

The Regulatory Framework

Course for External Audit Reviewers

3 October 2014

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Disclaimer

- Presentation is not legal advice
- You are advised to seek legal advice on any relevant issues arising from this presentation



Introduction

Introduction

- Commercial Partnerships Ordinance, 1962 (effective 1965)
- Role of accountants and auditors statutorily recognised
- Most practised as sole practitioners / cost-sharing arrangements
- Accountancy Profession Act, 1979
- Local recognition of accountancy as profession
- “To regulate the accountancy profession and to provide for matters connected therewith or ancillary thereto”
- Introduced warrant CPA
- Accounting scandals spurred EU to take action:
 - To enhance public trust in profession by implementing standards
 - To facilitate market access for audit firms
- Statutory Audit Directive & Services Directive



Main Act & Subsidiary Legislation

Main Act & Subsidiary Legislation

- Accountancy Profession Act (Cap. 281, Laws of Malta)
- Accountancy Profession Regulations (L.N. 18 of 2009)
- Accountancy Profession (Accounting and Auditing Standards) Regulations (L.N. 19 of 2009)
- Accountancy Profession (General Accounting Principles for Smaller Entities) Regulations (L.N. 51 of 2009)
- Accountancy Profession (Provision of Accountancy Services on a Temporary and Occasional Basis) Regulations (L.N. 112 of 2010)
- Directive 1, Continued Professional Education, 2009
- Directive 2, Code of Ethics for Warrant Holders, 2009
- Directive 3, Annual Return and Registration Fees, 2009
- Directive 4, Quality Assurance, 2009
- Directive 5, Statutory Audit Directive Implementation Measures Directive, 2011



Accountancy Board

Accountancy Board

- SAD: Governed by non-practitioners knowledgeable in areas relevant to statutory audit (could be former practitioners)
- Minority of practitioners may be allowed
- Article 6, APA
- Chairman and 10 other members
- Appointed by Minister for max 3 years (eligible for reappointment)
 - Chairman of recognised standing and experience in the accountancy profession & non-practitioner
 - non-practitioner nominated by UoM
 - 3 practising accountants
 - 3 other non-practitioners
 - senior Ministry official who is non-practitioner;
 - 2 from list of 4 nominated by MIA

Accountancy Board

- Public officer acts as secretary to the Board (no vote)
- Board shall make use of funds made available by Ministry and funds it collects as fees or otherwise
- SAD: adequately funded and secure and free from any undue influence by practitioners
- Annual report to be published by not later than 31/03
- Maintains separate registers for:
 - warrant holders and holders of practising certificates
 - audit firms and accountancy firms
 - third-country auditors and third-country audit entities
- May consult and appoint committees – to carry out studies and for establishment and operation of system of quality assurance

Accountancy Board

- Functions
 - to consider applications
 - to deal with cases of professional misconduct and other disciplinary proceedings
 - to protect public interest and integrity of profession
 - to advise Minister;
 - to assist with implementation of SAD, Services Directive and Mutual Recognition of Qualifications Act
 - to operate an appropriate system of quality assurance;
 - to publish guidelines on the interpretation of this Act
 - to exchange confidential information with competent authorities of other Member States
 - to register third-country auditors in accordance with law



Warrant Holders & Practising Certificate Holders

Warrant Holders

- **Warrant to practise the profession of accountant**
- Issued by Minister on the advice of the Board
- Must be of good conduct and repute
- Must be of full legal capacity
- Must have successfully completed B.A. (Honours) at University of Malta or attained university entrance or equivalent level then completed course of theoretical instruction recognised by Board
- Unless covered in B.A. (Honours) or theoretical instruction, must have passed examination, part or all of which must be in writing, of professional competence of University final or equivalent examination level, recognised or set by Board for that purpose
- Board satisfied that has adequate experience in accountancy for 3 years (at least 1 year gained after obtained academic qualifications)

Warrant Holders

- Work that can be performed by warrant holder:
- issuing of reports on prospective financial information prepared for promotion of investment in entity or for raising of finance
- issuing of independent reports on share valuations or valuations of businesses
- acting as reporting accountants in prospectuses, offering memoranda and other similar documents intended for public subscription;
- issuing of reports, including compilation or review of reports, with respect to interim or annual financial statements of any entity but excluding any reports on financial statements prepared for internal purposes
- any other service which may be prescribed by Minister or any other law

Practising Certificate Holders

- **Practising certificate in the field of auditing** issued by Board
- Must hold a warrant satisfies Board that:
 - Has adequate qualifications in auditing at advanced level
 - Satisfies conditions in article 3(2)(d) of APA
 - Has equivalent of 3 years full time practical training in inter alia auditing of financial statements, at least two-thirds of which with an auditor (at least 18 months gained after obtaining the degree or academic qualification relating to article 3(2)(c) APA;
- Also to individual of good repute who is approved auditor in any MS
 - As long as has passed, to satisfaction of Board, an aptitude test, covering local laws and regulations relevant to auditing
- Also to third-country auditor if satisfied that individual is in possession of qualifications and has passed aptitude test
- Can carry out audit of historical financial statements (includes statutory audit) and any other thing prescribed by law



Firms

Accountancy Firm

Object	Practice of accountancy as main object
Voting Rights	Warrant holders hold more than 50%
Administrative and management Body	Warrant holders hold more than 60%
Principal	Warrant holder Person of good repute and is appropriately qualified either by way of academic or professional qualifications or experience

Audit Firm

Object	Practice of auditing as main object
Voting Rights	Practising certificate holders / audit firm approved in any Member State hold more than 50%
Administrative and management Body	Practising certificate holders or audit firm approved in any Member State hold more than 60%
Other conditions	Individuals carrying out audit obo firm must hold practising certificate in field of auditing
Principal	Practising certificate holder of good repute and appropriately qualified (academic or professional qualifications or experience) Audit firm approved in any Member State and of good repute
Name	May indicate in firm's name

Legal Form

- SAD transposed into Maltese law towards the end of 2008
- Definition of “audit firm”:
 - a legal person or any other entity, regardless of its legal form, approved in accordance with the Directive by the competent authorities of Member States to carry out statutory audits
- All Member States (except Ireland and Malta) imposed no restrictions on the legal form of audit firms
- European Commission pronouncement in favour of possibility of using any legal form for audit firms
- Anomalous situation
 - Partners in a Maltese-owned civil partnership prohibited from enjoying limited liability
 - Ultimate owners of a Maltese audit firm partnered with an audit firm approved in another Member State could enjoy limited liability
- In conflict with objectives of SAD i.e. facilitating mutual recognition of audit firms between Member States
- Hindered market access for Maltese audit firms

Legal Form

- Ireland also repealed a section in the Irish Companies Act, 1990 allowing any legal entity to be registered as an audit firm in line with the SAD
- Amendment to definitions of 'accountancy firm' and 'audit firm':
 - to include commercial partnerships (Act IX of 2008)
 - an entity, regardless of its legal form (Act XXIII of 2009)



Insurance

Insurance

- Stark departure from what profession and clients were used to before
- Protective measures:
 - Minimum adequate cover depends on total annual fees or number of principals
 - Higher adequate professional indemnity insurance where the liability of a firm's owners is directly or indirectly limited
- Article 11, APA
- Every firm / warrant holder / holder of a practising certificate must be covered
- For so long as they hold warrant / certificate / firm is formed and thereafter with respect to anything done or omitted during that time
- Against any liability incurred for loss or damage which client or any other person may suffer as a result of any negligent act, error or omission in carrying out of functions as well loss or damage brought about or contributed by any dishonest, fraudulent, criminal or malicious act or omission of employees

Insurance

- Exemption:
 - does not in any manner exercise the said profession
 - exercises profession as employee of Government or public corporation, or of another person, or of a firm, in respect of exercise of profession in course of duties during such employment
 - in respect of any year warrant / practising certificate holder has not exercised profession, provided Board is informed in writing
- Board must be informed of insurance cover within a week of taking out / renewing
- In default, guilty of offence and liable to fine (multa) not exceeding €6,000 or maximum imprisonment of 3 months
- In case of continuing offence, additional maximum fine of €600 per day

Insurance

- Aggregate limit of liability in an indemnity insurance policy for **sole practitioner** cannot be lower than:
 - €100,000 or
 - total annual fees multiplied by 3
- Aggregate limit of liability in an indemnity insurance policy for **accountancy / audit firm** cannot be lower than:
 - €100,000 multiplied by number of principals or
 - total annual fees multiplied by 3
- If firm structured in manner such that liability of owners is directly or indirectly limited, aggregate limit of liability in indemnity insurance policy cannot be lower than:
 - €500,000 multiplied by number of principals in firm or
 - total annual fees multiplied by 5



Code of Ethics

Code of Ethics

- Fundamental principles of professional ethics for warrant holders
- Conceptual framework for applying principles where warrant holders can identify, evaluate and address threats to compliance with the fundamental principles rather than rule-based approach
- Mandatory compliance
- Based on IFAC Code and amended in certain areas to reflect additional requirements contained in EU recommendation on Statutory Auditors' Independence in EU
- If identified threats are other than “clearly insignificant”, safeguards must be applied to eliminate threats or reduce them to acceptable level
- 3 parts:
 - Part A applies to all warrant holders
 - Part B applies to warrant holders “in public practice”
 - Part C applies to warrant holders “in business”

- Fundamental Principles
- **Integrity**
 - Straightforward and honest in all professional and business relationships
- **Objectivity**
 - Not allow prejudice or bias, conflict of interest or undue influence of others to override professional or business judgments
- **Professional Competence and Due Care**
 - Continuing duty to maintain professional knowledge and skill at level to ensure that client / employer receives advantage of competent professional service based on current developments in practice, legislation and techniques
 - Act diligently and according with applicable technical and professional standards in professional and business relationships
- **Confidentiality**
 - Respect the confidentiality of information and not disclose without proper and specific authority (unless legal or professional right or duty to disclose).
 - Not used for personal advantage
- **Professional Behaviour**
 - Comply with relevant laws and regulations and avoid any action that discredits the profession



Quality Assurance

Quality Assurance

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public oversight bodies of the Member States. In order to achieve a maximum degree of harmonisation, Member States should be allowed to impose additional national audit procedures or requirements only if these stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated accounts, meaning that those requirements have not been covered by the adopted international auditing standards. Member States could maintain those additional audit procedures until the audit procedures or requirements have been covered by subsequently adopted international auditing standards. If, however, the adopted international auditing standards contain audit procedures the performance of which would create

unless an appropriate standard for such a report has been adopted at Community level.

(17) Regular inspections are a good means of achieving a consistently high quality in statutory audits. Statutory auditors and audit firms should therefore be subject to a system of quality assurance that is organised in a manner which is independent from the reviewed statutory auditors and audit firms. For the application of Article 29 on quality assurance systems, Member States may decide that if individual auditors have a common

- Accountancy Profession (Quality Assurance) Directive (Directive 4)
- To ensure that “firms” maintain the highest possible professional standards
- Firm includes sole practitioners engaging in “public practice”
- Responsibility of warrant holders to ensure that firm complies with Directive

Quality Assurance

- Quality Assurance Oversight Committee (QAOC)
 - *Acts on behalf of Board*
 - *Recommends and implements policies, decides in selection of QA visits, evaluates reports from QAU and takes necessary follow-up action where audit firms are found to be in default*
- Quality Assurance Unit (QAU) is a duly appointed agent
 - *Conducts QA visits to firms identifying gaps in audit quality and reporting findings to the QAOC*
 - *Monitoring of Annual Returns submitted by practitioners*
- QAOC composed of 5 individuals appointed by Board for max 3 years (may be re-appointed) – 2 from 4 nominated by MIA and 3 who, at least 3 years prior to their appointment, did not carry out audits nor held voting rights in / members of board of / employed by a firm

Quality Assurance

- QAOC has number of **responsibilities and powers**
- Development of QA obo Board
- Ensuring application of / compliance with Directive 4
- Requiring co-operation of firms and production of documents / information appropriate to proper performance of duties
- Investigating failure to submit QA return
- Reviewing reports compiled in QA process
- Establish appropriate procedures to ensure confidentiality of commercially sensitive information
- To appear in front of Disciplinary Committee and provide evidence on any of its findings as may be relevant to any enquiry

Quality Assurance

- **Quality Assurance Process**
- Key objective:
 - To safeguard against risk of financial loss to primary users of financial statements and to public through mishandling of funds by entities on which firms have reported favourably and to provide public assurance, assurance to regulators, to protect reputation of Board and QAOC, assist in reduction of complaints and improve firm's quality standards
- Submission of detailed return
- Periodic review visits to firms and adequate testing of audit files to assess:
 - compliance with applicable auditing standards and independence requirements
 - quantity and quality of resources spent
 - audit fees charged
 - internal quality control system of firm
- Drawing up of report containing main conclusions of QA process in respect of firm
- Annual publication of overall results of QA process



Disciplinary Measures

Disciplinary Measures

- An act or omission in breach of professional duty of accountant or auditor if amounts to dishonesty or serious misconduct - punishable with imprisonment 1-5 years and fine (multa) maximum €60,000
- Breach of any rules under APA / regulations / directives, Board has power to issue administrative fines and reprimands and take other measures it deems appropriate according to circumstances of case
 - disciplinary committee has power to impose administrative fines against any person in case of professional misconduct and other disciplinary proceedings not exceeding €12,000
- A number of criminal offences throughout APA such as:
 - individual practising profession of accountant without warrant – article 3(4)
 - Individual practising profession of accountant without fulfilling requirements set out in APA to qualify for warrant – article 3(4)

Disciplinary Measures

- Board may suspend or subject to conditions a warrant / practising certificate or may suspend, cancel or subject to conditions registration of a firm or may revoke / withdraw practising certificate or advise Minister to revoke / withdraw warrant
- After enquiry, Disciplinary Committee finds warrant / practising certificate holder or principal in firm guilty of:
 - dishonesty, serious misconduct or gross negligence in the exercise of profession
 - contravention of regulation / directive (where provides for such sanction)
 - material contravention of regulations / directives re professional standards, practices or integrity
 - grievous conduct discreditable to the profession
 - failure to comply with condition in warrant or practising certificate (if of a material nature)

Disciplinary Measures

- Court of law finds warrant / practising certificate holder or principal in firm guilty of:
 - an offence under APA / regulations
 - 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 1 year
- Following transposition of Services Directive, right of appeal to Administrative Review Tribunal is available to any aggrieved person (who must explain juridical interest) from decisions set out in article 15B, APA
 - Example: any decision of the disciplinary committee to impose an administrative fine

Disciplinary Measures

- Disciplinary Procedure set out in Schedule to the APR
- Proceedings may be initiated:
 - Board *ex officio*
 - Following complaint / information received in writing by Board:
 - on conduct of firm or holder of warrant / practising certificate
 - that holder of warrant / practising certificate holder unfit to continue to practice profession on grounds of mental infirmity
- If receives information, Board will determine whether admissible or frivolous or vexatious and may require confirmation under oath
- Warrant holder notified of complaint / information and invited to make submissions in writing within period of not less than 15 days and warning of fines that may be imposed
- Proceedings in public (but may order *in camera*)
- Mostly written submission based however may invite complainant and warrant holder to make oral submissions
- Disciplinary Committee will then decide and give reasons therefor



Other Regulations & Directives

Other Regulations & Directives

- **Accountancy Profession (Accounting and Auditing Standards) Regulations (L.N. 19 of 2009)**
 - Defines terms “generally accepted accounting principles and practice” and “generally accepted auditing standards” with reference to the Companies Act
- **Accountancy Profession (General Accounting Principles for Smaller Entities) Regulations (L.N. 51 of 2009)**
 - To reduce audit and financial statement reporting requirements for SME companies
- **Accountancy Profession (Provision of Accountancy Services on a Temporary and Occasional Basis) Regulations (L.N. 112 of 2010)**
 - To regulate any individuals seeking to provide accountancy services on a temporary and occasional basis in Malta following transposition of Services Directive

Other Regulations & Directives

- **Directive 1, Continued Professional Education, 2009**
 - To provide continued professional education - rule does not apply to those not practising profession
- **Directive 3, Annual Return and Registration Fees, 2009**
 - To provide for annual return and payment of annual fee which allows Board to carry out its statutory duties
- **Directive 5, Statutory Audit Directive Implementation Measures Directive, 2011**
 - To allow better transposition of the SAD



Conclusion

Conclusion

- Accountancy and audit profession best regulated profession in Malta
- Example of best practice for other professions
- 3 April 2014 – modifications to SAD which will require transposition into Maltese law
 - Stricter conflict of interest rules
 - Obligatory rotation of auditors and audit firms of PIEs every 10 years

Thank You

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