Project: “Good Governance for Local Development in South Caucasus” project

PN: 19.2204.6-002.00

Mission: Assistance to the Audit Chamber of the Republic of Armenia for the development of a methodological guideline for distinguishing the features of an apparent crime during the audit

1. **Introduction**

The project “Good Governance for Local Development in South Caucasus” (GGLD) aims at strengthening the capacities of public institutions in the South Caucasus to the effect that they are better able to provide citizen-oriented services. The project advises partner institutions at national, regional (sub-national) and local levels in Armenia, Azerbaijan and Georgia on designing and implementing national reform processes, improving framework conditions and developing standards and guidelines. It supports the capacity development of key actors for citizen-oriented service delivery, primarily at local level. To promote citizen participation in local development processes, the project advises on the introduction of participation and complaint mechanisms and supports respective awareness raising for citizens. The project also supports the elaboration and implementation of strategies and instruments for regional development and local economic development. As a part of the German Caucasus Initiative, the project promotes professional exchange of knowledge and experiences between the countries of the South Caucasus.

The project is commissioned by the German Federal Ministry of Economic Cooperation and Development (BMZ). In Armenia it is co-funded by the Swiss Development Cooperation (SDC) and carried out in close cooperation with the Ministry of Territorial Administration and Infrastructure (MTAI) as the main political partner.

One result area of the project is oversight system and external control and the Audit Chamber is a key institution in this regard. The Audit Chamber is the Armenian Supreme Audit Institution with unique constitutional mandate to audit municipal budgets and public property management by municipalities.

**Context of the assignment**

According to the Armenian Constitution the auditing of financial and economic activities of local self-government bodies of the Republic of Armenia (hereinafter referred to as: the “Local self-government bodies”) is carried out by the Audit Chamber of the Republic of Armenia (hereinafter referred to as: the “AC”). The Audit Chamber of the Republic of Armenia is a Constitutional Agency (art 198) with its unique mission in the system of the checks and balances among government branches. Part 5 of Article 5 of the Law on the Audit Chamber of the Republic of Armenia stipulates that if during the audit process the Audit Chamber finds that the committed operational act by the auditee contains elements of an apparent crime, relevant materials shall be sent immediately, but not later than within three days, by the decision of the Audit Chamber, to the RA General Prosecutor's Office. In this regard, the Audit Chamber may terminate the audit. In 2019, during the activities carried out by the Audit Chamber, 21 cases were sent to the RA General Prosecutor's Office, and the same indicator for 2018 was 12. In total, there is a legal assessment for 17 of those 33 cases. This relatively large number doesn’t necessarily mean also that the types and features of these cases are different. Here there is a need also for broad communication and publicity of audit and investigation results and recommendations in order to minimize especially non-deliberate wrongdoings in public financial management.

The diversity of auditing facilities and the effectiveness of the unified quality management system for auditing procedures can be significantly enhanced, when the features of an apparent crime often encountered by auditors during the audit are substantiated in the audit procedures. At the same time, the necessity of making relevant decisions by the RA Audit Chamber in this sphere, the short period envisaged, create a demand for possible regulation and standardization of the process. In this regard, the diversity of international experience, especially in developing countries with public financial management systems, the peculiarities of the Armenian legal system, as well as the existing control and auditing systems in the field of public finance, require appropriate guidance to regulate the effectiveness of the audit and its connection and more precise interaction mechanisms with law enforcement agencies.

There is an additional need for specific regulations in the RA Audit Chamber on qualification of obvious features of crime and further procedures, due to the mandate of the RA Audit Chamber in terms of local self-government bodies and significant limitation of resources for fulfilling of this mandate. The diversity of funding sources for community budgets and the politically neutral and professional conclusions and recommendations that result from the audit to increase the effectiveness of community property and financial management are particularly important in community governance reforms, and systematic efficiency can be further enhanced by the clear cut delimitation of the audit and law enforcement agencies’ actions on the one hand, and by their regulated cooperation on the other hand. This would create preconditions for reducing the corruption risks in public financial management system and in central, territorial and local self-government bodies.

The mandate of the AC to conduct an audit in local self-government bodies is fundamental and derives directly from the RA Constitution. The AC conducts the audit in local self-government bodies with a risk-based methodology, according to which the riskiest local self-government bodies (object of the audit) and the riskiest directions (subject of the audit) are selected. For example, the Municipality of Gyumri (second largest city) was audited in 2019, and already in 2020, the Municipality of Vanadzor (third largest city) will be audited. In 2018, at the suggestion of the Ministry of Territorial Administration, Norakert community of the RA Armavir region was audited. The results of this audit were sent to the RA General Prosecutor's Office by the AC, and a criminal case was initiated.

In general, audit in local self-government bodies is carried out within the limits of all the powers given to the AC by the Constitution and detailed in the respective law, i.e. there is no significant limitation that will prevent the AC from using all the lawful actions during auditing local self-government bodies. However, taking into account that the constitutional mandate given to the AC also includes the state budget and the state property, and that part itself is quite large, it turns out that the audit of local self-government bodies falls short of the best expectations, especially considering strictly limited human and technical resources of the AC.

The analysis of the annual reports of the General Prosecutor's Office of the Republic of Armenia shows that the statistics of corruption crimes committed by various officials in local self-government bodies is worrying. In 2019 alone, 113 local government officials were prosecuted, 74 of whom are community leaders. The fact that 113 local government officials have been prosecuted for a year really proves that there is a high risk of corruption schemes in local self-government bodies. There is a professional opinion in this regard that majority of these cases have similar roots and effective communication of the topic and knowledge increase of the topic might critically support the reduction of non-compliant financial management especially at local level.

Recently, various publications have been published in press about criminal violations committed in local self-government bodies. There are cases when the regional administration itself initiates a certain study; in some cases, the State Control Service carries out studies on the basis of citizens' applications. However, proving the above and the expected public benefits arising from it, it should be noted that a systemic approach should be shown in local self-government bodies. Taking into account the constitutional mandate of the AC to conduct audits in local self-government bodies, it is necessary to pay more attention to this tool, through which it will be possible to significantly improve the actions of ensuring legality and increasing efficiency in local self-government bodies. For example, some internal control mechanisms can be outlined by the AC and applied by local self-government bodies under supervision of territorial government bodies.

The AC is taking steps to fill the “gap” by raising the efficiency of audit in local self-government bodies. Certain qualitative steps (related to the audit) can further contribute to identification of issues and problems in regard to legality, efficiency, cost-effectiveness and economy in the management and use of community resources, as well as in detection of corruption schemes.

The AC tries to make the audits in local self-government bodies more systematic and targeted, especially paying attention to the detection of possible cases of fraud through corruption schemes. In this way, it will be possible to prevent possible crimes in other places. This can be done in the best way by publishing the results of the audit, in parallel cooperating with parliamentary forces, law enforcement bodies and active units of the society (media and specialized civil society organizations).

During 2020, the AC has significantly improved the methodology for conducting audits. Trainings are continuously carried out in the AC. Working guidelines are being developed to increase the effectiveness of the audit. Also, the AC introduces proper mechanisms for quality management and control.

At the present stage, the AC intends to increase the efficiency of cooperation with the RA General Prosecutor's Office in terms of audits in local self-government bodies, considering especially the following:

According to Clause 7 of Part 4 of Article 36 of the RA Law on the Audit Chamber, the auditor is obliged to immediately inform the Audit Chamber in case of suspicion of apparent features of crime during the audit in local self-government bodies, and Part 5 of Article 5 of the same law, if during the audit the Audit Chamber finds that the committed act contains features of an apparent crime, relevant materials, by the decision of the Audit Chamber, shall be sent to the Prosecutor General's Office of the Republic of Armenia immediately, but not later than within three days.

In this respect, the toolkit of the AC needs to be improved. At present, there is no methodological manual that will allow the auditor to identify a possible crime suspicion during the audit. Also, there is no manual on what criteria the AC should be guided by, if the auditor himself/herself saw that suspicion and has immediately sent the materials to the AC, so that the latter would decide whether to send the materials to the Prosecutor's Office or not.

Thus, there is a need to create a comprehensive methodological manual that will be useful for both the auditor and the member of the AC to see and qualify the substantiation of the suspicion of features of crime in the discrepancies and distortions revealed through the audit in local self-government bodies. It shall be noted that auditor and AC member are not trained or specialized in criminal law or proceedings.

This methodological manual will significantly improve the efficiency of the audit, as well as will naturally contribute to joint actions in the fight against corruption in any level of governance, especially local self-government bodies.

1. **Purpose**

The purpose of the assignment is to support the RA Audit Chamber in developing a methodology, procedure and guideline based on the international best practice and the local legislation and business practice, which will help auditors identify the features of an apparent crime, document it and propose a possible scenario to the RA Audit Chamber, even termination of the audit and submission of documents to the law enforcement agencies.

The below tasks are envisaged to be implemented in order to bring the final deliverable of the draft methodological guidance for procedures and documentation in case if an apparent crime is found during an audit:

1. Study of the international best practice of Supreme Audit Institutions in distinguishing the features of an apparent crime during the audit, presentation of the limits of applicability for Armenia
2. Analysis of the existing legal regulations and their practical implementation for the submission of a report on the features of an apparent crime during the audit, presentation of the process (alternative processes) applicable to the RA Audit Chamber
3. Study of the auditing procedures of the RA Audit Chamber and submission of a proposal for making additions and/or amendments to the respective regulations
4. Development of a draft methodological guideline for distinguishing the features of an apparent crime during the audit by the RA Audit Chamber and follow up procedures
5. Initiating a series of discussions on a draft of the guideline with stakeholders, including prosecutors, investigative agencies and executive agencies and local self-government entities.
6. **Main tasks, scope of responsibility, expected results and deadlines**

The consultancy will include, but is not limited to the following points:

1. Tasks

* Study the international best practice in distinguishing the features of an apparent crime during the audit, to prepare a relevant reference and as a result of the discussion with the RA Audit Chamber, to outline the scope of application of the international experience in legal relations and in business culture in Armenia.
* Analyze the legal regulations and business practice in Armenia for submitting a report on the features of an apparent crime in the course of professional activity and submit a reference on the procedure (alternative procedures) that may be applied by the Audit Chamber of the Republic of Armenia.
* Examine the auditing procedures of the RA Audit Chamber and the internal processes and prepare a reference for implementation of necessary additions and changes in the existing regulations by the RA Audit Chamber.
* Based on the formed references and studies and the comments and suggestions submitted by the RA Audit Chamber, develop a draft methodological guideline for the RA Audit Chamber for distinguishing the apparent crime features during the audit, discuss and prepare a final edited version.
* Strictly adhere to the provision of draft legal acts, as well as ensure the timely observations and recommendations by the AC and GIZ.
* Collaborate closely with the AC and GIZ, establish contacts with public institutions to participate in possible discussions and meetings initiated by the AC.
* Carry out research and studies for the development of the above documents.
* Involve other relevant structures and take the initiative to strengthen the arguments and ensure possible synergies.
* Provide prior professional advice on improving the existing legal framework and reflect positive international experience on all intended outcomes.
* Cooperate directly with the AC, all level of government agencies and local self-government bodies and GIZ throughout the assignment.

1. Beneficiary

The main beneficiary of the results of the assignment is the AC and the generally active civil society in anti-corruption measures.

1. Resources

The contractor is expected to provide the following resources:

1. Project manager - 15 days resource for presenting the international experience and regulations. The international expert is supposed to spend 15 days in his/her country.
2. National project manager - 60 day resource for the following tasks:
   1. Coordinate the professional work of experts, summarize and present the expected references.
   2. Organize the process of discussing the comments and suggestions submitted by the AC and reviewing the prepared references and drafts.
3. Project legal advisor - 30-day resource for presenting the existing legal framework, making necessary references and edits in the documents being developed, studying and presenting the practical culture in the legal system.
4. Project assistant - 15-day resource for the following tasks:
   1. Organizing necessary meetings, working discussions and ensuring communication with project stakeholders.
   2. Preparing references, reports and financial documents, ensuring communication and coordination of organizational issues.
5. Project translator - 10 days resource for translation of documents prepared by the international expert and ensuring communication.
6. Travel

No travel expenses are envisaged for the experts involved in the assignment.

*Expected results and deadlines*

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| Tasks and results  (All expected results will be provided in Armenian) | Proposed Timeline |
| Reference on the international best practice in distinguishing the features of an apparent crime during the audit and also the scope of application of the international experience in Armenia outlined as a result of the discussion with the RA Audit Chamber. | Draft: 28.12.2020  Final: 25.01.2021 |
| Reference on the legal regulations and business practice in submitting a report on the features of an apparent crime in the course of professional activity in Armenia, as well as the procedure (alternative procedures) that may be applied by the RA Audit Chamber. | Draft: 20.01.2021  Final: 10.02.2021 |
| Reference for the implementation of necessary additions and changes in the existing regulations by the RA Audit Chamber and audit procedures, internal processes of the RA Audit Chamber. | Draft: 10.02.2021  Final: 25.02.2021 |
| A draft methodological guideline for distinguishing the features of an apparent crime during the audit by the RA Audit Chamber and follow up procedures taken by the AC based on the formed references and studies and the comments and suggestions submitted by the RA Audit Chamber. | Draft: 15.03.2021  Final: 25.03.2021 |

It is planned to involve five experts with relevant experience for the implementation of the assignment.

1. **Qualification and skills requirement**

Potential consultants must meet the following requirements:

1. The project manager must have at least 20 years (ideally 25 years) experience (academic and practical) in law enforcement and / or external audit (ideally experience in both respects). He/she should have experience in providing international advice in terms of legal regulations in the field of external audit. The mentioned experience in the region - in the South Caucasus - would be ideal.
2. The national project manager must have more than 10 (ideally 15) years of experience in financial auditing and public administration. He/she must have experience in developing legal regulations in the field of external audit. A consulting experience regarding external audit of Armenia will be a significant advantage for him/her.
3. The legal advisor of the project must have more than 10 (ideally 15) years of experience in law. He/she should have experience in external audit legal aspect and financial criminal investigation in the legal system or experience in relevant consulting activities.
4. The project assistant should have more than 5 years (ideally 10) of experience in logistics and management of international and national staff or administration.
5. The translator must have more than 5 years (ideally 10) of experience in translating from English or German into Armenian and vice versa. The translating experience in the field of legal system and audit is considered a significant advantage in this regard.