L.N. 29 of 1987

ACCOUNTANCY PROFESSION ACT, 1979

(ACT XXVIII OF 1979)

Accountancy Profession Regulations, 1987

IN EXERCISE of the powers conferred by section 8 of the Accountancy Profession Act, 1979, the Deputy Prime Minister and Minister of Finance and Customs, has after consulting the Accountancy Board made the following regulations:

Citation and commencement.

1. These regulations may be cited a the Accountancy Profession Regulations, 1987 and shall come into force on the 15th April, 1987.

Interpretation.

2. In these regulations unless the context otherwise requires —

"Act" means the Accountancy Profession Act, 1979;

"company" means a company registered in terms of the Commercial Partnerships Ordinance, 1962;

Ord. X of 1962

"warrant holder" means a person who has been issued with a warrant to practise the profession of accountant or a warrant to act as auditor.

Work which can only be performed by warrant holder.

3. (1) No person other than a warrant holder may perform the work or render the services listed in paragraph (2) of this regulation.

(2) (a) Cash or profit projections or feasibility studies which are prepared either for investment promotion or in connection with an application for finance or for financial or other assistance;

(b) Share valuations and valuations of businesses;

(c) The reporting on accountancy matters in prospectuses issued for public subscription;

(d) The certification and issue of periodical or final accounts other than accounts for internal purposes;

(e) The audit of any accounts required under the Commercial Partnerships Ordinance 1962;

Ord. X of 1962

(f) Computations and returns for the purposes of the Income Tax Act 1948, relating to companies other than private and exempt companies in terms of the Commercial Partnerships Ordinance 1962;

Act LIV of 1948

(g) Liquidation of a company.

(3) Any person who acts in contravention of the provisions of this regulation shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not more than five hundred Maltese liri.

Cases where warrant holder may not act as auditor.

4. (1) A Certified Public Accountant and Auditor may not act as an auditor:

(a) if within the preceeding two years or at any time in the

course of carrying out an audit for a client, he or his partner or employee has performed or had the power to perform executive functions or has taken or has had the power to take executive decisions in respect of the affairs of the client; or

(b) he holds a direct or indirect interest in the affairs of the client whose accounts he is to audit, other than for the remuneration due to him for his services.

(2) Any person who acts in contravention to this regulation shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not more than one thousand Maltese liri.

Where warrant holder may not act as liquidator.

5. (1) No warrant holder may act as liquidator of a company if he has held an appointment with or in connection with that company, at any time during the two years prior to the date on which the company goes into liquidation.

(2) Any person who acts in contravention to this regulation shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not more than one thousand Maltese liri.

Guidelines.

6. (1) The Accountancy Board may with the approval of the Minister issue guidelines to warrant holders concerning:

(a) Professional Independence of warrant holders;

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

(c) Advertising and publicity by warrant holders;

(d) Obtaining professional work;

(e) The criteria concerning the charging of fees; and

(f) Clients' accounts and monies held on behalf of clients and third parties.

(2) Guidelines issued in terms of paragraph (1) of this regulation shall be published in the Gazette and shall not become operative before the lapse of one week after their publication.

Indemnity insurance.

7. Every person who, and every partnership under section 10 of the Act which, is required to be covered by an indemnity insurance policy in terms of section 11 of the Act shall be so covered throughout the currency of the insurance policy for a minimum amount of twenty-five thousand Maltese Liri (inclusive of costs to defend the claim) in respect of each warrant holder practising other than in a partnership and twenty-five thousand Maltese Liri (inclusive of costs to defend the claim) in respect of each warrant holder forming a partnership:

Provided that a sum not exceeding four percentum of the amount of cover may be deductible by the insurance company on each and every claim covered by a policy.

Procedure in enquiries.

8. The Accountancy Board shall in any enquiry for the purposes of section 14 of the Act follow the procedure set out in the rules of procedure set out in Schedule I to these regulations.

SCHEDULE I

(Reg. 8)

Rules of Procedure

Citation.

1. These rules may be cited as the Accountancy Profession Rules of Procedure, 1987.

Interpretation.

2. In these rules —

"appropriate warrant" means the warrant of Certified Public Accountant or the warrant of Certified Public Accountant and Auditor, as the case may be;

"Board" means the Accountancy Board established by the Accountancy Profession Act, 1979;

Act XXVIII of 1979

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

"charge" means a charge specified in a notice of inquiry;

"notice of inquiry" has the meaning assigned to it in rule 5(1) of these rules;

"Act" means the Accountancy Profession Act, 1979;

"warrant holder" has the same meaning as is assigned to it in the Accountancy Profession Regulations, 1982, and references to the warrant holder, in relation to any complaint or information or to any proceedings, are references to the warrant holder against whom a complaint or information is sent to the Board;

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

Application of rules.

3. A warrant may only be suspended or revoked in terms of subsection (1)(a) or (2)(b) of section 14 of the Act in consequence of an inquiry held in accordance with the provisions of these rules, into the charge or charges formulated in a notice of inquiry served in accordance with the provisions of these rules on the person against whom the charge or charges is or are made.

Complaint and information.

4. (1) Where —

(a) a complaint in writing on the conduct of a warrant holder has been sent to the Board by the Minister or by any member of

the Board or by any body or person, or information in writing as to the conduct of a warrant holder has been sent to the Board by a person acting in a public capacity, or

(b) a complaint in writing that a warrant holder is unfit to continue to practise his profession on grounds of mental or physical infirmity is sent to the Board by the Minister or by any member of the Board or by any body or person, or information in writing as to the unfitness of a warrant holder to continue to practice his profession on the grounds aforesaid is sent to the Board by a person acting in a public capacity,

the Secretary shall submit the complaint or information to the Chairman.

(2) In so far as a complaint relates to conduct or unfitness on grounds of infirmity it shall not proceed further unless and until it has been confirmed by means of a declaration on oath; and every such declaration —

(a) shall state the address and description of the declarant, and

(b) if any fact declared is not within the personal knowledge of the declarant, shall state the source of the declarant's information and the grounds for his belief in the truth of the fact.

(3) Subject to the provisions of the last foregoing paragraph, the Chairman shall direct the Secretary to notify the warrant holder of the receipt of the complaint or information stating the substance thereof and sending to the warrant holder a copy of any declaration on oath furnished under the last foregoing paragraph, and to invite the warrant holder to submit to the Board, within such date as the Chairman shall determine, any explanation which the warrant holder may have to offer; and every such explanation must be in writing and must reach the Secretary within the time fixed by the Chairman:

Provided that in so far as a complaint or information relates to conduct, if it does not appear to the Chairman that a question arises whether the said conduct constitutes any of the acts or omissions referred to in paragraph (a) of subsection (1) of section 14 of the Act, he shall direct the Secretary to refer such complaint or information to the Board either to decide that the complaint or information need not proceed further or to direct the Secretary to notify the warrant holder in accordance with the provisions of this paragraph.

(4) Subject to the foregoing provisions of this rule, the Chairman shall direct the Secretary to refer for enquiry a complaint or information to the Board together with any explanation then furnished by the warrant holder and any declarations on oath furnished under paragraph (2) of this rule.

(5) In this rule, the expression "person acting in a public capacity" means an officer of a Government Department or public authority acting as such, or any person holding judicial office or any officer attached to a court.

Notice of inquiry.

5. (1) As soon as may be after a complaint or information has been referred to the Board under the foregoing provisions and unless the Board is fully satisfied with the written explanation of the warrant holder, the Secretary shall serve on the warrant holder notice (in these rules referred to as "a notice of inquiry") which shall —

(a) specify, in the form of a charge or charges, the matters into which the inquiry is to be held, and

(b) state the day, time and place at which the inquiry is to be held.

(2) The inquiry shall not be fixed for any date earlier than eight days after the date of service of the notice of inquiry on the warrant holder.

(3) The Secretary shall cause such service to be effected either personally on the warrant holder, or by the delivery of such notice at his place of residence.

(4) A notice of inquiry shall be in the form set out in Form A contained in the Appendix to these rules, with such variations as circumstances may require.

(5) There shall be sent with any notice of inquiry a copy of these rules.

(6) A copy of the notice of inquiry shall be served on the complainant or the informer.

Day and time of inquiry.

6. The Chairman shall appoint the day and time for the holding of an inquiry.

Defective notice.

7. (1) Where before the hearing of an inquiry it appears to the Chairman, or at any stage of the hearing it appears to the Board, that a notice of inquiry is defective, the Chairman or the Board, as the case may be, shall give directions for the amendment of the notice as may be necessary unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) Where in the opinion of the Chairman or of the Board it is expedient, in consequence of the exercise by him or it of the powers conferred by the last foregoing paragraph, that the inquiry should be postponed or adjourned, the Chairman or the Board, as the case may be, shall give such directions in that behalf as appear necessary.

Public proceedings.

8. Proceedings before 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.

Abstention or challenge.

Cap. 12

9. (1) Any member of the Board and the Secretary shall abstain from taking part in any inquiry or may be challenged in any of the circumstances in which a judge would abstain or may be challenged in accordance with the provisions of section 734 of th e Code of Organisation and Civil Procedure.

(2) Any such challenge shall be made before the reading out by the Secretary of the charge or charges to the warrant holder, unless the cause of the challenge arose or came to the knowledge of the party later.

(3) The Board shall decide the objection previously to the reading of the said charge or charges, or later in appropriate cases, and its decision shall be final.

Legal and other assistance.

10. (1) Any party to the proceedings before the Board may be assisted by an Advocate or Legal Procurator. The warrant holder may also be assisted by another warrant holder.

(2) The Chairman shall bring the provisions of these rules to the notice of any party to the proceedings appearing before the Board without any such assistance.

Reading of charge.

11. The proceedings on the inquiry shall commence with the reading out by the Secretary of the charge or charges. Thereupon the Chairman shall put to the warrant holder the question whether he admits or refutes the charge or charges.

Admission or refutation.

12. (1) If the warrant holder admits the charge or charges the Board may, in its discretion, dispense with the production of witnesses and proceed to give its decision on that day or on any other day appointed for the purpose.

(2) If the warrant holder refutes the charge or charges the Board shall proceed with the inquiry.

(3) If the warrant holder fails to attend without just cause and the Board is satisfied that a notice of inquiry was served as required by these rules, the Board may, if it thinks fit, proceed with the inquiry even in his absence:

Provided that if the warrant holder is unable to attend for a just cause, he may, if he so prefers, request that the inquiry be proceeded with and appoint one of the persons mentioned in paragraph (1) of rule 10 to represent him in the proceedings.

Proceedings.

13. The proceedings on an inquiry shall be as follows:

(a) Witnesses in support of the charge shall be produced and examined by the party producing them or in his absence by the Board and cross-examined by the warrant holder; thereafter any member of the Board may put questions as he may deem necessary.

(b) Witnesses in defence shall be heard and in case the warrant holder wishes to give his evidence, he may do so provided that his evidence shall be given before that of any witness to be produced by him. Witnesses shall be examined by the warrant holder or by the person by whom he is assisted or represented and cross-examined by any other party to the proceedings; thereupon any member of the Board may put questions as he may deem necessary.

(c) When the whole of the evidence has been concluded, the warrant holder may, personally or through the person by whom he is assisted or represented, address the Board and make his defence.

(d) The Board shall then give its decision on that day or on any other day appointed for the purpose.

(e) The Board shall not be debarred at any stage of the proceedings until the decision is given from re-examining any witness or requesting the production of any documents.

Charge not proved.

14. In all cases where the Board is satisfied that the charge or charges have or have not been proved, the Board shall decide accordingly and it shall record a finding that the charge or charges have or have not been proved and that the warrant holder is or is not guilty in respect of the matters to which the charge or charges relate.

Decisions public and in writing.

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

Decisions to be forwarded to Minister.

(2) The original shall be forwarded by the Secretary, to the Minister together with the complete record of the inquiry.

(3) The Minister shall upon receipt of the decision from the Board decide as to whether to confirm or otherwise the finding of the Board and whether the warrant of the warrant holder is to be suspended, revoked, cancelled or otherwise;

Provided that the Minister shall always confirm the decision of the Board where this finds that the charge is not proven.

Validity of proceedings.

16. Where under any of the foregoing provisions of these rules the inquiry stands postponed to a future meeting, the validity of the proceedings at that meeting shall not be called into question by reason only that members of the Board who were present at the former meeting were not present at the later meeting or that members of the Board who were present at the later meeting were not present at the former meeting.

Copy of decision.

17. The Secretary shall serve without delay on the warrant holder a copy of the decision of the Board.

Form of summons to give evidence.

18. Notice to any person to appear before the Board to give evidence and/or produce documents shall be in the form set out in Form B contained in the Appendix hereto.

Signature and service of summons.

19. Every notice referred to in these rules shall be signed by the Chairman.

Power of Board.

20. It shall be within the authority of the Board during the proceedings —

(a) to maintain good order, and

(b) regulate the discussion.

21. The members of the Board and the Secretary shall not divulge anything discussed by the Board in the course of an inquiry. Confidential discussions.

22. (1) The provisions of the Inquiries Act, 1977 shall apply to the Board in any inquiry held according to these regulations. Other proceedings.

(2) Subject as otherwise expressly provided and in particular to paragraph (1) hereof, the Board shall regulate its own procedure. Act XIX of 1977

APPENDIX

Rules 5(4), 18

FORM A

ACCOUNTANCY BOARD

Notice of Inquiry

To ..... (date)

.....

I hereby give you notice that the Accountancy Board has ordered an Inquiry to consider and judge the charge/charges imputed to you, namely .....
.....

You are hereby informed that the first sitting of the said Inquiry will be held on ..... the ..... 19 ..... at .....
at .....

A copy of the Accountancy Profession Rules of Procedure 1987 is enclosed for your guidance.

You are warned that failure on your part to appear without giving a reasonable explanation for your absence would not debar the Accountancy Board from proceeding with the inquiry in your absence.

Chairman
Accountancy Board

FORM B

ACCOUNTANCY BOARD

Notice to a Person to give Evidence and/or to produce documents, etc.

To ..... (date)

.....

You are hereby required to attend before the Accountancy Board on ..... the ..... 19 ..... at ..... at ..... and so on any other day to which the hearing may be put off, to give evidence and/or to produce the following documents:

.....

.....

in the matter of an Inquiry held against .....

You are warned that failure to attend as hereby required will expose you to sanctions prescribed by law.

Chairman
Accountancy Board

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