inspection to perform some activity during the inspection procedure for the purpose of fully establishing the actual situation and to determine a deadline for the performance of that activity.

(4) The entity which is subject to financial inspection shall not have the right to reject to provide the information from previously conducted financial inspections by other entities that conduct control, the documents and the data that are kept in paper or electronic form having a particular degree of confidentiality, in accordance with the provisions for protection of classified information and documents that contain personal data.

Article 17

The inspector cannot be trusted with other things that would be an obstacle to performing his core work or in any way would harm the reputation and impartiality in the performance of his function.

III. PROCEDURE FOR CONDUCTING FINANCIAL INSPECTION

1. Initiation of a procedure for financial inspection

Article 18

(1) Procedure for financial inspection may be initiated by the chief inspector based on Article 10 of this Law and upon an order of the minister of finance.

(2) Prior to the commencement of the financial inspection, the chief inspector shall inform the minister of finance.

(3) The chief inspector shall decide upon the initiation of financial inspection if he/she receives information which indicates reasonable suspicion of seriously bad financial management, fraud and corruption.

2. Reporting on conducted financial inspection

Article 19

(1) The financial inspector shall prepare a report on the conducted financial inspection containing findings supported by relevant evidence and he/she shall suggest measures which are submitted to the chief inspector.

(2) Upon approval of the report referred to in paragraph (1) of this Article by the chief inspector, the report shall be submitted to the head of the entity which has been subject to financial inspection, in order to give written comments within a period of 10 days as of the day of submission of the report.

(3) In the event of established irregularities, for the purpose of giving written comments within the deadline referred to in paragraph (2) of this Article, copies of the findings in the report and the attached evidence shall also be appropriately delivered to the persons in the entity whose activities have been subject to inspection.

(4) The financial inspector who has conducted the inspection shall, within a period of seven working days as of the day of receipt of the comments referred to in paragraphs (2) and (3) of this Article, prepare a report for the performed financial inspection in which it incorporates the accepted comments.

(5) Upon approval of the report referred to in paragraph (4) of this Article the Chief Inspector shall submit it to the head of the entity in which the financial inspection is performed, as well as to the persons referred to in paragraph (3) of this Article.

(6) The head of the entity in which the financial inspection is carried out, within 30 days after receipt of the report referred to in paragraph (4) of this Article shall be obliged in written form to report to the Chief Inspector of undertaken measures and activities.

(7) The Chief Inspector shall submit the report on the performed Financial Inspection to the Minister of finance in order to inform him/her.

3. Measures taken by the chief inspector

Article 20

(1) On the basis of the report on financial inspection in the public sector, the chief inspector may take the following measures:

- may request from the head of the entity which is subject to financial inspection to take necessary measures for review of the financial management systems in order to remove the irregularities and/or to remove the negative consequences of these activities,

- may request from a competent body or a head of entity which has been subject to financial inspection to terminate the activities that have led to an irregularity or have caused damage,
- may request from a competent body or a head of entity which has been subject to financial inspection to harmonize the internal acts with the regulation on financial management and control,
- may request from a competent body or a head of entity which has been subject to financial inspection to take measures for material compensation or disciplinary measures pursuant to law, and to report on their implementation within a specified deadline, and
- may block the bank accounts or the use of funds approved in the budget for a program, item or project until the removal of the established irregularities.

(2) In the cases referred to in paragraph (1) line 1 of this Article, the head of the entity which has been subject to financial inspection shall, within a period of 30 days as of the day of informing the chief inspector, be obliged to inform him/her of the taken measures and activities, in writing.

4. Informing the bodies

Article 21

(1) In the case of established irregularities in the course of conducting the financial inspection:

- at the users of funds of the Budget of the Republic of Macedonia and the funds, the information on the irregularities should be submitted to the competent minister and/or the body to which it is accountable,
- in the local self-government units and the City of Skopje and their indirect budget users, the information on the irregularities shall be also submitted to the mayor and the council of the municipality, that is, to the mayor and to the Council of the City of Skopje,
- in the agencies and the other institutions established by law, the public enterprises, the public institutions and the other legal entities that are owned by the state or in which the state is a shareholder, as well as in the non-profit organizations and the other legal entities and natural persons, the information on the irregularities shall be also submitted to the Government of the Republic of Macedonia, that is, to the mayor of the municipality and the City of Skopje or to the legal entity holding the controlling shares in the capital, and
- in a trade company where a bankruptcy or liquidation procedure has been initiated, the information on irregularities shall be submitted to the state administration body or a municipality which holds the ownership rights and to the bodies of the bankruptcy procedure.

(2) The chief inspector shall submit the information about the irregularities referred to in paragraph (1) of this Article to the minister of finance as well.

5. Annual report

Article 22

The Ministry of Finance to the Government of the Republic of Macedonia shall submit an annual report on the work of the financial inspection in the public sector in the preceding year, no later than the 31st of March in the current year.

Article 22-a

If the inspector finds that there is a basis for taking administrative and other measures of competence of other authority, shall be obliged, without any delay, to inform that authority.

IV. MISDEMEANOR PROVISIONS

Article 23

Fine in the amount of Euro 500 to 1.000 in Denar counter-value shall be imposed for a committed misdemeanor to the head of the inspected entity if:

- 1) fails to provide unobstructed performance of the inspection and fails to furnish the information and the documents required for conducting the inspection (Article 16 paragraph (1));
- 2) does not provide the financial inspector with the conditions for unobstructed operation and for determining the factual situation (Article 16 paragraph (1) line 1);
- 3) does not allow the financial inspector in a certain period of time to access to the premises, products, documents or any other asset that is subject of financial inspection (Article 16 paragraph (1) line 2);
- 4) upon a written request from the financial inspector, within the deadline determined by the inspector's request, do not submit or draw up accurate and complete data, reports, materials or other documents necessary to conduct the financial inspection (Article 16 paragraph (2));
- 5) upon the order of the financial inspector, does not performs activity during the inspection procedure (Article 16 paragraph (3));
- 6) refuses to provide information from previously performed financial inspections (Article 16 paragraph (4));
- 7) fails to take measures for review of the financial management systems for the purpose of removing the irregularities and/or removing the negative consequences of these activities (Article 20 paragraph (1) line 1);
- 8) does not terminate the activities which have led to an irregularity or caused damage (Article 20 paragraph (1) line 2);
- 9) does not harmonize the internal acts with the regulation on financial management and control (Article 20 paragraph (1) line 3); and
- 10) fails to take measures for material compensation or disciplinary measures in accordance with law and fails to inform about their implementation within the specified deadline (Article 20 paragraph (1) line 4);

Article 24

- (1) Regarding the misdemeanors referred to in Article 23 of this Law, misdemeanor procedure shall be conducted and a misdemeanor sanction shall be imposed by a competent court.
- (2) Regarding the misdemeanors prescribed by this Law, prior to filing a motion for initiation of a misdemeanor procedure, a settlement procedure by issuing a misdemeanor payment order shall be initiated in accordance with the Law on Misdemeanors.
- (3) If the financial inspector establishes a misdemeanor, he/she shall be obliged to issue a misdemeanor payment order to the offender.
- (4) The authorized official persons shall be obliged to keep records of the issued misdemeanor payment orders and of the outcome of the initiated procedures.
- (5) The following data shall be gathered, processed and kept in the records referred to in paragraph (4) of this Article: name and surname, that is, name of the perpetrator, permanent, that is, temporary residence, head office, type of misdemeanor, number of the misdemeanor payment order which is issued, and outcome of the procedure.
- (6) The personal data referred to in paragraph (5) of this Article shall be kept for five years as of the day of entry in the records.
- (7) The minister of finance shall prescribe the form and the contents of the misdemeanor payment order.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 25

- (1) As of the day of commencement of the application of this Law, the provisions of Article 51 of the Law on Public Internal Financial Control ("Official Gazette of the Republic of Macedonia" nos. 90/2009 and 12/11) shall cease to be valid.
- (2) The application of Article 13 paragraph (1) line 6 and Article 13-a paragraph (1) line 6, will begin six months after the entry into force of this law.

Article 26

This Law shall enter into force on the eighth day as of the day of its publication in the "Official Gazette of the Republic of Macedonia", and shall start to apply within 60 days as of the day of entry into force of this Law.