

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 18,560, 5 ta' Marzu, 2010

Taqsimha B

L.N. 111 of 2010

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

Accountancy Profession (Amendment) Regulations, 2010

IN exercise of the powers conferred by article 8 of the Accountancy Profession Act, the Minister of Finance, the Economy and Investment has, on the recommendation of the Board, made the following regulations:

1. The title of these regulations is the Accountancy Profession (Amendment) Regulations, 2010, and they shall be read and construed as one with the Accountancy Profession Regulations, hereinafter referred to as "the principal regulations".

Title.
S.L. 281.01.

2. Subregulation (1) of regulation 2 of the principal regulations shall be amended as follows:-

Amends
regulation 2 of
the principal
regulations.

(a) immediately after the definition "group auditor" there shall be added the following new definition:

" "the Schedule" means the Schedule to these regulations;" and

(b) immediately after the definition "statutory auditor" there shall be added the following new definition:

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

3. For subregulation (1) of regulation 3 of the principal regulations there shall be substituted the following:

Amends
regulation 3 of
the principal
regulations.

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

Provided that a person shall, for all intents and purposes of law, be deemed to be a warrant holder upon receipt of a letter by the Chairman of the Board on behalf of the Minister containing a declaration that such person has the requirements of article 3(2) of the Act and that he may perform

the work or render the services listed in subregulation (2):

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

Amends
regulation 4 of
the principal
regulations.

4. Regulation 4 of the principal regulations shall be amended as follows:-

(a) for the marginal note thereof, there shall be substituted the words "Work which can only be performed by a holder of a practising certificate.";

(b) in subregulation (1) thereof:-

(i) for the words "An audit" there shall be substituted the words "An audit, or any matter reserved to an auditor in terms of any other law,";

(ii) in paragraph (b) thereof, for the words "of the Act." there shall be substituted the words "of the Act:";

(iii) immediately after paragraph (b) thereof, there shall be added the following new proviso to subregulation (1):-

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

(c) in subregulation (2) thereof:-

(i) for the words "shall be subject to a fine not to exceed six thousand euro (6,000.00) and in the case of warrant holders or practising certificate holders may result in the institution of disciplinary proceedings." there shall be substituted the words "shall be guilty of an offence and shall be liable on conviction to a fine (multa) not exceeding six thousand euro (€6,000) and, where the person making a false declaration is a warrant holder or a practising certificate holder, the Board may institute disciplinary proceedings against such warrant holder or practising certificate holder:"; and

(ii) immediately after subregulation (2), there shall be added the following new proviso:-

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

5. Immediately after regulation 4 of the principal regulations, there shall be added the following new regulation:-

Adds new regulation 4A to the principal regulations.

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

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

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

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

(a) the periods mentioned in subregulations (4) and (5) within which the Board shall determine the application;

(b) the procedure under which a refusal by the Minister to issue a warrant, or the refusal by the Board to issue a practising certificate, may be appealed in terms of article 15B of the Act; and

(c) that an applicant shall be deemed to be a warrant holder, or a holder of a practising certificate, where the Board does not determine an application form within the periods mentioned in subregulations (7) and (8).

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

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

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

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

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

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

(9) Where an applicant is refused a warrant by the Minister or where a practising certificate is not issued to the applicant by the Board, the applicant shall be informed without delay. Such a decision shall be notified by registered mail to any person to whom such decision applies and shall be subject to appeal in terms of article 15B of the Act."

6. In subregulation (3) of regulation 5 of the principal regulations, the words "shall be conclusively determined by the committee" shall be substituted by the words "shall be determined by the Board acting through the committee" and immediately after the words "Article 7(2) of the Act." there shall be added the words "and such a decision shall be notified by registered mail to any person to whom such decision applies and shall be subject to appeal in terms of article 15B of the Act."

Amends
regulation 5 of
the principal
regulations.

7. Regulation 6 of the principal regulations shall be amended as follows:-

Amends
regulation 6 of
the principal
regulations.

(a) in subregulation (1) thereof:-

(i) in paragraph (c) thereof, the words "or otherwise; and" shall be substituted by the words "or otherwise;";

(ii) the present paragraph (d) thereof shall be renumbered as paragraph (e); and

(iii) immediately after paragraph (c) there shall be added the following new paragraph:-

"(d) if applicable, the details of any subsidiaries, branches, offices or agencies of the warrant holder or practising certificate holder; and"; and

(b) for paragraph (d) of subregulation (2) thereof, there shall be substituted the following:-

"(d) details, including the address, of any subsidiary, branch, office or agency in the Member State;".

Amends
regulation 7 of
the principal
regulations.

8. Regulation 7 of the principal regulations shall be amended as follows:-

(a) in paragraph (j) of subregulation (1) thereof, immediately after the words "auditing standards;" there shall be added the word "and"; and

(b) in paragraph (h) of subregulation (2) thereof, immediately after the words "and statistics;" there shall be added the word "and".

Amends
regulation 8 of
the principal
regulations

9. In paragraph (b) of subregulation (5) of regulation 8 of the principal regulations, immediately after the words "the Maltese authorities;" there shall be added the word "and".

Substitutes
regulation 11 of
the principal
regulations.

10. For regulation 11 of the principal regulations there shall be substituted the following regulation:-

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

(a) proceedings leading to the revocation, suspension or subjection to other conditions of a practising certificate;

(b) proceedings leading to the revocation, suspension or subjection to other conditions of a warrant;

(c) proceedings leading to the imposition on a person of any administrative fine, reprimand or other measure; and

(d) proceedings leading to the suspension, cancellation, revocation or subjection to other conditions of the registration of a firm."

11. The Schedule to the principal regulations shall be substituted by the Schedule to these regulations.

Substitutes the
Schedule to the
principal
regulations.

12. The Appendix to the Schedule to the principal regulations shall be repealed.

Repeals
Appendix to the
Schedule to the
principal
regulations.

SCHEDULE
(Regulation 11)

Rules of Procedure

1. The title of these rules is the Accountancy Profession Rules of Procedure.

2. (1) In these rules:-

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

"the Chairman" means the Chairman of the Accountancy Board and includes, in the absence of the Chairman from a meeting of the Board, the member acting as chairman for that meeting;

"Secretary" means the Secretary of the Accountancy Board appointed in accordance with the provisions of article 6(5) of the Act.

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

3. (1) Proceedings of the Board or a disciplinary committee may be initiated:

(a) by the Board *ex-officio*;

(b) following a complaint or information received by the Board in writing from any person on the conduct of a warrant holder, practising certificate holder or a firm; and

(c) following a complaint or information received by the Board in writing from any person that a warrant holder or practising certificate holder is unfit to continue to practise his profession on the grounds of mental infirmity.

(2) The Board may determine the form in which a complaint to the Board is to be made. Such form shall be made available on the official website of the Board.

(3) Any information or complaint received shall be submitted by the Secretary to the Chairman who shall place such information or complaint on the agenda for consideration by the Board at the next meeting of the Board.

(4) The Board shall consider the information or complaint received and shall determine whether such information or complaint is admissible or whether it is frivolous or vexatious. In the event that the Board determines that such

information or complaint is frivolous or vexatious, the person who submitted the information or complaint shall be notified by registered mail that the Board shall not proceed any further. Such a decision may be subject to appeal in terms of article 15B of the Act.

(5) Where the Board determines that such information or complaint is admissible, and the Board appoints a disciplinary committee to take cognisance of such proceedings, references to the Board in sub-rules (6) to (12) shall be construed as references to the disciplinary committee.

(6) The Board may, at its discretion, require the information or complaint to be confirmed by means of declaration under oath by the person making the complaint or providing the information. Such declaration shall state the address and description of the declarant and if any fact declared is not within the personal knowledge of the declarant, such declaration shall state the source of the declarant's information and the grounds for his belief in the truth of the fact.

(7) Subject to the provisions of the preceding sub-rules, in the event of the commencement of proceedings, the Board shall direct the Secretary to:

(a) serve notice on the warrant holder, practising certificate holder or firm of the commencement of an ex-officio enquiry pursuant to the receipt of a complaint or information;

(b) serve notice on the warrant holder, practising certificate holder or firm with full details of the ex-officio enquiry or of the information or complaint received and, in case a declaration has been made under oath pursuant to sub-rule (6), with a copy of the said declaration under oath;

(c) invite the warrant holder, practising certificate holder or firm to make submissions in writing which are to reach the Secretary within a period to be determined by the Board, which shall in no event be less than fifteen days;

(d) warn the warrant holder, practising certificate holder or firm of the possible outcome of the enquiry including, if applicable, the administrative fine that may be imposed.

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

(9) Following the expiration of the period granted for the filing of submissions pursuant to sub-rule (7)(c) above, the Secretary shall refer a copy of all the relevant documentation, including the submissions in writing of the warrant holder, practising certificate holder or firm to the Board.

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

(11) The Board may, at its discretion, at any time during the enquiry invite the complainant, the person providing information, the warrant holder, practising certificate holder or the representative of the firm to make oral submissions to the Board. It shall be permissible for the Board to request the complainant or person providing the information to be confronted with the warrant holder, practising certificate holder or the representative of a firm.

(12) Following the conclusion of the enquiry and after having considered the submissions, if any, of the warrant holder, practising certificate holder or firm, the Board shall notify the warrant holder or practising certificate holder of its decision, giving reasons therefor.

4. (1) Any decision imposing an administrative fine shall specify the nature of the infringement committed by the warrant holder, practising certificate holder or firm and the amount of the administrative fine due. Upon notification by means of a judicial act to the warrant holder, practising certificate holder or firm of a decision imposing an administrative fine, and without prejudice to any right of appeal competent to the warrant holder, practising certificate holder or firm, the said decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

(2) Notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in subregulation (1) shall not be enforceable before the lapse of fifteen days from the service of the judicial act referred to therein.

