CHAPTER 281

ACCOUNTANCY PROFESSION ACT

To regulate the accountancy profession and to provide for matters connected therewith or ancillary thereto.

1st April, 1980;
30th March, 1981;
1st February, 1987;
1st April, 1987

ACT XXVIII of 1979, as amended by Acts XIII of 1983, XXXIV of 1986, XVI of 1991, XVIII of 2002, and II and XIV of 2003; Legal Notice 423 of 2007; Acts IX of 2008, and III and XXIII of 2009; Legal Notice 335 of 2010; and Acts VIII and XXXVI of 2016.

Short title.

1. The short title of this Act is the Accountancy Profession Act.

Interpretation.
Amended by:
XIV. 2003.2;
IX. 2008.47;
XXIII. 2009.29;
L.N. 335 of 2010;
VIII. 2016.2;
XXXVI. 2016.3.

2. (1) In this Act, unless the context otherwise requires -

"accountant" means a warrant holder or an accountancy firm;

"accountancy firm" means an entity, regardless of its legal form, formed in accordance with article 10 and any connected undertaking;

"aptitude test" means a test limited to the professional knowledge of the applicant, made by the Board with the aim of assessing the ability of the applicant to pursue the profession of auditor in Malta;

"audit" means the audit of historical financial statements and includes the statutory audit; the term "auditing" shall be construed accordingly;

"audit client" means an entity in respect of which an auditor conducts an audit;

Audit Directive" means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014;

"Audit Regulation" means Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 or the specific requirements regarding statutory audit of public interest entities;

"audit firm" means an entity, regardless of its legal form, which is authorised to practise in the field of auditing in terms of article 10 and any connected undertaking;

"auditor" is a holder of a practising certificate to practise in the field of auditing and includes an audit firm;

"approved accountancy body" means a local association of accountants for the time being recognized by the Minister as an approved accountancy body under article 9;

"Board" means the Accountancy Board established by article 6;

"CEAOB" means the Committee of European Auditing Oversight Bodies;

"competent authority" means the authority designated by the law of Member States to be responsible for the regulation and, or oversight of statutory auditors and audit firms or of specific aspects thereof;

"compliance principal" shall mean a principal of a firm, who, acting on behalf of and under the instructions of such firm, is responsible for ensuring compliance with the provisions of this Act or the regulations or directives issued under it, and in the case of a sole practitioner, shall, in all cases, be the sole practitioner;

"connected undertaking" means an undertaking which is effectively managed or promoted as one practice with the firm or as a related undertaking of the firm;

"financial statements" means the individual accounts of an entity or the consolidated accounts of a group of entities;

"firm" means, unless otherwise specified in a directive issued or regulation made under this Act, an audit firm or an accountancy firm;

"generally accepted accounting principles and practice" means the generally accepted accounting principles and practice as defined in the regulations prescribed by the Minister in terms of article 8;

"home Member State" means a Member State in which an auditor or audit firm is approved in accordance with regulation 4(1) of the Accountancy Profession Regulations;

S.L. 281.01

"host Member State" means a Member State in which an auditor approved by his or her home Member State seeks also to be approved in another Member State, or a Member State in which an audit firm approved by its home Member State seeks to be registered or is registered in another Member State;

"medium-sized undertakings" means undertakings referred to in paragraph 1 of Part I of the Third Schedule of the Companies Act;

Cap. 386.

"Member State" means a member state of the European Union;

"Minister" means the Minister responsible for finance and, to the extent of any functions delegated to it by the Minister, includes the Board;

"network" means the larger structure which is:

(*a*) aimed at cooperation and to which an auditor belongs; and

(*b*) clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources;

"non-practitioner" means any natural person who, during his or her involvement in the governance of the Board and during the period of three years immediately preceding that involvement has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of the administrative or management body of an audit firm and has not been employed by, or otherwise associated with, an audit firm;

"practising certificate" shall have the meaning assigned to it in article 4(2);

"prescribed" means prescribed by regulations or directives under this Act;

"principal" means every member of the ad-ministrative or management body of a firm, and any individual who is authorised to sign a report on behalf of a firm; and in the case of an audit firm, shall include any individual responsible for leading the engagement:

Provided that any individual carrying out the role of an engagement quality control reviewer on a statutory audit, and who is not authorised to sign a report on behalf of the firm in any capacity, is not deemed a principal:

Provided further that a warrant holder or a holder of a practising certificate who acts as a sole practitioner, may not engage a principal to act on his behalf;

"public-interest entity" means an entity governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, a credit institution as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, other than those referred to in Article 2 of that Directive, an insurance undertaking within the meaning of Article 2(1) of Directive 91/674/EEC and such other entities as may be prescribed by the Minister. References to the Directives in this definition shall include any other legislation amending or substituting such Directives;

"small undertakings" means the companies referred to in article 185(1) of the Companies Act; Cap. 386.

"statutory audit" means an audit of annual financial statements or consolidated financial statements in so far as:

(*a*) required by European Union law;

(*b*) required by Maltese law as regards small undertakings;;

"third-country" means a country which is not a Member State;

"third-country audit entity" means an entity, regardless of its legal form, which carries out audits of entities incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3 of the Audit Directive;

"third-country auditor" means an individual who carries out audits of an entity incorporated in a third country, other than an individual who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Article 3 and 44 of the Audit Directive;

Cap. 490.

"Tribunal" means the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act;

"warrant holder" shall mean a person who holds a warrant issued in terms of article 4(1).

(2) For the purposes of this Act references to a warrant issued thereunder includes references to a warrant deemed to have been so issued.

(3) In this Act and in any regulations, directives or guidelines made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

Warrant required to practise the profession.
Amended by:
XIII. 1983.5;
XXIV.1986.2;
XVI. 1991.2;
XIV. 2003.3;
L.N. 423 of 2007;
IX. 2008.48;
XXIII. 2009.30;
VIII. 2016.3.

3. (1) Except where otherwise prescribed, no person shall practise the profession of accountant unless he is a warrant holder.

(2) A person shall not qualify for a warrant under article 4 unless -

(*a*) he is of good conduct and repute;

(*b*) he is of full legal capacity;

(*c*) he has:

(i) successfully completed the course leading to the award of the professional accountancy degree organized by the University of Malta; or

(ii) attained university entrance or equivalent level, then completed a course of theoretical instruction recognised by the Board:

Provided that in every case the courses referred to in this subarticle shall cover such subjects at such levels as may be prescribed;

(*d*) unless covered in the courses referred to in paragraph (*c*), he has passed an examination, part or all of which must be in writing, of professional competence of University final or equivalent examination level, recognised or set by the Board for that purpose:

Provided that the Board shall ensure that in the case of an application for a practising certificate in the field of auditing the examination of professional competence referred to in this subarticle adequately covers the necessary level of theoretical knowledge of the prescribed subjects relevant to auditing as well as the ability to apply such knowledge in practice:

Provided further that where a person has completed a course of theoretical instruction and passed an examination of professional competence of university final or equivalent examination level relating to the accountancy profession and recognised by the Board but which did not cover all of the subjects prescribed, the Board may accept such qualification after such person shall have passed such examination or examinations in local laws and in those other subjects as the Board may determine according to the particular circumstances; and

(*e*) he satisfies the Board that he has adequate experience in the practice of accountancy for an aggregate period of three years, of which an equivalent of at least one year's experience shall be gained after he has obtained the academic qualifications stipulated in paragraph (*c*).

(3) Notwithstanding the provisions of subarticle (2), the Minister may, on the advice of the Board, issue, to any person who is duly qualified to act as accountant in any third-country, a warrant to act as accountant in Malta for such limited period or periods or such specific purpose or purposes, or both such period and purpose, and subject to such other conditions as may be specified in the warrant.

(4) Any person who acts in contravention of any of the provisions of this article shall be guilty of an offence and shall be liable on conviction for each offence, in respect of the first offence to a fine (*multa*) not exceeding one thousand and two hundred euro (€1,200.00) and in respect of a second or subsequent offence to a fine (*multa*) not exceeding six thousand euro (€6,000.00) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, and in the case of a continuing offence to an additional fine (*multa*) not exceeding one hundred and twenty euro (€120.00) for each day during which the offence continues.

(5) Any person who, for the purpose of obtaining a warrant or practising certificate under this Act, gives any wrong information or otherwise acts in a deceitful or fraudulent manner, shall be guilty of an offence and shall be liable on conviction for each offence to a fine (*multa*) not exceeding twelve thousand euro (€12,000.00) or to imprisonment not exceeding twelve months or to both such fine and imprisonment.

(6) Any person who, not being a warrant holder or a holder of a practising certificate in the field of auditing issued under this Act, assumes the title or designation of "certified public accountant" or of "certified public accountant and auditor" or their abbreviations "CPA" or "CPAA" or in any other manner indicates that he is entitled to exercise the profession of accountant or to act as auditor in Malta, shall be guilty of an offence and shall be liable on conviction for each offence to a fine (*multa*) not exceeding two thousand and three hundred euro (2,300.00) and in respect of a second or subsequent offence to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Warrant to practice as accountant.
Amended by: XXXIV. 1986.3; XVI. 1991. 3. Substituted by: XIV. 2003.4. Amended by: IX. 2008.49; XXXVI. 2016.4.

4. (1) A warrant to practise the profession of accountant shall be issued by the Minister on the advice of the Board to any person who satisfies the requirements of article 3(2).

(2) A person holding a warrant issued in terms of this article may in addition hold one or more certificates issued by the Board (hereinafter in this Act also referred to as "a practising certificate") to practise in such fields of the profession of accountant, including auditing, as may be prescribed and may not practise in such fields unless he holds the relative certificate.

(3) The Board shall issue a practicing certificate to practise in the field of auditing in Malta to an individual of good repute who is an approved auditor in any Member State provided that such individual has, to the satisfaction of the Board, passed an aptitude test, covering the local laws and regulations relevant to auditing, set by the Board for this purpose.

(4) Where a practicing certificate in the field of auditing is withdrawn for any reason, the Board shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of the Member States where the auditor is also registered.

(5) The Minister acting on the recommendation of the Board may make regulations prescribing the qualifications required for the issue of certificates in terms of subarticles (2), (3) and (6) as well as to regulate their suspension, withdrawal or the taking of any other regulatory measures which may be reasonably necessary to protect the public interest.

(6) Subject to reciprocity and subject to rules that may be prescribed by the Board, the Board may issue a practising certificate to practice in the field of auditing to a third-country auditor if it is satisfied that such individual is in possession of the qualifications set out in article 3(2), has passed an aptitude test set by the Board in accordance with subarticle (3) and satisfies any other conditions which may be prescribed.

Designation of warrant holders.
Amended by: XVI. 1991.4; II. 2003.27. Substituted by: XIV. 2003.4. Amended by: L.N. 423 of 2007; IX. 2008.50.

5. A warrant holder shall be entitled to use the designation "Certified Public Accountant" as well as the abbreviation "CPA".

Duty to provide information.
Added by: VIII. 2016.4.

5A. Every warrant holder shall give to the Board such information as the Board may reasonably require or as may be prescribed, and shall give notice to the Board of any relevant change in any information previously given to it within fifteen days after the date on which the change occurs.

Accountancy Board.
Amended by: XXXIV. 1986.4; XIV. 2003.5; IX. 2008.51; VIII. 2016.5.

6. (1) There shall be a Board, to be known as the Accountancy Board, consisting of a Chairman and six other members, all of whom shall be non-practitioners and who are knowledgeable in the areas relevant to statutory audit and accounting, who shall be appointed by the Minister in accordance with the provisions of this Act and shall hold office for such term not exceeding three years, and under such conditions as may be set out in their respective letter of appointment:

Provided that on the expiration of the term for which a person is appointed under this sub-article, he shall be eligible for re-appointment.

(2) The Board shall consist of:

(*a*) a chairman of recognised standing and experience in the accountancy and auditing profession;

(*b*) a member from a list of two nominated by the University of Malta from among the teaching staff of the Faculty or Faculties in which teaching of and research in the field of accountancy and auditing is organised;

(*c*) a senior official of the Ministry responsible for finance;

(*d*) two members from a list of four nominated by a recognised accountancy body; and

(*e*) two other members.

(3) The number of members present necessary to form a quorum shall be four, but, subject to the presence of a quorum, the Board may act notwithstanding any vacancy among its members.

(4) Save as aforesaid the Board may make its own rules and otherwise regulate its own procedure.

(5) The Minister may also designate a public officer to act as secretary to the Board, but the secretary shall not have a vote.

(6) In order to carry out its functions, the Board shall make use of such funds as the Minister may from time to time make available to it; as well as such funds as it may under regulations made under this Act collect as fees or otherwise.

Powers of the Board.
Added by: VIII. 2016.6.

6A. (1) The Board shall engage two practitioners in a permanent role to assist it in the proper discharge of its duties. The two practitioners shall be appointed by the Board for a one-year term and chosen from a panel of six, nominated by a recognised accountancy body. In the fulfilment of their duties, the practitioners shall not be involved in any decision-making of the Board. The practitioners shall leave the room each time a vote is taken or there is dissension among board members. The practitioners shall be required to desist from their work when any possible conflict of interest arises. A practitioner who has served for a one-year term shall only be eligible for re-appointment after three years have elapsed from his term of duty.

(2) The Board shall be independent of statutory auditors and

audit firms.

(3) The Board shall act in a transparent manner; this shall include the publication of annual work programmes and activity reports.

(4) The system of public oversight shall be adequately funded and shall have adequate resources to initiate and conduct investigations. The funding of the public oversight system shall be secure and free from any undue influence by statutory auditors or audit firms.

Functions of the Board.
Amended by:
II. 2003.28;
XIV. 2003.6;
IX. 2008.52;
XXIII. 2009.31;
VIII. 2016.7;
XXXVI. 2016.5.

7. (1) The Board shall regulate the accountancy profession in the public interest and shall have the following functions:

(*a*) to consider applications for the issue of warrants or practicing certificates under article 4 and, in the case of warrants, whether to advise the Minister to issue such warrants and, in the case of practising certificates, to decide whether to issue such practising certificates;

(*b*) to deal, through disciplinary committees appointed under article 7(16), with cases of professional misconduct and other disciplinary proceedings in respect of warrant holders or holders of a practising certificate including cases leading to the suspension or withdrawal of any warrant or practising certificate issued under this Act;

(*c*) to take such measures as may be reasonably necessary to protect the public interest and the integrity of the profession including the placing of restrictions, the imposition of fines and other similar measures on warrant holders and holders of a practising certificate which in no case shall exceed twelve thousand euro (12,000.00) per warrant holder, practising certificate holder or firm;

(*d*) to advise, or make recommendations or otherwise express its views to the Minister on any matter on which the Minister is to consult with the Board or on which the Board is to make recommendations to the Minister or on which the views of the Board are sought by the Minister;

(*e*) to carry out all such things as may be necessary to meet the obligations arising from Directive 2006/43/EC, Directive 2014/56/EU and Regulation (EU) No. 537/2014;

(*f*) to establish procedures for the registration referred to in subarticle (4);

(*g*) to operate an appropriate system of quality assurance;

Cap. 500.

(*h*) to carry out all such things as may be necessary to meet the obligations arising from the Services (Internal Market) Act, and to fulfill the powers, functions and responsibilities attributed to a competent authority in terms of the same Act, including the provision of assistance to competent authorities of other Member States in accordance with the provisions of the same Act;

(*i*) to carry out all such things as may be necessary to meet the obligations arising from the Mutual Recognition of Qualifications Act; Cap. 451.

(*j*) to inform any authority that it deems appropriate of any sanctions or restrictions imposed by it or any other matters that the Board considers necessary to protect the public interest, on any warrant holder and holders of a practising certificate, audit firms and accounting firms;

(*k*) to publish guidelines on the interpretation of this Act and the regulations and directives issued under it;

(*l*) where necessary, to initiate and conduct investigations in relation to auditors and audit firms and the right to take appropriate action;

(*m*) to regularly monitor the developments in the market for providing statutory audit services to public-interest entities and shall in particular assess the following:

(i) the risks arising from high incidence of quality deficiencies of an auditor or an audit firm, including systematic deficiencies within an audit firm network, which may lead to the demise of any audit firm, the disruption in the provisions of statutory audit services whether in a specific sector or across sectors, the further accumulation of risk of audit deficiencies and the impact on the overall stability of the financial sector;

(ii) the market concentration levels, including in specific sectors;

(iii) the performance of audit committees;

(iv) the need to adopt measures to mitigate the risks referred to in paragraph (*a*);

(*n*) to take measures in order to ensure that the application of auditing standards to the statutory audit of small undertakings is proportionate to the scale and complexity of such undertakings; and

(*o*) such other functions as are or may be assigned to it by this or any other law or as may be delegated to it by the Minister.

(2) In the exercise of its functions under subarticle (1), the Board may consult with such persons as it may deem appropriate, and may also appoint committees, of which the chairman shall be a member of the Board, for the carrying out of such studies or other work as the Board may assign to them, including but not limited to, the establishment and operation of a system of quality assurance.

(3) In the exercise of its function under subarticle (1)(*e*), the

Board shall be empowered to exchange confidential information with the competent authorities of other Member States.

(4) The Board shall maintain an updated register, separately identifying the following:

(*a*) warrant holders and holders of practising certificates;

(*b*) audit firms and accountancy firms;

(*c*) third-country auditors and third-country audit entities;

(*d*) suspended, revoked and withdrawn warrants and practising certificates;

(*e*) suspended, revoked and withdrawn firm registrations;

(*f*) defaulter warrant holders and holders of a practising certificate;

(*g*) defaulter audit and accountancy firms; and

(*h*) warrant holders and holders of a practising certificate who have obtained an exemption from Continued Professional Education in terms of Directive 1 and are temporarily not in practice.

(5) The Minister may, upon recommendation of the Board, prescribe the details to be contained in the register.

(6) The Board shall, in accordance with the provisions of this article, register every third-country auditor and third-country audit entity, where that third-country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements of an undertaking incorporated outside the European Union whose transferable securities are admitted to trading on the regulated market in Malta within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, except when the undertaking in question is an issuer exclusively of outstanding debt securities for which one of the following applies:

(*a*) they have been admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2(1) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least fifty thousand euro (€50,000) or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least fifty thousand euro (€50,000);

(*b*) they are admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2(1) of Directive 2004/109/EC from 31 December 2010 and the denomination per unit of which is, at the date of issue, at least one hundred thousand euro (€100,000) or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least one hundred thousand euro (€100,000).

(7) The audit report, referred to in subarticle (6), shall have no legal effect until the third-country auditor or the third-country audit-entity have been registered in accordance with the provisions of this article.

(8) Registered third-country auditors and third-country audit entities shall, *mutatis mutandis*, be subject to the rules, obligations, penalties and offences under this Act or the regulations or directives issued under it:

Provided that a third-country auditor or a third-country audit entity may be exempt from being subject to the quality assurance system if another Member State's or third country's system of quality assurance that has been assessed as equivalent by the Board in accordance with subarticle (9) has carried out a quality review of the third-country auditor or audit-entity concerned during the preceding three years.

(9) The Board may, on the basis of reciprocity disapply or modify the requirements provided in subarticle (6) and (8) if the third-country auditors or third-country audit entities are subject to systems of public oversight, quality assurance and investigations and penalties in the third-country that are equivalent to those under this Act or the regulations and directives issued under it.

(10) The equivalence referred to in subarticle (9) shall be assessed by the Board which may also rely on the assessments carried out by another Member State.

(11) The Board may register a third-country auditor or a third-country audit entity only if:

(*a*) he/she/it is of good repute;

(*b*) in the case of a third-country audit entity, the majority of the members of the administrative or management body of the third-country audit entity meet the requirements which are equivalent to those laid down in article 10(6);

(*c*) the third-country auditor or the third-country auditor carrying out the audit on behalf of the third-country audit entity meets requirements which are equivalent to those laid down in article 3(2);

(*d*) the audit referred to in sub-article (6) is carried out in accordance with international auditing standards and complies with the requirements of independence, objectivity and audit fees set out in this Act or by the Board or with equivalent standards and requirements;

(*e*) he/she/it publishes on his/her/its website an annual transparency report which includes the information referred to in article 18(1) or it complies with equivalent disclosure requirements.

(12) The equivalence referred to in subarticle (11)(*b*), (*c*), (*d*) and (*e*) shall be assessed by the Board.

(13) All the persons registered in accordance with the provisions of this article shall notify the Board in writing of any change to the

information contained in the register pertaining to them within fifteen days after the date on which the change occurs. The notification shall be signed by the warrant holder, practising certificate holder, third-country auditor, properly authorised representative of the registered firm or the third-country audit entity and delivered to the Board by not later than such term as may be prescribed by the Board for that purpose:

Provided that the Board shall establish procedures for the notification referred to in this subarticle to take place by electronic means.

(14) The register shall be updated without undue delay and in any case not later than four weeks following notification referred to in subarticle (13).

(15) The register shall be made available electronically through the Board's website.

(16) The Board shall exercise its functions under subarticle (1)(*b*) or under any regulations made by the Minister in terms of article 8A, through disciplinary committees appointed in respect of each particular proceeding and which shall in each case be composed of five members appointed by the Board as to two from a list of not less than ten persons submitted to the said Board each year by approved accountancy bodies and as to the remaining three members, at least one shall be a person holding a warrant under article 4(1) who has practised his profession for such period as may be prescribed. The Board shall appoint one of the said members being a warrant holder or a person who had been a warrant holder to be the chairman of the disciplinary committee.

(17) Without prejudice to any power granted to the disciplinary committee under the Act or the regulations or directives issued under it, the disciplinary committee shall have the power to impose administrative fines against any person in case of professional misconduct and other disciplinary proceedings which shall in each case not exceed twelve thousand euro (12,000.00).

(18) The Board may with the agreement of the Minister delegate, under such terms and conditions as it may deem appropriate and subject to its overall supervision or control, any of its functions, other than those under subarticle (1)(*b*) or those under article 4, to an approved accountancy body.

(19) The Board shall publish an annual report including details of its annual work programmes and activity reports, including its tasks under the Audit Regulation, a description of the work carried out by the disciplinary committee, a summary of the works carried out in respect of quality assurance and the overall results of the quality assurance system, the aggregated information on the findings and conclusions of inspections referred to in Article 49 of Directive Number 4 of the Accountancy Profession (Quality Assurance) Directive and such other things which the Board deems relevant.

This report shall also include information on recommendations issued, follow-up on the recommendations, supervisory measures taken and sanctions imposed. It shall also include quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system..

(20) The annual report shall be published by not later than the 31st March of every year.

(21) The Board shall cooperate with competent authorities with a view to achieving a convergence of the requirements set out in article 3(2)(*c*), (*d*) and (*e*). When engaging in such cooperation, the Board and the other competent authorities shall take into account developments in auditing and in the audit profession and, in particular, convergence that has already been achieved by the profession. They shall cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 20 of the Audit Regulation in so far as such convergence relates to the statutory audit of public-interest entities.

(22) The Board shall cooperate with other competent authorities within the framework of the CEAOB with a view to achieving a convergence of the requirements of the aptitude test mentioned in article 4(3). The competent authorities shall enhance the transparency and predictability of the requirements. They shall cooperate with the CEAOB and with the competent authorities referred to in Article 20 of the Audit Regulation in so far as such convergence relates to statutory audits of public-interest entities.

Powers of the competent authority.
Added by: XXXVI. 2016.6.

7A. (1) Without prejudice to Article 26 of the Audit Regulation, in carrying out its tasks under the Act and the Audit Regulation, the Board and any other public authorities may not interfere with the content of audit reports.

(2) The Board shall have all the supervisory and investigatory powers that are necessary for the exercise of its functions under the Act and the Audit Regulation, including, but not limitedly the power to:

(*a*) access data related to the statutory audit or other documents held by auditors or audit firms in any form relevant to the carrying out of their tasks and to receive or take a copy thereof;

(*b*) obtain information related to the statutory audit from any person;

(*c*) carry out on-site inspections of auditors or audit firms;

(*d*) refer matters for criminal prosecution;

(*e*) request experts to carry out verifications or investigations;

(*f*) take the administrative measures, and impose the sanctions referred to in article 14.

(3) The Board may use the powers referred to in sub-article (2)(*a*) only in relation to:

(*a*) auditors and audit firms carrying out statutory audit of public-interest entities;

(*b*) persons involved in the activities of auditors and audit firms carrying out statutory audit of public-interest entities;

(*c*) audited public-interest entities, their affiliates and related third parties;

(*d*) third parties to whom auditors and the audit firms carrying out statutory audit of public-interest entities have outsourced certain functions or activities; and

(*e*) persons otherwise related or connected to statutory auditors and audit firms carrying out statutory audit of public-interest entities.

(4) The Board shall exercise its supervisory and investigatory powers in any of the following ways:

(*a*) directly;

(*b*) in collaboration with other authorities;

(*c*) by application to the competent judicial authorities.

(5) The supervisory and investigatory powers of the Board shall be exercised in full compliance with Maltese law, and in particular, with the principles of respect for private life and the right of defence.

Cap. 440.

(6) The processing of personal data processed in the exercise of the supervisory and investigatory powers pursuant to this article shall be carried out in accordance with the Data Protection Act and Directive 95/46/EC.

Delegation of tasks.
Added by: XXXVI. 2016.6.

7B. (1) The Board may delegate any of the tasks required to be undertaken pursuant to this Act and the Audit Regulation to other authorities or bodies designated or otherwise authorised by law to carry out such tasks, except for tasks related to:

(*a*) the quality assurance systems referred to in Directive 4 Accountancy Profession (Quality Assurance);

(*b*) investigations arising from that quality assurance system or from a referral by another authority; and

(*c*) sanctions and measures related to the quality assurance reviews or investigation of auditors of public-interest entities.

(2) Any execution of tasks by other authorities or bodies shall be the subject of an express delegation by the Board. The delegation shall specify the delegated tasks and the conditions under which they are to be carried out.

Where the Board delegates tasks to other authorities or bodies, it shall be able to reclaim these competences on a case-by-case basis.

(3) The authorities or bodies shall be organised in such a manner that there are no conflicts of interest. The ultimate responsibility for supervising compliance with the Audit

Regulation, this Act and the implementing measures adopted pursuant thereto shall lie with the Board.

The Board shall inform the European Commission and the competent authorities of Member States of any arrangement entered into with regard to the delegation of tasks, including the precise conditions governing such delegation.

Regulations. *Amended by: XIII. 1983.5; XIV. 2003.7; L.N. 423 of 2007; IX. 2008.53; XXIII. 2009.32; XXXVI. 2016.7.*

8. (1) The Minister may, on the recommendation of the Board, make regulations not inconsistent with the provisions of this Act, to give better effect to any of such provisions and generally to regulate the profession of accountants, and, without prejudice to the generality of the foregoing, such regulations may in particular include provisions with respect to -

(*a*) the establishment and definition of accounting standards, procedures and generally accepted accounting principles and practice applicable in respect of the preparation of financial statements of entities;

(*b*) the establishment and definition of auditing standards and generally accepted auditing principles and practice and other duties and practices to be followed by auditors, either generally or in particular fields of activity, including, but not limitedly, the laying down of additional requirements in relation to the content of the audit report referred to in articles 179 and 179A of the Companies Act; Cap. 386.

(*c*) the recognition of an approved accountancy body, the conditions for such recognition and the suspension or withdrawal thereof;

(*d*) the work which cannot be performed and the services which cannot be rendered, whether wholly or in part, except by a person holding a warrant or a practising certificate under this Act;

(*e*) the work which cannot be performed and the services which cannot be rendered by persons holding a warrant or a practising certificate under this Act;

(*f*) any matter which is required or is authorised by this Act to be prescribed;

(*g*) the procedure to be followed by the Board in relation to applications for the issue of warrants or practising certificates under article 4;

(*h*) the procedures to be followed in cases of professional misconduct or other disciplinary proceedings;

(*i*) the procedure of the Board;

(*j*) the implementation of the provisions of Directive 2006/43/EC, Directive 2014/56/EU and Regulation (EU) No. 537/2014;

(*k*) the implementation of the powers, functions and responsibilities attributed to the Board as a competent authority in terms of the Services (Internal Market) Act;

Cap. 500.

(*l*) the punishments, penalties and other consequences and effects to which a person may become liable or may take place in the event of any contravention or non-compliance with any provision of any regulations or directive issued under or pursuant to this article; so however that no punishment so prescribed may exceed a fine (*multa*) of twenty-five thousand euro (€25,000.00), or imprisonment for a term of one year with or without such fine, or in the case of a continuing offence a fine (*multa*) of one hundred and twenty euro (€120.00) for each day on which the offence continues, whether or not in addition to the punishment aforesaid;

(*m*) the equivalence criteria of audits of the annual and consolidated financial statements referred to in article 7(6);

(*n*) the general equivalence criteria to be used in assessing the annual and consolidated financial statements referred to in article 7(6);

(*o*) the equivalence referred to in article 7(9);

(*p*) the establishment of general equivalence criteria which are to be used in assessing the public oversight, quality assurance, investigation and sanctions systems of a third country;

S.L. 281.01

(*q*) the adequacy of the third countries referred to in regulation 9 of the Accountancy Profession Regulations;

(*r*) the establishment of general adequacy criteria which are to be used in order to assess whether the competent authorities of third countries may be recognised as adequate to cooperate with the Board on the exchange of audit working papers or other documents held by auditors and audit firms.

(2) The Board may, with the approval of the Minister, issue directives or guidelines regulating the activity of warrant holders, practising certificate holders or firms on the following:

(*a*) the professional conduct of warrant holders, practising certificate holders or firms, code of ethics, standards on internal quality control of audit firms and standards of competency and integrity and independence to be kept by the profession;

(*b*) the confidentiality of information obtained by a warrant holder, practising certificate holder, firm or their employees in connection with work performed or services rendered in connection with the accountancy profession;

(*c*) advertising and publicity by warrant holders, practising certificate holders and firms;

(*d*) obtaining professional work;

(*e*) the manner in which experience for the purposes of article 3(2)(*e*) or which may be required to obtain practising certificates under article 4(2), and the persons with whom such practice and experience may be undertaken;

(*f*) clients' accounts and monies held on behalf of clients and third parties;

(*g*) continued professional education;

(*h*) the establishment and operation of a system of quality assurance;

(*i*) the meaning and interpretation of any provision of this Act and any regulations made in terms of subarticle (1);

(*j*) the punishments, penalties and other consequences and effect to which a person may become liable or which may take place in the event of any contravention of, or non-compliance with the provisions of any directive, so however that these may not exceed such parameters as may be set out in the Act;

(*k*) the implementation of the provisions of Directive 2006/43/EC, Directive 2014/56/EU and Regulation (EU) No. 537/2014;

(*l*) the implementation of the powers, functions and responsibilities attributed to the Board as a competent authority in terms of the Services (Internal Market) Act; Cap. 500.

(*m*) the provision of such information as may be required from warrant holders, practising certificate holders and firms by the Board in order to enable it to carry out any of its functions under this Act;

(*n*) the establishment of a system of registration and renewals for warrants and practising certificates;

(*o*) in exceptional circumstances, the signature(s) required in the audit report mentioned in articles 179 and 179A of the Companies Act need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person, even though the name(s) of the person(s) involved shall be known to the Board; Cap. 386.

(*p*) other sanctioning powers in addition to those referred to in article 14(2); and

(*q*) such other matters as may be prescribed by regulation.

(3) Directives and guidelines issued in terms of subarticle (2) shall be published:

(*a*) in the Gazette; or

(*b*) by the Ministry of Finance in a separate publication and the fact of publication thereof shall be notified in the Gazette together with information as to where the said publication may be viewed or copies thereof obtained by the public.

(4) Directives and guidelines issued in terms of subarticle (2) shall not become operative before the lapse of one week from the publication in the Gazette made in terms of subarticle (3), or such later date as may be specified therein.

(5) Regulations, directives or guidelines made under any of the provisions of this Act may be made in the English language only.

Regulations in relation to the mutual recognition of qualifications.
Added by: XVIII. 2002.10.
Amended by: XXIII. 2009.33.
Cap. 450.

8A. The Minister may make regulations for bringing into effect the provisions of the Mutual Recognition of Qualifications Act and subsidiary legislation issued thereunder.

Approved accountancy body.
Amended by: XIV. 2003.8.

9. (1) The Minister may, on the recommendation of the Board, recognize any local association of accountants as an approved accountancy body for the purposes of this Act if the Board is satisfied, among such other matters as may be prescribed, that the educational and professional qualifications demanded by such association for associate membership thereof conform to currently accepted standards and that such membership is open to all persons having such qualifications.

(2) Such recognition shall be subject to such conditions as the Minister may, on the recommendation of the Board, in granting recognition impose or as may from time to time be prescribed; and if at any time any of the conditions aforesaid, or any of the provisions contained in or prescribed under the next following subarticle, is not observed or fulfilled, or there is a material change in the circumstances under which the recognition was granted, the Minister may, on the recommendation of the Board, suspend or withdraw the recognition.

(3) An approved accountancy body shall keep a register of its associate members and shall enter therein the names of all persons who qualify for such membership. The said register shall be kept in such manner as may be prescribed.

Partnerships of accountants or of auditors.
Amended by: XIII. 1983.5; XIV. 2003.9; L.N. 423 of 2007; IX. 2008.54; XXIII. 2009.34; XXXVI. 2016.8.

10. (1) Where two or more persons intend to practise jointly as accountants, they may form an accountancy firm having as one of its main objects the practice of accountancy:

Provided that for an accountancy firm to practise as an audit firm it shall be required to have as one of its main objects the practice of auditing and shall fulfil such other conditions as may be prescribed from time to time:

Provided further that a firm may provide other services subject to compliance at all times with the rules on scepticism, independence and professional ethics set out in the Code of Ethics and any other regulations, directives or guidelines issued in terms of article 8.

(2) Where an accountancy firm is authorised to act as an audit firm it may indicate such fact in or together with the firm's name as the case may be.

(3) No person may be a principal in an accountancy firm which is not also an audit firm unless such person:

(*a*) holds a warrant issued under article 4(1); or

(*b*) is a person of good repute and is appropriately qualified either by way of academic or professional qualifications or experience.

(4) In an accountancy firm which is not also an audit firm the persons listed in subarticle (3)(*a*) shall:

(*a*) hold more than fifty *per centum* of the voting rights in the firm; and

(*b*) constitute more than sixty *per centum* of the firm's administrative or management body:

Provided that in the case of an accountancy firm which is owned, managed and controlled by two individuals, only one of the individuals sitting on the administrative or management body of the firm shall be required to satisfy the conditions laid down in subarticle (3)(*a*).

(5) No person may be a principal in an audit firm unless such person:

(*a*) holds a practising certificate to practise in the field of auditing; or

(*b*) is an audit firm of good repute approved in a Member State; or

(*c*) is a person of good repute and is appropriately qualified either by way of academic or professional qualifications or experience.

(6) An audit firm shall be of good repute and shall satisfy the following conditions:

(*a*) the individuals who carry out the audit on behalf of the audit firm must hold a practising certificate in the field of auditing;

(*b*) the majority of the voting rights in the audit firm must be held by an audit firm or audit firms approved in any Member State or by individuals holding a practising certificate in the field of auditing; and

(*c*) sixty *per centum* of the administrative or management body of the audit firm must be made up of an audit firm or audit firms approved in any Member State or by individuals holding a practising certificate in the field of auditing:

Provided that in the case of an audit firm which is owned, managed and controlled by two individuals, only one of the individuals sitting on the administrative or management body of the audit firm shall be required to satisfy the conditions laid down in this paragraph (*c*).

(7) A firm shall, when duly formed according to law, be registered with the Board, and upon such registration the principals, shall, for so long as it is so registered, be authorised by the Board to act, in the name and on behalf of the firm and where applicable, to bring to the notice of the public the fact that it may practise in any field of the profession of accountant for which a certificate may be required under article 4(2); and in the case of an accountancy firm it shall be entitled accordingly to use the designation of certified public accountants and the abbreviation "CPAs".

(8) When an audit firm carries out an audit, the audit report shall be signed at least by an individual auditor carrying out the audit on behalf of the audit firm.

(9) Every firm registered under this article shall give to the Board such information as the Board may reasonably require or as may be prescribed, and shall give notice to the Board of any relevant change in any information previously given to it within fifteen days after the date on which the change occurs.

(10) Notwithstanding any other provisions of this Act or of any other enactment and notwithstanding any agreement to the contrary, the principals shall be responsible for the maintenance of the required professional standards and conduct including any applicable Code of Ethics, and generally responsible for the fulfilment of their obligations under this Act or any other applicable law.

(11) Any person who makes use of the designation "certified public accountants" or its abbreviation "CPAs" and, or, bringing to the notice of the public the holding of any particular certificate in relation to a firm which is not registered under this article or in any other manner knowingly makes use of a name falsely implying the existence of such a firm, or that such a firm is registered, or may otherwise lawfully function, under this article, or does any other act calculated to lead to the belief that any of the facts aforesaid exists when in fact it does not, shall be guilty of an offence and shall be liable on conviction, for each offence, in respect of a first offence to a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500.00), and in respect of a second or subsequent offence to a fine (*multa*) not exceeding twelve thousand euro (€12,000.00) or to imprisonment to a term not exceeding three months or to both such imprisonment and fine, and in the case of a continuing offence to an additional fine (*multa*) not exceeding two hundred and fifty euro (€250.00) for each day during which the offence continues.

(12) The provisions of article 3(5) shall, *mutatis mutandis*, apply to the registration of a firm under this article as they apply to the issue of a warrant under this Act.

Recognition of audit firms.
Added by: XXXVI. 2016.9.

10A. (1) By way of derogation from article 10(7), an audit firm which is approved in another Member State shall be entitled to perform statutory audits provided that the key audit partner who carries out the statutory audit on behalf of the audit firm complies with article 3(1) and (2) and regulation 4(1) and (2) and regulation 7 of the Accountancy Profession Regulations. S.L. 281.01

(2) Where an audit firm which qualifies under sub-article (1) wishes to carry out statutory audits, it shall register with the Board in accordance with article 7(4) and (15) and regulation 6 of the Accountancy Profession Regulations. S.L. 281.01

(3) The Board shall register the audit firm if it is satisfied that the audit firm is registered with the competent authority in the home Member State. Where the Board intends to rely on a certificate attesting to the registration of the audit firm in the home Member State, the Board may require that the certificate issued by the competent authority in the home Member State be not more than three months old. The Board shall inform the competent authority in the home Member State of the registration of the audit firm.

Indemnity insurance and penalties for breach of duty.
Amended by: XIII. 1983.5; XXXIV. 1986.5; XIV. 2003.10; L.N. 423 of 2007; IX. 2008.55; XXIII. 2009.35; XXXVI. 2016.10.

11. (1) Every firm formed under article 10 and every warrant holder or a holder of a practising certificate, shall, for so long as they hold such a warrant or practising certificate or, as the case may require, for so long as they are so formed, and thereafter with respect to anything done or omitted during that time, be covered by an indemnity insurance, by such company, in such manner and for such amount as may be prescribed, against any liability which such person or firm may incur for compensation in respect of any loss or damage which a client or any other person may suffer as a result of any negligent act, error or omission committed by any such person or firm, or any principal thereof, or by any of their employees, in the carrying out of their functions as well as against any claim in respect of any loss or damage brought about or contributed by any dishonest, fraudulent, criminal or malicious act or omission of any of their employees.

(2) (*a*) The indemnity insurance referred to in subarticle (1) shall also extend to cover claims in respect of loss or damage made in the five years immediately following the cessation of the policy as a result of the retirement of or the surrender of the warrant or practising certificate by any principal and provided that the negligent act, error or omission giving rise to the claim had occurred during the period of insurance of the policy.

(*b*) In the event that an insurance policy is transferred from one insurer to another, the new policy shall extend to indemnify the assured against any loss or claim made against the assured in respect of any negligent act, error or omission which has occurred, or is alleged to have occurred, prior to the inception of the new policy, provided that the assured is unaware of such loss or claim at the time of completing the new policy, and such loss or claim has not been notified under any other policy attaching prior to the inception of the new policy.

(3) (*a*) The requirement of an indemnity insurance under this article shall not apply to any person who is a warrant holder or a holder of a practising certificate in respect of any year in which he has not exercised the profession of accountant or auditor and who has before the commencement of such year informed the Board in writing that during that year he will not be exercising the profession of accountant or auditor.

(*b*) The provisions of paragraph (*a*) shall not be construed as exempting any person from the obligation to be covered by an indemnity insurance for the further period of five years immediately following any year in which he so exercised such profession.

(*c*) For the purpose of this subarticle any warrant holder or a holder of a practising certificate who in any year -

(i) does not in any manner exercise the said profession; or

(ii) exercises the said profession as an employee of the Government or of a body corporate established by law, or of another person, or of a firm, in respect only of the exercise of such profession in the course of his duties during such employment,

shall be exempted from the obligation to be covered by an indemnity insurance under subarticle (1).

(4) Every person or firm bound to be covered by an indemnity insurance under this article shall each year, together with the annual return, inform the Board in writing of the name of the insurance company, the relative number of the insurance policy, provide documentary evidence from the insurance company that such person or firm is actually covered by the identified policy of insurance, and shall declare to the Board that such level of insurance cover amounts to not less than such minimum level as may be prescribed.

(5) Every person who fails to comply with any of the foregoing provisions of this article shall be guilty of an offence and shall be liable on conviction for each offence to a fine (*multa*) not exceeding six thousand euro (€6,000.00), or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment, and in the case of a continuing offence to an additional fine not exceeding six hundred euro (€600.00) for each day during which the offence continues.

Breach of professional duty.
Substituted by: XIV. 2003.11; IX. 2008.56. Amended by: XXIII. 2009.36.

12. Every person who acts or omits to act in breach of his professional duty as accountant or auditor, shall, if such act or omission amounts to dishonesty or serious misconduct, be liable on conviction to imprisonment for a period of not less than one year and not exceeding five years, and the court may also inflict on such person a fine (*multa*) not exceeding sixty thousand euro (€60,000.00).

Examption from liability or responsibility. *Substituted by: IX. 2008.56.*

13. Any agreement or other arrangement, as may be prescribed by the Minister, purporting to exempt a warrant holder or a holder of a practising certificate, from any liability, responsibility or duty relative to the statutory audit, except under a policy of insurance made out under article 11, to indemnify him against any such liability or responsibility, shall be null and void.

Administrative fines, sanctions and measures. *Amended by: XIV. 2003.13. Substituted by: IX. 2008.56. Amended by: XXXVI. 2016.11.*

14. (1) In the case of a breach of any rules under this Act or any regulations or directives issued under it, the Board shall have the power to issue administrative fines and reprimands, and to take such other measures as it may deem appropriate according to the circumstances of the case.

(2) The Board shall have the power to take and, or impose at least the following administrative measures and sanctions for breaches of the provisions of the rules under this Act and, where applicable, the Audit Regulation:

(*a*) a notice requiring the natural or legal person responsible for the breach to cease the conduct and to abstain from any repetition of that conduct;

(*b*) a public statement which indicates the person responsible and the nature of the breach, published on the website of the Board;

(*c*) a temporary prohibition, of up to three years' duration, banning the statutory auditor, the audit firm or the key audit partner from carrying out statutory audits and, or signing audit reports;

(*d*) a declaration that the audit report does not meet the requirements of article 179A of the Companies Act or, where applicable, article 179B of that Act; Cap. 386.

(*e*) a temporary prohibition, of up to three years' duration, banning a member of an audit firm from exercising functions in audit firms or public-interest entities;

(*f*) the imposition of administrative pecuniary sanctions on natural and legal persons.

(3) When determining the type and level of administrative sanctions and measures mentioned in sub-article (1), article 7(17) and article 15, the Board and, or the disciplinary committees appointed in terms of article 7(16) shall take into account all relevant circumstances, including where appropriate:

(*a*) the gravity and the duration of the breach;

(*b*) the degree of responsibility of the responsible person;

(*c*) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person;

(*d*) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined;

(*e*) the level of cooperation of the responsible person with the Board;

(*f*) previous breaches by the responsible legal or natural person.

Additional factors may be taken into account by the Board and, or the disciplinary committees appointed in terms of article 7(16) where such factors are specified in a legal provision, regulation or Directive.

Suspension, cancellation, etc., of warrants, registration of firm.
Amended by: XIV. 2003.14. Substituted by: IX. 2008.56. Amended by: III. 2009.7; XXIII. 2009.37; XXXVI. 2016.12.

15. (1) Without prejudice to article 14, a warrant or practising certificate issued under any of the provisions of this Act may be suspended or subjected to other conditions, and the registration of a firm under article 10 may be suspended, cancelled or subjected to other conditions, by the Board, in accordance with the provisions of this article, if the person to whom such a warrant or practising certificate was issued or the firm or any of the principals of the firm:

(*a*) has, following an enquiry held by the disciplinary committee appointed under article 7(16), been found guilty of any of the following acts or omissions:

(i) dishonesty, serious misconduct or gross negligence in the exercise of his profession;

(ii) a contravention of any regulation made or directive issued in terms of this Act where the regulation or directive provides for the suspension, cancellation, withdrawal or subjection to conditions of a warrant or practising certificate as a consequence of such contravention;

(iii) material contravention of regulations or directives with respect to professional standards, practices or integrity;

(iv) grievous conduct discreditable to the profession;

(v) failure to comply with any condition attached to a warrant or practising certificate under subarticle (5) when such failure is of a material nature; or

(*b*) has been found guilty by a court of law -

(i) of an offence under this Act or any regulations made thereunder; or

(ii) of a crime affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud or of any crime punishable by a term of imprisonment exceeding one year:

Provided that the Board may, in any of the cases referred to in (*a*) or (*b*) above:

(i) revoke or withdraw a practising certificate; or

(ii) advise the Minister to revoke or withdraw the warrant.

(2) Without prejudice to the provisions of subarticle (1):

(*a*) a warrant may be withdrawn or cancelled by the Minister at the request of the warrant holder addressed to the Board;

(*b*) a practising certificate may be withdrawn or cancelled by the Board at the request of the practising certificate holder or the firm;

(*c*) the registration of a firm may be cancelled by the Board at the request of the firm;

(*d*) a warrant may be revoked or cancelled by the Minister acting on the advice of the Board, whenever the Board is of the opinion that there are material circumstances concerning the person to whom the warrant was issued or if the warrant had not been issued, would disqualify such person from obtaining a warrant;

(*e*) a practising certificate and the registration of a firm may be revoked or cancelled by the Board whenever the Board is of the opinion that there are material circumstances concerning the person to whom the practising certificate was issued or the firm which, if the warrant or practising certificate had not been issued or the firm registered, as the case may require, would disqualify such person from obtaining a practising certificate or such firm from being registered;

(*f*) Where the approval of an audit firm is withdrawn for any reason, the Board shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of Member States where the audit firm is also registered.

(3) In exercising its functions under this article the disciplinary committee shall act in accordance with such rules and procedures as shall be prescribed.

(4) Where a warrant or practising certificate or registration has been suspended or subjected to conditions or when the practising certificate or the registration of the firm has been withdrawn or cancelled under any of the provisions of this article, the suspension or the conditions may be lifted by the Board at any time; and where the warrant or practising certificate has been withdrawn under subarticle (2)(*a*) or (*b*) or the registration cancelled under subarticle 2(*c*), a new warrant or practising certificate may be issued or a new registration made at any time if the conditions for such issue or registration are satisfied.

(5) Where a warrant has been revoked under any of the provisions of this article, other than subarticle (1)(*a*)(i) and (*b*), in respect of an offence against article 3(5), article 10(11) or article 10(12), the Minister may, after the expiration of two years from the date of the revocation, and if the Board so advises, issue a fresh warrant under article 4, under such conditions as may be imposed

by the Minister on the advice of the Board.

(6) Where a practising certificate has been revoked under any of the provisions of this article, other than subarticle (1)(*a*)(i) and (*b*), in respect of an offence against article 3(5), article 10(11) or article 10(12), the Board may, after the expiration of two years from the date of the revocation, issue a fresh practising certificate under article 4, under such conditions as may be imposed by the Board.

(7) Upon the revocation or withdrawal of a warrant or practising certificate issued under this Act, or during such period as such a warrant or practising certificate is suspended, the person to whom the warrant or practising certificate was issued shall cease to be the holder of such warrant or practising certificate; and upon the cancellation of any registration of a firm under article 10, or for such period as such registration is suspended, the firm shall cease to be registered.

Appeals.
Added by:
XXIII. 2009.38.
Amended by:
L.N. 335 of 2010.

15A. (1) A right of appeal to the Tribunal, from the decisions referred to in article 15B, shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Tribunal shall also explain his juridical interest in impugning the decision appealed from.

Cap. 490.

(2) Unless otherwise provided by the Administrative Justice Act or any regulations made thereunder, an appeal from the decisions referred to in article 15B shall be made by application and shall be filed in the registry of the Tribunal within twenty days from the date on which the said decision has been notified to the party appealing.

Decisions of the Board that may be appealed from.
Added by:
XXIII. 2009.38.
Amended by:
L.N. 335 of 2010.

15B. Unless otherwise provided by law, an appeal shall lie to the Tribunal from the following decisions made under this Act:

(*a*) any decision of the Board not to advise the Minister to issue a warrant, taken pursuant to article 7(1)(*a*), and any decision of the Board not to issue a practising certificate, taken pursuant to article 7(1)(*a*);

(*b*) any decision of the Board pursuant to article 7(1)(*b*) taken following an enquiry held by the disciplinary committee appointed under article 7(16);

(*c*) any decision of the Board to take a measure in terms of article 7(1)(*c*);

(*d*) any decision of the disciplinary committee to impose an administrative fine pursuant to article 7(17);

(*e*) any decision of the Board to refuse the registration of a firm pursuant to article 10(7) or any decision of the Board pursuant to article 15(1) to suspend, cancel or subject to other conditions the registration of a firm or to revoke or cancel the registration of a firm pursuant to article 15(2)(*e*);

(*f*) any decision of the Board, pursuant to article 14, to issue administrative fines or reprimands or to impose other measures;

(*g*) any decision taken by the Board, pursuant to article 15(1), to revoke, withdraw or suspend a practising certificate, or to subject such practising certificate to other conditions, or to revoke or cancel a practising certificate pursuant to article 15(2)(*e*);

(*h*) any decision taken by the Board, pursuant to article 15(1), to suspend a warrant or to subject such warrant to other conditions;

(*i*) any decision taken by the Minister, on the advice of the Board, pursuant to article 15(1) or article 15(2)(d), to revoke or withdraw a warrant; and

(*j*) any decision taken in terms of regulations or directives issued under this Act, when the regulation or directive explicitly grants a right of appeal in terms of this article.

Status of decision pending an appeal before the Tribunal or the Court of Appeal.
Added by: XXIII. 2009.38.
Amended by: L.N. 335 of 2010.

15C. (1) The decision of the Board or the Minister, as the case may be, shall stand pending an appeal, whether before the Tribunal or the Court of Appeal, and shall be adhered to by all the parties to whom the decision applies.

(2) The Tribunal or the Court of Appeal, as the case may be, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision of the Board or the Minister, as the case may be, pending the final determination of the appeal. The Tribunal or the Court of Appeal, in deciding to suspend the decision, shall state their reasons for doing so.

General provisions relating to offences.
Offences and punishments.
Added by: IX. 2008.57.
Amended by: XXIII. 2009.39; XXXVI. 2016.13.

16. (1) The provisions of this Act establishing offences and punishments in respect thereof shall not affect the operation of any other law establishing offences and punishments in respect of the same acts or omissions and shall not, in particular, affect the application of any higher punishments under any other law.

(2) For the purposes of article 3(6) and of article 10(11), the use on any card, letterhead, sign, board, plate, advertisement or other written, printed or engraved device, instrument or document, of the words "certified public accountant" or its abbreviation "CPA", whether in its singular or plural form, in relation to a name, shall be sufficient evidence of the knowledge of such use by the person in relation to whose name the said words or abbreviations are used, unless such person proves that the use was made without his knowledge and that upon becoming aware of the use he took adequate steps to stop it.

(3) For the purposes of this Act:

(*a*) a person shall not be deemed to exercise the profession of accountant if he acts simply as an employee of, or assistant to, an accountant, and does not issue any accounting or financial statement over his name;

(*b*) to the extent that is so prescribed, a person shall not be deemed to exercise the profession of accountant if he is in such employment or holds or acts in such office, or performs only such work, services, acts or functions, as may be prescribed;

(*c*) to the extent that is so prescribed, a person shall not be deemed to exercise the profession of accountant if he gives assurances on the future viability of an audited entity or on the efficiency or effectiveness with which the management or the board of directors has conducted or will conduct the affairs of the entity.

Cap. 9.

(4) The conduct by the Board of proceedings for professional misconduct and other disciplinary proceedings in terms of article 7 shall be without prejudice to any proceedings which may be taken against the person concerned under the provisions of the Criminal Code or of any other law and any proceedings so taken shall be without prejudice to any proceedings that may be taken by the Board.

(5) The Minister may by regulation prescribe that the provisions of subarticle (2) be applied *mutatis mutandis* in respect of the holding of a practising certificate in the field of auditing.

Dismissal or resignation of an auditor.
Added by: IX. 2008.57.
Amended by: XXIII. 2009.40.

17. (1) An auditor shall, in the case of his dismissal or resignation as auditor of an audit client during his term of appointment, inform the Board in writing of such dismissal or resignation of an audit and shall give adequate explanations for the reasons thereof.

(2) The notification referred to in subarticle (1) shall be made within fourteen days from the dismissal or resignation as the case may be.

Publication of transparency report in the audit of public-interest entities..
Added by: IX. 2008.57.
Amended by: XXIII. 2009.41.
Substituted by: XXXVI. 2016.14.

18. (1) An auditor or an audit firm that carries out statutory audits of public-interest entities shall make public an annual transparency report at the latest four months after the end of each financial year. That transparency report shall be published on the website of the auditor or the audit firm and shall remain available on that website for at least five years from the day of its publication on the website. If the auditor is employed by an audit firm, the obligations under this article shall be incumbent on the audit firm.

An auditor or an audit firm shall be allowed to update its published annual transparency report. In such a case, the auditor or the audit firm shall indicate that it is an updated version of the report and the original version of the report shall continue to remain available on the website.

Auditors and audit firms shall communicate to the competent authorities that the transparency report has been published on the website of the auditor or the audit firm or, as appropriate, that it has been updated.

(2) The annual transparency report shall include at least the following:

(*a*) a description of the legal structure and ownership of the audit firm;

(*b*) where the auditor or the audit firm is a member of a network:

(i) a description of the network and the legal and structural arrangements in the network;

(ii) the name of each auditor operating as a sole practitioner or audit firm that is a member of the network;

(iii) the countries in which each auditor operating as a sole practitioner or audit firm that is a member of the network is qualified as a statutory auditor or has his, her or its registered office, central administration or principal place of business;

(iv) the total turnover achieved by the auditors operating as sole practitioners and audit firms that are members of the network, resulting from the statutory audit of annual and consolidated financial statements;

(*c*) a description of the governance structure of the audit firm;

(*d*) a description of the internal quality control system of the auditor or of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning;

(*e*) an indication of when the last quality assurance review referred to in Article 26 of the Audit Regulation was carried out;

(*f*) a list of public-interest entities for which the auditor or the audit firm carried out statutory audits during the preceding financial year;

(*g*) a statement covering the auditor's or the audit firm's independence practices which also confirms that an internal review of independence compliance has been conducted;

(*h*) a statement on the policy followed by the auditor or the audit firm concerning the continuing education of auditors as referred in Directive 1 Accountancy Profession (Continued Professional Education);

(*i*) information concerning the basis for the principals' remuneration in audit firms;

(*j*) a description of the auditor's or the audit firm's policy concerning the rotation of key audit partners and staff in accordance with Article 17(7) of the Audit Regulation;

(*k*) where not disclosed in its financial statements within the meaning of article 167(2) of the Companies Act, information about the total turnover of the auditor or the audit firm, divided into the following categories: Cap. 386.

(i) revenues from the statutory audit of annual and consolidated financial statements of public-interest entities and entities belonging to a group of undertakings whose parent undertaking is a public-interest entity;

(ii) revenues from the statutory audit of annual and consolidated financial statements of other entities;

(iii) revenues from permitted non-audit services to entities that are audited by the statutory auditor or the audit firm; and

(iv) revenues from non-audit services to other entities.

The auditor or the audit firm may, in exceptional circumstances, decide not to disclose the information required in paragraph (*f*) to the extent necessary to mitigate an imminent and significant threat to the personal security of any person. The auditor or the audit firm shall be able to demonstrate to the Board the existence of such threat.

(3) The transparency report shall be signed by the auditor or the audit firm.

Prohibition of the provision of non-audit services.
Added by: XXXVI. 2016.15.

18A. (1) An auditor or an audit firm carrying out the statutory audit of a public-interest entity, or any member of the network to which the auditor or the audit firm belongs, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the European Union any prohibited non-audit services in:

(*a*) the period between the beginning of the period audited and the issuing of the audit report; and

(*b*) the financial year immediately preceding the period referred to in paragraph (*a*) in relation to the services listed in sub-article (2)(*e*).

(2) For the purposes of sub-article (1), prohibited non-audit services shall mean:

(*a*) tax services relating to:

(i) preparation of tax forms;

(ii) payroll tax;

(iii) customs duties;

(iv) identification of public subsidies and tax incentives unless support from the auditor or the audit firm in respect of such services is required by law;

(v) support regarding tax inspections by tax authorities unless support from the auditor or the audit firm in respect of such inspections is required by law;

(vi) calculation of direct and indirect tax and deferred tax;

(vii) provision of tax advice;

(*b*) services that involve playing any part in the management or decision-making of the audited entity;

(*c*) bookkeeping and preparing accounting records and financial statements;

(*d*) payroll services;

(*e*) designing and implementing internal control or risk management procedures related to the preparation and, or control of financial information or designing and implementing financial information technology systems;

(*f*) valuation services, including, valuations performed in connection with actuarial services or litigation support services;

(*g*) legal services, with respect to:

(i) the provision of general counsel;

(ii) negotiating on behalf of the audited entity; and

(iii) acting in an advocacy role in the resolution of litigation;

(*h*) services related to the audited entity's internal audit functions;

(*i*) services linked to the financing, capital structure and allocation, and investment strategy of the audited entity, except providing assurance services in relation to the financial statements, such as the issuing of comfort letters in connection with prospectuses issued by the audited entity;

(*j*) promoting, dealing in, or underwriting shares in the audited entity;

(*k*) human resources services, with respect to:

(i) management in a position to exert significant influence over the preparation of the accounting records or financial statements which are the subject of the statutory audit, where such services involve:

- searching for or seeking out candidates for such position; or
- undertaking reference checks of candidates for such positions;

(ii) structuring the organisation design; and

(iii) cost control.

(3) By way of derogation from sub-article (2), the services referred to in paragraphs (*a*)(i), (*a*)(iv) to (*a*)(vii) and (*f*) of the said sub-article may be provided, provided that the following requirements are complied with:

(*a*) they have no direct or have immaterial effect, separately or in the aggregate on the audited financial statements;

(*b*) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee referred to in Article 11 of the Audit Regulation; and

(*c*) the principles of independence laid down in the Code of Ethics issued by the Board are complied with by the auditor or the audit firm.

(4) An auditor or an audit firm carrying out statutory audits of public-interest entities and, where the auditor or the audit firm belongs to a network, any member of such network, may provide to the audited entity, to its parent undertaking or to its controlled undertakings non-audit services other than the prohibited non-audit services referred to in sub-articles (1) and (2), subject to the approval of the audit committee after it has properly assessed threats to independence and the safeguards applied in accordance with the Code of Ethics issued by the Board.

(5) (*a*) When a member of a network to which the auditor or the audit firm carrying out a statutory audit of a public-interest entity belongs provides any of the non-audit services, referred to in sub-articles (1) and (2), to an undertaking incorporated in a third country which is controlled by the audited public-interest entity, the auditor or the audit firm concerned shall assess whether his, her or its independence would be compromised by such provision of services by the member of the network.

(*b*) If his, her or its independence is affected, the auditor or the audit firm shall apply safeguards where applicable in order to mitigate the threats caused by such provision of services in a third country. The auditor or the audit firm may continue to carry out the statutory audit of the public-interest entity only if he, she or it can justify, in accordance with Article 6 of the Audit Regulation and the Code of Ethics issued by the Board, that such provision of services does not affect his, her or its professional judgement and the audit report.

(*c*) For the purposes of this sub-article:

(i) being involved in the decision-taking of the audited entity and the provision of the services referred to in sub-article (2)(*b*), (*c*) and (*e*) shall be deemed to affect such independence in all cases and to be incapable of mitigation by any safeguards.

(ii) provision of the services referred to in sub-article (2), other than paragraphs (*b*), (*c*) and (*e*) thereof, shall be deemed to affect such independence and therefore to require safeguards to mitigate the threats caused thereby.

19. (1) The information provided to the Board under the provisions of this Act or the rules and directives issued under it shall be signed by the compliance principal.

Compliance principal.
Added by: IX. 2008.57.

(2) The Board may issue rules prescribing the use of electronic signatures as defined in point 1 of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

20. (1) The Board shall appropriately disclose to the public all the measures taken and the penalties imposed on auditors in terms of this Act or the regulations and directives issued under it including the appropriate disclosure of penalties imposed. The disclosure required by this article may take place through the annual report published in terms of article 7(19).

Disclosure of measures and decisions.
Added by: IX. 2008.57.
Amended by: XXIII. 2009.42.

(2) Without prejudice to the generality of subarticle (1), the Board or the Minister, as the case may be, shall notify by registered mail the decisions taken pursuant to articles 7(1)(*a*), 7(1)(*b*), 7(1)(*c*), 7(17), 10(7), 14, 15(1), 15(2)(*d*) and 15(2)(*e*) to any person to whom such decision applies.

20A. (1) The Board shall publish on its official website at least any administrative sanction imposed for breach of the provisions of this Act, the regulations made under it or Directives, or of the Audit Regulation in respect of which all rights of appeal have been exhausted or have expired, as soon as reasonably practicable immediately after the person sanctioned has been informed of that decision, including information concerning the type and nature of the breach and the identity of the natural or legal person on whom the sanction has been imposed:

Publication of sanctions and measures.
Added by: XXXVI. 2016.16.

Provided that where the sanctions imposed are subject to appeal, publication shall only be made after all rights of appeal have been exhausted or have expired.

(2) The Board shall publish the sanctions imposed on an anonymous basis, and in a manner which is in conformity with Maltese law, in any of the following circumstances:

(*a*) where, in the event that the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(*b*) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(*c*) where publication would cause disproportionate damage to the institutions or individuals involved.

(3) The Board shall ensure that any publication in accordance with sub-article (1) is of proportionate duration and that it remains on its official website for a minimum period of five (5) years after all rights of appeal have been exhausted or have expired.

(4) The publication of sanctions and measures and of any public statement by the Board shall respect fundamental rights as laid down in the Charter of Fundamental Rights of the European

Union, the Constitution of Malta and the Convention for the Protection of Human Rights and Fundamental Freedoms; in particular the right to respect for private and family life and the right to the protection of personal data:

Provided that such publication or any public statement is not to contain personal data of third parties within the meaning of "personal data" in article 2 of the Data Protection Act.

Cap. 440.

Reporting of breaches.
Added by: XXXVI. 2016.16.

20B. (1) The Board shall establish effective mechanisms that encourage reporting of breaches of this Act, the regulations made under it and Directives or of the Audit Regulation to the Board.

(2) The mechanisms referred to in sub-article (1) shall include at least:

(*a*) specific procedures for the receipt of reports of breaches and their follow-up;

(*b*) protection of personal data concerning both the person who reports the suspected or actual breach and the person who is suspected of committing, or who has allegedly committed that breach, in compliance with the principles laid down in the Data Protection Act;

Cap. 440.

(*c*) appropriate procedures to ensure the right of the accused person to a defence and to be heard before the adoption of a decision concerning him or her, and the right to seek an effective remedy before a tribunal against any decision or measure concerning him or her.

(3) Audit firms shall establish appropriate procedures for their employees to report potential or actual breaches of this Act, the regulations made under it and Directives or of the Audit Regulation internally through a specific channel.

Exchange of information.
Added by: XXXVI. 2016.16.

20C. (1) The Board shall provide the CEAOB annually with aggregated information regarding all administrative measures and all sanctions imposed in accordance with articles 7(17), 14, 15, 20, 20A and 20B.

(2) The Board shall immediately communicate to the CEAOB all temporary prohibitions referred to in article 14(2)(*c*) and (*e*).

Demonstration of compliance with Services (Internal Market) Act.
Added by: XXIII. 2009.43.
Cap. 500.

21. A warrant holder, practising certificate holder or firm shall, if so requested by the Board and in the manner determined by the Board, demonstrate compliance with the obligations imposed on such warrant holder, practising certificate holder or firm pursuant to the Services (Internal Market) Act.