

# LAW OF THE REPUBLIC OF AZERBAIJAN

## on Compulsory Insurance of Auditor's Professional Liability

This law governs relations in compulsory insurance of professional liability of individuals and legal entities providing auditing services in the Republic of Azerbaijan before the audited entity, and specifies its organizational, legal, economic principles.

### Article 1. Main definitions

The definitions used in this law shall have the following meanings:

- 1.1. auditor – an individual or legal entity providing auditing services in the Republic of Azerbaijan as specified by the legislation;
- 1.2. subject of audit – an individual or legal entity who has signed an audit contract with the auditor to conduct the audit;
- 1.3. object of compulsory insurance of auditor's professional liability – liability of the auditor for the damage caused to the subject of audit by the provided service;
- 1.4. auditor's professional liability – liability of the auditor on compensating the damage caused to the subject of audit by auditing service;
- 1.5. insurer – a legal entity established to carry out only insurance and reinsurance activities and obtained special permission (license) as specified by the legislation;
- 1.6. policyholder - an individual or legal entity engaged in auditing activities in accordance with the procedure established by law who has concluded a contract of professional liability insurance with the insurer;
- 1.7. insurance event – an event stipulated in the contract of compulsory insurance of professional responsibility of the auditor, on the basis of which the policyholder is paid out an insurance indemnity;
- 1.8. insurance premium – the amount of money paid by the policyholder to the insurer under the contract of compulsory insurance of professional liability of the auditor (hereinafter - insurance contract);
- 1.9. amount of insurance – certain extent of the insurer's liability to compensate for the damage caused to the subject of audit by the audit service;
- 1.10. insurance indemnity – the amount of money payable to the policyholder by the insurer in the extent of insurance amount when an insurance event occurs.

### Article 2. Legislation on compulsory insurance of auditor's professional liability

- 2.1. Legislation on compulsory insurance of auditor's professional liability includes the present Law, the Civil Code of the Republic of Azerbaijan, the laws of the Republic of Azerbaijan "On Insurance Activity", "On Compulsory Insurance", "On Auditing Service" and other normative legal acts.

- 2.2. In case of difference between this law and international contracts wherein the Republic of Azerbaijan is one of the parties, provisions of international contracts shall prevail.
- 2.3. *Relations in the field of compulsory insurance of auditor's professional liability in the Alat Economic Zone shall be regulated in accordance with the requirements of the Law of the Republic of Azerbaijan "On the Alat Economic Zone".*

### **Article 3. Insurance events causing auditor's professional liability**

- 3.1. Insurance events causing the auditor's professional liability shall include:
  - 3.1.1. breach of requirements of normative legal acts, standards, regulations adopted in the field of auditing service;
  - 3.1.2. failure to detect mistakes and distorted data in *financial* and tax reports;
  - 3.1.3. failure to provide right recommendations to eliminate the detected errors and distortions;
  - 3.1.4. performance of work of poor quality and/or failure to meet deadlines;
  - 3.1.5. breach of the principle of confidentiality.

### **Article 4. Exemption of the auditor from professional liability**

- 4.1. Causing damage shall not be deemed an insurance event in the following cases:
  - 4.1.1. In the event of damage resulting from the audited entity's failure to perform the duties stipulated in the contract between the audited entity and the auditor;
  - 4.1.2. If data received from relevant government agencies and other related parties gives rise to an incorrect audit opinion.

### **Article 5. Rights and obligations of the insurer**

- 5.1. The insurer shall be entitled to:
  - 5.1.1. assess the insurance risk of the auditor's professional liability together with the policyholder or entrust this issue to an independent professional appraiser;
  - 5.1.2. participate in the resolution of disputes on compensation by the policyholder for damage caused to the audited entity as a result of the provision of audit services;
  - 5.1.3. determine the extent of damage caused by the insurance event, get information about it from the policyholder, visit the facility where the insurance case occurred or supposed to have occurred in order to assess the damage, obtain documents confirming the event and invite experts on relevant fields;

- 5.1.4. in cases which entail an increase in insurance risk after the conclusion of the insurance contract, demand from the policyholder to change the terms of the contract and increase insurance premiums in the manner prescribed by law;
  - 5.1.5. refuse to pay the insurance indemnity for compulsory insurance of the auditor's liability in cases stipulated in Article 11 of this Law.
- 5.2. The insurer shall be obliged to:
- 5.2.1. get the insurance premium from the policyholder and issue an insurance certificate;
  - 5.2.2. make relevant amendments to the insurance contract or conclude a new insurance contract upon request of the policyholder, while taking significant measures to reduce the risk of occurrence of an insurance event;
  - 5.2.3. make an insurance payment when an insurance event occurs;
  - 5.2.4. give privileges to the policyholder provided in Article 12 of this law;
  - 5.2.5. not to disclose confidential data about the policyholder and subject of audit;
  - 5.2.6. protect legal interests of the policyholder;
  - 5.2.7. *the insurer may not refuse to conclude a compulsory insurance contract with a person who has applied for insurance of the relevant risks and who has an insurable interest.*
- 5.3. The insurer may have other rights and obligations under the contract of compulsory insurance in accordance with law by the agreement of the parties.

## Article 6. **Rights and obligations of the policyholder**

- 6.1. The policyholder shall be entitled to:
- 6.1.1. independently choose the insurer;
  - 6.1.2. benefit from privileges provided for in Article 12 of the law;
  - 6.1.3. demand the interpretation of insurance contract provisions from the insurer;
  - 6.1.4. claim the insurance payment when an insurance event occurs;
- 6.2. The policyholder shall be obliged to:
- 6.2.1. conclude an insurance contract with the insurer;
  - 6.2.2. pay the insurance premium within the term, in the amount and manner provided for in the insurance contract;
  - 6.2.3. provide the insurer with information on other insurance contracts (coinsurance);
  - 6.2.4. take measures for preventing damage and its decrease;
  - 6.2.5. not to breach the conditions of the insurance contract;

- 6.2.6. notify the insurer within the term and in the manner as specified in the insurance contract in case of occurrence of an insurance event;
  - 6.2.7. allow the insurer to take part in the resolution of dispute in connection with payment of insurance indemnity for the damage caused to the subject of audit as a result of auditing service;
  - 6.2.8. not to assume any direct or indirect obligations to regulate demands of third parties without official consent of the insurer.
- 6.3. The policyholder may have other rights and obligations under the contract of compulsory insurance in accordance with law by the agreement of the parties.

#### **Article 7. Insurance contract and insurance certificate**

- 7.1. According to the insurance contract, the insurer undertakes to make an insurance payment under the claim for compensation put forward by the subject of audit for damage caused by an insurance event, and the policyholder undertakes to pay the insurance premium within the specified periods.
- 7.2. The insurance contract shall be signed with the insurer who obtained a special permission (license) as stipulated by law.
- 7.3. Unless otherwise provided in the insurance contract, the insurance contract is deemed to have taken effect from the moment the insurance premium is paid.
- 7.4. The insurance contract is concluded at least for one year.
- 7.5. The document confirming the conclusion of the insurance contract is an insurance certificate. The insurance certificate is issued on the day when the insurance premium is paid.
- 7.6. The insurance contract is terminated in the following cases:
  - 7.6.1. when the insurer completely fulfils its obligations before the policyholder;
  - 7.6.2. when the policyholder fails to pay the insurance premium within the term and in the amount as specified in the insurance contract;
  - 7.6.3. when the insurer is liquidated in the manner stipulated by law;
  - 7.6.4. when there is an effective court decision on considering the insurance contract invalid;
  - 7.6.5. In other cases provided in the legislation.

## Article 8. **Determination of insurance amount, insurance indemnity and insurance premium**

- 8.1. The amount of insurance shall be determined under the insurance contract in accordance with the assessment of the insurance risk of the auditor's professional liability.
- 8.2. The insurance amount shall be determined to fulfil insurance indemnities when an insurance event occurs during the period of insurance.
- 8.3. Determination of insurance risk and calculation of the insurance amount shall be based on the following criteria:
  - 8.3.1. penalties received by the policyholder and its employees for faults and defects they had previously;
  - 8.3.2. insurance indemnity made to the subject of audit in previous years and information on its essence;
  - 8.3.3. the policyholder's material and technical base (including software for audit service);
  - 8.3.4. the policyholder's regulatory framework;
  - 8.3.5. type and cost of audit service;
  - 8.3.6. scope and period of fulfilment of audit service.
- 8.4. The insurance indemnity is made in the amount of actually caused damage and shall not exceed the final limit of the insurer's liability.
- 8.5. The insurance amount shall be determined by the insurer according to documents (an expert opinion, if necessary) stipulated by Article 9 of the law, together with the claimant.
- 8.6. If the policyholder has several valid insurance contracts for the same risks, the damage is reimbursed by the insurers proportionally.
- 8.7. After the implementation of the insurance indemnity for liability insurance, the insurance amount shall be reduced in the amount of the payment and appropriate notes shall be made in the insurance contract. At the request of the policyholder, the previous insurance amount may be restored by paying an additional premium for the remaining period.
- 8.8. In the event of an insurance event stipulated by the insurance contract, the subject of the audit may bring a claim against the policyholder, and the policyholder may bring a claim against the insurer for damages.
- 8.9. The amount of insurance premiums shall be determined with consideration of the insurance amount, provided that it does not exceed 5% of the insurance amount, and is paid in full in one instalment. Base insurance rates shall be established by the relevant executive authority. The insurer shall form insurance reserves in the manner prescribed by law from the funds remaining after deductions for conducting

works in the amount of 10% of received insurance premiums and fees paid to the *financial markets supervision authority*.

8.10. The insurance amount for compulsory insurance of the auditor's professional liability shall not be less than the amounts indicated below:

8.10.1. for individuals engaged in auditing activity - 1000 manat;

8.10.2. for legal entities engaged in auditing activity - 3000 manat.

## Article 9. **Procedure for application to receive the insurance amount**

9.1. The subject of audit shall apply to the policyholder with the purpose of claiming the insurance amount upon the occurrence of an insurance event. If the policyholder acknowledges the infliction of damage, it shall notify the subject of the audit in writing about it taking into account the terms of claiming the insurance payment specified in the insurance contract, and shall submit the following documents to the insurer:

9.1.1. application indicating the requisites of the insurance item, causes of the insurance event, the size and results of the damage;

9.1.2. copy of the insurance contract and insurance certificate;

9.1.3. documents on claims brought against the policyholder in connection with the insurance event;

9.1.4. the amount of damage caused to the audited entity and documents confirming the direct expenses of the audited entity in connection with the damage;

9.2. The insurer issues the policyholder a document on the list of documents received and the date of receipt.

9.3. The insurer shall make insurance payment within 10 days upon receiving the documents provided for in Article 9.1 of this law.

9.3.1. *The insurer shall pay a penalty at the rate of 0.1 percent of the amount of insurance indemnity for each delayed day in case of failure to pay the insurance indemnity within the period specified in Article 9.3 of this law.*

9.4. If the policyholder does not submit the relevant information to the subject of audit during the period specified in Article 9.1, the subject of audit may apply to the court to get the insurance amount.

## Article 10. **Compensation for damage**

10.1. The insurer shall pay the insurance amount upon the policyholder's request or a court decision that has come into force.

10.2. An income lost in connection with insurance event shall not be paid by the insurer according to law.

#### Article 11. **Grounds for refusal to pay insurance indemnity**

11.1. The insurer may refuse to pay insurance indemnity in the following cases:

11.1.1. if the policyholder does not pay the insurance premium;

11.1.2. if the audited entity has suffered damage as a result of its deliberate actions (if its fault in the occurrence of the insurance event is proved);

11.1.3. if other grounds are determined by the legislation.

11.2. Decision on refusal to pay insurance indemnity shall be officially provided to the audited entity by indicating the reasons of refusal.

#### Article 12. **Granting discounts to the policyholder**

12.1. If no insurance event occurs during the period provided in insurance contract, the policyholder shall be refunded 10% of the insurance premium.

12.2. The insurer shall pay the insurance discount specified in Article 12.1 of this Law within 10 days after receiving corresponding documents.

12.3. Inclusion in income and exclusion from income of the compulsory insurance premium shall be regulated by the Tax Code of the Republic of Azerbaijan.

#### Article 13. **Insurance reserves**

The insurer shall create insurance reserves at the expense of insurance premiums in the manner prescribed by law in order to ensure the fulfillment of obligations to policyholders.

#### Article 14. **Liability for violation**

The parties to the insurance contract shall be liable for violation of the law in the manner prescribed by law.

#### Article 15. **Dispute resolution**

According to this law, if the parties do not reach an agreement on disagreements arising from the insurance contract, disputes shall be resolved by the court.

Article 16. **Entry of the law into force**

This law shall enter into force from the date of its publication.

**Ilham Aliyev**  
**President of the Republic of Azerbaijan**

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