

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,607, 12 ta' Lulju, 2016

Taqsim A

MALTA

ATT Nru XXXVI tal-2016

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT biex jintroduci emendi fl-Att dwar il-Professjoni tal-*Accountancy* u f'Liġijiet oħra u sabiex jiġu implimentati d-Direttiva 2014/56/EU u ċertu dispozizzjonijiet tar-Regolament (EU) Nru 537/2014.

ACT No. XXXVI of 2016

AN ACT enacted by the Parliament of Malta.

AN ACT to introduce amendments to the *Accountancy Profession Act* and to other Laws and to implement Directive 2014/56/EU and certain provisions of Regulation (EU) No. 537/2014.

Nagħti l-kunsens tiegħi.

(L.S.)

DOLORES CRISTINA
Aġent President

12 ta' Lulju, 2016

ATT Nru XXXVI tal-2016

ATT sabiex jintroduċi emendi fl-Att dwar il-Professjoni tal-Accountancy u f'Liġijiet oħra u sabiex jiġu implimentati d-Direttiva 2014/56/UE u ċertu dispożizzjonijiet tar-Regolament (UE) Nru 537/2014.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħarġet b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2016 li jemenda l-Att dwar il-Professjoni tal-*Accountancy* u Liġijiet oħra. Titolu fil-qosor u bidu fis-sehħ.

(2) Id-dispożizzjonijiet ta' dan l-Att għandhom jidhlu fis-sehħ fis-17 ta' Ġunju 2016.

TAQSIMA I

Emendi għall-Att dwar il-Professjoni tal-*Accountancy*

2. Din it-Taqsima temenda l-Att dwar il-Professjoni tal-*Accountancy*, u għandha tinqara u tintfiehem haġa wahda mal-Att dwar il-Professjoni tal-*Accountancy*, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali". Emendi għall-Att dwar il-Professjoni tal-*Accountancy*. Kap. 281.

3. Is-subartikolu (1) tal-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 2 tal-Att prinċipali.

(a) it-tifsira "awditjar statutorju" għandha tiġi sostitwita b'dan li ġej:

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" "awditjar statutorju" tfisser awditjar tal-kontijiet finanzjarji annwali jew il-kontijiet finanzjarji kkonsolidati skont kif:

(a) rikjest mil-liġi tal-Unjoni Ewropea;

(b) rikjest mil-liġi Maltija fir-rigward ta' imprizi żgħar;"

(b) fit-tifsira "awditur ta' pajjiż terz", minflok il-kliem "inkorporata f'pajjiż terz;" għandhom jidhlu l-kliem "inkorporata f'pajjiż terz, għajr individwu li jkun registrat bhala awditur statutorju fi kwalunkwe Stat Membru b'konsegwenza tal-approvazzjoni skont l-Artikoli 3 u 44 tad-Direttiva dwar l-Awditjar;"

(c) minnufih wara t-tifsira "awditur ta' pajjiż terz" għandha tiżdied it-tifsira ġdida li ġejja:

"awtorità kompetenti" tfisser l-awtorità nominata mil-liġi tal-Istati Membri sabiex tkun responsabbli għar-regolamentazzjoni u, jew għas-supervizzjoni tal-awdituri statutorji u d-ditti tal-awditjar jew ta' aspetti speċifiċi tagħhom;"

(d) minnufih wara t-tifsira "Bord" għandha tiżdied it-tifsira ġdida li ġejja:

" "CEAOB" tfisser il-Kumitat ta' Korpi Ewropej għas-Sorveljanza tal-Awditjar;"

(e) minnufih wara t-tifsira "dikjarazzjonijiet finanzjarji" għandha tiżdied it-tifsira ġdida li ġejja:

" "Direttiva dwar l-Awditjar" tfisser id-Direttiva 2006/43/KE tal-Parlament Ewropew u tal-Kunsill tas-17 ta' Mejju 2006 dwar il-verifiki statutorji tal-kontijiet annwali u tal-kontijiet konsolidati, kif emendata bid-Direttiva 2014/56/UE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' April 2014;"

(f) fit-tifsira "entità ta' awditjar ta' pajjiż terz", minflok il-kliem "inkorporati f'pajjiż terz;" għandhom jidhlu l-kliem "inkorporati f'pajjiż terz, għajr entità li tkun registrata bhala ditta tal-awditjar fi kwalunkwe Stat Membru b'konsegwenza tal-approvazzjoni skont l-Artikolu 3 tad-Direttiva dwar l-Awditjar;"

(g) it-tifsira "entità ta' interess pubbliku" għandha tiġi sostitwita b'dan li ġej:

" "entità ta' interess pubbliku" tfisser entità regolata mid-dritt ta' Stat Membru li t-titoli trasferibbli tiegħu huma ammessi għan-negozjar f'suq regolat ta' kwalunkwe Stat Membru fis-sens tal-punt 14 tal-Artikolu 4(1) tad-Direttiva 2004/39/KE; istituzzjoni ta' kreditu kif definita fil-punt 1 tal-Artikolu 3(1) tad-Direttiva 2013/36/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 dwar l-aċċess għall-attività ta' istituzzjonijiet ta' kreditu u s-supervizjoni prudenzjali ta' istituzzjonijiet ta' kreditu u ta' ditti tal-investment, minbarra dawk imsemmija fl-Artikolu 2 ta' dik id-Direttiva; impriżi tal-assigurazzjoni skont it-tifsira tal-Artikolu 2(1) tad-Direttiva 91/674/KEE; u tali entitajiet oħra kif jista' jiġi preskritt mill-Ministru. Ir-referenzi għad-Direttivi f'din it-tifsira għandhom jinkludu kwalunkwe leġislazzjoni oħra li temenda jew tissostitwixxi tali Direttivi;"

(h) minnufih wara t-tifsira "entità ta' interess pubbliku" għandhom jiżdiedu t-tifsiriet godda li ġejjin:

" "impriżi ta' daqs medju" tfisser impriżi msemmija fil-paragrafu 1 tat-Taqsima I tat-Tielet Skeda tal-Att dwar il-Kumpanniji;

"impriżi żgħar" tfisser il-kumpanniji msemmijin fl-artikolu 185(1) tal-Att dwar il-Kumpanniji;"

Kap. 386.

(i) fit-tifsira "ma jkunx jeżerċita", minflok il-kliem "għal mill-inqas tliet snin qabel ma jkun involut fit-tmexxija tal-Bord jew ta' xi kumitat imwaqqaf tahtu" għandhom jidhru l-kliem "għandhom jithassru u jiġu sostitwiti bil-kliem "matul l-involviment tiegħu jew tagħha fit-tmexxija tal-Bord u matul il-perjodu ta' tliet snin minnufih qabel dak l-involviment";

(j) minnufih wara t-tifsira "principal responsabbli għall-konformità" għandha tiżdied it-tifsira ġdida li ġejja:

" "Regolament dwar l-Awditjar" tfisser ir-Regolament (UE) Nru 537/2014 tal-Parlament Ewropew u tal-Kunsill tas-16 ta' April 2014 jew ir-reqwiżiti speċifiċi dwar l-awditjar statutorju ta' entitajiet ta' interess pubbliku;"

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(k) minnufih wara t-tifsira "Stat Membru" għandhom jizdiedu t-tifsiriet ġodda li ġejjin:

LS. 281.01 "Stat Membru domiciljari" tfisser Stat Membru fejn awditur jew ditta tal-awditjar hija approvata b'konformità mar-regolament 4(1) tar-Regolamenti dwar il-Professjoni tal-*Accountancy*;

"Stat Membru ospitanti" tfisser Stat Membru li fih awditur statutorju approvat mill-Istat Membru domiciljari tiegħu jew tagħha j/tipprova j/tikseb approvazzjoni wkoll fi Stat Membru ieħor, jew Stat Membru li fih ditta tal-awditjar approvata mill-Istat Membru domiciljari tagħha tfittex li tiġi registrata jew tkun registrata;

"test tal-kapaċità" tfisser test limitat għall-għarfien professjonali tal-applikant, magħmul mill-Bord bl-għan li jevalwa l-kapaċità tal-applikant sabiex isegwi l-professjoni ta' awditur f'Malta;" u

(l) fit-test Inġliż it-tifsira "Tribunal" għandha titqiegħed wara t-tifsira "third-country auditor".

Emenda tal-artikolu 4 tal-Att prinċipali.

4. L-artikolu 4 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (3) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(3) Il-Bord għandu jgħodġi ċertifikat ta' prattika fil-qas tal-awditjar f'Malta lil individwu ta' reputazzjoni tajba li huwa awditur approvat fi kwalunkwe Stat Membru sakemm tali individwu jkun, b'mod sodisfaċenti għall-Bord, għadda minn test tal-kapaċità, li jkopri l-ligijiet u r-regolamenti lokali rilevanti għall-awditjar, stabbiliti mill-Bord għal dan il-għan." u

(b) fis-subartikolu (4) tiegħu, minflok il-kliem "l-Istati Membri fejn l-awditur ikun ukoll approvat" għandhom jidhlu l-kliem "l-Istati Membri fejn l-awditur huwa wkoll registrat".

Emenda tal-artikolu 7 tal-Att prinċipali.

5. L-artikolu 7 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (e) tas-subartikolu (1) tiegħu, minflok il-kliem "Direttiva 2006/43/KE;", għandhom jidhlu l-kliem "Direttiva 2006/43/KE, id-Direttiva 2014/56/UE u r-Regolament (UE) Nru 537/2014;"

(b) il-paragrafu (l) tas-subartikolu (1) tiegħu għandu jiġi enumerat mill-ġdid bhala l-paragrafu (o), u minnufih wara l-paragrafu (k) tiegħu għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(l) fejn ikun meħtieġ, li jibda u jwettaq investigazzjonijiet marbuta ma' awdituri u ditti tal-awditjar u d-dritt li jieħu l-azzjoni adatta;

(m) li jimmonitorja b'mod regolari l-iżviluppi tas-suq għall-provvediment ta' servizzi ta' awditjar statutorju għall-entitajiet ta' interess pubbliku u b'mod partikolari għandu jevalwa dan li ġej:

(i) ir-riskji li jirriżultaw mill-inċidenza għolja ta' defiċenzi ta' awditur jew ta' ditta tal-awditjar, inklużi defiċenzi sistematiċi f'network ta' ditta tal-awditjar, li jistgħu jwasslu għall-falliment ta' kwalunkwe ditta tal-awditjar, l-interruzzjoni tal-provvediment ta' servizzi statutorji tal-awditjar kemm f'settur speċifiku kif ukoll fis-setturi kollha, l-akkumulazzjoni ulterjuri tar-riskju ta' defiċenzi fl-awditjar u l-impatt fuq l-istabbiltà ġenerali tas-settur finanzjarju;

(ii) il-livelli ta' konċentrazzjoni tas-suq, inkluż f'setturi speċifiċi;

(iii) il-prestazzjoni ta' kumitati tal-awditjar;

(iv) il-bżonn li jiġu adottati miżuri li jnaqqsu r-riskji msemmija fil-paragrafu (a);

(n) jieħu miżuri li jiżguraw li l-applikazzjoni ta' *standards* tal-awditjar għall-awditjar statutorju ta' imprizi żgħar hija proporzjonata mal-iskala u l-komplessità ta' tali imprizi;"

(ċ) is-subartikolu (6) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(6) Il-Bord għandu, b'konformità mad-dispożizzjonijiet ta' dan l-artikolu, jirreġistra kull awditur minn pajjiż terz u entità tal-awditjar minn pajjiż terz, fejn dak l-awditur minn pajjiż terz u dik l-entità tal-awditjar minn pajjiż terz jipprovdu rapport tal-awditjar li jikkonċerna d-dikjarazzjonijiet finanzjarji annwali jew

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konsolidati ta' impriza inkorporata barra l-Unjoni li t-titoli trasferibbli tagħha jkunu ammessi għan-negozjar f'suq regolat f'Malta fis-sens tal-punt 14 tal-Artikolu 4(1) tad-Direttiva 2004/39/KE, minbarra meta l-impriza inkwistjoni tkun emittent esklużiv ta' titoli ta' dejn pendenti li għalihom tapplika waħda minn dawn li ġejjin:

(a) huma kienu ammessi għan-negozjar f'suq regolat fi Stat Membru fis-sens tal-punt (ċ) tal-Artikolu 2(1) tad-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill (24) qabel il-31 ta' Diċembru 2010 u d-denominazzjoni tiegħu għal kull unità, li fid-data tal-ħruġ, hija tal-inqas ħamsin elf euro (€50,000) jew, fil-każ ta' titoli ta' dejn denominati f'munita oħra, ekwivalenti, fid-data tal-ħruġ, għal tal-inqas ħamsin elf euro (€50,000);

(b) huma jkunu ammessi għan-negozjar f'suq regolat fi Stat Membru fis-sens tal-punt (ċ) tal-Artikolu 2(1) tad-Direttiva 2004/109/KE mill-31 ta' Diċembru 2010 u li d-denominazzjoni tagħhom għal kull unità, fid-data tal-ħruġ, hija tal-inqas mitt elf euro (€100,000) jew, f'każ ta' titoli ta' dejn denominati f'munita oħra, ekwivalenti, fid-data tal-ħruġ, għal tal-inqas mitt elf euro (€100,000).";

(d) is-subartikolu (11) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(11) Il-Bord jista' jirreġistra awditur minn pajjiż terz jew entità tal-awditjar minn pajjiż terz biss jekk:

(a) hu/hi għandhom reputazzjoni tajba;

(b) fil-każ ta' entità tal-awditjar minn pajjiż terz, il-maġġoranza tal-membri tal-korp amministrattiv jew tat-tmexxija tal-entità tal-awditjar minn pajjiż terz jissodisfaw ir-rekwiziti li huma ekwivalenti għal dawk stipulati fl-artikolu 10(6);

(ċ) l-awditur minn pajjiż terz jew l-awditur minn pajjiż terz li jkun qed jagħmel l-awditjar f'isem l-entità tal-awditjar minn pajjiż terz, jissodisfa r-rekwiziti li huma ekwivalenti għal dawk stipulati fl-artikolu 3(2);

(d) l-awditjar imsemmi fis-subartikolu (6) isir b'konformità mal-*standards* internazzjonali tal-awditjar u jikkonforma mar-rekwiżiti ta' indipendenza, oġġettività u tariffi tal-awditjar kif stabbilit f'dan l-Att jew mill-Bord jew ma' *standards* u rekwiżiti ekwivalenti;

(e) hu/hi jipubblikaw fuq is-sit elettroniku tagħhom rapport ta' trasparenza annwali li jinkludi l-informazzjoni msemmija fl-artikolu 18(1) jew jikkonformaw ma' rekwiżiti ta' divulgazzjoni ekwivalenti.";

(e) is-subartikolu (19) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(19) Il-Bord għandu jipubblika rapport annwali li jinkludi dettalji tal-programmi ta' ħidma annwali tiegħu, inklużi l-kompiti tiegħu skont ir-Regolament dwar l-Awditjar, deskrizzjoni tax-xogħol li sar mill-kumitat dixxiplinarju, sommarju tax-xogħol li sar fir-rigward tal-assigurazzjoni tal-kwalità u r-riżultati generali tas-sistema tal-assigurazzjoni tal-kwalità, l-informazzjoni aggregata dwar is-sejbiet u l-konklużjonijiet tal-spezzjonijiet imsemmija fl-Artikolu 49 tad-Direttiva Nru 4 tad-Direttiva dwar il-Professjoni tal-*Accountancy* (Assigurazzjoni tal-Kwalità) u tali affarijiet oħra li l-Bord iqis rilevanti.

Dan ir-rapport għandu jinkludi wkoll informazzjoni dwar rakkomandazzjonijiet maħruġa, segwitu tar-rakkomandazzjonijiet, miżuri superviżorji meħuda u sanzjonijiet imposti. Għandu jinkludi wkoll informazzjoni kwantitattiva u informazzjoni ewlenija oħra ta' prestazzjoni dwar riżorsi finanzjarji u dwar persunal, u l-effiċjenza u l-effikacità tas-sistema tal-assigurazzjoni tal-kwalità."; u

(f) minnufih wara s-subartikolu (20) tiegħu għandhom jiżdiedu s-subartikoli godda li ġejjin:

"(21) Il-Bord għandu jikkoopera ma' awtoritajiet kompetenti bil-għan li jikseb konverġenza tar-rekwiżiti stipulati fl-artikolu 3(2)(c), (d) u (e). Meta jimpenjaw ruħhom f'tali kooperazzjoni, dawk l-awtoritajiet kompetenti għandhom iqisu żviluppi fl-awditjar u fil-professjoni tal-awditjar, u, b'mod partikolari, il-

konvergenza li tkun digà ntlahqet mill-professjoni. Huma għandhom jikkooperaw mal-Kumitat tal-Korpi Ewropej ta' Sorveljanza tal-Awditjar (CEAOB) u l-awtoritajiet kompetenti msemmijin fl-Artikolu 20 tar-Regolament (UE) Nru 537/2014 sa fejn tali konvergenza tkun marbuta mal-awditjar statutorju ta' entitajiet ta' interess pubbliku.

(22) Il-Bord għandu jikkoopera ma' awtoritajiet kompetenti oħra fi ħdan il-qafas tas-CEAOB bil-għan li tinkiseb konvergenza tar-rekwiziti tal-perijodu ta' adattament u t-test ta' kapaċità. Għandhom itejbu t-trasparenza u l-prevedibilità tar-rekwiziti. Għandhom jikkooperaw mas-CEAOB u mal-awtoritajiet kompetenti msemmija fl-Artikolu 20 tar-Regolament dwar l-Awditjar sa fejn dik il-konvergenza għandha x'taqsam mal-awditjar statutorju ta' entitajiet ta' interess pubbliku."

Żjieda ta' artikoli godda mal-Att prinċipali.

6. Minnufih wara l-artikolu 7 tal-Att prinċipali għandhom jiżdiedu l-artikoli godda li ġejjin:

"Setgħat tal-awtorità kompetenti.

7A. (1) Mingħajr hsara għall-Artikolu 26 tar-Regolament dwar l-Awditjar, meta jwettaq il-kompiti tiegħu skont dan l-Att u skont ir-Regolament dwar l-Awditjar, il-Bord u kwalunkwe awtorità pubblika oħra ma jistgħux ifixklu l-kontenut tar-rapporti tal-awditjar.

(2) Il-Bord għandu jkollu s-setgħat superviżorji u investigatorji kollha li huma neċessarji għall-eżerċizzju tal-funzjonijiet tiegħu skont l-Att u r-Regolament dwar l-Awditjar, inkluż, iżda mhux biss is-setgħa li:

(a) jaċċessa *data* relatata mal-awditjar statutorju jew dokumenti oħra miżmuma mill-awdituri jew minn ditti tal-awditjar fi kwalunkwe forma rilevanti għat-twettiq tal-kompiti tiegħu u li jirċievi u jagħmel kopja tagħhom;

(b) jikseb informazzjoni relatata mal-awditjar statutorju mingħand kwalunkwe persuna;

(ċ) jagħmel spezzjonijiet ta' awdituri jew ta' ditti tal-awditjar fuq il-post;

(d) jirreferi kwistjonijiet għal prosekuzzjoni kriminali;

(e) jitlob lill-esperti biex jagħmlu verifiki jew investigazzjonijiet;

(f) jieħu miżuri amministrattivi, u jimponi s-sanzjonijiet imsemmija fl-artikolu 14.

(3) Il-Bord jista' juża s-setgħat imsemmija fis-subartikolu (2)(a) fir-rigward biss ta':

(a) awdituri u ditti tal-awditjar li jagħmlu awditjar statutorju tal-entitajiet ta' interess pubbliku;

(b) persuni involuti fl-attivitajiet ta' awdituri u ta' ditti tal-awditjar li jagħmlu awditjar statutorju ta' entitajiet ta' interess pubbliku;

(ċ) entitajiet ta' interess pubbliku awditjati, l-affiljati tagħhom u partijiet terzi relatati;

(d) partijiet terzi li għalihom l-awdituri u d-ditti tal-awditjar li jagħmlu l-awditjar statutorju ta' entitajiet ta' interess pubbliku, ikunu esternalizzaw ċertu funzjonijiet u attivitajiet; u

(e) persuni relatati jew konnessi mod ieħor mal-awdituri statutorji jew mad-ditti tal-awditjar li jagħmlu l-awditjar statutorju ta' entitajiet ta' interess pubbliku.

(4) Il-Bord għandu jeżercita s-setgħat superviżorji u investigatorji tiegħu bi kwalunkwe mod minn dawn li ġejjin:

(a) direttament;

(b) flimkien ma' awtoritajiet oħra;

(ċ) b'applikazzjoni lill-awtoritajiet ġudizzjarji kompetenti.

(5) Is-setgħat superviżorji u investigatorji tal-Bord għandhom jiġu eżercitati b'konformità shiha mal-liġi Maltija, u b'mod partikolari, mal-principji tar-rispett għall-ħajja privata u d-dritt ta' difiża.

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Kap. 440. (6) L-ipproċessar ta' *data* personali pproċessata fl-eżerċizzju tas-setgħat superviżorji u investigatorji skont dan l-artikolu, għandu jitwettaq b'konformità mal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data* u d-Direttiva 95/46/KE.

Delega ta' kompiti.

7B. (1) Il-Bord jista' jiddelega kwalunkwe kompitu rikjest li għandu jsir skont dan l-Att u r-Regolament dwar l-Awditjar lil awtoritajiet jew korpi maħturin jew awtorizzati mod ieħor mil-liġi biex iwettqu tali kompiti, minbarra l-kompiti relatati ma':

(a) is-sistemi ta' assigurazzjoni tal-kwalità msemmija fid-Direttiva 4 tal-Professjoni tal-*Accountancy* (Assigurazzjoni tal-Kwalità);

(b) investigazzjonijiet li jirriżultaw minn dik is-sistema ta' assigurazzjoni tal-kwalità jew minn riferiment minn awtorità oħra; u

(ċ) sanzjonijiet u miżuri relatati mal-eżamijiet mill-ġdid tal-assigurazzjoni tal-kwalità jew investigazzjoni ta' awdituri ta' entitajiet ta' interess pubbliku.

(2) Kwalunkwe eżekuzzjoni ta' kompiti minn awtoritajiet jew korpi għandha tkun delegata b'mod speċifiku mill-Bord. Id-delega għandha tispeċifika l-kompiti delegati u l-kondizzjonijiet li skonthom għandhom jitwettqu.

Meta l-Bord jiddelega kompiti lil awtoritajiet jew korpi oħra, huwa għandu jkun jista' jieħu lura l-kompetenzi delegati skont il-każ.

(3) L-awtoritajiet jew il-korpi kompetenti għandhom ikunu organizzati b'tali mod li jiġu evitati l-konflitti ta' interess. Il-Bord għandu r-responsabbiltà aħharija għas-superviżjoni tal-konformità mar-Regolament dwar l-Awditjar, ma' dan l-Att u mal-miżuri ta' implimentazzjoni li ġew adottati skont l-Att.

Il-Bord għandu jinforma lill-Kummissjoni Ewropea u lill-awtoritajiet kompetenti tal-Istati Membri dwar kwalunkwe arrangament li jkun daħal fih fir-rigward tad-delega tal-kompiti, inklużi l-kundizzjonijiet preċiżi li jirregolaw tali delega."

7. L-artikolu 8 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 8 tal-Att prinċipali.

(a) fil-paragrafu (b) tas-subartikolu (1) tiegħu, minflok il-kliem "f'oqsma partikolari ta' attività;" għandhom jidhlu l-kliem "f'oqsma partikolari ta' attività, inkluż, iżda mhux limitat għal, l-istabbiliment ta' rekwiżiti addizzjonali marbuta mal-kontenut tar-rapport ta' awditjar imsemmija fl-artikoli 179 u 179A tal-Att dwar il-Kumpanniji;"

(b) fil-paragrafu (j) tas-subartikolu (1) tiegħu, minflok il-kliem "Direttiva 2006/43/KE;" għandhom jidhlu l-kliem "Direttiva 2006/43/KE, id-Direttiva 2014/56/UE u r-Regolament (UE) Nru 537/2014;"

(ċ) fil-paragrafu (l) tas-subartikolu (1) tiegħu, minflok il-kliem "mal-piena hawn qabel imsemmija." għandhom jidhlu l-kliem "mal-piena hawn qabel imsemmija;" u minnufih wara għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(m) il-kriterji ta' ekwivalenza tal-awditjar tad-dikjarazzjonijiet finanzjarji annwali u kkonsolidati msemmija fl-artikolu 7(6);

(n) il-kriterji ta' ekwivalenza ġenerali li għandhom jintużaw meta jiġu vvalutati d-dikjarazzjonijiet finanzjarji msemmija fl-artikolu 7(6);

(o) l-ekwivalenza msemmija fl-artikolu 7(9);

(p) l-istabbiliment ta' kriterji ta' ekwivalenza ġenerali li għandhom jintużaw meta jiġu vvalutati s-sorveljanza pubblika, l-assigurazzjoni tal-kwalità, l-investigazzjoni u s-sistemi ta' sanzjonijiet ta' pajjiż terz;

(q) l-adegwatezza ta' pajjiżi terzi msemmija fir-regolament 9 tar-Regolament dwar il-Professjoni tal-*Accountancy*;

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(r) l-istabiliment ta' kriterji ta' adegwatezza generali li għandhom jintużaw sabiex jiġi vvalutat jekk l-awtoritajiet kompetenti ta' pajjiżi terzi jistgħux jiġu rikonoxxuti bħala adatti sabiex jikkooperaw mal-Bord fl-iskambju ta' dokumenti tal-hidma tal-awditjar u dokumenti oħra f'idejn awdituri statutorji u ditti tal-awditjar.";

(d) fil-paragrafu (a) tas-subartikolu (2) tiegħu, minnufih wara l-kliem "kodiċi ta' etika," għandhom jiżdiedu l-kliem "*standards* dwar kontroll intern tal-kwalità ta' ditti tal-awditjar, kif ukoll";

(e) fil-paragrafu (k) tas-subartikolu (2) tiegħu, minflok il-kliem "Direttiva 2006/43/KE;" għandhom jidhlu l-kliem "Direttiva 2006/43/KE, id-Direttiva 2014/56/UE u r-Regolament (UE) Nru 537/2014;"; u

(f) il-paragrafu (o) tas-subartikolu (2) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (q) u minnufih wara l-paragrafu (n) tiegħu għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

Kap. 386.

"(o) f'ċirkostanzi eċċezzjonali, il-firma/firem mehtieġa fir-rapport tal-awditjar imsemmi fl-artikoli 179 u 179A tal-Att dwar il-Kumpanniji, m'hemmx għalfejn jiġu żvelati lill-pubbliku jekk tali żvelar jista' jwassal għal theddida imminente u sinifikattiva għas-sigurtà personali ta' kwalunkwe persuna, ukoll jekk l-isem/ismijiet tal-persuna/i involuta/i jkun/u magħruf/a mill-Bord;

(p) setgħat oħra ta' sanzjonar minbarra dawk imsemmija fl-artikolu 14(2);".

Emenda tal-artikolu 10 tal-Att prinċipali.

8. Fit-tieni proviso tas-subartikolu (1) tal-artikolu 10 tal-Att prinċipali, minflok il-kliem "mar-regoli dwar l-indipendenza" għandhom jidhlu l-kliem "mar-regoli dwar xettiċiżmu, l-indipendenza".

Żjieda ta' artikolu ġdid mal-Att prinċipali.

9. Minnufih wara l-artikolu 10 tal-Att prinċipali għandu

jizzied l-artikolu ġdid li ġej:

"Rikonoxxi- ment ta' ditta tal-awditjar.	10A.(1) B'deroga mill-artikolu 10(7), ditta tal-awditjar li hija approvata fi Stat Membru ieħor għandha tkun intitolata li twettaq awditjar statutorju fi Stat Membru ieħor dment li s-sieħeb ewlieni ta' awditjar li jwettaq l-awditjar statutorju f'isem id-ditta tal-awditjar jikkonforma mal-artikolu 3(1) u
L.S. 281.01	(2) u mar-regolament 4(1) u (2) u r-regolament 7 tar-Regolamenti dwar il-Professjoni tal- <i>Accountancy</i> .
L.S. 281.01	(2) Meta ditta tal-awditjar, li tikkwalifika taħt is-subartikolu (1), tkun tixtieq twettaq awditjar statutorju, hi għandha tirreġistra mal-Bord skont l-artikolu 7(4) u (15) u r-regolament 6 tar-Regolamenti dwar il-Professjoni tal- <i>Accountancy</i> .
	(3) Il-Bord għandu jirreġistra d-ditta tal-awditjar jekk ikun sodisfatt li d-ditta tal-awditjar tkun reġistrata mal-awtorità kompetenti fl-Istat Membru domiciljari. Meta l-Bord ikun biħsiebu joqgħod fuq ċertifikat li jafferma r-reġistrazzjoni tad-ditta tal-awditjar fl-Istat Membru domiciljari, il-Bord jista' jitlob li ċ-ċertifikat maħruġ mill-awtorità kompetenti fl-Istat Membru domiciljari ma għandux ikun ilu aktar minn tliet xhur li nħareġ. Il-Bord għandu jgħarraf lill-awtorità kompetenti fl-Istat Membru domiciljari dwar ir-reġistrazzjoni tad-ditta tal-awditjar."

10. Is-subartikolu (4) tal-artikolu 11 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 11 tal-Att prinċipali.

"(4) Kull persuna jew ditta marbuta li tkun koperta minn assigurazzjoni ta' indennizz taħt dan l-artikolu, għandha, kull sena, flimkien mal-formola annwali, tinforma lill-Bord bil-miktub bl-isem tal-kumpannija tal-assigurazzjoni, in-numru relatat tal-polza tal-assigurazzjoni, tippovdi evidenza dokumentarja mill-kumpannija tal-assigurazzjoni li tali persuna jew ditta hija attwalment koperta mill-polza tal-assigurazzjoni identifikata, u għandha tiddikjara lill-Bord li tali livell ta' kopertura tal-assigurazzjoni jammonta għal mhux inqas minn tali livell minimu li jista' jiġi preskritt."

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Emenda tal-
artikolu 14 tal-
Att prinċipali.

11. L-artikolu 14 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) in-nota marginali tiegħu għandha tiġi sostitwita b'dan li ġej:

"Multi, sanzjonijiet u miżuri amministrattivi."; u

(b) l-artikolu preżenti għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1) tiegħu u minnufih wara għandhom jiżdiedu s-subartikoli godda li ġejjin:

"(2) Il-Bord għandu jkollu s-setgħa li jieħu u, jew jimponi tal-inqas il-miżuri u s-sanzjonijiet amministrattivi li ġejjin għall-ksur tad-dispożizzjonijiet tar-regoli taht dan l-Att kif ukoll, fejn applikabbli, ir-Regolament dwar l-Awditjar:

(a) notifika li teħtieġ lill-persuna fizika jew ġuridika responsabbli għall-ksur li tieqaf mill-imġiba u li tastjeni milli tirrepeti dik l-imġiba;

(b) dikjarazzjoni pubblika li tindika li l-persuna responsabbli u n-natura tal-ksur, ippubblikata fuq is-sit elettroniku tal-awtoritajiet kompetenti;

(ċ) projbizzjoni temporanja ta' mhux aktar minn durata ta' tliet snin, li tillimita lill-awditur statutorju, id-ditta tal-awditjar jew is-sieheb ewlieni tal-awditjar milli jwettqu awditjar statutorju u, jew jiffirmaw rapporti tal-awditjar;

(d) dikjarazzjoni li r-rapport tal-awditjar ma jilhaqx ir-rekwiziti tal-artikolu 179A tal-Att dwar il-Kumpanniji jew, fejn applikabbli, l-artikolu 179B ta' dak l-Att;

(e) projbizzjoni temporanja, ta' mhux aktar minn durata ta' tliet snin, li tillimita lill-membri ta' ditta tal-awditjar milli jeżerċita funzjonijiet f'ditti ta' awditjar jew entitajiet ta' interess pubbliku;

(f) l-impożizzjoni ta' sanzjonijiet amministrattivi pekunjarji fuq persuni fiżiċi u ġuridiċi.

Kap. 386.

(3) Meta jiġu determinati t-tip u l-livell tas-sanzjonijiet u l-miżuri amministrattivi msemmija fis-subartikolu (1), fl-artikolu 7(17) u fl-artikolu 15, il-Bord u, jew il-kumitati dixxiplinarji maħtura skont it-termini tal-artikolu 7(16) għandhom jieħdu kont taċ-ċirkostanzi rilevanti kollha, inkluż, fejn ikun il-każ:

(a) il-gravità u t-tul ta' żmien tal-ksur;

(b) il-grad ta' responsabbiltà tal-persuna responsabbli;

(c) is-saħħa finanzjarja tal-persuna responsabbli, pereżempju kif indikat mill-fatturat totali tal-impriza responsabbli jew id-dhul annwali totali tal-persuna responsabbli, jekk dik il-persuna tkun persuna fiżika;

(d) l-ammonti tal-qligħ iggwadanjati jew tat-telf evitat mill-persuna responsabbli, sa fejn dawn jistgħu jiġu determinati;

(e) il-livell ta' kooperazzjoni tal-persuna responsabbli mal-Bord;

(f) ksur preċedenti mill-persuna fiżika jew ġuridika responsabbli.

Il-Bord u, jew il-kumitati dixxiplinarji maħtura jistgħu jieħdu kont ta' fatturi addizzjonali skont it-termini tal-artikolu 7(16) meta tali fatturi huma speċifikati f'dispożizzjoni legali, regolament jew Direttiva."

12. Fil-paragrafu (e) tas-subartikolu (2) tal-artikolu 15 tal-Att prinċipali, minflok il-kliem "dik id-ditta milli tiġi reġistrata." għandhom jidhlu l-kliem "dik id-ditta milli tiġi reġistrata"; u minnufih wara għandu jizdied il-paragrafu gdid li ġej:

Emenda tal-artikolu 15 tal-Att prinċipali.

"(f) Fejn l-approvazzjoni ta' ditta tal-awditjar tiġi ritirata għal kwalunkwe raġuni, il-Bord għandu jikkomunika dak il-fatt u r-raġunijiet għall-irtirar lill-awtoritajiet kompetenti rilevanti tal-Istati Membri fejn id-ditta tal-awditjar tkun ukoll reġistrata."

13. Fil-paragrafu (b) tas-subartikolu (3) tal-artikolu 16 tal-Att prinċipali, minflok il-kliem "li jistgħu jiġu lilha preskritti." għandhom

Emenda tal-artikolu 16 tal-Att prinċipali.

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jidhlu l-kliem "li jistgħu jiġu lilha preskritti"; u minnufih wara għandu jizdied il-paragrafu ġdid li ġej:

"(ċ) safejn huwa hekk preskrit, persuna ma għandhiex titqies bħala li teżerċita l-professjoni ta' *accountant* jekk hija tagħti assigurazzjoni dwar il-vijabilità fil-ġejjieni tal-entità awditjata jew dwar l-effiċjenza jew l-effikaċja li biha l-korp manigerjali jew il-bord tad-diretturi amministra jew ser jamministra l-affarijiet tal-entità."

Sostituzzjoni tal-artikolu 18 tal-Att prinċipali.

14. L-artikolu 18 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Pubblikazzjoni tar-rapport dwar it-trasparenza fl-awditjar tal-entitajiet ta' interess pubbliku.

18. (1) Awditur jew ditta tal-awditjar li jwettqu awditjar statutorju ta' entitajiet ta' interess pubbliku għandhom jipubblikaw ir-rapport annwali tat-trasparenza sa mhux aktar tard minn erba' xhur wara tmiem kull sena finanzjarja. Dak ir-rapport ta' trasparenza għandu jiġi ppubblikat fuq is-sit elettroniku tal-awditur jew id-ditta tal-awditjar u għandu jibqa' għad-dispożizzjoni fuq dak is-sit elettroniku għal tal-inqas hames snin mill-jum tal-pubblikazzjoni tiegħu fuq is-sit elettroniku. Jekk l-awditur jiġi impjegat minn ditta tal-awditjar, l-obbligi taht dan l-artikolu għandhom ikunu tad-ditta tal-awditjar.

Awditur jew ditta tal-awditjar għandha tithalla taggorna r-rapporti annwali tagħha tat-trasparenza. F'dan il-każ, l-awditur jew id-ditta tal-awditjar għandha tindika li din tkun verżjoni aġġornata tar-rapport u l-verżjoni originali tar-rapport għandha tibqa' disponibbli fuq is-sit elettroniku.

L-awdituri u d-ditti tal-awditjar għandhom jikkomunikaw lill-awtoritajiet kompetenti li r-rapport tat-trasparenza ġie ppubblikat fuq is-sit elettroniku tal-awditur jew tad-ditta tal-awditjar jew, skont il-każ, li dan ġie aġġornat.

(2) Ir-rapport annwali ta' trasparenza għandu tal-inqas jinkludi dan li ġej:

(a) deskrizzjoni tal-istruttura ġuridika u s-sjeda tad-ditta tal-awditjar;

(b) fejn l-awditur statutorju jew id-ditta tal-awditjar tkun membru ta' netwerk:

(i) deskrizzjoni tan-netwerk u l-arrangamenti legali u strutturali fin-netwerk;

(ii) l-isem ta' kull awditur li jopera bhala prattikant wahdani jew ditta tal-awditjar li jkunu membri tan-netwerk;

(iii) il-pajjiżi li fihom kull awditur li jopera bhala prattikant wahdani jew ditta tal-awditjar li jkunu membri tan-netwerk huma kkwalifikati bhala awdituri statutorji jew fejn għandhom l-uffiċċju reġistrat, l-amministrazzjoni ċentrali jew is-sede prinċipali;

(iv) il-fatturat totali ġġenerat mill-awdituri li joperaw bhala prattikant wahdani u d-ditti tal-awditjar li jkunu membri tan-netwerk, li jirriżulta mill-awditjar statutorju tar-rapporti finanzjarji annwali u konsolidati;

(ċ) deskrizzjoni tal-istruttura tal-governanza tad-ditta tal-awditjar;

(d) deskrizzjoni tas-sistema interna ta' kontroll tal-kwalità tal-awditur jew tad-ditta tal-awditjar u dikjarazzjoni mill-korp amministrattiv jew manigerjali dwar l-effikaċja tal-funzjonament tagħha;

(e) indikazzjoni dwar meta sar l-aħħar eżami tal-garanzija tal-kwalità msemmi fl-Artikolu 26 tar-Regolament dwar l-Awditjar;

(f) lista ta' entitajiet ta' interess pubbliku li l-awditur jew id-ditta tal-awditjar wettqu awditjar statutorju għalihom fis-sena finanzjarja ta' qabel;

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(g) dikjarazzjoni li tikkonċerna l-prattiki ta' indipendenza tal-awditur jew tad-ditta tal-awditjar li tikkonferma wkoll li sar eżami intern tal-konformità dwar l-indipendenza;

(h) dikjarazzjoni dwar il-politika segwita mill-awditur statutorju jew mid-ditta tal-awditjar li tikkonċerna l-edukazzjoni kontinwa tal-awdituri statutorji msemmija fid-Direttiva 1 dwar il-Professjoni tal-*Accountancy* (Edukazzjoni Professjonali Kontinwa);

(i) informazzjoni li tikkonċerna l-bażi għar-remunerazzjoni tal-principali fid-ditti tal-awditjar;

(j) deskrizzjoni tal-politika tal-awditur jew tad-ditta tal-awditjar li tikkonċerna r-rotazzjoni tas-sħab u l-persunal ewlenin tal-awditjar f'konformità mal-Artikolu 17(7) tar-Regolament dwar l-Awditjar;

(k) fejn ma tiġix żvelata fir-rapport finanzjarju fis-sens tal-artikolu 167(2) tal-Att dwar il-Kumpanniji, informazzjoni dwar il-fatturat totali tal-awditur statutorju jew tad-ditta tal-awditjar, maqsuma fil-kategoriji li ġejjin:

(i) dħul mill-awditjar statutorju ta' rapporti finanzjarji annwali u konsolidati ta' entitajiet ta' interess pubbliku u entitajiet li jappartjenu għal grupp ta' imprizi li l-impriza prinċipali tagħhom hija entità ta' interess pubbliku;

(ii) dħul mill-awditjar statutorju ta' rapporti finanzjarji annwali u konsolidati ta' entitajiet oħra;

(iii) dħul minn servizzi permessi mhux tal-awditjar mogħtija lil entitajiet li huma awditjati mill-awditur statutorju jew mid-ditta tal-awditjar; u

Kap. 386.

(iv) dhul minn servizzi mhux tal-awditjar mogħtija lil entitajiet oħra.

F'ċirkostanzi eċċezzjonali, l-awditur jew id-ditta tal-awditjar tista' tiddeċiedi li ma tiddivulgax l-informazzjoni meħtieġa fil-paragrafu (f) sa fejn dan huwa neċessarju sabiex tiġi mitigata theddida imminenti u sinifikanti għas-sigurtà persunali ta' kwalunkwe persuna. L-awditur jew id-ditta tal-awditjar għandha tkun tista' turi lill-awtorità kompetenti l-eżistenza ta' theddida bhal din.

(3) Ir-rapport ta' trasparenza għandu jiġi ffirmat mill-awditur jew mid-ditta tal-awditjar."

15. Minnufih wara l-artikolu 18 tal-Att prinċipali għandu jizjed l-artikolu ġdid li ġej:

Żjieda tal-artikolu ġdid mal-Att prinċipali.

"Projbiz-
zjoni tal-
forniment
ta' servizzi
mhux tal-
awditjar.

18A.(1)L-awditur jew id-ditta tal-awditjar li jwettqu awditjar statutorju ta' entità ta' interess pubbliku, jew kwalunkwe membru tan-netwerk li minnu l-awditur jew id-ditta tal-awditjar jagħmlu parti, ma għandhomx jipprovdu direttament jew indirettament lill-entità awditjata, lill-intrapriża prinċipali tagħha jew lill-intrapriži kkontrollati tagħha fl-Unjoni Ewropea, kwalunkwe servizz mhux tal-awditjar ipprojbit:

(a) fil-perijodu bejn il-bidu tal-perijodu awditjat u l-ħruġ tar-rapport tal-awditjar; u

(b) fis-sena finanzjarja minnufih qabel il-perijodu msemmi fil-paragrafu (a) b'rabta mas-servizzi elenkati fis-subartikolu (2)(e).

(2) Għall-finijiet tas-subartikolu (1), servizzi mhux ta' awditjar ipprojbiti għandha tfisser:

(a) servizzi fiskali relatati ma':

(i) it-tnejn tal-formoli tat-taxxa;

(ii) it-taxxa fuq is-salarji;

(iii) id-dazji doganali;

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(iv) l-identifikazzjoni ta' sussidji pubbliċi u inċentivi fiskali sakemm l-appoġġ mill-awditur jew id-ditta tal-awditjar fir-rigward ta' tali servizzi ma jkunx meħtieġ bil-liġi;

(v) l-appoġġ rigward l-ispezzjonijiet fiskali mill-awtoritajiet fiskali sakemm l-appoġġ mill-awditur jew id-ditta tal-awditjar b'rabta ma' tali ispezzjonijiet ma jkunx meħtieġ bil-liġi;

(vi) kalkolu ta' taxxa diretta u indiretta u taxxa differita;

(vii) forniment ta' konsulenza fiskali;

(b) servizzi li jinvolvu kwalunkwe rwol fil-ġestjoni jew il-proċess ta' teħid ta' deċiżjonijiet tal-entità awditjata;

(ċ) żamma tal-kotba u tnejnija tar-rekords kontabilistiċi u d-dikjarazzjonijiet finanzjarji;

(d) servizzi ta' hlas tas-salarji;

(e) disinn u implimentazzjoni ta' proċeduri ta' kontroll intern jew ta' maniġġar tar-riskji b'rabta mat-tnejnija u, jew il-kontroll ta' informazzjoni finanzjarja jew mat-tfassil jew implimentazzjoni ta' sistemi informatiċi finanzjarji;

(f) servizzi ta' evalwazzjoni, inklużi evalwazzjonijiet imwettqin b'rabta ma' servizzi attwarji jew servizzi ta' appoġġ f'tilwim;

(g) servizzi legali, rigward:

(i) il-forniment ta' konsulenza ġenerali;

(ii) negozjar f'isem l-entità awditjata; jew

(iii) azzjoni fi rwol ta' difiża fir-risoluzzjoni ta' tilwim;

(h) servizzi marbutin mal-funzjoni tal-awditjar intern tal-entità awditjata;

(i) servizzi marbutin mal-finanzjament, l-istruttura u l-allokazzjoni kapitali, u l-istrategija tal-investment tal-entità awditjata, minbarra l-forniment ta' servizzi tal-assigurazzjoni b'rabta mad-dikjarazzjonijiet finanzjarji, bhall-ħruġ ta' ittri ta' konfort b'rabta mal-prospetti mahruġa mill-entità awditjata;

(j) il-promozzjoni, in-negozjar, jew is-sottoskrizzjoni ta' ishma fl-entità awditjata;

(k) servizzi ta' riżorsi umani rigward:

(i) ġestjoni f'pożizzjoni ta' eżerċizzju ta' influwenza sinifikanti fuq it-tnejn tar-rekords kontabilistiċi jew id-dikjarazzjonijiet finanzjarji li huma soġġetti għal awditjar statutorju, fejn tali servizzi jinvolvu:

- it-tfittxija għal kandidati għal dawn il-pożizzjonijiet; jew

- it-twettiq ta' verifiki ta' referenza ta' kandidati għal dawn il-pożizzjonijiet;

(ii) it-tfassil tas-sistema tal-organizzazzjoni; u

(iii) il-kontroll tal-ispejjeż.

(3) B'deroga mis-subartikolu (2), is-servizzi msemmija fil-paragrafi (a)(i), (a)(iv) sa (a)(vii) u (f) jistgħu jiġu pprovduti, dment li jissodisfaw ir-rekwiziti segwenti:

(a) ma jkollhom l-ebda effett dirett, jew ikollhom effett immaterjali, b'mod separat jew aggregat fuq id-dikjarazzjonijiet finanzjarji awditjati;

(b) l-istima tal-effett fuq id-dikjarazzjonijiet finanzjarji awditjati tiġi dokumentata u spjegata b'mod komprensiv fir-rapport addizzjonali lill-kumitat tal-awditjar imsemmi fl-Artikolu 11 tar-Regolament dwar l-Awditjar; u

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(ċ) il-prinċipji tal-indipendenza stabbiliti fil-Kodiċi tal-Etika mahruġ mill-Bord, jiġu sodisfatti mill-awditur jew id-ditta tal-awditjar.

(4) Awditur statutorju jew ditta tal-awditjar li twettaq awditjar statutorju ta' entitajiet ta' interess pubbliku u, meta l-awditur statutorju jew id-ditta tal-awditjar tagħmel parti minn netwerk, kwalunkwe membru ta' tali netwerk, tista' tipprovdi lill-entità awditjata, lill-intrapriża prinċipali tagħha jew lill-intrapriži kkontrollati tagħha, servizzi mhux tal-awditjar li mhumiex is-servizzi mhux tal-awditjar ipprojbiti msemmija fis-subartikoli (1) u (2), soġġett għall-approvazzjoni tal-kumitat tal-awditjar wara li jkun ivvaluta b'mod adatt it-theddid għall-indipendenza u s-salvagwardji applikati f'konformità mal-Kodiċi tal-Etika mahruġ mill-Bord.

(5) (a) Meta membru ta' netwerk li minnu jagħmlu parti l-awditur jew id-ditta tal-awditjar li twettaq awditjar statutorju ta' entità ta' interess pubbliku jipprovdi kwalunkwe servizz mhux tal-awditjar, imsemmi fis-subartikoli (1) u (2), lil intrapriża inkorporata f'pajjiż terz ikkontrollata mill-entità ta' interess pubbliku awditjata, l-awditur jew id-ditta tal-awditjar ikkonċernata għandha tivvaluta jekk l-indipendenza tagħha tkunx kompromessa minn tali forniment ta' servizzi mill-membri tan-netwerk.

(b) Jekk l-indipendenza tagħha tkun affettwata, l-awditur statutorju jew id-ditta tal-awditjar għandha tapplika salvagwardji, fejn applikabbli, sabiex timmitiga t-theddid ikkawżat minn tali forniment ta' servizzi f'pajjiż terz. L-awditur statutorju jew id-ditta tal-awditjar tista' tkompli twettaq l-awditjar statutorju tal-entità ta' interess pubbliku biss jekk din tista' tiġġustifika, f'konformità mal-Artikolu 6 tar-Regolament dwar l-Awditjar u l-Kodiċi tal-Etika mahruġ mill-Bord, li tali forniment ta' servizzi ma jaffettwax il-ġudizzju professjonali tagħha u r-rapport tal-awditjar.

(ċ) Għall-finijiet ta' dan is-subartikolu:

(i) l-involviment fit-tehid ta' deċiżjonijiet tal-entità awditjata u l-forniment tas-servizzi li għalihom issir referenza fis-subartikolu (2)(b), (ċ) u (e), għandhom jitqiesu li jaffettwaw tali indipendenza fil-każijiet kollha u ma tkunx tista' ssir mitigazzjoni bi kwalunkwe salvagwardja; u

(ii) il-forniment tas-servizzi msemmija fis-subartikolu (2), għajr il-paragrafi (b), (ċ) u (e), jitqies li jaffettwa tali indipendenza u għalhekk jitqies li jirrikjedi salvagwardji biex jiġi mmitigat it-theddid ikkawżat b'riżultat ta' dan."

16. Minnufih wara l-artikolu 20 tal-Att prinċipali għandhom jizziedu l-artikoli ġodda li ġejjin:

Żjieda ta' artikoli ġodda mal-Att prinċipali.

"Pubblikazzjoni ta' sanzjonijiet u miżuri.

20A.(1) Il-Bord għandu jippubblika fil-websajt uffiċjali tiegħu għall-inqas kwalunkwe sanzjoni amministrattiva imposta għall-ksur tad-dispożizzjonijiet ta' dan l-Att, ir-regolamenti magħmula tahtu u Direttivi, jew tar-Regolament dwar l-Awditjar, li fir-rigward tagħhom id-drittijiet kollha ta' appell ikunu ġew eżawriti jew ikunu skadew mingħajr dewmien mhux dovut immedjatament wara li l-persuna sanzjonata tkun giet informata dwar it-tip u n-natura tal-ksur u l-identità tal-persuna fiżika jew ġuridika li fuqha giet imposta s-sanzjoni:

Iżda meta s-sanzjonijiet imposti huma soġġetti għal appell, il-pubblikazzjoni għandha ssir biss wara li d-drittijiet kollha għall-appell ikunu ġew eżawriti jew ikunu skadew.

(2) Il-Bord għandu jippubblika s-sanzjonijiet imposti fuq bażi anonima, u b'mod konformi mal-ligi Maltija, fi kwalunkwe waħda miċ-ċirkostanzi li ġejjin:

(a) fejn, fil-każ li s-sanzjoni tiġi imposta fuq persuna fiżika, jiġi ppruvat li l-pubblikazzjoni tad-*data* personali tkun sproporzjonata minn valutazzjoni obbligatorja li tkun saret qabel tal-proporzjonalità ta' tali publikazzjoni;

(b) fejn il-pubblikazzjoni tipperikola l-istabbiltà tas-swieq finanzjarji jew investigazzjoni kriminali li tkun għadha għaddejja;

(ċ) fejn publikazzjoni tohloq ħsara sproporzjonata lill-istituzzjonijiet jew l-individwi involuti.

(3) Il-Bord għandu jiżgura li kwalunkwe publikazzjoni f'konformità mas-subartikolu (1) tkun għal żmien proporzjonat u għandha tibqa' fuq il-websajt ufficjali għal perijodu minimu ta' hames (5) snin wara li d-drittijiet kollha għal appell ikunu gew eżawriti jew ikunu skadew.

(4) Il-pubblikazzjoni ta' sanzjonijiet u ta' miżuri u ta' kwalunkwe dikjarazzjoni pubblika għandha tirrispetta d-drittijiet fundamentali kif stipulati fil-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, il-Kostituzzjoni ta' Malta u l-Konvenzjoni għall-Protezzjoni tad-Drittijiet tal-Bniedem u l-Libertajiet Fundamentali; b'mod partikolari d-dritt għar-rispett tal-ħajja privata u tal-familja u d-dritt għall-protezzjoni tad-*data* personali:

Iżda tali publikazzjoni jew kwalunkwe dikjarazzjoni pubblika ma għandhiex ikollha fiha *data* personali fis-sens ta' "*data* personali" fl-artikolu 2 tal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*.

Kap. 440.

Rappurtar ta' ksur.

20B.(1) Il-Bord għandu jistabbilixxi mekkaniżmi effettivi sabiex jinkoraġġixxi r-rappurtar ta' ksur ta' dan l-Att, ir-regolamenti magħmula tahtu u Direttivi jew tar-Regolament dwar l-Awditjar lill-Bord.

(2) Il-mekkanizmi msemmija fis-subartikolu (1) għall-inqas għandhom jinkludu:

(a) proċeduri speċifiċi għar-riċevuta ta' rapporti ta' ksur u s-segwitu tagħhom;

(b) protezzjoni ta' *data* personali dwar kemm il-persuna li rrapportat il-ksur issuspettat jew ikkonfermat kif ukoll il-persuna li tkun akkuzata li wettqet, jew li allegatament wettqet dak il-ksur, f'konformità mal-prinċipji stabbiliti fl-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*;

Kap. 440.

(ċ) proċeduri adatti sabiex jiżguraw id-dritt tal-persuna akkuzata li tiddefendi ruħha u li tinstema' qabel l-adozzjoni ta' deċiżjoni li tikkonċernaha u d-dritt li tfittex rimedju effettiv quddiem tribunal kontra kwalunkwe deċiżjoni jew miżura li tikkonċernaha.

(3) Id-ditti tal-awditjar għandhom jistabbilixxu proċeduri adatti għall-impjegati tagħhom sabiex dawn jirrapportaw ksur potenzjali jew ikkonfermat ta' dan l-Att, ir-regolamenti magħmula tahtu u Direttivi jew tar-Regolament dwar l-Awditjar, b'mod intern permezz ta' kanal speċifiku.

Skambju ta' informazzjoni.

20Ċ.(1) Il-Bord għandu kull sena jipprovdi lis-CEAOB informazzjoni miġbura fir-rigward tal-miżuri, is-sanzjonijiet u l-multi amministrattivi kollha imposti f'konformità mal-artikoli 7(17), 14, 15, 20, 20A u 20B.

(2) Il-Bord għandu jikkomunika lis-CEAOB il-projbizzjonijiet temporanji kollha msemmija fl-artikolu 14(2)(ċ) u (e).".

TAQSIMA II

Emendi għall-Att dwar il-Kumpanniji

17. Din it-Taqsima temenda l-Att dwar il-Kumpanniji, u għandha tinqara u tintfiehmed haġa waħda mal-Att dwar il-Kumpanniji, hawn iktar 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emendi għall-Att dwar il-Kumpanniji. Kap. 386.

18. L-artikolu 3A tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 3A tal-Att prinċipali.

(a) fil-paragrafu (e) tiegħu, minflok il-kliem "Kunsill 84/253/KEE;" għandhom jidhlu l-kliem "Kunsill 84/253/KEE, liema Direttiva hi stess ġiet emendata bid-Direttiva 2014/56/UE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' April 2014;" u

(b) minnufih wara l-paragrafu (p) tiegħu għandu jizjed il-paragrafu ġdid li ġej:

"(q) ir-Regolament (UE) Nru 537/2014 tal-Parlament Ewropew u tal-Kunsill tas-16 ta' April 2014 dwar rekwiżiti speċifiċi dwar l-awditjar statutorju ta' entitajiet ta' interess pubbliku, hawn iktar 'il quddiem imsejjaħ "ir-Regolament dwar l-Awditjar";".

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Emenda tal-artikolu 151 tal-Att prinċipali.

19. Minnufih wara s-subartikolu (6) tal-artikolu 151 tal-Att prinċipali għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(7) Kwalunkwe klawnsola kuntrattwali li tillimita l-għażla mil-laqgħa ġenerali tal-kumpannija skont is-subartikolu (1) għal ċerti kategoriji jew listi ta' awdituri statutorji jew ditti tal-awditjar fir-rigward tal-ħatra ta' awditur statutorju jew ditta tal-awditjar partikolari sabiex iwettqu l-awditjar statutorju ta' dik l-entità għandha tiġi pprojbita. Kwalunkwe tali klawnsola eżistenti għandha tkun nulla u bla effett.

(8) Għall-finijiet tal-applikazzjoni ta' dan l-artikolu, għall-ħatra ta' awdituri jew ditti tal-awditjar minn entitajiet ta' interess pubbliku, għandhom japplikaw il-kondizzjonijiet stipulati fl-Artikolu 16(2) sa (6) tar-Regolament dwar l-Awditjar, u daww fil-leġislazzjoni settorjali relattiva li tirregola kull tip ta' entità ta' interess pubbliku."

Żjieda ta' artikolu ġdid mal-Att prinċipali.

20. Minnufih wara l-artikolu 151 tal-Att prinċipali għandu jiżdied l-artikolu ġdid li ġej:

"Durata tal-inkarigu tal-awditjar ta' entitajiet ta' interess pubbliku.

151A.(1)(a)Entità ta' interess pubbliku għandha taħtar awditur statutorju jew ditta tal-awditjar tal-inqas għal inkarigu inizjali ta' mill-anqas sena. L-inkarigu jista' jiġġedded.

(b) La l-inkarigu inizjali ta' awditur jew ditta tal-awditjar partikolari, u lanqas dan flimkien ma' kwalunkwe inkarigu mġedded miegħu ma għandu jaqbez id-durata massima ta' għaxar snin.

(2) Wara l-iskadenza tad-durati massimi tal-inkarigi msemmija fis-subartikolu (1)(b) jew wara l-iskadenza tad-durata tal-inkarigi estiża f'konformità mas-subartikoli (3) jew (5), la l-awditur jew id-ditta tal-awditjar u lanqas, fejn applikabbli, kwalunkwe membru tan-netwerks tagħhom fl-Unjoni Ewropea ma għandu jidhol għall-awditjar statutorju tal-istess entità ta' interess pubbliku fil-perijodu ta' erba' snin ta' wara.

(3) Permezz ta' deroga mis-subartikolu (1), id-durati massimi msemmija fis-subartikolu (1)(b) jistgħu jiġu estiżi sad-durata massima ta' għoxrin (20) sena, fejn proċess ta' sejha pubblika għall-offerti għall-awditjar jitwettaq f'konformità mal-Artikolu 16(2) sa (5) tar-Regolament dwar l-Awditjar u jsir effettiv mal-iskadenza tad-durati massimi msemmija fis-subartikolu (1)(b).

(4) Il-perijodi ta' durata massima msemija fis-subartikolu (1)(b) għandhom jiġu estiżi biss jekk, fuq rakkomandazzjoni tal-kumitat tal-awditjar, il-bord tad-diretturi jipproponi fil-laqgħa ġenerali tal-kumpannija, f'konformità mal-liġi Maltija, li l-inkarigu jiġgedded u dik il-proposta tiġi approvata.

(5) Wara li tiskadi d-durata massima tal-inkarigu msemija fis-subartikolu (1)(b), jew fis-subartikolu (3), skont il-każ, l-entità ta' interess pubbliku tista', fuq bażi eċċezzjonali, titlob lill-Bord estensjoni biex jerga' jinhatar l-awditur jew id-ditta tal-awditjar għal inkarigu ieħor fejn jiġu milhuqa l-kondizzjonijiet fis-subartikolu (3). Tali inkarigu addizzjonali m'għandux ikun aktar minn sentejn.

(6) (a) Is-shab ewlenin tal-awditjar responsabbli għat-twettiq ta' awditjar statutorju għandhom itemmu l-partecipazzjoni tagħhom fl-awditjar statutorju tal-entità awditjata mhux aktar tard minn seba' (7) snin mid-data tal-ħatra tagħhom. Ma għandhomx jerggħu jippartecipaw fl-awditjar statutorju tal-entità awditjata qabel ma jkunu għaddew tliet snin minn dak il-waqfien.

(b) L-awditur jew id-ditta tal-awditjar għandhom jistabilixxu mekkaniżmu ta' rotazzjoni gradwali adatt fir-rigward tal-persunal l-aktar anzjan involut fl-awditjar statutorju, inklużi tal-inqas il-persuni li huma rreġistrati bħala awdituri statutorji. Il-mekkanizmu ta' rotazzjoni gradwali għandu jiġi applikat f'fażijiet fuq il-bażi ta' individwi aktar milli fuq il-bażi tat-tim sħiħ tal-inkarigu. Dan għandu jkun proporzjonat fl-iskala u l-komplessità tal-attività tal-awditur jew tad-ditta tal-awditjar.

(ċ) L-awditur jew id-ditta tal-awditjar għandha tkun tista' turi lill-Bord li mekkaniżmu bħal dan huwa effettivament applikat u adattat għall-iskala u l-komplessità tal-attività tal-awditur jew tad-ditta tal-awditjar.

(7) (a) Għall-finijiet ta' dan l-artikolu, id-durata tal-inkarigu tal-awditjar għandha tiġi kkalkulata mill-ewwel sena finanzjarja koperta fl-ittra tal-inkarigu tal-awditjar li fiha l-awditur jew id-ditta tal-awditjar tkun inhatret għall-ewwel darba biex tagħmel awditjar statutorju konsekuttiv għall-istess entità ta' interess pubbliku.

(b) Għall-finijiet ta' dan l-artikolu, id-ditta tal-awditjar għandha tinkludi ditti oħra li d-ditta tal-awditjar tkun akkwistat jew li jkunu nġaħdu magħha.

(ċ) Jekk ikun hemm inċertezza dwar id-data meta l-awditur jew id-ditta tal-awditjar bdew jaġġmlu awditjar statutorju konsekuttiv għall-entità ta' interess pubbliku, pereżempju minhabba fużjoni tad-ditta, akkwisti, jew bidliet fl-istruttura tas-sjieda, l-awditur għandu jirrapporta minnufih tali inċertezzi lill-Bord.

(8) Mis-17 ta' Ġunju 2020 entità ta' interess pubbliku ma għandhiex tidhol jew iġġedded inkarigu ta' awditjar ma' awditur jew ditta tal-awditjar partikolari jekk dak l-awditur jew id-ditta tal-awditjar ilha tipprovdi servizzi ta' awditjar lil dik l-entità ta' interess pubbliku għal għoxrin (20) sena konsekuttiva jew aktar mis-16 ta' Ġunju 2014.

(9) Mis-17 ta' Ġunju 2023, entità ta' interess pubbliku ma għandhiex tidhol jew iġġedded inkarigu ta' awditjar ma' awditur jew ditta tal-awditjar partikolari jekk dak l-awditur statutorju jew id-ditta tal-awditjar ilha tipprovdi servizzi ta' awditjar lil dik l-entità ta' interess pubbliku għal hax-il (11) sena jew aktar iżda inqas minn għoxrin (20) sena konsekuttiva fis-16 ta' Ġunju 2014.

(10) Mingħajr preġudizzju għas-subartikoli (8) u (9), l-inkarigi ta' awditjar li saru qabel is-16 ta' Ġunju 2014 iżda li jkunu għadhom fis-seħh sas-17 ta' Ġunju 2016 jistgħu jibqgħu japplikaw sat-tmiem tad-durata massima msemmija fis-subartikolu (1)(b). Għandu japplika s-subartikolu (3).

(11) L-artikolu 16(3) għandu japplika biss għal inkarigi ta' awditjar wara l-iskadenza tal-perijodu msemmi fis-subartikolu (1)(b).".

21. Minnufih wara s-subartikolu (4) tal-artikolu 157 tal-Att prinċipali għandu jizdied is-subartikolu ġdid li ġej:

Emenda tal-artikolu 157 tal-Att prinċipali.

"(5) F'każ tal-awditjar statutorju ta' entità ta' interess pubbliku, għandu jkun permissibbli għal -

(a) l-azzjonisti, li jirrapprezentaw hamsa fil-mija jew aktar tad-drittijiet tal-vot jew tal-kapital azzjonarju; jew

(b) il-Bord imsemmi fis-subartikolu (2),

li jressaq kawża quddiem il-qorti għat-tkeċċija tal-awdituri statutorji jew tad-ditti tal-awditjar fejn ikun hemm raġunijiet tajba biex dan isir."

22. L-artikolu 179 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 179 tal-Att prinċipali.

(a) is-subartikolu (4) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(4) Ir-rapport tal-awditjar għandu jikkonforma mad-dispożizzjonijiet tal-artikolu 179A."; u

(b) fis-subartikolu (13) tiegħu, minflok il-kliem "stipulati f'dan l-artikolu" għandhom jidhru l-kliem "stipulati f'dan l-artikolu u fl-artikolu 179A".

23. Minnufih wara l-artikolu 179 tal-Att prinċipali għandhom jizdiedu l-artikoli godda li ġejjin:

Żjieda ta' artikoli godda mal-Att prinċipali.

"Rapportar tal-awditjar. 179A. (1) Ir-rapport tal-awditjar għandu jsir bil-miktub u għandu:

(a) jidentifika l-entità li d-dikjarazzjonijiet annwali jew konsolidati tagħha huma soġġetti għall-awditjar statutorju; jispeċifika d-dikjarazzjonijiet finanzjarji annwali jew konsolidati u d-data u l-perijodu li huma jkopru; u jidentifika l-qafas ta' rapportar finanzjarju li gie applikat fit-tnejn tagħhom;

(b) jinkludi deskrizzjoni tal-ambitu tal-awditjar statutorju li għandu, bħala minimu, jidentifika l-*standards* tal-awditjar li f'konformità magħhom twettaq l-awditjar statutorju;

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(ċ) jinkludi opinjoni tal-awditjar, li għandha tkun mhux kwalifikata, jew kwalifikata jew opinjoni negattiva u li għandu jindika b'mod ċar l-opinjoni tal-awditur(i) jew tad-ditta/i tal-awditjar dwar:

(i) jekk id-dikjarazzjonijiet finanzjarji annwali jagħtux stampa veritiera u għusta f'konformità mal-qafas rilevanti għar-rappurtar finanzjarju; u

(ii) fejn ikun il-każ, jekk id-dikjarazzjonijiet finanzjarji annwali jkunux konformi mar-rekwiżiti statutorji.

Jekk l-awditur/i statutorju/i jew id-ditta/i tal-awditjar ma jkunux kapaċi jesprimu opinjoni tal-awditjar, ir-rapport għandu jkollu ċaħda tal-opinjoni;

(d) jirreferi għal kwalunkwe kwistjoni oħra li fuqha l-awditur/i jew id-ditta/i tal-awditjar xeħtu xi dawl permezz ta' enfasi mingħajr ma kkwalikaw l-opinjoni tal-awditjar;

(e) jinkludi opinjoni u dikjarazzjoni, li t-tnejn li huma għandhom ikunu bbażati fuq il-hidma li twettqet matul l-awditjar, imsemmija fl-artikolu 179(3);

(f) jipprovdi dikjarazzjoni dwar kwalunkwe incertezza materjali marbuta ma' avvenimenti jew kondizzjonijiet li jistgħu jifgħu dubju sinifikanti dwar il-kapaċità tal-entità li tkompli bħala negozju avvjat;

(g) jidentifika l-post fejn ikunu stabbiliti l-awditur/i jew id-ditta/i tal-awditjar.

(2) Fejn l-awditjar statutorju jkun twettaq minn aktar minn awditur wieħed jew aktar minn ditta tal-awditjar waħda, l-awditur/i jew id-ditta/i tal-awditjar għandhom jaqblu dwar ir-riżultati tal-awditjar statutorju u jipprezentaw rapport u opinjoni kongunti. Fil-każ ta' nuqqas ta' qbil, kull awditur statutorju jew ditta tal-awditjar għandhom jipprezentaw l-opinjonijiet tagħhom f'paragrafu separat tar-rapport tal-awditjar u jagħtu r-raġuni tan-nuqqas ta' qbil.

(3) Ir-rapport tal-awditjar għandu jiġi ffirmat u datat mill-awditur. Fejn ditta tal-awditjar twettaq l-awditjar statutorju, ir-rapport tal-awditjar għandu jiġi ffirmat minn tal-inqas l-awditur/i li wettqu l-awditjar statutorju f'isem id-ditta tal-awditjar. Fejn ikunu tqabbdur aktar minn awditur wiehed jew ditta tal-awditjar waħda r-rapport tal-awditjar għandu jiġi ffirmat mill-awdituri kollha jew għall-inqas mill-awdituri li jwettqu l-awditjar statutorju f'isem kull ditta tal-awditjar:

Izda r-rapport tal-awditjar jiġi wkoll koffirmat minn awditur awtorizzat fi Stat Membru ieħor, sakemm hu/hi huma membri tal-istess netwerk u kisbu l-kunsens bil-miktub minn qabel tal-Bord.

(4) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikoli (1) sa (3), u l-artikoli 179 u 179B, l-ambitu tal-awditjar statutorju ma jinkludix assigurazzjoni dwar il-vijabilità fil-gejjieni tal-entità awditjata jew dwar l-effiċjenza jew l-effikaċja li biha l-korp manigerjali jew dak amministrattiv jamministra jew ser jamministra l-affarijiet tal-entità.

Rapport tal-awditjar.

179B. (1) Ir-rapport tal-awditjar ta' entitajiet ta' interess pubbliku għandu jithejja b'konformità mad-dispożizzjonijiet tal-artikoli 179 u 179A u barra minn hekk tal-inqas għandu:

(a) jiddikjara min, jew liema korp ikun ħatar l-awditur jew id-ditta/i tal-awditjar;

(b) jindika d-data tal-ħatra u l-perijodu tal-inkarigu totali mingħajr interruzzjoni inkluż tiġdid u ħatriet mill-ġdid preċedenti ta' awditur/i jew ditti tal-awditjar;

(ċ) jipprovdi, b'appoġġ tal-opinjoni tal-awditjar, dan li ġej:

(i) deskrizzjoni tal-aktar riskji sinifikanti vvalutati tad-dikjarazzjoni skorretta materjali, inklużi r-riskji vvalutati tad-dikjarazzjoni skorretta materjali minħabba frodi;

(ii) sommarju tar-rispons tal-awditur għal dawk ir-riskji; u

(iii) fejn rilevanti, osservazzjonijiet ewlenin li jirrizultaw fir-rigward ta' dawk ir-riskji.

Fejn ikun rilevanti għall-informazzjoni msemmija hawn fuq, ipprovduta fir-rapport tal-awditjar dwar kull riskju vvalutat tad-dikjarazzjoni skorretta materjali, ir-rapport tal-awditjar għandu jipprovdi referenza ċara għad-divulgazzjoni rilevanti fir-rapporti finanzjarji;

(d) jispjega sa liema punt l-awditjar statutorju tqies li seta' jidentifika irregolaritajiet, inkluż frodi;

(e) jikkonferma li l-opinjoni tal-awditjar hija konsistenti mar-rapport addizzjonali għall-kumitat tal-awditjar imsemmi fl-Artikolu 11 tar-Regolament dwar l-Awditjar;

(f) jiddikjara li s-servizzi mhux tal-awditjar ipprojbti msemmija fl-artikolu 18 tal-Att dwar il-Professjoni tal-*Accountancy* ma ġewx ipprovduti u li l-awditur/i jew id-ditta/i tal-awditjar baqgħu indipendenti mill-entità awditjata fit-twettiq tal-awditjar;

(g) jindika kwalunkwe servizz, minbarra l-awditjar statutorju, li ġie pprovdut mill-awditur jew mid-ditta tal-awditjar lill-entità tal-awditjar u lill-impriza jew imprizi kkontrollati tagħha, u li ma ġiex żvelat fir-rapport tad-diretturi jew id-dikjarazzjonijiet finanzjarji annwali.

(2) Bl-eċċezzjoni ta' fejn dan ikun meħtieġ fis-subartikolu (1)(e), ir-rapport tal-awditjar ma għandu jinkludi ebda kontroreferenza għar-rapport addizzjonali għall-kumitat tal-awditjar imsemmi fl-Artikolu 11 tar-Regolament dwar l-Awditjar. Ir-rapport tal-awditjar għandu jkun imfassal b'lingwaġġ ċar u mingħajr ambigwià.

(3) L-awditur statutorju jew id-ditti tal-awditjar ma għandhom jużaw l-isem tal-ebda awtorità kompetenti b'mod li jkun jindika jew jissuggerixxi endorsjar jew approvazzjoni minn dik l-awtorità tar-rapport tal-awditjar."

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 414 tas-6 ta' Lulju, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

DOLORES CRISTINA
Acting President

12th July, 2016

ACT No. XXXVI of 2016

AN ACT to introduce amendments to the Accountancy Profession Act and to other Laws and to implement Directive 2014/56/EU and certain provisions of Regulation (EU) No. 537/2014.

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:-

Short title and commencement.

1. (1) The short title of this Act is the Accountancy Profession Act and other Laws (Amendment) Act, 2016.

(2) The provisions of this Act shall come into force on 17 June 2016.

PART I

Amendment of the Accountancy Profession Act

Amendment of the Accountancy Profession Act. Cap. 281.

2. 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.

3. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "accountancy firm" there shall be added the following new definition:

" "aptitude test" means a test limited to the professional knowledge of the applicant, made by the Board with the aim of assessing the ability of the

applicant to pursue the profession of auditor in Malta;"

(b) the definition "Tribunal" shall be placed after the definition "third-country auditor";

(c) immediately after the definition "audit client" there shall be added the following new definitions:

" "Audit Directive" means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014;

"Audit Regulation" means Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 or the specific requirements regarding statutory audit of public interest entities;"

(d) immediately after the definition "Board" there shall be added the following new definitions:

" "CEAOB" means the Committee of European Auditing Oversight Bodies;

"competent authority" means the authority designated by the law of Member States to be responsible for the regulation and, or oversight of statutory auditors and audit firms or of specific aspects thereof;"

(e) immediately after the definition "generally accepted accounting principles and practice" there shall be added the following new definitions:

SL.281.01 " "home Member State" means a Member State in which an auditor or audit firm is approved in accordance with regulation 4(1) of the Accountancy Profession Regulations;

"host Member State" means a Member State in which an auditor approved by his or her home Member State seeks also to be approved in another Member State, or a Member State in which an audit firm approved by its home Member State seeks to be registered or is

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registered in another Member State;

"medium-sized undertakings" means undertakings referred to in paragraph 1 of Part I of the Third Schedule of the Companies Act;"

(f) in the definition "non-practitioner", for the words "for at least three years before his involvement in the governance of the Board or any committee thereunder" there shall be substituted the words "during his or her involvement in the governance of the Board and during the period of three years immediately preceding that involvement";

(g) the definition "public-interest entity" shall be substituted by the following:

" "public-interest entity" means an entity governed by the law of a Member State 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 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, other than those referred to in Article 2 of that Directive, 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 Minister. References to the Directives in this definition shall include any other legislation amending or substituting such Directives;"

(h) immediately after the definition "public-interest entity" there shall be added the following new definition:

Cap.386. " "small undertakings" means the companies referred to in article 185(1) of the Companies Act;"

(i) the definition "statutory audit" shall be substituted by the following new definition:

" "statutory audit" means an audit of annual financial statements or consolidated financial statements in so far as:

(a) required by European Union law;

(b) required by Maltese law as regards small undertakings";

(j) in the definition "third-country audit entity", for the words "incorporated in a third country;" there shall be substituted the words "incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3 of the Audit Directive;"; and

(k) in the definition "third-country auditor", for the words "incorporated in a third country;" there shall be substituted the words "incorporated in a third country, other than an individual who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Article 3 and 44 of the Audit Directive;".

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

Amendment of
article 4 of the
principal Act.

(a) sub-article (3) thereof shall be substituted by 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, to the satisfaction of the Board, passed an aptitude test, covering the local laws and regulations relevant to auditing, set by the Board for this purpose."; and

(b) in sub-article (4) thereof, for the words "the Member States where the auditor is also approved" there shall substituted the words "Member States where the auditor is also registered".

5. Article 7 of the principal Act shall be amended as follows:

Amendment of
article 7 of the
principal Act.

(a) in paragraph (e) of sub-article (1) thereof, for the words "Directive 2006/43/EC;" there shall be substituted the words "Directive 2006/43/EC, Directive 2014/56/EU and Regulation (EU) No. 537/2014;";

(b) paragraph (l) of sub-article (1) thereof shall be re-numbered as paragraph (o), and immediately after paragraph (k) thereof there shall be added the following new paragraphs:

"(l) where necessary, to initiate and conduct

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investigations in relation to auditors and audit firms and the right to take appropriate action;

(m) to regularly monitor the developments in the market for providing statutory audit services to public-interest entities and shall in particular assess the following:

(i) the risks arising from high incidence of quality deficiencies of an auditor or an audit firm, including systematic deficiencies within an audit firm network, which may lead to the demise of any audit firm, the disruption in the provisions of statutory audit services whether in a specific sector or across sectors, the further accumulation of risk of audit deficiencies and the impact on the overall stability of the financial sector;

(ii) the market concentration levels, including in specific sectors;

(iii) the performance of audit committees;

(iv) the need to adopt measures to mitigate the risks referred to in paragraph (a);

(n) to take measures in order to ensure that the application of auditing standards to the statutory audit of small undertakings is proportionate to the scale and complexity of such undertakings;"

(c) sub-article (6) thereof shall be substituted by the following:

"(6) The Board shall, in accordance with the provisions of this article, register every third-country auditor and third-country audit entity, where that third-country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements of an undertaking 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 undertaking in question is an issuer exclusively of outstanding debt securities for which one of the following applies:

(a) they have been admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2(1) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least fifty thousand euro (€50,000) or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least fifty thousand euro (€50,000);

(b) they are admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2(1) of Directive 2004/109/EC from 31 December 2010 and the denomination per unit of which is, at the date of issue, at least one hundred thousand euro (€100,000) or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least one hundred thousand euro (€100,000).";

(d) sub-article (11) thereof shall be substituted by the following:

"(11) The Board may register a third-country auditor or a third-country audit entity only if:

(a) he/she/it is of good repute;

(b) in the 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);

(c) the third-country auditor or the third-country auditor carrying out the audit on behalf of the third-country audit entity meets requirements which are equivalent to those laid down in article 3(2);

(d) the audit referred to in sub-article (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;

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(e) he/she/it publishes on his/her/its website an annual transparency report which includes the information referred to in article 18(1) or it complies with equivalent disclosure requirements.";

(e) sub-article (19) thereof shall be substituted by the following:

"(19) The Board shall publish an annual report including details of its annual work programmes and activity reports, including its tasks under the Audit Regulation, a description of the work carried out by the disciplinary committee, a summary of the works carried out in respect of quality assurance and the overall results of the quality assurance system, the aggregated information on the findings and conclusions of inspections referred to in Article 49 of Directive Number 4 of the Accountancy Profession (Quality Assurance) Directive and such other things which the Board deems relevant.

This report shall also include information on recommendations issued, follow-up on the recommendations, supervisory measures taken and sanctions imposed. It shall also include quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system."; and

(f) immediately after sub-article (20) thereof there shall be added the following new sub-articles:

"(21) The Board shall cooperate with competent authorities with a view to achieving a convergence of the requirements set out in article 3(2)(c), (d) and (e). When engaging in such cooperation, the Board and the other competent authorities shall take into account developments in auditing and in the audit profession and, in particular, convergence that has already been achieved by the profession. They shall cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 20 of the Audit Regulation in so far as such convergence relates to the statutory audit of public-interest entities.

(22) The Board shall cooperate with other competent

authorities within the framework of the CEAOB with a view to achieving a convergence of the requirements of the aptitude test mentioned in article 4(3). The competent authorities shall enhance the transparency and predictability of the requirements. They shall cooperate with the CEAOB and with the competent authorities referred to in Article 20 of the Audit Regulation in so far as such convergence relates to statutory audits of public-interest entities."

6. Immediately after article 7 of the principal Act there shall be added the following new articles:

Addition of new articles to the principal Act.

"Powers of the competent authority.

7A. (1) Without prejudice to Article 26 of the Audit Regulation, in carrying out its tasks under the Act and the Audit Regulation, the Board and any other public authorities may not interfere with the content of audit reports.

(2) The Board shall have all the supervisory and investigatory powers that are necessary for the exercise of its functions under the Act and the Audit Regulation, including, but not limitedly the power to:

(a) access data related to the statutory audit or other documents held by auditors or audit firms in any form relevant to the carrying out of their tasks and to receive or take a copy thereof;

(b) obtain information related to the statutory audit from any person;

(c) carry out on-site inspections of auditors or audit firms;

(d) refer matters for criminal prosecution;

(e) request experts to carry out verifications or investigations;

(f) take the administrative measures, and impose the sanctions referred to in article 14.

(3) The Board may use the powers referred to in sub-article (2)(a) only in relation to:

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(a) auditors and audit firms carrying out statutory audit of public-interest entities;

(b) persons involved in the activities of auditors and audit firms carrying out statutory audit of public-interest entities;

(c) audited public-interest entities, their affiliates and related third parties;

(d) third parties to whom auditors and the audit firms carrying out statutory audit of public-interest entities have outsourced certain functions or activities; and

(e) persons otherwise related or connected to statutory auditors and audit firms carrying out statutory audit of public-interest entities.

(4) The Board shall exercise its supervisory and investigatory powers in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) by application to the competent judicial authorities.

(5) The supervisory and investigatory powers of the Board shall be exercised in full compliance with Maltese law, and in particular, with the principles of respect for private life and the right of defence.

(6) The processing of personal data processed in the exercise of the supervisory and investigatory powers pursuant to this article shall be carried out in accordance with the Data Protection Act and Directive 95/46/EC.

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Delegation of tasks.

7B. (1) The Board may delegate any of the tasks required to be undertaken pursuant to this Act and the Audit Regulation to other authorities or bodies designated or otherwise authorised by law to carry out such tasks, except for tasks related to:

(a) the quality assurance systems referred to in Directive 4 Accountancy Profession (Quality Assurance);

(b) investigations arising from that quality assurance system or from a referral by another authority; and

(c) sanctions and measures related to the quality assurance reviews or investigation of auditors of public-interest entities.

(2) Any execution of tasks by other authorities or bodies shall be the subject of an express delegation by the Board. The delegation shall specify the delegated tasks and the conditions under which they are to be carried out.

Where the Board delegates tasks to other authorities or bodies, it shall be able to reclaim these competences on a case-by-case basis.

(3) The authorities or bodies shall be organised in such a manner that there are no conflicts of interest. The ultimate responsibility for supervising compliance with the Audit Regulation, this Act and the implementing measures adopted pursuant thereto shall lie with the Board.

The Board shall inform the European Commission and the competent authorities of Member States of any arrangement entered into with regard to the delegation of tasks, including the precise conditions governing such delegation."

7. Article 8 of the principal Act shall be amended as follows:

Amendment of article 8 of the principal Act.

(a) in paragraph (b) of sub-article (1) thereof, for the words "in particular fields of activity;" there shall be substituted the words "in particular fields of activity, including, but not limitedly, the laying down of additional requirements in relation to the content of the audit report referred to in articles 179 and 179A of the Companies Act;";

(b) in paragraph (j) of sub-article (1) thereof, for the words "Directive 2006/43/EC;" there shall be substituted the

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words "Directive 2006/43/EC, Directive 2014/56/EU and Regulation (EU) No. 537/2014;"

(c) in paragraph (l) of sub-article (1) thereof, for the words "in addition to the punishment aforesaid." there shall be substituted the words "in addition to the punishment aforesaid;", and immediately thereafter there shall be added the following new paragraphs:

"(m) the equivalence criteria of audits of the annual and consolidated financial statements referred to in article 7(6);

(n) the general equivalence criteria to be used in assessing the annual and consolidated financial statements referred to in article 7(6);

(o) the equivalence referred to in article 7(9);

(p) the establishment of general equivalence criteria which are to be used in assessing the public oversight, quality assurance, investigation and sanctions systems of a third country;

S.L. 281.01 (q) the adequacy of the third countries referred to in regulation 9 of the Accountancy Profession Regulations;

(r) the establishment of general adequacy criteria which are to be used in order to assess whether the competent authorities of third countries may be recognised as adequate to cooperate with the Board on the exchange of audit working papers or other documents held by auditors and audit firms.";

(d) in paragraph (a) of sub-article (2) thereof, immediately after the words "code of ethics," there shall be added the words "standards on internal quality control of audit firms and";

(e) in paragraph (k) of sub-article (2) thereof, for the words "Directive 2006/43/EC;" there shall be substituted the words "Directive 2006/43/EC, Directive 2014/56/EU and Regulation (EU) No. 537/2014;" and

(f) paragraph (o) of sub-article (2) thereof shall be renumbered as paragraph (q) and immediately after paragraph

(n) thereof there shall be added the following new paragraphs:

Cap. 386. "(o) in exceptional circumstances, the signature(s) required in the audit report mentioned in articles 179 and 179A of the Companies Act need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person, even though the name(s) of the person(s) involved shall be known to the Board;

(p) other sanctioning powers in addition to those referred to in article 14(2);".

8. In the second proviso to sub-article (1) of article 10 of the principal Act, for the words "the rules on independence" there shall be substituted the words "the rules on scepticism, independence".

Amendment of article 10 of the principal Act.

9. Immediately after article 10 of the principal Act, there shall be added the following new article:

Addition of new article to the principal Act.

"Recognition of audit firms.

10A.(1) By way of derogation from article 10(7), an audit firm which is approved in another Member State shall be entitled to perform statutory audits provided that the key audit partner who carries out the statutory audit on behalf of the audit firm complies with article 3(1) and (2) and regulation 4(1) and (2) and regulation 7 of the Accountancy Profession Regulations.

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(2) Where an audit firm which qualifies under sub-article (1) wishes to carry out statutory audits, it shall register with the Board in accordance with article 7(4) and (15) and regulation 6 of the Accountancy Profession Regulations.

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(3) The Board shall register the audit firm if it is satisfied that the audit firm is registered with the competent authority in the home Member State. Where the Board intends to rely on a certificate attesting to the registration of the audit firm in the home Member State, the Board may require that the certificate issued by the competent authority in the home Member State be not more than three months old. The Board shall inform the competent authority in the home Member State of the registration of the audit firm."

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Amendment of article 11 of the principal Act.

10. Sub-article (4) of article 11 of the principal Act shall be substituted by the following new sub-article:

"(4) Every person or firm bound to be covered by an indemnity insurance under this article shall each year, together with the annual return, inform the Board in writing of the name of the insurance company, the relative number of the insurance policy, provide documentary evidence from the insurance company that such person or firm is actually covered by the identified policy of insurance, and shall declare to the Board that such level of insurance cover amounts to not less than such minimum level as may be prescribed."

Amendment of article 14 of the principal Act.

11. Article 14 of the principal Act shall be amended as follows:

(a) the marginal note thereof shall be substituted by the following:

"Administrative fines, sanctions and measures."; and

(b) the current article shall be re-numbered as sub-article (1) thereof and immediately thereafter there shall be added the following new sub-articles:

"(2) The Board shall have the power to take and, or impose at least the following administrative measures and sanctions for breaches of the provisions of the rules under this Act and, where applicable, the Audit Regulation:

(a) a notice requiring the natural or legal person responsible for the breach to cease the conduct and to abstain from any repetition of that conduct;

(b) a public statement which indicates the person responsible and the nature of the breach, published on the website of the Board;

(c) a temporary prohibition, of up to three years' duration, banning the statutory auditor, the audit firm or the key audit partner from carrying out statutory audits and, or signing audit reports;

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(d) a declaration that the audit report does not meet the requirements of article 179A of the Companies Act or, where applicable, article 179B of that Act;

(e) a temporary prohibition, of up to three years' duration, banning a member of an audit firm from exercising functions in audit firms or public-interest entities;

(f) the imposition of administrative pecuniary sanctions on natural and legal persons.

(3) When determining the type and level of administrative sanctions and measures mentioned in sub-article (1), article 7(17) and article 15, the Board and, or the disciplinary committees appointed in terms of article 7(16) shall take into account all relevant circumstances, including where appropriate:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible person;

(c) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person;

(d) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined;

(e) the level of cooperation of the responsible person with the Board;

(f) previous breaches by the responsible legal or natural person.

Additional factors may be taken into account by the Board and, or the disciplinary committees appointed in terms of article 7(16) where such factors are specified in a legal provision, regulation or Directive."

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Amendment of article 15 of the principal Act.

12. In paragraph (e) of sub-article (2) of article 15 of the principal Act, for the words "such firm from being registered." there shall be substituted the words "such firm from being registered;", and immediately thereafter there shall be added the following new paragraph:

"(f) Where the approval of an audit firm is withdrawn for any reason, the Board shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of Member States where the audit firm is also registered."

Amendment of article 16 of the principal Act.

13. In paragraph (b) of sub-article (3) of article 16 of the principal Act, for the words "as may be prescribed." there shall be substituted the words "as may be prescribed;", and immediately thereafter there shall be added the following new paragraph:

"(c) to the extent that is so prescribed, a person shall not be deemed to exercise the profession of accountant if he gives assurances on the future viability of an audited entity or on the efficiency or effectiveness with which the management or the board of directors has conducted or will conduct the affairs of the entity."

Substitution of article 18 of the principal Act.

14. Article 18 of the principal Act shall be substituted by the following:

"Publication of transparency report in the audit of public-interest entities.

18. (1) An auditor or an audit firm that carries out statutory audits of public-interest entities shall make public an annual transparency report at the latest four months after the end of each financial year. That transparency report shall be published on the website of the auditor or the audit firm and shall remain available on that website for at least five years from the day of its publication on the website. If the auditor is employed by an audit firm, the obligations under this article shall be incumbent on the audit firm.

An auditor or an audit firm shall be allowed to update its published annual transparency report. In such a case, the auditor or the audit firm shall indicate that it is an updated version of the report and the original version of the report shall continue to remain available on the website.

Auditors and audit firms shall communicate to the competent authorities that the transparency report has been published on the website of the auditor or the audit firm or, as appropriate, that it has been updated.

(2) The annual transparency report shall include at least the following:

(a) a description of the legal structure and ownership of the audit firm;

(b) where the auditor or the audit firm is a member of a network:

(i) a description of the network and the legal and structural arrangements in the network;

(ii) the name of each auditor operating as a sole practitioner or audit firm that is a member of the network;

(iii) the countries in which each auditor operating as a sole practitioner or audit firm that is a member of the network is qualified as a statutory auditor or has his, her or its registered office, central administration or principal place of business;

(iv) the total turnover achieved by the auditors operating as sole practitioners and audit firms that are members of the network, resulting from the statutory audit of annual and consolidated financial statements;

(c) a description of the governance structure of the audit firm;

(d) a description of the internal quality control system of the auditor or of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning;

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(e) an indication of when the last quality assurance review referred to in Article 26 of the Audit Regulation was carried out;

(f) a list of public-interest entities for which the auditor or the audit firm carried out statutory audits during the preceding financial year;

(g) a statement covering the auditor's or the audit firm'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 auditor or the audit firm concerning the continuing education of auditors as referred in Directive 1 Accountancy Profession (Continued Professional Education);

(i) information concerning the basis for the principals' remuneration in audit firms;

(j) a description of the auditor's or the audit firm's policy concerning the rotation of key audit partners and staff in accordance with Article 17(7) of the Audit Regulation;

(k) where not disclosed in its financial statements within the meaning of article 167(2) of the Companies Act, information about the total turnover of the auditor or the audit firm, divided into the following categories:

(i) revenues from the statutory audit of annual and consolidated financial statements of public-interest entities and entities belonging to a group of undertakings whose parent undertaking is a public-interest entity;

(ii) revenues from the statutory audit of annual and consolidated financial statements of other entities;

(iii) revenues from permitted non-audit services to entities that are audited by the statutory auditor or the audit firm; and

(iv) revenues from non-audit services to other entities.

The auditor or the audit firm may, in exceptional circumstances, decide not to disclose the information required in paragraph (f) to the extent necessary to mitigate an imminent and significant threat to the personal security of any person. The auditor or the audit firm shall be able to demonstrate to the Board the existence of such threat.

(3) The transparency report shall be signed by the auditor or the audit firm."

15. Immediately after article 18 of the principal Act, there shall be added the following new article:

Addition of new article to the principal Act.

"Prohibition of the provision of non-audit services.

18A.(1) An auditor or an audit firm carrying out the statutory audit of a public-interest entity, or any member of the network to which the auditor or the audit firm belongs, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the European Union any prohibited non-audit services in:

(a) the period between the beginning of the period audited and the issuing of the audit report; and

(b) the financial year immediately preceding the period referred to in paragraph (a) in relation to the services listed in sub-article (2)(e).

(2) For the purposes of sub-article (1), prohibited non-audit services shall mean:

(a) tax services relating to:

(i) preparation of tax forms;

(ii) payroll tax;

(iii) customs duties;

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- (iv) identification of public subsidies and tax incentives unless support from the auditor or the audit firm in respect of such services is required by law;
- (v) support regarding tax inspections by tax authorities unless support from the auditor or the audit firm in respect of such inspections is required by law;
- (vi) calculation of direct and indirect tax and deferred tax;
- (vii) provision of tax advice;
- (b) services that involve playing any part in the management or decision-making of the audited entity;
- (c) bookkeeping and preparing accounting records and financial statements;
- (d) payroll services;
- (e) designing and implementing internal control or risk management procedures related to the preparation and, or control of financial information or designing and implementing financial information technology systems;
- (f) valuation services, including, valuations performed in connection with actuarial services or litigation support services;
- (g) legal services, with respect to:
 - (i) the provision of general counsel;
 - (ii) negotiating on behalf of the audited entity; and
 - (iii) acting in an advocacy role in the resolution of litigation;
- (h) services related to the audited entity's internal audit functions;

(i) services linked to the financing, capital structure and allocation, and investment strategy of the audited entity, except providing assurance services in relation to the financial statements, such as the issuing of comfort letters in connection with prospectuses issued by the audited entity;

(j) promoting, dealing in, or underwriting shares in the audited entity;

(k) human resources services, with respect to:

(i) management in a position to exert significant influence over the preparation of the accounting records or financial statements which are the subject of the statutory audit, where such services involve:

- searching for or seeking out candidates for such position; or

- undertaking reference checks of candidates for such positions;

(ii) structuring the organisation design; and

(iii) cost control.

(3) By way of derogation from sub-article (2), the services referred to in paragraphs (a)(i), (a)(iv) to (a)(vii) and (f) of the said sub-article may be provided, provided that the following requirements are complied with:

(a) they have no direct or have immaterial effect, separately or in the aggregate on the audited financial statements;

(b) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee referred to in Article 11 of the Audit Regulation; and

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(c) the principles of independence laid down in the Code of Ethics issued by the Board are complied with by the auditor or the audit firm.

(4) An auditor or an audit firm carrying out statutory audits of public-interest entities and, where the auditor or the audit firm belongs to a network, any member of such network, may provide to the audited entity, to its parent undertaking or to its controlled undertakings non-audit services other than the prohibited non-audit services referred to in sub-articles (1) and (2), subject to the approval of the audit committee after it has properly assessed threats to independence and the safeguards applied in accordance with the Code of Ethics issued by the Board.

(5) (a) When a member of a network to which the auditor or the audit firm carrying out a statutory audit of a public-interest entity belongs provides any of the non-audit services, referred to in sub-articles (1) and (2), to an undertaking incorporated in a third country which is controlled by the audited public-interest entity, the auditor or the audit firm concerned shall assess whether his, her or its independence would be compromised by such provision of services by the member of the network.

(b) If his, her or its independence is affected, the auditor or the audit firm shall apply safeguards where applicable in order to mitigate the threats caused by such provision of services in a third country. The auditor or the audit firm may continue to carry out the statutory audit of the public-interest entity only if he, she or it can justify, in accordance with Article 6 of the Audit Regulation and the Code of Ethics issued by the Board, that such provision of services does not affect his, her or its professional judgement and the audit report.

(c) For the purposes of this sub-article:

(i) being involved in the decision-taking of the audited entity and the provision of the services referred to in sub-article (2)(b), (c) and (e) shall be deemed to affect such independence in all cases and to be incapable of mitigation by any safeguards.

(ii) provision of the services referred to in sub-article (2), other than paragraphs (b), (c) and (e) thereof, shall be deemed to affect such independence and therefore to require safeguards to mitigate the threats caused thereby."

16. Immediately after article 20 of the principal Act, there shall be added the following new articles:

Addition of new articles to the principal Act.

"Publication of sanctions and measures.

20A.(1) The Board shall publish on its official website at least any administrative sanction imposed for breach of the provisions of this Act, the regulations made under it or Directives, or of the Audit Regulation in respect of which all rights of appeal have been exhausted or have expired, as soon as reasonably practicable immediately after the person sanctioned has been informed of that decision, including information concerning the type and nature of the breach and the identity of the natural or legal person on whom the sanction has been imposed:

Provided that where the sanctions imposed are subject to appeal, publication shall only be made after all rights of appeal have been exhausted or have expired.

(2) The Board shall publish the sanctions imposed on an anonymous basis, and in a manner which is in conformity with Maltese law, in any of the following circumstances:

(a) where, in the event that the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

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(c) where publication would cause disproportionate damage to the institutions or individuals involved.

(3) The Board shall ensure that any publication in accordance with sub-article (1) is of proportionate duration and that it remains on its official website for a minimum period of five (5) years after all rights of appeal have been exhausted or have expired.

(4) The publication of sanctions and measures and of any public statement by the Board shall respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, the Constitution of Malta and the Convention for the Protection of Human Rights and Fundamental Freedoms; in particular the right to respect for private and family life and the right to the protection of personal data:

Provided that such publication or any public statement is not to contain personal data of third parties within the meaning of "personal data" in article 2 of the Data Protection Act.

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Reporting of breaches.

20B. (1) The Board shall establish effective mechanisms that encourage reporting of breaches of this Act, the regulations made under it and Directives or of the Audit Regulation to the Board.

(2) The mechanisms referred to in sub-article (1) shall include at least:

(a) specific procedures for the receipt of reports of breaches and their follow-up;

(b) protection of personal data concerning both the person who reports the suspected or actual breach and the person who is suspected of committing, or who has allegedly committed that breach, in compliance with the principles laid down in the Data Protection Act;

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(c) appropriate procedures to ensure the right of the accused person to a defence and to be heard before the adoption of a decision concerning him or her, and the right to seek an effective remedy before a tribunal against any decision or measure concerning him or her.

(3) Audit firms shall establish appropriate procedures for their employees to report potential or actual breaches of this Act, the regulations made under it and Directives or of the Audit Regulation internally through a specific channel.

Exchange of information.

20C.(1) The Board shall provide the CEAOB annually with aggregated information regarding all administrative measures and all sanctions imposed in accordance with articles 7(17), 14, 15, 20, 20A and 20B.

(2) The Board shall immediately communicate to the CEAOB all temporary prohibitions referred to in article 14(2)(c) and (e)."

PART II

Amendment of the Companies Act

17. This Part amends the Companies Act, and shall be read and construed as one with the Companies Act, hereinafter referred to as "the principal Act".

Amendment of the Companies Act. Cap. 386.

18. Article 3A of the principal Act shall be amended as follows:

Amendment of article 3A of the principal Act.

(a) in paragraph (e) thereof, for the words "Council 84/253/EEC;" there shall be substituted the words "Council 84/253/EEC, which Directive was itself amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014;"; and

(b) immediately after paragraph (p) thereof there shall be added the following new paragraph:

"(q) Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities hereinafter referred to as "the Audit Regulation";".

19. Immediately after sub-article (6) of article 151 of the principal Act there shall be added the following new sub-articles:

Amendment of article 151 of the principal Act.

"(7) Any contractual clause restricting the choice by the general meeting of the company pursuant to sub-article (1) to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of the company shall be

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prohibited. Any such existing clause shall be null and void.

(8) For the purposes of the application of this article, for the appointment of auditors or audit firms by public-interest entities, the conditions set out in Article 16(2) to (6) of the Audit Regulation, and those in the relative sectoral legislation regulating each particular type of public-interest entity, shall apply."

Addition of new article to the principal Act.

20. Immediately after article 151 of the principal Act there shall be added the following new article:

"Duration of the audit engagement of public-interest entities.

151A. (1) (a) A public-interest entity shall appoint an auditor or an audit firm for an initial engagement of at least one year. The engagement may be renewed.

(b) Neither the initial engagement of a particular auditor or audit firm by a public-interest entity, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of ten years.

(2) After the expiry of the maximum durations of engagements referred to in sub-article (1)(b), or after the expiry of the durations of engagements extended in accordance with sub-articles (3) or (5), neither the auditor or the audit firm nor, where applicable, any members of their networks within the European Union shall undertake the statutory audit of the same public-interest entity within the following four-year period.

(3) By way of derogation from sub-article (1), the maximum durations referred to in sub-article (1)(b) may be extended to the maximum duration of twenty (20) years, where a public tendering process for the statutory audit is conducted in accordance with Article 16(2) to (5) of the Audit Regulation and takes effect upon the expiry of the maximum durations referred to in sub-article (1)(b).

(4) The maximum durations referred to in sub-article (1)(b) shall be extended only if, upon a recommendation of the audit committee, the board of directors proposes to the general meeting of the company, in accordance with Maltese law, that the engagement be renewed and that proposal is approved.

(5) After the expiry of the maximum durations referred to in sub-article (1)(b), or in sub-article (3), as appropriate, the public-interest entity may, on an exceptional basis, request that the Board grant an extension to re-appoint the auditor or the audit firm for a further engagement where the conditions in sub-article (3) are met. Such an additional engagement shall not exceed two years.

(6) (a) The key audit partners responsible for carrying out a statutory audit shall cease their participation in the statutory audit of the audited entity not later than seven (7) years from the date of their appointment. They shall not participate again in the statutory audit of the audited entity before three years have elapsed following that cessation.

(b) The auditor or the audit firm shall establish an appropriate gradual rotation mechanism with regard to the most senior personnel involved in the statutory audit, including at least the persons who are registered as auditors. The gradual rotation mechanism shall be applied in phases on the basis of individuals rather than of the entire engagement team. It shall be proportionate in view of the scale and the complexity of the activity of the auditor or the audit firm.

(c) The auditor or the audit firm shall be able to demonstrate to the Board that such mechanism is effectively applied and adapted to the scale and the complexity of the activity of the auditor or the audit firm.

(7) (a) For the purposes of this article, the duration of the audit engagement shall be calculated as from the first financial year covered in the audit engagement letter in which the auditor or the audit firm has been appointed for the first time for the carrying-out of consecutive statutory audits for the same public-interest entity.

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(b) For the purposes of this article, the audit firm shall include other firms that the audit firm has acquired or that have merged with it.

(c) If there is uncertainty as to the date on which the auditor or the audit firm began carrying out consecutive statutory audits for the public-interest entity, for example due to firm mergers, acquisitions, or changes in ownership structure, the auditor or the audit firm shall immediately report such uncertainties to the Board.

(8) As from 17 June 2020, a public-interest entity shall not enter into or renew an audit engagement with a given auditor or audit firm if that auditor or audit firm has been providing audit services to that public-interest entity for twenty (20) and more consecutive years as at 16 June 2014.

(9) As from 17 June 2023, a public-interest entity shall not enter into or renew an audit engagement with a given auditor or audit firm if that statutory auditor or audit firm has been providing audit services to that public-interest entity for eleven (11) and more but less than twenty (20) consecutive years as at 16 June 2014.

(10) Without prejudice to sub-articles (8) and (9), the audit engagements that were entered into before 16 June 2014 but which are still in place as at 17 June 2016 may remain applicable until the end of the maximum duration referred to in sub-article (1)(b). Sub-article (3) shall apply.

(11) Article 16(3) of the Audit Regulation shall only apply to audit engagements after the expiry of the period referred to in sub-article (1)(b).".

Amendment of
article 157 of
the principal
Act.

21. Immediately after sub-article (4) of article 157 of the principal Act there shall be added the following new sub-article:

"(5) In the case of a statutory audit of a public-interest entity, it shall be permissible for -

(a) shareholders representing five per cent or more of the voting rights or of the share capital of the company; or

(b) the Board referred to in sub-article (2),

to bring a claim before the court for the dismissal of the statutory auditor(s) or the audit firm(s) where there are proper grounds for so doing."

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

Amendment of article 179 of the principal Act.

(a) sub-article (4) thereof shall be substituted by the following:

"(4) The audit report shall comply with the provisions of article 179A."; and

(b) in sub-article (13) thereof, for the words "set out in this article" there shall be substituted the words "set out in this article and in article 179A".

23. Immediately after article 179 of the principal Act there shall be added the following new articles:

Addition of new articles to the principal Act.

"Audit reporting.

179A. (1) The audit report shall be in writing and shall:

(a) identify the entity whose annual or consolidated financial statements are the subject of the statutory audit; specify the annual or consolidated financial statements and the date and period they cover; and identify the financial reporting framework that has been applied in their preparation;

(b) include a description of the scope of the statutory audit which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;

(c) include an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the auditor(s) or the audit firm(s) as to:

(i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework; and

(ii) where appropriate, whether the annual financial statements comply with statutory requirements.

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If the statutory auditor(s) or the audit firm(s) are unable to express an audit opinion, the report shall contain a disclaimer of opinion;

(d) refer to any other matters to which the auditor(s) or the audit firm(s) draw(s) attention by way of emphasis without qualifying the audit opinion;

(e) include an opinion and statement, both of which shall be based on the work undertaken in the course of the audit, referred to in article 179(3);

(f) provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity's ability to continue as a going concern;

(g) identify the place of establishment of the auditor(s) or the audit firm(s).

(2) Where the statutory audit was carried out by more than one auditor or audit firm, the auditor(s) or the audit firm(s) shall agree on the results of the statutory audit and submit a joint report and opinion. In the case of disagreement, each statutory auditor or audit firm shall submit his, her or its opinion in a separate paragraph of the audit report and shall state the reason for the disagreement.

(3) The audit report shall be signed and dated by the auditor. Where an audit firm carries out the statutory audit, the audit report shall bear the signature of at least the auditor(s) carrying out the statutory audit on behalf of the audit firm. Where more than one auditor or audit firm have been simultaneously engaged, the audit report shall be signed by all auditors or at least by the auditors carrying out the statutory audit on behalf of every audit firm:

Provided that the audit report may also be co-signed by an auditor authorised in another Member State as long as he/she/it is a member of the same network and has obtained the prior written consent of the Board.

(4) Without prejudice to the provisions of sub-articles (1) to (3), and articles 179 and 179B, the scope of the statutory audit shall not include assurance on the future viability of the audited entity or on the efficiency or effectiveness with which the management or the board of directors has conducted or will conduct the affairs of the entity.

Audit report.

179B. (1) The audit report of public-interest entities shall be prepared in accordance with the provisions of articles 179 and 179A and in addition shall at least:

(a) state by whom or by which body the auditor(s) or the audit firm(s) was (were) appointed;

(b) indicate the date of the appointment and the period of total uninterrupted engagement including previous renewals and reappointments of the auditors or the audit firms;

(c) provide, in support of the audit opinion, the following:

(i) a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud;

(ii) a summary of the auditor's response to those risks; and

(iii) where relevant, key observations arising with respect to those risks.

Where relevant to the above information provided in the audit report concerning each significant assessed risk of material misstatement, the audit report shall include a clear reference to the relevant disclosures in the financial statements;

(d) explain to what extent the statutory audit was considered capable of detecting irregularities, including fraud;

(e) confirm that the audit opinion is consistent with the additional report to the audit committee referred to in Article 11 of the Audit Regulation;

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(f) declare that the prohibited non-audit services referred to in article 18A(1) of the Accountancy Profession Act were not provided and that the auditor(s) or the audit firm(s) remained independent of the audited entity in conducting the audit;

(g) indicate any services, in addition to the statutory audit, which were provided by the auditor or the audit firm to the audited entity and its controlled undertaking(s), and which have not been disclosed in the directors' report or financial statements.

(2) Except as required by sub-article (1)(e) the audit report shall not contain any cross-references to the additional report to the audit committee referred to in Article 11 of the Audit Regulation. The audit report shall be in clear and unambiguous language.

(3) The statutory auditor or the audit firms shall not use the name of any competent authority in a way that would indicate or suggest endorsement or approval by that authority of the audit report."

Passed by the House of Representatives at Sitting No. 414 of the 6th July, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

