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Public Practice of Accounting in the Republic of Cuba

Angela M. Lyons

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PUBLIC PRACTICE OF ACCOUNTING IN

THE REPUBLIC OF CUBA

Prepared for

AMERICAN INSTITUTE OF ACCOUNTANTS

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HASKINS & SELLS FOUNDATION, INC.

By

Angela M. Lyons

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REPUBLIC OF CUBA

General Information

Geography:

Cuba, the largest and most important island of the West Indies, has an area of 44,164 square miles and is comparable in size to the State of Pennsylvania. It is located at the entrance to the Gulf of Mexico, between North America and those countries of South America that are bordered by the Caribbean Sea.

The Republic has six provinces: Havana, Pinar del Rio, Matanzas, Las Villas, Camaguey, and Oriente. The chief cities are Havana, the capital, Santa de Cuba, Cienfuegos, and Guantanamo.

People:

The 1949 population was estimated at 5,051,000, most of whom are of the white race, descendants of Spanish colonial settlers and immigrants. Along the seacoasts and in certain provinces, particularly in Oriente, there are many Negroes and mulattoes.

The country is Spanish as to language but English is widely understood. In 1943 the illiteracy rate was estimated at 35.6 percent.

Economy:

The economy of the country is largely based upon agriculture, the staple products being tobacco and sugar. Coffee, cocoa, cereals, and potatoes are also grown, and a considerable trade is done in fruit and minerals. Cuba is the second largest producer of sugar in

the world. Ninety percent of the crop is taken by the United States at a fixed price and under a preferential tariff agreement.

Sugar and its products furnish the bulk of the exports. In 1949 the United States took about 64 percent of all exports and furnished about 83 percent of imports.

In addition to sugar production and mining activities, Cuba manufactures textiles, leather and rubber footwear, tires, alcoholic and other beverages, paint, soap, and some food products. United States investments aggregating an amount in excess of one billion dollars have been made in the following Cuban industries: sugar, tobacco, mining, alcohol, railroad, tramways, lighting, power, communication, and insurance. These investments constitute a major factor in the economic development of Cuba.

SECTION I

PRACTICE OF ACCOUNTANCY BY NATIONALS

Basic Laws and Regulations

The Constitution of the Republic of Cuba, which became effective on October 10, 1940, makes a distinction between Cubans by birth and citizens by naturalization in certain matters relating to civil and political rights. One such distinction is in the matter of practicing a profession, and is contained in Article 82, a translation of which reads as follows:

Professions which require an official title, with the exception of what is provided in Article 57 of this Constitution, can be practiced only by Cubans by birth and the naturalized ones who were naturalized five years or more prior to the date on which they apply for authorization to practice. Congress can, nevertheless by a special law, provide for the temporary suspension of this precept when, for reasons of public utility, the cooperation of foreign professional men or technicians is necessary or advisable in carrying out public or private initiatives of national interest. The law which so provides shall fix the scope and term of the authorization. (Underscoring supplied.)

In the fulfillment of this precept, and in the cases in which a law or regulation regulates the exercise of any new profession, art or trade, the right to work acquired by persons who up to that time had practiced the profession, art or trade in question, shall be respected and the principles of international reciprocity shall be observed. (Underscoring supplied.)

It would seem that the second paragraph of this article is intended to protect vested rights of those "persons" who were engaged in practice of the profession of public accountant prior to the promulgation of restrictive legislation (Law No. 4, published November 17, 1944, and Law of January 3, 1945, authorizing the

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establishment of the College of Public Accountants of Cuba. The application of this clause concerns not only Cubans but also United States citizens or other non-nationals who may have acquired such rights prior to 1940. Whether or not the term "persons" also includes "juridic persons" and applies to firms has not yet been judicially determined. For a further discussion of vested rights of United States accountants, see pages 31-34.

Other provisions of the 1940 Constitution affecting the profession of public accountant are Article 57, which states that professions which require titles for their practice shall be determined by law, and Article 70, relative to obligatory official association in order to exercise any profession requiring a university degree.

Following insistent demands on the part of nationals -- particularly, the so-called "university" or student group, who wished to preserve for Cuban citizens the practice of public accounting -- there were introduced to the Cuban Legislature at various times, commencing in 1935, bills which were aimed at limiting the practice of the profession to Cubans. Finally, Decree No. 641 was signed by the then President of Cuba and published in the Official Gazette on March 17, 1944. This Decree provided for compulsory association of professional men with university degrees. It is our understanding that this Decree was found to be unconstitutional by the Cuban Courts and, in its place, Law No. 4 was enacted by the Cuban Congress and published on November 17, 1944. Since that time, the situation with respect to the profession has been an extremely complicated one, especially for non-nationals, because of local and national political aspects.

There are two schools of thought on the subject of whether or not the profession is regulated. The National College of Public Accountants claims that by Decree No. 563 of March 2, 1927, the profession became a university career and, as such, was an established profession in 1940 when the new Constitution was adopted. The Provincial College of Public Accountants of Havana apparently does not share this view and is in agreement with the non-university accountants who hold that there are no valid regulations in force because it listed among its objectives for the years 1948 to 1950, the following:

(11) In collaboration with the National College of Public Accountants to obtain a law recognizing our Profession and which, at the same time, would authorize the practice of national and foreign accountants who may have been practicing the profession before the promulgation of the 1940 Constitution and can prove it.

The following are the basic laws and regulations now in force which purport to govern the public practice of accounting by individuals registered as Contadores Publicos (Public Accountants) with university degrees and by Contadores (Accountants), non-university graduates:

Public Accountants-

Law No. 4, published November 17, 1944, relative to the formation of Colleges of University Graduates, requirements for membership, and for practicing professions.

Resolution of Ministry of Labor of January 3, 1945, approving the by-laws of the College of Public Accountants of Cuba which regulates the practice.

Accountants-

Law No. 10, published November 25, 1946, establishing the compulsory association of persons practicing non-university professions.

By-laws of the College of Non-University Accountants of Cuba, adopted in pursuance of Law No. 10, and published March 24, 1947.

In addition to the foregoing laws and regulations, the decision of the Supreme Court of Cuba (No. 345 of December 17, 1948, published May 10, 1949), in the matter of the appeal by the National College of Public Accountants against the decision of the Court of First Instance in the case against Angus Mackay Irvine, is an extremely important one. By this decision, retroactive recognition of public accountancy as a university profession was given. A translation of the Court's opinion relative to regulation of the profession follows:

Whereas: The practice of the profession of accounting was not regulated in Cuba prior to the year 1927 and only degrees of Mercantile Professors and Mercantile Experts were issued but not by the university, and the powers thereof were not clearly determined. In the said year and by Decree No. 563 of March 2 of that year, the Elementary and Superior Business Schools were established and they were converted in 1934 into the Professional Business Schools and the School of Commercial Sciences, the latter being a university school which was given the rank of a Faculty by resolution of the University Board which was adopted precisely in the year 1937 in exercise of the powers granted it by the University By-Laws, the same powers which were granted to that autonomous corporation by the Ley Docente of January 8, 1937, among which powers was that of governing everything connected with the issuance of professional degrees, the incorporation of studies engaged in abroad and the validation and incorporation of foreign degrees, Article 75 providing that the degrees issued by the University in connection with the professions it might establish would have legal validity and be recognized by the State for the practice of the respective profession, from which it follows that beginning with the establishment of the Faculty of Commercial Sciences, the degree of Public Accountant issued by it is official and provides the legal status for the practice of that profession throughout the territory of the Republic according to the laws in force at the time and those that may be enacted in the future on the subject, it not being necessary to enact any special law to authorize said practice.

Whereas: The practice of professions in general prior to the promulgation of the Educational Law (Ley Docente) of 1937 was subject to the regulations issued by the Military Government of the First Intervention contained in Order No. 90 of 1899; to the regulations contained in the Law of October 28, 1902 and in Decree No. 1774 of December 29, 1915

and other supplementary laws; and, as regards the graduates of foreign universities, validation or incorporation of their degrees was required, the necessary requisities for doing this being established when the degrees covered courses that were taken at Havana University or when not taken with academic validity thereat; and even though at the time those laws and regulations were issued it might have been believed that accounting was not one of the professions included in said laws and regulations, there is no doubt that as soon as it was given the status of a University profession the said provisions in force on the subject had to be applied to the incorporation of the foreign degrees held by those who practised that profession.

The foregoing decision, against which there was no appeal, appears to definitely establish for the Public Accountants of Cuba, the legal status of compulsory association in the College of Public Accountants, conditioned upon university titles granted by the University of Havana by virtue of studies made therein or by revalidation examination or incorporation of foreign degrees, in accordance with the provisions of Law No. 4 and the By-laws of the College. The further effects of this decision were: (1) to recognize the College as an "institution of official character, with juridical status," whose by-laws have status as official regulations, but not the rank of law; and (2) to prevent the practice of the profession by accountants without degrees from the University of Havana.

Concept of Profession

At this point, it should perhaps be explained that the term "profession" is not always used by Cubans in the strict sense; i.e., as pertaining to a university profession, but frequently means "occupation." However, if the profession of Public Accountant is in fact covered by Law No. 4 and the regulations issued thereunder and the supreme Court decision in the Irvine case, previously cited, correctly states the Cuban law, the profession of public accountant is now a university or "liberal" profession in Cuba.

The College of Public Accountants of Cuba issued a booklet in 1945 which states (at page 5 thereof) that the profession was first created as a "consequence of a university career by Decree No. 563 of March 2, 1927," and that studies leading to the title of Public Accountant were fully ratified by the Education Law of January 8, 1937. Article XXV of this latter law, dealing with University by-laws, provided that titles awarded by the University of Havana with respect to careers established "will have legal validity and shall be recognized by the State for the practice of professions."

As to the obligation to hold the respective degree for the practice of university professions in general, the College also relies on Presidential Decree No. 1774 of 1915, Article 2 of which reads as follows:

To exercise professions the titles for which are comprised in the first group, i.e., those that are studied in the University of Havana or other official institution of the Republic, it is required in addition to holding the relative title issued by the respective official institution or the title issued by a school, college, academy, institute,

university or foreign institution having revalidated same in accordance with the provisions in force, that the provisions of these regulations and the provisions of the laws and other legislative provisions shall be complied with.

This Decree regulated the practice of professions in existence in 1915. However, the profession of public accountant was not then among the professions practiced by Cubans.

Upon the promulgation of restrictive legislation (Law No. 4 and regulations thereunder), it was vigorously contended by the accountants without university degrees that since the profession was not regulated at the time of the adoption of the new Constitution of 1940, it was new and could be freely practiced by accountants without university degrees. They further argued that the By-laws of the College of Public Accountants of Cuba, having been promulgated under Decree No. 641 which had been found to be unconstitutional, and not under Law No. 4 subsequently published, were invalid and without force.

Included in this group of "non-university accountants" were individuals with such diverse titles as Mercantile Professor, Mercantile Expert, Authorized Public Accountant, Industrial Accountant, Accountant, and Bookkeeper. All of these titles had been granted by commercial schools of one kind or another. Many of these accountants were engaged in independent practice, the exact number not being known, but undoubtedly the vast majority had the status of employee in private practice.

It appears that Mercantile Professors and Mercantile Experts, because of specific provisions of the Commercial Code, were able to continue in the exercise of their functions. The "practical" or "expert" accountants who were engaged in practice when the restrictive

legislation became effective were automatically deprived of the use of the title Public Accountant and could not thereafter maintain an office for the purpose of performing any services for the public which could be construed as public practice. These accountants are now permitted to perform only bookkeeping services and to sign certain tax declarations for their clients.

Whatever the equities may be on the question of whether or not the profession was regulated and required university degrees, at any time prior to 1945, it appears to be now settled, under Law No. 4, the regulations issued thereunder, and the decision in the Irvine case, that it has the status of a liberal profession and may be legally practiced only by the holder of the degree of Public Accountant from the University of Havana, obtained by completing the prescribed studies, or by the holder of a foreign degree which has been incorporated in the University. The practice of the profession is subject to the maintenance of active membership in a Provincial College of Public Accountants. The requirements for membership are discussed under the heading, "Who May Practice."

Regulatory Authority

The Ministry of Labor is the governmental authority which supervises the respective College governing each class of accountants; i.e., College of Public Accountants of Cuba, and College of Non-University Accountants of Cuba.

The College of Public Accountants of Cuba, founded in 1934, is the national institution representing the graduates of the University of Havana who hold the degree of Public Accountant. This

College, membership in which is obligatory, is organized in federative form, composed of a local body in each of the six provinces of Pinar del Rio, Havana, Matanzas, Las Villas, Camaguey, and Oriente; and has jurisdiction in all of the national territory.

The College of Non-University Accountants was established in pursuance of Law No. 10 of 1946, its By-laws being published in March 1947. There are said to be some eighty-six Municipal Colleges subordinate to this national association, representing individuals holding the title of Accountant as well as individuals holding the various other non-university titles previously mentioned.

Who May Practice

Actually, under the laws in force, only registered Public Accountants, with university degrees, may now legally practice the profession in Cuba. But, because some United States citizens and other non-nationals engaged in public practice in Cuba have become members of the College of Non-University Accountants, it seems desirable to also include a discussion of the functions of this group even though they are expressly prohibited by law from performing the functions attributed to the University Group.

Registered University Graduates:

Under Article 82 of the 1940 Constitution, the profession of Public Accountant may be legally practiced only by Cubans by birth and citizens who have been naturalized for five years or more prior to the date on which they apply for authorization to practice.

They are subject to the following rules laid down in Title V, Chapter I, Article 1 of the By-laws of the College of Public Accountants of Cuba:

- a) To be in possession of the diploma of Public Accountant issued or ratified by the University of Havana.
- b) To comply with the requirements of Article 82 of the Constitution of the Republic.
- c) To be of full age.
- d) To be a member of the College of Public Accountants of Cuba, being inscribed to this effect, in the corresponding Provincial College and maintaining the status of active member.
- e) To comply with the By-Laws, Code of Morals, etc.
- f) To comply with all legal provisions in effect regarding the practice of the profession.

Public Accountants may form partnerships among themselves to practice the profession, in accordance with the provisions of the Civil Code, but they can not adopt any form of limited partnership. Partnership deeds or agreements must be in written form and the College of Public Accountants of Cuba must be notified of their existence within thirty days after execution. The notification must include the names of partners and the date of execution and must be signed by all partners. Notice of all amendments or rescissions must also be given to the College. The College is required to keep a register of all such documents.

A collective or firm name may be formed only with the names of two or more partners and the words "and Company" may not be added to it. Article 139 of the By-laws of the College provides that any name or partnership name that does not belong to a living person who is an active member of the College may not be used.

Registered Non-University Accountants:

As previously stated, the laws in force prohibit the practice of the profession of Public Accountant by non-university graduates. Law No. 10, published November 25, 1946, provides for the compulsory association of persons practicing "non-university professions." Article VI of this Law is similar to Article V of Law No. 4, and provides that professional practice shall be construed to embody the acts peculiar to each profession. No precise statement is made in the By-laws of the Municipal College of Non-University Accountants of Havana as to the functions of the members of this association. Article 3 of these By-laws gives the following requirements which must be met in order to be registered as a member:

- a) To hold the appropriate title or certificate.
- b) To conform to the requirements provided in Article 82 of the Constitution of the Republic.
- c) To hold a certificate issued by a natural or juridical person, where the applicant may have practiced or be practicing the profession of accountant, under the provisions of Article 35 of the Code of Commerce, and subject to the obligations required in Decree No. 1117, Article 19, of May 15, 1939, published in the Official Gazette of May 31 of the same year; or else to hold a certificate issued by the Secretary of an Association, College, Group, Entity, or Union appertaining to this profession and with which applicant may be registered as a member.
- d) Those who, not being included in paragraphs a), b), and c) of this Article, shall prove by means of a Notarial attestation that they have practiced the profession.
- e) To be of lawful age.
- f) Not to have any legal impediment for the practice of the profession.
- g) To be practicing in the national territory.

- h) To take the oath of honor of the Municipal College.
- 1) To apply for registration as Member of the College and to be tentatively accepted by the Municipal College.

Article 35 of the Code of Commerce relates to the books of account which commercial companies are required by law to keep. Decree No. 1117 is the Profits Tax Law, under which non-university accountants may sign certain tax declarations.

It will be apparent from the foregoing that the activities of non-university accountants are restricted to compiling and recording business operations of commercial or industrial companies and to performing certain minor tax work.

Exercise of the Profession

Public Accountants:

Article V of Law No. 4 states that for the purposes of the law, professional practice shall be construed to embody the acts peculiar to each profession and the discharge of the offices or functions of all kinds for which the respective University diploma may be required, unless otherwise prescribed by the Constitution.

Chapter II, Article 135, of the By-laws of the College of Public Accountants of Cuba, defines acts that shall be considered appropriate for the profession of Public Accountant as follows:

- a) To check, audit, inspect or verify accounts, documents and books of account, in connection with operations of economic or financial character, of natural or juridical persons, in order to verify the same or to determine the result thereof of the economic or financial situation of said natural or juridic persons.
- b) To prepare statements and balance sheets reflecting or exhibiting the result of said operations or the economic or financial situation investigated.

- c) To issue opinions, reports, or verdicts on said statements and balance sheets, or in any other form.
- d) To prepare statements and balance sheets reflecting or exhibiting the result of operations of an economic or financial nature of natural or juridic persons, or the financial or economic situation thereof as of a given date, when such preparation is made by persons other than those who have made the relative entries or have done the bookkeeping work.
- e) To install accounting systems for the recording of operations of an economic or financial nature of natural or juridic persons.
- f) To fulfill positions and offices of any kind for which the title of Public Accountant is required.
- g) To offer and to contract for the rendition of professional services of Public Accountants.
- h) To issue opinions on consultations on all matters pertaining to the profession.

Accountants:

Article VI of Law No. 10 is identical with Article V of Law No. 4. However, the By-laws of the College of Non-University Accountants contain no definition of the appropriate acts of the profession of Accountant, comparable to Article 135 of the By-laws of the College of Public Accountants. As has been previously stated, the role of accountants in this category is that of "private accountants."

Registration

General Conditions:

Registration as a member of the College of Public Accountants of Cuba is conditioned upon inscription and maintenance of status of active membership in a provincial college. The requirements for membership have already been considered under "Who May Practice."

Procedure:

Article 95 of the By-laws of the College of Public Accountants of Cuba provides that:

The Governing Board of the Provincial College shall take cognizance of and resolve upon, in the first instance, the applications for admission which it receives, transferring them to the National Governing Board, if it approves, for the latter's final resolution, within the term of five days after its consideration of them.

Article 96 of the By-laws states that registration may not be refused unless justifiable cause exists which is detrimental to the applicant in his professional capacity.

Article 97 reads as follows:

Whenever a Provincial College shall deem that a Public Accountant must not be admitted as a College Member, it shall designate an Instructor for the initiating of a proceeding incorporating in the same the application of the interested applicant, all the antecedents of the case and the steps taken, as well as a certified copy of the decision of the College adopted in the case. The record, thus formed, shall be submitted to the consideration of the National Governing Board which may examine such evidence and steps taken as it considers necessary, and after hearing the interested applicant and a Delegate of the Provincial Council which handled it, shall adopt the appropriate resolution. Should this decision confirm that of the local College, it shall be considered as a judgment that implies the disqualification of the applicant for practice of the profession insofar as the remedy of appeal is concerned.

Application Requirements:

Chapter II, Article 92 of the By-laws of the College of Public Accountants of Cuba stipulates the requirements for application for inscription in a provincial college. These requirements have already been listed under "Who May Practice."

Under the regulations in force, no practical experience is required before an accountant may engage in the public practice of

accounting. The holder of a degree of Public Accountant is legally entitled to practice his profession, subject to the absolute requirement of membership in the College of Public Accountants.

No examinations are given by the National College of Public Accountants or the Provincial College. The only examinations required are those taken by the candidates for the degree conferred by the National University of Havana or taken by holders of foreign degrees seeking to have them revalidated or incorporated in the University.

License to Practice:

The College of Public Accountants of Cuba issues to each member an identification booklet with leather cover, bearing in gilt letters the distinctive insignia of the College and containing his membership number, together with a certificate of the Secretary General to the effect that the individual is an active member, having complied with all the requirements of Article 92 of the By-laws. The booklet, which also gives the name of the Provincial College to which the individual belongs, contains the photograph and signature of the individual.

Revalidation or Recognition of Foreign Degrees:

Decree No. 1774, published December 29, 1915, provides for revalidation, known as "incorporation", of foreign degrees in the University of Havana. The general rule is stated in Article 2 thereof that in order to practice any profession for which studies are provided and titles conferred by the University of Havana, graduates of foreign universities must have their degrees revalidated in the University. Both native-born Cubans and naturalized Cubans are subject

to this rule. However, naturalized Cubans would not be allowed to apply for a license to practice until five years after naturalization.

If, in the judgment of the University of Havana, the requirements for the degree or title earned abroad are not substantially equal to those prescribed for the same degree or title in the University of Havana, the candidate must meet its academic requirements before the revalidation will be granted. To each degree or title so validated by the University is added "per Incorporacion" (by Incorporation), the charge for which is \$100.

Accountants in Practice at Date of Restrictive Legislation:

When the restrictive legislation became effective in 1946, approximately 30,000 Cubans were said to be engaged in the public practice of accounting. How many of this number were public accountants, actually carrying on an independent, professional practice is not known. Some of these individuals had titles of Mercantile Professor and Mercantile Expert, granted by the former School of Commerce of the Institute of Secondary Education of Havana (prior to 1927); others had the title of Accountant from an elementary school of commerce; and still others had the title of Authorized (or Certified) Public Accountant or of Industrial Accountant, obtained after completion of a three-year course in the Higher School of Commerce following completion of courses in the lower commercial schools.

In 1934, as an outgrowth of commercial training in Cuba, the elementary schools of commerce were replaced by professional schools of commerce. These latter schools now award, among other diplomas, the title of Accountant (Contador) and Bookkeeper (Tenedor

de Libres). In 1933 the Higher School of Commerce was reorganized and attached to the Faculty of Law and Social Sciences of the University of Havana, and in 1937 it became an independent unit, since which time it has been known as the School of Commercial Sciences. The first degree of Public Accountant awarded by the University was conferred in 1934.

The holders of degrees granted by the University since 1934 -- estimated at some 400 at the time Law No. 4 was passed -- had no difficulty because they had sponsored the law and could meet all its requirements. As mentioned earlier in this article, the law was construed to give retroactive effect to public accountancy as a university profession.

But to the so-called practical or expert accountants of Cuban nationality (and non-nationals, too), this legislation had serious effects. Included in this class were the Mercantile Experts and Mercantile Professors mentioned above, whose functions were similar, in some respects, to those of a Public Accountant. Because of certain specific provisions of the Commercial Code, they were permitted to continue their functions. The other accountants, who were without university titles, were deprived of the use of the title Public Accountant and could not thereafter render reports to third persons on the economic or financial condition of enterprises or sign reports or financial statements for governmental or official use, or perform any other functions of a Public Accountant as defined in the new regulations.

It is significant that in spite of the concerted efforts of the large number of Cubans then engaged in some form of accounting practice, no consideration was given to any vested rights acquired to such practice, as provided by Section 82 of the Cuban Constitution. Whether or not by governmental recognition of such vested rights for Cubans, similar treatment would have to be accorded also to citizens of the United States and other countries, long established in practice in Cuba, is a decision which the Cuban Government avoided making.

Education of Accountants

The School of Commercial Sciences (Escuela de Ciencias Comerciales) was founded by the Faculty of Law and Social Sciences of the University of Havana in 1933 and became an independent unit in 1937. Its purpose is to train candidates for the profession of Public Accountant and other specialists in commercial sciences.

For admission, a candidate must be at least seventeen years of age and must hold a bachillerato (equivalent to a high school diploma in the United States) from a public institute of secondary education, or a title of contador (accountant) from a vocational school of commerce, or a title of professor or commercial expert from the former school of commerce of the institute of secondary education of Havana. The bachillerato is obtained after six years of elementary school work and five years of secondary school work. The diploma of contador is obtained after completing six years of elementary school work and four years of commercial studies in a secondary school.

The University offers a five-year curriculum leading to the degree of contador publico (public accountant) and a two-year course

for the holders of the aforesaid title who wish to attain the doctorate in commercial science (doctor en ciencias comerciales). Up to August 18, 1949, the University had conferred 742 degrees to Public Accountants.

The officially prescribed curriculum for the degree of ¹ Public Accountant includes the following subjects:

First Year-	<u>Hours Per Week</u>
Advanced Accounting I	6
Economic Resources of Cuba	3
Financial Mathematics I	3
Political Economy I	3
Principles of Civil Law	3
	<u>18</u>
Second Year-	
Advanced Accounting II	6
Economic Resources of Cuba II	3
Financial Mathematics II	3
Political Economy II	3
Principles of Administrative Law	2
	<u>17</u>
Third Year-	
Auditing and Fiscalization	5
Commercial Statistics	6
Finance	2
Principles of Penal Law	1
Public Treasury	3
	<u>17</u>
Fourth Year-	
Industrial Accounting	4
Auditing and Fiscalization Practice I	4
Industrial and Labor Legislation	2
Mercantile Law	3
Fiscal Law	3
	<u>16</u>
Fifth Year-	
Systems of Accounting and Budgets	3
Auditing and Fiscalization Practice II	4
Business Administration	2
Insurance	3
	<u>12</u>

¹ School of Commercial Sciences, University of Havana, 1949-1950.

It is interesting to note that many of the leading books on accounting and related subjects written by authorities in the United States are used in the School of Commercial Sciences, either as texts or for reference purposes.

Cuba adheres to the custom of the Latin American countries and permits the holder of a university degree to practice his profession without passing further examinations, but subject to membership in an official association. The only examinations required for Public Accountants are those given during the five-year course of study for the degree.

Some Aspects of Practice

Annual Audits:

There is no requirement under Cuban law for annual audits of corporations. However, there is a "General Register of Corporations" in the Division of Banks, Merchants, Companies and Firms, Commerce Department, of the Ministry of Commerce. Banks and insurance companies are required to publish their balance sheets annually in the Official Gazette, and there is also a ruling which is not strictly enforced that corporations must publish annual balance sheets.

One of the objectives of the College of Public Accountants, as stated in its Program of Work for the years 1948-1950, is to obtain the adoption of measures providing that all public service companies, banks, insurance and bonding companies, as well as companies whose securities are listed on the Havana Stock Exchange shall be audited by Public Accountants who are members of the College.

Tax Returns:

The Regulations for the Cuban Profits Tax, contained in Presidential Decree No. 1117 of May 15, 1939, provide the following:

Article 19 (9). The documents enumerated . . . must contain a sworn certification of the taxpayer or his duly authorized representative, together with that of the natural or juridic person who effects or who is in charge of effecting the taxpayer's accounting, with respect to accuracy . . .

The foregoing function is one which the non-university Accountants are permitted to perform.

Professional Accountants Engaged in PracticePublic AccountantsStandards and Code of Ethics:

Under the laws in force, the College of Public Accountants of Cuba has the authority to set the standards for Public Accountants. Members of the College who are entitled to practice must strictly observe the code of ethics -- or Code of Morals, as it is called -- provided by Article 132 of the by-laws of the College. A translation of the rules is given below:

1. The Public Accountant must exercise his profession decorously, exalting it and giving it prestige.
2. All the members owe the College consideration and mutual respect.
3. No member of the College shall give out any written or verbal report, nor shall he give any opinion, nor shall he sign any report or certification of any kind, unless he absolutely knows and is able to prove the correctness thereof in accordance with the principles and doctrines generally accepted in professional practice.

4. The members of the College, when they act as employees of natural or juridic persons will not be able, in their capacity of public accountants, to audit, inspect, or certify operations of their employers, or the result of them, or other operations in favor of or for account of the employer.
5. There shall not be considered as comprised in the foregoing clause the public accountants who act as employees of the State, the Provinces, or the Municipalities, when they are in the exercise of their employment.
6. The Public Accountant who is consulted or called upon to act in relation to the exaction of taxes shall exercise the utmost care in the application of all the extensions of the doctrines of the Fiscal Law.
7. Disloyal competence or acceptance of fees which are unworthy of professional decorum is prohibited.
8. Contracting for fees which depend on the eventual result of the services which must be given, excepting the time employed on such services, is prohibited.
9. No member of the College shall receive a commission or compensation in any form which is by purchase of equipment, goods, stationery, etc., made by his client.
10. No member of the College may allow or give to any person who is not a Member of the College and a Public Accountant, participation in his fees within the national territory.
11. Members of the College are obliged to guard the professional secrets of their clients or employers and shall avoid mentioning unnecessarily their names and the work performed for them.
12. The members of the College are obliged to employ the greatest zeal and diligence in the work which they perform and in the offices which they discharge; but they shall not be responsible when they act following orders and directions of superiors whom they must respect.
13. No member of the College may offer his professional services to the client of another member; but he has the right to render to those who solicit them, appropriate services and advice.
14. The members of the College may associate only with members for the purpose of engaging in the practice of the profession in Cuba.

15. The members of the College shall not attempt to employ persons who are in the employment of another member of the College without first informing him of his intention to do so. This provision shall not prohibit negotiations with individuals who present themselves on their own initiative or who, as a result of an announcement of general nature, apply to a member for employment.
16. The College does not recommend professional announcements and prohibits advertising that is not a publication of an announcement in the form of a card in periodicals or magazines of well-known reputation. These announcements shall occupy not more than two columns in width by three inches in height and shall contain only the name, title, specialty or class of service to which the individual is dedicated, membership in the College, and his address.
17. No member of the College or any group of them shall seek any legislation that in any manner affects the profession without previously obtaining the approval of the National Governing Board; but all members of the College are obliged to give their cooperation and assistance to the initiatives and official conduct of the College or those that are performed with the approval of the said Board.
18. All members of the College must communicate by writing to their Provincial College any cases of illegal exercise of the profession of which they have knowledge, as well as of infractions of the By-laws on the part of any member of the College, especially with respect to the Moral Code and to the Rules for the Exercise of the Profession, in order that they may be timely investigated.
19. All members of the College in exercising the profession shall take care not to invade the sphere of activities of other professionals.
20. All members of the College have the obligation of comporting themselves in an irreproachable manner in the exercise of the profession and shall avoid all conduct prejudicial to professional dignity or that would tend to lessen the prestige of the class, notwithstanding that any such acts may not be provided for in this article.

Signature:

The mere signature of a Public Accountant in such capacity at the end of financial statements or any other similar documents shall be regarded as a report in blank, implying that the signer assumes full responsibility with regard to the correctness of such statements or documents (Article 152 of the By-laws of the College).

The license containing the authority to practice which is issued by the College of Public Accountants must be signed by the Public Accountant and his signature must be certified by the General Secretary of the College.

Number of Public Accountants Engaged in Practice:

Figures as to the exact number of university graduates who are engaged in the public practice of accounting are not known. As mentioned previously, the University of Havana had conferred 742 degrees to Public Accountants up to August 18, 1949. However, only a comparatively few appear to be in public practice, if the telephone directory listings may be any gauge. The December 1949 telephone directory for Havana lists thirteen Public Accountants in the classified section.

Accountants

It should be borne in mind that Accountants in this category are the non-university professionals whose functions are limited to acts which are performed by "private accountants." The only standards laid down are those given in Article 4 of the By-laws of the College of Non-University Accountants which provides in general for compliance with the laws, regulations, resolutions and decisions of the Municipal and National Colleges. No code of ethics appears to have been issued.

The National College of Non-University Accountants has issued a scale of minimum fees for accounting services rendered to commercial and industrial companies. The fees stipulated are for

monthly services in connection with tax matters and figuring of payrolls, and the Accountant is obliged to comply with the rates fixed.

An Accountant who is in charge of books of accounting may prepare and render to his "patron" (employer), balance sheets and financial statements, but he may not sign any report or financial statement as a public accountant, the only exception being that he is empowered to sign declarations of taxes.

Professional Accounting Societies

Under the heading "Regulatory Authority," information has been given on the national association named "College of Public Accountants of Cuba," which was organized in 1934. Subordinate to this national college are the provincial colleges; membership in any college automatically enables the individual to become a member in the national college.

The requirements for membership have already been discussed under "Who May Practice." The national college has, by Article 132 of its By-laws, laid down a "Code of Morals" which has been considered under "Professional Accountants Engaged in Practice."

The purposes of the College of Public Accountants of Cuba are enumerated in Article 4 of its By-laws, a translation of which follows:

- a) To comply with the provisions now in force or hereafter enacted on the compulsory association of university professionals insofar as the profession of Public Accountant may be concerned.
- b) To enhance in every respect the practice of the profession of Public Accountant, maintaining decorum, discipline, and fraternity among its associates.

- c) To see that the moral principles universally governing the practice of the profession of Public Accountant are duly observed.
- d) To regulate within the scope of its faculties the practice of the profession of Public Accountant and to procure the enactment of such legislative and regulatory provisions as may be beneficial to the profession.
- e) To contribute to the economic betterment of the Republic, by promoting efficiency in the practice of the profession.
- f) To protect Public Accountants in the practice of their profession, individually and collectively, procuring for their benefit the considerations which they merit.
- g) To foster the cultural, moral, and material betterment of the class.
- h) To prevent and combat by all legal means at its command, the illegal practice of the profession.
- i) To cooperate with the Public Administration in the enforcement of the legal provisions which are related to the profession and to render such opinions and to furnish such data as may be required by public entities or officers in the general interest.
- j) To report on professional fees in cases submitted to litigation.
- k) To cooperate for the greater glory of the University of Havana and, in particular, of the Faculty of Commercial Sciences.
- l) Any other purposes that may be beneficial to the interests of the profession.

Theoretically, the only way that a United States CPA would be eligible for membership in this association would be by revalidation of his certificate in the University of Havana and proving five years of continuous residence in Cuba prior to 1940. As a practical matter, such procedure seems to be difficult to effect. To date, only one United States CPA, a practicing accountant and a resident of Cuba for fifty years has been successful in obtaining incorporation of his California CPA certificate.

The National College of Public Accountants of Cuba is a member of the Pan-American Union of Technicians in Economic Sciences, and it was represented by delegates at the First Inter-American Conference of Accounting held in Puerto Rico in 1949.

Accountants

Also under the heading of "Regulatory Authority," information has been furnished with respect to the National College of Non-University Accountants, established in 1947. Affiliated with and subordinate to this College are some eighty-six Municipal Colleges, representing individuals holding the title of Accountant. The requirements for membership have previously been discussed. Membership in a municipal college is tantamount to membership in the National College.

The colleges are officially recognized by Law No. 10, and membership by practicing accountants is compulsory. The purposes of the Municipal College of Non-University Accountants of Havana are practically identical with the purposes of the National College of University Accountants, with the exception of the omission of the word "Public" where it pertains to the practice of the profession and to a clause relating to the University of Havana.

Several United States citizens have already become members of this College, apparently being eligible for membership by simply furnishing a certificate of membership in the Asociacion nacional de contables (National Association of Accountants). This latter association, formed in 1933, is also referred to as Union de contadores and tenedores de libros (Union of Accountants and Bookkeepers). The main

purposes of this society are to unite all persons who practice accounting without distinction of sex, nationality, political or religious creed, and to work for the material and cultural improvement of the class.

The official publication of the Non-University Accountants is Contabilidad (Accounting), the first number of which was issued on July 1, 1950. El Contador Cubano (The Cuban Accountant) is the official publication of the National Association of Accountants.

SECTION II

PRACTICE OF ACCOUNTANCY BY UNITED STATES CITIZENS

AND OTHER NON-NATIONALS

Basic Laws and Regulations

The situation with respect to practice by United States citizens and accounting firms is delicate and complicated. According to a strict construction of Law No. 4 and the By-laws of the College of Public Accountants of Cuba, which regulates the public practice of accounting, a United States citizen is not now legally entitled to engage in practice under his own title or even as a non-certified public accountant (as he may do in New York State, for example). This is so regardless of whether such practice is permanent or temporary.

Obviously, a United States citizen cannot fulfill the requirement as to Cuban nationality; he would experience difficulty in having his degree from a United States college or university incorporated in the University of Havana; and unless he had been established in public practice prior to the promulgation of the 1940 Constitution he cannot claim vested rights. Moreover, the controversial question of vested rights for foreigners has not yet been judicially determined by the Cuban courts or otherwise officially decided by the Cuban Government.

Inasmuch as a United States CPA may not become a member of the College of Public Accountants of Cuba without holding the degree of Contador Publico from the National University of Havana, the next question to be considered is whether membership in the College of Non-University Accountants of Cuba would enable him to practice in

Cuba. An examination of the By-laws of the latter association indicates that such membership is not a solution because of the fact that the actual public practice of accounting as a profession is denied to this group. See further comments on this matter which appear under "Permanent Practice."

It follows that since a United States citizen may not practice as a Public Accountant, the only alternative is qualification under Law No. 10 by becoming a member of the non-university college and conducting practice as a private accountant. In this connection also, see the comments which follow under "Permanent Practice."

The decision in the Irvine case, previously cited, states the law which is applicable to United States citizens and other non-national accountants who were engaged in practice when the Cuban Constitution was adopted in 1940. A discussion of this case follows:

In Case No. 307 of 1946 before the Court of First Instance in Havana, the College of Public Accountants of Cuba, as private accuser, had preferred criminal charges of usurpation of legal capacity or professional intrusion against Angus Mackay Irvine, a British subject, who had been practicing in Cuba as a public accountant for his own account or for an international firm since 1929, and who had not been registered in the College.

The defendant in his written plea raised the question of legal organization of the College, which was constituted under Presidential Decree No. 641 of March 9, 1944 (officially published March 17, 1944) and contended that since the College had not complied with subsequent provisions of Law No. 4 (officially published

November 17, 1944), the practice of the profession was free. He further contended that, under Article 82 of the 1940 Constitution, the principles of international reciprocity should be observed and that, having practiced as a public accountant in Cuba since the year 1929, he had acquired vested rights.

The Court of First Instance held (on September 15, 1947) that the defendant was not guilty of the crime charged since there was no law then in force regulating the profession, the By-Laws of the College not having been promulgated under Law No. 4, and that, as provided by Article 57 of the Constitution of 1940, the profession of public accountant had not been declared to be one which required any degree or official authorization for its practice. But, with respect to the principles of international reciprocity, the Court held that the point had not been proven (apparently because of the fact that proof of foreign law governing the practice of accountancy in Great Britain had been submitted by letter rather than by affidavit).

The decision of the lower court was promptly appealed by the College. The Supreme Court arrived at its decision on December 17, 1948 but publication was not made until May 1949. This opinion annulled the previous decision and held that Mr. Irvine had committed the crime of usurpation of legal capacity by practicing the profession of accountancy in Cuba, but as he had practiced in good faith and without knowledge that in doing so he had committed a crime, he should be acquitted without sanction or penalty. The decision further held that it was error for the lower court to say that there was no law regulating the profession in accordance with Article 57 of the

Constitution, and that activities in which the so-called "public accountants" had been engaged covering private accounting for merchants was not affected.

The decision of the Supreme Court of Cuba is important for its effects not only on the rights of nationals who had been engaged in practice prior to the promulgation of the 1940 Constitution and prior to the enactment of restrictive legislation but also on the rights of United States citizens and other non-national accountants to continue in their established practices. The Court, however, made no judicial determination of the controversial question of vested rights.

Qualification of a United States CPA

The remarks which follow apply to accountants who were not residing in Cuba at least five years prior to 1940. Under the laws now in force, a United States CPA who retains his citizenship would not be able to qualify for registration as a Public Accountant in Cuba. Even though he were successful in having his CPA certificate or degree from a United States college or university incorporated in the University of Havana, there would still remain the requirement of Cuban citizenship.

Examination:

There is absolutely no possibility of qualifying by examination before the regulatory authority. The University of Havana has the power to require examinations of holders of foreign degrees before incorporating such degrees. Under existing conditions, it seems doubtful that any United States CPA would have the opportunity of taking

and passing an examination for such purpose. The University could, of course, extend incorporation to foreign degrees held by Cubans.

Revalidation:

There is no treaty presently in force between the United States and Cuba by which a United States degree or certificate in accounting would be recognized in Cuba or, conversely, a Cuban degree in the United States.

As stated previously, the rules of the School of Commercial Sciences of the University of Havana provide for the revalidation by examination of titles earned in foreign countries. The examination for revalidation is given in two sessions, each of which requires six hours. The first part covers advanced accounting, industrial accounting, audits and investigations, accounting systems and budgets, audit and investigation practice, financial mathematics, and commercial statistics. The second session consists of problems on law and commercial sciences based upon the official plan of studies.

Because of the citizenship requirement, already discussed, a United States CPA would not be able to have his certificate incorporated in the National University unless he had resided and practiced in Cuba for the required length of time prior to 1940.

Proof of Practical Experience:

Inasmuch as proof of practical experience is not a condition precedent for the practice of the profession in Cuba, proof of such experience obtained in the United States, Cuba, or elsewhere would now have no effect on Cuban requirements for qualification to practice.

Membership in Recognized Society:

The only society of public accountants which the Cuban authorities recognize is the College of Public Accountants of Cuba, the regulatory body, which includes the subordinate colleges. Membership in a professional society organized in the United States, such as the American Institute of Accountants or any state CPA society would have no bearing whatever on Cuban requirements.

Permanent Practice

Since the enactment of restrictive legislation in Cuba, there has been determined opposition on the part of the National College of Public Accountants to the performance by United States accountants or firms of any of the functions attributed to its members. The College has opposed examinations by United States accountants not only of Cuban enterprises -- financed in whole or in part by United States capital -- but also of United States enterprises doing business in Cuba. It has strenuously opposed the practice by firms maintaining offices long established in Cuba and has even more vigorously resented the practice by United States firms, without offices in Cuba, which send their representatives to Cuba from time to time. The College has instituted legal proceedings against United States citizens and firms concerning their right to practice and has caused interference by notarial demands on clients of United States accounting firms.

The situation in Cuba has necessitated intervention on the part of our State Department over the past several years. Negotiations

have been and are now being carried on in an effort to work out a solution with the Cuban Government whereby: (1) United States accounting firms which have maintained offices in Cuba will be allowed to continue them in order to serve clients already acquired and to carry out work involving United States interests; and (2) United States accounting firms not now maintaining offices in Cuba would be permitted to send representatives to Cuba from time to time in order to audit the accounts of enterprises in which United States citizens have made substantial investments.

Recent developments indicate that the present Cuban Government is not disposed to oppose the requirement that accounting services, rendered for Cuban companies and their stockholders in Cuba, be performed by Cuban Public Accountants. Neither is it inclined to permit United States accountants to perform services in Cuba for official purposes such as, for example, certifying statements for use of Cuban Government agencies.

Obviously, it is not now possible to undertake permanent practice by opening a new office in Cuba. The problem is, therefore, confined to (1) firms (or individuals) already established and maintaining offices, and (2) firms (or individuals) maintaining no offices but which from time to time send representatives to Cuba. A discussion of the status of each class follows:

Firms Established and Maintaining Offices in Cuba:

These firms are now acting in the role of "private accountants!" The representatives of such firms, in their individual capacities, prepare financial statements or other accounting information, which may not be submitted in lieu of reports or opinions required by law to be filed or published in Cuba. Since "publication" may be strictly

construed as comprising notice in not only the Official Gazette but also any other newspaper or periodical and even by mail to Cuban stockholders, no financial statement or report bearing a certification signed in the United States or elsewhere outside of Cuba, should be published in Cuba. It is desirable also that a Cuban Public Accountant should supervise any work performed.

In the light of the decision of the Irvine case, previously cited, the representatives of the United States accounting firms maintaining offices in Cuba, considered it advisable to qualify themselves to practice as Accountants by joining the non-university group. They became members of the Asociacion Nacional de Contadores (National Association of Accountants). Under Law No. 10, providing for compulsory association, the resident partner or manager of a firm must be a member of the College of Non-University Accountants. The holders of certificates of membership in the National Association were in turn accepted for membership in the provincial College of Non-University Accountants of Havana, such membership being automatically membership in the National College of Non-University Accountants.

Apparently, there has been no enforcement so far of the restriction against a Cuban Public Accountant associating himself with any one other than a Public Accountant. The firms already established in Cuba employ practically all Cuban employees in their branches, many of whom undoubtedly are "university" accountants.

The matter of continuity of United States accounting firms under their established firm names is, of course, extremely important.

There is no provision for firm membership in the College of Non-University Accountants. The By-Laws of the College of University Accountants provide that a firm name may be used but it must be composed of the names of living members and the words "and company" may not be used. There is no comparable article in the By-Laws of the College of Non-University Accountants.

There appears to be no limitation as to size of staff of firms already established. However, under Cuban labor laws, 50 percent of employees must be natives and 50 percent of the payroll must go to native Cubans. Those employers with a higher percentage of Cubans must maintain that proportion and increase it in the future, and naturalized citizens may not be completely excluded. In case of reduction, aliens go first. Only native and naturalized citizens may fill vacant or new positions, unless adequately trained Cubans are not available, in which case, aliens may be employed.

In view of the foregoing provisions, it would seem that in order to replace a staff member with a United States citizen, approval of some high official of the Cuban government would have to be first obtained.

Considering the position of United States accountants and accounting firms, acting in the role of "private accountants," it is plain to be seen that there are many restrictions as to the types of engagements that may be now undertaken by them. Strictly speaking, they may not render accounting services for Cuban companies and their stockholders in Cuba; neither may they certify reports or statements for submission to Cuban Government agencies. Their certificates may

not be published, officially or unofficially, in any newspaper or periodical in Cuba and should not be mailed to stockholders residing in Cuba, even though the certification is signed outside of Cuba.

Firms Maintaining No Offices in Cuba but Sending Representatives:

The status of these firms is substantially the same as that of the firms maintaining offices in Cuba, except for compulsory membership in the Non-University College of Accountants. These firms are likewise regarded as "private accountants" and may prepare financial statements and other accounting information for signature and use outside of Cuba. Possibly, because the individual representatives are not paid in Cuba, they are not required to become members of the Non-University College of Accountants.

The same restrictions as to reports for local use and publication, applicable to the firms maintaining offices, govern these firms. Reports, even though signed and intended for use outside of Cuba should not be mailed to stockholders residing in Cuba.

Isolated Engagements

The matter of United States accountants performing isolated engagements in Cuba has been covered in the paragraphs immediately preceding this caption.

Immigration Requirements

For permanent residence in Cuba, permission must be obtained from the Immigration Department as well as a permit from the Department

of Labor. Anyone can go to Cuba, without a passport or visa, and remain there for six months. However, in order to perform any work there a residence permit is necessary.

The procedure for obtaining the work permit is as follows: The client should approach the Labor Department informing it of his desire to have his books examined by accountants from the United States, at the same time requesting that permits be issued to accountants whose names should be furnished. Necessary permits will then be issued to the client in Cuba or, in some cases, will be forwarded directly to the accountants.

Accountants Established In Practice

Only three United States citizens are believed to be engaged in public practice at the present time, and they are associated with accounting firms maintaining established offices. The following United States accounting firms maintain offices in Cuba:

Deloitte, Plender, Griffiths & Co.
 Haskins & Sells
 Peat, Marwick, Mitchell & Co.
 Price, Waterhouse & Co.
 Stagg, Mather & Hough

The following firms without offices but with established clienteles in Cuba send representatives from time to time:

Arthur Andersen & Co.
 Loomis, Suffern & Pernald
 Lybrand, Ross Bros. & Montgomery
 R. G. Rankin & Co.

SECTION III

TREATIES AND LEGISLATION PENDING

Proposed Treaty Between The United States And Cuba:

There is no treaty presently in force under which United States accountants have the right to engage in the public practice of accounting in Cuba. During the past several years many conferences have been held by representatives of the American Institute of Accountants with officials of our State Department in connection with a commercial treaty which is now under consideration with Cuba. Many difficulties surround the drafting of a treaty acceptable to both countries.

Any such treaty must, of course, contain reciprocal provisions. If United States accountants and firms are given permission to freely practice the profession in Cuba, Cuban citizens must be given the same right in the United States. Here, some difficulty is encountered because of the laws of the individual states which prohibit the admission of foreign accountants. Our State Department is not willing to negotiate any treaty which places the Federal Government in the position of overriding state laws. And Cuba -- with an intensely nationalistic attitude -- is faced with the economic necessity of affording to Cuban nationals who have studied accounting the opportunity to practice their profession. On the other hand, the United States accounting firms which have practiced in Cuba for a long time (some since 1902) and have employed and trained Cuban accountants desire to prevent an expropriation of their property

rights with respect to practices built up over many years, most of which is in connection with United States interests.

The United States accounting firms feel that the present controversy with the Cuban professional accountants should be resolved on the basis of broad policy considerations of the governments of Cuba and the United States, rather than the immediate selfish interests of both classes of accountants. While the United States accounting firms are willing to make concessions to the Cuban public accountants, they feel that the problem should be allowed "to work itself out," in much the same manner as the same problem worked itself out in this country in the early days of the profession. British accountants first established themselves in public practice and subsequently employed and trained United States accountants, many of whom were either admitted to partnership or founded their own firms. Today, practically all the original British accounting firms in the United States are entirely in the hands of United States citizens. As the profession advances in Cuba, the same pattern should develop.

The United States accounting firms now maintaining offices in Cuba feel that they should be allowed to continue to maintain them as "service offices" to serve clients already acquired and to carry out work involving United States interests that may be referred to them by their main offices. They also feel that they should be permitted to serve Cuban clients with whom their professional relations had been established prior to the date of any agreement that may be entered into. As a concession to the Cuban public accountants, the

United States firms might be willing to agree to accept no more purely local engagements from Cuban clients and to voluntarily enlist the collaboration of Cuban accounting firms in matters requiring the signing of accounts for official purposes within Cuba so that only the names of Cuban accountants would appear on accounts published in the Official Gazette or filed with governmental authorities pursuant to law.

With respect to the United States accounting firms not now maintaining offices in Cuba, it is felt that they should be permitted to continue to send personnel to Cuba to audit accounts of enterprises in which substantial financial interests of United States citizens are involved.

The result of any exchange of agreements incorporating the above arrangements would be the virtual withdrawal of United States accountants from the local practice of accounting in Cuba but maintaining the right of United States citizens to have auditors of their own choice examine the accounts of enterprises in which they have important financial interests.

As of the present time (March 15, 1951), no commercial treaty has been signed by the Governments of Cuba and the United States.

Treaties Between Cuba And Other Countries:

A commercial convention between Cuba and France, signed on November 6, 1929, provides that "Nationals of each of the two contracting parties shall enjoy in the territory of the other, most-favored-nation treatment in respect of establishment of residence, the carrying

on of trade, industry and any other occupancy or profession...."

A commercial agreement between Cuba and the United Kingdom of Great Britain was entered into on February 19, 1937. This convention provides that the Cuban Government will permit British interests rendering services in Cuba to have in their employment a reasonable number of foreigners in technical or supervisory positions.

Between Cuba and the Republic of Chile there exists a convention of Commerce and Navigation which was signed on March 13, 1937. This document contains a clause providing that "the nationals of each country shall enjoy in the territory of the other . . . for the purposes of their business and occupations, commerce and industry, the same rights, advantages, and consideration as have been or may hereafter be granted to the nationals of any other country."

Pending Legislation:

Under Article 82 of the Cuban Constitution, the Cuban Congress could, if it so desired, by a special law provide for the temporary suspension of the requirement that professions requiring an official title shall be practiced only by Cubans by birth and Cubans by naturalization after five years.

In May 1949 a decree was proposed and subsequently approved by the President and Cabinet containing provisions to the effect that examination of accounting books and records which were made for the purpose of informing interested parties regarding the financial condition of businesses would be considered as acts of private accounting and that foreign accountants would have the right to perform in Cuba such acts of private accounting. Rumors caused political disturbances

in Havana, with the result that this decree was never issued. There is adequate reason to believe that it will not be passed, at least, by the present Cuban Government.

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In conclusion it should be stated that the foregoing study of Public Practice of Accounting in Cuba has been prepared from a study of the laws dealing with accounting practice and other information which has been obtained from sources believed to be reliable. A list of such sources is contained in the attached appendix.

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MEMORANDUM RE PUBLIC PRACTICE OF ACCOUNTING INC U B A✓ Status of Profession:

Contador Publico (Public Accountant) is a university or "liberal" profession which may be practiced by only native-born Cubans or Cubans naturalized five years prior to authorization to practice.

Contadores (Accountants) -- nongraduates of the University -- are prevented from practicing public accounting under Law No. 4 and regulations issued thereunder. They may perform only bookkeeping services and sign minor tax returns for clients.

✓ Regulatory Laws:

Constitution of 1940, Article 82, contains limiting clause relative to practice of professions.

Law No. 4, published November 17, 1944, provides for the formation of Colleges of University Graduates, requirements for membership therein, and for practicing professions.

Resolution of Ministry of Labor of January 3, 1945 approved the by-laws of the College of Public Accountants of Cuba which body regulates public practice.

The non-university group is governed by Law No. 10, published November 25, 1946, which established compulsory association of persons practicing non-university professions. By-laws of the College of Non-University Accountants of Cuba, adopted in pursuance of Law No. 10, were published on March 24, 1947.

Decision No. 345 of December 17, 1948, published May 10, 1949, in the matter of the appeal by the National College of Public Accountants against the decision of the Court of First Instance in the case against Angus Mackay Irvine is an extremely important one. Decision gave retroactive recognition of public accountancy as a university profession.

✓ Regulatory Authority:

College of Public Accountants of Cuba regulates practice by Public Accountants; and College of Non-University Accountants of Cuba governs Accountants, or Non-university graduates. Both bodies are under supervision of Ministry of Labor. Membership in respective association is compulsory.

✓ Registration:

Registration as a member of the College of Public Accountants of Cuba is conditioned upon inscription and maintenance of status of active membership in a provincial college. Non-university Accountants must also be registered in their respective associations.

✓ Conditions for Practice:

✓ Citizenship is an absolute requirement for practice as a Public Accountant. It is not a requirement to practice as an Accountant (with limited functions).

✓ A degree of Contador Publico from the University of Havana, or a foreign degree incorporated therein, is a condition for registration. A Public Accountant must be of full age (21 years).

✓ No experience is required to engage in practice; the university degree is sufficient qualification.

✓ Examinations are not given by the regulatory authority. The only examinations are those required for degree candidates given by the National University of Havana.

✓ Professional Accountants in Practice:

It is estimated that there are about 400 Public Accountants holding University degrees; but it is not known exactly how many are in public practice. (There are various estimates as to the number of accountants in the non-university group, ranging from 40,000 to 60,000.)

{ The by-laws of the College of Public Accountants of Cuba (Article 132) contain a code of morals applicable to its members. Non-university group has apparently adopted no code of ethics.

The College of Public Accountants of Cuba is the official association which represents the Public Accountants. Membership is obligatory.

The Municipal College of Non-University Accountants of Havana probably represents 98 percent of the non-university group.

✓ Practice by United States Citizens or Firms:

At the present time it is absolutely impossible to establish an office in Cuba for the permanent practice of public accounting. United States, and other foreign firms, long established in Cuba have had difficulty in continuing offices and are not permitted to act as Public Accountants. Legal proceedings have been instituted against United States citizens and clients of United States firms have been served with notarial demands.

United States firms, without offices in Cuba but with a long established practice, have experienced difficulty in performing engagements for clients in Cuba. These firms, as well as the firms maintaining offices, are regarded as private accountants and may prepare financial statements and reports only for use and publication outside Cuba. Certified reports or statements may not be published, officially or unofficially, in any newspaper or periodical in Cuba.

Treaties and Legislation Pending:

Although the situation with respect to practice by United States accounting firms is quiescent at the present time (early 1951), sooner or later a commercial treaty or convention will be necessary to prevent the expropriation of the property rights of these firms who have built up a practice over many years, most of which is in connection with United States interests in Cuba, aggregating billions of dollars.

During the past several years a great many conferences have been held by representatives of the American Institute of Accountants with officials of the State Department relative to the problems of United States citizens and accounting firms. A commercial treaty is said to be under consideration with Cuba, which, if signed by the United States, will contain measures protecting the rights of United States investors to have accountants of their own choice make investigations of Cuban enterprises which are financed by United States investors.