

SUBSIDIARY LEGISLATION 281.01**ACCOUNTANCY PROFESSION REGULATIONS**

1st October, 2008

LEGAL NOTICE 18 of 2009, as amended by Legal Notices 111 of 2010 234 of 2016, 78 of 2019 and 314 of 2020.

1. The title of these regulations is the Accountancy Profession Regulations. Title.

2. In these regulations unless the context otherwise requires -

"the Act" means the Accountancy Profession Act;

"affiliate" means any undertaking, regardless of its legal form, which is connected to a firm by means of common ownership, control or management;

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

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

"competent authorities of other Member States" means the authorities designated by the law of the other Member States responsible for approval, registration, quality assurance, inspection or oversight of statutory auditors in terms of the Directive;

"compilation engagement" means an engagement in which a practitioner applies accounting and financial reporting expertise to assist management in the preparation and presentation of financial information of an entity in accordance with an applicable financial reporting framework, and reports as required by International Standard on Related Services;

"the 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;

"group auditor" means the auditor carrying out the audit of consolidated accounts;

"review engagement" means an engagement carried out by an auditor with the objective of enabling the auditor to state whether, on the basis of procedures which do not provide all the evidence that would be required in an audit, anything has come to the auditor's attention that causes the auditor to believe that the financial statements are not prepared, in all material respects, in accordance with the applicable financial reporting framework;

"the Schedule" means the Schedule to these regulations;

"statutory auditor" means an individual who is approved by the

Interpretation.
Amended by:
L.N. 111 of 2010;
L.N. 234 of 2016.
Cap. 281.

Board in terms of the Act and these regulations to carry out a statutory audit;

"temporary service provider" means any individual, other than a warrant holder, seeking to provide work and, or services comparable to those listed in regulation 3(2) on a temporary and occasional basis in Malta;

"warrant holder" means a person who has been issued with a warrant to practice the profession of accountant or is a firm registered under article 10 of the Act.

(2) Unless the context otherwise requires, terms used in these regulations and not defined shall have the meaning assigned to them in the Act.

Work which can only be performed by warrant holder.
Amended by:
L.N. 111 of 2010;
L.N. 234 of 2016;
L.N. 314 of 2020.

3. (1) No person other than a warrant holder may perform the work or render the services listed in subregulation (2):

Provided that a person shall, for all intents and purposes of law, be deemed to be a warrant holder upon receipt of a letter by the Chairman of the Board containing a declaration that such person has the requirements of article 3(2) of the Act and that he may perform the work or render the services listed in subregulation (2):

Provided further that a temporary service provider may perform the work or render the services listed in subregulation (2) subject to the temporary service provider meeting the conditions contained in regulations made by the Minister in terms of article 8A of the Act.

(2) The services indicated in subregulation (1) are:

- (a) the issuing of reports on prospective financial information prepared for the promotion of investment in an entity or for the raising of finance;
- (b) the issuing of independent reports on share valuations or valuations of businesses;
- (c) acting as reporting accountants in prospectuses, offering memoranda and other similar documents intended for public subscription;
- (d) the issuing of reports, including reports on a compilation engagement, with respect to interim or annual financial statements of any entity but excluding any reports on financial statements prepared for internal purposes; and
- (e) any other service which may be prescribed by the Minister or by any other law.

(3) Any person who acts in contravention of the provisions of this regulation shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not more than six thousand euro (6,000.00).

4. (1) Audits and review engagements, or any other matter reserved to an auditor in terms of any other law, may only be carried out by an individual, in that individual's name or on behalf of an audit firm, holding a practicing certificate in the field of auditing issued in terms of article 4 of the Act, to an individual who:

Work which can only be performed by a holder of a practising certificate..
Amended by:
L.N. 111 of 2010;
L.N. 234 of 2016.

- (a) holds a warrant issued in terms of article 4(1) of the Act and satisfies the Board that:
 - (i) he has adequate qualifications in auditing at an advanced level;
 - (ii) satisfies the conditions referred to in article 3(2)(d) of the Act; and
 - (iii) has gained the equivalent of three years full time practical training in *inter alia* auditing of financial statements, at least two-thirds of which shall be with an auditor approved in any Member State:
Provided that at least eighteen months of this practical training were gained after obtaining the degree or academic qualification relating to the accountancy profession prescribed in article 3(2)(c) of the Act; or
- (b) he satisfies the conditions laid down by article 4(3) or 4(6) of the Act:

Provided that a person shall, for all intents and purposes of law, be deemed to be a holder of a practising certificate upon receipt of a letter by the Chairman of the Board containing a declaration that such person has satisfied the requirements of this subregulation and that he may carry out audits.

(2) The person providing the practical training in accordance with the provisions of this regulation shall provide the Board with a written declaration that *inter alia* it has the ability to provide adequate practical training in accordance with the provisions of the Act and the regulations and directives issued under it, on such form prescribed by the Board for that purpose and any person making a false declaration shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding six thousand euro (€6,000) and, where the person making a false declaration is a warrant holder or a practising certificate holder, the Board may institute disciplinary proceedings against such warrant holder or practising certificate holder:

Provided that any decision taken pursuant to the institution of disciplinary proceedings shall be notified by registered mail to any person to whom such decision applies and shall be subject to appeal in terms of article 15B of the Act.

(3) An authorisation to act as auditor issued prior to the 25th July, 1978, under the provisions of article 141 of the Commercial Partnerships Ordinance as in force at the time of the issue of the authorization, in favour of a person who was then a member of a body of accountants recognized for the purposes of that article, or the holding of a warrant to act as auditor issued under the

Cap. 168.

provisions of article 4(1) of the Act, prior to the date of entry into force of the Accountancy Profession Regulations, 1987 ("the 1987 Regulations") or practising certificates issued in terms of the 1987 Regulations, shall for all purposes have the same effect of a practising certificate issued under this regulation and be deemed to have been so issued.

(4) The holder of a practising certificate issued under this regulation may bring this fact to the notice of the public, so however that holders of the warrant of certified public accountant and auditor immediately before the date with effect from which such person shall be deemed to have been issued with a practising certificate under the immediately preceding subregulation, shall cease to use the designation "certified public accountant and auditor" and the corresponding abbreviation "CPAA".

(5) A firm registered under article 10 of the Act shall be entitled to apply for a practising certificate to act as auditor:

Provided that the provisions of subregulation (3) shall apply mutatis mutandis in respect of firms registered under article 10 of the Act prior to the date of entry into force of the 1987 Regulations.

(6) The individuals who carry out a statutory audit on behalf of an audit firm must be principals holding a practising certificate in the field of auditing.

(7) Agreements or other arrangements purporting to exempt persons required to hold a practising certificate issued under this regulation from any liability, responsibility or duty relative to the statutory audit, or to relieve him therefrom, or, except under a policy of insurance made out under article 11 of the Act, to indemnify him against any such liability or responsibility, shall be null and void.

(8) The partners or shareholders of an audit firm as well as the members of the administrative and management bodies of such a firm, or of an affiliate shall not intervene in the execution of an audit in any way which jeopardises the independence and objectivity of the principals carrying out the audit on behalf of the firm.

Application.
Added by:
L.N. 111 of 2010.
Amended by:
L.N. 314 of 2020.

4A. (1) Every person seeking to obtain a warrant or a practising certificate issued by the Board as the case may be, (hereinafter referred to as the "applicant"), shall submit to the Board an application form in such form as may be determined by the Board from time to time and made publicly available on the official website of the Board together with such other documentation as may be set out in the application form:

Provided that the Board may, in ensuring whether an applicant satisfies the requirement mentioned in article 3(2)(a) of the Act, request and conduct an interview with such applicant.

(2) Every applicant shall, together with the application form submitted to the Board make a payment of an application fee of twenty-five euro (€25.00) payable to the Board.

(3) The Board shall, without delay, acknowledge receipt of the application form and the application fee by letter to the applicant and shall specify:

- (a) the periods mentioned in subregulations (4) and (5) within which the Board shall determine the application;
- (b) the procedure under which a refusal by the Board to issue a warrant, or the refusal by the Board to issue a practising certificate, may be appealed in terms of article 15B of the Act; and
- (c) that an applicant shall be deemed to be a warrant holder, or a holder of a practising certificate, where the Board does not determine an application form within the periods mentioned in sub-regulations (7) and (8).

(4) In the case of an incomplete application form, the Board shall, without delay, inform the applicant of the need to supply any additional information or documentation, and that the Board shall not commence processing the application form unless it receives a complete application form:

Provided that an application form shall not be deemed to be complete unless the Board is in receipt of all the documentation required to be submitted together with the application form, as set out in the same application form.

(5) The Board shall determine whether to issue a practising certificate, or to issue a warrant, as the case may be, to an applicant, within sixty days from the date of receipt of a complete application form.

(6) The periods mentioned in sub-regulation (5) may, prior to the expiry of the relevant period, be extended by the Board for one period of not more than thirty days. Such extension and the reasons thereof shall be notified to the applicant without delay.

(7) Where the Board has not determined whether to issue a practising certificate, or to issue a warrant, to an applicant, within the periods mentioned in sub-regulation (5), or within the extended period mentioned in sub-regulation (6), such applicant shall, subject to sub-regulation (8), be deemed to be, for all intents and purposes of law, a warrant holder or a practising certificate holder.

(8) A person shall be deemed to be a warrant holder, or a practising certificate holder in terms of sub-regulation (7), only in the event that, following the expiration of the periods referred to in sub-regulation (5) and, if applicable, sub-regulation (6), the applicant notifies the Board by means of a registered letter that it has not determined his application in terms of this regulation, and the Board fails, within a period of forty-five days from the date of receipt of the said registered letter, to determine the applicant's application.

(9) Where a warrant or a practising certificate is not issued to the applicant by the Board, the applicant shall be informed without

delay. Such a decision shall be notified by registered mail to any person to whom such decision applies and shall be subject to appeal in terms of article 15B of the Act.

Indemnity
insurance policy.
Amended by:
L.N. 111 of 2010.
Substituted by:
L.N. 234 of 2016.

5. (1) Every person who, and every firm under article 10 of the Act which, is required to be covered by an indemnity insurance policy in terms of article 11 of the Act shall be adequately covered throughout the currency of the insurance policy to the extent reasonably necessary according to the particular circumstances of such person or firm, and in particular by reference to the size and type of practice and clients:

Provided that the insurance cover shall be inclusive of costs to defend the claim but exclusive of the amount that may be deducted by the insurance company on each and every claim under the terms of the policy.

(2) Without prejudice to sub-regulation (1), with effect from 1 January 2010, if the aggregate limit of liability in an indemnity insurance policy is less than the lower of the limits set out in paragraphs (a) and (b), as calculated in sub-paragraphs (i) or (ii), including the proviso after paragraph (b), then the cover shall be deemed inadequate:

- (a) in the case of a sole practitioner and any connected undertakings:
 - (i) one hundred thousand euro (€100,000) for the sole practitioner and any principal other than the sole practitioner of any connected undertaking; and
 - (ii) the amount arrived at by multiplying the total annual fees charged by a sole practitioner and any connected undertaking in the course of his or its practice, by three;
- (b) in the case of a firm and any connected undertaking:
 - (i) the said amount shall be equivalent of one hundred thousand euro (€100,000) multiplied by the number of principals in the said firm and any connected undertakings; and
 - (ii) the amount arrived at by multiplying the total annual fees charged by a firm and any connected undertaking in the course of its practice, by three;

Provided that in the case of a firm structured in a manner such that the liability of its owners for statutory audit work is directly or indirectly limited, the appropriate limit of liability shall be:

- (a) (i) five hundred thousand euro (€500,000) multiplied by the number of principals in the said firm and connected undertakings who:
 - (aa) hold a practicing certificate in auditing; and
 - (bb) are principals which are audit firms;

- (ii) one hundred thousand euro (€100,000) multiplied by the remaining principals in the said firm and any connected undertakings; and
- (b) the total annual fees charged by the audit firm and any connected undertaking in the course of its practice, multiplied by five.

(3) For the period commencing on the date of the coming into force of these regulations, and ending on the 31 December 2009, every person who, and every firm under article 10 of the Act which, is required to be covered by an indemnity insurance policy in terms of article 11 of the Act, shall be adequately covered throughout the currency of the insurance policy in respect of each:

- (a) sole practitioner, for a minimum of fifty-eight thousand and two hundred and thirty-four euro (€58,234), inclusive of costs to defend the claim; and
- (b) principal in a firm, for a minimum of fifty-eight thousand and two hundred and thirty-four euro (€58,234), inclusive of costs to defend the claim.

Provided that in the case of a firm structured in a manner such that the liability of its owners for statutory audit work is directly or indirectly limited, the appropriate limit of liability in an indemnity insurance policy shall not be less than the lower of the amount arrived at by multiplying:

- (a) the number of principals in the said audit firm and any connected undertakings by five hundred thousand euro (€500,000); and
- (b) the total annual fees charged by the said audit firm and any connected undertakings in the course of its practice by five.

(4) In the event of reasonable doubt as to whether a person or a firm and any connected undertakings are adequately covered by an indemnity insurance policy, the matter shall be conclusively determined by the committee appointed by the Board for the operation of a system of quality assurance in terms of article 7(2) of the Act.

6. (1) The register of warrant holders and practising certificate holders to be kept by the Board in terms of article 7(4) of the Act shall include for each warrant holder or practising certificate holder, including a third-country auditor registered in terms of article 7(6) of the Act:

Registers to be kept by the Board.
Amended by:
L.N. 111 of 2010;
L.N. 234 of 2016.

- (a) the name, address and registration number;
- (b) a clear indication as to whether the warrant holder has been issued with a practising certificate to carry out audits together with the date of issue of such practising certificate;
- (c) if applicable, the name, address, website address and registration number of the audit firm by which the statutory auditor is employed or with whom he is associated as a partner or otherwise;

- (d) if applicable, the details of any subsidiaries, branches, offices or agencies of the warrant holder or practising certificate holder; and
- (e) all other registrations as statutory auditor with the competent authorities of another Member State and as auditor with a third country, including the name of the registration authority, and if applicable, the registration number.

(2) The register of registered firms to be kept by the Board in terms of article 7(4) of the Act shall include for each registered firm, and any connected undertakings, including a third-country audit-entity:

- (a) the name, address and registration number;
- (b) the legal form;
- (c) contact information, the primary contact person and where applicable the website address;
- (d) details, including the address, of any subsidiary, branch, office or agency in the Member State;
- (e) name and registration number of all statutory auditors employed by or associated as partner or otherwise with the audit firm and indicating in each case whether the statutory auditor is authorised to sign audit reports on behalf of the firm;
- (f) names and business addresses of all owners and shareholders;
- (g) names and business addresses of all members of the administrative or management body;
- (h) if applicable, the membership of a network and a list of the names and addresses of member firms and affiliates of the network or an indication of the place where such information is publicly available; and
- (i) all other registrations as audit firm with the competent authorities of another Member State as an audit entity with third countries including the name of the registration authority, and if applicable, the registration number;
- (j) where applicable, whether the audit firm is registered pursuant to article 10A(3) of the Act.

(3) The Board shall assign for each registered auditor, third-country auditor and third-country audit entity a unique registration number.

(4) The register referred to in this regulation shall indicate clearly the contact details of the Board and such other information as may be reasonably necessary to indicate that the Board is the ultimate competent authority with ultimate responsibilities for public oversight, the approval of warrants and practising certificates, the operation of the quality assurance process and for investigation and disciplinary measures.

(5) The register of suspended, revoked and withdrawn warrants and practising certificates to be kept by the Board in terms of article 7(4) of the Act shall include for each warrant holder or practising certificate holder, including a third-country auditor registered in terms of article 7(6) of the Act, the individual's name, address and registration number.

(6) The register of suspended, revoked and withdrawn firm registrations, to be kept by the Board in terms of article 7(4) of the Act shall include for each registered firm, the firms' name, address, registration number and legal form.

(7) The register of defaulter warrant holders and holders of a practising certificate, to be kept by the Board in terms of article 7(4) of the Act shall include for each warrant holder or practising certificate holder, including a third-country auditor registered in terms of article 7(6) of the Act:

- (a) the name, address and registration number; and
- (b) the breach(es) of statutory requirements.

(8) The register of defaulter firm registrations to be kept by the Board in terms of article 7(4) of the Act shall include for each registered firm:

- (a) the name, address, registration number;
- (b) the legal form; and
- (c) the breach(es) of statutory requirements.

(9) The register of warrant holders and holders of a practising certificate who have obtained an exemption from Continued Professional Education in terms of Directive 1 made under the Act and are temporarily not in practice, to be kept by the Board in terms of article 7(4) of the Act, shall include for each warrant holder or practising certificate holder, including a third-country auditor registered in terms of article 7(6) of the Act, the individual's name, address and registration number.

7. (1) The course of theoretical instruction referred to in article 3(2)(c) of the Act shall cover the following subjects in particular:

- (a) general accounting theory and principles;
- (b) legal requirements and standards relating to the preparation of annual and consolidated accounts;
- (c) international accounting standards;
- (d) financial analysis;
- (e) cost and management accounting;
- (f) risk management and internal control;
- (g) tax law;
- (h) auditing and professional skills;
- (i) legal requirements and professional standards relating to accountants, auditors and the statutory audit;

Theoretical
instruction course.
Amended by:
L.N. 111 of 2010;
L.N. 234 of 2016.

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(j) international auditing standards as referred to in article 179(2) of the Companies Act and regulation 4 of the Accountancy Profession (Accounting and Auditing Standards) Regulations; and

(k) professional ethics and independence.

(2) Such course shall also cover at least the following subjects insofar as they are relevant to auditing and accounting:

(a) company law and corporate governance;

(b) the law of insolvency and similar procedures;

(c) tax law;

(d) civil and commercial law;

(e) social security law and employment law;

(f) information technology and computer systems;

(g) business, general and financial economics;

(h) mathematics and statistics; and

(i) basic principles of the financial management of undertakings.

Functions of the Board.
Amended by:
L.N. 111 of 2010;
L.N. 234 of 2016;
L.N. 78 of 2019.

8. (1) The Board shall cooperate with the competent authorities of other Member States and the relevant European Supervisory Authorities wherever necessary to carry out the responsibilities and tasks arising from the Directive and the Audit Regulation.

(2) The Board shall render assistance to competent authorities in other Member States and to the relevant European Supervisory Authorities, in particular by exchanging information and cooperating in investigations related to the carrying out of statutory audits.

(3) The Board shall, on request, and without undue delay supply any information required for the purpose referred to in subregulation (1) and where necessary the Board shall without undue delay, take the necessary measures to gather the required information:

Provided that at all times the information so supplied shall be covered by the obligation of professional secrecy:

Provided further that the obligation of professional secrecy shall also apply to any other person to whom the Board has delegated tasks in relation to the purposes set out in the Directive.

(4) If the Board is not able to supply the required information without undue delay it shall notify the requesting competent authority of the reasons thereof.

(5) The Board may refuse to act on a request of information, after consulting the Minister, where:

(a) supplying information might adversely affect the sovereignty, security or public order of Malta or breach its national security rules;

(b) judicial proceedings have already been initiated in

respect of the same actions and against the same persons before the Maltese authorities; and

- (c) final judgment has already been passed in respect of the same actions and on the same persons by the competent authorities in Malta.

(6) Where the Board concludes that activities contrary to the provisions of the Directive are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State of that conclusion in a specific manner.

(7) Where the competent authorities of another Member State notify the Board that activities contrary to the provisions of the Directive are or have been carried out in Malta, the Board shall investigate the matter without undue delay and shall inform the notifying competent authority of the outcome and, to the extent possible, of significant interim developments.

(8) A competent authority of another Member State may request that an investigation be carried out by the Board on the Maltese territory. The competent authority of another Member State may also request some of its own personnel to be allowed to accompany the personnel of the Board in the course of the investigation:

Provided that the investigation shall at all times be subject to the overall control of the Board.

(9) The Board may refuse to act on a request for an investigation to be carried out as provided in subregulation (8) or on a request for the Board's personnel to be accompanied by the personnel of a competent authority of another Member State where:

- (a) such an investigation might adversely affect the sovereignty, security or public order of Malta or breach national security rules; or
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same person before the authorities of Malta; or
- (c) final judgment has already been passed in respect of the same actions on such persons by the authorities of Malta.

(10) Any information received by the competent authorities of other Member States or European Supervisory Authorities pursuant to the provisions of this regulation shall only be used by the competent authorities of the other Member States or the European Supervisory Authorities for the exercise of their functions within the scope of the Directive or the Audit Regulation and in the context of administrative or judicial proceedings specifically related the exercise of these functions.

(11) The Board may transmit to the competent authorities of other Member States responsible for supervising public-interest entities, to central banks, to the European System of Central Banks and to the European Central Bank, in their capacity as monetary

authorities, and to the European Systemic Risk Board, confidential information intended for the performance of their tasks. Such authorities or bodies shall not be prevented from communicating to the Board information that the Board may need in order to carry out their duties under the Audit Regulation.

(12) In fulfilling its tasks under the Audit Regulation, the Board may delegate its tasks to the competent authorities of another Member State subject to the agreement of that authority. Delegation of tasks shall not affect the responsibility of the Board.

(13) The Board shall take the necessary measures with regard to an audit firm or an accountancy firm regulated under the Act conducive to preventing criminals convicted in relevant areas or their associates from holding a management function in or being the beneficial owners of such audit firm or accountancy firm.

(14) The Board shall also take the necessary measures with regard to a holder of a practising certificate in auditing or a certified public accountant in public practice regulated under the Act conducive to preventing criminals convicted in relevant areas or their associates from holding a management function in their practice.

Mutual recognition
of regulatory
arrangements.
Added by:
L.N. 234 of 2016.

8A. (1) The Board shall respect the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office:

Provided that audit firms approved in another Member State that perform audit services in another Member State pursuant to article 10A of the Act shall be subject to quality assurance review in Malta and oversight by the Board of any audit carried out in Malta.

(2) In the case of a statutory audit of consolidated financial statements, the Board may not impose additional requirements in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence on a statutory auditor or an audit firm carrying out a statutory audit of a subsidiary established in another Member State.

(3) In the case of a company whose securities are traded on a regulated market in a Member State other than that in which that company has its registered office, the Board may not impose any additional requirements in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence on a statutory auditor or an audit firm carrying out the statutory audit of the annual or consolidated financial statements of that company.

(4) Where a statutory auditor or an audit firm is registered in any Member State as a consequence of approval in accordance with articles 4 and 10 of the Act and of regulation 4 and that statutory auditor or audit firm provides audit reports concerning annual financial statements or consolidated financial statements as referred to in article 7(6) of the Act, the Board shall subject that statutory auditor or audit firm to its systems of oversight, its quality

assurance systems and its systems of investigations and sanctions.

8B. (1) The Board shall take measures to ensure effective cooperation at European Level in respect of quality assurance reviews.

Cooperation with regards to quality assurance, reviews, investigations and on-site inspections.
Added by:
L.N. 234 of 2016.

(2) The competent authority of one Member State may request the assistance of the competent authority of another Member State with regard to the quality assurance reviews of auditors or audit firms belonging to a network carrying out significant activities in the requested Member State.

(3) (a) Where a competent authority receives a request from a competent authority of another Member State to assist in the quality assurance review of a statutory auditor or an audit firm belonging to a network carrying out significant activities in that Member State, it shall allow the requesting competent authority to assist in such quality assurance review.

(b) The requesting competent authority shall not have the right to access information which might breach national security rules or adversely affect the sovereignty, security or public order of the requested Member State.

(4) Where a competent authority concludes that activities contrary to the provisions of the Audit Regulation are being carried out or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State of that conclusion in as specific a manner as possible. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments.

(5) (a) A competent authority of one Member State may request that an investigation be carried out by the competent authority of another Member State on the latter's territory.

(b) It may also request that some of its own personnel be allowed to accompany the personnel of the competent authority of that Member State in the course of the investigation, including with regard to on-site inspections.

(c) The investigation or inspection shall be subject throughout to the overall control of the Member State on whose territory it is carried out.

(6) The requested competent authority may refuse to act on a request for an investigation to be carried out as provided for in sub-regulation (5)(a), or on a request for its personnel to be accompanied by personnel of a competent authority of another Member State as provided for in sub-regulation (5)(b), in the following cases:

(a) where such an investigation or on-site inspection might breach national security rules or adversely affect

the sovereignty, security or public order of the requested Member State;

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same person before the authorities of the requested Member State;

(c) where a final judgment has already been delivered in respect of the same actions and the same persons by the authorities of the requested Member State.

(7) In the event of a quality assurance review or an investigation with cross-border effects, the competent authorities of the Member States concerned may address a joint request to the CEAOB to coordinate the review or investigation.

(8) In this regulation the term "competent authority" shall include the Board.

Transfer of
auditing
documents.
Amended by:
L.N. 234 of 2016.

9. (1) Auditors registered in accordance with the Act may transfer to the competent authorities of a third-country audit working papers or other documents held by them, and of inspection or investigation reports relating to the audits in question, provided that:

(a) those audit working papers or other documents relate to audits of companies which have issued securities in that third-country or which form part of a group issuing statutory consolidated financial statements in that third-country;

(b) the transfer takes place via the Board to the competent authorities of that third-country at their request;

(c) the competent authorities of the third-country concerned meet requirements which have been declared adequate in accordance with paragraph 3 of article 47 of the Directive;

(d) there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned;

(e) the transfer of personal data to the third-country is in accordance with Chapter IV of Directive 95/46/EC or any amending legislation.

(2) The working arrangements referred to in sub-regulation (1)(d) shall at all times ensure that:

(a) justification as to the purpose of the request for audit working papers and other documents is provided by the competent authorities;

(b) the persons employed or formerly employed by the competent authorities of the third-country that receive the information are subject to obligations of professional secrecy;

(c) the protection of the commercial interests of the audited entity, including its industrial and intellectual

property, is not undermined;

- (d) the competent authorities of the third-country may use audit working papers and other documents only for the exercise of their functions of public oversight, quality assurance and investigation that meet requirements equivalent to those of Articles 29, 30 and 32 of the Directive;
- (e) the request from a competent authority of a third-country for audit working papers or other documents held by a statutory auditor or audit firm can be refused:
 - (i) where the provision of those working papers or documents would adversely affect the sovereignty, security or public order of the European Community or of the requested Member State; or
 - (ii) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the requested Member State; or
 - (iii) where final judgment has already been passed in respect of the same actions and on the same statutory auditor or audit firms by the competent authorities of the requested Member State.

(3) In exceptional cases, the Board may allow auditors to transfer audit working papers and other documents directly to the competent authorities of a third-country, if the following conditions are satisfied:

- (a) investigations have been initiated by the competent authorities in that third-country;
- (b) the transfer does not conflict with the obligations with which auditors are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority;
- (c) there are working arrangements with the competent authorities of that third-country that allow the Board reciprocal direct access to audit working papers and other documents of that third-country's audit entities;
- (d) the requesting competent authority of the third-country informs in advance the home competent authority of the auditor of each direct request for information including the reasons therefor; and
- (e) the conditions laid down in subregulation (2) are respected.

(4) The Board shall be empowered to issue directives on the applicability and proper interpretation of this regulation and shall also be empowered to lay down the general adequacy criteria in accordance with which the Board is to assess whether the competent authorities of third countries may be recognised as adequate to co-operate with it on the exchange of audit working

papers or other documents held by statutory auditors and audit firms. The general adequacy criteria shall be based on the requirements of article 8 of the Act or essentially equivalent functional results relating to a direct exchange of audit working papers or other documents held by statutory auditors or audit firms.

Consolidated
accounts of group
of undertakings.
Substituted by:
L.N. 234 of 2016.

10. In the case of a statutory audit of the consolidated financial statements of a group of undertakings:

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- (a) in relation to the consolidated financial statements, the group auditor bears the full responsibility for the audit report referred to in article 179A of the Companies Act and, where applicable, article 179B of the Companies Act and for, where applicable, the additional report to the audit committee as referred to in Article 11 of the Audit Regulation;
- (b) the group auditor evaluates the audit work performed by any third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies), or audit firm(s) for the purpose of the group audit, and documents the nature, timing and extent of the work performed by those auditors, including, where applicable, the group auditor's review of relevant parts of those auditors' audit documentation;
- (c) the group auditor reviews the audit work performed by the third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies) or audit firm(s) for the purpose of the group audit and documents it.

The documentation retained by the group auditor shall be such as to enable the Board to review the work of the group auditor.

For the purposes of paragraph (c), the group auditor shall request the agreement of the third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) concerned to the transfer of relevant documentation during the conduct of the audit of consolidated financial statements, as a condition of the reliance by the group auditor on the work of those third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firms(s).

- (2) (a) Where the group auditor is unable to comply with sub-regulation (1)(c) he, she or it shall take appropriate measures and inform the Board.
- (b) Such measures shall, as appropriate, include carrying out additional statutory audit work, either directly or by outsourcing such tasks, in the relevant subsidiary.
- (3) (a) Where the group auditor is subject to a quality assurance review or an investigation concerning the statutory audit of the consolidated financial statements of a group of undertakings, the group auditor shall, when requested, make available to the Board the relevant documentation he, she or it retain concerning

the audit work performed by the respective third-country auditor(s), statutory auditor (s), third-country audit entity(ies) or audit firm(s) for the purpose of the group audit, including any working papers relevant to the group audit.

- (b) The Board may request additional documentation on the audit work performed by any statutory auditor(s) or audit firm(s) for the purpose of the group audit from the relevant competent authorities pursuant to regulation 8.
- (c) Where a parent undertaking or a subsidiary undertaking of a group of undertakings is audited by an auditor or auditor(s) or an audit entity(ies) from a third country, the Board may request additional documentation on the audit work performed by any third country auditor(s) or third country audit entity(ies) from the relevant competent authorities from third countries through the working arrangements referred to in regulation 9.
- (d) By way of a derogation from the paragraph (c), where a parent undertaking or a subsidiary undertaking of a group of undertakings is audited by an auditor or auditors or an audit entity or entities from a third country that has no working arrangements as referred to in regulation 9(3)(c), the group auditor shall, when requested, also be responsible for ensuring proper delivery of the additional documentation of the audit work performed by such third-country auditor(s) or audit entity(ies), including the working papers relevant to the group audit. In order to ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the third-country auditor(s) or audit entity(ies) that he, she or it is to be given unrestricted access to such documentation upon request, or take any other appropriate action:

Provided that where audit working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation, and in the case of impediments other than legal ones arising from the legislation of the third country concerned, evidence supporting the existence of such impediments.

10A. (1) In fulfilling its tasks under the Audit Regulation, the Board may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information disclosed is subject, in the third countries concerned, to guarantees of professional secrecy which are at least equivalent to those set out in Articles 22 and 34 of the Audit Regulation. The Board shall immediately communicate such agreements to the CEA OB and notify the Commission of them.

Cooperation with third-country authorities and with international organisations and bodies.
Added by:
L.N. 234 of 2016.

Information shall only be exchanged under this regulation where such exchange of information is necessary for the performance of the tasks of those competent authorities under the Audit Regulation.

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Where such exchange of information involves the transfer of personal data to a third country, the Board shall comply with the Data Protection Act and Directive 95/46/EC and the CEAOB shall comply with Regulation (EC) No. 45/2001.

(2) The Board shall cooperate with the competent authorities or other relevant bodies of third countries regarding the quality assurance reviews and investigations of statutory auditors and audit firms. Upon request by a competent authority, the CEAOB shall contribute to such cooperation and to the establishment of supervisory convergence with third countries.

(3) Where the cooperation or exchange of information relates to audit working papers or other documents held by statutory auditors or audit firms the provisions of regulation 9 shall apply.

(4) The CEAOB shall prepare guidelines on the content of the cooperation agreements and exchange of information referred to in this regulation.

Disclosure of information received from third countries.
Added by:
L.N. 234 of 2016.

10B. In fulfilling its tasks under the Audit Regulation, the Board may disclose the confidential information received from competent authorities of the third countries where a cooperation agreement so provides, only if it has obtained the express agreement of the competent authority which has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that competent authority has given its agreement, or where such disclosure is required by European Union or Maltese law.

Disclosure of information transferred to third countries.
Added by:
L.N. 234 of 2016.

10C. In fulfilling its tasks under the Audit Regulation, the Board shall require that confidential information communicated by it to a competent authority of a third country may be disclosed by that competent authority to third parties or authorities only with the prior express agreement of the competent authority which has transmitted the information, in accordance with its national law and provided that the information is disclosed only for the purposes for which that competent authority of the Member State has given its agreement, or where such disclosure is required by European Union or national law or is necessary for legal proceedings in that third country.

Inquiry procedures.
Substituted by:
L.N. 111 of 2010.

11. In carrying out any of the following proceedings, the Board or a disciplinary committee shall ensure compliance with the provisions of the Schedule:

- (a) proceedings leading to the revocation, suspension or subjection to other conditions of a practising certificate;
- (b) proceedings leading to the revocation, suspension or subjection to other conditions of a warrant;
- (c) proceedings leading to the imposition on a person of

any administrative fine, reprimand or other measure;
and

- (d) proceedings leading to the suspension, cancellation, revocation or subjection to other conditions of the registration of a firm.
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SCHEDULE
(Regulation 11)*Substituted by:
L.N. 111 of 2010;
L.N. 234 of 2016.*

Rules of Procedure

1. The title of these rules is the Accountancy Profession Rules of Procedures.
2. (1) In these rules:

"the Act" means the Accountancy Profession Act;

"the Code" means the Code of Organization and Civil Procedure;

"the Directive" means the Accountancy Profession (Annual Return and Registration Fees) Directive, 2016;

"disciplinary committee" means a disciplinary committee appointed in terms of article 7(16) of the Act;

"Secretary" means the Secretary of the Accountancy Board appointed in accordance with the provisions of article 6(5) of the Act;
- (2) Unless the context otherwise requires, terms used in these regulations and which are not defined herein shall have the meaning assigned to them in the Act.
3. (1) Proceedings of the Board or a disciplinary committee in terms of regulation 11 of the Accountancy Profession Regulations may be initiated:
 - (a) by the Board *ex officio*;
 - (b) following a complaint or information received by the Board in writing from any person on the conduct of a warrant holder, practicing certificate holder or a firm; or
 - (c) following a complaint or information received by the Board in writing from any person that a warrant holder or practicing certificate holder is unfit to continue to practice his profession on the grounds of mental infirmity.
- (2) (a) The Board may determine the form in which a complaint to the Board is to be made;
- (b) The form shall be made available on the official website of the Board.
- (3) Any complaint or information received shall be submitted by the Secretary to the Chairman who shall place such complaint or information on the agenda for consideration by the Board at the next meeting of the Board.
- (4) (a) The Board may, at its discretion, require the complaint or information to be confirmed by means of a declaration under oath by the person making the complaint or providing the information;
- (b) Such declaration shall state the address and description of the declarant, and if any fact declared is not within the personal knowledge of the declarant, such declaration shall state the source of the declarant's information and the grounds for his belief in the truth of the fact.
- (5) If, on assessment of the complaint or information received, the Board reaches the conclusion that the complaint or information received is:

- (a) frivolous or vexatious, the Secretary shall notify by registered mail such conclusion to the person who submitted the complaint or information, and the Board shall not proceed any further, however the person who submitted the complaint or information has a right to appeal in terms of article 15A of the Act;
- (b) admissible, the Board appoints a disciplinary committee to take cognisance of such proceedings and reference to the Committee in sub-rules (6) to (11) shall be construed as references to the disciplinary committee.

(6) A member of the Committee shall in proceedings in which he may have a conflict of interest or may be or may fairly be suspected to be biased, abstain from taking part in any such proceedings.

(7) In the event of a commencement of proceedings, the Committee shall direct the Secretary to:

- (a) serve on the warrant holder, practicing certificate holder or firm with:
 - (i) a copy of the notice of the initiation of the proceedings against him or it;
 - (ii) if applicable, full details of the complaint or information received;
 - (iii) if applicable, a copy of the declaration under oath made in pursuant to sub-rule (4);
- (b) invite the warrant holder, practicing certificate holder or firm to make submissions in writing which are to reach the Secretary within a period to be determined by the Committee, which period shall in no event be less than fifteen days;
- (c) warn the warrant holder, practicing certificate holder or firm with the possible outcome of the proceedings including, if applicable
 - (i) the administrative fine that may be imposed;
 - (ii) the suspension, revocation and withdrawal of a warrant holder and, or practicing certificate; and
 - (iii) the listing of the name of the warrant holder, practicing certificate holder or firm within the list of the register of default warrant holders and holders of practicing certificates;

(8) Proceedings of the Committee shall be held in public. However the Committee may, when it considers it necessary or expedient, order that the proceedings be held in private.

(9) The Committee shall hold its own procedures. The Committee may:

- (a) seek clarifications from the complainant, the person providing the information, the warrant holder, practicing certificate holder or the representative of the firm to enable a proper evaluation of the complaint or information received;
- (b) invite the complainant, the person providing the information, the warrant holder, practicing certificate holder or the representative of the firm, to make oral submissions to the Committee;
- (c) request the complainant or the person providing the information to be confronted with the warrant holder, practicing certificate holder or the representative of a firm;
- (d) seek expert advice on a complaint or information received;

- (e) take such action which it deems appropriate in terms of the Act and directives issued under the Act.
 - (10) (a) The decision of the Committee shall be rendered in writing and presented to the Board for its approval.
 - (b) The Committee shall indicate:
 - (i) the infringement committed;
 - (ii) the reasons upon which such decision was taken;
 - (iii) the imposition of an administrative fine, if any, and the period within which the amount is to be paid;
 - (iv) the revocation, suspension or withdrawal of the warrant and or practicing certificate, where applicable; and
 - (v) any conditions attached to such revocation, suspension or withdrawal, including the listing of the name of the warrant holder, practicing certificate holder or firm within the register of warrant holders and holders of practicing certificates in terms of article 7(4) of the Act;
 - (c) The Board may approve or reject the decision of the Committee, and in the case of rejection must provide the Committee with its reasons. Nothing shall preclude the Committee from subsequently re-presenting a revised decision to the Board for its approval relating to the same matter.
 - (d) Following approval by the Board, the decision of the Committee shall be notified by the Board to the warrant holder, practicing certificate holder or firm, and the complainant, as the case may be. The notification to a warrant holder, practicing certificate holder or firm shall be effected at the last address made known to the Board in terms of article 5A of the Act and rule 6 of Directive 3.
 - (11) Any injured party may file an appeal before the Appeals Tribunal in terms of article 15A of the Act, and article 15C of the Act shall apply accordingly.
4. (1) Without prejudice to the powers conferred on the Board under the Directive, in the event that -
- (a) a decision confirms that an amount is due by the warrant holder, practicing certificate holder or firm; and, or
 - (b) a decision imposes an administrative fine on the said warrant holder, practicing certificate holder or firm; and
 - (c) after 30 days from the date of the notification of the decision; and
 - (d) should it be confirmed that an appeal has not been filed by any aggrieved person in terms of article 15A of the Act

the Board may on the basis of article 166A of the Code, recover the amount of the debt which is due together with the costs incurred up to the final decision, by proceeding with the filing of a judicial letter which shall be drawn up in the form established under the said article 166A, and serve it upon the warrant holder, practicing certificate holder or firm concerned.

(2) Where the warrant holder, practicing certificate holder or firm do not oppose the claim within 30 days from the notification thereof, the judicial letter shall upon registration in terms of article 166B of the Code, constitute an executive title and the provisions of Title VII of Part 1 of Book Second of the said Code shall apply.

(3) Where the warrant holder, practicing certificate holder or firm oppose the claim within 30 days from the notification thereof, the procedure contemplated under article 166A of the Code shall be followed.

(4) Notwithstanding the provisions of article 256(2) of the Code, the executive title referred to in sub-regulation (1) shall not be enforceable before the lapse of fifteen days from the day the said judicial letter shall constitute an executive title in terms of sub-rule (2).
