Audit & Consulting

Legal audit in France: notable characteristics

THE SPECIFIC TERMS OF THE LEGAL AUDITOR'S MISSION

For commercial companies, the legal duration of an auditor's mission is six financial years.

This mission is renewable for the audit company. There is, however, one exception: the same partner of the audit company cannot certify the accounts of a company listed on a regulated market, nor those of an entity that call on public generosity, for more than six consecutive financial years.

Only after a delay of two years can the auditor once more verify the accounts of this kind of organisation. If the legal auditor is an auditing firm, another signatory associate can be appointed, upon termination of the original tenure.

The mission is terminated if any of the following events occur:

- Upon the expiration of the mission (there is no tacit renewal);
- Dismissal (though only upon proper grounds) by shareholders during the Annual General Meeting (AGM) or by a judiciary ruling (following gross misconduct - disclosure of company secrets, for example - or because of an extended period of illness);
- The death of the auditor, or his striking-off from the professional body « Compagnie Régionale des Commissaires aux Comptes » (CRCC);
- The resignation of the auditor for just cause: ill health, irreconcilable differences with the company, etc.

These are the only acceptable reasons for the early termination of the tenure, in any other case the auditor must finish the six year tenure.

AUDITING STANDARDS

The role of the auditor during his statutory mission is to certify his client's accounts according to French GAAP (but not only).

Accounting standards in France

The auditor is obliged to certify financial statements according to the following applicable French accounting standards:

- Statutory accounts: "Plan Comptable Général" defined by decree n°99-03 of the "Comité de Réglementation Comptable" (CRC) ;
- Consolidated accounts of commercial entities and the public sector: by decree n°99-02 (29 April 1999) of the CRC;
- The company must present consolidated accounts, in accordance with international standards (IFRS), if they are listed on a European Union regulated market.

However, the auditor may also, as part of diligences directly related to his mission, be appointed to certify the financial statements established/issued according to a different set of standards (e.g. US GAAP or IFRS).

Audit standards applicable in France

The auditing standards for the legal audit is the "Norme d'Exercice Professionnel" or NEP, which is legally binding. The auditor will reference these standards in his report on the company's annual financial statements.

The legal auditor's fees must also respect certain legal directives regarding the ratio of hours to be worked, in order to ensure the quality and homogeneity of the auditing project; the hourly rate, however, is decided based on the result of negotiations between the client and the auditor. The legal auditor is regularly subject to quality control by the "Compagnie Nationale des Commissaires aux Comptes" or the H3C (a state body).

FUNDAMENTAL DEONTOLOGY

Auditors, as well as their collaborators, are bound by a code of secrecy regarding sensitive documents or information, which they may be required to deal with during the course of their assessment. This code of secrecy may only be breached under certain predefined conditions.

The auditor must respect a « principle of independence », characterized by the following limitations:

- All salaried employment is forbidden, with the exception of employment by an auditing firm, or of an educational nature;
- All commercial activity is forbidden, whether direct or indirect;
- The provision of advice or services, other than those which are directly related to the assignment undertaken on behalf of the client (or on behalf of firms controlling the client or

firms controlled by the client), is strictly forbidden. Thus, the auditor may not provide accounting or tax services, of any nature, to the client of whom he is the legal auditor;

- The auditor must not have any personal connection (whether emotional, financial or professional) with his client, the companies controlling his client or companies controlled by his client;
- The auditor cannot accept to become the legal auditor of a company when he or the auditing firm to which he belongs would be in a situation of auto-revision (i.e. certifying accounts which he helped to establish), which may compromise the auditor's judgment, liberty of expression or the execution of the audit.

Legal restrictions

The legal auditor or any of the signatory members of the auditing firm are forbidden from being named legal representative, or being employed, by any of their previous clients, for a period of five years following the cessation of their duties for that client.

Throughout this same five year period, they cannot be employed by any entity controlled by, or controlling, the company which they audited.

An employee or legal representative cannot become the legal auditor of the company in which they had been working, until five years after the cessation of their duties for that company.

Throughout this same five year period, they cannot become the legal auditor of any entity which holds at least a 10% stake in the company in which they had been employed or in any entity which is detained by at least a 10% stake by the company in which they had been employed.

THE AUDITORS PREROGATIVES

The right to be kept informed by the company

- The annual accounts, management report, consolidated accounts and the group report must all be made available to the auditor one month before the general meeting at the company's registered address.
- The auditor must be summoned to all meetings with shareholders, the board of directors and the supervisory board.

The right to investigate the company

The auditor may, at any time, request the company's statutory accounts, documents concerning the company's parent companies, or subsidiaries, as well as documents relating to any legal representatives and auxiliary agents employed by the firm.

The auditor has the right to convene a general meeting with the company's shareholders.

The auditor may only gather information from third parties, who carried out transactions on behalf of the company, with the legal representative's explicit permission.

THE "SPECIFIC ASSESSMENTS AND REPORTS" CONDUCTED BY THE AUDITOR

They consist in:

- Issuing a report concerning the conventions established between the company and its legal representatives, whether directly or indirectly.
- Issuing a report detailing the total amount paid to the highest earning employees in the company (only for joint-stock companies).
- Issuing a report detailing the internal control implemented by the board of directors, or the supervisory board, which is attached to the management report issued by the CEO (only if the corporation is listed on a stock exchange).
- Issuing a limited review report on the intermediate accounts (only if the corporation is listed on a stock exchange).

These "specific reports and assessments" will be transmitted to the shareholders during the next general meeting.

The auditor is obliged to implement an "**alert procedure**" if he discovers any irregularities likely to jeopardize the continued operations of the company.

If the auditor discovers any criminal activity, especially criminal activity conducted by employees or managers, he is legally obliged to disclose this information to the Attorney General ("Révélation au Procureur de la République" in French).

The auditor must do everything in his power to reveal and impede money laundering or terrorist financing.

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