PUBLIC CONSULTATION PAPER NO. 01/2024

REGISTRATION OF BODY CORPORATE AS PUBLIC PRACTICE ENTITY

Start Date : **31 May 2024**

End Date : **28 June 2024**

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INTRODUCTION

1. **Section 2** of the Accountants Act 1967 ("**AA**") defines a *"member"* as follows:

   "member" means a person who is registered in accordance with this Act as a chartered accountant, a licensed accountant or an associate member.

2. **Rule 2** of the MIA (Membership and Council) Rules 2001 ("**Rules**") deals with members in public practice and states the following:

   2.1 *"member in public practice" means a chartered accountant or licensed accountant who, as a sole proprietor or in a partnership, provides or is engaged in public practice services in return for a fee or reward for such services otherwise than as an employee.*

   2.2 *"public practice services"* include:

   (a) auditing including internal auditing;

   (b) accounting and all forms of accounting related consultancy;

   (c) accounting related investigations or due diligence;

   (d) forensic accounting;

   (e) taxation, tax advice and consultancy;

   (f) bookkeeping;

   (g) costing and management accounting;

   (h) insolvency, liquidation and receiverships;

   (i) provision of management information systems and internal controls;

   (j) provision of secretarial services under the Companies Act 1965 [125]; or

   (k) such other services as the Council may from time to time prescribe.

3. **Rule 9 (1)** of the **Rules** further states the following:

   A member shall not hold himself out as a member in public practice unless he holds a valid practising certificate issued by the Institute pursuant to the provisions of this rule.

4. **Section 18** of the **AA** deals with prohibitions on members and states as follows:

Prohibition

Without prejudice to any other provisions of this Act or rules or by-Jaws no member shall-

(b) be a director or a shareholder in a company incorporated under the Companies Act 1965, or any other written Jaw, being a company which carries on a business of auditing, nor shall he use a trade or association name under which to practise the profession;

(c) in any way, practise as a chartered accountant or licensed accountant otherthan-

(i) in his own name;

(ii) in the name or names of his partner or partners being chartered accountants or licensed accountants; or

(iii) in the name of a firm existing at the time of the coming into operation of this Act or formed thereafter provided that the partners in Malaysia are eligible to be registered as chartered accountants or licensed accountants;

5. From the aforesaid provisions, it can be summarized that:

5.1 A member need not necessarily hold a practising certificate.

5.2 However, if a member provides or is engaged in public practice services in return for a fee or a reward (otherwise than as an employee):

5.2.1 He must be a chartered accountant or a licensed accountant;

5.2.2 He must be a sole proprietor or in a partnership; and

5.2.3 He must hold a valid practising certificate.

5.3 A member cannot practise as a chartered accountant or a licensed accountant other than in his own name, or in the names of his partners who are chartered accountants or licensed accountants.

5.4 A member cannot be a director in a company which carries on the business of auditing.

6. Paragraph B200.6 MIA By Laws

(1) A member may subject to these by-laws, participate as a director in a limited or unlimited company which offers taxation, tax advice, taxation

consultancy services, accounting and all forms of accounting related consultancy, accounting related investigations or due diligence, forensic accounting, book keeping, costing and management accounting, insolvency, liquidation, receivership, management systems and internal controls and secretarial services under the Companies Act 2016, provided that in doing so -

(a) the member and/or the company does not contravene any written law; and

(b) the company is not in any way described as Chartered Accountants or Licensed Accountants.

(2) Where members participate as directors in limited or unlimited companies in the manner stated in paragraph 500.6 (1) [paragraph 200.6 (1)], *such members are:*

(a) deemed for the purpose of these by-laws to be members in public practice whereby members are required to hold valid practicing certificates and the provisions of the rules of the Institute and these by-laws with the appropriate modifications, apply to such members; and

(b) cause the companies to comply with these by-laws provided such members hold the majority interest and/or voting rights whether directly or indirectly in the companies.

Paragraph B200.6 therefore:

1.1 Allows a member to participate as a director in a company which offers public practice services (other than auditing), provided that:

1.1.1 He and/or the company does not contravene any written law; and

1.1.2 The company is not described as chartered accountants or licensed accountants.

1.2 This member is deemed to be a member in public practice:

1.2.1 Who is required to hold a valid practising certificate;

1.2.2 To whom the **Rules** and **By-Laws** apply; and

1.2.3 Who is required to cause the company to comply with the **By-laws** provided that he holds the majority interest and/or voting rights in the company.

Therefore, in addressing the inconsistencies in the AA and MIA By Laws, the study to review AA (Act 62) has been conducted with the aim to focus on the inconsistencies of applicable laws and to explore areas for improvements.

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In the process of reviewing the act, Legal Unit seeks to gauge the views and comments of the public through this public consultation paper. Feedbacks and comments should be limited to the issues stated in the 'Points to be Considered' in each proposed item under Part II. Further to the views and comments, the suggestion can also state whether there is a need for a new provision, amendments to the as-is provisions, amendments to the regulations or issuance of guidelines.

SUBMISSION OF COMMENTS

Individuals/parties who are interested to participate in this public consultation may do so by:

i) Writing your comment/feedback (concise and with justification) in Microsoft Word format, concerning the questions in Part I;

ii) Fill in your particulars in Part II;

iii) **Email to i) fazlina@mia.org.my and ii) to farah.athirah@mia.org.my no later than Friday, 14 June 2024**.

PARTICIPATION

This public consultation is open to anyone who has the interest to get involved in the process of the review. **All submission should reach MIA by 28 June 2024**. Please do not hesitate to contact fazlina@mia.org.my or farah.athirah.org.my if you have any enquiry.

Thank you very much for your interest and participation.

Chief Executive Director
Malaysian Institute of Accountants

PART I – PROPOSED IMPROVEMENT SUGGESTION

1) Body Corporate Registration is compulsory

- There is no provision in the Accountants Act 1967 ("AA") that gives recognition to allow body corporate to provide public practice services.
- Therefore, MIA is proposing to directly regulate body corporate who is providing public practice services.
- Points to be considered:
    i. Body corporate that is providing public practice services to have direct obligation under AA and to be registered with MIA.
    ii. The definition of body corporate to include Sdn Bhd and Bhd.

Do you agree with the proposal to regulate the body corporate who is providing public practice services?

Please state the reasons for your views.

2) All directors of the Body Corporate shall hold a valid Practising Certificate

- MIA is considering to insert a new provision on the strict requirement of all directors of the body corporate to hold a valid Practising Certificate.
- Points to be considered:
    i. The proposed approach of the strict requirement.
    ii. Impact of this requirement being implemented in Malaysia.

Do you agree with the proposal for all directors of the body corporate to hold a valid practising certificate?

Please state the reasons for your views.

PART II – ABOUT YOU

i) Name:

ii) Email address:

iii) You are commenting as:
(please mark ✓ in the third column given)

No.	Respondent category	✓
1	**MIA member**	
2	**MIA member with Practising Certificate**	
3	**Non MIA member in Accountancy sector**	
4	**Non MIA member in other sector**	

iv) If you provide comments as **no. 3 or 4**, please state your organisation's name:

v) If you provide comments as **no. 3 or 4**, please state your organisation business's sector: