

# The Content and Terms of an Audit Services Agreement: Theoretical and Practical Criteria

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## ABSTRACT

The research goal of this article is to consider the form of an audit services agreement and to identify all the essential terms of this agreement. Through an analysis of legislation, doctrine and judicial practice, the following points were substantiated: 1) When entering civil law agreements, including an audit services agreement, the most optimal form is electronic. This provision is confirmed, inter alia, by the Recommendations on the conclusion of agreements in electronic form (approved by The Association of Russian Banks on December 19, 2012) 2) The audit services agreement should contain such conditions as the subject matter of the agreement, the terms for the provision of services, the price of the agreement, parties of the agreement and their rights and liabilities and responsibilities of the parties for violation of the obligation to provide audit services.

As a result of the study, the author found that the following relations are the subject matter of an audit services agreement: the implementation of an independent audit and the subsequent expression of the auditor (audit organization) opinion on the issue of reliability (transparency) and the compliance of existing accounting with financial legislation; the provision of other audit-related services that are directly listed in Clause 2 of Article 6 of the Law of the Republic of Tajikistan “On Audit Activities”.

The author substantiates the conclusion that the standard on the terms of an audit services agreement provided for in the Law of the Republic of Tajikistan “On Audit Activities” should have a priority over the general rules of Chapter 37 of the Civil Code of the Republic of Tajikistan.

**Keywords:** *audit services agreement, agreement subject matter, agreement terms, agreement price, agreement parties*

## 1. INTRODUCTION

At the conclusion of any agreement, including audit services agreement, special emphasis is placed on the will of the parties that enter into agreement relations, as this corresponds to the principle of freedom of agreement. For an audit services agreement, as well as for any business contract, the form of its conclusion is always essential.

The form of an entrepreneurial agreement is governed by general rules and regulations on the form of transactions and agreements, as well as special regulations regarding forms of other types of agreements.

Civil legislation of the Republic of Tajikistan provides for two forms of agreement conclusion – verbal and written, in addition, and even more complex – notarial. The civil legislation of the Republic of Tajikistan mainly recognizes the written form: Article 186 CC RT provides for a simple written form of a transaction of legal entities between themselves and with citizens.

The legislation does not limit the possibility of concluding an audit services agreement, and the possibility of concluding this agreement both in the form of a single document and in the form of exchange of documents by

mail, telegraph, teletype, telephone, electronic and other communications. The peculiarity of an audit services agreement is not in choosing the form of expression of the will of the parties to the agreement but in the manner of concluding the agreement.

The preceding procedure for concluding an audit services agreement is a letter of commitment. A letter of commitment must be preceded by an official proposal from the business entity requesting the provision of audit services.

The form and content of the letter of commitment of the audit organization are determined by the need to include a number of mandatory instructions and additional information in it according to the features of the upcoming audit and the wishes of the business entity to provide additional services related to the audit.

Clause 2, Article 466 of the Civil Code of RT provided an electronic form for concluding an agreement. “An agreement in a written form may also be concluded by exchange of documents by post, telegraph, teletype, telephone, electronic or other communication, which allows to establish reliably that the document comes from the agreement party.”

Since reporting in entrepreneurial activity has long been switched to electronic form (for example, tax reporting in

electronic form, electronic settlement of payments, etc.), so why not use the electronic form for concluding an agreement when providing audit services, because the auditor's opinion is contained in a material medium (electronic or magnetic drive).

An electronic document is stored, processed and transmitted using automated information and telecommunication systems, and will have legal force after confirmation by electronic digital signature. The creation and use of electronic digital signatures are regulated by several laws, among which the Law of the Republic of Tajikistan "On Electronic Digital Signature" dated July 30, 2007, No. 320, takes a special place. The mentioned law establishes the minimum requirements that are imposed on an electronic digital signature as a detail of an electronic document. And only observing these requirements, certain legal consequences ensue, namely, only subject to the legal conditions listed in the law an electronic digital signature will be recognized as the equivalent of a handwritten signature, which is affixed in documents on paper.

In the legal literature, the content of a civil agreement is interpreted in various ways.

"The content of an agreement is constituted by social relations regulated by the agreement," writes A. G. Bykov. Studying audit services, Mihriban COŞKUN ARSLAN and Serkan DEMİRKAN note that the terms of an agreement, the subject matter of an audit and its criteria that will be used by an auditor are of great importance for conducting the audit and preparing the auditor's opinion (Mihriban COŞKUN ARSLAN, Serkan DEMİRKAN, 2017).

Scientific literature presents various opinions regarding the essential terms of a services agreement: from recognizing the subject matter of an agreement as the sole essential condition to adding there the price and term conditions (E.A. Sukhanov, 2000; V. V. Vitryanskiy, 1998; E. G. Shablova, 2002; V. P. Tretyakova, 2018).

Based on the meaning of the provisions of civil law, an agreement is recognized concluded if the parties have reached concordance on the essential terms of the agreement. The paid audit services agreement must contain the following conditions:

- condition on the subject matter;
- a condition on the timing of the audit services provision;
- a condition on the payment for the audit services provision;
- a condition on the confidentiality of information received by the auditor in the course of the audit services provision;
- a condition on the rights and liabilities of counterparties;
- and the most important condition is the liability of the parties for violation of the obligation to provide audit services.

The subject matter of an audit services agreement indicates the expression of the auditor's opinion regarding the reliability and compliance of the existing accounting, as well as the financial statements of the organization with those requirements established by the legislation of the Republic of Tajikistan. The implementation of this activity is to have an agreed timeframe. In our opinion, the conditions for specifying the period of the audit will specify the direction of the contract and thereby determine the estimated scope of the auditor's service. However, the provisions of the current Law of the Republic of Tajikistan "On Audit Activities" do not provide for such regulation. Based on the foregoing, it seems to us that the following wording should be included in the subject matter of an audit services agreement:

- auditor shall express one's own opinion on the reliability (veracity) and compliance of accounting and financial (accounting) statements with the requirements established by the legislation of the Republic of Tajikistan for a specific period of time.

The next important condition established by the Civil Code of the Republic of Tajikistan is the condition on the timing of the provision of audit services. Some scientists also refer to the timeframe to the essential conditions of the paid services agreement (M.N. Surovtseva, 2018). Based on the provisions of civil law, the legal norms on contract can be applied to an audit services agreement. Such an application is possible provided that these standards do not contradict the provisions of Articles 797-803 of the Civil Code of the Republic of Tajikistan.

The next important point that deserves our attention is the issue of the reimbursement of an audit services agreement. Based on the provisions of the civil legislation of the Republic of Tajikistan, this type of agreement in all cases has to be concluded on a reimbursable basis.

Yu.V. Romanets, regarding the reimbursable basis of an audit services agreement, notes that if the agreement in question is concluded as gratuitous, it has to be declared invalid, since it implies such a provision by its nature. Consequently, we may assume that an audit services agreement would have been concluded without the inclusion of this condition."

It can be assumed that the provision on the reimbursable nature of an audit services agreement corresponds to the provision of Part 1 of Article 455 of the Civil Code of the Republic of Tajikistan, which states that an agreement under which one party must receive a fee or other consideration for the performance of its duties is reimbursable. Based on this, we assume that when providing audit services, an auditor as a contractor has to receive a fee or remuneration for the work performed.

## 2. MATERIALS

The main base of this study was the regulatory legal acts in the Civil Code of the Republic of Tajikistan, the Law of the Republic of Tajikistan "On Audit Activities" of July 22, 2013, the Law of the Republic of Tajikistan "On Electronic Digital Signatures" of July 30, 2007, and the Law of the Republic of Tajikistan "On Electronic Document" of May 10, 2002. Based on the Civil Code of the Republic of Tajikistan and the Law of the Republic of Tajikistan "On Audit Activities", there was a study of issues regarding the forms and contents of an audit services agreement, including the general rules for concluding agreements for the provision of paid services, the essential conditions provided for in agreements under consideration.

In the course of the research, we also studied the Standard for Auditing Activities "Letter of Commitment of the Audit Organization on the Consent to Carry Out an Audit" (AD 3/2002), and examined the judicial practice for this study: The decision of the Federal Arbitration Court of the Ural District of October 21, 2011 No. F09-6419/11//ConsultantPlus Reference Legal System; Resolution of the FAC of the North Caucasian District of September 28, 2012, in the case No. A53-17836/2011, Resolution of the FAC of the Volga District of June 9, 2012, in the case No. A57-15169/2011//ConsultantPlus Reference Legal System; Resolution of the FAC of the Ural District of June 7, 2013 No. F09-3482/13//ConsultantPlus Reference Legal System; Regulation of the Arbitration Court of the Moscow District dated November 27, 2015, No. F015-16849/2015//Consultant Plus Reference Legal System.

None the less important for this study were scientific approaches, which formed the theoretical basis for the study of the form and content of paid services agreements, including ones of audit services, among which the works of prominent scientists A.G. Bykov (1975), M.I. Braginskiy, V.V. Vitryanskiy (1999), O.S. Ioffe (2005) were of significant influence on the research.

Issues of the need to comply with the written form of a paid services agreement have been studied on the basis of works by S.N. Berdyshev (2014).

In the conditions of business volume, in addition to the documentary form, the computer-assisted conclusion of an agreement, that is, in electronic form, is of great importance (Yu.F. Bepalov, 2017).

Issues of the essential terms of a services agreement: from recognizing the subject matter of an agreement as the sole essential condition to adding there the price and term conditions were studied by E.A. Sukhanov (2000), V.V. Viryanskiy (1998), E.G. Shabalova (2002).

The subject matter of an audit services agreement and its definition were analyzed not only based on the laws of the Republic of Tajikistan and the Russian Federation but were also studied in the articles by L.L. Gorshkova (2009), S.A. Kemaeva and S.V. Kozmenkova (2015), M.V. Leus (2015), I.A. Rozhentsova (2017).

The recognition of the term (timeframe) as an essential condition of a paid services agreement, including audit services, was analyzed on the example of works by S.V. Zavyalova (2016), O.G. Lazarenkova, and E.Yu. Kargina (2011), E.A. Sukhanov (2008), A.A. Chumakov (2005). When studying the issue of agreement price as an essential condition for any reimbursable agreement, we studied the works by V. V. Vitryanskiy (1998), S.A. Denisov (1998), L.B. Sitdikova (2008), E.G. Shablova (2002), and in terms of price, procedure, and form of settlements of an audit services agreement, the work by of V.I. Kolesnikov (2004). Besides, this issue was studied by foreign scientists: Dan A. Simunic (1980), Hollis Ashbaugh (2004), Jolanta Dalia Staliūnienė (2014) and others.

## 3. METHODS

In this study, we used methods such as the structural method, with the help of which we made a study of the content and terms of an audit services agreement through the lens of the essential elements of such an agreement.

A functional analysis made it possible to study the matter from the standpoint of establishing significant circumstances affecting the validity of an audit services agreement.

A genetic method has made it possible to establish the factors underlying the origin of an audit services agreement.

The comparative legal research method allowed us to identify the general and the particular when comparing the elements of an audit services agreement in Russia and the Republic of Tajikistan under the conditions of a comparative analysis.

## 4. RESULTS

This work presents a lot of doctrines and judicial practice on the form of concluding an audit services agreement and its essential conditions, although there is a controversy around them. We will try to identify them, because from our point of view they are more justified and reasoned by judicial practice.

1. S.N. Berdyshev in his textbook cites the conclusions of the judicial practice of the federal arbitration courts of Russia on the need to comply with the written form of a paid services agreement. It seems to us important to pay attention to the indicated judicial practice, since the judicial practice of the Republic of Tajikistan is developing in the same direction.

According to the Resolution of the Federal Arbitration Court of the Ural District, "legal relations under a paid services agreement are regulated by Chapter 39 of the Civil Code of the Russian Federation." The provisions of the norms of this chapter do not see a written form for concluding an agreement as mandatory, therefore, this agreement can be concluded in writing, and if such an agreement is executed upon its conclusion, it can also be

verbal (Resolution of the FAC of the Ural District of October 21, 2011 No. F09-6419/11// ConsultantPlus Reference legal system);

- an analysis of the provisions of Chapter 39 of the Civil Code of the Russian Federation allows us to conclude that failure to comply with the simple written form of a paid services agreement does not entail its invalidity (Resolution of FAC of the North Caucasus District of September 28, 2012, in case No. A53-17836/2011, Resolution FAS of the Volga District of June 9, 2012, in case No. A57-15169/2011//ConsultantPlus Reference legal system);
- the absence of a written paid services agreement between the parties cannot be used as a basis for non-payment of the services actually provided "(Resolution of the FAC of the Ural District of June 7, 2013 No. F09-3482/13 // ConsultantPlus Reference legal system).

2. In conditions of developed business volume, in addition to the documentary form, computer-assisted contracting, that is, in electronic form, is gathering great importance.

As Yu.F. Bepalov notes in his comment to the Civil Code of the Russian Federation "On the issue of the conclusion of civil agreements in electronic form, the Recommendations for the conclusion of agreements in electronic form (approved By the Association of Russian Banks on December 19, 2012) deserve attention."

Paragraph 4 of this document states that a qualified electronic signature of the sender of the document (Clause 2 of Article 160 Civil Code of the Russian Federation) may be evidence of the compilation of documents by a contracting party. In this case, no additional evidence is required that the document comes from the party under the contract "(Yu.F. Bepalov, 2017).

3. Article 22 of the Law of the Republic of Tajikistan "On Audit Practices" is devoted to audit agreement. It seems to us that such an agreement should be called an audit services agreement, which is more adequate to the content of audit activities and the general rules of Chapter 37 of the Civil Code of the Republic of Tajikistan.

In accordance with Clause 2 of this article, "the audit agreement stipulates the purpose of the agreement, the terms, amount and terms of payment, audit standards, in accordance with which the audit is conducted, the rights, liabilities, and responsibility of the parties, confidentiality of information received, information about the license of the audit organization or individual auditor and other conditions agreed on by the parties."

Summarizing the foregoing, we can state that the legislator cited all essential conditions in Article 22 of the aforementioned Law, which have to be directly contained in an audit services agreement.

Analyzing the legislation of the Russian Federation in the field of audit activities and international audit standards, I.A. Rozhentseva (2017) noted that none of the above

regulatory documents identified the concept and content of an audit services agreement, and therefore, the general civil law should be applied to an audit services agreement, namely Chapter 39 of the Civil Code of the Russian Federation.

Consideration of this kind of civil agreement should begin with the definition of the agreement subject matter.

Examining a consulting services agreement, P. Mirzoyev notes that the subject matter of the agreement for the provision of information and consulting services is the provision of information (P. Mirzoyev, 2018).

Some scientists offer the following concept of a subject matter of an audit services agreement: "... analysis of accounting and other documentation of legal entities and drawing up opinions in the framework of the provision of audit services" (E. A. Sukhanov, 2008).

In her turn, L.L. Gorshkova, based on the provisions of Clause 2 of Article 1 of the Law of the Russian Federation "On Audit Activities", defines the subject matter of an audit services agreement as activities to conduct an audit and provide related audit services (L.L. Gorshkova, 2009).

M.V. Leus and I.A. Rozhentsova defines the subject matter of an audit services agreement as "the activities of the audit organization or an individual auditor in conducting the audit and the provision of audit-related services based on the results of which an auditor's opinion is issued" (M.I. Leus 2015, I.A. Rozhentsova, 2017).

Therefore, the determined subject matter of an audit services agreement should fully cover the specific services provided under this agreement.

4. Analyzing regulatory legal acts O.G. Lazarenkova and E.Yu. Kargina came to the conclusion that the period as an essential condition has to be agreed on by the parties in an audit services agreement, during which the auditor must prepare an auditor's opinion. So, the authors cite the norms from the Law of the Russian Federation "On Audit Activities", where auditor shall undertake to submit, within the time period established by an audit services agreement, one's auditor's opinion to customer. In addition, the deadline for the provision of audit services is also provided in Subclause E of Clause 2.8 of the Auditor Code of Ethics. Further, the authors note that the official explanation by the Ministry of Finance of the Russian Federation that the timeframe for the provision of audit services relates to the agreement essential conditions (O.G. Lazarenkova, E. Yu. Kargina, 2011).

5. When studying the issue of agreement price, there is always an issue of the procedure to determine it. For example, V. V. Vitryanskiy, S.A. Denisov, E. G. Shablova, and L.B. Sitdikova consider the price condition to be an essential condition for any reimbursable agreement.

Therefore, an audit services agreement has to establish the price as an essential condition defined in Article 800 of the Civil Code of the Republic of Tajikistan. The fact that the price is an essential condition of an audit services agreement is supported by the Resolution of the Arbitration Court of the Moscow District dated November 27, 2015, No. F015-16849/2015.

As Hollis Ashbaugh notes, an audit services agreement is unique as an auditor is hired and paid for by customer, and as a result of the audit, the auditor issues an auditor's opinion (Hollis Ashbaugh, 2004).

The terms of confidentiality of information obtained by the auditor during the audit also have its relevance among not only among domestic scientists but also among their foreign counterparts (Jonathan Frankle, Sunoo Park, Daniel Shaar, Shafi Goldwasser, Daniel J. Weitzner, 2012)

## 5. CONCLUSION

1. When choosing a form for concluding an audit services agreement, the parties to the agreement have the right to choose for themselves either a documentary or electronic (non-documentary) form. It is concluded that it is the electronic form that is the more acceptable form for concluding an audit services agreement. Since business entities (audited entities), and individual auditors or audit organizations themselves, use more up-to-date information technologies and, of course, each of them uses the Internet and e-mail, and since, as was noted above, business entities use electronic reporting programs in the provision of financial and tax reporting of accounting documents. In addition, the legislator adopted several laws, such as the Law of the Republic of Tajikistan "On Electronic Document", the Law of the Republic of Tajikistan "On Electronic Digital Signature", which directly regulate the relations that arise in the process of formation and use of documents in electronic form.

2. In our opinion, the following relations are the subject matter of an audit services agreement:

- the implementation of an independent audit and the subsequent expression of the auditor (audit organization) opinion on the issue of reliability (transparency) and the compliance of existing accounting with financial legislation;
- the provision of other audit-related services that are directly listed in Clause 2 of Article 6 of the Law of the Republic of Tajikistan "On Audit Activities".

3. In accordance with Clause 2 of this article, "the audit agreement stipulates the purpose of the agreement, the timeframe, amount and terms of payment, audit standards, in accordance with which the audit is conducted, the rights, obligations, and liability of the parties, the confidentiality of information received, information about licenses of the audit organization or individual auditor and other conditions agreed on by the parties."

Summarizing the foregoing, we can state that the legislator cited all essential conditions in Article 22 of the aforementioned Law, which have to be directly contained in an audit services agreement

An important condition of an audit services agreement is the liability of the agreement parties for violation of contractual obligations. As some scientists note: "In practice, the civil liability of the audit organization is determined by the contract for the audit, which should provide for special conditions for the division of responsibility of the parties, as well as the procedure for compensation for losses resulting from violation of contractual obligations" (M. Khojiev, O. Abdusalomov, 2018; I.N. Kuziev, 2016).

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