

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

14th August, 2008

ACT No. IX of 2008

*AN ACT to introduce amendments to the Accountancy Profession Act
and to other Laws, and to implement Directive 2006/43/EC.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Accountancy Profession Act and other Laws (Amendment) Act, 2008. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for finance may by notice in the Gazette appoint and different dates may be so appointed for different provisions or different purposes of this Act.

PART I

2. This Part amends the Companies Act, and shall be read and construed as one with the Companies Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Companies Act.
Cap. 386.

3. The Arrangement of Act in the principal Act shall be amended as follows:

(a) in Part IV thereof, for the words “51-66”, there shall be substituted the words “51-66A”;

(b) in Part VI thereof, for the words “327-329”, there shall be substituted the words “327-329B”;

(c) in Part IX thereof, for the words “Chapter III.” there shall be substituted the words “Chapter IV.”, and immediately after the words from “Chapter II. Division by the formation of new companies 374” there shall be added the words “Chapter III. Division by a combination of a division by acquisition with a division by the formation of one or more new companies 374A”; and

(d) Part XI thereof shall be amended as follows:

(i) for the words “384-399” there shall be substituted the words “384-399A”; and

(ii) for the word “399” there shall be substituted the words “399-399A”.

4. Article 2 of the principal Act shall be amended as follows:-

(a) for the definition “auditor” in subarticle (1) thereof there shall be substituted the following:

“ “auditor” shall have the meaning assigned to it in the Accountancy Profession Act or regulations issued in terms thereof;”; and

(b) in subarticle (1) thereof, immediately after the definition “issuer”, there shall be inserted the following new definition:

“ “Maltese regulated market” means a regulated market duly authorised by the competent authority in accordance with article 4 of the Financial Markets Act;”;

(c) in subarticle (1) thereof, the definition “recognised investment exchange” shall be deleted;

(d) in subarticle (1) thereof, the definition “recognised stock exchange” shall be deleted;

(e) in subarticle (1) thereof, immediately after the definition “Registrar”, there shall be inserted the following new definition:

““regulated market” means a regulated market as defined in the Financial Markets Act and includes a Maltese regulated market;” and

(f) for subarticle (4) thereof, there shall be substituted the following:

“(4) For the purposes of this Act, “generally accepted accounting principles and practice” shall have the meaning assigned to it in the Accountancy Profession Act or regulations issued in terms thereof.”

5. Paragraph (c) of subarticle (12) of article 66 of the principal Act shall be substituted by the following: Amendment of article 66 of the principal Act.

“(c) The provisions of article 153 shall apply to an auditor appointed in terms of paragraph (a). Such auditor shall not be a person who has held the office of auditor of the partnership en commandite or limited partnership at any time during the last three years immediately preceding the date of dissolution.”

6. In paragraph (c) of subarticle (4) of article 74 of the principal Act, for the words “to stock exchange acquisitions.”, there shall be substituted the words “to acquisitions made on a regulated market or on an equivalent market in a non-Member State or non-EEA State.” Amendment of article 74 of the principal Act.

7. For the first proviso to subarticle (1) of article 83 of the principal Act, there shall be substituted the following: Amendment of article 83 of the principal Act.

“Provided that if a creditor of the company whose debt existed prior to the publication of the statement mentioned in this subarticle objects thereto by sworn application filed within the period of three months reckoned as aforesaid and satisfies the Court that due to the proposed reduction in the issued share capital the satisfaction of his claims would be prejudiced and that no adequate safeguards have been obtained from the company, the court shall either uphold the objection or allow the reduction on sufficient security being given.”

Amendment of article 84 of the principal Act.

8. In subarticle (3) of article 84 of the principal Act, for the words “Action taken by a company to ensure that the stock exchange value of its shares does not deviate from its net asset value”, there shall be substituted the words “Action taken by a company to ensure that the value of its shares as quoted on a regulated market or any equivalent market in a non-member State or non-EEA State does not deviate from its net asset value”.

Amendment of article 84A of the principal Act.

9. Subarticle (2) of article 84A of the principal Act shall be amended as follows:

(a) for paragraph (a) thereof, there shall be substituted the following:

Cap 403.

“(a) “business of insurance” has the same meaning as assigned to it in article 2(1) of the Insurance Business Act and shall include the business of affiliated insurance as prescribed by regulations issued thereunder, the business of an insurance manager and the business of insurance broking under the Insurance Intermediaries Act;” and

Cap 487.

(b) in paragraph (d) thereof, for the words “in such manner as may be prescribed.” there shall be substituted the words “in such manner as may be prescribed; and in relation to the business of insurance manager, as well as the business of insurance broking, reference to a “company” shall include reference to a partnership *en commandite* or similar or equivalent body corporate, the capital of which is divided into shares.”.

Amendment of article 89 of the principal Act.

10. In paragraph (e) of article 89 of the principal Act, for the words “admitted to trading on a recognised investment exchange”, there shall be substituted the words “admitted to trading on a regulated market”.

Amendment of article 101 of the principal Act.

11. Article 101 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “listed on a recognised investment exchange in or outside Malta.”, there shall be substituted the words “listed on a regulated market or on an equivalent market in a non-Member State or non-EEA State.”; and

(b) in subarticle (2) thereof, for the words “as may be notified to the applicant, within those twenty-one days, for permission by or on behalf of the stock exchange.”, there shall be substituted the words “as may be notified by or on behalf of the

regulated market or the equivalent market in a non-Member State or non-EEA State to the applicant for permission, within those twenty-one days.”.

12. Article 106 of the principal Act shall be amended as follows: Amendment of article 106 of the principal Act.

(a) in subarticle (1) thereof, for the words “A company may acquire any of its own shares otherwise than by subscription,”, there shall be substituted the words “Without prejudice to the principle of equal treatment of the shareholders who enjoy the same rights in respect of the shares held by them and to any relevant provisions of the Prevention of Financial Markets Abuse Act, a company may acquire any of its own shares otherwise than by subscription,”; and

(b) in paragraph (e) of subarticle (1) thereof, for the words “lower than the amount of issued share capital”, there shall be substituted the words “lower than the amount of called up issued share capital”.

13. In article 110 of the principal Act, immediately after subarticle (3) thereof there shall be inserted the following new subarticle: Amendment of article 110 of the principal Act.

“(4) The provisions of subarticle (1)(b) shall not apply if the company granting the financial assistance is a private company and the following requirements are fulfilled:

(a) the Board of Directors has, after taking into account the financial position of the company and the obligations of the directors as set out in article 136A, resolved by the affirmative vote of a majority of all the directors forming the Board at the time of the particular resolution, to authorize the grant of financial assistance for a specific transaction;

(b) an extraordinary resolution has been passed affirming the resolution taken pursuant to paragraph (a) of this subarticle; and

(c) a declaration in the prescribed form signed by two directors confirming that the requirements set out in paragraphs (a) and (b) of this subarticle have been satisfied is duly filed with the Registrar prior to the granting of the financial assistance, and the signature of one director shall suffice where the Board is composed of only one director.”.

Amendment of article 122 of the principal Act.

14. Subarticle (12) of article 122 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words “quoted on the recognised investment exchange” there shall be substituted the words “quoted on a Maltese regulated market”, and for the words “maintenance by the recognised investment exchange of the relevant register of holders thereof,” there shall be substituted the words “maintenance by such Maltese regulated market of the relevant register of holders thereof,”;

(b) in indent (i) of paragraph (a) thereof, for the words “a certified copy of the signed pledge agreement to the recognised investment exchange,” there shall be substituted the words “a certified copy of the signed pledge agreement to the Maltese regulated market,”;

(c) in indent (iii) of paragraph (a) thereof, for the words “delivery of the signed pledge agreement to the recognised investment exchange” there shall be substituted the words “delivery of the signed pledge agreement to the Maltese regulated market”;

(d) in indent (iv) of paragraph (a) thereof, for the words “upon giving notice by judicial act to the pledgor, the recognised investment exchange and the company,” there shall be substituted the words “upon giving notice by judicial act to the pledgor, the Maltese regulated market and the company,”, and for the words “have the securities sold through a licensed stockbroker.” there shall be substituted the words “have the securities sold through a person duly licensed under the Investment Services Act.”; and

(e) in paragraph (b) thereof, for the words “quoted on a prescribed foreign Stock Exchange,”, there shall be substituted the words “quoted on a regulated market other than a Maltese regulated market or on an equivalent market in a non-Member State or non-EEA State,”, and for the words “have the shares sold through a licensed stockbroker.” there shall be substituted the words “have the securities sold through a person duly authorised for this purpose.”.

Amendment of article 153 of the principal Act.

15. Article 153 of the principal Act shall be substituted by the following:

“Rules on auditor independence and professional ethics.

153. An auditor must at all times adhere to the rules on independence and professional ethics set out in the Code of Ethics and any other regulations, directives or guidelines issued from time to time in terms of the Accountancy Profession Act.”.

16. Article 156 of the principal Act shall be amended as follows: Amendment of article 156 of the principal Act.

(a) for subarticle (5) thereof there shall be substituted the following:

“(5) There shall also be stated in the notes to the accounts separately the total fees charged by the auditor for:

- (a) other assurance services;
- (b) tax advisory services; and
- (c) other non-audit services.”; and

(b) immediately after subarticle (5) thereof, there shall be added the following subarticles (6) and (7):

“(6) The provisions of subarticle (5) shall not apply:

(a) where an undertaking is included within the consolidated accounts of another undertaking and the information required by subarticle (5) is provided in the notes to such consolidated accounts; or

(b) to a company which on its balance sheet date, such undertaking does not exceed the limits of two out of the three criteria set out in article 185(1)(a).

(c) Notwithstanding the provisions of paragraph (b), the information specified in subarticle (5) shall be delivered to the Accountancy Board established in terms of the Accountancy Profession Act within such period as may be indicated by the Accountancy Board for that purpose.

(7) The provisions of subarticle (6) shall not apply to a public interest entity as defined in the Accountancy Profession Act.”.

17. Article 157 of the principal Act shall be amended as follows: Amendment of article 157 of the principal Act.

(a) in subarticle (1) thereof the words “article 140(1).” shall be substituted by the words “article 140(1):” and immediately thereafter there shall be added the following provisos:

“Provided that an auditor may only be removed from office as aforesaid if there is a proper ground for dismissal:

Provided further that divergence of opinions on accounting treatments or audit procedures shall not constitute a proper ground for dismissal.”; and

(b) for subarticle (2) thereof, there shall be substituted the following:

“(2) (a) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice thereof to the Registrar for registration. The company shall also, within the same period, deliver to the Board a statement by the company giving an adequate explanation of the reasons for the removal of the auditor. If a company fails to give the aforesaid notice to the Registrar or the aforesaid statement to the Board, every officer of the company who is in default shall be liable to a penalty in respect of each default, and for every day during which the default continues, to a further penalty.

(b) For the purposes of this subarticle, the Board shall have the meaning assigned to it by the Accountancy Profession Act.”.

Amendment of article 159 of the principal Act.

18. In subarticle (1) of article 159 of the principal Act, the words “An auditor of a company may resign his office” shall be substituted by the words: “Without prejudice to the notification obligations in terms of article 17 of the Accountancy Profession Act, an auditor of a company may resign his office” and the words “and he shall so resign if he ceases to be qualified as an auditor or if he fails to satisfy the conditions of qualification provided in article 153” shall be deleted.

Amendment of article 167 of the principal Act.

19. Article 167 of the principal Act shall be amended as follows:-

(a) in subarticle (2) thereof the words “clearly and in accordance with the provisions of this Act and with generally accepted accounting principles and practice” shall be substituted by the words “in accordance with generally accepted accounting principles and practice”;

(b) the proviso to subarticle (2) shall be substituted by the following:

“Provided that the disclosures prescribed in indents (m), (o) and (p) of paragraph 31 of Part III of the Third Schedule shall be complied with.”;

(c) subarticle (4) thereof shall be substituted by the following:

“(4) Where the application of the provisions of this Act would not be sufficient to give a true and fair view within the meaning of subarticle (3), additional information shall be given.”;

(d) subarticle (5) thereof shall be substituted by the following:

“(5) Where in exceptional cases the application of a provision of this Act is incompatible with the obligation for the individual accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.”; and

(e) subarticle (6) thereof shall be deleted.

20. Article 168 of the principal Act shall be amended as follows: Amendment of article 168 of the principal Act.

(a) for subarticle (1) thereof, there shall be substituted the following:

“(1) Banks governed by the Banking Act, financial institutions governed by the Financial Institutions Act, and insurance companies governed by the Insurance Business Act need not apply the provisions of the Third and Fourth Schedules.”;

(b) for subarticle (2) thereof, there shall be substituted the following:

“(2) Banks and financial institutions shall follow the Banking Rules and Financial Institutions Rules issued by the relevant competent authority under the Banking Act and the Financial Institutions Act, respectively, in relation to the form and content of their annual accounts and any other Rules issued by the competent authority in this regard.” ; and

(c) in subarticle (3) thereof, for the words “or if no such regulations have been made they shall follow any directives issued by the competent authority in this regard.”, there shall be substituted the words “and any rules as may be issued by the competent authority from time to time.”.

Amendment of
article 169 of the
principal Act.

21. Subarticle (1) of article 169 of the principal Act shall be substituted by the following:

“(1) An investment company with variable share capital shall prepare its individual accounts in accordance with the format set out in the Fifth Schedule.”.

Amendment of
article 171 of the
principal Act.

22. Article 171 of the principal Act shall be amended as follows:-

(a) subarticle (2) thereof shall be substituted by the following:

“(2) Without prejudice to articles 170 and 172 to 174, and to the provisions of subarticle (2) of article 2 and the Ninth Schedule in so far as may be relevant to articles 170 and 172 to 174, the consolidated accounts shall be drawn up in accordance with generally accepted accounting principles and practice:

Provided that the disclosure prescribed in indent (m) of paragraph 31 of Part III of the Third Schedule shall apply to the consolidated accounts as if the undertakings included in the consolidation were a single company and the disclosures prescribed in sub-paragraphs (7) and (8) of paragraph 22 of the Fourth Schedule shall apply to the consolidated accounts.”;

(b) subarticle (4) thereof shall be substituted by the following:

“(4) Where the application of the provisions of this Act would not be sufficient to give a true and fair view within the meaning of subarticle (3), additional information shall be given.”;

(c) subarticle (5) thereof shall be substituted by the following:

“(5) Where in exceptional cases the application of a provision of this Act is incompatible with the obligation for the consolidated accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the consolidated accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit and loss.”; and

(d) subarticle (6) thereof shall be deleted.

23. Subarticle (1) of article 173 of the principal Act, shall be amended as follows: Amendment of article 173 of the principal Act.

(a) for the words “two of the three criteria laid down in article 185:”, there shall be substituted the words “two of the three criteria laid down in article 185(1)(a):”; and

(b) in the proviso thereto, for the words “admitted to official listing on the recognised investment exchange.” there shall be substituted the words “admitted to official listing on a regulated market or on an equivalent market in a non-Member State or non-EEA State.”.

24. Article 174 of the principal Act shall be amended as follows: Amendment of article 174 of the principal Act.

(a) in paragraph (a) of subarticle (1) thereof, for the words “registered under the law of Malta” there shall be substituted the words “registered under the law of a Member State or an EEA State”;

(b) in paragraph (b) of subarticle (1) thereof, for the words “ninety per cent or more in nominal value” there shall be substituted the words “more than fifty per cent in nominal value”, and for the words “the remaining percentage in nominal value” there shall be substituted the words “not less than ten per cent in nominal value”;

(c) in paragraph (a) of subarticle (2) thereof, for the words “registered under the law of Malta” there shall be substituted the words “registered under the law of a Member State or an EEA State”;

(d) in paragraph (b) of subarticle (2) thereof, for the words “established under the law of Malta” there shall be substituted the words “registered under the law of a Member State or an EEA State”, and for the words “equivalent to that prescribed by this Act” there shall be substituted the words “equivalent to that required by this Act”; and

(e) in subarticle (3) thereof, for the words “admitted to official listing on the recognised investment exchange.”, there shall be substituted the words “admitted to official listing on a regulated market or on an equivalent market in a non-Member State or non-EEA State.”.

Amendment of
article 179 of the
principal Act.

25. Article 179 of the principal Act shall be amended as follows:-

(a) in subarticle (2) thereof, the words “International Standards on Auditing” shall be substituted by the words “generally accepted auditing standards”; and

(b) for subarticle (8) thereof, there shall be substituted the following:

“(8) References in this article to signature by the auditors are, where the office of auditor is held by an audit firm, to the signature of a principal authorised to sign on behalf of such audit firm.”;

(c) subarticle (13) thereof shall be substituted by the following:

“(13) In this article “audit firm”, “generally accepted auditing standards” and “principal”, shall have the meaning assigned to them in the Accountancy Profession Act or regulations issued in terms thereof.”; and

(d) subarticle (13) thereof shall be substituted by the following:

“(13) In this article, “generally accepted auditing standards” shall have the meaning assigned to it in the Accountancy Profession Act or regulations issued in terms thereof.”.

Amendment of
article 183 of the
principal Act.

26. For the provisos to subarticle (2) of article 183 of the principal Act, there shall be substituted the following:

“Provided that where the company which qualifies to draw up abridged annual accounts is an exempt company, it may deliver to the Registrar only its abridged balance sheet, all the notes to the accounts relevant for the purposes of that balance sheet and the auditors’ report, and without the directors’ report:

Provided further that where the exempt company which qualifies to draw up abridged accounts is a company referred to in article 185(1)(b), it may deliver to the Registrar only its abridged balance sheet and all the notes to the accounts relevant for the purposes of that balance sheet, and without a directors’ report and an auditors’ report.”.

27. Article 185 of the principal Act shall be amended as follows:- Amendment of article 185 of the principal Act.

(a) in paragraph (a) of subarticle (2) thereof, the words “balance sheet;” shall be substituted by the words “balance sheet.”;

(b) the following proviso shall be added to paragraph (a) of subarticle (2):

“Provided that a company may instead choose to present its resulting abridged balance sheet as determined in accordance with the aforesaid provisions of this subarticle using the terminology and layouts in accordance with generally accepted accounting principles and practice, and in such case the aforesaid provisions of this subarticle shall apply mutatis mutandis.”;

(c) in paragraph (b) of subarticle (2) thereof, the words “Loss Account Formats.” shall be substituted by the words “Loss Account Formats.”;

(d) the following proviso shall be added to paragraph (b) of subarticle (2):

“Provided that a company may instead choose to present its resulting abridged profit and loss account as determined in accordance with the aforesaid provisions of this subarticle using the terminology and layouts in accordance with generally accepted accounting principles and practice, and in such case the aforesaid provisions of this subarticle shall apply mutatis mutandis.”; and

(e) for subarticle (3) thereof, there shall be substituted the following:

“(3) Companies referred to in subarticle (1) may draw up abridged notes to the accounts omitting the disclosures prescribed by indents (d) and (g) to (o) of paragraph 31 of Part III of the Third Schedule. The notes to the accounts shall however disclose the information specified in indent (j) of the said paragraph 31 in total for all the items concerned:

Provided that companies referred to in subarticle (1) may instead draw up abridged notes to the accounts in accordance with generally accepted accounting principles and practice by:

(i) omitting, where relevant, any corresponding disclosures resulting from compliance with generally accepted accounting principles and practice equivalent to those set out in indents (d) and (g) to (o) of paragraph 31 of Part III of the Third Schedule; and

(ii) if generally accepted accounting principles and practice require the disclosure of the information specified in indent (j) of paragraph 31 of Part III of the Third Schedule, disclosing in the notes to the accounts such information as specified in indent (j) of the said paragraph 31 as a total for all the items concerned.”.

Amendment of article 187 of the principal Act.

28. Article 187 of the principal Act shall be amended as follows:-

(a) in subarticle (1) thereof, the words “draw up its annual accounts” shall be substituted by the words “present its annual accounts”;

(b) in subarticle (2) thereof, the words “are drawn up in a currency other than euro” shall be substituted by the words “are presented in a currency other than euro”; and

(c) in subarticle (4) thereof, the words “in the currency in which they are drawn up.” shall be substituted by the words “in the currency in which they are presented.”, and the words “both the currency in which they are drawn up and in euro” shall be substituted by the words: “both the currency in which they are presented and in euro”.

Amendment of article 188 of the principal Act.

29. Article 188 of the principal Act shall be amended as follows:-

(a) in paragraph (e) thereof, the words “permit a company to draw up its annual accounts” shall be substituted by the words “permit a company to present its annual accounts”; and

(b) in paragraph (g) thereof, the words “International Accounting Standards or International Standards on Auditing” shall be substituted by the words “generally accepted accounting principles and practice or generally accepted auditing standards.”.

Amendment of article 194 of the principal Act.

30. For paragraph (a) of subarticle (4) of article 194 of the principal Act, there shall be substituted the following:

“(a) its shares are listed on a regulated market; and”.

31. Subarticle (4) of article 274 of the principal Act shall be substituted by the following: Amendment of article 274 of the principal Act

“(4) The provisions of article 153 shall apply to an auditor appointed in terms of subarticle (1). Such auditor shall not be a person who has held the office of auditor of the company at any time during the last three years immediately preceding the date of dissolution.”.

32. In paragraph (d) of subarticle (3) of article 329B of the principal Act, for the words “listing of securities on a recognised investment exchange,” there shall be substituted the words “listing of securities on a Maltese regulated market,”. Amendment of article 329B of the principal Act.

33. In article 348 of the principal Act, immediately after subarticle (5) thereof there shall be added the following new subarticle: Amendment of article 348 of the principal Act.

“(6) The provisions of this article shall not apply if all the shareholders of all the companies involved in the amalgamation have so agreed.”.

34. For paragraph (e) of subarticle (1) of article 349 of the principal Act, there shall be substituted the following: Amendment of article 349 of the principal Act.

“(e) where required, the reports of the experts relating to the amalgamation.”.

35. Subarticle (1) of article 359 of the principal Act shall be amended as follows: Amendment of article 359 of the principal Act.

(a) in paragraph (b) thereof, for the words “shall be held not later than three months from the publication referred to in paragraph (a);” there shall be substituted the words “shall be held at least one month after, and not later than three months from the publication referred to in paragraph (a);”; and

(b) in paragraph (d) thereof, for the words “the provisions of article 358(3)(c) shall”, there shall be substituted the words “the provisions of the proviso to article 358 (3) shall”.

36. In paragraph (b) of subarticle (6) of article 391 of the principal Act, for the words “for the time being listed on the recognised investment exchange or on such other investment exchange as may be prescribed;” there shall be substituted the words “for the time being listed on a regulated market or on any equivalent market in a non-Member State or non-EEA State;”. Amendment of article 391 of the principal Act.

Amendment of article 395 of the principal Act.

37. Article 395 of the principal Act shall be amended as follows:

(a) for the marginal note thereto, there shall be substituted the following:

“Certificate exempting from compliance with Part B of the Second Schedule.”;

(b) in paragraph (b) of subarticle (1) thereof, for the words “listing of its shares or debentures on a recognised investment exchange.” there shall be substituted the words “listing of its shares or debentures on a Maltese regulated market.”; and

(c) in subarticle (3) thereof, for the words “admissibility to listing on a recognised investment exchange” there shall be substituted the words “admissibility to listing on a Maltese regulated market”.

Amendment of article 396 of the principal Act.

38. In subarticle (4) of article 396 of the principal Act, for the words “in connection with an application under that article to the recognised investment exchange,” there shall be substituted the words “in connection with an application under that article to a Maltese regulated market.”.

Amendment of article 401 of the principal Act.

39. Subarticle (1) of article 401 of the principal Act shall be amended as follows:

(a) paragraph (d) thereof shall be renumbered as sub-paragraph (i) of paragraph (d);

(b) in sub-paragraph (i) of paragraph (d) as renumbered, for the words “may deem appropriate;”, there shall be substituted the following:

“may deem appropriate:

Provided that any such document shall be drawn up in any one of the official languages of Malta;”;

(c) immediately after sub-paragraph (i) of paragraph (d) thereof as renumbered, there shall be inserted the following new sub-paragraph (ii):

“(ii) to retain, in addition to any document which is required to be delivered or given to or served on him as indicated in sub-paragraph (i), a translation of any such document which may voluntarily be delivered or given to or served on him, and provided it is a certified translation into one of the official languages of the Community.

In case of conflict between any document delivered in accordance with the provisions of sub-paragraph (i) and any translation delivered voluntarily in accordance with this paragraph, the translation may not be relied upon against third parties. Third parties may nevertheless rely on the translation voluntarily delivered, unless the company proves that the third parties had knowledge of the version which was required to be delivered or submitted or served to the Registrar.”.

40. In paragraph (g) of subarticle (1) of article 425 of the principal Act, for the words “in relation to companies listed on any recognised investment exchange” there shall be substituted the words “in relation to companies listed on any regulated market or any equivalent market in a non-Member State or non-EEA State”.

Amendment of article 425 of the principal Act.

41. For subarticle (1) of article 31 in Part II of Part B of the Second Schedule to the principal Act there shall be substituted the following:-

Amendment of the Second Schedule to the principal Act.

“(1) A report required by paragraph 27 or 28 of this Part shall be made by an accountant who is an individual who holds a warrant to act as accountant issued under the Accountancy Profession Act, or is “an accountancy firm duly registered under the said Act.”.

42. Paragraph 4 of the Fifth Schedule to the principal Act shall be amended as follows:

Amendment of the Fifth Schedule to the principal Act.

(a) for sub-paragraph (a) thereof, there shall be substituted the following:

“(a) transferable securities admitted to listing on a Maltese regulated market;”;

(b) for sub-paragraph (b) thereof, there shall be substituted the following:

“(b) transferable securities dealt in on any other regulated market or on any equivalent market in a non-Member State or non-EEA State;”;

(c) for the words “References in sub-paragraph (c) of this paragraph to recently issued transferable securities are to securities the terms of issue of which include an undertaking that an application will be made for admission to listing on a recognised investment exchange or for admission to any other regulated market.”, there shall be substituted the words “References in sub-paragraph (c) of this paragraph to recently issued transferable securities are to securities the terms of issue of which include an undertaking that an application will be made for admission to listing on a Maltese regulated market or for admission on any other regulated market or on any equivalent market in a non-Member State or non-EEA State.””.

Amendment of the
Eighth Schedule to
the principal Act.

43. The Eighth Schedule to the principal Act shall be amended as follows:

(a) in the title thereof, the word “reporting” shall be substituted by the word “presentation”;

(b) paragraph 1 thereof shall be amended as follows:

(i) the definition “Reporting Currency” shall be deleted and substituted by the following:

“ “Presentation currency” shall mean the currency used in presenting the annual accounts in accordance with the provisions of article 187. On a change in the presentation currency consequent to a change in the currency in which the share capital of a company is expressed which is effected in accordance with the provisions of article 186, the term "original presentation currency" shall refer to the presentation currency in operation before the change; and the term "new presentation currency" shall refer to the presentation currency applicable following the change, and in the case of the change taking place in the first accounting period, to the presentation currency which would have been used had such change not taken place.”;

(ii) the definition “Foreign currency” shall be deleted;

(iii) in the definition “Closing rate”, the words “reporting currency” shall be substituted by the words “presentation currency”;

(iv) the definitions “Monetary items” and “Average annual exchange rate” shall be deleted;

(c) paragraph 2 thereof shall be amended as follows:

(i) in the sub-title thereof the word “rules” shall be substituted by the word “rule”;

(ii) paragraph 2 shall be renumbered as sub-paragraph (1) thereof and shall be substituted by the following:

“(1) The company’s share capital, its share premium account when applicable, and its reserves shall be converted from the original presentation currency to the new presentation currency in accordance with the rules set out in paragraphs 3 and 4 of this Schedule.”;

(iii) immediately after sub-paragraph (1) thereof as renumbered, a new sub-paragraph (2) shall be added as follows:

“(2) All other items in the company’s annual accounts, including comparative figures where applicable, shall be presented in the new presentation currency in accordance with generally accepted accounting principles and practice.”;

(d) paragraph 3 thereof shall be deleted;

(e) paragraph 4 shall be renumbered as paragraph 3 and:

(i) the title “Conversion rules” shall be substituted by the title “Conversion rules for share capital and share premium”;

(ii) in sub-paragraph (1) thereof the words “paid-up share capital” shall be substituted by the words “called-up share capital”;

(iii) in sub-paragraph (2) thereof the words “were issued.” shall be substituted by the words “were issued by the company.”;

(iv) in sub-paragraph (3) the words “reporting currency”, wherever appearing shall be substituted by the words “presentation currency” and the words “paid-up share capital” shall be substituted by the words “called-up share capital”;

(v) in the proviso to sub-paragraph (3) the words “or for each class of ordinary shares in so far as the nominal value per share” shall be substituted by the words “or for each class of ordinary and preference shares in so far as the nominal value per share”;

(f) paragraph 5 thereof shall be renumbered as paragraph 4 and shall be amended as follows:

(i) a new sub-title thereof shall be added as follows:

“Conversion rules for reserves.”;

(ii) sub-paragraph (1) thereof shall be substituted by the following:

“(1) Reserves created out of profits, including retained profits, and accumulated losses shall be converted at the average annual exchange rate or rates pertaining to the accounting period or periods during which the profits and losses from which such reserves or accumulated losses originated were earned or incurred.”;

(iii) sub-paragraph (2) thereof shall be substituted by the following:

“(2) Reserves which were not created out of profits shall be converted at the exchange rate or rates applicable on the date or dates when such reserves were created.”; and

(iv) sub-paragraph (3), (4), (5) and (6) thereof shall be deleted;

(g) paragraph 6 shall be substituted by a new paragraph 5 as follows:

(i) a sub-title shall be added thereto as follows:

“Presentation currency conversion difference”;

(ii) sub-paragraphs (1) to (4) shall be substituted by the following provision:

“5. Where following conversion to the new presentation currency a presentation currency conversion difference arises, this is not to be recognised in the company’s profit and loss account but is to be recognised as a separate component of equity, and is to be considered as an unrealised gain or as a realised loss as applicable.”;

(h) paragraph 7 shall be substituted by a new paragraph 6 as follows:

(i) a sub-title shall be added thereto as follows:

“Disclosure”;

(ii) sub-paragraphs (1) to (3) shall be substituted by the following provision:

“(6) In the first annual accounts following the conversion, the notes shall include full details of the method of conversion and the exchange rates used for the company’s share capital, its share premium account when applicable, and its reserves.”; and

(i) paragraphs 8 and 9 thereof shall be deleted.”.

44. The Tenth Schedule to the principal Act shall be amended as follows:

Amendment of the Tenth Schedule to the principal Act

“(a) in paragraph 3(1)(a) thereof, for the words “established by guidelines issued by the competent authority”, there shall be substituted the words “established by Investment Services Rules issued by the competent authority”;

(b) paragraph 14(3) in Part I thereof shall be substituted by the following:

“(3) The individual accounts shall be drawn up in accordance with generally accepted accounting principles and practice.”;

(c) in paragraph 25(8)(h) in Part I thereof for the words “shall draw up its annual accounts” there shall be substituted the words: “shall present its annual accounts”; and

(d) paragraph 25(8)(k) in Part I thereof shall be substituted by the following:

“(k) For the purposes of sub-paragraphs (h) and (j), the conversion from the base currency of a sub-class into the currency in which the annual accounts of the umbrella or multi-class partnership are to be presented in accordance with generally accepted accounting principles and practice. This note shall be disclosed in the notes to the accounts.”.

Amendment of the Eleventh Schedule to the principal Act.

45. In the Eleventh Schedule to the principal Act, with relation to article 159(3), for the words “Officers of company failing to give notice to Registrar of resignation of auditor” there shall be substituted the words “Officers of company failing to give notice to Registrar or failing to give statement to Accountancy Board of resignation of an auditor”.

PART II

Amendment of the Accountancy Profession Act. Cap. 281.

46. This Part amends the Accountancy Profession Act, and shall be read and construed as one with the Accountancy Profession Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of article 2 of the principal Act.

47. Article 2(1) of the principal Act shall be amended as follows:

(a) in the definition “accountant” for the words “includes an individual or a partnership of accountants” there shall be substituted the words “means a warrant holder or an accountancy firm.”;

(b) immediately after the definition “accountant” there shall be added the following definitions:

““accountancy firm” means a partnership whether a civil partnership or a commercial partnership including a company, formed in accordance with article 10 of this Act and any connected undertaking;

“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 a civil partnership or a commercial partnership, including a company 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;”;

(c) immediately after the definition “Board” there shall be added the following definitions:

““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 of this Act;”;

“Member State” means a member state of the European Union;”;

(d) immediately after the definition “Minister” there shall be added the following definitions:

“ “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);”;

(e) the definition “prescribed” shall be substituted by the following:

“ “prescribed” means prescribed by regulations or directives under this Act;”;

(f) immediately after the definition “prescribed” there shall be added the following definitions:

““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).”;

(g) immediately after subarticle (2) there shall be added the following new subarticle:

“(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.”.

48. Article 3 of the principal Act shall be amended as follows:- Amendment of article 3 of the principal Act.

(a) in subarticle (1) thereof the words “the holder of a warrant issued under article 4” shall be substituted by the words “a warrant holder”;

(b) in paragraph (a) of subarticle (2) thereof the words “conduct and moral character” shall be substituted by the word “repute”;

(c) for paragraph (c) of subarticle (2) thereof there shall be substituted the following:

“(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) paragraph (d) of sub-article (2) thereof shall be substituted by the following:

“(d) unless covered in the courses referred to in sub-article 2(c), he has passed an examination, part or all of which must be in writing, of professional competence of University final or equivalent examination level, recognised or set by the Board for that purpose:

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

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

(e) immediately after paragraph (d) there shall be added the following new paragraph:

“(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).”;

(f) in sub-article (3) thereof the words “after consulting” shall be substituted by the words “on the advice of”;

(g) in sub-article (5) thereof, immediately after the words “obtaining a warrant” there shall be added the words “or practising certificate”; and

(h) in sub-article (6) thereof, the words “not being the holder of the appropriate warrant” shall be substituted by the words “not being a warrant holder or a holder of a practising certificate in the field of auditing”, and the words “not exceeding one hundred liri” shall be substituted by the words “not exceeding two thousand and three hundred euro (2,300.00)”.

49. Article 4 of the principal Act shall be amended as follows:- Amendment of article 4 of the principal Act.

(a) in subarticle (1) thereof, the word “recommendation” shall be substituted by the word “advice”;

(b) in subarticle (2) thereof, the words “as may be prescribed by the Minister, acting on the recommendation of the Board” shall be substituted by the words “as may be prescribed”;

(c) for subarticle (3) thereof, there shall be substituted the following:

“(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.”;

(d) immediately after subarticle (3) thereof, there shall be added the following new subarticle:

“(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.”;

(e) immediately after new subarticle (4) there shall be added the following new subarticle:

“(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.”; and

(f) immediately after new subarticle (5) there shall be added the following new subarticle:

“(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.”.

Amendment of article 5 of the principal Act.

50. Subarticle (1) of article 5 of the principal Act shall be renumbered as the whole article 5, the words “The holder of a warrant issued under article 4” shall be substituted by the words “A warrant holder”, and subarticle (2) thereof shall be deleted.

Amendment of article 6 of the principal Act.

51. Article 6 of the principal Act shall be amended as follows:-

(a) in subarticle (1) thereof, for the words “six other members who” there shall be substituted the words “ten other members, all of whom shall be knowledgeable in the field of auditing and accounting, who”;

(b) subarticle (2) thereof shall be substituted by the following:

“(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.”; and

(c) in subarticle (3) thereof, the word “four” shall be substituted by the word “six”.

52. Article 7 of the principal Act shall be amended as follows: Amendment of article 7 of the principal Act.

(a) in subarticle (1) thereof -

(i) immediately after the words “and shall have the” there shall be added the word “ following”;

(ii) paragraph (a) thereof shall be substituted by the following:

“(a) to consider applications for the issue of warrants or practicing certificates under article 4 and to advise the Minister;”;

(iii) in paragraph (b) thereof, the words “certified public accountants” shall be substituted by the words “warrant holders or holders of a practising certificate”;

(iv) paragraph (c) thereof shall be substituted by the following:

“(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 or firm;”;

(v) immediately after paragraph (c) thereof, there shall be added paragraphs (d),(e), (f), (g), (h) and (i) as follows:

“(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 2006/34/EC

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

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

(h) to publish guidelines on the interpretation of the Accountancy Profession Act and the regulations and directives issued under it; and

(i) 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.”;

(b) in subarticle (2) thereof the words “paragraph of” shall be deleted and the words “may assign to them.” shall be substituted by the words “may assign to them, including but not limited to, the establishment and operation of a system of quality assurance”;

(c) for subarticle (3) thereof, there shall be substituted the following:

“(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.”;

(d) for subarticle (4) thereof, there shall be substituted the following:

“(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.”;

(e) for subarticle (5) thereof, there shall be substituted the following:

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

(f) immediately after subarticle (5) thereof, there shall be added the following subarticles (6) to (20):

“(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. 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 may 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) 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.”.

Amendment of article 8 of the principal Act.

53. (1) Article 8 of the principal Act shall be renumbered as subarticle (1) thereof and shall be amended as follows:

(a) paragraph (a) thereof, shall be substituted by the following:

“(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) paragraph (b) thereof shall be substituted by the following:

“(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) paragraph (c) thereof shall be deleted;

(d) paragraph (d) thereof shall be renumbered as paragraph (c);

(e) paragraph (e) thereof shall be renumbered as paragraph (d) and immediately after the words “holding a warrant” thereof there shall be added the words “ or a practising certificate”;

(f) paragraph (f) thereof shall be renumbered as paragraph (e) and immediately after the words “holding a warrant” thereof there shall be added the words “or a practising certificate”;

(g) paragraph (g) thereof shall be deleted;

(h) paragraph (h) thereof shall be renumbered as paragraph (f);

(i) paragraph (i) thereof shall be renumbered as paragraph (g);

(j) paragraphs (j) and (k) thereof shall be deleted;

(k) paragraph (l) thereof shall be renumbered as paragraph (h) and the words “Board; and” shall be substituted by the word “Board;”;

(l) immediately after paragraph (h) thereof, as renumbered, there shall be added a new paragraph (i) as follows:

“(i) the implementation of the provisions of Directive 2006/43/EC;”;

(m) paragraph (m) thereof shall be renumbered as paragraph (j).

(2) Immediately after subarticle (1) of article 8 as renumbered of the principal Act, subarticles (2) to (5) shall be added as follows:

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

(a) the professional conduct of warrant holders and practising certificate holders, 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 or practising certificate 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 and practising certificate holders;

(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 regulations issued in terms of article 8(1);

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

(k) the implementation of the provisions of Directive 2006/43/EC;

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

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

(n) 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.”.

(a) subarticle (1) thereof shall be substituted by the following:

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

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

Provided further that any other service provided by such firms shall not be incompatible with their main object, as aforesaid.”;

(b) subarticle (2) thereof shall be substituted by the following:

“(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.”;

(c) sub-article (3) thereof shall be substituted by the following:

“(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.”;

(d) subarticle (4) thereof, there shall be substituted by the following:

“(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).”;

(e) subarticle (5) thereof shall be substituted by the following:

“(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.”;

(f) subarticle (6) thereof shall be substituted by the following:

“(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) of subarticle (6).”;

(g) subarticle (7) thereof shall be substituted by the following:

“(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”.”;

(h) subarticle (8) thereof shall be substituted by the following:

“(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.”;

(i) immediately after subarticle (8) thereof, there shall be added a new subarticle (9) as follows:

“(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.”;

(j) immediately after subarticle (9) thereof there shall be added a new subarticle (10) as follows:

“(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.”;

(k) immediately after new subarticle (10) thereof there shall be a new subarticle (11) as follows:

“(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 three hundred and twenty-nine euro and thirty-seven cents (2,329.37), and in respect of a second or subsequent offence to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) 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 thirty-two euro and ninety-four cents (232.94) for each day during which the offence continues.”; and

(l) immediately after new subarticle (11) thereof there shall be a new subarticle (12) as follows:

“(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.”.

Amendment of article 11 of the principal Act.

55. Article 11 of the principal Act shall be amended as follows:-

(a) subarticle (1) thereof shall be substituted by the following:

“(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.”;

(b) in subarticle (2)(a) thereof, immediately after the words “surrender of the warrant” there shall be added the words “or practising certificate”, the word “partner” shall be substituted by the word “principal” and the words “or practitioner” shall be deleted;

(c) in subarticle (3)(a) thereof, the words “the holder of the warrant of accountant” shall be substituted by the words “a warrant holder or a holder of a practising certificate”, immediately after the words “not exercised the profession of accountant” there shall be added the words “or auditor” and the words “he will not be exercising the profession of accountant.” shall be substituted by the words: “he will not be exercising the profession of accountant or auditor”;

(d) in subarticle (3)(c) thereof, the words “person holding the warrant of accountant” shall be substituted by the words “warrant holder or a holder of a practising certificate”;

(e) in subarticle (3)(c)(ii) thereof, the words “a partnership of accountants” shall be substituted by the words “a firm.”;

(f) in subarticle (4) thereof, the word “partnership” shall be substituted by the word “firm”;

(g) in subarticle (5) thereof, the words “or partnership” shall be deleted; and

(h) subarticle (6) thereof shall be deleted.

56. Articles 12, 13, 14 and 15 of the principal Act shall be substituted by the following:

Amendment of
article 12 to 15 of
the principal Act

“Breach of
professional
duty.

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 fifty-eight thousand and two hundred and thirty-four euro and thirty-three cents (58,234.33).”

Exemptions
from liability
or
responsibility

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

Administrative
fines and
measures.

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.

Suspension,
cancellation
etc. of
warrants,
registration
of firm.

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

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

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

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

(iii) grievous conduct discreditable to the profession;

(iv) 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; and the findings of the said disciplinary committee shall be subject to such reference back, review or appeal as may 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.” .

57. Immediately after article 15 of the principal Act, there shall be added the following new articles 16, 17, 18, 19 and 20:

Addition of new articles 16 to 20 to the principal Act.

“General provisions relating to offences.
Offences and punishments.”

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(5) 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.

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

Dismissal or
resignation of
an auditor.

17. (1) The auditor shall inform the Board in writing in case of a dismissal or a resignation of the auditor during the term of appointment and shall give adequate explanations for the reasons thereof.

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

Audit of
Public
Interest
Entities.

18. (1) Auditors that carry out statutory audits of public-interest entities shall publish on their websites, within three months of each calendar year, annual transparency reports that include at least the following:

(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.

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.

20. 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 subarticle (19) of article 7.”.

Passed by the House of Representatives at Sitting No. 34 of the 16th July, 2008.

LOUIS GALEA
Speaker

Pauline Abela
Acting Clerk to the House of Representatives

