

L.N. 226 of 2004

**ACCOUNTANCY PROFESSION ACT
(CAP. 281)**

Accountancy Profession (Amendment) Regulations, 2004

IN exercise of the powers conferred by article 8 of the Accountancy Profession Act, the Prime Minister and Minister of Finance has made the following regulations:-

1. (1) The title of these regulations is the Accountancy Profession (Amendment) Regulations, 2004 and they shall be read and construed as one with the Accountancy Profession Regulations, 1987, hereinafter referred to as “the principal regulations”.

Citation and commencement.

L.N. 29 of 1987.

(2) These regulations shall come into force on the 29th April, 2004.

2. Regulation 2 of the principal regulations shall be amended as follows:-

Amends regulation 2 of the principal regulations.

(a) for the words “ “Act” means” there shall be substituted the words “ “the Act” means”; and

(b) in the definition “warrant holder”, for the words “or a warrant to act as auditor” there shall be substituted the words “or is a partnership registered under article 10 of the Act”.

3. Regulation 3 of the principal regulations shall be amended as follows:-

Amends regulation 3 of the principal regulations.

(a) in sub-regulation (2) thereof, paragraphs (e), (f) and (g) shall be deleted; and

(b) in sub-regulation (3) thereof, for the words “five hundred liri” there shall be substituted the words “two thousand and five hundred liri”.

4. For regulations 4, 5 and 6 of the principal regulations there shall be substituted the following:-

Substitution of regulations 4, 5 and 6 of the principal regulations.

“Audit of
company
accounts.

4. (1) The audit of any accounts of companies, other entities or bodies of persons may only be carried on by a warrant holder holding a practicing certificate to act as auditor issued by the Minister on the recommendation of the Board to a person who –

(a) is a certified public accountant;

(b) satisfies the Board that –

(i) he has adequate qualifications in auditing;
and

(ii) he has gained three years full time experience in auditing at appropriate level, under the supervision of a holder of a practising certificate to act as auditor who shall have satisfied the Board in respect of his competence, skills and work experience for the purpose of such supervision, or such full time experience in auditing at an appropriate level in any country outside Malta under the supervision of such person or persons whom the Board considers as adequate for the purpose, or a combination of such full time experience in Malta and outside Malta:

Provided that at least two years of this experience were gained after obtaining the degree or academic qualification relating to the accountancy profession prescribed in paragraph (c) of subarticle (2) of article 3 of the Act:

Provided further that any experience gained before the qualification above referred to shall be considered to amount to only one half of the time so spent and shall in no case be deemed to exceed one year:

Provided further that the supervision required under this regulation shall be carried out by persons providing such adequate guarantees regarding training as may be prescribed.

(2) An authorization 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 provisions of article 5 of the Act, prior to the date of entry into force of this regulation, shall for all purposes have the same effect of a practicing certificate issued under this regulation and be deemed to have been so issued.

(3) The holder of a practicing 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 practicing certificate under the immediately preceding sub-regulation, shall cease to use the designation “certified public accountant and auditor” and the corresponding abbreviation “CPAA”.

(4) A partnership registered under article 10 of the Act shall be entitled to apply for a practicing certificate to act as auditor in terms of this regulation, and where such a practicing certificate is issued to a particular partnership, the carrying out by such partnership of statutory audits of annual accounts (including audits of the consolidated accounts of bodies of undertakings) shall be carried out by, or under the supervision of, at least one partner holding a practicing certificate issued in terms of this regulation: Provided that the provisions of sub-article (2) of this article shall apply *mutatis mutandis* in respect of partnerships registered under article 10 of the Act prior to the date of entry into force of these regulations.

(5) References in any law or regulation to the term “auditor” or to any person holding a warrant to act as auditor issued under the Accountancy Profession Act or to any partnership of auditors duly registered under that Act or other words to that effect, shall be construed as references to a person holding a warrant as a certified public accountant who also holds a practicing certificate to act as auditor in terms of this regulation or to a partnership registered under article 10 of the Act which holds a practicing certificate to act as auditor in terms of this regulation, as the case may be.

(6) Agreements or other arrangements purporting to exempt persons required to hold a practicing certificate issued under this regulation from any liability, responsibility or duty relative to the audit of any accounts

of companies, other entities or bodies of persons, as laid down under the Act, under any regulations issued thereunder, or under any other enactment, 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.

(7) The provisions of sub-articles (5) and (6) of article 3, of sub-article (2) of article 5, of sub-article (6) of article 10 and of sub-article (2) of article 15 of the Act and any penalties contemplated therein shall apply *mutatis mutandis* also in respect of the holding of a practicing certificate issued under this regulation.

(8) (a) For the purposes of sub-paragraph (ii) of paragraph (b) of sub-regulation (1) of this regulation, supervision of experience in auditing shall be carried out by persons holding a practicing certificate to act as auditor who shall have satisfied the Board that they possess the necessary competence, skills and work experience to ensure that appropriate training is given to prospective holders of a practicing certificate in auditing, working under their supervision.

(b) In order to be eligible for acceptance by the Board, such persons must apply to the Board giving details on qualifications and experience held by them. Upon acceptance, the Board will confirm its approval in writing.

(c) In the case of a partnership holding a practicing certificate to act as auditor, an application in terms of this sub-regulation must be made in respect of each of the persons on whom the partnership will rely to supervise the audit work of persons seeking to apply for a practicing certificate in auditing.

(d) In approving applications for the supervision of audit work experience, the Board may impose such conditions and give such directions as it deems appropriate from time to time.

Where
warrant
holder may
not act as
auditor.

5. (1) The provisions of article 153 of the Companies Act shall *mutatis mutandis* apply also in respect of appointment as auditor or holding the office of auditor of any entity or body of persons other than a company, so however that references to “officer” or “officer of the

company” in the aforementioned article of the Companies Act should be construed as referring to “a person by whatever name called, performing or having the power to perform substantially the same functions in relation to the direction of the affairs of the particular entity or body of persons as those carried out by an officer within a company”.

(2) Any person who acts in contravention of article 153 of the Companies Act or this regulation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not more than five thousand liri.

Directives
and
guidelines.

6. (1) The Accountancy Board may, with the approval of the Minister, issue directives regulating the activity of warrant holders or guidelines for warrant holders concerning:

(a) professional ethics and independence of warrant holders;

(b) the confidentiality of information obtained by a warrant holder or his employees in connection with work performed or services rendered in connection with the accountancy profession;

(c) advertising and publicity by warrant holders;

(d) obtaining professional work;

(e) the criteria concerning the charging of fees;

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

(g) continued professional education;

(h) quality assurance;

(i) definition of the terms “audit” and “auditing”;

(j) norms for the approval of persons supervising work experience required for the issue of warrants under sub-article (1) of article 4 of the Act and practicing certificates issued in terms of regulations

prescribed in terms of sub-article (2) of article 4 of the Act;

(k) the professional conduct of warrant holders;

(l) on the meaning and interpretation of any regulations issued in terms of article 8 of the Act;

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

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

(2) Directives and guidelines issued in terms of subregulation (1) 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.

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

Amends regulation 8 of the principal regulations.

5. In regulation 8 of the principal regulations for the words “The Accountancy Board shall” there shall be substituted the words “Any Disciplinary Committee appointed by the Accountancy Board in terms of sub-article (4) of article 7 of the Act shall”.

Amends the Schedule to the principal regulations.

6. The Schedule to the principal regulations shall be amended as follows:-

(a) in rule 2, for the definition “appropriate warrant” there shall be substituted the following:

“ “appropriate warrant” means the warrant held by an individual to practice the profession of accountant issued in terms of sub-article (1) of article 4 of the Act, or the registration of any partnership in terms of article 10 of the Act, and includes also, where appropriate, the holding by such individual or partnership of any certificate to practice in such fields of the profession of accountant as may be prescribed in terms of sub-article (2) of article 4 of the Act.”;

(b) rule 5 shall be amended as follows:

(i) in paragraph (b) of sub-rule (1), for the words “be held.” there shall be substituted the words:

“be held; and

(c) state the names of the individuals nominated by the Board to perform duties as members of the Disciplinary Committee in respect of the particular charge or charges, including the individual nominated by the Board as Chairman.”; and

(ii) in sub-rule (3), the words “place of residence.” shall be substituted by the words “place of residence in the case of an individual, and in the case of a partnership registered in terms of article 10 of the Act, at the address from which it conducts its activities according to the records of the Board.”;

(c) in rule 8 wherever the words “the Board” appears there shall be substituted the words “the Disciplinary Committee”;

(d) in rule 9 wherever the words “the Board” appear there shall be substituted the words “the Disciplinary Committee”;

(e) rule 10 shall be amended as follows:

(i) in sub-rule (1) for the words “the Board” there shall be substituted the words “the Disciplinary Committee”; and

(ii) in sub-rule (2) for the words “The Chairman” there shall be substituted the words “The Chairman of the Disciplinary Committee”;

(f) in rule 11 for the words “the Chairman” there shall be substituted the words “the Chairman of the Disciplinary Committee”;

(g) in rule 12 for the words “the Board” wherever they appear there shall be substituted the words “the Disciplinary Committee”;

(h) in rule 13 –

(i) for the words “the Board” wherever they appear there shall be substituted the words “the Disciplinary Committee”; and

(ii) in sub-rule (d) immediately after the words “give its decision” there shall be inserted the words “including the imposition of any penalty as it may determine”;

(i) in rule 14 for the words “the Board” wherever they appear there shall be substituted the words “the Disciplinary Committee”;

(j) for rule 15 there shall be substituted the following:

“15. (1) The decisions of the Disciplinary Committee shall be given in public and in writing; they shall be signed by the Chairman of the Disciplinary Committee.

(2) The original shall be forwarded by the Secretary to the Board together with the complete record of the inquiry. The Board shall make its recommendation in writing to the Minister to give effect to the decisions of the Disciplinary Committee. A copy of any decision of the Disciplinary Committee, certified as a true copy by the Chairman of the Board, shall be forwarded by the Secretary to the Minister, together with the recommendation of the Board.

(3) On receipt of the decision of the Disciplinary Committee and of the recommendation of the Board, the Minister shall give effect to the decision and act in terms of article 14 of the Act.”;

(k) in rule 16 for the words “the Board” wherever they appear there shall be substituted the words “the Disciplinary Committee”;

(l) in rule 17 for the words “the Board” there shall be substituted the words “the Disciplinary Committee”;

(m) in rule 18 for the words “the Board” there shall be substituted the words “the Disciplinary Committee”;

(n) in rule 20 for the words “the Board” there shall be substituted the words “the Disciplinary Committee”;

(o) for rule 21 there shall be substituted the following:

“21. The members of any Disciplinary Committee, the Board and the Secretary shall not divulge anything discussed by the Disciplinary Committee or the Board in the course of an inquiry.”;
and

(p) in rule 22 for the words “the Board” wherever they appear there shall be substituted the words “the Disciplinary Committee”.

7. The Appendix to the Schedule shall be amended as follows: Amends the Appendix to the Schedule.

(a) in Form A –

(i) the following new paragraph shall be inserted immediately between the second paragraph and the third paragraph commencing with the words “A copy of the Rules”:

“The Accountancy Board has nominated the following individuals as members of the Disciplinary Committee that will conduct the inquiry in respect of the above charge/charges:

.....

.....

.....

.....

The Disciplinary Committee shall be chaired by the
above-mentioned ”; and

(ii) in the last paragraph for the words “the
Accountancy Board” there shall be substituted the words
“the Disciplinary Committee”; and

(b) in Form B, in the paragraph commencing with the
words “You are hereby required”, for the words “the
Accountancy Board” there shall be substituted the words “the
Disciplinary Committee nominated by the Accountancy Board”.

Deletes L.N. 17 of
1982.

12. The Accountancy Board (Examination Fees) Regulations,
1982, are hereby deleted.