**The Impact of Fees on the Legal Responsibility of the Auditor
Legal Liability**

 **Abstract**

This study aimed to identify the factors affecting in determining the internal auditor fees in the Jordanian Public Contribute Companies from the perspective of auditors, financial managers of these companies.

This study is one of the studies on the level of Jordan handle the subject of factors influencing in determining the efficiency of the internal auditor.

**The study found many of the most important results:**

1) The need for awareness of the auditing responsibility, its risks and working on raising auditing fees because they are generally low and unfair in order to fit with the responsibilities, the risks and the amount of work for the development of the profession and its staff.

 2) The need for a general legal by the Jordanian Society of Chartered Accountants to be taken by the General Authority for the company in determining the audit fees in order to reduce the competition between audit firms until the expertise and efficiency factor is still the most important factor.

3) The study has shown that there is no trace of the fees on the legal responsibility for the auditor.

**1 - Introduction:**

The audit fees charged by the internal auditor one of the important indicators that affect the independence and quality of service it provides.

American Society of Accountants has raised that there is interaction between the fees and the low or low auditor independence which less than the audit process performance costs to verify the loss to the auditor and make a threat to its independence.

The study by (pelhamand neter, 2005) was carried out to the conclusion that the participants who elevated their motives less prone to distractions, but it is related to the easy duties not the complicated.

Another study carried out by the (Ashton, 2004) that the auditors when they are on duty depends on the level and increase of motivation through financial incentives or other applications, this leads to improve performance in the absence of decision help. There is no doubt these referred studies indicate to a relationship between financial incentives and the performance of the auditor and that the fiscal stimulus increases the auditor performance. And the performance sub-par when stimuli goes down.

Despite the importance of the fees impact which earned by the internal auditor on his performance, we find that he did not touch to: the law regulating the legal profession Accounting (73) for the year 2003, the Auditing Profession Law No. (32) for the year 1985 or practicing Auditing Law No. (10) for the year 1961. Or any phase on auditors fees or pay or how the relationship be between the auditors and the client, except as provided in the system auditors Chartered Society (43 ) for the year 1987 in item (b) of paragraph (ii) of Article (32) relating to the professional conduct of the auditor's relationship with its customers.

"The assignment with its clients clearly regulates contracts to reflect the scope of his work, the duties and responsibilities of all parties".

The association has sent circulate minimum fees during the previous years. Perhaps another generalization was issued on March 14, 2007, which identified audit fees as follows:

\* Individual Institutions: 700 J.D

\* Solidarity and Limited Companies: 1000 J.D

 Limited Liability Directive equities and foreign companies operating and non-operating: 1.250 J.D companies.

\* Private Contribute Companies: 2000 J.D.

\* Public Contribute Companies not listed: 4.500

\* Listed Public Contribute Companies which provide financial statements in progress: 7.500 J.D.

\* Governmental Institutions that operate on the basis of commercial 3.500 J.D

\* The associations, clubs and other establishments that are not-for-profit are agreed on their fees according to the size of its work[[1]](#footnote-2).

**2. The Problem of the Study**

 The problem of the study summaries to identify the affecting factors in determining the internal auditor's fees in Jordanian General Contribute Companies Corporations from the viewpoint of the auditors and financial managers of these companies.

**3. The Relevance of the Study**

 The fees are a source of income for the auditor services or auditing offices, when greater income increased the possibility of upgrading the auditor and his workers, and he managed to achieve quality in performance and the use of advanced techniques to ensure the reliability of financial statements, and providing the financial expertise and can then achieve the transparency and accountability of financial statements should be fair fees. When the fees are fair, and then enable the auditor to carry out the implementation done by a professional, high quality and maintain the integrity, objectivity and independence, which leads to increased credibility in the financial statements.

**4. The Study Hypotheses**

 This study testing the following hypotheses:

1. Affect competition between audit offices in determining the auditor's fees.

2. The Audit office reputation and its association affect with global audit office to determine fees.

3. The time and effort spent on the audit process to determine fees Checker.

 4. The auditor Commitment with Audit Office with the general standards, procedures and quality controls in the determination of fees.

**5. Methodology of the Study:**

1. Study population and sample.

The study population consists of categories most closely associated with the subject of study:

First Category: Audit Service Providers Class

Second Category: financial managers in Jordanian Public Contribute Companies.

Total Auditors practicing within the Kingdom (474) auditors based on this information, a random sample was selected from category I (29) auditors, regarding companies total public contribute companies in the Kingdom (industrial, service, and financial intermediaries (214) and the sample is selected randomly (11) companies.

**2. Sources of Information Collection:**

The author used two sources of information gathering, they are:

a) Secondary Sources: with reference to books and journals, as well as refer to previous studies.

B) Primary Sources: it will rely on the statistical survey for sample of working auditors in institutions discussed using a questionnaire prepared for this purpose.

3-A study by Kevan L. Jensen and Jeff L. Payne(2009): entitled "**Audit Procurement:**

**Managing Quality Audit and Audit fees in Response to Agency Costs**"[[2]](#footnote-3) :

This study examines (1) The relationship between the Agency and the check collection applications in America. (2) The relationship between audit recoveries and quality of audit fees and audit applications.

Developed collections auditing was strengthened as a mechanism to improve the quality of audit and also found " The applications developed well " to audit collections (and checking personal collections) associated with the recruitment of experienced Auditors with higher level of industrial experience leads to higher quality and check. The researcher found evidence of "assumes that the applications developed" to audit collections affect audit fees and the personal collections items related to audit fees.

4-A study by Vivien Beattie Alan and Joanna Pratt Goodarce. Ken Stevenson, 2007 entitled "**The Determinants of Audit fees – Evidence from the Voluntary Sector**"[[3]](#footnote-4)

The researcher sees that because of increasing need of responsibility in the public sector in Britain, there is a need to start the investigation in determining the audit in this sector and the prices are the issues of this study by three contributions.

First ": working for the first time to develop and assess the model of the determinants of audit fees in the charitable sector basic determines as found in previous studies to private companies is the size, organizational tangles and site auditing firm.

And the importance of the charitable sector appear in the charitable nature of the activity (for example, the provision of grants or fundraising) and its activity, the commercial income importance and reflect the nature of the activity the complexity of the audit process.

Second ": The auditor concentrate allows less on the voluntary sector compared to the private sector. The results show that the six major companies receive audit fees at a rate of 18.5%, more than the companies which do not fall under the six major companies and is also a "bonus auditing firms that do not fall under the six major companies and they have the experience in charity work with extra fees more than other companies.

Finally: "The study proves that audit fees to charities rate significantly lower than the accounts audit fees for private sector companies and it is actually half.

5-A study conducted by Mohammed Hussein Abu Nassar 2007 entitled "**Determinants of**

**Audit Fees from the Viewpoint of Auditors and Public Companies."**

The researcher determine the most important factors that contribute to determine the audit fees in Jordan and the level of fees charged by the auditor and how it fits with the effort made and the values ​​of the results of the study showed that the size of the business of the audited and the number of branches and the time required to complete the audit process are the most important factors that influence in determining the value of the fees charged by the internal auditor and the results showed a low level of fees from the viewpoint of auditors and not to fit these fees with the effort of the auditor to complete the audit process.

6- A study conducted by Marc A. Rubin 2008 entitled **"Municipal Audit Fee Determinants"**

In this study was an attempt to take advantage of the models used to study the audit fees of the private sector and in order to determine the factors affecting the fees of public sector institutions scrutiny in the United States and study on the municipal sector have been carried out and found that audit fees positively associated "with both the size of the municipality and the size of the loans issued by the documents and the volume of services provided and the number of reports issued by that.

7- A study by Simunic 2001 entitled "**Legal Responsibility "**

It is the professional commitment by the calculations with law requirements, which is one of the highest appropriate level, which should take care of it and made when the service auditor.

**What is the problem of Legal Responsibility:** It become a problem of legal liability facing the profession more pronounced in 1990, when the seventh largest company announced in the world "Leventhol and Horwath" bankruptcy, and was the main cause of bankruptcy is the high number of lawsuits filed against it and that have been filed on the basis of shortening the facility in the performance legal responsibilities

**The Impact of Legal Responsibility:**

Legal Responsibility affect the auditing profession with regard to the humanitarian aspect of their employees, and as an example a study in 1994 showed that the number of companies and managers who have left to work in the accounting facilities due to their inability to withstand the threat of litigation.

**Changed Legal Environment:**

**Objective**: Description litigation environment in which it operates accountants authorized, any professionals should always perform their work in accordance with the appropriate level of care when providing services to others.

The auditors shall bear responsibility stipulated in the law with respect to their contracts with customers where it should be held accountable legally claiming negligence or breach of contracts that lead to the failure to provide the service.

The following figure shows the four main sources of legal responsibility for the Checker

|  |  |
| --- | --- |
| Sources responsibility | Example of a Possible Lawsuit |
| Responsibility in front of the client under the general law | Worker filed a lawsuit against the auditor not to raise the embezzlement discovered during the audit performance. |
| Responsibility in front of the auditor under the general law | The bank raised a lawsuit against the auditor for non-discovery of misrepresentation in their own advanced customer's financial statements to get a loan. |
| Legal liability under the federal laws of the stock. | Lifting of a group of lawsuits against auditors shareholders not to the discovery of material misstatement in the financial statements. |
| Criminal Liability | Sue the government for the auditor to issue a report checks incorrectly knowingly. |

Factors that led to increase number of cases against the auditors in recent years.

1. The growing awareness of the users of the financial statements of the responsibilities of the Accountant General.

2. Increase the attention of the Capital Market Authority for the implementation of its responsibilities to protect the interests of investors.

3. Held practice of auditing and accounting in light of the increasing size of the economic units and the trend towards globalization and the complexity of operations in the business sector.

4. The concept of money-filled deep "Pocket Clipboard": means a general acceptance in society lawsuits from parties that suffered damage in the community in line with many private liability conditions.

5. Difficulties that guide the courts in the understanding and interpretation of the technical aspects of the accounting and auditing.

**The Distinction among business failure, audit failure, and audit risk:**

- Many accountants, professionals and legal people that the main cause of lawsuits against auditors due to the lack of users understanding of financial statements to differ between business failure and the failure of auditing and checking the difference between failure and the risk of an audit.

- Business Failure, happens when the economic unit not be able to repay their debts to the lenders or is due to the presence of internal economic Living situation like recession.

- Audit Failure: This occurs when a checker false report as a result of failure to apply generally accepted auditing standards requirements.

- Audit risk: It is caused by the auditor's conclusion fairness of financial statements and issue a clean report for error. While the financial statements contain misstatements substantially affecting the light level in the relative importance.

- Accounting difficulties facing facilities as a result of a business failure, not the failure of the audit. For example:

If it is proved the bankruptcy of the entity and proven inability to pay debt, it is well known that users of financial statements is called the audit failure, especially if the auditor's opinion stating the fairness of the financial statements.

Even if a failure has occurred in the financial statements (misstatements) and the occurrence of the failure in the economic union is possible that users named negligently checker with a proven commitment to generally accepted auditing standards, and this disagreement between auditors and users because of the so-called expectations Expectation Gap.

Where the auditor believes that the performance of auditors must be within the auditing standards generally accepted, while ensuring that the user sees the auditor for the accuracy of financial statements.

 **Legal Concepts Affecting Liability:**

There are some legal terms that have been applied in all types of claims against the auditors, namely:

1. The Prudent Person Concept:

There is agreement within the profession and the courts that the auditor is not a guarantor of the fairness of the financial statements, where only he must exert sufficient attention, however, is not expected from the auditor that the currency leads as the ideal, referred to as the standard by which requires the auditor to do the usual concept of the individual judicious care, and explains the as follows:

"Every man is supposed to lead his services to others in the framework of a contractual lead due under this contract through the use of his skills and make the appropriate care and diligence, and in such contracts, which requires the presence of skill a prerequisite so that the auditor can provide the requested service.

The individual must know that public opinion believes he has the skill to a high degree, if proven otherwise have committed an act of fraud against anyone sign him for his confidence to the profession in which it operates and its adoption by the general for I must not think that everyone has the skill or do not enjoy it, and the initiation of such action to lead successfully without errors.

Where the individual must initiate work honestly and integrity but this does not negate the possibility of failure, and therefore this person will be responsible either from contracted due to negligence or mal-intentioned or dishonesty, not because of the resulting estimate by the errors losses.

**The Liability for the Acts of Others:**

In the case of companies were public contribute companies, the legal responsibility to be on all the partners or contributors are responsible for any owner of private civil suits them.

In the case of limited responsibility companies or solidarity, the companies on the penalty shall be one of the owners does not extend to personal assets to other owners.

**The Lack of Privileged Communication**

In the sense it is not entitled to authorized accountants under the common law to withhold information from the courts on the basis of information privacy.

**Definitions of Legal Terms**

**Negligence and Fraud :**

The following four terms concerns the degree of error that could put auditor under the legal repercussions:

- **Simple / Ordinary Negligence**: the absence of a reasonable level of protection from any individual be expected in light of the particular circumstances, and should be evaluated auditor neglect that is recognized as the way in which it will be followed by the auditor to stop if it encounters the same position.

- **Gross Negligence**: Happen as a result of not doing the least amount of care and draw the behavior of the auditor, in this case with the expected behavior of a person is reckless.

- **Constructive Fraud**: it indicates a degree of severe neglect or unusual with no intention of deception or harm others.

- **Fraud**: Located at the occurrence of tariffs and availability of knowledge of the auditor for the negative impact of the presence of faith has to deceive others.

**The Contract Law:**

Set aside the contract breach of contract: The result is a lack of commitment of the parties to the contract to fulfill the requirements of the contract.

**Third - Party Beneficiary:**

The third party of people who have no right to see the contract consists however be understood by both parties to the contract and follows that with rights and benefits as a result of signing the contract.

**Public law and Statutory Law:**

- **Common Law**: the law in the materials that have been accessed through the provisions of the judges in the courts rather than through legislation.

- **Legislative Texts (Legal Law) Statutory Law**: such laws and legislation already approved by the state and other government bodies such as the Securities Act.

**Estimate / Assessed Proportion of Liability:**

**Joint Legal Responsibility and Several Liability**

The plaintiff in the estimation of the size of the losses incurred due to the defendant, regardless of the extent of the involvement of other parties in damage to the plaintiff.

Example: If the management has deliberately misrepresented financial statements can bear auditor total losses suffered by shareholders in the event of bankruptcy of the company.

**Separate Legal Liability and Responsibility Relative Separate and Proportionate Liability:**

Size of the losses that must be borne by the defendant in proportion to the damage caused by the negligence For example: If the court decides that the auditor negligence was the cause of 30% of the losses, it will be the total damage caused by the auditor in a total of 30%.

**Legal Responsibility in the Face of Customer Liability of Clients:**

The customers' are the main source of litigation against authorized accountants, and vary the legal proceedings brought by customers such as the / claim that the completion of the audit by the agreed date Garret not detect embezzlement.

The basic point that relate to the issues of neglect usually in the level of care to be suit and although there was general agreement on the non-ideal anyone, not even professionals.

**Auditor's Defenses Against Client Suits:**

 Accounting facilities and one of the following methods used in the presence of the accused clients such as:

- **Non-compliance with the contract**( lack of duty): it means that claims accounting facilities that there is no substance in the contract explicitly or implicitly refer to the need for the auditor to perform something in a particular way.

- **No Negligent Performance**: In this particular the facilities accounting can claim that the performance of the auditor has been in accordance with the auditing standards generally accepted and even if there remained errors or irregularities are not detected no longer responsible auditor so long has led the audit in an appropriate manner .

- **Contributory Negligence**: This occurs when the client's actions lead to the occurrence of causing losses to damage or interfere with the audit performance, so as to prevent the auditor from the discovery of the cause of the losses.

An example of this by employee theft from within the company and it felt the presence of the customer facility accounting weaknesses in internal control to prevent theft administration did not correct the situation, so can the auditor to defend himself in the administration were contributing to neglect.

**- The Absence of Causal Connection**: Here, even the customer able to earn a lawsuit against the auditor, and he has to prove a causal link between the breach of the auditor to the standard of professional care and the damage that happened to him.

**Legal Responsibility to Third Parties Under Common Law:**

  Accounting facility can be exposed to legal repercussions due to losses incurred by the third party under the allegation of losses as a result of the adoption of the financial statements that are misleading, and is the third party in the shareholders, vendors, bankers and creditors.

**Special legal basis for Ultramares Doctrine:**

There is a famous case occurred in 1931 was known as the Ultramares corporation V. touché, legal basis specified in the public law and private legal foundation called the b Ultramares and summed up the issue by: Creditors in one of the capital companies adopted Ultramares on the financial statements that have been audited, and the company can to fulfill its debt obligations, it was to sue accountants because of negligence which resulted in adding $ 700,000 to the debtors balance of $ 650,000 and called on creditors to scrutiny could lead to show fraud, which is equivalent to $ 700,000.

The court found that the accountants have neglected in their work and that the auditor has contributed to the fraud by saying in an opinion, "Witness also concerning the examination of government taxes on income, the income is considered, in our opinion for a real vision of the situation is correct to finances."

While the auditor knows the invalidity of this view, it represents mal representation of the auditor led to the occurrence of fraud.

So, is the main focus in Ultramares the legal basis for the inadequacy of neglect to load the auditor's responsibility in the face of third party due to lack of availability of Privacy in the contract between the auditor and the third party unless the third party benefiting mainly.

**Foreseen Users:**

  The many courts in recent years to expand the concept of private Ultramares legal basis to allow a third party to compensation in the new cases were not take into account was the use of the concept of users forecasters in this regard.

Prospective users have any member of a specific category of users who auditor knows that they are using the financial statements.

There are three methods used when applying the expected user concept:

1. **Credit Alliance Approach**: This approach originated in 1986 on the issue raised in the credit union credit alliance against the Arther Anderson facility and has a one-borrowers filed a lawsuit against one of the customers who received the loan and is the allegation that the borrower based on financial statements Checker lenders the borrower has been unable to meet its debt.

2. **Approach of Restatement of Torts**: Through applied the specified basic for the damage which represent a formal summary of a certified legal principles apply, according to this article should be used is expected to be a member of a group of identifiable users definition in an appropriate manner and rely on the work of the accountant edifice him .

3. **Approach of Reasonably Foreseeable User**: This is the broader interpretations of the rights of the third party beneficiary under this approach concept is for each user auditor believes he can be regarded as users of the financial statements has denied the rights that relate to the party which is subject to the privacy of the contract.

- Auditor defenses against third - party suits: The best technique used by the auditor in the lawsuits filed by customers is the plea of ​​negligence.

**Private means of defense auditor Act of 1934 /Auditor defenses act**

Auditor can used the same three defenses available in the cases against the third party under the common law and represent these means in:

1. Audit the required level performance.

2. Lack of commitment to the contract.

 3. The absence of a causal link.

**Punishment for the Capital Market Authority / S E C Sanctions:**

These sanctions are closely linked to the legal responsibility of the auditor is available to the money market regulator authority in specific cases to impose sanctions or deny the practitioners of the auditing firms that deal with the CMA report.

**Criminal Liability:**

It is possible to condemn authorized accountants criminal acts have been committed under the laws of the state, and is the most widely used standardized laws Securities Act of 1934 & 1933 legislation.

This legislation is a government legislation issued by the auditors, in particular, and enjoy this legislation from making any financial statements that are misleading or subscribe to it.

- There are many issues happened regarding the criminal liability and its summary, "The examine of the integrity of management is important when the possibility of customer acceptance and the extent of work that needs to support and offer (SA S 7) guide for auditors when examining new customers.

**The Profession's Response to Legal Liability:**

There are many things that individual's Accountants and the accounting profession as a whole can do, to reduce the vulnerability of auditor's lawsuits including:

1. Research in the Field of Auditing: the search must continue to reach the best ways to discover the fundamental distortions unintentional fraud management and staff.

2. Drafting Auditing Standards: the bodies responsible for international standards of scrutiny, such as the American Institute for drafting and revising standards so, that it can comply with changing requirements for auditors.

3. Put the requirements for the protection of the auditor.

4. Put the peer examination requirements: The periodic inspection of the practices and procedures of accounting facility is one the means to teach practitioners.

5. User Education: the user knows that the auditor does not audit all financial operations increased by 100% and it does not guarantee the accuracy of financial books.

**The individual cpa's response to legal liability;**

Auditors practitioners may take positions to work on reducing legal liability, such as:

1. Dealing only with customers who meet the rectitude.

2. The appointment of qualified individuals and conduct training and supervision in an appropriate manner.

3. Commitment to the profession standards.

4. Maintaining neutrality. (Separately responsible for the client's interests).

5. Understand the activity that the customer operates.

6. Quality check: a checker for evidence, convenience and reach the right judgments about the evidence.

7. Working adequately documented.

8. Keep confidential relations: the auditor not to disclose the client's things to other parties.

9. Appoint a legal adviser in the event of serious problems during the audit process must be an authorized accountant advised to obtain the advice of an experienced legal counsel.

**Auditor's fees:**

The concept of the auditor's fees:

        Audit fees mean wages or fees charged by independent internal auditor to meet with carrying out a company audit certain accounts.

       And audit fees was decided when the agreement with the customer on the service performance required is determined value on base expected time spent in the audit process (the number of hours or number of days) and the number of assistants involved in the work and that these fees should cover the cost elements the live such as the salaries of the participants in the labor and transportation expenses and all direct expenses spent on audits, and also must cover the cost elements such as indirect share of the burden of the office operation and cover profits. The fees value differ according to a reputable professional auditors and also depends on the amount of additional services they perform for their customers, and if the audit fees Given several auditors by the customer at quality level of certain checks vary across these Auditors, the audit will perform an auditing for the customer is able to display his fees less than rivals and this is the practice in the US audit firms where she contracted the so-called promotional price low balling)) in order to win new customers. (league)

**1. Identify the Auditor's Fees**

     As a general rule the General Authority determining Auditing fees because it is originally appointed in exceptional cases in which the body that appointed him determine his fees.

 **(A) Laws and regulations relating to factors associated with audit fees:**

**First:** Jordanian Companies Law No. (22) of 1997 Article (192) that he must "Elect General Authority for each of the company's public joint stock company limited by shares and limited liability company auditor or more auditors to practice the profession for a period of one year renewable decide instead their fees or to authorize the board of Directors determining fees. "

**Second**: Auditors Association of Chartered Jordanians Regulation No. (94) for the year 2001.

Stated in Article 32 that Member shall rules of professional conduct that results in the context of cooperation customary and literature, and therefore, in particular, abide by the rules of behavioral and professional as follows: Withhold payment any commissions or any part of the fees for any professional office :.

**Third**: Mainstream auditors Jordanian Association of Chartered No. (4268) on March 14, 2007 which set fees scrutiny:

\* Individual institutions 700 J.D

\* General Partnership and Limited Partnership 1000 J.D

\* Limited liability companies and companies limited by shares and foreign labor and non-labor 1250 J.D.

\* Private joint-stock companies in 2000 J.D.

\* Companies listed contributors is 4,500 J.D

\* Contributors listed companies that provide financial statements and interim 7500 J.D

\* Government institutions that operate on the basis of commercial 3,500 J.D

These fees canceled under the Trade Competition Act, which came valid since 2012 and became the subject of fees to compete under free by the law.

**B: Things be taken into account when determining the remuneration of the auditor.**

First, not to leave the matter to determine the fees for the body or the person or work under his scrutiny, to avoid its effect on the auditor or bargaining him about fees, the audit process, which could lose its neutrality and independence of the auditor.

Second, fees fit with what his checker effort in his work and to be rewarding.

Third, lack of fees results that link up to it (unconditional).

Fourth, it must not be low fees as may be paid to the auditor complacency in his (Al-Khatib and Al-Rifai).

**2. Confusion fees.**

Updated fees and fees from the client for the audit process may take all or some of the following formats:

\* Fixed Fee (FIXD FEES) and a certain predetermined lump can not be increased.

\* Fees variable (VARIABLE FEES) and shall be according to the time spent auditor or his representative in the audit process.

\* Conditional fees CONTINGENT FEES)) the amount of such fees on the results and future such fees in violation of professional ethics and stops (Abdullah Page 160).

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