

Boundary between statutory auditing and consulting services, case of information technology services: comparative law

Frontière entre commissariat aux comptes et prestations de consulting, cas des services de systèmes d'information : droit comparé

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Abstract

The statutory auditor is entrusted with a mission of general interest, its primary goal is to certify the annual accounts of companies by verifying the fairness and regularity of the accounts and financial statements, while adhering to the principles of independence and non-interference in management decisions, which are widely accepted both nationally and internationally. However, while performing its main mission, the statutory auditor may, in various situations, become dependent on the audited company, particularly in terms of appointment, remuneration and access to information. This dependence may intensify when providing non audit services. This situation highlights the need to strengthen the legal framework and safeguard mechanisms to ensure the auditor's independence and uphold the credibility of the audit mission. Thus, this article aims to analyze the approaches adopted by different regulators to regulate and protect auditor independence when providing non-audit-services to audit clients, especially in the field of information technology.

Keywords: Statutory audit; Non-audit services; Audit independence; Information Technology services; Regulation

Résumé

L'auditeur légal est investi, de par son statut de tiers digne de confiance d'une mission, qualifiée par la majorité des régulateurs, d'intérêt général, dont l'objectif majeur tend à certifier les comptes de l'entité auditée en se prononçant sur l'image fidèle de ses comptes et de ses états financiers. Ce professionnel d'audit, et lors de l'exercice de sa mission, est tenu de se conformer aux principes de non-immixtion dans la gestion et d'indépendance, lesquels font l'objet d'un consensus général, aussi bien à l'échelle nationale, qu'internationale. Toutefois, ce dernier reste, dans de nombreuses situations, dépendant des dirigeants et de la société auditée, notamment, en termes de nomination, de rémunération, et d'accès à l'information. Cette dépendance s'accroît de plus en plus à la suite de la fourniture de services non liés à sa mission principale d'audit légal. Cette situation met en évidence la nécessité de renforcer l'arsenal juridique et les mécanismes de sauvegarde afin de préserver l'indépendance de l'auditeur et d'assurer la crédibilité de sa mission. Ainsi, cet article vise à analyser les approches adoptées par différents régulateurs pour encadrer et préserver l'indépendance de l'auditeur lorsqu'il fournit des services autres que l'audit à un même client d'audit, en particulier dans le domaine des systèmes d'information.

Mots clés : Audit légal ; Services autres que l'audit ; Indépendance de l'audit ; Services de systèmes d'information ; Régulation

Introduction

The need for high-quality financial information is becoming increasingly crucial in the management of both public and private organizations.

In light of this, the significant role of the statutory auditor emerges, with the objective of enhancing the reliability of financial information by minimizing information asymmetry between information holders (Organization executives) and stakeholders such as shareholders, partners, banks, and creditors.

Thus, the statutory auditor holds a key position within the organization, indeed, their status as a trusted third party ensures the security of stakeholders.

In this context, the statutory auditor is entrusted with a mission of general interest. Their primary responsibility is to certify the annual accounts of the company by verifying the accuracy and compliance of financial information with established standards. This is achieved while adhering to the principles of independence and non-interference in management, which enjoy general consensus on both national and international scales.

Nevertheless, while performing its main mission, the auditor is, in various aspects, dependent on the executives and the audited company. This dependence is evident, particularly concerning matters such as appointments, remuneration, and access to information. It intensifies further when delivering services other than auditing.

Indeed, from the Enron scandal and the subsequent downfall of Arthur Anderson in the United States to the financial scandal that sent shockwaves through the United Kingdom following the bankruptcy of the construction giant Carrillon, the trustworthiness of financial and accounting information has been called into question. This has led to the implementation of a series of laws and regulations in various countries (Bari, 2020). The primary objective of this strengthening is to fortify the independence of auditors, especially in aspects related to services other than auditing.

To explore this matter, we have conducted a literature review focusing on regulatory framework established by key bodies, namely the IFAC & IESBA, the SEC, and Moroccan regulations. Our research is based on an in-depth analysis of existing regulatory texts, professional standards, and academic literature to explore how these frameworks address the challenge of maintaining auditor independence while providing non-audit services to audit clients.

From this arises the research problem of our work, which can be formulated as follows: How and to what extent do the IFAC, the SEC, and Morocco address the challenge of maintaining

and preserving the independence of statutory auditors while providing non-auditing services to a client undergoing an audit (Case of information technology services)?

In order to better grasp this issue, we have chosen to emphasize the concept of audit independence as a starting point. Following this, our approach involves examining the strategies adopted by certain regulators to safeguard and strengthen auditor's independence while providing services other than audit to audit clients. Lastly, we will present a comparative analysis of how certain regulators approach the provision of information technology services to an audited client.

1. Independence – Cornerstone of audit quality:

Independence, an integral element of audit quality, stands as the cornerstone for the success of financial statement certification missions (Loyer, 2006). According to (DeAngelo, 1981), this quality is influenced by two variables: independence and competence. These variables, as highlighted by (Richard, 2006) and (Citron & Taffler, 1992), represent two necessary and interconnected dimensions, the equilibrium of which is crucial for conducting a quality audit.

Indeed, the competence of the auditor which is influenced by their education and practical experience (Minko, 2022), is reflected in their ability to detect anomalies and irregularities (Arrunada, 1999). This competence represents the level of expertise required to achieve audit objectives, as stated by (Lee & Stone, 1995). As explained by (Dreyfus & Dreyfus, 1986), this expertise denotes a continuum that evolves through a learning process, starting from knowledge and dependence on rules, and culminating in a state of intuition.

While the degree of independence of an auditor, as described by (DeAngelo, 1981), represents the conditional probability that an auditor will report the detected infractions, it is defined by (Essaoudi & Lotfi, 2024) as the state of an auditor who is not influenced by any external party, whether financially, morally, or intellectually. In other words, it reflects the ability to report irregularities and anomalies identified during the audit mission (Portal, 2011). It refers according to (Diallo & Diop, 2020), the auditor's ability to resist any pressures from their clients in situations of conflict of interest, ensuring that the auditor can act with impartiality. It is regarded, according to (El Bouchikhi & Laiachi, 2024), as the cornerstone of audit credibility.

The concept of independence is considered by standard setters and various authors in the context of both independence in appearance, known as perceived independence, and

independence in fact, also identified as real independence or independence of mind (Gaddour, 2016).

1.1. Independence in fact:

Independence in fact, also identified as real independence or independence of mind, is considered by (Compernelle, 2008) as the independence of the auditor in both judgement and practice. According to (Prat Dit Hauret, 2003), it is defined as the attitude that ensures only factors related to the audit mission are considered during the decision-making process. It is reflected, according to (Minko, 2022), in the auditor's attitude towards their clients, as well as the work procedures put in place to avoid any conflict or controversy with the client. Independence in fact refers to the mental process of the professional and their attitude of impartiality and objectivity. According to (Mautz & Sharaf, 1961), it is the approach adopted by auditors to analyze various audit evidence in an unbiased manner and is associated, according to (Richard & Reix, 2002), with the principles of integrity and objectivity.

Integrity, as defined by (IFAC & IESBA, 2022), manifests through the auditor's uprightness and honesty in all professional and business relationships. Acting with integrity, as described by (De George, 1993), involves aligning one's actions with the highest standards of personal behavior and adhering to ethical and moral norms.

Regarding objectivity, it entails, according to (Charpateau, 2012), the absence of any subjectivity and emotion in favor of a perfect rationality. This aligns with the principle set by (IFAC, 2022), which requires auditors not to compromise their judgment due to personal bias, undue influence from third parties, or conflicts of interests. In other words, auditor objectivity is characterized by their ability to make rational and unbiased decisions, even when confronted with conflicts of interests, pressures, and external influences.

Thus, independence in fact can be defined as a value, a mindset, and a moral quality inherent to each individual, manifesting in behavior that is both objective and integral.

Evaluating this independence remains subjective and cannot be easily measured and verified (Compernelle, 2008), as it essentially relies on the auditor and their moral principles. Hence, the importance of independence in appearance, which serves as a complementary aspect.

1.2. Independence in appearance:

Independence in appearance, or perceived independence, complements the concept of independence in fact, which, however, does not allow for the verification and demonstration of the auditor's independence to the general public due to its subjective nature (Compernelle,

2008). Indeed, while the sustainability of the mission is strengthened by independent behavior, its legitimacy is ensured by a high level of apparent independence (Prat Dit Hauret 2003). From this perspective, (Richard, 2002) emphasizes the idea that, even though the auditor is mentally independent, it is crucial for him to provide explicit, accessible, and visible indications to validate this independence.

The independence of appearance, as defined by (Ben Saad & Lesage, 2009), refers to the perceived level of independence as acknowledged by users, namely investors, shareholders, and more broadly, the financial market (Wolnizer, 1987). According to (Barhon, 2019), it serves as a showcase for the auditor's objectivity, aiming to enhance the public image of the auditor and maintain the trust of the general public. In other words, as stated by (Prat Dit Hauret, 2003), this independence is ensured when the auditor employs every possible measure to strengthen both their independence and the perception that stakeholders in the governance of the company may have, particularly by managing their relationships with the management of the audited entity (Lee & Stone, 1995).

(Prat Dit Hauret, 2003) also emphasizes that perceived independence relies on avoiding facts and circumstances that, due to their importance, would lead a third party to question the objectivity of the auditor.

In this context, various regulators, including the Moroccan regulatory body, IFAC, and the SEC, emphasize the importance of an auditor maintaining independence from the audited entity both in fact and in appearance. This requirement is outlined in the second article of the Moroccan standard governing rules of independence and incompatibility in legal audit (OEC, 2002), paragraph 120.12 of the IFAC and IESBA Code of Ethics (IFAC & IESBA, 2022), and in release No. 33-8133 (SEC, 2003). The auditor must abstain from performing the audit if it becomes evident that a dependent relationship exists with the audited entity. Such a situation, when perceived by an informed third party, would be deemed compromising to their independence.

It is worth emphasizing that the concept of a reasonable and informed third party, as expressed by various regulators, pertains to the perspective of an investor, shareholder, partner, or any other knowledgeable stakeholder (FRC, 2024).

1.3. The independence of audit according to the systemic approach:

The concept of independence can also be examined through a systemic approach, a framework initially formulated by (Cohen Scali, 1998) and later referenced by (Khouchaf,

2005). To gain a clearer understanding, it is crucial to emphasize the focus on the concepts of absolute and relative independence.

Indeed, absolute independence signifies a complete absence of connection between two entities. This means that the respective behaviors of these entities are entirely unpredictable in relation to each other, and it is impossible to explain the actions of one based on the actions of the other.

In the context of auditing, absolute independence for audit professionals is hard to reach, if not impossible (Compernelle, 2008), notably due to the existing relationship between these two parties:

- The appointment and remuneration of the auditor by the executives.
- The execution of the certification mission by the audit professional in return.

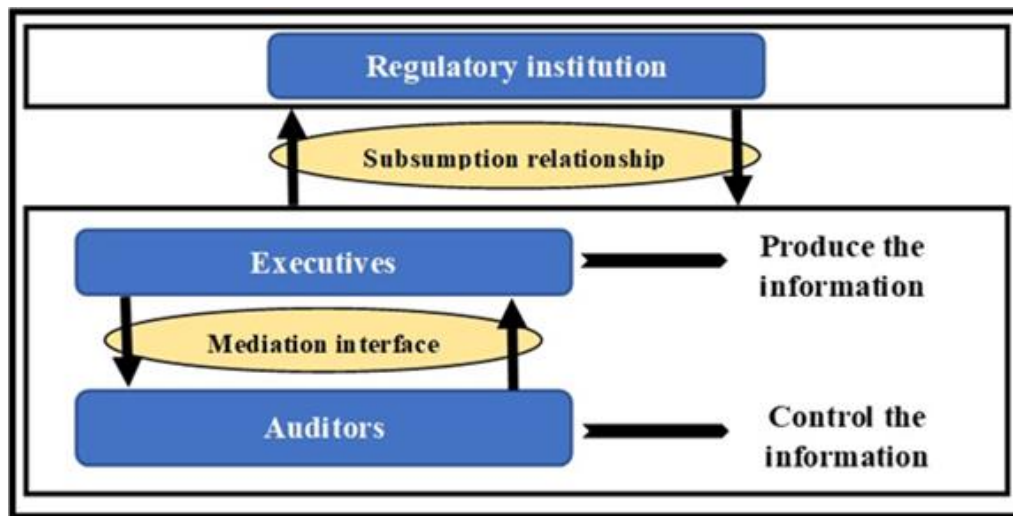
This leads us to shed light on the concept of relative independence, which, according to (Khouchaf, 2005), implies that the two parties involved are dependent on a common third party holding a hierarchical position above them. In the realm of auditing, both parties, auditors and those being audited, operate in alignment with their individual objectives. However, their behaviors are subject to a third party representing the regulatory institution overseeing the auditing profession, thereby prohibiting any arbitrary conduct. This ensures the continuity and proper functioning of the overall system.

This refers to a systemic relationship, also known as subsumption, in which both auditors and those being audited constitute two structures that are encompassed within a larger system, with the regulatory institution as the overarching actor.

The systemic approach also encompasses an important concept, namely the mediation instance, whose primary objective is to mitigate the direct relationship between auditors and executives. It ensures that subsumption regulation is not diverted from its intended course. An illustrative example of such a mediation entity is the audit committee.

The diagram below clearly illustrates the subsumption organization and the mediation interface resulting from the systemic approach to audit independence.

Figure N°1: Subsumption organization and mediation interface resulting from the systematic approach to audit independence



Source: (Cohen Scali, 1998), translated by authors

2. Non-audit services offered to audited entities - Risks to audit independence:

Offering services that are not related to the main mission of certifying financial statements, known as non-audit services in Anglo-Saxon literature, encompasses all services offered by audit firms, apart from their core auditing mission to an audited entity. These services may include legal, administrative, evaluation, internal audit, recruitment, litigation support, accounting, and information technology services.

The effect of providing these services on the independence of the statutory auditor represents, according to (Meuwissen & Quick, 2019), a crucial question facing the auditing profession. In this regard, legal literature has analyzed various threats that may affect the independence of the legal audit professional. These threats can be classified into five categories:

2.1. Self-interest threats :

These threats can arise when the legal auditor may benefit from a personal interest, such as financial connection, with the audit client. According to (IFAC & IESBA, 2022), this refers to any threat that could inappropriately influence the behavior or judgment of the audit professional. Canadian Rule No. 204 highlights various situations that may give rise to threats associated with self-interest. We provide the following examples:

- The presence of a close business connection with the audited client.
- The reliance of the audit professional on the fees provided by the audit client.

2.2. Self-review threats :

These threats may arise when the legal auditor is mandated to express an opinion on a situation in which they have previously played a role, either by making management decisions or merely being involved in such choices. Canadian Rule No. 204 provides illustrations of situations that could lead to such threats:

- A team member of the audit staff holding a managerial position in the audited company, either currently or recently.
- The audit firm delivering additional services to an audit client that may directly affect the elements covered by its audit mission.

2.3. Advocacy threats :

These threats may be generated when the legal auditor advocates for or represents the audited company to a degree that could compromise their objectivity. The Canadian legislator exemplifies such a situation in Rule No. 204, where a legal auditor advocates for their audit clients following a dispute or disagreement with third parties.

2.4. Intimidation threats :

These threats can emerge when the legal auditor is deterred from maintaining objectivity and exercising critical judgment, either due to real threats or actions perceived as such, emanating from the audited company. The Canadian regulatory framework exemplifies, in Rule No. 204, a situation where such a threat could occur: When the audit client applies pressure and forces the audit professional to unreasonably limit the scope of their work.

2.5. Familiarity threats :

These threats can emerge when the legal auditor maintains close personal relationships with their audit clients, which could, over time, influence their professional skepticism and judgement. Canadian Rule No. 204 provides examples of various situations that could lead to such threats, including:

- Establishing long-term relationships between an audit team member and the client.
- Receiving gifts from the audit client, unless their value is considered insignificant.

3. Regulatory approaches on providing information technology services to an audited client – Comparative law:

Aware of the profound importance that non-audit services offered to an audited client hold in enhancing the competence of the professional (Sawan, 2013), and in order to ensure and

preserve a higher quality of audit, combining independence and competence, different regulators have focused on the need to safeguard and strengthen the independence of audit professionals while providing such services.

The approach adopted to regulate and standardize such services depends on each country, on each regulator. Two regulatory approaches exist: a rules-based approach and a principles-based approach.

The first approach is based on specific and detailed rules, including limitations and prohibitions, and it is the regulatory approach adopted in the United States.

The second approach, on the other hand, is based on general and flexible rules, this approach values and relies on the professional's judgment, who is required to:

- Identify the threats that may compromise its independence.
- Evaluate the identified threats (Acceptable or not).
- Determine the safeguard measures and evaluate their effectiveness.
- Evaluate the degree of risk that may impact the independence of the audit professional.
- Adopt additional safeguard measures.

In this perspective, and to illustrate the diversity of approaches regarding the regulation of aspects concerning the provision of information technology services to an audited client, we have opted to showcase the case of:

- The United States, and specifically the SEC, a strong supporter of the rules-based approach.
- The IFAC, which is a quintessential example of the conceptual-based approach.
- Morocco.

3.1. IFAC's position on providing information technology services to an audited client:

Information technology services represent, according to (IFAC & IESBA, 2022), the set of services related to the design or implementation of software and hardware systems. These information technology services may involve aggregating source data, contributing to internal controls for reporting, or generating information.

According to their code of ethics, (IFAC & IESBA, 2022) state that delivering such services to an audited client may give rise to a self-review threat, which, in certain instances, may persist despite the implementation of safeguard measures. In this regard, the regulators recommend, following their conceptual approach, that, prior to commencing the provision of

these services, an assessment should be conducted to evaluate the level of threats posed to the independence of the audit professional.

(IFAC & IESBA, 2022) outline numerous factors that enable the statutory auditor to evaluate the degree of threat created by providing such services. To illustrate we mention:

- The nature of the service.
- The characteristics of the client's information technology systems and the level of influence or interaction that the IT systems have on the client's financial statements, internal controls related to accounting records or financial reporting.
- The extent to which the specific information technology systems will be relied upon during the audit.

In addition to the factors highlighted by these regulatory bodies, which aim to assess the compromised independence of audit professionals following the provision of information technology services to audited client, they also state, within the framework of their conceptual approach, a measure to minimize the created threats to an acceptable degree. So, they recommend executing the service with a team separate from the one responsible for the audit engagement.

Nevertheless, under certain circumstances, the threats that arise cannot be mitigated even with the application of safeguard measures. In this context, (IFAC & IESBA, 2022) prohibit the provision of IT services to an audited client classified as public interest entities in case where providing such services could give rise to a self-review threat. The regulators bodies provide an example of services that encompass the design or implementation of information technology that contribute to the internal control over financial reporting or generate information for the clients' financial statements or accounting records, on which the professional of audit will formulate an opinion.

It is important to highlight that some information technology services do not create threats as long as the team responsible for the audit engagement does not assume managerial responsibilities. Among these services, we give the examples of:

- Creating or implementing information technology systems that have no connection to the internal control over financial reporting.
- Creating or implementing information technology systems that do not produce information included in accounting records or financial statements.

- Implementing accounting or financial reporting software that was not created by the audit firm, unless the necessary adjustments for meeting the client's requirements are substantial.

Furthermore, according to (IFAC & IESBA, 2022), it is worth mentioning that when an audit firm provide information technology systems services to an audited client, it is imperative for the firm to ensure that the client:

- Assigns the responsibility for making all management decisions regarding the design and implementation of the software or hardware system to a qualified employee, preferably within senior management.
- Acknowledges its responsibility for establishing and overseeing a system of internal controls.
- Takes full responsibility for all management decisions related to the design and implementation of the system.
- Assumes responsibility for operating the system (hardware or software) and the data it utilizes or generates.

3.2. SEC's position on providing information technology services to an audited client:

According to Release No. 33-8133 (SEC, 2003), the American regulator forbids auditors from offering any information technology services to an audited client, unless there is a reasonable assurance that while examining the client's financial statements, audit procedures will not be applied to the result of these services.

However, these rules, do not prevent the audit firm from engaging in software or hardware system projects not associated with the financial statements or accounting records of the audited client, as long as such services receive prior approval from the audit committee.

In fact, taking part in the design, implementation or operation of systems that impact financial statements can position the auditor in a managerial role. This involvement may also lead to situations where the auditor is auditing their own work or providing attestations regarding the efficacy of internal control systems implemented or designed or implemented by them.

In this regard, the American regulator (SEC, 2003) illustrates with the case of an auditor who is engaged in designing or implementing a computer system responsible for generating financial records. If this system generates incorrect data, the auditor is then obligated to report on the work conducted by their firm's own work. This could lead investors to perceive a

reluctance on the part of the auditor to question the effectiveness and integrity of the client's financial or accounting information collection systems, particularly those designed or installed by the accountant.

3.3. Morocco's position on providing information technology services to an audited client:

In accordance with the stipulations of Decree No. 02-18-454 dated December 20, 2019, particularly outlined in paragraph 211.1, legal auditors are restricted from offering any services related to the design or implementation of information systems. This restriction aligns with Article 161 of Law No. 17-95, which stipulates that a statutory auditor cannot be appointed to companies for which they have received remunerations for functions that may put them in a position to make decisions, assessments, or documents in which they have been involved in preparation.

Conclusion

To summarize, (De Angelo, 1981) underscores the pivotal role of independence and competence as two indispensable variables influencing audit quality.

On the first hand, competence represents the professional's ability to identify irregularities, and this can be improved through the provision of services beyond auditing (These services offer access to additional information about the management of the audited entity, ...); on the other hand, independence is associated to auditor's willingness to report the detected anomalies.

Nevertheless, this independence is not absolute as the professional of audit remains dependent on the audited company in various aspects, notably in terms of appointment and remuneration. This dependence intensifies further after providing services beyond the scope of auditing.

In this regard, it becomes imperative to regulate these services. There are too regulatory approaches:

- A conceptual approach, embraced by various regulators, notably IFAC, which values the professional judgement of the statutory auditor.
- A normative approach based on detailed rules with limitations and prohibitions as adopted by the SEC.

For example, both the Moroccan and American regulators strictly prohibit offering information technology services to the same audit client. Nevertheless, IFAC's approach to regulating these services is grounded in a conceptual framework that involves identifying threats, assessing risks to independence, and suggesting safeguard measures.

It is important to note that these two approaches may appear to be diametrically opposed at first glance. However, the dichotomy between them is not as clearcut. Regulators who adopt a normative approach often do not clearly outline the theoretical framework, but this does not prevent normative rules from being coherently developed based on general concepts and guiding principles.

Similarly, applying the conceptual approach can lead to specific rules that prohibit certain situations and relationships, thereby giving them a normative character. However, it should be emphasized that within this approach, prohibition is the exception rather than the rule.

The proponents of both approaches share the same goal: safeguarding the independence of audit professionals after providing non-audit services to an audit client. However, their methods for achieving this goal differ. Advocates of the normative approach argue that strict and detailed rules are the best way to ensure adherence to independence requirements. Conversely, supporters of the conceptual approach believe that laws or regulations should set out general principles, with the interpretation left to professional organizations and auditors.

This leads us to question the best way to maintain independence after providing non-audit services to an audit client. Should we place our trust in the auditor's professional judgment? Or, alternatively, should we implement stricter rules, even if they risk becoming ineffective?

The findings of this research have several implications:

- From a managerial perspective, this study will help regulators, practitioners and other stakeholders in the audit process effectively manage aspects related to non-audit services.
- From an academic perspective, this study opens several avenues for further research on auditor independence and the regulation of non-audit services.

This research has certain limitations, notably its focus primarily on regulatory frameworks without a thorough analysis of their practical application in the field.

In terms of perspectives, an empirical study based on surveys and interviews with reasonable and informed third parties would be valuable.

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