

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; and Acts IX of 2008, and III and XXIII of 2009.

1. The short title of this Act is the Accountancy Profession Act. Short title.
2. (1) In this Act, unless the context otherwise requires - Interpretation.
*Amended by:
XIV. 2003.2;
IX. 2008.47;
XXIII. 2009.29.*
- "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;
- "Appeals Tribunal" means the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act; Cap. 490.
- "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 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;
- "chain of command" shall have the meaning prescribed by the Board from time to time;
- "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 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;

"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, for at least three years before his involvement in the governance of the Board or any committee thereunder 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 administrative or management body of a firm and any person who signs a report on behalf of the firm; and in the case of an audit firm, an individual who carries out an audit on behalf of the firm including the individual who signs the audit report, the individual responsible for leading the engagement, the quality control engagement reviewer and any other person in the chain of command for that audit;

"public-interest entity" means an entity 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 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, 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 Board. References to the Directives in this definition shall include any other legislation amending or substituting such Directives;

"statutory audit" means the audit of financial statements as prescribed by law;

"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;

"third-country auditor" means an individual who carries out audits of an entity incorporated in a third country;

"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.

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 Bachelor of Accountancy (Honours) organised 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

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.

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.

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).

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

(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 passed, to the satisfaction of the Board, an aptitude test, covering 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 approved.

(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.

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

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.

6. (1) There shall be a Board, to be known as the Accountancy Board, consisting of a chairman and ten other members, all of whom shall be knowledgeable in the field of auditing and accounting, who shall be appointed by the Minister and shall hold office for such term, not exceeding three years, and under such conditions as may be set out in their respective letters of appointment:

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

Provided that on the expiration of the term for which a person is appointed under this subarticle, he shall be eligible for

reappointment.

(2) The Board shall consist of:

- (a) a chairman of recognised standing and experience in the accountancy profession and who is a non-practitioner;
- (b) a non-practitioner nominated by the University of Malta from among a list of not less than two persons nominated by the said university from among the teaching staff of the Faculty or Faculties in which teaching of and research in the field of accountancy is organised;
- (c) a senior official of the Ministry responsible for finance who is a non-practitioner;
- (d) two members recommended by a recognised accountancy body from among a list of not less than four members nominated by the said body;
- (e) three members who are practising accountants holding a warrant issued under article 4(1); and
- (f) three other members who are non-practitioners.

(3) The number of members present necessary to form a quorum shall be six, 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.

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

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;
- (f) to establish procedures for the registration referred to in subarticle (4);
- (g) to operate an appropriate system of quality assurance;
- (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; Cap. 500.
- (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 publish guidelines on the interpretation of this Act and the regulations and directives issued under it; and
- (k) 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; and
- (c) third-country auditors and third-country audit entities.

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

(6) The Board shall register, in accordance with the provisions of this article, every third-country auditor and third-country audit entity that provides an audit report concerning the financial statements of a company 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 company is an issuer exclusively of debt securities admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC, the denomination per unit of which is at least fifty thousand euro (50,000) or, in case of debt securities denominated in another currency, equivalent at the date of issue, to at least fifty thousand euro (50,000).

(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 and third-country audit entity in accordance with the provision of subarticle (6) only if:

- (a) it is of good repute;
- (b) the third-country auditor or the third-country auditor carrying out the audit on behalf of the third-country audit entity is in possession of qualifications which are equivalent to those laid down in article 3(2);
- (c) in 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);

- (d) the audit referred to in subarticle (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; and
- (e) it publishes on 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 programme, activity reports, a description of the work carried out by the disciplinary committee, a summary of the work carried out in respect of quality assurance and such other things which the Board deems relevant.

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

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

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;
- (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;

- (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.

(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 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,

Cap. 500.

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;
- (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;
- (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; and
- (o) 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.

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:

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.

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 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.

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.

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.

(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 within a week of taking out or renewing such indemnity insurance inform the Board in writing of the name of the insurance company and the relative number of the insurance policy, 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.

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).

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

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.

Exemption from liability or responsibility.
Substituted by:
IX. 2008.56.

14. 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.

Administrative fines and measures.
Amended by:
XIV. 2003.13.
Substituted by:
IX. 2008.56.

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:

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.

- (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.

(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.

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

Appeals.
Added by:
XXIII. 2009.38.

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

(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 Appeals Tribunal within thirty days from the date on which the said decision has been notified to the party appealing.

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

Decisions of the Board that may be appealed from.
Added by:
XXIII. 2009.38.

- (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 Appeals Tribunal or the Court of Appeal.
Added by:
 XXIII. 2009.38.

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

(2) The Appeals 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 Appeals 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.

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.

(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.

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(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.

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.

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

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

18. (1) Auditors that carry out statutory audits of public-interest entities shall, within three months of each calendar year, publish an annual transparency report on their website, and maintain such report on their website until the publication of a transparency report the following calendar year, that shall include at least the following:

Audit of public interest entities.
Added by:
IX. 2008.57.
Amended by:
XXIII. 2009.41.

- (a) a description of the legal structure and ownership;
- (b) where the audit firm belongs to a network a description of the network and the legal and structural arrangements in the network;
- (c) a description of the governance structure of the audit firm;
- (d) a description of the internal quality control system 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 took place;
- (f) a list of public-interest entities for which the auditor or audit firm has carried out statutory audits during the preceding calendar year;
- (g) a statement concerning the auditor'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 audit firm concerning the continuing education of auditors;
- (i) the total turnover divided into audit fees and fees for all other services rendered; and

(j) information concerning the basis for the principal's remuneration.

(2) The transparency report shall be signed by the compliance principal.

(3) The first transparency report shall be published by not later than 31 March 2009.

(4) The Board may issue guidelines or directives on the correct interpretation of this article.

Compliance principal.
Added by:
IX. 2008.57.

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.

(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.

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

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).

(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.

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.