

Rulebook



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Rulebook

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Section 1

Royal Charter and bye-laws

Introduction

The Royal Charter, which was granted to the Association on 25 November 1974, by Queen Elizabeth II, is the constitution of the Association. The affairs of the Association are managed and regulated in accordance with the Charter and bye-laws. Both the Charter and the bye-laws may be amended or added to in general meeting by resolution passed by not less than two-thirds of the members entitled to vote and voting. Such amendments or additions to the Charter and bye-laws have no force or effect until they have been approved by the Privy Council. The Association's Council may from time to time make such regulations as it thinks fit, provided such regulations are not in any way inconsistent with any of the provisions of the Charter and bye-laws.

Members are reminded that, on applying for admission to membership, they sign an undertaking that if admitted, and as long as they are members, they will observe the Charter, bye-laws and regulations for the time being in force.

1.1

Royal Charter

Elizabeth the Second by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas the Association incorporated under the Companies Act 1929 and known as “The Association of Certified Accountants” (hereinafter referred to as “the existing Association”) have by their humble Petition prayed that We would be graciously pleased to grant them a Charter on Incorporation:

And Whereas We have taken the said Petition into Our Royal Consideration and are minded to accede thereto:

Now Therefore know ye that We by virtue of Our Prerogative Royal have of Our especial grace, certain knowledge and mere motion granted and declared and do by these Presents for Us, Our Heirs and Successors grant and declare as follows:

1. The persons now members of the existing Association and all other persons who shall hereafter pursuant to this Our Charter and the bye-laws become members of the Body Corporate hereby constituted shall for ever hereafter be one Body Corporate and Politic by the name of “The Association of Chartered Certified Accountants” and by the same name shall have perpetual succession and a Common Seal with power to alter, break and make anew the said Seal from time to time at their will and pleasure, and by the same name shall and may sue and be sued in all Courts and in all manner of actions and proceedings and shall have power to do all other matters and things incidental or appertaining to a Body Corporate.

2. In this Our Charter unless the context otherwise requires:

- (a) *the Association* shall mean The Association of Chartered Certified Accountants as hereby incorporated;
- (b) *the bye-laws* shall mean the bye-laws set forth in the Second Schedule hereto or other the bye-laws from time to time of the Association;
- (c) *the Council* shall mean the Council of the Association hereinafter referred to and as from time to time constituted in accordance with the bye-laws;
- (d) *public practice* means practice as a public accountant in the capacity of sole principal, in partnership or through the medium of a body corporate or otherwise and *practising* as applied to an accountant shall have the same connotation; the decision of the Council as to whether or not a person is engaged in public practice shall be conclusive;

1.1 Royal Charter

- (e) *industry and commerce* means the administration of organisations of whatever kind engaged in industrial and commercial activities of every type and shall include the nationalised industries; the decision of the Council as to whether or not a person is engaged in industry or commerce shall be conclusive;
- (f) *the public service* means the administrative organisations of central, regional or local government and all public bodies of a non-industrial character; the decision of the Council as to whether or not a person is engaged in the public service shall be conclusive;
- (g) *the 1989 Act* means the Companies Act 1989;
- (h) words importing the singular only shall include the plural and vice versa, words importing the masculine gender only shall include the feminine gender and words importing persons shall include corporations;
- (i) any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision shall include that provision as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

3. The principal objects and purposes for which the Association is hereby constituted are to advance the science of accountancy, financial management and cognate subjects as applied to all or any of the professional services provided by accountants whether engaged in public practice (in partnership or through the medium of a body corporate or otherwise), industry and commerce or the public service; to promote the highest standards of competence, practice and conduct among members of the Association so engaged; to protect and preserve their professional independence and to exercise professional supervision over them; and to do all such things as may advance and protect the character of the profession of accountancy whether in relation to public practice (carried on in partnership or through the medium of a body corporate or otherwise) or as applied to service in industry and commerce or the public service.

4. In furtherance of the objects and purposes set out in Article 3 hereof the Association shall have the following ancillary objects and powers:

- (a) to acquire, take over and accept from the existing Association by disposition, conveyance, assignment or transfer the whole of the assets and property both real and personal and also the whole of the debts and liabilities of whatever kind of the existing Association and where necessary to give to any trustees in whom the said assets or property may be vested a valid receipt, discharge and indemnity for and in respect of the transfer of the same to the Association and without prejudice to the generality of the foregoing to assume responsibility for all undertakings and engagements of whatever kind of the existing Association and to carry out all the requirements of the same so far as is legally possible to the same extent and in the same manner as the existing Association would have done;
- (b) to purchase, take on lease or in exchange or hire in any other way acquire any real or personal property or options for acquiring the same in any part of the world considered necessary for the use of members and others or for any purposes of the

- Association and to sell, lease, mortgage (by issue of debentures, debenture stock or otherwise), exchange, partition or otherwise deal with in any way any real or personal property, rights or assets of the Association; and to construct, alter and maintain in any part of the world any buildings considered necessary for the use of members and others or for any purposes of the Association and to provide the same with all property and necessary fixtures, fittings, furniture and other equipment;
- (c) to accept any gift, endowment or bequest to the Association and to execute and perform any trust attaching thereto;
 - (d) to accept and take by way of gift and absorb upon any terms the undertaking and assets of any society or body whether incorporated or not having objects similar to those of the Association and to undertake all or such as may be agreed of the liabilities and engagements of any such other society or body but so that the exercise of the powers conferred by this paragraph shall be subject always to the approval of the Association in general meeting (of which meeting not less than twenty-one days' clear notice in writing shall have been given) by resolution passed by not less than two-thirds of the members entitled to vote and voting on such resolution and to the approval of the Lords of Our Most Honourable Privy Council (of which approval a Certificate under the hand of the Clerk of Our said Privy Council shall be conclusive evidence);
 - (e) to establish and administer or to participate in the establishment and administration of any organisation, whether incorporated or not and whether subsidiary to the Association or not, having as its principal object or one of its principal objects the advancement of the science of accountancy or any part thereof where in the opinion of the Council the interests of the accountancy profession may be most advantageously served through the medium of such an organisation and to establish, maintain, review and finance, alone or in conjunction with others, a body, whether incorporated or not, independent of the Association, having as its object the review of the schemes of regulation and discipline of the Association and other participant accountancy bodies;
 - (f) to undertake, execute and perform any trusts or conditions affecting any real or personal property of any description acquired by the Association;
 - (g) to organise, finance and maintain schemes for the granting of diplomas, certificates and other awards (with or without prior examinations or tests) to persons seeking admission to membership of the Association, members of other professional bodies or others and to issue certificates and diplomas to such persons and to provide for the use of designatory letters by such persons, provided that no such diploma, certificate or other award issued by or on the authority of the Association shall contain any statement expressing or implying that it is granted under the authority of any Department of Our Government or other authority unless in fact it is so granted; and provided that no such scheme, open only to members of the Association, as originally established or subsequently amended, shall provide for the use of designatory letters by members of the Association unless and until they shall have been approved by the Association in general meeting and by the Lords of Our Most Honourable Privy Council (of which approval a Certificate under the hand of the Clerk of Our said Privy Council shall be conclusive evidence); and provided also that no member shall in any circumstances be obliged to participate in any such schemes;

1.1 Royal Charter

- (h) to encourage the study of such subjects by providing scholarships, bursaries, prizes and donations on such terms and conditions as may be thought fit, by making grants to universities and other educational institutions, by providing courses, classes, lectures and other tuition for members and others or by making grants for the provision of the same or for research or by such other means as may be thought appropriate;
- (i) to promote and facilitate the dissemination and exchange of information on matters of professional interest among members and others by the holding of conferences, meetings and seminars for the reading of papers and reports, by the publication of periodicals, books, monographs or papers and by the promotion, compilation and publication of research studies;
- (j) to establish and maintain a library or libraries for the use of members and others;
- (k) to provide such services including technical and advisory services as may promote and further the interest and efficiency of members and others and of the accountancy profession generally;
- (l) to form local branches and committees or appoint local representatives in any part of the world with such powers and subject to such conditions as the Council may from time to time determine and to make such grants and contributions (if any) to the same as the Council shall think fit;
- (m) to procure the Association to be registered or recognised in any overseas country or place and to exercise any of its objects or powers in any part of the world;
- (n) to make and carry out any arrangement for joint working or co-operation with any other society or body, whether incorporated or not, carrying on work similar to any work for the time being carried on by the Association;
- (o) to borrow or raise money on such terms and on such security as may be thought fit for any of the purposes of the Association; provided that no money shall be raised by the mortgage of any real or leasehold property of the Association without such consent or approval (if any) as may be required by law therefor;
- (p) to establish, administer and contribute to any charitable purpose which in the opinion of the Council may tend to promote any of the objects of the Association or which has objects similar to those of the Association and to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and schemes for such purposes, and generally to contribute to or otherwise assist any charitable or benevolent institutions or undertakings and grant donations for any national or public purpose;
- (q) to pay to officials and servants of the Association their expenses and such salaries, pensions, gratuities or other sums in recognition of services (including those rendered to the existing Association before the date of this Our Charter) and to make such provision for their widows, children or other dependants as the Council may from time to time think proper;
- (r) to operate schemes of regulation and discipline of the Association's members and students and such other persons as agree to be subject to such schemes and, with

- one or more other professional accountancy bodies, to establish and participate in a scheme (whether constituted as an incorporated body or not) for the investigation and discipline in certain circumstances of such persons as may be subject to the scheme pursuant to the procedures of that scheme rather than the Association's own disciplinary scheme;
- (s) to take all such steps as it thinks fit to enable it to become and operate as a recognised professional body for the purposes of the Financial Services Act 1986 and do anything whatsoever incidental to or in connection therewith and (without prejudice to the generality thereof) may:
- (i) implement certification procedures for the purposes of the said Act;
 - (ii) provide for the constitution of a scheme, fund or other arrangements for the compensation of persons dealing with persons certified by the Association for the purposes of the said Act;
 - (iii) accept undertakings and enter into agreements with firms or persons (whether individuals or corporations) in relation to the certification of such firms or persons or of firms in which such persons are partners or of corporations with which such persons are directly or indirectly concerned (whether through ownership, management or otherwise); and
 - (iv) make provision (whether by agreement or otherwise) for the application of disciplinary procedures and sanctions to firms and persons giving such undertakings or entering into such agreements;
- (t) (i) to take all steps as it thinks fit to enable it to obtain and maintain recognition as a supervisory body for the purposes of the 1989 Act, any corresponding provision under the law of Northern Ireland and any other corresponding or similar provision of the law of any other jurisdiction anywhere in the world; and
- (ii) to take all steps as it thinks fit to enable any qualifications offered by it to be declared a recognised professional qualification for the purposes of the 1989 Act so as to enable it to become a recognised qualifying body for the purposes of the 1989 Act, any corresponding provision under the law of Northern Ireland and any other corresponding or similar provision of the law of any other jurisdiction anywhere in the world; and
 - (iii) to perform on behalf of other bodies, which are recognised supervisory bodies under the 1989 Act, the functions of monitoring of compliance with the rules of such other bodies and of investigating complaints on behalf of such other bodies against that body or any other person; and
 - (iv) to do anything whatsoever incidental to or in connection with such powers (without prejudice to the generality of those powers) to:
 - (1) implement procedures (including arrangements for monitoring and enforcement in relation to members or otherwise) to ensure that the requirements for recognition of the Association as a supervisory body, set out in Part II of Schedule 11 to the 1989 Act, are and continue to be fulfilled;

1.1 Royal Charter

- (2) implement procedures for the certification of any individual (whether or not a member of the Association) or firm as eligible for appointment as company auditor for the purposes of the 1989 Act;
- (3) accept undertakings and make agreements with individuals (whether or not members of the Association) or firms in relation to such procedures and certification;
- (4) make provision (whether by agreement or otherwise) for the application of disciplinary procedures and sanctions to individuals and firms giving such undertakings or entering into such agreements; and
- (5) lay down requirements and implement procedures (including professional experience, examinations and practical training) to ensure that the requirements for recognition of a professional qualification, set out in Part II of Schedule 12 to the 1989 Act, are and continue to be fulfilled;

and for the purposes of this paragraph "firm" means a partnership and a body corporate; and

- (u) to do, alone or in conjunction with others, the foregoing and all such other lawful things in any manner whatsoever consistent with the provisions of this Our Charter and the bye-laws as may be incidental or conducive to furthering or protecting the interests and efficiency of the Association and its members and of the accountancy profession.

5. The income and property of the Association, whencesoever derived, shall be applied solely towards the promotion of its objects as set forth in this Our Charter as amended or added to in the manner hereinafter provided and no member shall as such have any personal claim on any of the said income or property. No part of the income or property of the Association shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to its members, provided that nothing herein contained shall prevent the payment in good faith of remuneration to any member thereof or to any other person in return for services rendered to the Association or the payment in good faith of expenses incurred by any such persons in providing such services or the payment of interest at a rate not exceeding one per centum per annum above the base rate from time to time of National Westminster Bank PLC on money borrowed from any member or any payment becoming due under or by virtue of any indemnity given by the Association to any officials or servants or to any member thereof in accordance with the bye-laws. No member of the Council shall receive any remuneration in respect of his services as a member of the Council or as a member of any committee or sub-committee of the Council other than expenses incurred in providing such services.

6. There shall be a President, Deputy-President and a Vice-President of the Association who shall be elected in accordance with the bye-laws. The first President, Deputy-President and Vice-President whose names are shown in the First Schedule hereto shall each hold office until the close of the first Annual General Meeting of the Association.

7. The first Council shall be the Council of the existing Association immediately prior to the date of this Our Charter and whose members, in addition to the President, Deputy-President and Vice-President already referred to, are shown in the First Schedule hereto.

8. The Council shall consist of such members, with such qualifications and to be appointed or elected in such manner and to hold office for such periods and on such terms as to reappointment and re-election and otherwise as may be prescribed by the bye-laws, subject always in the case of the first Council to the provisions of the preceding Article of this Our Charter.

9. The property and affairs of the Association shall, subject to the provisions of this Our Charter and of the bye-laws, be administered and controlled by the Council, who may exercise for those purposes all such powers and authorities by this Our Charter or otherwise expressly conferred on them and do all such acts and things as may be exercised or done by the Association as are not hereby or by the bye-laws required to be exercised or done by the Association in general meeting, but no new bye-law or amendment or addition thereto shall invalidate any prior act of the Council which would have been valid if the same had not been made.

10. The members of the Association shall, unless and until otherwise provided by the bye-laws, consist of two classes, namely, Fellows and Members, herein collectively referred to as "members".

11. The Fellows and Associates of the existing Association immediately prior to the date of this Our Charter shall be deemed hereafter to be Fellows and Members respectively of the Association.

12. Persons who immediately prior to the date of this Our Charter were Honorary Members or registered graduates or registered students of the existing Association shall be deemed hereafter to be of similar status in the Association in Accordance with the bye-laws subject to the completion by them of such undertaking or requirements as the Council may at any time require of them.

13. The qualifications for and the method of election to membership and the rights, privileges, obligations and conditions of membership and the manner in which the same may be suspended or determined shall be such as the bye-laws or regulations made thereunder shall prescribe.

14. As soon as is reasonably possible after the date of this Our Charter the Council shall do all things and execute all documents so as, with effect from that date, to vest the assets and any other rights, entitlements and benefits of the existing Association, held in its name or in that of its nominees or in the names of trustees on its behalf, in the Association and to enable the Association to undertake and be responsible for all the obligations and commitments of the existing Association.

15. The affairs of the Association shall be managed and regulated in accordance with the provisions of this Our Charter and of the bye-laws set forth in the Second Schedule hereto. The said bye-laws may from time to time be amended or added to by the Association in general meeting (of which meeting not less than twenty-one clear days' notice shall have been given) by resolution passed by not less than two-thirds of the members entitled to vote and voting on such resolution, provided that no such amendment or addition shall have any force or effect if it be repugnant to any of the provisions of this Our Charter or until the same has been submitted to and approved by the Lords of Our Most Honourable Privy Council (of

1.1 Royal Charter

which approval a Certificate under the hand of the Clerk of Our said Privy Council shall be conclusive evidence).

16. The Council may from time to time make such regulations as they think fit for the purpose of carrying any bye-law into effect or otherwise for regulating the affairs of the Association and may amend or add to any such regulations provided always that no such regulations shall be in any way inconsistent with any of the provisions of this Our Charter or of the bye-laws.

17. The Association in general meeting (of which meeting not less than twenty-one clear days' notice shall have been given) may from time to time amend or add to the provisions of this Our Charter by resolution passed by not less than two-thirds of the members entitled to vote and voting on such resolution and any such amendment or addition shall, when allowed by Us, Our Heirs or Successors in Council, become effectual so that this Our Charter shall thenceforth continue and operate as though it had been originally granted and made accordingly. The provision shall apply to this Our Charter as amended or added to in the manner aforesaid.

18. It shall be lawful for the Association in general meeting (of which meeting not less than twenty-one clear days' notice shall have been given) with the sanction of not less than two-thirds of the members entitled to vote and voting thereat to surrender this Our Charter subject to the sanction of Us, Our Heirs or Successors in Council and upon such terms as We or They may consider fit and to wind up or otherwise deal with the affairs of the Association in such manner as shall be directed by such general meeting or in default of such direction as the Council shall think expedient having due regard to the liabilities of the Association for the time being, and if, on the winding up or the dissolution of the Association, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the members of the Association or any of them but shall, subject to any special trusts affecting the same, be given and transferred to some association or associations having objects similar to the objects of the Association and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Association under Article 5 hereof, such association or associations to be determined by the Council at or before the time of dissolution.

And We do for Ourselves, Our Heirs and Successors grant and declare that these Our Letters or the enrolment thereof shall be in all things valid and effectual in law according to the true intent and meaning of the same and shall be taken, construed and adjudged in the most favourable and beneficial sense and for the best advantage of the Association as well in Our Courts of Record as elsewhere notwithstanding any nonrecital, mis-recital, uncertainty or imperfection in this Our Charter.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourselves at Westminster the twenty-fifth day of November in the twenty-third year of Our Reign. [1974]

By Warrant under the Queen's Sign Manual.

DOBSON

1.2

THE SECOND SCHEDULE

Bye-laws

Definitions

1. In these bye-laws, unless the context otherwise requires:

affiliate means a registered student who has passed the qualifying examinations but not satisfied the other conditions applicable to applications for membership;

the Association means the Association of Chartered Certified Accountants as incorporated by the Charter;

the Charter means the Royal Charter of Incorporation granted to the Association in the year 1974 as amended or supplemented from time to time;

company auditor means a person appointed as auditor under Chapter V of Part XI of the Companies Act 1985;

consent order has the meaning ascribed to it by bye-law 9(d);

the Council means the Council of the Association as from time to time constituted in accordance with these bye-laws;

disciplinary order has the meaning ascribed to it by bye-law 9(c) and, for the purposes of bye-laws 13 to 26, by bye-law 15(b);

exempt regulated activities has the meaning given in Part XX of the Financial Services and Markets Act 2000;

firm includes any body corporate;

intervention order has the meaning ascribed to it by bye-law 9(d);

member means any person admitted to membership of the Association in accordance with or pursuant to these bye-laws;

month means a calendar month;

practising certificates, insolvency licences and investment business certificates mean the certificates and licences issued by the Association pursuant to regulations made under bye-laws 4(c), 5(c) and 6(1)(b) respectively;

public practice has the meaning ascribed to it by regulations made under bye-law 4(a);

registered student means a student registered with the Association as such and includes an affiliate;

regulation means any regulation, code of conduct or standing order made, adopted or approved by Council in accordance with these bye-laws;

relevant firm means any firm which has undertaken to be bound by all or some of these bye-laws;

1.2 Bye-laws

the Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council;

specified person means, in relation to a relevant firm which is a partnership any partner in that firm, in relation to any firm which is a body corporate a director of that firm and in relation to any firm such other persons as may from time to time be prescribed in regulations made under bye-law 11(f);

the United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

Words importing the masculine gender shall include the feminine and words in the singular shall include the plural and vice versa. Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision shall include that provision as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

Members

2. (a) No individual shall be eligible for membership of the Association unless he has:

- (i) passed the examination or examinations;
- (ii) undertaken the period (which shall be not less than two years in any case, except as otherwise required by applicable law) and type or types of accountancy experience; and
- (iii) satisfied such other requirements;

as may from time to time be prescribed by the Council, provided that where an individual has passed an examination or examinations which in the opinion of the Council is equivalent to the examination or examinations so prescribed by the Council, the Council may treat him as having passed such prescribed examination or examinations.

- (b) On admission to membership individuals shall become Members of the Association and individuals who have been Members continuously for a period of five years (or such other period as may be prescribed in regulation) shall advance to fellowship and become Fellows of the Association.
- (c) Every member may denote his membership of the Association by the use of the professional designations Chartered Certified Accountant or Certified Accountant and/or the designatory letters FCCA in the case of Fellows and ACCA in the case of Members. Every person admitted as an honorary member in accordance with regulations prescribed by the Council may denote his status as such by the designation Hon. FCCA. An honorary member shall not be treated as a member for the purposes of the Charter and bye-laws or regulations made hereunder except to the extent they specifically otherwise provide.
- (d) The Council shall from time to time prescribe or provide for in regulations:

- (i) the conditions a person must satisfy to gain admission to membership of the Association, which conditions may prescribe different requirements for different classes of persons and include provision for reciprocal and honorary membership for persons who may not have satisfied the requirements of bye-law 2(a);
- (ii) the qualifications of the Association available to members and other persons, provided that the only designation and designatory letters which by virtue of membership of the Association may be used by members shall be as set out in bye-law 2(c);
- (iii) the procedure for making application for membership of the Association and by which the Association shall determine the success of such applications and the procedure for notifying successful applicants, which may include the issuance of a certificate in such form as the regulations may prescribe;
- (iv) the obligations applicable to a member, including (without limitation) the paying of admission fees and annual subscriptions, the undertaking of continuing professional development and the notifying of a member's addresses and occupation, provided that any regulation prescribing or providing for the paying of admission fees and annual subscriptions in excess of 105% of the admission fees or, as the case may be, annual subscriptions in force prior to such regulation shall be subject to the approval of the Association in general meeting by resolution passed by not less than two thirds of the members entitled to vote and voting on such resolution;
- (v) the maintenance by the Association of a register of members' names and addresses and of other information in relation to them as specified by the regulations;
- (vi) the procedure for retiring from membership of the Association and the limitations on a member's right to retire where he is liable to disciplinary action, the circumstances in which a member shall automatically cease to be a member, and the circumstances in which and procedure whereby a former member may re-apply for admission to membership of the Association; and
- (vii) such other matters relating to or connected with membership of the Association as the Council shall in its discretion consider necessary or desirable.

Students

3. The Council shall from time to time prescribe or provide for in regulations:

- (a) the conditions a person must satisfy to become and remain a registered student, which conditions may prescribe different requirements for different classes of persons, which may include a requirement that he undertake to be bound by the Charter, these bye-laws and all applicable regulations made hereunder;
- (b) the way in which a registered student may describe himself whilst being a registered student, including whilst being an affiliate, and the qualifications of the Association available to registered students and other persons;

1.2 Bye-laws

- (c) the procedure for making application to become a registered student and by which the Association shall determine whether or not to accept such application and the procedure for notifying successful applicants, which may include the issuance of a certificate in such form as the regulations may prescribe;
- (d) the examinations of the Association and all matters related thereto, including (without limitation) as to the appointment of examiners;
- (e) the obligations applicable to a registered student, including (without limitation) the payment of fees, exam fees and annual subscriptions, the restrictions on description applicable to him and on the work that may be carried on by him and the notification of the Association of his address and occupation;
- (f) the maintenance by the Association of a register of registered students' names and addresses and of other information in relation to them as specified by the regulations;
- (g) the procedure for seeking removal from the register of registered students and the circumstances in which the right to be so removed shall be restricted, the circumstances in which a registered student shall automatically cease to be a registered student, and the circumstances in which and procedure whereby a former registered student may re-apply to become a registered student; and
- (h) such other matters relating to or connected with registered students as the Council shall in its discretion consider necessary or desirable.

Certificates

Practising certificates

4. The Council shall from time to time make all such regulations as it shall consider necessary or desirable in connection with the Association's acting as a recognised supervisory body, and as a qualifying body offering a recognised professional qualification, within the meaning of the Companies Act 1989, or otherwise relating to the carrying on of public practice or other activities in the United Kingdom or elsewhere. Such regulations may (without limitation) prescribe or provide for:

- (a) the restrictions applicable to members and other individuals and firms who are subject to the regulations in the conduct of public practice, which restrictions may include restrictions on a member being connected with a firm which, or another person in relation to which, carries on public practice, and the meaning or meanings of public practice for this purpose and the purposes of these bye-laws;
- (b) the qualifications which a person subject to the regulations must hold to be eligible to accept an appointment as company auditor, and the conditions which a firm subject to the regulations must satisfy to be so eligible, including (without limitation) conditions concerning the qualifications of persons responsible for company audit work on behalf of the firm and the control of the firm, and the examinations and other requirements of the Association's recognised professional qualification (within the meaning of the Companies Act 1989);

- (c) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of practising certificates, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for a practising certificate shall be made, the procedure for appealing against a decision on such an application, the period of time for which a practising certificate shall remain valid and the fees payable for the issue or renewal of a practising certificate;
- (d) the rules applicable to the holder of a practising certificate, including without limitation to the conduct of public practice and related activities;
- (e) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of a practising certificate to them or to another person; and
- (f) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations.

Insolvency licences

5. The Council shall from time to time make all such regulations as it shall consider necessary or desirable in connection with the Association's acting as a recognised professional body within the meaning of the Insolvency Act 1986. Such regulations may (without limitation) prescribe or provide for:

- (a) the restrictions applicable to members and other persons who are subject to the regulations in their acting as an insolvency practitioner within the meaning of the Insolvency Act 1986, which restrictions may include restrictions on a member being connected with a firm another person in relation to which acts as an insolvency practitioner (as so defined) and restrictions on the carrying on of other similar activities;
- (b) the qualifications which a person subject to the regulations must hold to be eligible to act as an insolvency practitioner (as so defined);
- (c) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of insolvency licences, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for an insolvency licence shall be made, the procedure for appealing against a decision on such an application, the period of time for which an insolvency licence shall remain valid and the fees payable for the issue or renewal of an insolvency licence;
- (d) the rules applicable to holders of an insolvency licence issued by the Association including (without limitation) to his acting as an insolvency practitioner within the meaning of the Insolvency Act 1986;
- (e) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of an insolvency licence to them or to another person; and
- (f) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations.

Investment business

6. (1) Investment business certificates

The Council shall from time to time make all such regulations as it shall consider necessary or desirable in connection with the Association's acting as a recognised professional body within the meaning of the Financial Services Act 1986 or as a similar body under corresponding or similar legislation applicable outside the United Kingdom. Such regulations may (without limitation) prescribe or provide for:

- (a) the restrictions applicable to members and other individuals and firms who are subject to the regulations in the conduct of investment business within the meaning of the Financial Services Act 1986, which restrictions may include restrictions on a member being connected with a firm which, or another person in relation to which, carries on investment business (within the meaning of that Act) in the United Kingdom;
- (b) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of investment business certificates issued by the Association, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for an investment business certificate shall be made, the procedure for appealing against a decision on such an application, the period of time for which an investment business certificate shall remain valid and the fees payable for the issue or renewal of an investment business certificate;
- (c) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of an investment business certificate to them or to another person;
- (d) the rules applicable to the holder of an investment business certificate issued by the Association, including (without limitation to) the conduct of investment business (within the meaning of the Financial Services Act 1986) and related activities;
- (e) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations;
- (f) the establishment of a compensation scheme for the compensation of investors who suffer loss in connection with the activities of a holder of an investment business certificate issued by the Association; and
- (g) similar matters to those set out in paragraphs (a) to (f) of this bye-law relating to the Association acting as a body under such corresponding or similar legislation.

(2) Exempt regulated activities

The Council may from time to time make all such regulations as it shall consider necessary or desirable in connection with the Association's acting as a designated professional body within the meaning of the Financial Services and Markets Act 2000 or as a similar body under corresponding or similar legislation applicable outside the United Kingdom. Such regulations may (without limitation) prescribe or provide for:

- (a) the restrictions applicable to members and other individuals and firms who are subject to the regulations in the conduct of exempt regulated activities, which restrictions may include restrictions on a member being connected with a firm which, or another person in relation to which, carries on exempt regulated activities;
- (b) the conditions and eligibility criteria for carrying on exempt regulated activities;
- (c) the acceptance of undertakings or agreements from persons other than members of the Association;
- (d) the rules applicable to the member or other person including (without limitation) the conduct of exempt regulated activities and related activities;
- (e) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations;
- (f) the establishment of a compensation scheme for the compensation of investors who suffer loss in connection with the activities of a person subject to the regulations; and
- (g) similar matters to those set out in paragraphs (a) to (f) of this bye-law 6(2) relating to the Association acting as a body under such corresponding or similar legislation.

General

- 7. (a) The Charter, bye-laws and applicable regulations for the time being in force shall apply to each member on and following his admission and, insofar as the Charter, bye-laws and such regulations provide, following his ceasing to be a member. In addition, the Charter, bye-laws and applicable regulations shall similarly apply to each person who undertakes or agrees to be bound by them.
- (b) Any person ceasing by death, resignation or otherwise to be a member of the Association shall not, nor shall his representatives, have any claim upon or interest in the funds of the Association.

Liability to disciplinary action

- 8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:
 - (i) he or it, whether in the course of carrying out his or its professional duties or otherwise, has been guilty of misconduct;
 - (ii) in connection with his or its professional duties, he or it has performed his or its work, or conducted himself or itself, or conducted his or its practice, erroneously, inadequately, inefficiently or incompetently;
 - (iii) he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound;
 - (iv) in the case of a relevant firm, any person has in the course of the business of that firm committed any breach of these bye-laws or of any regulations made under them in respect of which that person is bound;

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- (v) he is a specified person in relation to a relevant firm against which a disciplinary order has been made and which has become effective or which has been disciplined by another professional body or pursuant to some other disciplinary process;
 - (vi) he or it has been disciplined by another professional body or pursuant to some other disciplinary process;
 - (vii) he or it has made an assignment for the benefit of creditors, or has made an arrangement for the payment of a composition to creditors, or has had an interim order made by the court in respect of him, or is a specified person in relation to a relevant firm which has made such an assignment or composition or been wound up as an unregistered company, or entered into a voluntary arrangement, administration or liquidation, in each case where applicable under the Insolvency Act 1986, or other similar or analogous event has occurred in relation to him or it under applicable legislation; or
 - (viii) he or it has failed to satisfy a judgment debt without reasonable excuse for a period of two months (and the fact that he or it did not have sufficient funds to discharge the debt shall not be a reasonable excuse for this purpose) whether or not the debt remains outstanding at the time of the bringing of the disciplinary proceedings hereunder.
- (b) Each of the paragraphs in bye-law 8(a) shall be without prejudice to the generality of any of the other paragraphs therein.
- (c) For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.
- (d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:
- (i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
 - (ii) whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question;
 - (iii) the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.
- (e) The following shall be conclusive proof of misconduct:
- (i) the fact that a member, relevant firm or registered student has pleaded guilty to, or been found guilty of, any offence discreditable to him or, as the case may be, it, or derogatory to the Association or the accountancy profession, before a court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are in the opinion of Council (or relevant committee of Council) relevant;

- (ii) the fact that a member, relevant firm or registered student has been found to have acted fraudulently or dishonestly in any civil proceedings before any court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are enforceable in the United Kingdom.

Disciplinary process

9. The Council shall, from time to time, prescribe in regulations the procedures (including relating to the hearing of appeals) whereby a person subject to bye-law 8 may be disciplined and as to all other matters pertaining thereto. Such regulations shall provide that such a person shall have the right to be given notice of any disciplinary proceedings which it is proposed should be brought against him or it, the right to be represented at any such disciplinary proceedings, the right to call and cross-examine any witness at such disciplinary proceedings and a right of appeal against any disciplinary order made against him or it. In addition, such regulations shall provide that any committee able to make or confirm a disciplinary order shall include a person or persons who are not members of the Association and shall not be quorate in the absence of such a person. Where the Association participates with other professional accountancy bodies in such a scheme as is referred to in Article 4(s) of the Charter, such regulations shall provide for the referral of relevant cases by the Association to and in accordance with such scheme and all other matters relevant thereto.

In particular (but without limitation) such regulations may prescribe or provide for:

- (a) the committees (consisting of members and/or other persons) to whom Council may delegate the responsibility of determining whether or not a person subject to bye-law 8 is to be disciplined, the making of disciplinary orders (including consent orders) against persons who it is found are liable to disciplinary action and the making of intervention orders in appropriate circumstances, the method, timing and terms of appointment, constitution, quorum, powers, and responsibilities of each such committee, and whether any such committee is to be empowered to make any further regulations concerning any such matter or any of the other matters mentioned in this bye-law;
- (b) the procedures to be followed by each such committee and in the preparation of cases to be heard by any of them, the manner in which cases may be presented to them and the circumstances in which matters are to be referred to them for consideration, which may include (without limitation) procedures for the hearing of cases in an expedited manner;
- (c) the orders ("disciplinary orders") which may be made against a person in respect of whom a complaint is found proved in whole or in part, which without limitation may include an order that a person be excluded from membership, that any certificate issued by the Association to the person be withdrawn and that a fine be imposed on the person, which may be unlimited in amount, or be up to such maximum amount as may from time to time be prescribed by such regulations, and the times at which such disciplinary orders are to become effective;
- (d) the making of certain types of disciplinary orders as specified in the regulations with the consent of the person concerned ("consent orders"), and the making in circumstances where it appears to be urgent for the protection of the public or

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members or both an order on a person requiring him to take such action as is specified in the order (“intervention orders”), which orders may be made without conducting the full disciplinary procedures which would apply in other circumstances;

- (e) subject to bye-law 8(c), guidance as to the meaning of misconduct or other expression used in bye-law 8 and the relevance for disciplinary purposes of a person subject to bye-law 8 being found guilty of a criminal offence or having any matter found against him in any civil proceedings or being subject to discipline from a tribunal or other body in any such case whether in the United Kingdom or elsewhere;
- (f) disciplinary proceedings (including the hearing of appeals) in respect of students where the alleged misconduct relates to examinations;
- (g) the circumstances in which appeals against a disciplinary order may be brought and the procedures for dealing with such appeals;
- (h) the making of orders as to costs, which may provide for different orders in respect of individuals and firms; and
- (i) the publication of disciplinary orders in those cases where a complaint is found proved in whole or in part.

Obligation to co-operate and inform

10. (a) Every member, relevant firm and registered student shall, and every member shall use his best endeavours to ensure that every firm (whether or not a relevant firm) in relation to which he is a specified person shall, at all times, co-operate with the Council and the committees appointed by it under bye-law 9 in the administration of the Association’s disciplinary process.
- (b) It shall be for every member and for any person to bring to the attention of the Secretary any facts or matters indicating that a member or relevant firm or registered student may have become liable to disciplinary action: and in any such case the Secretary shall lay the facts and matters before the relevant committee of Council if he or she is of the opinion that the complaint ought to be investigated by that committee.

Application and interpretation

11. Bye-laws 8 to 10 shall apply and be interpreted as follows:

- (a) A member, relevant firm and registered student shall be liable to disciplinary action whether or not he was a member or registered student or (as the case may be) it was a relevant firm at the time of the occurrence giving rise to such liability.
- (b) A member, relevant firm and registered student shall continue to be liable to disciplinary action after his or its ceasing to be a member, relevant firm or registered student in respect of any matters which occurred whilst he was actually a member, relevant firm or registered student and in respect of which a complaint is referred to the committee responsible for hearing the complaint, or disciplinary action is otherwise commenced, within five years of his or its so ceasing to be a member, relevant firm or registered student (as the case may be).

- (c) For the avoidance of doubt, a person shall be liable to disciplinary action in accordance with the bye-laws and regulations in force at the time the matters complained of took place. All disciplinary proceedings, however, shall (for the avoidance of doubt) be conducted in accordance with the bye-laws and regulations in force at the time of such proceedings.
- (d) Bye-laws 8 to 10 shall, so far as they are capable of doing so, apply to a specified person (not being a member in public practice) in relation to a relevant firm in respect only of the undertakings given by that specified person to, and agreements made by that specified person with, the Association.
- (e) In the case of a relevant firm in relation to which there is a specified person or specified persons other than members in public practice, the provisions of bye-laws 8 to 10 shall apply to that relevant firm in respect only of the undertakings which have been given to the Association and agreements which have been made with the Association by it or by each such specified person who is not a member in public practice, but this paragraph shall not in any way restrict the application of those bye-laws to a member in public practice who is a specified person in relation to such relevant firm.
- (f) The Council may from time to time by regulation prescribe the persons (additional to partners in a firm which is a partnership and directors of a firm which is a body corporate) who are in these bye-laws to be specified persons in relation to a firm and such regulations may prescribe different persons as specified persons for different purposes.
- (g) For the purposes of this bye-law and bye-laws 8 to 10, "member" includes an individual (not being a member as defined in bye-law 1) who has undertaken to be bound by, *inter alia*, such bye-laws and such bye-laws shall apply to such an individual insofar as the same are capable of doing so, *mutatis mutandis*, as they apply to a member as defined in bye-law 1.

Appointment of lay observer

12. The Council shall appoint a lay observer who shall hold office for a term of three years renewable at the Council's discretion. The lay observer shall be instructed to report to the Council not less than once a year on the Association's investigatory, disciplinary and regulatory procedures adopted pursuant to or for the purposes of the Association's bye-laws and regulations and its recognition under statute. The lay observer shall undertake such other functions as Council may from time to time specify. The Council shall have power to pay remuneration to and the reasonable expenses of the lay observer.

Elections to Council

13. The Council shall be elected by the Association in accordance with the procedures provided for in these bye-laws from among the members of the Association.

14. Subject to the provisions of the bye-laws the number of members of the Council shall not be less than 30 nor more than 36.

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15. Any member of the Association shall be eligible for election (which shall include re-election) as a member of the Council, provided that:

- (a) at the date of his nomination for election, or of his written notice of intention to offer himself for re-election (as the case may be), he is by reason of mental disorder neither detained in a hospital nor subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983, nor subject to any similar supervision in any other jurisdiction; and
- (b) no disciplinary order (which for the purposes of bye-laws 13 to 26 shall be taken to include any order made pursuant to any joint disciplinary scheme operated by the Association with any other bodies) excluding him from membership or removing him from the student register has ever been made against him and become effective; and
- (c) within the period of five years immediately preceding the date of his nomination, no disciplinary order has been made against him and become effective; and
- (d) as at the date of the Annual General Meeting at which the result of the election is to be announced, he will not have served as a member of the Council for 9 years or more, whether consecutively or otherwise; and
- (e) he has been duly nominated for election in accordance with bye-law 16, or he is exempt from nomination for election.

16. A member may be nominated for election either (a) by the Council; or (b) by 10 or more members of the Association. Each nomination shall be in writing, shall specify the name of the candidate and shall be signed by each of those making the nomination or (in the case of a nomination by the Council) by the Secretary. A nomination by members of the Association may be contained in one document or in several documents in like form each signed by one or more of those making the nomination. A member of the Council who is retiring pursuant to bye-law 18 and intends to seek re-election shall be exempt from nomination, but shall give written notice to the Secretary of his intention so to offer himself. There shall be appended to each nomination a declaration, signed by the candidate, of his willingness to be elected a member of the Council: and to each nomination and each notice of intention to seek re-election a declaration signed by the candidate containing an undertaking to comply with and be bound by Council's standing orders adopted in accordance with bye-law 33(a) and any Code of Practice for Council members adopted by the Council from time to time. Each nomination, each notice of intention to seek re-election and each document required to be appended thereto shall be in such form as may from time to time be prescribed by the Council and shall be delivered to the Secretary not less than three months before the day of the Annual General Meeting at which the result of the election is to be announced. Any candidacy which does not comply with this bye-law shall be void.

17. The Council may also require a member nominated for election, or offering himself for re-election to the Council, to make such declarations as it shall consider expedient for determining that none of the circumstances referred to in paragraphs (a) to (d) of bye-law 15 apply to that member. If the Council thinks fit, these declarations may be embodied in any form of nomination or notice of intention to seek re-election prescribed for the purposes of bye-law 16. The Council shall be entitled to rely upon the truth of any declarations made by a member pursuant to bye-law 15 or to bye-law 16 and to reject the nomination or notice

of intention to seek re-election of any member who declines to make any such declaration or makes a false or inaccurate declaration. If any member is elected a member of the Council and one or more of his declarations pursuant to bye-law 15 was false or inaccurate and he would have been ineligible for election had such declaration been made truthfully or accurately, the Council shall declare the election of that member void. But any such declaration shall be without prejudice to the operation of bye-law 37 and shall not affect the validity of the election of any other member as a member of the Council. The vacancy arising as a result of any such declaration shall be treated as a casual vacancy. Each member of Council who is not retiring at the conclusion of an Annual General Meeting shall (i) notify the Secretary of his practising status and eligibility for appointment as a company auditor as at the date three months before the day of the Annual General Meeting not less than two weeks after such date and he shall be treated for the purposes of these bye-laws as holding such status and eligibility until any amending notice is served under this bye-law in any subsequent year, and (ii) submit to the Secretary a signed undertaking to comply with and be bound by Council's standing orders adopted in accordance with bye-law 33(a) and any Code of Practice for Council members adopted by Council from time to time.

18. At each Annual General Meeting of the Association there shall retire from office (a) any member of the Council appointed pursuant to bye-law 22; and (b) any other member of the Council who did not retire from office at either of the two Annual General Meetings immediately preceding the present one; and (c) any member who, as at the Annual General Meeting, will have served as a member of the Council for 9 years or more, whether consecutively or otherwise, provided that bye-laws 18(b) and (c) shall not apply to the Deputy-President, Vice-President or the Council's preferred nominee for Vice-President (which nomination is subject to his formal appointment in accordance with bye-law 20). Subject to these bye-laws, the Association may re-elect any person so retiring or elect another member of the Association to fill his place. A retiring member of the Council shall retain office until the conclusion of the general meeting at which he retires.

19. At each Annual General Meeting there shall be declared the names of any persons who shall have been elected members of the Council in accordance with the following provisions of this bye-law.

- (a) If the number of candidates duly nominated or seeking re-election is equal to or less than the number of vacancies to be filled, all such candidates shall be declared elected at such Annual General Meeting.
- (b) If no declaration of elected candidates can be made in accordance with paragraph (a) of this bye-law, the election shall be made by ballot and the result shall be announced at the Annual General Meeting.
- (c) If a ballot shall be necessary the Secretary shall cause the name of each candidate to be entered in the ballot paper. That paper shall be in a form approved by the Council. There shall be appended to the ballot paper short biographical notes respecting each candidate and such other information as the Council may direct.
- (d) One such ballot paper shall be sent to each member of the Association not less than 28 days prior to the Annual General Meeting at which the result of the election is to be declared.

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- (e) A member shall be entitled to vote for any number of candidates up to but not exceeding the number of vacancies to be filled, but shall not cast more than one vote in respect of each candidate.
- (f) A member may irrevocably nominate in his ballot paper some person (his “delegate”), being a member of the Association, to cast some or all of his votes on his behalf. Such a member, having made his nomination, shall send his ballot paper (marked with any votes which he has himself cast) to the delegate. The delegate shall be entitled to exercise his discretion as to how and to what extent he casts the votes delegated to him.
- (g) Each ballot paper shall state the last date on which it may be returned to the Scrutineer appointed as described in paragraph (i) of this bye-law by a member or his delegate. Such last date shall be at least 7 days before the Annual General Meeting at which the result of the election is to be declared.
- (h) Any ballot paper which does not comply with this bye-law shall be void.
- (i) The President shall in good time prior to any ballot appoint (if not already appointed) an independent body of good repute to act as scrutineer (the “Scrutineer”) in relation to the ballot to perform the functions described in this bye-law. The Scrutineer shall be responsible for:
 - (i) receiving ballot papers and determining which are void;
 - (ii) counting the votes duly cast;
 - (iii) determining which candidates have been successful in the election in accordance with the requirements of paragraph (j) of this bye-law, including by the drawing of lots, if applicable;
 - (iv) providing a written report to the President on the result of the ballot; and
 - (v) retaining all ballot papers received for a period of one month after the relevant Annual General Meeting.

In so acting, the Scrutineer's decision on any matter shall be final and binding upon the Association save in the case of manifest error. The Scrutineer shall perform each of the above responsibilities by the time specified by the President.

- (j) The successful candidates in the election shall be those who attained respectively the greatest number of votes cast, the next greatest number, and so on in descending order until the number of vacancies has been filled. If as between two or more candidates for a vacancy or vacancies there is an equality of votes, the successful candidate or candidates shall be chosen by lot.

20. At the first meeting of the Council after each Annual General Meeting of the Association, the members of the Council then present shall choose from among their number a President, a Deputy-President and a Vice-President, each of whom shall act in his office until the first to occur of his resigning that office, his ceasing to be a member of the Council and the close of the next Annual General Meeting. Any casual vacancy in these offices shall be filled for the current year in like manner at the next meeting of the Council after the occurrence of such

vacancy. Notice of such meeting and of the existence of any such vacancy shall be given to all members of the Council.

21. The members of the Council may act and exercise all their powers notwithstanding that there shall be any vacancy in their body (including any vacancy left unfilled following an election at an Annual General Meeting): provided that, if and so long as their number is reduced below 30, they may act for the purpose of filling vacancies, or of summoning a general meeting of the Association, or of dealing with emergencies but for no other purpose.

22. Any casual vacancy in the Council may be filled by the appointment of any member of the Association by the Council and, if the number of members of the Council is reduced below 30, such number of vacancies shall be filled by the Council as is necessary to increase the number of members to 30: provided that a person shall not be so appointed if:

- (a) he is by reason of mental disorder either detained in a hospital or subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983 or is subject to similar supervision in any other jurisdiction; or
- (b) there has ever been made in respect of him a disciplinary order excluding him from membership or removing him from the student register which has become effective; or
- (c) there has within the period of five years immediately preceding the date of his proposed appointment been made in respect of him any disciplinary order which has become effective.

For the purpose of determining that a person is eligible for appointment as a member of the Council in accordance with this bye-law, the Council may require such person to make such declarations as it shall consider expedient, and shall be entitled to rely upon the truth of any declaration so made. If any such person is appointed a member of the Council and one or more of his declarations made with respect to paragraphs (a) to (c) (inclusive) of this bye-law is false or inaccurate and he would have been ineligible for appointment had such declaration been made truthfully or accurately the Council shall declare the appointment of that member void. But any such declaration shall be without prejudice to the operation of bye-law 37. The vacancy arising as a result of any such declaration shall be treated as a casual vacancy.

23. A member of the Council may give notice in writing to the Secretary of his wish to resign from the Council, and on acceptance of his resignation by the Council his office shall become vacant. A member of the Council who shall resign under this bye-law shall not thereby be disqualified from being at any time thereafter re-elected or reappointed.

24. [Deleted]

25. (a) The Association may by resolution in general meeting passed by a majority of those entitled to vote and voting at it remove a member of the Council from his office.

- (b) Notice of intention to move any such resolution shall be given to the Secretary not less than 28 days before the meeting at which it is to be moved, and the Secretary shall give members notice of such resolution at the same time and in the same manner as he shall give notice of the meeting. On receipt of notice of such an

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intended resolution the Secretary shall send a copy of it to the member of the Council concerned.

- (c) A vacancy created by the removal of a member of the Council under this bye-law may be filled as a casual vacancy.

26. A member of the Council shall vacate his office automatically if he:

- (a) ceases to be a member of the Association; or
- (b) is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction; or
- (c) has made against him a disciplinary order which becomes effective; or
- (d) commits a serious breach of any undertaking contained in a declaration given by him under bye-laws 16 or 17, as determined by Council or (for the avoidance of doubt and without limitation of Council's power to delegate to committees any of its other functions and powers in accordance with bye-law 28) committee of Council to which Council has delegated its responsibility to determine whether such a breach has occurred; or
- (e) fails to attend six consecutive meetings of the Council without prior leave of absence from the Council.

The Council

27. Subject to the Charter and these bye-laws, the direction, control and management of the affairs of the Association shall be vested in the Council which may for those purposes exercise all the powers of the Association other than those which are required by the Charter or these bye-laws to be exercised by the Association in general meeting and may from time to time make such regulations as they may deem necessary or expedient.

Committees

28. Subject to the Charter and the bye-laws, the Council may delegate any of its functions and powers to committees consisting of such members and other persons as it may think fit. The Council shall prescribe by regulation and/or standing order the constitution and quorum of each such committee and may prescribe the proceedings to be followed at each such committee or provide for the committee to determine its own procedure. Council may also prescribe the powers and responsibilities of each such committee.

29. The Council may from time to time revoke all or any of the powers delegated to any committee and discharge any committee in whole or in part.

30. Any committee, unless the Council shall otherwise prescribe, shall have power to delegate to a sub-committee, made up of members of the delegating committee or other persons, any of the powers conferred upon it. Any such sub-committee shall in the exercise of the powers delegated to it conform to any regulations that may be imposed on it by the delegating committee.

Local branches and committees

31. The Council may form local branches and committees or appoint local representatives in any part of the world and may dissolve any such branches or local committees or remove such local representatives. The Council may from time to time make and vary rules for the government and control of local branches and committees.

Proceedings of the Council

32. The Council shall meet at such times as they may deem requisite and may, subject to these bye-laws, regulate their meetings as they think fit. On the requisition of the President or any three members of the Council, the Secretary shall summon a meeting of the Council.

33. (a) At the first meeting of the Council after each Annual General Meeting of the Association, the Council shall adopt standing orders for the regulation of its proceedings. The said standing orders shall be such as the Council shall think fit, provided that they shall in no respect be repugnant to these bye-laws.

(b) At all meetings of the Council the President, failing whom the Deputy-President, failing whom the Vice-President, shall be Chairman. In the absence of the President, the Deputy-President and the Vice-President, a Chairman shall be elected from among those members of the Council present.

(c) A quorum at meetings of the Council shall be ten or such greater number as the Council may from time to time decide.

34. Except as otherwise provided by these bye-laws every question at a meeting of the Council shall be determined by a majority of the votes of the members present, every member having one vote, and in case of an equality of votes the Chairman shall have a second or casting vote.

35. Minutes of the proceedings of every meeting of the Council and of the attendance of the members of the Council thereat shall be recorded by the Secretary in a book kept for that purpose, and shall be signed by the chairman of the meeting at which they are read.

36. Every such minute when so signed shall in the absence of proof of error therein be considered a correct record.

37. The members of the Council may act and exercise all their powers notwithstanding any defect in the qualifications or appointment of all or any of them.

Staff

38. The Council shall appoint the Secretary of the Association and such other officials, servants or agents as the Council may deem necessary on such terms and conditions as to remuneration and otherwise as the Council shall think fit and may remove any of them. Subject to these bye-laws, the Council shall determine the duties of the Secretary and such other officials, servants or agents.

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Accounts and audit

39. The Council shall cause proper books of account to be kept and shall submit to the Annual General Meeting in each year a statement of income and expenditure and a balance sheet made up to the preceding thirty-first day of December together with the report of the auditor or auditors thereon. A copy of the said accounts and of the report of the auditor or auditors shall be sent to every member entitled to receive notice of the Annual General Meeting.

40. At each Annual General Meeting the Association shall appoint one or more members in public practice or firms either holding a practising certificate or otherwise eligible to be appointed company auditor (within the meaning of section 24(2) of the Companies Act 1989) as the auditor or auditors of the Association to hold office until the close of the next Annual General Meeting. The fees of the auditor or auditors shall be fixed by the Council. Any casual vacancy in the auditors may be filled by appointment by the Council of any member in public practice or firm which holds a practising certificate or which is otherwise so eligible. Any member or firm so appointed shall hold office until the close of the next Annual General Meeting.

41. None of the following shall be eligible for appointment as auditor:

- (a) a member of the Council or an official or servant of the Association;
- (b) a member who is a partner of or in the employment of a member of the Council or of an official or servant of the Association.

Indemnity

42. Every member of the Council, every member of any committee or sub-committee of the Council, every trustee, the Secretary, each other official and servant of the Association, and each auditor:

- (a) shall be indemnified by the Association from all liability, expenses or costs which by virtue of any rule of law would otherwise attach to him in relation to the Association unless such liability arises from his own wilful default or (in the case of any auditor) from his own negligence or wilful default; and
- (b) shall be entitled to be reimbursed by the Association the amount of any expenses (including, in the case of a member of the Council or of any committee or sub-committee of the Council, or of trustees, his expenses of attending any meeting of the Council or of any such committee or sub-committee or of trustees) properly incurred by him in or about the discharge of his duties to the Association, provided that the Council shall have power to determine, from time to time, what expenses shall be eligible for reimbursement pursuant to this paragraph.

Investments

43. (1) All moneys of the Association not immediately required for the purposes of the Association may be invested by the Council in any of the following:
- (a) in the purchase of, or in mortgages of:
 - (i) freehold property in England and Wales or Northern Ireland;
 - (ii) leasehold property in those countries of which the unexpired term at the time of investment is not less than 60 years;
 - (b) in the purchase of heritable property, or of leasehold property of which the unexpired term at the time of investment is not less than 60 years, in Scotland;
 - (c) in loans on heritable security in Scotland;
 - (d) in deposits with any recognised bank or licensed deposit taker in the United Kingdom;
 - (e) in any other investment not above mentioned in which trustees are for the time being authorised to invest trust funds (including, without limitation, in investments specified in Schedule I of the Trustee Investments Act 1961);
 - (f) in the purchase of securities of any government, local authority, statutory undertaking or company quoted on one or more of the following Stock Exchanges, namely:

Adelaide, Amsterdam, Antwerp, Brisbane, Brussels, Copenhagen, Dusseldorf, Frankfurt, Johannesburg, Lisbon, Luxembourg, Madrid, Melbourne, Milan, Montreal, New York, Oslo, Paris, Perth, Singapore, Stockholm, Sydney, Tel Aviv, Tokyo, Toronto, Vienna or Zurich: provided always that at the time of the investment the paid-up capital and capital reserves (including the share premium account and capital redemption reserve fund) of such company shall together total one million pounds at least or its equivalent at the rate of exchange current at the date of investment and so that in the case of a company having shares of no par value such paid-up capital and capital reserves shall be deemed to be the capital sum and capital surplus appearing in the company's published accounts (but this requirement shall not prevent an application for and part payment in respect of shares offered for subscription to the public if the full subscription for such shares would cause the paid-up capital and capital reserves of the company concerned to total one million pounds at least or such equivalent as aforesaid);
 - (g) in making loans (not being loans authorised by any of the foregoing paragraphs) with or without security;
 - (h) in purchasing any real or personal property or interest therein, not herein before authorised, in any part of the world.
- (2) The Council may from time to time vary any investments.
- (3) In any case where the Council thinks fit, investments may be made in the name of a nominee or trustee instead of the name of the Association.

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General meetings

44. (a) Unless the Council shall in any particular case otherwise determine, the Annual General Meeting of the Association shall be held, at such place as the Council shall appoint, on the third Thursday in May of each year. If the Council shall fix upon some other date for an Annual General Meeting, it shall notify the members of the Association of that other date not later than the day which falls six months before that date. Not more than fifteen months shall elapse between the date of one Annual General Meeting and that of the next.

(b) There shall be transacted at each Annual General Meeting the following business:

- (i) receiving the annual report of the Council;
- (ii) declaration of the result of any election for members of the Council;
- (iii) receiving the annual accounts of the Association and the auditors' report on them;
- (iv) appointment of an auditor or auditors.

All business, other than the above, to be transacted at an Annual General Meeting and all business to be transacted at an extraordinary general meeting, shall be deemed special business.

45. All general meetings other than the Annual General Meeting shall be called extraordinary general meetings.

46. Any member wishing to bring before the Annual General Meeting any motion not relating to the ordinary business of the meeting shall give notice in writing of such motion, supported in writing by nineteen other members expressing their desire that such motion should be so brought, all to be received by the Secretary not later than by 12.00 GMT on the first Friday in February prior to the date of the meeting. No such notice shall be valid if any of the members concerned shall not have paid any subscription or sum payable by him to the Association.

47. An extraordinary general meeting may at any time be called by the Council or on a requisition addressed to the Secretary specifying the business to be brought forward and signed by not fewer than 10 members of the Council or by not fewer than one per cent of the members of the Association as at 1 January in the year in which the requisition is notified to the Secretary. No such notice or requisition shall be valid if any of the members concerned shall not have paid any subscription or sum payable by him to the Association.

48. Every extraordinary general meeting shall be held at such time and place as the Council shall appoint provided that a meeting called on requisition shall be held within three calendar months of the receipt of the requisition by the Secretary, in default of which the requisitionists shall themselves be entitled to convene the meeting and to be reimbursed by the Association in respect of any reasonable expenses thereby incurred.

49. Not less than 21 clear days' notice of every general meeting specifying the time and place of the meeting and in the case of special business the nature of such business shall be given to every member. In the case of an Annual General Meeting, the Secretary shall also

send to each such member with such notice a copy of the annual report of the Council, a copy of the annual accounts of the Association with the auditors' report thereon and a list of the persons nominated for membership of the Council and as auditors. The accidental omission to give any notice to or the non-receipt of any notice by any such member shall not invalidate the proceedings at any such meeting.

Proceedings at general meetings

50. At all general meetings the President, failing whom the Deputy-President, failing whom the Vice-President shall be Chairman; in the absence of the President, the Deputy-President and the Vice-President, the Chairman shall be a member of the Council elected by the members of the Council present. In the absence of any member of the Council the Chairman shall be elected by the members present from among themselves.

51. Twenty members present in person shall be a quorum at any general meeting. Unless the requisite quorum shall be present within 15 minutes after the time appointed for the meeting, the meeting shall (unless convened on requisition) stand adjourned for a fortnight, and be then held at the same time and place, and the business on the agenda paper, but no other, shall then be disposed of by the members present in person or by proxy, who shall constitute a quorum. Unless a quorum be present at any general meeting convened on the requisition of members within 15 minutes after the time appointed for the meeting, the meeting shall be dissolved.

52. The Chairman of any meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice shall be given of any adjourned meeting unless it is so directed in the resolution for adjournment.

53. Subject to a poll being demanded as hereinafter mentioned every question to be decided by any general meeting, unless resolved on without dissent, shall be decided on a show of hands.

54. Unless a poll be demanded (before or on the declaration of the result of the show of hands) by the Chairman or by at least twenty members of the Association present in person or by proxy, a declaration by the Chairman that on a show of hands a resolution has been carried or carried by a particular majority or lost and entry to that effect made in the minutes of the proceedings of the meeting shall be conclusive evidence of the fact so declared without proof of the number or proportion of votes given for or against the resolution.

55. No poll shall be taken as to the election of a Chairman or the appointment of the Scrutineer appointed in accordance with bye-law 56 or on a question of adjournment and notwithstanding a demand for a poll the meeting shall continue for the transaction of business other than the question in respect of which a poll has been demanded.

56. On a poll being demanded as aforesaid, it shall be taken at such time (either at the meeting at which the poll is demanded or within 21 days after the said meeting) and place and in such manner as the Chairman shall direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The Chairman shall

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(if he has not already done so) appoint an independent body of good repute to act as scrutineer (the "Scrutineer") in relation to the taking of any such poll. The Scrutineer shall be responsible for:

- (a) receiving any instrument of proxy deposited or sent in accordance with bye-law 61 and relating to the vote and collecting all voting papers utilised at the meeting at which the poll is taken and determining which are valid and duly completed;
- (b) counting the votes duly cast;
- (c) providing a written report to the Chairman on the result of the poll; and
- (d) retaining all instruments of proxy and such voting papers for a period of one month after the date of the taking of the poll.

In carrying out its responsibilities under this bye-law, the Scrutineer's decision on any matter shall be final and binding upon the Association save in the case of manifest error. The Scrutineer shall perform each of the above responsibilities by the time specified by the Chairman.

The result of the poll shall be communicated to members in such manner as the Chairman shall direct.

57. In the case of an equality of votes either on a show of hands or at a poll the Chairman of the meeting shall be entitled to a second or casting vote.

58. On a show of hands every member present in person shall have one vote and on a poll every member present in person or by proxy shall have one vote.

59. No member shall be entitled to be present or to vote at any general meeting who is in arrears with any subscription or sum payable by him to the Association.

60. A member entitled to vote may appoint as his proxy any other member who is qualified to vote.

61. Every instrument of proxy shall be in writing and shall be signed by the appointer or his attorney and together with the power of attorney (if any) under which it is signed, shall be deposited with or sent to the Scrutineer appointed in accordance with bye-law 56 so as to be received at least 7 days before the time for holding the meeting or adjourned meeting at which it is to be acted on or, in the case of a poll, before the time appointed for the taking of the poll.

62. (a) An instrument appointing a proxy shall be in the following form or as near thereto as circumstances admit or in such form as the Council may from time to time prescribe or accept:

“The Association of Chartered Certified Accountants
I of
being a member of the above named Association hereby appoint
..... or failing him
each of whom is a member of the said Association as my proxy to vote for me on my
behalf at the (Annual) (Extraordinary) General Meeting of the said Association to be
held on the day of
and at any adjournment thereof.

This form is to be used in respect of the resolution(s) below-mentioned as follows:-

Resolution No. 1 ... *For/Against

Resolution No. 2 ... *For/Against

*Strike out whichever is not desired.

Unless otherwise instructed the proxy will vote as he thinks fit.

Signed this day of ”

- (b) The instrument appointing a proxy shall be deemed to include authority to demand or join in demanding a poll.
- (c) A vote given under the terms of an instrument of proxy shall be valid notwithstanding the death or insanity of the appointer or the revocation of the proxy or of the authority under which the same was executed provided that the Scrutineer appointed in accordance with bye-law 56 shall have received no intimation in writing of such death, insanity or revocation up to the time of the commencement of the meeting at which the proxy is used.

63. No objection shall be made to the validity of any vote except at the meeting or poll at which such vote be tendered, and every vote not disallowed at such meeting or poll shall be valid. The Chairman at the meeting shall be the sole and absolute judge of the validity of every vote tendered at any meeting or poll.

64. Every entry in the minute book of the proceedings of general meetings purporting to be signed by the Chairman of the meeting to which they relate or by the Chairman of a subsequent general meeting shall be sufficient evidence of the facts therein stated.

Common Seal

65. The Common Seal of the Association shall not be affixed to any instrument except with the authority of the Council and in the presence of two members thereof at least and all such instruments shall be signed by such members of the Council and countersigned by the Secretary or such other official of the Association as the Council shall authorise for this purpose.

66. A separate book shall be kept, in which shall be entered a short title and description of every instrument to which the Seal is affixed together with the date of the minute authorising the same and such entry shall be signed by the members of the Council who attest the execution of the document under the Seal of the Association and countersigned by the Secretary.

1.2 Bye-laws

Notices

67. Any notice or other document required to be given to a member may be given to him personally or by sending it by post to his registered place of address. Any notice or other document required to be given to a relevant firm may be given to it by delivering it or sending it by post to the registered place of address of any member who is a specified person in relation to that relevant firm. Where a notice is sent by post, service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the same and to have been effected at the expiration of 72 hours after such letter was posted.

68. A member who has failed to give a registered address shall not be entitled to receive any notice or document, but any notice or other document which the Association shall deliver or send by post to the address of such member last known to the Association shall be deemed to have been validly given. The accidental omission to send any notice or document to, or the non-receipt of any notice or document by, any member entitled to receive the same shall not invalidate the proceedings at any meeting to which they relate.

69. Any notice or document required to be given to the Association may be given by sending it by post to the Secretary at the principal office of the Association or such other address as the Council may from time to time designate.

70. The Council may prescribe by regulation that a document, notice, nomination, ballot paper or other thing required by these bye-laws may be in electronic form and delivered by electronic means. Such regulations may provide different requirements for different types of document, notice, nomination, ballot paper or thing.

71. The Council may prescribe by regulation that any person entitled to attend, participate in and vote at Annual General Meetings, extraordinary general meetings, meetings of Council or committee meetings may do so by means of a conference video link or other form of remote visual communication. Such regulations shall prescribe the minimum specifications for the communication equipment, the criteria for the locations at which the meetings shall be deemed to be held and the method by which voting at such meetings shall be undertaken. The regulations may prescribe different requirements for different types of meetings. Persons attending by such means shall for the purposes of these bye-laws be deemed to be present and shall count towards the quorum at such meetings, and references in these bye-laws to such meetings, the place of such meetings and the method of voting thereat shall be construed accordingly.

Annex 1

The Chartered Certified Accountants' Fees Regulations 2007

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 2(d)(iv) of the ACCA's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. These regulations may be cited as The Chartered Certified Accountants' Fees Regulations 2007. These regulations as amended as set out herein shall come into force on 22 September 2007.

2. The admission fees and annual subscriptions applicable for the calendar year 2008 shall be as follows:

(a) Admission Fees

On admission as an Associate or as a Fellow £175

(b) Annual Subscriptions

All members other than those in retirement £175

Members on the Register of members in retirement Nil

Annex 2

The Chartered Certified Accountants' Electronic Communications Regulations 2002

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 70 and 71 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

- (1) These regulations may be cited as The Chartered Certified Accountants' Electronic Communication Regulations 2002.
- (2) These regulations as amended as set out herein shall come into force on 1 January 2002.
- (3) These regulations shall apply to all members.

2. Interpretation

- (1) In these regulations, words and expressions defined in the bye-laws set forth in the Second Schedule to the Royal Charter of Incorporation granted to the Association in 1974 as amended or supplemented from time to time shall have the same meanings herein and the "bye-laws" shall mean those bye-laws set forth.
- (2) Words importing the masculine gender shall include the feminine and words in the singular shall include the plural and vice versa. Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.
- (3) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

3. Election of members of Council

(1) Ballots

- (a) Where there is a ballot for the election of members of Council, a member may vote either by signing and completing the ballot paper and returning it to the address stated on the ballot paper or by casting his votes electronically in accordance with the instructions on or referred to in the ballot paper.
- (b) Votes will be deemed cast on the due receipt of the ballot paper by the Scrutineer or of the electronically cast votes by or on behalf of the Scrutineer. Once cast, votes may not be amended and the votes first received will take precedence over any votes later received.

(2) Delegated votes

Where a member wishes to appoint any person whose name is pre-printed on the ballot paper to act as his delegate to cast some or all of his votes on his behalf, he may either:

- (a) duly complete and send his ballot paper (marked with any votes which he wishes himself to cast) to the address stated on the ballot paper, or
- (b) nominate any person whose name is pre-printed on the ballot paper to act as his delegate electronically, and electronically cast any votes which he wishes himself to cast in accordance with the instructions on or referred to in the ballot paper.

4. Instruments of proxy

- (a) A member wishing to appoint another member to act as his proxy for the purposes of voting at a general meeting of the Association (including without limitation an Annual General Meeting or Extraordinary General Meeting) may either:
 - (i) complete and sign the hard-copy form provided to him by the Association and deposit or send it to the Scrutineer in accordance with the bye-laws and instructions accompanying the form, or
 - (ii) complete and send electronically the electronic version of the form in accordance with the instructions accompanying or referred to in the hard-copy form.
- (b) An electronic form of proxy shall be deemed received on its due receipt by or on behalf of the Scrutineer.

5. Requirements of the bye-laws

Subject to their meeting and being delivered in accordance with the other relevant requirements of the bye-laws, ballot papers completed and returned electronically and instruments of proxy completed and sent electronically in accordance with these regulations shall constitute valid ballot papers and proxies respectively for the purposes of the bye-laws.

Annex 3

The Chartered Certified Accountants' Online Provision of Annual Reports and Notices Regulations 2006

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by article 70 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Online Provision of Annual Reports and Notices Regulations 2006.

(2) These regulations as amended as set out herein come into force on 26 June 2006.

2. Interpretation

In these regulations, unless the context otherwise requires, the following expressions have the following meaning:

Association means the Association of Chartered Certified Accountants;

bye-laws means the bye-laws of the Association in force from time to time;

Customer ID means the identification name or number assigned to each member by the Association;

meeting(s) means an Annual General Meeting and Extraordinary General Meeting of the Association;

member means any person admitted to membership of the Association in accordance with or pursuant to the bye-laws for so long as he remains a member of the Association;

Publication(s) shall mean the annual reports of the Association and notices relating to general meetings and any accompanying papers as shall be from time to time provided to members in accordance with or as required by the bye-laws or regulations;

regulations shall mean the regulations of the Association in force from time to time;

Secretary means the Secretary of the Association;

Website means the website of the Association, at www.accaglobal.com.

3. Application

These regulations shall apply to all Publications published by the Association.

4. Electronic publication

Subject to regulation 5, the Association may deliver all Publications to members by making them available on its Website and any notice or accompanying papers delivered in accordance with these regulations shall be deemed validly given or sent to members for the purposes of the Charter and the bye-laws.

5. Consent of members

(1) The Association may only validly deliver Publications pursuant to regulation 4 where the member has consented to its doing so in accordance with this regulation 5 and the member has not revoked that consent in accordance with this regulation 5.

(2) A member shall consent to Publications being delivered to him electronically for the purpose of this regulation by:

- (a) signing and returning the relevant consent form approved by Council from time to time, and
- (b) providing to the Association a valid e-mail address for notifications under regulation 7.

(3) Such consent shall continue until revoked by a member at any time by giving 28 days' notice in writing to the Secretary at the following address: Association of Chartered Certified Accountants, 29 Lincoln's Inn Fields, London, WC2A 3EE (such revocation may not be made by electronic communication).

(4) It shall be the responsibility of the member to ensure that the Association is notified in writing of any changes of the member's details provided under regulation 5(2)(b).

6. Format and access

(1) The Association may make such arrangements as it shall, in its absolute discretion, consider appropriate to ensure that all members who wish to access Publications electronically are able to do so.

(2) Access to the Website shall be by Customer ID and password provided by the Association. Members shall be required to use this information to access Publications on the Website.

(3) The Publications shall be made available electronically in either Microsoft Word or Adobe Acrobat PDF format.

7. Notification of availability

(1) The Association shall notify each member who has provided and not revoked consent under regulation 5 by e-mail to the e-mail address provided under regulation 5(2) on each occasion a Publication is put on the Website. The following details shall be provided:

- (a) the presence of the Publication on the Website;
- (b) the address or URL of the Website;
- (c) the place on the Website where it may be accessed; and
- (d) how to access the document or information.

1.2 Bye-laws (Annex 3)

(2) The Publication is deemed to be delivered to the member for the purposes of these regulations:

- (a) on the date on which the notification required by regulation 7(1) above is sent to the member; or
- (b) if later, on the date on which the Publication is first available on the Website after such notification is sent.

8. Validity

The Association shall take all reasonable steps to ensure that Publications are delivered to the members in accordance with these regulations. However, no failure on the part of the Association to comply with any requirements of the regulations shall invalidate the validity of any Publication, or its delivery to a member, or any meeting or other thing relevant to the Publication in question.

Section 2 Regulations

Introduction

The regulations in Section 2 must be read in conjunction with each other. A regulation may affect members, affiliates and registered students in different ways depending on the application of other regulations to those members, affiliates and registered students. Regulations are not always cross-referred to each other.

2.1

The Chartered Certified Accountants' Membership Regulations 1996

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 2, 3 and 8 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Membership Regulations 1996.

(2) These regulations as amended as set out herein shall come into force on 1 January 2008.

(3) These regulations shall apply to all members, affiliates and registered students and, to the extent that they are relevant, to former members, affiliates and registered students.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

ACCA approved employer means an organisation which has received the Association's approved employer status for the purposes of these regulations for the provision of training towards a practising certificate;

ACCA student means a registered student who is undertaking the ACCA Qualification examinations;

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

affiliate means a registered student who has passed or obtained exemptions from the Association's examinations as set out in Appendix 1 but has not progressed to membership;

Appeal Committee means the Committee appointed by Council pursuant to regulations made under bye-law 28;

applicant means a person who has applied or is in the course of applying to become a member, affiliate or registered student;

application means the application to be admitted to membership or to the student register submitted by an applicant;

2.1 Membership Regulations

Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

bankruptcy event means a bankruptcy order, a bankruptcy restriction order, a bankruptcy restriction undertaking or an equivalent event in any country or jurisdiction;

bye-laws means the bye-laws from time to time of the Association;

CAT status means the status held by an individual who has completed the Association's Certified Accounting Technician scheme examinations and has satisfied the scheme's conditions and is thereby entitled to call himself a Certified Accounting Technician;

CAT student means a registered student who is undertaking the Association's Certified Accounting Technician scheme examinations;

certificate has the meaning given in The Chartered Certified Accountants' Global Practising Regulations 2003;

Charter means the Association's Royal Charter of Incorporation granted to it in the year 1974 as amended or supplemented from time to time;

committee officer means any officer of the Association (whether official, servant or agent, and whether employed by the Association or otherwise) with responsibility for the administration of the Admissions and Licensing Committee;

Council means the Council of the Association from time to time;

Diploma student means a registered student who is undertaking one of the Association's diploma schemes;

disciplinary order means an order made against a person in respect of whom a complaint is found proved in whole or in part pursuant to The Chartered Certified Accountants' Disciplinary Regulations 2001 or The Chartered Certified Accountants' Appeal Regulations 2001;

European Regulations means the European Communities (Recognition of Professional Qualifications) Regulations 1991, S.I. 1991 No. 824 as amended from time to time;

firm means a sole practice, partnership, or body corporate including a limited liability partnership;

IFAC means the International Federation of Accountants;

insolvency licence means the licence issued by the Association only to individuals who are eligible therefor in accordance with The Chartered Certified Accountants' Global Practising Regulations 2003;

mature student entry route means the Association's scheme for permitting prospective students over the age of 21 who do not meet in part, or in full, the normal requirements for registration as a student;

member means an individual admitted to membership of the Association pursuant to the bye-laws;

membership means membership of the Association;

NVQ means National Vocational Qualification in the United Kingdom;

personal data has the meaning ascribed to it by the Data Protection Act 1998;

practising certificate means any of the types of certificate issued by the Association to individuals in accordance with The Chartered Certified Accountants' Global Practising Regulations 2003;

public practice has the meaning ascribed to it by The Chartered Certified Accountants' Global Practising Regulations 2003 as amended from time to time;

registered student means an individual on the register of students maintained by the Association in accordance with these regulations and includes affiliates and the other classes of person prescribed in regulation 7 pursuant to bye-law 3(a);

relevant firm means any firm which has undertaken to be bound by some or all of the bye-laws;

Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council;

specified person means, in relation to a relevant firm which is a partnership, any partner in that firm, in relation to any firm which is a limited liability partnership, any member in that firm, in relation to any firm which is a body corporate, a director of that firm and in relation to any firm, such other person as may from time to time be prescribed in regulations made pursuant to bye-law 11(f).

(2) Words importing the masculine gender shall include the feminine and words in the singular shall include the plural and vice versa. Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

(3) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

2.1 Membership Regulations

3. Eligibility for membership

Criteria

An individual shall be eligible for membership of the Association if he:

(a)

- (i) has passed or obtained exemptions from the Association's examinations set out in Appendix 1;
- (ii) has completed three years of approved experience in accordance with Appendix 2;
- (iii) has completed the Professional Ethics module save that this requirement does not apply to those ACCA students registered before 1 January 2007; and
- (iv) satisfies the Admissions and Licensing Committee as to his general character and suitability,

OR

(b)

- (i) has the right to practise in the United Kingdom as a Chartered Certified Accountant pursuant to Regulation 5 of the European Communities (Recognition of Professional Qualifications) Regulations 1991, having satisfied any requirements imposed on him pursuant to Regulation 6 thereof; or
- (ii) has the right to practise in the United Kingdom as a Chartered Certified Accountant pursuant to Regulation 11 of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996, having satisfied any requirements imposed on him pursuant to Regulation 19 thereof,

OR

(c)

- (i) is a member of a body and the holder of an appropriate qualification recognised for the purposes of section 33 of the UK Companies Act 1989; and
- (ii) is, or intends to be, a partner, director, person responsible for audit or sole principal of a firm which holds, or intends to hold, an auditing certificate under The Chartered Certified Accountants' Global Practising Regulations 2003; and
- (iii) satisfies the Admissions and Licensing Committee as to his general character and suitability,

OR

- (d)
- (i) is a member of the Hong Kong Institute of Certified Public Accountants, who has at any time been registered as a student of the Hong Kong Institute of Certified Public Accountants in Hong Kong (and not in any other place), having completed the Hong Kong Institute of Certified Public Accountants Qualification Programme and satisfied the Association that he has at least three years of practical experience in accountancy which has been gained under an authorised employer or authorised supervisor complying with the Hong Kong Institute of Certified Public Accountants Practical Experience Requirement; or
 - (ii) is a member of the Institute of Certified Public Accountants of Singapore, having completed the Institute of Certified Public Accountants of Singapore Professional Examination introduced in 2005 and three years of approved experience in accordance with Appendix 2; or
 - (iii) is a member of the Certified General Accountants Association of Canada, having completed the Certified General Accountants Association of Canada Program of Professional Studies, satisfied the Certified General Accountants Association of Canada Practical Experience Requirements and has satisfactorily completed a designated assessment in local tax and law previously approved by the Association and the Certified General Accountants Association of Canada; or
 - (iv) is a Certified Public Accountant member of the Malaysian Institute of Certified Public Accountants, having completed the Malaysian Institute of Certified Public Accountants examinations, satisfied the Malaysian Institute of Certified Public Accountants Practical Experience Requirements and has either:
 - (aa) achieved five years' relevant post-qualification experience and satisfactorily completed either the ACCA Professional Ethics module or the ACCA Critical Incident Questionnaire; or
 - (bb) passed Paper P1 – The Professional Accountant; and
 - (v) satisfies the Admissions and Licensing Committee as to his general character and suitability and any other prescribed terms in accordance with the relevant mutual recognition agreement,

OR

- (e)
- (i) is a:
 - member by examination of the Canadian Institute of Chartered Accountants; or
 - member by examination of the Chartered Institute of Management Accountants; or
 - member by examination of the Chartered Institute of Public Finance and Accountancy; or

2.1 Membership Regulations

member by examination of the Institute of Chartered Accountants in Australia;
or

member by examination of the Institute of Chartered Accountants in England
and Wales; or

member by examination of the Institute of Chartered Accountants in Ireland; or

member by examination of the Institute of Chartered Accountants of Scotland;
or

without prejudice to rights under the European Communities (Recognition of
Professional Qualifications) Regulations 1991 or the European Communities
(Recognition of Professional Qualifications) (Second General System)
Regulations 1996, is a member by examination of a professional body or
holder of a qualification recognised under these EC Regulations; and

- (ii) satisfies the Admissions and Licensing Committee as to his general character
and suitability; and
- (iii) has held such membership for a continuous period of not less than five years;
or
- (iv) has been employed as a member of staff on a full-time basis by the
Association continuously for at least a year and in the opinion of the Secretary
of the Association will derive benefit in his work for the Association from his
being able to describe himself as a member of the Association; or
- (v) holds, or is eligible to hold, a practising certificate from one of the above
bodies (or on admission to the Association from his being able to describe
himself as a member of the Association); or
- (vi) holds, or is eligible to hold, a practising certificate from one of the above
bodies (or on admission to membership of the Association will be eligible to
hold a practising certificate from the Association); and
 - (aa) is in, or intends to enter into, partnership including limited liability
partnership with a member of the Association, or be, or become a
director of a body corporate another director of which is or will be a
member of the Association, which partnership or body corporate will
include in the description of such partnership or body corporate the
words "Chartered Certified Accountants"; "Certified Accountants"; or
 - (bb) is, or intends to be, a partner, director, member or designated member in
the case of a limited liability partnership, or sole principal of a firm which
holds or intends to hold an auditing certificate under the Chartered
Certified Accountants' Global Practising Regulations 2003; or
 - (cc) as an individual, holds, or intends to hold, a licence to act as an
insolvency practitioner under The Chartered Certified Accountants'
Global Practising Regulations 2003; or

- (dd) is, or intends to be, a partner, director, member or designated member in the case of a limited liability partnership, or sole principal of a firm which holds the Association's approved employer status,

OR

- (f)
 - (i) has been invited by the Council to become a member of the Association; and
 - (ii) is a member of an accountancy body which is itself a member of the International Federation of Accountants or is eligible to be a company auditor in a European Union member state; and
 - (iii) has held such membership for a continuous period of not less than five years; and
 - (iv) satisfies the Council as to his general character and suitability; and
 - (v) has, in the opinion of the Council, made a significant contribution to the knowledge or practice of accountancy; and
 - (vi) will, in the opinion of the Council, bring benefits to the Association and/or its membership through his membership.

4. Members' obligations and rights

(1) Members and Fellows

- (a) Subject to the provisions of Global Practising Regulations 3 and 4, which prohibit members without a practising certificate from carrying on activities which constitute public practice, on admission to membership an individual shall become a Member of the Association and may denote his membership of the Association by the use of the professional designation Chartered Certified Accountant or Certified Accountant and/or the designatory letters ACCA.
- (b) A member who was admitted to membership on or after 1 January 2005 and has been a Member of the Association for a continuous period of five years shall automatically advance to fellowship, and be a Fellow, of the Association and may denote his fellowship of the Association by the use of the professional designation Chartered Certified Accountant or Certified Accountant and/or the designatory letters FCCA, providing the member has not breached the continuing professional development requirements of regulation 4(4) during that time.
- (c) Where a member resigns his membership under regulation 10, or is removed from the register of members under regulation 11, or ceases to be a member under regulation 12, the continuous period of membership of five years (as specified in regulation 4(1)(b)) shall commence from the date of readmission under regulation 13.
- (d) The Secretary shall maintain a register of members of the Association and the Council may if it thinks fit periodically publish lists of members, copies of which may be made available on such terms as the Council may determine.

2.1 Membership Regulations

(2) Application of the Charter, bye-laws and regulations

- (a) Upon and following admission to membership, the Charter, the bye-laws and the regulations made pursuant to the bye-laws for the time being in force shall apply to and bind every person so admitted for so long as he is a member and, insofar as the Charter, bye-laws and such regulations so provide, thereafter.
- (b) Every person shall, on applying for admission to membership, sign an undertaking that he will, if admitted, and for so long as he is a member and, insofar as the Charter, bye-laws or such regulations so provide, thereafter, observe the Charter, bye-laws and such regulations and that he will not use any designation or designatory letters suggesting that he is a member of or has any other connection with the Association after he has ceased to be a member of the Association.

(3) Admission fees and annual subscriptions

- (a) Each member must pay an admission fee on admission to membership of the Association. In addition, for so long as he remains a member of the Association, he must pay an annual subscription to the Association.
- (b) Admission fees are due on admission and annual subscriptions on 1 January of each year, unless the Council shall otherwise direct. Annual subscriptions shall be payable whether or not the member intends to remain a member for the entire year to which the subscription relates.
- (c) The amount of the admission fee and annual subscription shall be as specified in regulations made from time to time pursuant to and in accordance with bye-law 2(d).
- (d) Council may, in its absolute discretion, vary, suspend or waive payment of the admission fee or annual subscription payable by any applicant for membership or by any member on such terms and for such period as it may think fit.

(4) Continuing professional development (CPD)

- (a) All members must obtain CPD in accordance with this regulation 4(4).
- (b) A member may obtain CPD in one of the following ways:
 - (i) with an employer who holds approved CPD employer status from the Association;
 - (ii) by following the unit scheme set out in regulations 4(4)(c) to 4(4)(f) below; or
 - (iii) by following the CPD scheme of another IFAC body of which he is also a member, provided that the scheme complies with the CPD requirements of IFAC.
- (c) Units required
 - (i) Members must obtain at least 40 units per calendar year of acceptable CPD learning activities which are relevant to their work. One unit is equal to one hour spent on an acceptable CPD learning activity.

- (ii) At least 21 units must be verifiable units. A unit will be verifiable if the member can prove that he or she was involved in an acceptable CPD learning activity. A unit will be non-verifiable if the member is unable to prove that the CPD learning activity has taken place.
 - (iii) Members may carry forward a credit of up to 21 verifiable units from one year to the next.
 - (iv) Members must obtain their CPD units in areas relevant to their work and must comply with regulations 4(4)(c)(v) and (vi) below.
 - (v) All members, regardless of their role, must:
 - (aa) maintain competence in professional ethics; and
 - (bb) keep their business and finance knowledge up to date.
 - (vi) All members holding practising certificates, insolvency licences and/or carrying on exempt regulated activities or investment business in Ireland must:
 - (aa) maintain competence in the specialised areas of their practice; and
 - (bb) obtain an appropriate proportion of CPD units in those areas.
 - (vii) Where a member works for 770 hours or less over the course of a calendar year, he need not comply with the requirements of regulation 4(4)(c)(i) and (ii) provided that he can demonstrate that he has undertaken CPD relevant and sufficient for his role, save that he must obtain at least 19 units of non-verifiable CPD. This regulation does not apply to a member who:
 - (aa) undertakes audit or other regulated work;
 - (bb) is involved in the preparation or presentation of accounts of listed or other public interest entities; or
 - (cc) is a non-executive director of a listed entity.
- (d) Records
- (i) Individuals subject to this regulation 4(4) shall maintain records of both verifiable and non-verifiable CPD units obtained and of the relevance of those units to their role. In the case of verifiable units, the records shall include proof that the individual was involved in an acceptable CPD learning activity.
 - (ii) Such records shall be retained for three years and shall be subject to examination and verification by the Association and shall be provided to the Association upon their being requested in writing. Such records shall be provided within the deadline specified in the request, which shall be no sooner than seven days after the date of the request.

2.1 Membership Regulations

(e) Guidance

Before planning their CPD programmes, members should consult the detailed guidance issued by the Association from time to time regarding subject areas and the types of CPD learning activity that will be acceptable.

(f) Waiver

- (i) Subject to regulations 4(4)(f)(ii) and (iii) below, the Admissions and Licensing Committee may waive, vary or suspend the requirements of this regulation 4(4) at any time to adapt them to an individual's requirements as the Admissions and Licensing Committee, in its absolute discretion, thinks fit.
- (ii) Any waivers or variations granted will be in respect of one calendar year only.
- (iii) Waivers or variations in respect of non-verifiable CPD units will only be granted in exceptional circumstances.

(5) *Annual return and members' addresses*

- (a) Every member shall make a return to the Association in such form and at such time as the Council may prescribe showing whether or not the member is in public practice and notifying a place of business or residence as his registered address.
- (b) Each member must notify the Secretary forthwith of any change in his registered address(es) (place of business or residence) other than one which is merely temporary.

(6) *Members in retirement*

- (a) A member who has been a member for at least 30 years, and who has, with a view to permanent retirement, retired from professional work or business, may apply to Council to be placed on the register of members in retirement. Members on the register of retired members shall not be permitted to hold a practising certificate or an insolvency licence, save that this shall not apply to those members who transferred to the register of retired members prior to 1 January 1998 and who held a practising certificate or an insolvency licence on 31 December 1997.
- (b) Insofar as Council is provided with satisfactory evidence of the member's retirement, on his paying one additional year's full annual subscription at the rate current at the time of application, the member may be placed on the register of members in retirement, and shall thereafter be exempt from the requirement to pay the annual subscription referred to in regulation 4(3) for so long as he remains on the register of members in retirement.
- (c) A member in retirement who does not hold a practising certificate or insolvency licence is not required to comply with regulation 4(4).

(7) *Provision of data*

The Association may process members' personal data subject to the provisions of the Data Protection Act 1998. In certain circumstances this may include disclosure of said data to

third parties, including statutory regulators. This provision shall also be of application to affiliates and registered students.

(8) Honorary members

- (a) On admission, an honorary member shall undertake to be bound by the Charter, the bye-laws and the regulations made under them insofar as the same are capable of applying to honorary members.
- (b) An honorary member shall not be liable to pay admission fees or annual subscriptions under regulation 4(3) and shall not be eligible to be elected as a member of the Council. He shall not be entitled to receive notice of or attend or vote at any general meeting of the Association. Provided that none of these disabilities shall apply in the case of a person who, prior to his election as an honorary member, was a member of the Association in his own right.
- (c) All applications for honorary membership of the Association shall be considered by Council.

5. Eligibility for affiliate status

An ACCA student shall be eligible for affiliate status if he:

- (a) has passed or obtained exemptions from the Association's examinations as set out in Appendix 1;
- (b) has not yet completed three years of approved accountancy experience in accordance with Appendix 2; and/or
- (c) has not yet completed the Professional Ethics module save that this requirement does not apply to those ACCA students registered before 1 January 2007.

6. Affiliates' obligations and rights

(1) Application of the Charter, bye-laws and regulations

Upon and following admission as an affiliate, the Charter, the bye-laws and the regulations made pursuant to the bye-laws for the time being in force shall insofar as applicable to them apply to and bind every person so admitted for so long as he is an affiliate and, insofar as the Charter, bye-laws and such regulations so provide, thereafter.

(2) Descriptions

- (a) An affiliate shall not be entitled to describe himself as a member of the Association, imply that he is a member, or use the Association's designatory letters ACCA.
- (b) An affiliate may not hold himself out as being in public practice and shall abide by the obligations set out in Membership Regulation 8 (registered students' obligations and rights).

2.1 Membership Regulations

(3) *Subscriptions*

- (a) An affiliate shall be entitled to pay a reduced rate subscription, set at half of the membership subscription rounded to the nearest £5 for three complete calendar years following the year in which examination results are received. Thereafter, full membership subscription rates will apply regardless of whether the affiliate has achieved membership status.
- (b) Council may, in its absolute discretion, extend the period during which the reduced rate of subscription may be paid.
- (c) In cases of exceptional hardship Council may suspend or waive payment of the annual subscription payable on such terms and for such period as it may think fit.

(4) *Continuing professional development*

From 1 January 2008, an affiliate who has held affiliate status for three years or more (which need not be a consecutive period of three years) must participate in relevant and sufficient CPD where they are not fulfilling any of the practical experience requirements required for qualification and admission to membership.

(5) *Affiliates' addresses*

Every affiliate shall be required to notify the Association of a place of business or residence as his registered address and to notify the Secretary forthwith of any change in his registered address(es) other than one which is merely temporary.

7. Eligibility for registered student status

(1) *ACCA Qualification*

An individual shall be eligible to be registered as an ACCA student if he:

- (a) has attained UK university entrance standard or equivalent or has successfully completed the requirements of the mature student entry route described in regulation 7(2) or has satisfied the Association's requirements, as laid down from time to time, for acceptance of Certified Accounting Technician students on to the ACCA Qualification; and
- (b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

(2) *Mature student entry route (MSER) scheme*

An individual shall be eligible to be registered as an MSER if he:

- (a) satisfies the Association's requirements, as laid down from time to time, for acceptance on the MSER scheme; and
- (b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

To complete the mature student entry route an MSER student must pass two of the relevant MSER examination papers set by the Association within four examination sessions after joining the route. On completion, the student shall be exempted from papers F2 and F3 of the Fundamentals level of the ACCA Qualification examinations.

(3) Certified Accounting Technician (CAT) scheme

An individual shall be eligible to be registered as a CAT student if he:

- (a) satisfies the Association's requirements, as laid down from time to time, for acceptance on the Association's CAT scheme; and
- (b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

(4) Diploma schemes

An individual shall be eligible to be registered as a Diploma student if he:

- (a) satisfies the Association's requirements, as laid down from time to time, for acceptance on any of the Association's diploma schemes; and
- (b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

8. Registered students' obligations and rights

(1) Application of the Charter, bye-laws and regulations

Upon and following admission as a registered student, the Charter, the bye-laws and the regulations made pursuant to the bye-laws for the time being in force shall insofar as applicable to them apply to and bind every person so admitted for so long as he is a registered student and, insofar as the Charter, bye-laws and such regulations so provide, thereafter.

(2) Permitted activities of ACCA students

- (a) ACCA students of the Association may not claim to be members of the Association, nor may they be, or hold themselves out to be, in public practice, or a partner, director or controller of a firm or a member of a limited liability partnership which carries on public practice. ACCA students are, however, permitted to provide basic book-keeping services for reward, either directly to the public or for an accountant, provided that they do not refer to their studentship or potential membership of the Association. Such service may be provided by the ACCA student acting in a self-employed capacity, or as an employee. Basic book-keeping services are defined as:
 - (i) The recording of basic accounting data up to and including the preparation of accounting records to trial balance stage
 - (aa) bank accounts
 - (bb) cash
 - (cc) sales ledger and purchase ledger

2.1 Membership Regulations

- (ii) Payroll
 - (aa) wages
 - (bb) PAYE, National Insurance deductions
- (iii) VAT or its equivalent.
- (b) Any accountancy services, other than basic book-keeping services, can only be provided for reward by an ACCA student working for, and under the supervision of, a person who, in the opinion of Council, is suitably qualified and/or suitably experienced. The ACCA student may undertake such work either as an employee or as a self-employed person.
- (c) The provision of basic book-keeping services directly to the public cannot constitute approved accountancy experience, for the purpose of regulation 3(a)(ii). However, basic book-keeping and other accountancy work undertaken under supervision may constitute approved accountancy experience.
- (d) An ACCA student or affiliate who wishes to provide basic book-keeping services may obtain or seek such work by direct approaches to existing or prospective clients by mail or any other means unless prohibited by law in the country in which the student operates and subject to the requirements in paragraphs (e) and (f) below.
- (e) An ACCA student may inform the public of his book-keeping services by means of advertising, or other forms of promotion, subject to the general requirement that the medium should not, in the opinion of Council, reflect adversely on the ACCA student, the Association or the accountancy profession, nor should the advertisement or promotion material, in the opinion of Council:
 - (i) as to content or presentation, bring the Association into disrepute or bring discredit to the ACCA student, firm or the accountancy profession;
 - (ii) discredit the services offered by others whether by claiming superiority for the ACCA student's services or otherwise;
 - (iii) contain comparisons with the services offered by others;
 - (iv) be misleading, either directly or by implication;
 - (v) fall short of the requirements of the Advertising Standards Authority as to legality, decency, honesty and truthfulness.
- (f) Advertisements and other promotional material may refer to the basis on which fees are calculated, or to hourly or other charging rates, provided that the information given is not misleading.
- (g) Where ACCA students provide services pursuant to the above rules, they are subject to the same rules of professional conduct which apply to members who provide such services.
- (h) Regulations 8(2)(a)–(g) do not apply to ACCA students:

- (i) who are members of one or more of the UK or Irish Institutes of Chartered Accountants, The Chartered Institute of Management Accountants or The Chartered Institute of Public Finance and Accounting and who hold practising certificates or the equivalent status from such bodies; or
- (ii) who are authorised for appointment as company auditor under Section 25 of the Companies Act 1989; or
- (iii) who are resident outside the United Kingdom, Jersey, Guernsey and Dependencies, the Isle of Man and the Republic of Ireland, and hold a professional accountancy qualification which confers the right to practise in their country of residence.

ACCA students falling within these categories are permitted to engage in public practice (although, in respect of category (iii), in their country of residence only) provided that they describe themselves only as members of the professional bodies to which they belong (if any) and not as students of the Association.

(3) MSER students

The provisions of regulation 8(2) apply to MSER students in respect of their permitted activities.

(4) CAT students

- (a) The provisions of regulation 8(2) apply to CAT students in respect of their permitted activities.
- (b) CAT students are eligible to apply for CAT status and to use the letters “CAT” after their names if they:
 - (i) have passed or obtained exemptions from the Association’s Certified Accounting Technician scheme examinations set out in Appendix 3; and either
 - (ii) have completed one year of approved experience in accordance with Appendix 4; or
 - (iii) hold an NVQ Level 4 in accounting.

The activities of individuals holding CAT status are not restricted by the provisions of regulation 8(2) unless they are ACCA students.

(5) Diploma students

The activities of Diploma students are not restricted by the provisions of regulation 8(2) unless they are ACCA students.

(6) Students’ addresses

Every registered student shall be required to notify the Association of a place of business or residence as his registered address and to notify the Secretary forthwith of any change in his registered address(es) other than one which is merely temporary.

2.1 Membership Regulations

9. Application procedure to become a member or registered student

(1) Form of application

- (a) An applicant must apply in writing in such form, giving such undertakings and accompanied by such fees, as may be prescribed by Council from time to time.
- (b) It shall be for an applicant to satisfy the Admissions and Licensing Committee that he is eligible in accordance with these regulations for membership or, as the case may be, to become a registered student.

(2) Procedure

- (a) Applications shall be considered by the Admissions and Licensing Committee. At any time after receiving an application and before finally deciding upon it, the Admissions and Licensing Committee may require the applicant to furnish it with additional information.
- (b) Any information furnished by the applicant shall, if the Admissions and Licensing Committee so requires, be verified in such manner as it may specify.
- (c)
 - (i) The Admissions and Licensing Committee may additionally take into account any other information which it considers appropriate in relation to the applicant, provided such information is disclosed to the applicant where such disclosure does not constitute a breach by the Admissions and Licensing Committee of any duty to any other person.
 - (ii) The applicant may within a reasonable time after service of such other information serve on the Admissions and Licensing Committee any additional information and/or written comments or submissions for the committee's consideration.
- (d) Where the Admissions and Licensing Committee deems it appropriate to have regard to the findings of any other body in its consideration of an application, any such finding which has not been set aside on appeal or otherwise shall be regarded as conclusive proof of the fact that it has been made and shall not be re-opened before the Admissions and Licensing Committee unless the Admissions and Licensing Committee in its absolute discretion otherwise determines.
- (e) After consideration of all of the information before it, the Admissions and Licensing Committee shall make a decision on the application.

(3) The Admissions and Licensing Committee's decision

The Admissions and Licensing Committee may decide to:

- (i) grant the application;
- (ii) refuse the application;
- (iii) grant the application subject to such condition(s) as it considers appropriate; or
- (iv) adjourn consideration of any application or postpone the admission of any applicant to membership or, as the case may be, to the student register.

(4) The hearing

- (a) Before making a decision under regulation 9(3), the Admissions and Licensing Committee shall consider the matter at a hearing. It shall determine the date of the hearing and shall give the applicant at least 21 days prior written notice of the date set, unless a shorter period of notice is agreed between the applicant and the Association.
- (b) The applicant and the Association may appear at the hearing in person and/or by solicitor, counsel or other representative and may call witnesses who may give evidence and be cross-examined. The Admissions and Licensing Committee may, at any time, ask questions of the applicant, the Association, any representative or any witness and shall announce its decision at the hearing.
- (c) The hearing shall be open to the public unless the Admissions and Licensing Committee determines that the public shall be excluded from all or any part of the hearing on one or more of the following grounds:
 - (i) in the interests of morals, public order or national security in a democratic society;
 - (ii) where the interests of juveniles or the protection of the private lives of the parties so require; or
 - (iii) to the extent strictly necessary in the opinion of the Admissions and Licensing Committee in special circumstance, where publicity would prejudice the interests of justice.
- (d) The procedure to be adopted in relation to any hearing shall, subject to the foregoing paragraphs of this regulation, be such as the Admissions and Licensing Committee shall, in its absolute discretion, determine.

(5) Communication of the decision

The Admissions and Licensing Committee shall notify the applicant in writing within 14 days of its decision, and a written statement of the reasons for the decision shall be given to the applicant within 21 days, or such longer period as shall be necessary in the circumstances.

When an application is granted, or granted subject to conditions, the applicant shall be issued with a certificate of admission to membership or, as the case may be, notification of admission to the student register. Any such certificate shall remain the property of the Association and shall be returned to the Association on the individual ceasing to be a member or, as the case may be, a registered student.

(6) Correction of errors

- (a) Where the order and/or written statement of the reasons for the decision of the Admissions and Licensing Committee contains an accidental error or omission, a party may apply by way of an application notice for it to be corrected. The application notice shall describe the error or omission and state the correction required.

2.1 Membership Regulations

- (b) The Chairman of the Admissions and Licensing Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.
- (c) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.
- (d) If the application is opposed, it should be heard by the same Admissions and Licensing Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.
- (e) The Admissions and Licensing Committee may of its own volition vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

(7) Appeal

A person ("the appellant") aggrieved by any decision of the Admissions and Licensing Committee made pursuant to regulation 9(3) of these regulations may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in The Chartered Certified Accountants' Appeal Regulations 2006 (hereafter referred to as "the Appeal Regulations"). Any such appeal shall be dealt with in accordance with the Appeal Regulations.

The Association may appeal against a decision of the Admissions and Licensing Committee in accordance with the Appeal Regulations.

(8) Effective date

Any decision made by the Admissions and Licensing Committee pursuant to regulation 9(3) of these regulations shall take effect from the date of expiry of the appeal period referred to in the Appeal Regulations, unless the appellant shall duly give notice of appeal prior to the expiry of such period, in which case it shall become effective (if at all) as described in the Appeal Regulations.

(9) Administration charge

If an application is withdrawn by the applicant the Association may charge the applicant such sum as seems reasonable to it to defray or contribute to the cost of processing the application between its receipt by the Association and its withdrawal by the applicant but, subject to this, shall return any fee tendered with the application.

(10) Affiliate's application

- (a) An affiliate must apply for membership of the Association as soon as he has completed
 - (i) three years of approved experience in accordance with Appendix 2; and
 - (ii) the Professional Ethics module save that this requirement does not apply to those ACCA students registered before 1 January 2007.

- (b) Council may, in its absolute discretion, remove an individual's affiliate status where it believes that an individual has delayed his application for membership without good cause.

10. Resignation of member, affiliate or registered student status

(1) Notice

Any member, affiliate or registered student wishing to resign shall tender written notice to the Council and on its acceptance his membership shall cease or, as the case may be, he shall cease to have the status of member, affiliate or registered student and his name shall be removed from the relevant register.

(2) Fees and subscriptions

Any individual giving notice of his intention to resign shall remain liable to pay any subscription or other sums due from him at the date the relevant notice is accepted.

(3) Outstanding disciplinary matters

An individual's notice of resignation or notice seeking removal from the member, affiliate or student register shall not be accepted, and the individual shall accordingly not cease to be a member or, as the case may be, an affiliate or a registered student, where a complaint in respect of him or of a relevant firm in relation to which he is a specified person has been received by the Association, or where disciplinary proceedings of the Association are otherwise pending against him or such relevant firm until such time as the matter has been finally disposed of and the amount of any fine or costs specified in a disciplinary order made in respect of him or such relevant firm has been paid in full.

11. Removal of member, affiliate or registered student status for non-payment of sums due to the Association

(1) Subject to the remainder of regulation 11 below, a member, affiliate or registered student shall cease to hold his status as such if any sum due to the Association (including without limitation in the case of a member his annual subscription) shall remain unpaid after three months from the date on which it was due to the Association.

(2) The Council may in its absolute discretion, either on its own volition or on the application of the individual concerned, suspend the operation of regulation 11(1) where it is of the opinion it is reasonable to do so.

(3) Regulation 11(1) shall not apply to an individual where a complaint in respect of him or of a relevant firm in relation to which he is a specified person has been received by the Association until such time as the complaint is finally disposed of and all applicable appeal periods have expired.

(4) Where a disciplinary order has been made against an individual member, affiliate or registered student or against a relevant firm in relation to which such person is a specified person, he will automatically cease to be a member if he fails to pay when due any amount imposed by way of a fine or costs pursuant to such order. Provided that the Chairman of the Committee that made the order may at his absolute discretion and on such terms as he

2.1 Membership Regulations

deems fit agree to defer the due date for payment on the application of the member prior to such date if he is of the opinion that such deferral is appropriate in all the circumstances.

(5) The Association shall be entitled to recover the amount of any fine or costs which an individual has been ordered to pay pursuant to a disciplinary order from that individual and his personal representatives, notwithstanding that he has ceased to be a member, affiliate or registered student howsoever that may have occurred.

12. Bankruptcy

(1) Duty to notify

If an individual becomes the subject of a bankruptcy event, he must:

- (a) notify the Admissions and Licensing Committee within one month of the event, and
- (b) satisfy the Admissions and Licensing Committee that he is still eligible in accordance with these regulations to remain a member, affiliate or registered student, notwithstanding the fact of the bankruptcy event.

Any individual who fails to notify the Association of the bankruptcy event within the period specified in regulation 12(1)(a) will automatically cease to be a member or, as the case may be, an affiliate or registered student, on the expiry of one month from the date of the bankruptcy event.

(2) Procedure

On receipt of notification of an individual's bankruptcy event, the Admissions and Licensing Committee may require the individual to furnish it with such information (including documents) as it requires, and may take into account any other information it considers appropriate, in considering whether the individual continues to be eligible to remain a member, affiliate or registered student. Such information shall be disclosed to the individual unless such disclosure would constitute a breach by the Admissions and Licensing Committee of a duty to any other person. Any information furnished by the individual shall, if the Admissions and Licensing Committee so requires, be verified in such matter as it may specify.

(3) The Admissions and Licensing Committee's decision

The Admissions and Licensing Committee may:

- (i) permit the individual to retain his membership, affiliate or registered student status;
- (ii) withdraw the individual's membership, affiliate or registered student status;
- (iii) permit the individual to retain his membership, affiliate or registered student status subject to such condition(s) as it may specify; or
- (iv) make such other decision as it thinks fit in respect of the individual.

(4) The hearing

- (a) Before making a decision under regulation 12(3), the Admissions and Licensing Committee shall consider the matter at a hearing. Accordingly, it shall determine the date of the hearing and shall give the individual at least 21 days prior written notice of the date set unless a shorter period of notice is agreed between the individual and the Association.
- (b) The individual and the Association may appear at the hearing in person and/or by solicitor, counsel or other representative and may call witnesses who may give evidence and be cross-examined. The Admissions and Licensing Committee may ask questions of the individual, the Association, any representative or any witness at any time and shall announce its decision at the hearing.
- (c) The hearing shall be open to the public unless the Admissions and Licensing Committee determines that the public shall be excluded from all or part of the hearing on one or more of the following grounds:
 - (i) in the interests of morals, public order or national security in a democratic society;
 - (ii) where the interests of juveniles or the protection of the private lives of the parties so require; or
 - (iii) to the extent strictly necessary in the opinion of the Admissions and Licensing Committee in special circumstances, where publicity would prejudice the interests of justice.
- (d) The procedure to be adopted in relation to any hearing shall, subject to the foregoing paragraphs of this regulation, be such as the Admissions and Licensing Committee shall, in its absolute discretion, determine.

(5) Communication of the decision

The Admissions and Licensing Committee shall notify the individual in writing within 14 days of the decision, and a written statement of reasons for the decision shall be given to the individual within 21 days or such longer period as shall be necessary in the circumstances.

(6) Appeal

An individual ("the appellant") aggrieved by any decision of the Admissions and Licensing Committee made pursuant to regulation 12(3) of these regulations may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in the Appeal Regulations. Any such appeal shall be dealt with in accordance with the Appeal Regulations.

(7) Effective date

Any decision made by the Admissions and Licensing Committee pursuant to regulation 12(3) of these regulations shall take effect from the date of expiry of the appeal period referred to in the Appeal Regulations unless:

2.1 Membership Regulations

- (i) the individual shall duly give notice of appeal prior to the expiry of such period in which case it shall become effective (if at all) as described in the Appeal Regulations; or
- (ii) the Admissions and Licensing Committee directs that, in the interests of the public, the decision should have immediate effect, subject to its being varied or rescinded on appeal as described in the Appeal Regulations.

13. Readmission

(1) Any former member, affiliate or registered student may apply for readmission provided that any outstanding sums due to the Association, including any fine or costs imposed by a disciplinary order, have been paid. Such application should be made in the same manner as the original application and it will be considered by the Admissions and Licensing Committee in the ordinary way, and in accordance with regulation 9 above, save that:

- (a) the Admissions and Licensing Committee shall have specific regard to the circumstances of his cessation as a member, affiliate or registered student; and
- (b) the Admissions and Licensing Committee may, in its absolute discretion, require him to pass further examinations and/or tests and/or satisfy other requirements before it considers his application for readmission.

(2) No former member, affiliate or registered student who has had a disciplinary order made against him excluding him from membership or as the case may be, causing him to lose his affiliate or registered student status, and prohibiting him from applying for readmission to membership or, as the case may be, seeking restoration of his affiliate or registered student status for a specified period may do so prior to the expiry of such period.

14. General

(1) Notice

- (a) Any notice or other document required to be given to any person pursuant to these regulations may be given to him personally or by sending it by post or courier to his registered address. If the person has no registered address any notice or document should be sent by post or courier to his address last known to the Association. Any such notice or document so sent shall be deemed to have arrived within 72 hours (excluding Saturdays and Sundays and Public and Bank Holidays) of despatch.
- (b) Any notice or document required to be given to the Association may be given by sending it to the committee officer at the principal office of the Association.

(2) Hearings

Where a matter is to proceed by way of a hearing in accordance with these regulations, and is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Admissions and Licensing Committee or the Secretary may, at their discretion, direct that any hearing before the Admissions and Licensing Committee take place in that country. In the absence of any such direction, hearings before the Admissions and Licensing Committee shall take place in London.

Appendix 1

ACCA QUALIFICATION EXAMINATION STRUCTURE

The new ACCA Qualification structure below applies from August 2007, and will be first examined in December 2007. All current students will be converted to the new syllabus below in August 2007 and advised of the papers that they are required to complete.

Fundamentals

Knowledge

- F1 Accountant in Business (AB)
- F2 Management Accounting (MA)
- F3 Financial Accounting (FA)

Skills

- F4 Corporate and Business Law (CL)
- F5 Performance Management (PM)
- F6 Taxation (TX)
- F7 Financial Reporting (FR)
- F8 Audit and Assurance (AA)
- F9 Financial Management (FM)

Professional

Essentials

- P1 Professional Accountant (PA)
- P2 Corporate Reporting (CR)
- P3 Business Analysis (BA)

Options

- P4 Advanced Financial Management (AFM)
- P5 Advanced Performance Management (APM)
- P6 Advanced Taxation (ATX)
- P7 Advanced Audit and Assurance (AAA)

Appendix 2

PRACTICAL EXPERIENCE REQUIREMENT

Trainees must demonstrate that they have met a range of workplace performance objectives. There are 20 performance objectives which are divided into 8 key areas of knowledge and classified as either Essentials or Options. The performance objectives describe the types of work activities that trainees should be involved with in addition to the values and attitudes they should demonstrate to fulfil the requirement.

To satisfy the PER, trainees must achieve 13 performance objectives – all 9 from Essentials and any 4 from Options.

Trainees demonstrate that they have achieved a performance objective by responding to 3 “challenge questions”. A performance objective is achieved once it has been reviewed and signed off by a workplace mentor.

ACCA students must record their achievements on an online trainee development matrix (TDM). Trainees who opt to use a paper-based version of the TDM must retain hard copies of their responses to the challenge questions and of performance objectives they have had reviewed and signed off. ACCA may require to view these records for audit purposes.

Trainees working for an ACCA approved employer – trainee development – gold or platinum are not required to use the TDM, unless they or their employer wishes them to do so.

ACCA will accept the Hong Kong Institute of Certified Public Accountants Practical Experience Requirement as substitute for the TDM where ACCA students in Hong Kong are also students of the Hong Kong Institute of Certified Public Accountants and who are complying with the Hong Kong Institute of Certified Public Accountants Practical Experience Requirement.

ESSENTIALS

Professionalism, ethics and governance

- 1 Demonstrate the application of professional ethics, values and judgement
- 2 Contribute to the effective governance of an organisation
- 3 Raise awareness of non-financial risk

Personal effectiveness

- 4 Manage self
- 5 Communicate effectively
- 6 Use information and communications technology

Business management

- 7 Manage ongoing activities in your area of responsibility
- 8 Improve departmental performance
- 9 Manage an assignment

OPTIONS

Financial accounting and reporting

- 10 Prepare financial statements for external purposes
- 11 Interpret financial transactions and financial statements

Performance measurement and management accounting

- 12 Prepare financial information for management
- 13 Contribute to budget planning and production
- 14 Monitor and control budgets

Finance and financial management

- 15 Evaluate potential business/investment opportunities and the required finance options
- 16 Manage cash using active cash management and treasury systems

Audit and assurance

- 17 Prepare for and collect evidence for audit
- 18 Evaluate and report on audit

Taxation

- 19 Evaluate and compute taxes payable
- 20 Assist with tax planning

Appendix 3

CERTIFIED ACCOUNTING TECHNICIAN SCHEME EXAMINATION STRUCTURE

Introductory Level

- Paper 1 Recording Financial Transactions
- Paper 2 Information for Management Control

Intermediate Level

- Paper 3 Maintaining Financial Records
- Paper 4 Accounting for Costs

Advanced Level

- Paper 5 Managing People and Systems
 - Paper 6 Drafting Financial Statements
 - Paper 7 Planning, Control & Performance Management
 - Paper 8 Implementing Audit Procedures
 - Paper 9 Preparing Taxation Computations
 - Paper 10 Managing Finances
- (any two
from three
papers)

Appendix 4

REQUIRED EXPERIENCE TO OBTAIN CERTIFIED ACCOUNTING TECHNICIAN STATUS

(The content of this appendix applies to those who first registered as Certified Accounting Technician scheme students on or after 16 August 2003. Alternative provisions apply to those registering before this date. Details are available from the Association.)


The Association has identified 21 units of competence that cover a range of technical and management functions. Within each of these units, specific elements of competence have been defined. Each element of competence relates to a specific skill, task or area of responsibility that may be demonstrated by a Certified Accounting Technician in the workplace.

Each unit contains two or more elements of competence. The units are numbered 1 to 23. There is no unit 16 or unit 20 because the Accounting Occupational Standards Group has withdrawn these two units. Some units of competence have been identified as mandatory. These are important areas in which training is essential.

Each element of competence is underpinned by performance criteria that describe the standards expected. Overviews of the performance criteria, together with examples which illustrate the tasks and activities that Certified Accounting Technician students might undertake in order to achieve an element of competence, are available from the Association's website.

To satisfy the Association's minimum competence requirements for Certified Accounting Technician status, students must either:

achieve at least 10 units of competence, including:

- 3 mandatory units (marked by the symbol )
- at least 7 other units

or

achieve an NVQ Level 4 in Accounting.

Competence is the ability to perform an activity to a set standard within the workplace. Certified Accounting Technician students achieve an element of competence if they meet the performance criteria associated with the element of competence without close supervision or regular instruction from their Supervisor.

Certified Accounting Technician students (with the exception of those students who have achieved an NVQ Level 4 in Accounting) must record their achievement of workplace experience and skills in their Technician Training Record (TTR) or such other document as the Association may require from time to time. Certified Accounting Technician students must provide the Association with their completed TTR if requested to do so.

2.1 Membership Regulations

Unit 1 – Recording income and receiving payments

Competence must be achieved in 1 of the 2 elements:

Element 1.1

Process documents relating to goods and services supplied

Element 1.2

Process receipts

Unit 2 – Making and recording payments

Competence must be achieved in 1 of the 2 elements:

Element 2.1

Process documents relating to goods and services received

Element 2.2

Process payments

Unit 3 – Preparing ledger balances and an initial trial balance

Competence must be achieved in 2 of the 3 elements:

Element 3.1

Balance bank transactions

Element 3.2

Prepare ledger balances and control accounts

Element 3.3

Draft an initial trial balance

Unit 4 – Supplying information for management control

Competence must be achieved in 1 of the 2 elements:

Element 4.1

Code and extract information

Element 4.2

Provide comparisons on costs and income

Unit 5 – Maintaining financial records and preparing accounts

Competence must be achieved in 1 of the 3 elements:

Element 5.1

Maintaining records relating to capital acquisition and disposal

Element 5.2

Collecting and collating information for the preparation of final accounts

Element 5.3

Preparing the final accounts of sole traders and partnerships

Unit 6 – Recording and evaluating costs and revenues

Competence must be achieved in 2 of the 3 elements:

Element 6.1

Record and analyse information relating to direct costs and revenues

Element 6.2

Record and analyse information relating to the allocation, apportionment and absorption of overhead costs

Element 6.3

Prepare and evaluate estimates of costs and revenues

Unit 7 – Preparing reports and returns

Competence must be achieved in 2 of the 3 elements:

Element 7.1

Prepare and present periodic performance reports

Element 7.2

Prepare reports and returns for outside agents

Element 7.3

Prepare sales tax/VAT returns

Unit 8 – Contributing to the management of performance and the enhancement of value

Competence must be achieved in 1 of the 2 elements:

Element 8.1

Collect, analyse and disseminate information about costs

Element 8.2

Monitor performance and make recommendations to enhance value

Unit 9 – Contributing to the planning and control of resources

Competence must be achieved in 1 of the 3 elements:

Element 9.1

Prepare forecasts of income and expenditure

Element 9.2

Prepare draft budget proposals

Element 9.3

Monitor the performance of responsibility centres against budgets

Unit 10 – Managing systems and people in the accounting environment

Competence must be achieved in 1 of the 2 elements:

Element 10.1

Manage people within the accounting environment

Element 10.2

Identify opportunities for improving the effectiveness of an accounting system

Units 11, 12, 13 and 14 – Drafting financial statements

These units are about drafting and interpreting financial statements for specific industry sectors:

Unit 11 – Drafting financial statements (accounting practice, industry and commerce)

Unit 12 – Drafting financial statements (central government)

Unit 13 – Drafting financial statements (local government)

Unit 14 – Drafting financial statements (health sector)

Competence must be achieved in 1 of the 2 elements:

Element 14.1

Draft financial statements for one of the following sectors:

- accounting practice, industry and commerce
- central government
- local government
- health sector

Element 14.2

Interpret financial statements for one of the following sectors:

- accounting practice, industry and commerce
- central government
- local government
- health sector

Unit 15 – Operating a cash management and credit control system

Competence must be achieved in 2 of the 4 elements:

Element 15.1

Monitor and control cash receipts and payments

Element 15.2

Manage cash balances

Element 15.3

Grant credit

Element 15.4

Monitor and control the collection of debts

Unit 16 – This unit has been withdrawn

2.1 Membership Regulations

Unit 17 – Implementing audit procedures

Competence must be achieved in 2 of the 3 elements:

Element 17.1

Contribute to the planning of an audit assignment

Element 17.2

Contribute to the conduct of an audit assignment

Element 17.3

Prepare related draft reports

Unit 18 – Preparing business taxation computations

Competence must be achieved in 2 of the 4 elements:

Element 18.1

Prepare capital allowances computations

Element 18.2

Compute assessable business income

Element 18.3

Prepare capital gains computations

Element 18.4

Prepare corporation tax computations

Unit 19 – Preparing personal taxation computations

Competence must be achieved in 2 of the 4 elements:

Element 19.1

Calculate income from employment

Element 19.2

Calculate property and investment income

Element 19.3

Prepare income tax computations

Element 19.4

Prepare capital gains tax computations

Unit 20 – This unit has been withdrawn

M Unit 21 – Working with computers

Competence must be achieved in all elements:

Element 21.1

Use computer systems and software

Element 21.2

Maintain security of data

M Unit 22 – Contribute to the maintenance of a healthy, safe and productive working environment

Competence must be achieved in all elements:

Element 22.1

Monitor and maintain a safe, healthy and secure working environment

Element 22.2

Monitor and maintain an effective and efficient working environment

M Unit 23 – Achieving personal effectiveness

Competence must be achieved in all elements:

Element 23.1

Plan and organise your own work

Element 23.2

Maintain good working relationships

Element 23.3

Improve your own performance

2.2

The Chartered Certified Accountants' Global Practising Regulations 2003

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 4, 5, 6, 27 and 28 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations and annexes may be cited as The Chartered Certified Accountants' Global Practising Regulations 2003.

(2) These regulations and annexes as set out herein shall come into force on 1 January 2008.

(3) These regulations and annexes shall apply to all members and to all persons who otherwise agree to be bound by them.

(4) These regulations and the annexes may be amended by resolution of Council.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

ACCA approved employer means an organisation which has received the Association's approved employer status for the purposes of these regulations for the provision of training towards a practising certificate;

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

auditor means a person who signs or holds himself out as being available to sign an audit report whether or not that report is required by statute;

bye-laws mean the bye-laws from time to time of the Association;

certificate means a practising certificate;

Charter means the Royal Charter of Incorporation granted to the Association as amended or supplemented from time to time;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

2.2 Global Practising Regulations

designated territory means the United Kingdom, the Republic of Ireland, Jersey, Guernsey and Dependencies and the Isle of Man and any other country or jurisdiction designated as such by Council from time to time;

Disciplinary Regulations means The Chartered Certified Accountants' Disciplinary Regulations 2001;

FGI means fidelity guarantee insurance;

firm means a sole practice, partnership or body corporate including a limited liability partnership;

member means an individual admitted to membership of the Association pursuant to the bye-laws;

Membership Regulations means The Chartered Certified Accountants' Membership Regulations 1996;

PII means professional indemnity insurance;

practising certificate means a practising certificate issued by the Association and referred to in regulation 5(1) of The Chartered Certified Accountants' Global Practising Regulations 2003;

public practice has the meaning given by regulation 4;

registered student has the meaning given by The Chartered Certified Accountants' Membership Regulations 1996;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

(3) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

(4) In these regulations words shall be interpreted in accordance with the context of the regulation in which they are contained, unless otherwise stated.

3. Restrictions on carrying on public practice

(1) *Members*

- (a) Subject to regulation 3(1)(b), no member shall carry on public practice unless he holds a practising certificate which authorises the carrying on of the activity in question.
- (b) Where a member carries on public practice in a country other than a designated territory or Zimbabwe, he may carry on public practice not authorised by his practising certificate (such as audit work) where he is authorised to do so by local law and has notified the Admissions and Licensing Committee of his practising status

and of any local body of which he is a member or by which he is regulated in the conduct of his public practice.

- (c) A member shall only be regarded as holding a practising certificate where it is current and valid. The certificate shall at all times remain the property of the Association and the Association shall retain the right to demand its return at any time and without giving reasons.

(2) Members and firms

- (a) No member shall be a sole proprietor, partner or director of a firm, or member of a limited liability partnership, where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, unless the member holds a practising certificate.
- (b) No member shall hold rights in a firm where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, which in effect put him in the position of a principal of the firm, unless the member holds a practising certificate.

4. Meaning of public practice

(1) Activities

Subject to regulation 4(3), public practice, which may be carried on by an individual or a firm (the "practitioner"), means:

- (a) accepting an appointment as an auditor; and/or
- (b) signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the "third party"), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or
- (c) holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of "Chartered Certified Accountant(s)", "Certified Accountant(s)", "Chartered Accountant(s)", "Accountant(s)" or "Auditor(s)" or any similar description or designation standing for any such description in the context of the practitioner's business shall be regarded as an example of such a holding out); and/or
- (d) holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on.

Book-keeping services, as defined in paragraphs 8(2)(a)(i) to 8(2)(a)(iii) of the Membership Regulations 1996, do not constitute public practice.

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(2) Where carried on

Public practice shall be taken to be carried on in the country whose laws apply to the activity carried on by the practitioner, or where the said laws are unclear, in the country in which the practitioner is resident.

(3) Honorary reports

The activities set out in regulation 4(1)(b) shall not constitute public practice where all of the following conditions are satisfied:

- (a) the accounts are of an entity which does not require the appointment of an auditor; and
- (b) no fee is payable or other material benefit receivable in respect of the work performed; and
- (c) the gross income of the entity for the year prior to the year in question does not exceed £100,000; and
- (d) the aggregate of such gross income with such gross income of any other entity in respect of which the member has relied upon this regulation 4(3) in the calendar year in question does not exceed £200,000; and
- (e) any third parties are made aware that the activity has been carried out by an Honorary Reporting Accountant; and
- (f) the member does not hold himself out, or allow himself to be held out, as a sole proprietor, partner, director, member or designated member of a firm where public practice is carried on.

5. The practising certificate

(1) Authorised activity

The practising certificate shall authorise a member to carry on in the country to which the certificate relates any activity constituting public practice. The practising certificate shall authorise the carrying on of the activities as specified in the holder's application, as updated from time to time.

(2) Countries

The practising certificate shall specify the country or countries to which it relates.

6. Eligibility for a practising certificate

A member shall be eligible for a practising certificate where:

- (a) he is sufficiently qualified in accordance with regulation 7 to carry on any activity constituting public practice in the country to which the certificate applied for relates;
- (b) he is fit and proper within the meaning of regulation 8;

- (c) he holds the necessary PII in accordance with regulation 9; and
- (d) he has made arrangements for the continuity of his practice in accordance with regulation 11.

7. Qualifications

(1) *Qualification for a practising certificate*

- (a) To be qualified to hold a global practising certificate authorising a member for the carrying on of any activity constituting public practice, except accepting appointments as an auditor, an individual must have been a member of the Association continuously for a period of not less than two years and either:
 - (i) (aa) completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, under the supervision of a suitably experienced member or another person having in the opinion of Council adequate qualification; and
 - (bb) at least two years of practical training must be completed after the individual's admission to membership and must comply with the requirement at regulation 7(2). The remaining training period may be completed before or after, or partly before and partly after, the individual's admission to membership and must include experience in the matters set out in Appendices 3 and 4 of the Membership Regulations in an ACCA approved employer; and
 - (cc) completed a practising certificate training record; or
- (ii) previously held an equivalent certificate issued to members by the Association prior to 1 January 2006.
- (b) The following transitional provision applies until 31 December 2009: an individual who became a member of the Association prior to 1 January 2005, and whose training has not been in an ACCA approved employer, may, instead of the requirement at regulation 7(1)(a)(i), complete five years' supervised experience in the specialist field in which he or she intends to work, of which at least two years must have been completed after admission to membership.
- (c) An individual practising in a country other than a designated territory and who holds a practising certificate from a recognised national body or regulatory authority in that country may apply for a practising certificate which is valid only in that country, in which case the individual will be exempted from regulation 7(1)(a)(i). If such an individual wishes to obtain a global practising certificate, regulation 7(1)(a)(i) will apply.
- (d) The requirements at regulations 7(1)(a)(i)(bb) and (cc) above do not apply to Zimbabwe or any other country that Council may designate from time to time, where the licensing body of the country to which the certificate relates does not require practical training to have taken place after the individual's admission to membership in order to issue a practising certificate.

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- (e) Any experience gained by an individual whilst carrying on public practice in breach of regulation 3 shall not count towards supervised experience referred to in regulations 7(1)(a) and 7(1)(b).

(2) *Training requirements after admission to membership*

- (a) Training in an ACCA approved employer after admission to membership must cover all the following key areas of competence as set out in Appendix 1 to these regulations and must be recorded in the practising certificate training record:
 - (i) Professional Conduct (key area 1);
 - (ii) Technical (key areas 2–5: Accounting; Business advice, development and measurement; Taxation; Business assurance and internal review); and
 - (iii) Management (key area 6).
- (b) Candidates for a practising certificate must achieve proficiency in the following elements of competence as set out in Appendix 1 to these regulations, which must be recorded in the practising certificate training record:
 - (i) all 5 mandatory elements of competence in relation to Professional Conduct; and
 - (ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and
 - (iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

(3) *Waiver*

In exceptional circumstances, the requirements of regulation 7(1) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion. The Admissions and Licensing Committee may impose such alternative requirements as it thinks fit, which may include without limitation a requirement to pass any tests of competence and/or examinations.

8. Fit and proper persons

The Admissions and Licensing Committee shall only issue a practising certificate to an applicant that is fit and proper, as determined by it in accordance with this regulation 8.

(1) In determining whether a person is “fit and proper”, the Admissions and Licensing Committee may, without limitation, take into account whether that person has:

- (i) been convicted of a criminal offence; or
- (ii) been the subject of a disciplinary order made by the Association or another professional body; or
- (iii) been or is the subject of an investigation, whether criminal, disciplinary or otherwise, in respect of his conduct; or

- (iv) committed a material breach of an applicable regulation of the Association; or
- (v) fallen within any of the criteria set out at regulations 8(3) and (4); or
- (vi) on any occasion given the Association false, inaccurate or misleading information or failed to co-operate with the Association.

(2) The Admissions and Licensing Committee may take into account all current and past matters which impact on the ability to hold a practising certificate.

(3) In the case of individuals, the criteria referred to in regulation 8(1)(v) are whether the person is or has been:

- (i) at any time bankrupt, signed a trust deed for creditors or entered into a deed of arrangement, scheme or composition in respect of his financial affairs (or any similar or analogous event); or
- (ii) removed from the office of liquidator, trustee, administrative receiver, administrator or supervisor; or
- (iii) the subject of a disqualification order or disqualification undertaking made under the Company Directors Disqualification Act 1986 of the United Kingdom; or
- (iv) the subject of a bankruptcy restriction order or bankruptcy restriction undertaking under the Insolvency Act 1986 of the United Kingdom; or
- (v) excluded from or refused membership of a professional body on disciplinary grounds; or
- (vi) found to have failed to ensure that the experience and competence of his employees and practice associates are adequate, having regard to the nature of the work involved; or
- (vii) a patient under the Mental Health Act 1983 of the United Kingdom; or
- (viii) the equivalent of or similar to the above criteria under the corresponding legislation of any country or jurisdiction.

(4) In the case of firms, the criteria referred to in regulation 8(1)(v) are as for individuals as specified in regulation 8(3), with such amendments as are appropriate to make the criteria applicable to firms.

(5) In determining whether any person is “fit and proper” for the purposes of this regulation 8, the Admissions and Licensing Committee may take into account any matter which relates to him or it and:

- (i) any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice;
- (ii) in the case of a partnership, any matter relating to any of the partners, any director or controller of any of the partners, any body corporate in the same group as any of the partners and any director or controller of any such other body;

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- (iii) in the case of a body corporate, any matter relating to any director or controller of the body, any other body corporate in the same group or any director or controller of any such other body; and
- (iv) in the case of a limited liability partnership, any matter relating to any of the members or designated members of the limited liability partnership.

9. Professional indemnity insurance

(1) Holders of a practising certificate

- (a) Subject to regulation 9(6), applicants for and holders of a practising certificate must hold professional indemnity insurance (“PII”) covering the liabilities and according with the limits set out in this regulation 9 and, in the case of such a person whose firm employs full and/or part time staff, the firm must also hold a policy of fidelity guarantee insurance (“FGI”) in respect of all partners, directors, members and designated members of limited liability partnerships and employees in accordance with this regulation. For the avoidance of doubt such FGI may, but need not, form a single policy with such PII and all such PII and FGI must remain in force for all of the period during which a relevant practising certificate is held.
- (b) Such PII and FGI may be effected with any reputable insurance company or insurance companies or other underwriter provided that Council reserves the right to require applicants for or holders of a practising certificate not to use certain insurance companies or underwriters, if it so directs.

(2) Liabilities to be covered

PII shall provide cover in respect of all civil liability incurred in connection with the conduct of the firm’s business by the partners, directors, members and designated members of limited liability partnerships or employees and FGI shall include cover against any acts of fraud or dishonesty by any partner, director or employee in respect of money or goods held in trust by the firm.

(3) Limits

- (a) Subject to regulation 9(3)(g), the limit of indemnity on PII in respect of each and every claim shall be:
 - (i) in the case of a person whose firm’s total income for the accounting year immediately preceding the year in question (the “relevant total income” and “relevant accounting year”) is less than or equal to £200,000, at least the greatest of:
 - (aa) two and one half times that firm’s relevant total income; and
 - (bb) twenty-five times the largest fee paid to the firm during the relevant accounting year; and
 - (cc) £50,000;
 - (ii) in the case of a person whose firm’s relevant total income exceeds £200,000 but is less than or equal to £700,000, at least the greater of:

- (aa) the aggregate of £300,000 and the firm's relevant total income; and
 - (bb) twenty-five times the largest fee paid to the firm during the relevant accounting year;
- (iii) in the case of a person whose firm's relevant total income exceeds £700,000, at least the greater of:
 - (aa) £1 million; and
 - (bb) twenty-five times the largest fee paid to the firm during the relevant accounting year.
- (b) The limit of indemnity on PII in respect of year 2000 date recognition claims, where available, may be on an aggregate basis as opposed to an each and every claim basis. The minimum limit on this cover must be calculated in accordance with regulation 9(3)(a).
- (c) A firm's "total income" is the aggregate of the firm's professional charges and all other income (including commissions) received by a firm in respect of and in the course of the firm's business, but excluding any commission which the firm passes on to the client.
- (d) The "largest fee" paid to a firm relates, in all cases, to the highest cumulative amount of fees raised to a particular client during the year rather than the largest single invoice raised.
- (e) Subject to regulation 9(3)(g), any uninsured excess (that is to say, the amount of any claim which is borne by the firm before there is any payment by the insurer) in accordance with a firm's PII and FGI shall be restricted to 2 per cent of the limit of indemnity in respect of each and every claim provided pursuant to the PII or, as the case may be, FGI or £20,000 per principal in respect of each and every claim, whichever amount is the lesser.
- (f) Subject to regulation 9(3)(g), the annual limit of indemnity to be provided by a firm's FGI shall be not less than £50,000 in respect of each and every claim.
- (g) Persons carrying on public practice in a country other than a designated territory may, instead of complying with regulations 9(3)(a), 9(3)(e) and 9(3)(f), comply with the minimum requirements of a recognised national body or regulatory authority in that country in respect of the limit of indemnity on PII and FGI and in respect of uninsured excess.

(4) Administrative provisions

- (a) (i) Each person subject to regulation 9(1) must on request provide the Association with a policy and/or certificate from his insurer or broker as evidence that PII and, if required, FGI is in force in accordance with this regulation as at 1 January of each year, and will remain in force for that year, being PII and, as the case may be, FGI which meets the requirements of this regulation.

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- (ii) In the event that PII is subject to an aggregate limit and claims are notified during the year in question but not met in that year, the aggregate limit for the following year and, if such claims are not by then met, subsequent years should be increased to take account of the amount (or a best estimate of that amount) either paid or reserved for such claims.
- (b) The policy terms and wording shall be available for inspection by the Admissions and Licensing Committee.
- (c) Each person subject to regulation 9(1) shall be deemed to have authorised the Admissions and Licensing Committee to seek, direct from the relevant insurer and/or broker, confirmation of matters of record.
- (d) Each person subject to regulation 9(1) must keep a record of insurance claims made by him pursuant to his PII and, as the case may be, FGI.
- (e) Such record, together with each annual renewal proposal form, must be available for inspection by the Admissions and Licensing Committee.

(5) Continuity following cessation

Persons subject to regulation 9(1) shall ensure that arrangements exist for the continued existence of PII and, as the case may be, FGI for a period of six years after they cease to engage in public practice. Such PII and, as the case may be, FGI shall be on terms satisfying the requirements of this regulation as applied to their business during the year immediately preceding such cessation.

(6) Exception

An individual who is not a sole proprietor, partner or director of the firm in which he works, or member or designated member of a limited liability partnership, but holds a practising certificate and is responsible for public practice work carried on by the firm, shall be deemed to hold PII in accordance with regulation 9(1) where the firm (or all of them if more than one) in which he works:

- (a) is a person subject to regulation 9(1) and holds PII in compliance with regulation 9(1); or
- (b) holds PII which the Admissions and Licensing Committee regards as adequate.

(7) Waiver

In exceptional circumstances, the requirements of regulation 9 may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

10. Continuing professional development

Members must comply with Membership Regulation 4(4).

11. Continuity of practice

(1) *Individuals*

- (a) A holder of a practising certificate must enter into and keep in force for all of the period during which a certificate is held a written agreement with another accountant, a firm of accountants or a limited company (the “nominee”), providing for the nominee, or nominees if more than one, to be responsible for the individual’s practice in the event of his death or incapacity.
- (b) The nominee or nominees must:
 - (i) be based in the same country as the individual; and
 - (ii) hold an equivalent qualification and be authorised to carry on the individual’s work for which they have undertaken to be responsible.
- (c) Where the individual’s practice is based in more than one country, he must comply with this regulation in respect of each country in which he is based, but may appoint different nominees in respect of different countries.

(2) *Firms*

- (a) A firm must make provision for the continuity of its practice in the event of its dissolution, winding-up or liquidation, or the death or incapacity of an individual holder of a practising certificate who is a partner, director or member of the firm, by providing for another accountant or a firm of accountants (the “nominee” or “nominees” if more than one) to be responsible for the firm’s practice in those circumstances.
- (b) Such provision may be made in the partnership agreement (where the firm is a partnership) or in the Memorandum and Articles of Association (where a firm is a company) or in the incorporation document (where the firm is a limited liability partnership) or other such agreement as the members of the limited liability partnership may agree or by entering into and keeping in force for all of the period during which a practising certificate is held a written agreement with another firm.
- (c) The nominee or nominees must:
 - (i) be based in the same country as the firm; and
 - (ii) hold an equivalent qualification and be authorised to carry on the firm’s work for which they have undertaken to be responsible.
- (d) An individual holder of a practising certificate who is the sole director and shareholder of his firm may not provide nominee services to his firm.
- (e) Where the firm’s practice is based in more than one country, it must comply with this regulation in respect of each country in which it is based and may appoint different nominees in respect of different countries.

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(3) Exception for individuals

An individual holder of a practising certificate who does not carry on public practice on his own account shall not have to comply with regulation 11(1) provided any firm of which he is a partner, director, member or designated member of a limited liability partnership or employee and for whom he works has complied with regulation 11(2) or, if it is not subject to that regulation, has made arrangements for the continuity of its practice which the Admissions and Licensing Committee regards as adequate.

(4) Waiver

In exceptional circumstances, for members in a country other than a designated territory, Cyprus or Zimbabwe, the requirements of regulations 11(1) and 11(2) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

12. Notification

(1) Notification 28 days in advance

- (a) A holder of a practising certificate shall notify the Association in writing of the following changes not less than 28 days before the change is implemented:
 - (i) a change in the name of the holder, or where it is a body corporate, its registered name and, in the case of a firm, of any partner, member or designated member or director or controller of it;
 - (ii) a change in the address of the holder's principal or, in the case of a body corporate, registered office or, if different, the address of the place for service of notices or documents;
 - (iii) the opening or closure of a branch office of the holder;
 - (iv) the disposal or cessation of a holder's practice.
- (b) Notification of a change of name of a person holding a practising certificate shall be accompanied by an application for a new certificate of the relevant type from the stated date.

(2) Notification forthwith

A holder of a practising certificate shall give written notice forthwith to the Association of the occurrence of any of the following, setting out in the notice details of the event in question and any other relevant information:

- (a) in the case of a partner, member or designated member or director of a firm, a person has become or ceased to be a partner, member or designated member or director of it, and, in the case of a body corporate, a person has become or ceased to be a controller of it and, in the case of a sole practitioner, he has ceased to practise;

- (b) the appointment of a receiver, administrator, trustee, judicial factor or sequestrator of the assets of the holder (or the happening of any similar or analogous event) or, in the case of a firm, of any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it;
- (c) the making or any proposals for the making of a composition or arrangement with creditors or any one creditor of the holder or, in the case of a firm, of any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it;
- (d) where the holder is a partnership, an application or notice to dissolve the partnership and where it is a body corporate, the presentation of a petition for winding-up or the summoning of any meeting to consider a resolution to wind up the body corporate or any other body corporate in its group;
- (e) the granting or refusal of any application for, or revocation of, a recognised professional qualification or any certificate entitling the holder or, in the case of a firm, any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it to carry on company audit work from another qualifying or supervisory body or authorisation to carry on insolvency, investment, banking or insurance business;
- (f) the appointment of inspectors by a statutory or regulatory authority to investigate the affairs of the holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it;
- (g) the imposition of disciplinary measures or sanctions on the holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it by any other regulatory authority or professional body of which he or such a person is a member;
- (h) in relation to a holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it:
 - (i) the institution and abandonment or completion of proceedings in relation to and/or a conviction for any offence involving fraud or other dishonesty;
 - (ii) the institution and abandonment or completion of proceedings in relation to and/or a conviction for any offence under legislation relating to investment, banking, building societies, companies, consumer credit, credit unions, friendly societies, industrial and provident societies, insolvency, insurance or other financial services;
 - (iii) the presentation of a petition for a bankruptcy order or an award of sequestration;
 - (iv) the making of an order by a court disqualifying that individual from serving as director or as a restricted director or as a disqualified director of a company or from being concerned with the management of a company;

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- (v) the commencement by the police or any other authority of an investigation into any matter related to public practice, or any other matter which might reasonably affect the Admissions and Licensing Committee's willingness to grant or renew a certificate of a type relevant to the activities in question;
- (i) the disappearance of a partner, member or designated member of a firm such that he is no longer contactable by the other partners or members of the firm;
- (j) the happening of any event which causes the holder to cease to be eligible for the certificate;
- (k) any changes in any of the information previously supplied to the Association;
- (l) any other information relevant to the determination by the Admissions and Licensing Committee of the fitness and propriety of the holder in accordance with regulation 8;
- (m) any other information that the Association may require in connection with the requirements of these regulations.

(3) *Force Majeure*

If any event happens or any circumstances arise which make it impossible, impracticable or unreasonable for a person to comply with this regulation 12, provided he takes all practicable steps to relieve the situation and complies with this regulation as soon as the event or circumstances cease to apply, he will not be regarded as having been in breach of this regulation if he fails to comply with it for so long as the event or circumstances do apply.

(4) *Notification obligation*

A member who has notified the Admissions and Licensing Committee that he is carrying on public practice but does not hold a practising certificate shall give written notice forthwith to the Association of all of the matters referred to in regulation 12(1)(a) and 12(2).

13. Conduct

Holders of a practising certificate shall, in the conduct of their work to which the certificate relates:

- (a) comply with the Code of Ethics and Conduct of the Association or of another recognised body which incorporates the International Federation of Accountants (IFAC) Code of Ethics for Professional Accountants; and
- (b) maintain documented (either paper-based or electronic) quality assurance systems and procedures for ensuring timely and accurate identification of client requirements; and
- (c) apply to all relevant assignments the International Financial Reporting Standards issued by the International Accounting Standards Board or the equivalent standards of the country in which the individual carries on public practice; and
- (d) apply to all relevant assignments the International Standards on Auditing issued by the International Auditing and Assurance Standards Board or the equivalent standards of the country in which the individual carries on public practice.

14. Monitoring, quality assurance and compliance

(1) Persons subject to these regulations shall be subject to:

- (a) monitoring by the Association, in order to monitor compliance with these regulations and with the bye-laws; and
- (b) the Association's quality assurance programme;

which may be carried out by post, by email, by visiting the person's business premises and/or by any other form of communication.

(2) For the purposes of regulation 14(1), members must supply the Association with all the information necessary to enable the Association to complete its monitoring process and quality assurance programme efficiently.

(3) Persons subject to these regulations shall, and shall ensure (insofar as they are able) that all persons associated with them shall, co-operate with the Association in its monitoring and enforcement of compliance with these regulations and with the bye-laws.

(4) Persons subject to these regulations shall maintain proper books and records at all times to facilitate the proper performance of their duties.

(5) The requirements of this regulation 14 shall apply to persons for as long as they hold a certificate, and for a period of five years after they cease to do so for any reason.

(6) For the purposes of this regulation 14, certificate includes all types of certificates and licences issued by the Association.

15. Disclosure of information

Registered students, affiliates and members must supply the Association with all necessary information to enable the Association to comply with its obligations with respect to any legal and regulatory requirements that may exist in the country where the registered student, affiliate or member is based.

Appendix 1

Competences of Practising Certificate Holders

- M indicates a mandatory element
K indicates a key element
A indicates an audit element

Key Area 1 Professional Conduct

A	A1	Establish and maintain effective and ethical business relationships and networks	M
	A2	Maintain an awareness and understanding of changes affecting the profession	M
	A3	Demonstrate a commitment to own personal and professional knowledge and development	M
B	B1	Maintain the confidentiality of internal and external information	M
	B2	Uphold professional ethics, values and standards	M

Key Area 2 Accounting

C	C1	Appraise information for the preparation of financial and other statements and accounts	K
	C2	Prepare and present financial and other statements and accounts	K
D	D1	Appraise financial information for the preparation of management information	K
	D2	Prepare and present financial information for management purposes	K
E	E1	Identify potential changes to an organisation's accounting systems	
	E2	Implement and evaluate new/changes to accounting systems	

Key Area 3 Business Advice, Development and Measurement

F	F1	Identify and advise on relevant legal and regulatory obligations	K
	F2	Provide support in meeting regulatory obligations	
G	G1	Formulate business strategy and objectives	K
	G2	Devise business plans	
H	H1	Assist clients to understand and evaluate their options for raising finance	K
	H2	Assist clients to raise finance to achieve objectives	
I	I1	Prepare spending proposals and profiles	
	I2	Agree, monitor and report on budgets for activities	
J	J1	Identify financial objectives and performance measures	K
	J2	Facilitate the introduction of systems and practices to plan and monitor financial performance	
	J3	Monitor the achievement of financial performance and objectives	K
K	K1	Evaluate the potential profitability of products and services	
	K2	Calculate the actual costs of products and services	
	K3	Make recommendations to reduce costs and enhance value	
L	L1	Determine the risks and benefits associated with business/investment opportunities	K
	L2	Recommend ways of optimising the use of assets	
	L3	Establish the value of businesses	K

Key Area 4 Taxation

M	M1	Compute the tax payable	K
	M2	Provide advice on tax liabilities and payments	K
	M3	Provide advice on current and future tax planning	K
	M4	Provide advice about the tax implications of externally or internally initiated changes	
	M5	Negotiate with the tax authorities on behalf of clients	

Key Area 5 Business Assurance and Internal Review

N	N1	Determine the scope, purpose and objectives of an internal review or investigation	K
	N2	Deliver evidence for an internal review or investigation	
O	O1	Obtain evidence for analysis against the objectives of an internal review or investigation	
	O2	Make judgements against the objectives of an internal review or investigation	K
	O3	Report on the findings and outcomes of an internal review or investigation	K
	O4	Present evidence as an expert witness for litigation or criminal proceedings	

2.2 Global Practising Regulations

Key Area 6 Management

P	P1	Promote services to existing and potential clients	K
	P2	Evaluate potential and existing clients	K
	P3	Agree service details and engage clients	
Q	Q1	Set fees and credit limits for activities	
	Q2	Collect fee income from clients	
R	R1	Identify changes to products and services	
	R2	Implement and monitor client service standards and policies	
	R3	Promote continuous quality improvement in products, services and processes	K
S	S1	Monitor and control activities against budgets	
	S2	Control costs to improve services to clients	
T	T1	Identify personnel requirements and role specifications	
	T2	Select teams and individuals	
	T3	Develop teams and individuals	K
U	U1	Identify and agree objectives and methods to deliver required outcomes	
	U2	Delegate activities to teams and individuals	
	U3	Monitor and appraise the work of others	K
V	V1	Monitor and maintain the security of high value items	
	V2	Maintain the health, safety and security of the working environment	
W	W1	Develop and maintain information systems to meet the employer's requirements	
	W2	Monitor and control the employer's information systems	

Key Area 7 Audit

X	X1	Determine the level of audit risk	A
	X2	Evaluate the risk within an organisation's internal control structure	A
	X3	Co-ordinate the delivery of audit evidence	A
Y	Y1	Evaluate evidence collected for an audit	A
	Y2	Make judgements about the truth and fairness of an organisation's financial statements	A
	Y3	Review the performance of an audit	A
Z	Z1	Advise on the findings and implications of the audit	A
	Z2	Prepare a formal audit report	A

Additional Practising Regulations for the United Kingdom, Jersey, Guernsey and Dependencies and the Isle of Man

Annex 1 to The Chartered Certified Accountants' Global Practising Regulations 2003

1. Application

The regulations contained in this annex form part of The Chartered Certified Accountants' Global Practising Regulations 2003, and shall apply to all members and to all persons who otherwise agree to be bound by them.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

agent, in relation to a person, means any person (including an employee) who acts on that person's behalf;

AIU means the Audit Inspection Unit of the Professional Oversight Board;

audit qualification means an audit qualification to the practising certificate issued by the Association to individuals holding the Association's recognised professional qualification and referred to in regulation 5, which authorises the individual to hold himself out as an auditor and to carry on audit work;

audit report means a report on accounts or financial statements which is described as an audit report or having been made by an auditor or is given in true and fair terms or which states that the accounts present fairly the financial position;

auditing certificate means an auditing certificate issued by the Association to firms and referred to in regulation 6;

auditor means a person who signs or holds himself out as being available to sign an audit report whether or not that report is required by statute;

controller has the meaning given in paragraph 6(3) of Schedule 11 of the Companies Act 1989 of the United Kingdom;

exempt regulated activities has the meaning given in The Chartered Certified Accountants' Designated Professional Body Regulations 2001;

insolvency licence means the licence issued by the Association referred to in regulation 10 and which authorises the holder in accordance with section 390(2) of the Insolvency Act 1986 of the United Kingdom to act as an insolvency practitioner;

insolvency practitioner means a person acting as such in accordance with section 388 of the Insolvency Act 1986 of the United Kingdom;

licensed person means a person holding an insolvency licence;

2.2 Global Practising Regulations (Annex 1)

non-member means a person who is not registered as a student, affiliate or member of the Association;

qualified person means, in relation to an individual, a person qualified to hold a practising certificate with an audit qualification and, in relation to a firm, a firm that is eligible to be appointed as an auditor;

recognised professional qualification means a qualification declared as such for the purpose of Part II of the Companies Act 1989 of the United Kingdom;

regulated work means work conducted under an insolvency licence, or an auditing certificate;

supervisory body has the meaning given by section 30(1) of the Companies Act 1989 of the United Kingdom.

(2) For the purposes of these regulations, unless the context otherwise requires, a reference to the Companies Act 1989 of the United Kingdom or the Companies Act 1985 of the United Kingdom or any of the provisions of either Act shall, in relation to the carrying on of public practice in Northern Ireland, the eligibility, the qualifications and other conditions in relation thereto and the functions of the Association as a supervisory body (or corresponding concept) in Northern Ireland, be deemed to be a reference to the corresponding legislation or provision of the law of Northern Ireland.

(3) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

(4) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

(5) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment.

3. Restrictions on carrying on public practice

(1) *Members*

(a) Subject to regulation 3(1)(b), a member holding an insolvency licence may not carry on an activity constituting public practice which is outside the practice of acting as an insolvency practitioner unless he holds a practising certificate.

(b) A member who holds an insolvency licence who does not carry on an activity constituting public practice which is outside the practice of acting as an insolvency practitioner, but who is a partner or director of a firm where such an activity is carried on, is not required to hold a practising certificate.

(2) Members and firms

Where public practice is carried on in the name of a firm, or otherwise in the course of a firm's business, and that public practice involves the accepting of an appointment as an auditor, or the holding out of the firm as being available to accept such an appointment, no member shall be a sole proprietor, partner or director of that firm unless the firm holds an auditing certificate issued by the Association and is thereby authorised by the Association to carry on audit work.

(3) A firm required by regulation 3(2) to hold an auditing certificate may instead hold another certificate or authorisation which is in the opinion of the Admissions and Licensing Committee equivalent.

(4) A practising certificate or auditing certificate shall only authorise the carrying on of an activity where the activity is both carried on in the country to which the certificate relates, as determined in accordance with regulation 4(2), and is covered by the certificate as provided for in regulations 5 and 6.

4. Meaning of public practice

(1) Activities

Public practice has the meaning described by regulation 4 of the Global Practising Regulations.

(2) Where carried on

Where the public practice consists of accepting an appointment as an auditor, or holding oneself out as available to do so, it shall be taken to be carried on in the United Kingdom, Jersey, Guernsey and Dependencies and/or the Isle of Man whose laws apply to the appointment, or would apply to the potential appointment, in question.

(3) Insolvency practice

Insofar as practitioners carrying on their professional activities in the United Kingdom are concerned, any activity carried on by a person acting as an insolvency practitioner shall not constitute public practice for the purposes of these regulations, but a member acting as an insolvency practitioner shall be deemed to be a member in practice for the purposes of the bye-laws concerning elections to Council.

5. Eligibility for an audit qualification

Members accepting an appointment as an auditor shall be required to obtain the Association's recognised professional qualification in accordance with regulation 7 in addition to complying with regulation 5 of the Global Practising Regulations as regards their practising certificate. The audit qualification will convey to the holder the necessary authorisation to carry on audit work.

6. Eligibility for an auditing certificate

A firm shall be eligible for an auditing certificate if:

- (a) each of the individuals responsible for the firm's audit work holds an audit qualification, or, in the case of non-members of the Association, holds an equivalent certificate;
- (b) it is controlled by qualified persons within the meaning of regulation 8;
- (c) it is fit and proper within the meaning of regulation 13;
- (d) it holds the necessary PII in accordance with regulation 14;
- (e) it has made arrangements for the continuity of its practice in accordance with regulation 16;
- (f) it undertakes to be bound by the Global Practising Regulations including this annex, the Disciplinary Regulations, the Membership Regulations and the Charter and by-laws insofar as they are applicable to it; and
- (g) it has arrangements to prevent individuals who do not hold an appropriate qualification for the purposes of Part II of the Companies Act 1989 and persons who are not members of the firm from being able to exert any influence over the way in which an audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit.

7. Qualifications

(1) Qualifications required to hold a practising certificate

To be qualified to hold a practising certificate, members will need to meet the requirements of regulation 7 of the Global Practising Regulations.

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification, an individual must meet one of the following requirements:

- (a) where the audit qualification is to relate to the United Kingdom:
 - (i) have obtained the Association's recognised professional qualification (in accordance with regulation 7(3) below); or
 - (ii) have the right to practise the profession of company auditor pursuant to Regulation 5 of the European Communities (Recognition of Professional Qualifications) Regulations 1991, having satisfied any requirements imposed on him by the Association under Regulation 6 thereof, or pursuant to Regulation 11(2) of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996, having satisfied any requirements imposed on him by the Association pursuant to Regulation 19 thereof; or

- (iii) have an overseas qualification approved by the Secretary of State under section 33 of the Companies Act 1989 and have passed the Association's Aptitude Test; or
 - (iv) have previously held an equivalent certificate issued to members prior to 1 January 2005;
- (b) where the audit qualification is to relate to Jersey, Guernsey and Dependencies, or the Isle of Man:
- (i) comply with the relevant requirements in Appendix 2 of these regulations; or
 - (ii) have previously held an equivalent certificate issued to members prior to 1 January 2005.

(3) Recognised professional qualification of the Association

To obtain the Association's recognised professional qualification, members must:

- (a) have completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, under the supervision of:
 - (i) a member who is authorised to carry on audit work by way of an audit qualification (or a practising certificate issued to members prior to 1 January 2005); or
 - (ii) any other person having in the opinion of Council adequate qualifications and experience and who is a fully qualified company auditor under paragraph 8(3) of Schedule 12 to the Companies Act 1989 of the United Kingdom, such as (subject to the approval of the Secretary of State) company auditors practising in member states of the European Union (or equivalent persons in relation to applicants for certificates relating to countries other than the United Kingdom);

at least two years of which must be completed after the individual's admission to membership and must comply with the requirements set out in Part 1 of Appendix 1. The remaining training period may be completed before or after, or partly before and partly after, the individual's admission to membership and must include experience in the matters set out in Appendix 2 of the Membership Regulations in the office of a public accountant;

- (b) have passed the Audit Orientation Course and Test described in Part 2 of Appendix 1 of these regulations;
- (c) have passed the relevant examinations stipulated in Part 3 of Appendix 1 of these regulations, if any; and
- (d) have been a member of the Association continuously for a period of not less than two years.

8. Meaning of firm controlled by qualified persons

Firms controlled by qualified persons are authorised for carrying on audit work in accordance with regulation 6.

- (a) A firm shall only be regarded as controlled by qualified persons for the purposes of regulation 6 where:
 - (i) a majority of the partners or a majority of the directors and shareholders of the firm are qualified persons; and
 - (ii) if the firm's affairs are managed by a board or committee, a majority of the members of that board or committee are qualified persons, or if the body consists of only two persons, at least one of them is a qualified person and has a casting vote.
- (b) References in regulation 8(a) above to a person being qualified are, in relation to an individual, to his being qualified to hold an audit qualification in accordance with regulation 7(2) and that he spends a material amount of his time working in the firm concerned, or being otherwise eligible to be appointed as an auditor.
- (c) A majority of the partners or a majority of the directors and shareholders of the firm in regulation 8(a)(i) means:
 - (i) where under the firm's constitution matters are decided on by the exercise of voting rights, partners or directors and shareholders holding a majority of the rights to vote on all, or substantially all, matters;
 - (ii) in any other case, partners or directors and shareholders having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (d) A majority of the members of the management board or committee of a firm in regulation 8(a)(ii) means:
 - (i) where matters are decided at meetings of the management board or committee by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;
 - (ii) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (e) The provisions of paragraphs 5 to 11 of Schedule 10A to the Companies Act 1985 of the United Kingdom (rights to be taken into account and attribution of rights) apply for the purposes of this regulation 8.

9. Restriction on carrying on insolvency practice

(1) Members

No member shall act as an insolvency practitioner unless he holds an insolvency licence issued by the Association or he is otherwise authorised so to act for the purposes of section 391 of the Insolvency Act 1986 of the United Kingdom and holds an insolvency licence issued by another recognised professional body under that section. Where the individual acts as an insolvency practitioner but does not hold an insolvency licence issued by the Association, he must hold a practising certificate.

(2) Non-members

Persons who are non-members may be regulated by the Association solely to act as an insolvency practitioner.

(3) A person shall only be regarded as holding an insolvency licence where it is current and valid.

10. Eligibility for an insolvency licence

(1) Members and non-members

A person shall be eligible for an insolvency licence if:

- (a) he is qualified in accordance with regulation 11;
- (b) he is fit and proper within the meaning of regulation 13;
- (c) he holds the necessary PII in accordance with regulation 14; and
- (d) he has made arrangements for the continuity of his practice in accordance with regulation 16.

(2) Additional requirements for non-members

In addition to complying with regulation 10(1), non-members shall be required to provide undertakings to be bound by the following regulations as if they were members of the Association:

- (a) the Global Practising Regulations;
- (b) the continuing professional development requirements of Membership Regulation 4(4);
- (c) the Authorisation Regulations, including the requirement at Authorisation Regulation 3(1)(a) to pay such fees as Council may from time to time require when applying for an insolvency licence;
- (d) the Charter, bye-laws and regulations of the Association insofar as they are appropriate and applicable (other than those relating to members' rights to attend and vote at meetings of the Association and obligations to pay subscriptions); and

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- (e) the disciplinary procedures of ACCA and penalties which may be imposed under such provisions insofar as such penalties could be applicable to a person who is not a member of the Association.

11. Qualification requirements for an insolvency licence

(1) Qualifications and experience

To be qualified for the purposes of regulation 10(1)(a), an individual must:

- (a) if he is a member of the Association:
 - (i) have been a member of the Association for a continuous period of not less than two years; and
 - (ii) have passed the examinations set by the Joint Insolvency Examination Board; and
 - (iii) have completed three years of practical experience in a firm of accountants or insolvency practitioners, under the supervision of a licensed insolvency practitioner, or in an Official Receiver's office, of which two years must have been obtained subsequent to his admission as a member or as a member of another accountancy body recognised under section 391 Insolvency Act 1986 of the United Kingdom; and
 - (iv) have obtained a minimum of 600 hours' insolvency experience in the three years immediately preceding the application for an insolvency licence, of which at least 150 hours must have been gained in each of three calendar years within such period; or
- (b) if he is a non-member:
 - (i) have passed the examinations set by the Joint Insolvency Examination Board; and
 - (ii) have completed three years of practical experience under the supervision of a licensed insolvency practitioner or in an Official Receiver's office; and
 - (iii) have obtained a minimum of 600 hours' insolvency experience in the three years immediately preceding the application for an insolvency licence, of which at least 150 hours must have been gained in each of three calendar years within such period; or
- (c) have the right to practise in the United Kingdom as an insolvency practitioner pursuant to Regulation 11 of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 1996, having satisfied any requirements imposed on him pursuant to Regulation 19 thereof; or
- (d) hold, or be eligible to hold, an insolvency licence issued by another recognised professional body or by the competent authority under sections 391 and 393 respectively of the Insolvency Act 1986 of the United Kingdom.

(2) Insolvency experience

The insolvency experience referred to in regulations 11(1)(a)(iv) and 11(1)(b)(iii) must have been gained in the course of:

- (a) assisting an insolvency practitioner acting as such; or
- (b) assisting or being an Official Receiver in accordance with section 399 Insolvency Act 1986 of the United Kingdom; or
- (c) where the individual was authorised to act as an insolvency practitioner at the relevant time, acting as an insolvency practitioner.

(3) Experience on renewal

A licensed person wishing to renew his insolvency licence must continue to meet, as an appointment holder, joint appointment holder or as an assistant to an appointment holder, the number of hours of relevant insolvency experience as follows:

- (a) 600 hours' experience gained over a period of more than three but less than or equal to five years immediately preceding the renewal application of which at least 150 hours must have been gained in each of three calendar years within such period; or
- (b) 750 hours' experience gained over a period of more than five but less than or equal to eight years immediately preceding the renewal application of which at least 100 hours must have been gained in each of four calendar years within such period; or
- (c) 900 hours' experience gained over a period of more than eight years immediately preceding the renewal application of which at least 75 hours must have been gained in each of six calendar years within such period

save that any licensed person who fails to meet the relevant insolvency experience requirement for any one calendar year shall be eligible for an insolvency licence provided he can demonstrate that he has undertaken an adequate programme of additional continuing professional development during that year.

(4) Waiver

In exceptional circumstances, the requirements of regulations 11(1)(a)(iv) and 11(1)(b)(iii) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

12. Restriction on carrying on exempt regulated activities

No member, nor any firm in relation to which he is a sole proprietor, partner or director, may carry on, or purport to carry on, exempt regulated activities in the United Kingdom unless he or, as the case may be, it is registered by the Association to carry on exempt regulated activities or is otherwise authorised, or exempted from the need for authorisation, in respect of such exempt regulated activities for the purposes of the Financial Services and Markets Act 2000 of the United Kingdom. However, any member, or firm, satisfying the eligibility requirements contained in regulation 3 of the Designated Professional Body Regulations can

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register to conduct exempt regulated activities in accordance with and from the effective date of those regulations. The exempt regulated activities must be the only regulated activities carried out, other than regulated activities in relation to which the member or firm is an exempted person. Exempt regulated activities are as defined in the Designated Professional Body Regulations.

13. Fit and proper persons

Regulation 8 of the Global Practising Regulations applies to members. Additionally, where auditing certificates or insolvency licences are concerned, this regulation 13 shall apply to the Admissions and Licensing Committee's determination.

In determining whether a person is "fit and proper", the Admissions and Licensing Committee:

- (a) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor or insolvency practitioner or to the carrying on of exempt regulated activities or the provision of investment business services or investment advice;
- (b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities, including without limitation in the case of holders of insolvency licences regulation 4 of the Insolvency Practitioners Regulations 2005 and the Guidance Notes for Persons seeking Authorisation to Act as an Insolvency Practitioner issued by the DTI;
- (c) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice, insolvency work, exempt regulated activities or investment business services or investment advice.

14. Professional indemnity insurance

(1) Practising certificates, insolvency licences and auditing certificates held by firms

Regulation 9 of the Global Practising Regulations applies to applicants for and holders of

- (a) practising certificates;
- (b) insolvency licences; and
- (c) auditing certificates held by firms.

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 14(1) in respect of their ceasing to engage in public practice, insolvency work, exempt regulated activities or investment business services or investment advice.

(3) Insolvency licences

- (a) In addition to holding PII, a holder of an insolvency licence must hold a bond by way of security or, in Scotland, a caution for the proper performance of his functions that complies with regulation 10 of, and Part 2 of Schedule 2 to, the Insolvency Practitioners Regulations 2005 of the United Kingdom (the “enabling bond”).
- (b) A holder of an insolvency licence shall comply with section 390(3) Insolvency Act 1986 of the United Kingdom and the Insolvency Practitioners Regulations 2005 of the United Kingdom as regards the enabling bond and shall ensure that:
 - (i) the enabling bond is in force at a time when he is appointed to act as an insolvency practitioner in relation to a person; and
 - (ii) there is in force in relation to the enabling bond with effect from the time when he is appointed so to act in relation to that person, specific penalty as required by the provisions of the Insolvency Practitioners Regulations 2005 of the United Kingdom.
- (c) The enabling bond shall be lodged with the Association on application for or renewal of an insolvency licence issued by the Association.

15. Continuing professional development

Firms holding an auditing certificate and/or firms which carry on exempt regulated activities must require the individuals who are partners or directors or agents of the firm who are not members but who are responsible for the firm’s audit work or carry on exempt regulated activities in the United Kingdom on behalf of the firm to comply with Membership Regulation 4(4) as if they were members.

16. Continuity of practice

Regulation 11 of the Global Practising Regulations shall be applicable to all holders of an insolvency licence, firms holding an auditing certificate and firms carrying on exempt regulated activities. The nominee providing continuity of practice for a holder of an insolvency licence may be any person licensed to act as an insolvency practitioner and need not be an accountant.

17. Notification

Holders of an insolvency licence and firms holding an auditing certificate must comply with regulation 12 of the Global Practising Regulations.

Additionally, they shall give written notice forthwith of the commencing of proceedings against the holder or any partner or director or controller of a firm any actions for damages, injunctions or restitution orders connected with regulated work carried on by the individual in question.

Firms holding an auditing certificate shall notify the Association in writing within 28 days after their acceptance of an appointment as auditor to a public interest entity whose audits are within the scope of the AIU. An up-to-date list of such entities can be found at www.asb.org.uk/poba/audit/inspection.cfm.

18. Conduct

(1) Audit work

- (a) In the conduct of audit work in the United Kingdom, Jersey, Guernsey and Dependencies and the Isle of Man, holders of an audit qualification and firms holding an auditing certificate shall comply with all the applicable sections of the Association's Rulebook and in particular the Auditing Standards issued by the Auditing Practices Board and the International Standards on Auditing issued by the International Auditing and Assurance Standards Board.
- (b) In the conduct of audit work in the United Kingdom holders of an audit qualification and firms holding an auditing certificate shall use the designation "Registered Auditor" or "Registered Auditors" when signing audit reports.

(2) Accountants' reports

Members reporting on an entity which is a member of a regulatory body shall comply with the requirements of that regulatory body and adhere to any guidance issued by it for the preparation and presentation of their reports.

(3) Insolvency work

In the conduct of insolvency appointments, a holder of an insolvency licence shall comply with the Insolvency Act 1986 of the United Kingdom and all subordinate legislation made thereunder and in particular, but without limitation, the Insolvency Regulations 1994 of the United Kingdom and the Insolvency Practitioners Regulations 2005 of the United Kingdom and the Statements of Insolvency Practice and shall have due regard to any other guidelines issued under the procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee ("JIC"), approved by the JIC, and adopted by the Association.

(4) Exempt regulated activities

Members and firms conducting exempt regulated activities under the Designated Professional Body Regulations shall comply with the Association's Code of Ethics and Conduct in the conduct of that work.

19. Disclosure of information

(1) In the conduct of audit work, holders of an audit qualification and firms holding an auditing certificate must supply the Association with all necessary information in accordance with, and to enable the Association to comply with any other obligations imposed upon it by regulations made under, Section 35 or 36 of the United Kingdom Companies Act 1989. This requirement shall apply for the duration of time that an audit qualification and auditing certificate are held.

(2) In the case of individuals holding an insolvency licence, such persons must supply the Association with all necessary information to enable the Association to comply with its obligations to the Insolvency Service and other bodies in its capacity as a recognised professional body under the Insolvency Act 1986 of the United Kingdom.

(3) In the case of firms eligible to conduct exempt regulated activities under the Designated Professional Body Regulations, firms must supply the Association with all the necessary information to enable the Association to comply with its obligations to the Financial Services Authority and other bodies in its capacity as a designated professional body.

20. Monitoring

(1) Individuals holding a practising certificate, an audit qualification and/or an insolvency licence, and firms holding an auditing certificate, shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

(2) Firms holding an auditing certificate shall be subject to monitoring by the AIU if they hold an appointment as auditor to a public interest entity whose audits are within the scope of the AIU. Such firms must supply the AIU with any information the AIU requires to enable it to complete its monitoring process.

Appendix 1

Requirements for the recognised professional qualification

Part 1: Training requirements after admission to membership

Training in an ACCA approved employer after admission to membership must cover all the following key areas of competence as set out in Appendix 1 to the Global Practising Regulations:

- (a) Audit (key area 7 – see below);
- (b) Professional Conduct (key area 1);
- (c) Technical (key areas 2–5: Accounting; Business advice, development and measurement; Taxation; Business assurance and internal review);
- (d) Management (key area 6).

Candidates for the Association's recognised professional qualification must:

- (a) be proficient in all the competences shown for audit as described in more detail in the competences of practising certificate holders reproduced in Appendix 1 to the Global Practising Regulations;
- (b) be proficient in:
 - (i) all 5 mandatory elements of competence in relation to Professional Conduct; and
 - (ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and
 - (iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

30 per cent of the training must be in audit work. This should include:

- (a) approximately 20 per cent specifically in company audit, and
- (b) a further 10 per cent which is either:
 - (i) audit work of companies established under the Companies Acts, or
 - (ii) audit work in respect of either:
 - (aa) organisations whose financial reporting requirements are laid down in statutes other than the Companies Acts, as set out in regulations made under Section 50 of the Companies Act 1989 of the United Kingdom and consequential amendments (or equivalent provisions of the laws of the country to which the qualification is to relate), for example:

- nationalised industries;
 - local councils, health authorities and self-governing trusts (excluding value for money audits and parish accounts);
 - housing associations;
 - insurance companies;
 - trade unions;
 - friendly or industrial and provident societies;
 - building societies, or
- (bb) other entities where the provisions of the Auditing Standards issued by the Auditing Practices Board or the International Standards on Auditing issued by the International Auditing and Assurance Standards Board apply and where an opinion or certificate is placed on accounts stating that they give a true and fair view of the financial position of the entity or that they present fairly the financial position of the entity. The turnover of the entity must exceed the VAT threshold ruling at the date to which the accounts are made up. Examples of non-statutory audits include:
- partnerships or sole traders whose external reporting obligations are governed by legislation or regulatory bodies;
 - professional bodies (e.g. the Association);
 - charities;
 - UK branches of overseas corporations;
 - private partnerships and sole traders (subject to partnership agreements or bankers'/other third party demands).

The length of time to be spent on the other areas is not fixed, but candidates must be able to demonstrate competence in each of the three specified areas.

Part 2: The Audit Orientation Course and Test

The Audit Orientation Course and Test lasts for three days and incorporates a number of assessment techniques designed to satisfy the Association as to a candidate's ability to act competently as a company auditor. Candidates are required to demonstrate, in particular, that they are able to apply their theoretical knowledge gained in the Association's examinations to practical problems.

Candidates who fail to complete the course satisfactorily and pass the test may have the option of appearing before a Panel of Assessors. If the Panel confirms that the candidate is not yet ready for the award of the recognised professional qualification it will advise him why it has come to that conclusion and how any particular deficiencies can be remedied and will suggest any continuing professional development which might be appropriate before the candidate resubmits himself for a second attempt at the Audit Orientation Course and Test. Candidates who fail to reach the required standard will not be eligible to resit for six months.

Part 3: Additional requirements for certain members

- (a) A person who first registered as a student on or after 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

A person who first registered as a student before 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance (or optional papers 3.1 Audit and Assurance Services or 10 Accounting and Audit Practice under previous examination syllabi) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

In addition, such an applicant who was exempted from the Fundamentals Level (or Part 1 and Part 2 under the December 2001 syllabus) of the Association's syllabus must have completed the Professional Level (or Part 3 of the December 2001 syllabus) of the Association's syllabus within five years of becoming eligible to sit that part.

- (b) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

- (c) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

The above requirements are without prejudice to the rights under Directive (89/48/EEC) of certain members admitted under Membership Regulation 3(e) to complete the Association's Aptitude Test to be eligible for the recognised professional qualification.

Global Practising Regulations (Annex 1) 2.2

The above requirements shall not apply where an applicant holds a qualification approved by the Secretary of State under Section 33 of the Companies Act 1989 and has completed the Association's Aptitude Test.

In addition to meeting the above requirements, a person admitted under Membership Regulation 3(d) or (f) shall be required to complete the Association's Aptitude Test.

Appendix 2

Qualification requirements for an audit qualification

Jersey, Guernsey and Dependencies and the Isle of Man

1. The requirements referred to in regulation 7(2)(b)(i) are:

- (a) the member has been a member of the Association continuously for a period of not less than two years; and
- (b) the member must have completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, under the supervision of:
 - (i) a member holding an audit qualification (or an equivalent certificate issued to members prior to 1 January 2003); or
 - (ii) any other person having in the opinion of Council adequate qualifications and experience and who is a fully qualified company auditor under paragraph 8(3) of Schedule 12 to the Companies Act 1989 of the United Kingdom;

At least two years of the practical training must be completed after the individual's admission to membership and must comply with the requirements set out in Part 1 of Appendix 1. The remaining training period may be completed before or after, or partly before and partly after, the individual's admission to membership and must include experience in the matters set out in Appendix 2 of the Membership Regulations in the office of a public accountant; and

(c) have passed the Audit Orientation Course and Test described in Part 2 of Appendix 1.

2. The minimum two years of post-admission to membership experience referred to in paragraph 1(b) should be of a wider and deeper nature than that required for admission to membership and applicants, working independently, should have gained a broad knowledge and have undertaken work reviewed by such a person as is referred to in paragraph 1(b) in the following four key areas of competence as set out in Appendix 1 to the Global Practising Regulations:

Audit (key area 7)

Professional Conduct (key area 1)

Technical (key areas 2–5: Accounting; Business advice, development and measurement; Taxation; Business assurance and internal review)

Management (key area 6).

3. The member shall have passed such local equivalents in the country of the examinations specified in Part 3 of Appendix 1 of these regulations as the Admissions and Licensing Committee shall from time to time specify as acceptable.

4. In exceptional circumstances, the requirements of paragraphs 1, 2 and 3 of Appendix 2 may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

Additional Practising Regulations for the Republic of Ireland

Annex 2 to The Chartered Certified Accountants' Global Practising Regulations 2003

1. Application

The regulations contained in this annex form part of The Chartered Certified Accountants' Global Practising Regulations 2003, and shall apply to all members and to all persons who otherwise agree to be bound by them.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

agent, in relation to a person, means any person (including an employee) who acts on that person's behalf;

approved professional body has the meaning given by section 55 of the Investment Intermediaries Act, 1995 of the Republic of Ireland;

audit qualification means an audit qualification to the practising certificate issued by the Association to individuals holding the recognised professional qualification and referred to in regulation 5, which authorises the individual to hold himself out as an auditor and to carry on audit work;

audit report means a report on accounts or financial statements which is described as an audit report or having been made by an auditor or is given in true and fair terms or which states that the accounts present fairly the financial position;

auditing certificate means an auditing certificate issued by the Association to firms and referred to in regulation 6;

auditor means a person who signs or holds himself out as being available to sign an audit report whether or not that report is required by statute;

disqualified director means a person referred to in section 160 of the Companies Act, 1990 of the Republic of Ireland;

Financial Regulator means the Irish Financial Services Regulatory Authority (IFSRA);

IAASA means the Irish Auditing and Accounting Supervisory Authority;

investment advice has the meaning given in the Investment Intermediaries Act, 1995 of the Republic of Ireland;

investment business certificate (Ireland) means the certificate referred to in regulation 10, issued by the Association in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 1999;

investment business services has the meaning given in the Investment Intermediaries Act, 1995 of the Republic of Ireland;

2.2 Global Practising Regulations (Annex 2)

qualified person means, in relation to an individual, a person qualified to hold a practising certificate with an audit qualification and, in relation to a firm, a firm that is eligible to be appointed as an auditor;

recognised professional qualification means a qualification declared as such for the purpose of Part II of the Companies Act 1989 of the United Kingdom;

regulated work means work conducted under an auditing certificate or an investment business certificate (Ireland);

restricted director means a person referred to in section 150 of the Companies Act, 1990 of the Republic of Ireland;

supervisory authority has the meaning given in The Chartered Certified Accountants' Irish Investment Business Regulations 1999;

supervisory body means a body recognised for the purposes of section 187 of the Companies Act 1990 of the Republic of Ireland.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

(3) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

(4) The Interpretation Act, 1937 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

3. Restrictions on carrying on public practice

(1) *Members and firms*

Where public practice is carried on in the name of a firm, or otherwise in the course of a firm's business, and that public practice involves the accepting of an appointment as an auditor, or the holding out of the firm as being available to accept such an appointment, no member shall be a sole proprietor or partner of that firm unless the firm holds an auditing certificate issued by the Association and is thereby authorised by the Association to carry on audit work.

(2) A firm required by regulation 3(1) to hold an auditing certificate may instead hold another certificate or authorisation which is in the opinion of the Admissions and Licensing Committee equivalent.

(3) A practising certificate or an auditing certificate shall only authorise the carrying on of an activity where the activity is both carried on in the country to which the certificate relates, as determined in accordance with regulation 4(2), and is covered by the certificate as provided for in regulations 5 and 6.

4. Meaning of public practice

(1) Activities

Public practice has the meaning described in regulation 4 of the Global Practising Regulations.

(2) Where carried on

Where the public practice consists of accepting an appointment as an auditor, or holding oneself out as available to do so, it shall be taken to be carried on in the Republic of Ireland, whose laws shall apply to the appointment, or potential appointment.

5. Eligibility for an audit qualification

Members accepting an appointment as an auditor shall be required to obtain the Association's recognised professional qualification in accordance with regulation 7 in addition to complying with regulation 5 of the Global Practising Regulations as regards their practising certificate. The audit qualification will convey to the holder the necessary authorisation to carry on audit work.

6. Eligibility for an auditing certificate

A firm shall be eligible for an auditing certificate if:

- (a) each of the individuals responsible for the firm's audit work holds an audit qualification, or in the case of non-members of the Association, holds an equivalent certificate;
- (b) it is controlled by qualified persons within the meaning of regulation 8;
- (c) it is fit and proper within the meaning of regulation 11;
- (d) it holds the necessary PII in accordance with regulation 12;
- (e) it has made arrangements for the continuity of its practice in accordance with regulation 14;
- (f) it undertakes to be bound by the Global Practising Regulations and this annex, the Disciplinary Regulations, the Membership Regulations and the Charter and bye-laws insofar as they are applicable to it; and
- (g) it has arrangements to prevent individuals who do not hold an appropriate qualification for the purposes of Part X of the Companies Act, 1990 and persons who are not members of the firm from being able to exert any influence over the way in which an audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit.

7. Qualifications

(1) Qualifications required to hold a practising certificate

To be qualified to hold a practising certificate, members will need to meet the requirements of regulation 7 of the Global Practising Regulations.

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification, an individual must meet one of the following requirements:

- (a) have obtained the Association's recognised professional qualification (in accordance with regulation 7(3) below); or
- (b) have authorisation to practise the profession of company auditor in Ireland granted pursuant to the European Communities (General System for the Recognition of Education Diplomas) Regulations 1991 of the Republic of Ireland; or
- (c) have previously held an equivalent certificate issued to members prior to 1 January 2005.

(3) Recognised professional qualification of the Association

To obtain the Association's recognised professional qualification, members must:

- (a) have completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, under the supervision of:
 - (i) a member who is authorised to carry on audit work by way of an audit qualification (or a practising certificate issued to members prior to 1 January 2005); or
 - (ii) any other person having in the opinion of Council adequate qualifications and experience and who is a fully qualified company auditor under paragraph 8(3) of Schedule 12 to the Companies Act 1989 of the United Kingdom, such as (subject to the approval of the Secretary of State) company auditors practising in member states of the European Union, subject to the relevant authorisations (or equivalent persons in relation to applicants for certificates relating to countries other than the United Kingdom);

at least two years of which must be completed after the individual's admission to membership and must comply with the requirements set out in Part 1 of Appendix 1. The remaining training period may be completed before or after, or partly before and partly after, the individual's admission to membership and must include experience in the matters set out in Appendix 2 of the Membership Regulations in the office of a public accountant;

- (b) have passed the Audit Orientation Course and Test described in Part 2 of Appendix 1 of these regulations;

- (c) have passed the relevant examinations stipulated in Part 3 of Appendix 1 of these regulations, if any; and
- (d) have been a member of the Association continuously for a period of not less than two years.

8. Meaning of firm controlled by qualified persons

Firms controlled by qualified persons are authorised for carrying on audit work in accordance with regulation 6.

- (a) A firm shall only be regarded as controlled by qualified persons for the purposes of regulation 6 where:
 - (i) a majority of the partners of the firm are qualified persons; and
 - (ii) if the firm's affairs are managed by a board or committee, a majority of the members of that board or committee are qualified persons, or if the body consists of only two persons, at least one of them is a qualified person and has a casting vote.
- (b) References in regulation 8(a) above to a person being qualified are, in relation to an individual, to his being qualified to hold an audit qualification in accordance with regulation 7(2) and that he spends a material amount of his time working in the firm concerned, or being otherwise eligible to be appointed as an auditor.
- (c) A majority of the partners of the firm in regulation 8(a)(i) means:
 - (i) where under the firm's constitution matters are decided on by the exercise of voting rights, partners holding a majority of the rights to vote on all, or substantially all, matters;
 - (ii) in any other case, partners having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (d) A majority of the members of the management board or committee of a firm in regulation 8(a)(ii) means:
 - (i) where matters are decided at meetings of the management board or committee by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;
 - (ii) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.

9. Restriction on carrying on investment business

No member, nor any firm in relation to which he is a sole proprietor, partner or director, may act or do anything in contravention of section 9(1) of the Investment Intermediaries Act, 1995 of the Republic of Ireland.

10. Eligibility for an investment business certificate (Ireland)

The eligibility criteria for an investment business certificate (Ireland) are set out in The Chartered Certified Accountants' Irish Investment Business Regulations 1999.

11. Fit and proper persons

Regulation 8 of the Global Practising Regulations applies to members. Additionally, where auditing certificates or investment business certificates (Ireland) are concerned, this regulation 11 shall apply to the Admissions and Licensing Committee's determination.

In determining whether a person is "fit and proper", the Admissions and Licensing Committee:

- (a) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor or to the carrying on of investment business or the provision of investment business services or investment advice;
- (b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;
- (c) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice, investment business or investment business services or investment advice.

12. Professional indemnity insurance

(1) Practising certificates, auditing certificates held by firms and investment business certificates (Ireland)

- (a) Regulation 9 of the Global Practising Regulations applies to applicants for and holders of
 - (i) practising certificates;
 - (ii) auditing certificates held by firms; and
 - (iii) investment business certificates (Ireland).

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 12(1) in respect of their ceasing to engage in public practice, investment business or investment business services or investment advice.

13. Continuing professional development

Firms holding an auditing certificate and/or an investment business certificate (Ireland) must require the individuals who are partners or directors or agents of the firm who are not members but who are responsible for the firm's audit work or carry on investment business on behalf of the firm to comply with Membership Regulation 4(4) as if they were members.

14. Continuity of practice

Regulation 11 of the Global Practising Regulations shall be applicable to all holders of an investment business certificate (Ireland) and firms holding an auditing certificate.

15. Notification

Holders of an investment business certificate (Ireland) and firms holding an auditing certificate must comply with regulation 12 of the Global Practising Regulations.

Additionally they shall give written notice forthwith of

- (a) the commencing of proceedings against the firm or, as the case may be, any partner or controller of it, under the Investment Intermediaries Act, 1995 of the Republic of Ireland; and
- (b) the withdrawal or suspension of any qualification which is a condition of the firm's eligibility for an investment business certificate (Ireland) by reason of regulation 3(1)(b), regulation 3(2)(e) or regulation 3(3)(e) of The Chartered Certified Accountants' Irish Investment Business Regulations 1999.

Firms holding an auditing certificate shall notify the Association in writing within 28 days after their acceptance of an appointment as auditor to a public interest entity.

16. Conduct

(1) Audit work

- (a) In the conduct of audit work holders of an audit qualification and firms holding an auditing certificate shall comply with all the applicable sections of the Association's Rulebook and in particular the Auditing Standards issued by the Auditing Practices Board and the International Standards on Auditing issued by the International Auditing and Assurance Standards Board.
- (b) In the conduct of audit work in the Republic of Ireland holders of an audit qualification and firms holding an auditing certificate shall use the designation "Registered Auditor" or "Registered Auditors" when signing audit reports. In the event that an audit report is signed by a firm with an auditing certificate, the audit report shall additionally identify the member(s) and/or other person(s) in relation to that firm responsible for the conduct of that audit.

2.2 Global Practising Regulations (Annex 2)

(2) Accountants' reports

Members reporting on an entity which is a member of a regulatory body shall comply with the requirements of that regulatory body and adhere to any guidance issued by it for the preparation and presentation of their reports.

(3) Investment business services and investment advice

In the conduct of investment business services and the provision of investment advice, a holder of an investment business certificate (Ireland) shall comply with the Association's Irish Investment Business Regulations 1999 and the code of conduct of the supervisory authority.

17. Disclosure of information

(1) In the conduct of audit work, holders of an audit qualification and firms holding an auditing certificate must supply the Association with all necessary information in accordance with, and to enable the Association to comply with any other obligations imposed upon it by regulations made under Sections 199 and 200 of the Companies Act 1990 of the Republic of Ireland. This requirement shall apply for the duration of time that an auditing certificate is held.

(2) In the case of holders of an investment business certificate (Ireland), firms must supply the Association with all necessary information and documents to enable the Association to comply with its obligations to the Financial Regulator and others in its capacity as an approved professional body.

18. Monitoring

Members holding a practising certificate and/or an audit qualification and/or an investment business certificate (Ireland) and firms holding an auditing certificate shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

Appendix 1

Requirements for the recognised professional qualification

Part 1: Training requirements after admission to membership

Training in an ACCA approved employer after admission to membership must cover all the following key areas of competence as set out in Appendix 1 to the Global Practising Regulations:

- (a) Audit (key area 7 – see below);
- (b) Professional Conduct (key area 1);
- (c) Technical (key areas 2–5: Accounting; Business advice, development and measurement; Taxation; Business assurance and internal review);
- (d) Management (key area 6).

Candidates for the Association's recognised professional qualification must:

- (a) be proficient in all the competences shown for audit as described in more detail in Appendix 1 to the Global Practising Regulations;
- (b) be proficient in:
 - (i) all 5 mandatory elements of competence in relation to Professional Conduct; and
 - (ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and
 - (iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

30 per cent of the training must be in audit work. This should include:

- (a) approximately 20 per cent specifically in company audit, and
- (b) a further 10 per cent which is either:
 - (i) audit work of companies established under the Companies Acts, or
 - (ii) audit work in respect of either:
 - (aa) organisations whose financial reporting requirements are laid down in statutes other than the Companies Acts, for example:
 - nationalised industries;
 - local councils, health authorities and self-governing trusts (excluding value for money audits and parish accounts);
 - housing associations;
 - insurance companies;

2.2 Global Practising Regulations (Annex 2)

- trade unions;
 - friendly or industrial and provident societies;
 - building societies, or
- (bb) other entities where the provisions of the Auditing Standards issued by the Auditing Practices Board or the International Standards on Auditing issued by the International Auditing and Assurance Standards Board apply and where an opinion or certificate is placed on accounts stating that they give a true and fair view of the financial position of the entity or that they present fairly the financial position of the entity. The turnover of the entity must exceed the VAT threshold ruling at the date to which the accounts are made up. Examples of non-statutory audits include:
- partnerships or sole traders whose external reporting obligations are governed by legislation or regulatory bodies;
 - professional bodies (e.g. the Association);
 - charities;
 - credit unions;
 - Irish branches of overseas corporations;
 - private partnerships and sole traders (subject to partnership agreements or bankers'/other third party demands).

The length of time to be spent on the other areas is not fixed, but candidates must be able to demonstrate competence in each of the three specified areas.

Part 2: The Audit Orientation Course and Test

The Audit Orientation Course and Test lasts for three days and incorporates a number of assessment techniques designed to satisfy the Association as to a candidate's ability to act competently as a company auditor. Candidates are required to demonstrate, in particular, that they are able to apply their theoretical knowledge gained in the Association's examinations to practical problems.

Candidates who fail to complete the course satisfactorily and pass the test may have the option of appearing before a Panel of Assessors. If the Panel confirms that the candidate is not yet ready for the award of the recognised professional qualification it will advise him why it has come to that conclusion and how any particular deficiencies can be remedied and will suggest any continuing professional development which might be appropriate before the candidate resubmits himself for a second attempt at the Audit Orientation Course and Test. Candidates who fail to reach the required standard will not be eligible to resit for six months.

Part 3: Additional requirements for certain members

- (a) A person who first registered as a student on or after 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

A person who first registered as a student before 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance (or optional papers 3.1 Audit and Assurance Services or 10 Accounting and Audit Practice under previous examination syllabi) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

In addition, such an applicant who was exempted from the Fundamentals Level (or Part 1 and Part 2 under the December 2001 syllabus) of the Association's syllabus must have completed the Professional Level (or Part 3 of the December 2001 syllabus) of the Association's syllabus within five years of becoming eligible to sit that part.

- (b) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

- (c) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete the following of the Association's examination papers to be eligible for the recognised professional qualification:

P7 Advanced Audit and Assurance.

The above requirements are without prejudice to the rights under Directive (89/48/EEC) of certain members admitted under Membership Regulation 3(e) to complete the Association's Aptitude Test to be eligible for the recognised professional qualification.

The above requirements shall not apply where an applicant holds a qualification recognised by the relevant Irish legislation and has completed the Association's Aptitude Test.

In addition to meeting the above requirements, a person admitted under Membership Regulation 3(d) or (f) shall be required to complete the Association's Aptitude Test.

Additional Practising Regulations for Cyprus

Annex 3 to The Chartered Certified Accountants' Global Practising Regulations 2003

1. Application

The regulations contained in this annex form part of The Chartered Certified Accountants' Global Practising Regulations 2003, and shall apply to all members and to all persons who otherwise agree to be bound by them.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

audit qualification means an audit qualification to the practising certificate issued by the Association to individuals referred to in regulation 5, which authorises the individual to hold himself out as an auditor and to carry on audit work;

audit report means a report on accounts or financial statements which is described as an audit report or having been made by an auditor or is given in true and fair terms or which states that the accounts present fairly the financial position;

auditor means a person who signs or holds himself out as being available to sign an audit report whether or not that report is required by statute;

qualified person means, in relation to an individual, a person qualified to hold a practising certificate with an audit qualification and, in relation to a firm, a firm that is eligible to be appointed as an auditor;

regulated work means work conducted under a practising certificate with an audit qualification.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

(3) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

3. Restrictions on carrying on public practice

(1) *Members*

Where a member carries on public practice and holds a practising certificate, he may carry on public practice not authorised by his practising certificate (such as audit work) where he is authorised to do so by local law and has notified the Admissions and Licensing Committee of his practising status and of his membership of any local body by which he is regulated in the conduct of public practice.

(2) Members and firms

Where public practice is carried on in the name of a firm, or otherwise in the course of a firm's business, and that public practice involves the accepting of an appointment as an auditor, or the holding out of the firm as being available to accept such an appointment, no member shall be a sole proprietor, partner or director of that firm unless the firm holds the appropriate authorisation to carry on the activity in question.

(3) A practising certificate shall only authorise the carrying on of an activity where the activity is both carried on in the country to which the certificate relates, as determined in accordance with regulation 4(2), and is covered by the certificate as provided for in regulation 5.

4. Meaning of public practice

(1) Activities

Public practice has the meaning described in regulation 4 of the Global Practising Regulations.

(2) Where carried on

Where the public practice consists of accepting an appointment as an auditor, or holding oneself out as available to do so, it shall be taken to be carried on in Cyprus, whose laws will apply to the appointment, or potential appointment.

5. Eligibility for an audit qualification

Members accepting an appointment as an auditor shall be required to obtain an audit qualification in accordance with regulation 6(2) in addition to complying with regulation 5 of the Global Practising Regulations as regards their practising certificate. The audit qualification will convey to the holder the necessary authorisation to carry on audit work.

6. Qualifications

(1) Qualifications required to hold a practising certificate

To be qualified to hold a practising certificate, members will need to meet the requirements of regulation 7 of the Global Practising Regulations.

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification members must have obtained a practising certificate in accordance with regulation 6(1) above. Members must also meet the following requirements:

- (a) comply with the relevant requirements in parts 1 and 2 of Appendix 1 to these regulations; or
- (b) have previously held an equivalent certificate issued to members prior to 1 January 2005;

2.2 Global Practising Regulations (Annex 3)

- (c) in any case, satisfy any other qualification requirements applicable to individuals wishing to become eligible to act as an auditor in accordance with the laws of Cyprus.

(3) Waiver

In exceptional circumstances, the requirements of regulations 6(1) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

7. Fit and proper persons

General eligibility

- (a) Regulation 8 of the Global Practising Regulations applies to members. Additionally, where audit qualifications are concerned, this regulation 7 shall apply to the Admissions and Licensing Committee's determination.
- (b) In determining whether a person is "fit and proper", the Admissions and Licensing Committee:
 - (i) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor;
 - (ii) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;
 - (iii) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

8. Disclosure of information

In the conduct of audit work, holders of an audit qualification must supply the Association with all necessary information in accordance with applicable relevant legislation, and to enable the Association to comply with any other obligations it is legally obliged to meet. This requirement shall apply for the duration of time that the audit qualification is held.

9. Monitoring

Members holding a practising certificate and/or an audit qualification shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

Appendix 1

Requirements for an audit qualification

Part 1: Additional requirements for certain members

- (a) A person who first registered as a student on or after 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

A person who first registered as a student before 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance (or optional papers 3.1 Audit and Assurance Services or 10 Accounting and Audit Practice under previous examination syllabi) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

In addition, such an applicant who was exempted from the Fundamentals Level (or Part 1 and Part 2 under the December 2001 syllabus) of the Association's syllabus must have completed the Professional Level (or Part 3 of the December 2001 syllabus) of the Association's syllabus within five years of becoming eligible to sit that part.

- (b) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

- (c) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

Part 2: Qualifications requirements for an audit qualification

1. For all members applying for the certificate on or after 1 January 2003, the requirements are set out below.
2. A member who wishes to obtain an audit qualification shall be required to:
 - (a) have been a member continuously for two years;
 - (b) have completed three years of training in an ACCA approved employer, at least two years of which shall have been obtained after admission to membership; and
 - (c) pass any tests of competence and/or examinations as Council may prescribe in this appendix from time to time.
3. The training must consist of experience in all of the following key areas of competence as set out in Appendix 1 to the Global Practising Regulations:
 - (a) Audit (key area 7);
 - (b) Professional Conduct (key area 1);
 - (c) Technical (key areas 2–5: Accounting; Business advice, development and measurement; Taxation; Business assurance and internal review);
 - (d) Management (key area 6).
4. For the purposes of paragraph 3, a member must:
 - (a) be proficient in all the competences shown for audit as described in the competences of practising certificate holders reproduced in Appendix 1 to the Global Practising Regulations; and
 - (b) be proficient in:
 - (i) all 5 mandatory elements of competence in relation to Professional Conduct; and
 - (ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and
 - (iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.
5. The training must be obtained in an ACCA approved employer under the supervision of either:
 - (a) a principal who is entitled to practise and throughout the period of training does practise as an auditor in the country; or

(b) any other person having in the opinion of Council adequate qualifications and experience providing that such a person is a fully qualified auditor under the law of Cyprus.

6. The training shall be recorded in a manner that the Association specifies as acceptable from time to time.

7. The member shall have passed such local equivalents in the country of the examinations specified in Part 1 of Appendix 1 of these regulations as the Admissions and Licensing Committee shall from time to time specify as acceptable.

Additional Practising Regulations for Zimbabwe

Annex 4 to The Chartered Certified Accountants' Global Practising Regulations 2003

1. Application

The regulations contained in this annex form part of The Chartered Certified Accountants' Global Practising Regulations 2003, and shall apply to all members and to all persons who otherwise agree to be bound by them.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

audit qualification means an audit qualification to the practising certificate issued by the Association to individuals referred to in regulation 5, which authorises the individual to hold himself out as an auditor and to carry on audit work;

audit report means a report on accounts or financial statements which is described as an audit report or having been made by an auditor or is given in true and fair terms or which states that the accounts present fairly the financial position;

auditor means a person who signs or holds himself out as being available to sign an audit report whether or not that report is required by statute;

qualified person means, in relation to an individual, a person qualified to hold a practising certificate with an audit qualification and, in relation to a firm, a firm that is eligible to be appointed as an auditor;

regulated work means work conducted under a practising certificate with an audit qualification.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

(3) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

3. Restrictions on carrying on public practice

(1) *Members and firms*

Where public practice is carried on in the name of a firm, or otherwise in the course of a firm's business, and that public practice involves the accepting of an appointment as an auditor, or the holding out of the firm as being available to accept such an appointment, no

member shall be a sole proprietor, partner or director of that firm unless the firm holds the appropriate authorisation to carry on the activity in question.

(2) A practising certificate shall only authorise the carrying on of an activity where the activity is both carried on in the country to which the certificate relates, as determined in accordance with regulation 4(2), and is covered by the certificate as provided for in regulation 5.

4. Meaning of public practice

(1) Activities

Public practice has the meaning described in regulation 4 of the Global Practising Regulations.

(2) Where carried on

Where the public practice consists of accepting an appointment as an auditor, or holding oneself out as available to do so, it shall be taken to be carried on in Zimbabwe, whose laws will apply to the appointment, or potential appointment.

5. Eligibility for an audit qualification

Members accepting an appointment as an auditor shall be required to obtain an audit qualification in accordance with regulation 6(2) in addition to complying with regulation 5 of the Global Practising Regulations as regards their practising certificate. The audit qualification will convey to the holder the necessary authorisation to carry on audit work subject to the requirements of regulation 6(2)(c).

6. Qualifications

(1) Qualifications required to hold a practising certificate

To be qualified to hold a practising certificate, members will need to meet the requirements of regulation 7 of the Global Practising Regulations.

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification, members must have obtained a practising certificate in accordance with regulation 6(1) above. Members must also meet the following requirements:

- (a) comply with the relevant requirements in Parts 1 and 2 of Appendix 1 to these regulations; or
- (b) have previously held an equivalent certificate issued to members prior to 1 January 2005;
- (c) in any case, satisfy any other qualification requirements applicable to individuals wishing to become eligible to act as an auditor in accordance with the laws of Zimbabwe.

2.2 Global Practising Regulations (Annex 4)

(3) *Waiver*

In exceptional circumstances, the requirements of regulations 6(1) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

7. Fit and proper persons

General eligibility

- (a) Regulation 8 of the Global Practising Regulations applies to members. Additionally, where audit qualifications are concerned, this regulation 7 shall apply to the Admissions and Licensing Committee's determination.
- (b) In determining whether a person is "fit and proper", the Admissions and Licensing Committee:
 - (i) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor;
 - (ii) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;
 - (iii) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

8. Disclosure of information

In the conduct of audit work, holders of an audit qualification must supply the Association with all necessary information in accordance with applicable relevant legislation, and to enable the Association to comply with any other obligations it is legally obliged to meet. This requirement shall apply for the duration of time that the audit qualification is held.

9. Monitoring

Members holding a practising certificate and/or an audit qualification shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

Appendix 1

Requirements for an audit qualification

Part 1: Additional requirements for certain members

- (a) A person who first registered as a student on or after 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

A person who first registered as a student before 1 January 2007 and who was admitted to membership of the Association under Membership Regulation 3(a) without completing the optional paper P7 Advanced Audit and Assurance (or optional papers 3.1 Audit and Assurance Services or 10 Accounting and Audit Practice under previous examination syllabi) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

In addition, such an applicant who was exempted from the Fundamentals Level (or Part 1 and Part 2 under the December 2001 syllabus) of the Association's syllabus must have completed the Professional Level (or Part 3 of the December 2001 syllabus) of the Association's syllabus within five years of becoming eligible to sit that part.

- (b) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

- (c) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete the following of the Association's examination papers:

P7 Advanced Audit and Assurance.

Part 2: Qualification requirements for an audit qualification

1. For all members applying for the certificate on or after 1 January 2003, the requirements are set out below.

2. A member who wishes to obtain an audit qualification shall be required to:

- (a) have completed three years of training in an ACCA approved employer; and
- (b) pass any tests of competence and/or examinations as Council may prescribe in this appendix from time to time.

The requirement in (a) above shall be extended to five years in the case of applicants who are not holders of a university degree.

3. The training must consist of experience in all of the following:

- (a) Audit;
- (b) Accounting; and
- (c) Taxation.

4. For the purposes of paragraph 3, a member must:

- (a) be proficient in all the performance objectives for audit and assurance as described in the Practical Experience Requirement as set out in Appendix 2 of the Membership Regulations; and
- (b) endeavour to achieve proficiency in a broad range of practical experience in relation to accounting and taxation.

5. The training must be obtained in an ACCA approved employer under the supervision of either:

- (a) a principal who is entitled to practise and throughout the period of training does practise as an auditor in the country; or
- (b) any other person having in the opinion of Council adequate qualifications and experience providing that such person is a fully qualified auditor under the law of Zimbabwe.

6. The training shall be recorded in a manner that the Association specifies as acceptable from time to time.

7. The member shall have passed such local equivalents in the country of the examinations specified in Part 1 of Appendix 1 of these regulations as the Association shall from time to time specify as acceptable.

2.3

The Chartered Certified Accountants' Designated Professional Body Regulations 2001

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of all the powers conferred on it by bye-laws 6 and 27 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

Chapter 1 Citation

1. Citation, commencement and application

(1) Citation

These regulations may be cited as The Chartered Certified Accountants' Designated Professional Body Regulations 2001. The Association is a designated professional body under Part XX of the Financial Services and Markets Act 2000 ('the Act') and is required, under section 332(3) of that Act, to make rules relating to carrying on regulated activities that may be carried on by members and firms without breaching the general prohibition.

(2) Commencement

These regulations as amended as set out herein shall come into force on the following dates:

- (a) regulations concerning activities related to regulated mortgage contracts on 31 October 2004;
- (b) regulations concerning insurance mediation activities related to contracts of long-term care insurance on 31 October 2004;
- (c) regulations concerning all other insurance mediation activities on 14 January 2005;
- (d) regulations concerning regulated home purchase plans, regulated home reversion plans and rights under personal pension plans on 6 April 2007;
- (e) all other regulations on 1 January 2005.

(3) Application

- (a) These regulations shall apply to all members and firms.
- (b) A firm shall not be eligible to undertake any regulated activities pursuant to these Regulations if it is an authorised person (i.e. a firm cannot be regulated by a designated professional body and at the same time be authorised by the FSA).

2.3 Designated Professional Body Regulations

- (c) These regulations shall apply to exempt regulated activities carried on in, into or from the United Kingdom.

(4) Approval by the FSA

The regulations in this chapter and chapters 2, 3 and 4 have been approved by the FSA under section 332(5) of the Act.

Chapter 2 Interpretation

2. Interpretation

(1) Definitions

In these regulations, unless the context otherwise requires:

Act means the Financial Services and Markets Act 2000;

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

agent, in relation to a person, means any person (including an employee) who acts on that person's behalf;

Appeal Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

appointed representative means a person (other than an authorised person) who is employed by an authorised person (his principal) under a contract for services which requires or permits him to carry on a regulated activity of a kind to which Section 39 of the Act applies;

associate, in relation to a person, shall be construed as follows:

(a) in relation to an individual, "associate" means:

- (i) that individual's spouse or minor child or step-child;
- (ii) any body corporate of which that individual is a director; and
- (iii) any employee or partner of that individual;

(b) in relation to a body corporate, "associate" means:

- (i) any body corporate of which that body is a director;
- (ii) any body corporate in the same group as that body; and
- (iii) any employee or partner of that body or of any body corporate in the same group;

(c) in relation to a Scottish partnership, or a partnership constituted under the law of any other country or territory in which a partnership is a legal person, "associate" means:

- (i) any body corporate of which the partnership is a director;

- (ii) any employee of or partner in the partnership; and
- (iii) any person who is an associate of a partner in the partnership; and
- (d) in relation to a partnership constituted under the law of England and Wales or Northern Ireland, or the law of any other country or territory in which a partnership is not a legal person, “associate” means any person who is an associate of any of the partners;

Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

authorised person means a person who is authorised by the FSA under section 31(1) of the Act;

authorised unit trust scheme means a unit trust scheme declared by an order of the FSA for the time being in force to be an authorised unit trust scheme for the purposes of the Act;

broker funds arrangement means an arrangement between a firm and a life office (or operator of a regulated collective investment scheme) under which the life office (or operator of the regulated collective investment scheme) agrees to establish a separate fund whose composition may be determined by instructions from the firm and in which it is possible for more than one client to invest;

capital redemption contracts means (in relation to a class of contract of insurance) capital redemption contracts where effected or carried out by a person who does not carry on a banking business, and otherwise carries on the regulated activity of effecting or carrying out contracts of insurance, as specified in paragraph VI of Part II of Schedule 1 to the Regulated Activities Order (Contracts of long-term insurance);

charges means any fee or charge levied by the firm to a client in connection with investment business activities;

client means any person to whom a firm provides public practice accountancy services under these regulations including a potential client and an indirect client but does not include a trust beneficiary;

collective investment scheme means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, which are not excluded by the Financial Services and Markets Act (Collective Investment Schemes) Order 2001;

company includes any body corporate;

contract of insurance means:

- (1) (in relation to a specified investment) the investment, specified in article 75 of the Regulated Activities Order (Contracts of insurance), which is rights under a contract of insurance in (2).

2.3 Designated Professional Body Regulations

- (2) (in relation to a contract) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any contract of insurance which is a long-term insurance contract or a general insurance contract, including:
- (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are:
 - (i) effected or carried out by a person not carrying on a banking business;
 - (ii) not effected merely incidentally to some other business carried on by the person effecting them; and
 - (iii) effected in return for the payment of one or more premiums;
 - (b) tontines;
 - (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who:
 - (i) does not carry on a banking business; and
 - (ii) otherwise carries on the regulated activity of effecting or carrying out contracts of insurance;
 - (d) contracts to pay annuities on human life;
 - (e) contracts of a kind referred to in article 1(2)(e) of the Consolidated Life Directive (collective insurance etc); and
 - (f) contracts of a kind referred to in article 1(3) of the Consolidated Life Directive (social insurance);

but does not include a funeral plan contract or a contract which would be a funeral plan contract but for the exclusion in article 60 of the Regulated Activities Order;

in this definition, “annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

contract of long-term care insurance means a contract of long-term care insurance specified in Article 1(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003;

contract of long-term insurance means a contract of long-term insurance specified in Part II of Schedule 1 to the Regulated Activities Order;

controller means, in relation to any company, a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 10 per cent or more of the rights to vote on all, or substantially all, matters at general meetings of the company or another company of which it is a subsidiary;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

deposit means a sum of money, paid on terms:

- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property (other than currency) or services or the giving of security;

derivative means an investment falling within any of articles 83, 84 or 85 of the Regulated Activities Order;

designated investment means a security or a contractually based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the Regulated Activities Order (Specified Investments):

- (a) life policy (subset of article 75 (Contracts of insurance));
- (b) share (article 76);
- (c) debenture (article 77);
- (d) government and public security (article 78);
- (e) warrant (article 79);
- (f) certificate representing certain securities (article 80);
- (g) unit (article 81);
- (h) stakeholder pension scheme (article 82(1)) and personal pension scheme (article 82(2));
- (i) option (article 83);
- (j) future (article 84);
- (k) contract for differences (article 85);
- (l) regulated mortgage contracts (article 88);
- (m) regulated home reversion plans (article 88A);
- (n) regulated home purchase plans (article 88B);
- (o) rights to or interests in investments in (a) to (k) (article 89);

designated investment business means any of the activities, specified in Part II of the Regulated Activities Order (Specified Activities) which are carried on by way of business;

designated professional body has the meaning given by section 326 of the Act;

distance contract means any contract for financial services, the making or performance of which constitutes or is part of a regulated activity, concluded under an organised

2.3 Designated Professional Body Regulations

distance sales or service provision scheme run by the contractual provider of the service, who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded;

Distance Marketing Directive means the Distance Marketing of Consumer Financial Services Directive 2002/65/EC;

EIS scheme means an enterprise investment scheme approved under Chapter III of Part VII of the Income and Corporation Taxes Act 1988;

employee means an individual who is employed in connection with the firm's exempt regulated activities under a contract of service or under a contract for services such that he is held out as an employee or consultant of the firm and includes an appointed representative of the firm;

execution-only client, in relation to the effecting of a transaction by a firm, means a person with or for whom that transaction is effected in circumstances in which the firm can reasonably assume that the client is not relying upon the firm to advise him on or to exercise any judgement on his behalf as to the merits of or the suitability for him of the transaction and where that person has agreed in writing that the firm has not provided and is not responsible for providing him with investment advice or for exercising any judgement on his behalf as to the merits of or the suitability for him of the transaction and has reasonably concluded that the client can be expected to understand the risks involved in the transaction, and execution-only shall be construed accordingly;

exempt person means a person who is exempt under sections 38 and 39 of the Act;

exempt regulated activities means a regulated activity which may, as a result of Part XX of the Act (Provision of Financial Services by Members of the Professions), be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition;

FSA means the Financial Services Authority;

FSA Register means the record maintained by the FSA, which includes a record of unauthorised persons that carry on, or are proposing to carry on, insurance mediation activity;

firm means a sole practice, partnership or body corporate including a limited liability partnership that satisfies the eligibility requirements for carrying on exempt regulated activities;

funeral plan contract means the investment, specified in articles 59(2), 60 and 87 of the Regulated Activities Order which come into force on 1 January 2002, which is in summary, rights under a contract under which:

- (a) a person ("the customer") makes one or more payments to another person ("the provider"); and
- (b) the provider undertakes to provide, or secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month; but excluding certain contracts under which sums paid will be applied towards a contract of insurance or will be held on trust;

general prohibition means the prohibition imposed by section 19 of the Act which states that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is:

- (a) an authorised person; or
- (b) an exempt person;

group, in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

holding company has the meaning given by section 736 of the Companies Act 1985;

indirect client means, where a client is known to be acting as agent, an identified principal who would be a client if he were dealt with direct;

inducement does not include disclosable commission that is accounted for fully to the client;

insurance mediation activity means any of the following regulated activities carried on in relation to a contract of insurance or rights to or interest in a life policy:

- (a) dealing in investments as agent in the manner specified by article 21 of the Regulated Activities Order;
- (b) arranging (bringing about) deals in investments in the manner specified by article 25(1) of the Regulated Activities Order;
- (c) making arrangements with a view to transactions in investments in the manner specified by article 25(2) of the Regulated Activities Order;
- (d) assisting in the administration and performance of a contract of insurance within article 39A of the Regulated Activities Order;
- (e) advising on investments in the manner specified by article 53 of the Regulated Activities Order;
- (f) agreeing to carry on a regulated activity in (a) to (e) within article 64 of the Regulated Activities Order;

investment trust savings scheme means a dealing service dedicated to the securities of a particular investment trust or of investment trusts within a particular marketing group (and references to an investment trust savings scheme include references to securities to be acquired through that scheme);

ISA means an account which is a scheme of investment satisfying the conditions prescribed by the Individual Savings Accounts Regulations 1998 (SI 1998/1870) or any regulations amending or replacing them;

material interest, in relation to a transaction, does not include disclosable commission on the transaction that is accounted for fully to the client;

2.3 Designated Professional Body Regulations

means of distance communication means (in accordance with Article 2(e) of the Distance Marketing Directive) any means used for the distance marketing of a service between parties which does not involve the simultaneous physical presence of those parties;

member means an individual admitted to membership of the Association pursuant to the bye-laws;

officer means, in relation to a firm which is a partnership, a partner, and in relation to a firm which is a limited liability partnership, a member, and in relation to a firm which is a company, a director or company secretary; and in relation to the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

open-ended investment company means a collective investment scheme which satisfies both the property condition and the investment condition:

(a) the property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate ("BC") having as its purpose the investment of its funds with the aim of:

- (i) spreading investment risk; and
- (ii) giving its members the benefit of the results of the management of those funds by or on behalf of that body;

(b) the investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme:

- (i) expect that he would be able to realise, within a period appearing to him be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
- (ii) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements;

Order means an intervention order made pursuant to regulation 8;

packaged product means a life policy, personal pension scheme, stakeholder pension scheme, a unit in a regulated collective investment scheme, or an investment trust savings scheme;

pension fund withdrawals means in relation to a decision of a client in respect of a personal pension scheme, to defer the purchase of an annuity and to take:

- (a) income withdrawals within the meaning of section 630 of the Income and Corporation Taxes Act 1988, as amended by section 58 and Schedule 11 of the Finance Act 1995; or
- (b) payments made under interim arrangements in accordance with section 28A of the Pension Schemes Act 1993, as inserted by section 143 of the Pensions Act 1995;

and, in respect of an election to make pension fund withdrawals, a reference in these regulations to a client, an investor or a policyholder includes, after that person's death, his surviving spouse and/or anyone who is, at that time, his dependant;

pension transfer means any transaction by a client resulting from a decision to:

- (a) opt out of or not join an occupational pension scheme of which a client is a current member, or which he is, or at the end of a waiting period will become eligible to join, in order to enter into a personal pension policy or stakeholder pension scheme; or
- (b) make a payment into a personal pension scheme or stakeholder pension scheme of accrued pension benefits under an occupational pension scheme;

PEP means a plan which is a scheme of investment satisfying the conditions prescribed by the Personal Equity Plan Regulations 1989 (SI 1989/469);

permission means permission given by the FSA, under Part IV of the Act or resulting from any other provision of the Act, to carry on regulated activities in the UK;

permitted third party means in relation to a regulated activity, an authorised person with permission under Part IV of the Act to carry on that activity or an exempt person who is an exempt person in relation to that activity but in relation to packaged products does not include the regulated life office or operator of the regulated collective investment scheme in question, or an appointed representative of either; and in the case of any reference to the firm acting as disclosed agent where the permitted third party has confirmed to the firm that the client is or will be treated by the authorised person as its customer;

personal pension policy means a right to benefits obtained by the making of contributions to a personal pension scheme;

personal pension scheme means:

- (a) (in relation to a specified investment) the investment specified in article 82(2) of the Regulated Activities Order (Rights under a pension scheme) which is rights under a personal pension scheme in (b);
- (b) (in relation to a scheme) (in accordance with 3(1) of the Regulated Activities Order) a pension scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people:
 - (i) on retirement;
 - (ii) on having reached a particular age; or
 - (iii) on termination of service in an employment;

plan manager means in relation to:

- (a) a group PEP, the PEP manager;
- (b) a group ISA, the ISA manager;
- (c) a group savings plan, the person primarily responsible for that group savings plan;

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practising certificate means any practising certificate relating to the UK issued by the Association only to members pursuant to The Chartered Certified Accountants' Global Practising Regulations 2003;

public practice accountancy services means services within the definition of public practice contained in The Chartered Certified Accountants' Global Practising Regulations 2003:

- (a) which do not constitute carrying on a regulated activity, and
- (b) the provision of which is supervised and regulated by a designated professional body;

Regulated Activities Order means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (Statutory Instrument 2001 No. 544) as amended;

regulated activity means an activity included in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

regulated collective investment scheme means an authorised unit trust scheme, a recognised scheme or a United Kingdom OEIC;

regulated home purchase plan means an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

- (a) the arrangement is one under which a person (the "home purchase provider") buys a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;
- (b) where the undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in (c) below as beneficial tenants in common;
- (c) the arrangement provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and
- (d) the home purchaser (if he is an individual) or an individual who is a beneficiary of a trust (if the home purchaser is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period, and intends to do so;

in the context of a *regulated home purchase plan*:

"administering" means either or both of:

- (i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan or to require that such action is or is not taken;

“qualifying interest” in land means:

- (i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;
- (ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant’s right over or interest in a property subject to a lease;
- (iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

“timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992;

“related person” in relation to the home purchaser or, where the home purchaser is a trustee, a beneficiary of the trust, means:

- (i) that person’s spouse or civil partner;
- (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationships between husband and wife; or
- (iii) that person’s parent, brother, sister, grandparent or grandchild;

for the purposes of (d) above, the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

regulated home reversion plan means an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

- (a) the arrangement is one under which a person (the “plan provider”) buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “reversion seller”);
- (b) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion seller is a trustee), or a related person, who is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; and
- (c) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;

in the context of a *regulated home reversion plan*:

“administering” means any of:

- (i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- (ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan; and

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- (iii) taking any steps for the purposes of collecting or recovering payments due under the plan from the reversion seller;

but a person is not to be treated as administering a regulated home reversion plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken);

“qualifying interest” in land means:

- (i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;
- (ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant’s right over or interest in a property subject to a lease;
- (iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

“timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992;

“related person” in relation to the reversion seller or, where the reversion seller is a trustee, a beneficiary of the trust, means:

- (i) that person’s spouse or civil partner;
- (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationships between husband and wife; or
- (iii) that person’s parent, brother, sister, grandparent or grandchild;

“qualifying termination event”, in relation to a person’s entitlement to occupy land, means:

- (i) the person becomes resident in a care home;
- (ii) the person dies;
- (iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement;

for the purposes of (b) above, the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

regulated mortgage contract means:

- (a) (in relation to a contract) (in accordance with article 61(3) of the Regulated Activities Order) a contract which, at the time it is entered into, meets the following conditions:
 - (i) a lender provides credit to an individual or to trustees (the “borrower”); and

- (ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:
 - (aa) that person's spouse; or
 - (bb) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
 - (cc) that person's parent, brother, sister, child, grandparent or grandchild;
- (b) (in relation to a specified investment) the investment, specified in article 88 of the Regulated Activities Order, which is rights under a regulated mortgage contract within (a);

regulatory system means the arrangements for regulating a firm under the Act including these regulations;

securities means investments falling within articles 76 to 81 of the Regulated Activities Order;

shares means an investment falling within article 76 of the Regulated Activities Order;

soft commission agreement means an agreement in any form, the terms of which permit a firm to receive certain goods or services from another person in return for transacting investment business with or through that other person;

specified investment means any of the investments specified in Part III of the Regulated Activities Order (Specified Investments);

stakeholder pension scheme means:

- (a) (in relation to a specified investment) the investment specified in article 82 of the Regulated Activities Order (Rights under a stakeholder pension scheme) which is rights under a stakeholder pension scheme in (b);
- (b) (in relation to a scheme) a scheme established in accordance with Part I of the Welfare Reform and Pensions Act 1999 and the Stakeholder Pension Schemes Regulations 2000;

subsidiary has the meaning given by section 736 of the Companies Act 1985;

trustee appointment means an appointment as a trustee, personal representative, donee of a power of attorney, receiver appointed by the Court of Protection, curator bonis, tutor or judicial factor;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland;

United Kingdom OEIC has the meaning as defined in the Open-ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.

2.3 Designated Professional Body Regulations

(2) Interpretation

- (a) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.
- (b) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.
- (c) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or to regulations shall include that provision or, as the case may be, regulations as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.
- (d) The Interpretation Act 1978 shall apply to these regulations in the same way as it applies to an enactment.

Chapter 3 Eligibility

3. Eligibility to carry on regulated activities

Subject to regulation 1(3) the following eligibility criteria must be met in order for firms to carry out any of the activities permitted by regulation 4(1).

(1) Sole practitioners

A sole practitioner will only be eligible to carry on regulated activities where:

- (a) he is a member; and
- (b) he holds a practising certificate; and
- (c) the main business of his practice is the provision of public practice accountancy services; and
- (d) he is practising otherwise than in partnership.

(2) Partnerships

A partnership will only be eligible to carry on regulated activities where:

- (a) at least one of the partners in the firm is a member and each partner who is not a member is:
 - (i) a member of another designated professional body and is entitled to practise accountancy and is subject to the regulations of the Association; or
 - (ii) entitled to practise accountancy and is subject to the regulations of the Association; and
- (b) the partners who are members of the Association or of another designated professional body (if any) manage or control the firm; and

- (c) the main business of the partnership is the provision of public practice accountancy services; and
- (d) each partner who is a member holds a practising certificate.

Where this regulation is being applied in connection with a Limited Liability Partnership, the reference to partner or partners should be construed as referring to a member or members of the Limited Liability Partnership.

(3) Companies

A company will only be eligible to carry on regulated activities where:

- (a) at least one director and controller is a member and each director who is not a member is:
 - (i) a member of another designated professional body and is entitled to practise accountancy and is subject to the regulations of the Association; or
 - (ii) entitled to practise accountancy and is subject to the regulations of the Association; and
- (b) the directors who are members of the Association or of another designated professional body (if any) manage or control the firm; and
- (c) its main business is the provision of public practice accountancy services; and
- (d) each director who is a member holds a practising certificate.

Note on applicability of these regulations to members of the Association of Authorised Public Accountants

The Association of Authorised Public Accountants (AAPA) is not a designated professional body for the purposes of the Act, and AAPA members are therefore not eligible to carry on exempt regulated activities. Consequently, these regulations are not of application to AAPA members, save for any provisions concerning the handling of client monies linked to exempt regulated activities, or execution-only business which AAPA members are obliged to observe.

(4) Undertakings

Partners or directors who are not members of the Association shall be required to provide undertakings to be bound by the regulations of the Association, under regulations 3(2)(a) and 3(3)(a), in a manner prescribed by the Association and shall be accompanied by the appropriate administration fee.

(5) Incidental manner

- (a) In order for a firm to qualify as carrying on regulated activities in an incidental manner:
 - (i) the main activity of the firm must be the provision of public practice accountancy services other than regulated activities; and

2.3 Designated Professional Body Regulations

- (ii) the carrying on of the regulated activities is not isolated from other activities of the firm so that it is in effect a separate business; and
 - (iii) the firm does not carry on, or hold itself out as carrying on, a regulated activity other than one which is allowed by these rules or one in relation to which the firm is an exempt person.
- (b) The following additional requirements are relevant in assessing whether the requirement in regulation 3(5)(a)(ii) is met:
- (i) regulated activities should arise out of or be complementary to the provision by the firm of a particular professional service to a particular client; and
 - (ii) the firm should disclose to an existing client or a potential client that the firm is an accountancy firm which may only carry on a limited range of investment business activities; and
 - (iii) the firm must not receive from a person other than its client any pecuniary reward or other advantage, for which it does not account to its client (see 6 below), arising out of its carrying on of regulated activities; and
 - (iv) the carrying on of regulated activities is within the scope of the general ethical code or the rules governing the profession; and
 - (v) the firm must not hold out that the exempt regulated activities are carried out on a stand alone basis separate from the main activity of the firm.

(6) Receipt of any pecuniary reward or other advantage

- (a) Regulation 3(5)(b)(iii) requires that any pecuniary reward or other advantage arising out of carrying on exempt regulated activities can only be retained where the member or firm accounts to the client for that pecuniary reward or other advantage. "Accounts to the client" means remitting any pecuniary reward or advantage (such as commissions received from product providers) to the client; or informing the client of the pecuniary reward or advantage and that he has the right to require the firm to pay the amount concerned to the client, thus allowing offsetting of the amount against any fees charged to the client; or obtaining the client's informed consent, in writing, that the firm may retain the particular reward or advantage in question.
- (b) In securing the consent of the client, the client must be informed clearly of the nature of the pecuniary reward or advantage, including its amount and frequency, and that the client has the right to require the firm to pay the amount concerned to the client. Even if the client consents, the client must be informed each time a pecuniary reward or advantage is received (for example, each time a commission is received, be it initial commission or renewal commission). The exception to this is where the amount and frequency of the pecuniary reward or advantage is predetermined (for example, a fixed commission receivable once per month over the term of a life assurance policy).
- (c) It is not considered sufficient for firms in, say, the letter of engagement to make a general disclosure regarding the receipt of any pecuniary reward or advantage, or to obtain a client's general consent to the firm's retention of such pecuniary reward or advantage.

- (d) Firms should agree with clients the manner in which any commission, fee or reward is going to be dealt with. Firms are also reminded of the requirements of disclosure of such commission, fee or reward, under the Code of Ethics and Conduct.

(7) Other restrictions

- (a) A firm with a branch (or branches) or office (or offices) outside the United Kingdom shall be eligible to undertake exempt regulated activities in the UK from its UK branch (or branches) or office (or offices) (subject to the requirements of other relevant regulations).
- (b) A member or firm shall not be eligible to undertake any activity specified in any Order made under the Financial Services and Markets Act 2000 (Professions)(Non-Exempt Activities) Order 2001, as amended from time to time or any other Order made by the Treasury under section 327(6) of the Act.
- (c) Where the FSA exercises its powers under sections 328 and 329 of the Act, members or firms cannot undertake the activity or activities specified in the direction or order.

The powers of the FSA

(1) Directions

Section 328 of the Act enables the FSA to issue a direction that the exemption from the general prohibition under section 327(1) of the Act does not apply either to a class of person or to a specific regulated activity. The direction must be in writing.

(2) Orders

Section 329 of the Act enables the FSA to make an order that the exemption from the general prohibition under section 327(1) does not apply if it appears to the FSA that the person to whom the order will apply is not a fit and proper person to carry on exempt regulated activities.

The powers of the FSA detailed above may be used separately, or in addition to, the Association's disciplinary procedures.

Chapter 4 Scope

4. Scope

(1) Exempt regulated activities

Subject to regulations 4(2) and 4(3), all firms that are eligible to conduct regulated activities under regulation 3 may carry on, or agree to carry on, any of the activities set out in this regulation (but no other activity constituting regulated activities).

In relation to designated investments, contracts of long-term insurance, contracts of long-term care insurance, regulated mortgage contracts, regulated home reversion plans and regulated home purchase plans, firms may carry on:

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- (a) dealing as agent in investments within article 21 to the Regulated Activities Order:
 - (i) as disclosed agent for a named client where the transaction is carried out with or through a permitted third party; or
 - (ii) where the client is an execution-only client except in respect of pension transfer or opt-out business and pension fund withdrawals; or
- (b) making arrangements within articles 25 (investments deals), 25A (regulated mortgage contracts), 25B (regulated home reversion plans) and 25C (regulated home purchase plans) of the Regulated Activities Order where:
 - (i) the firm acts as disclosed agent for a named client and the arrangements are carried out with or through a permitted third party; or
 - (ii) the arrangements are made in consequence of advice given in relation thereto by a permitted third party which if obtained by the firm has been obtained by it acting as disclosed agent for a named client; or
 - (iii) the client is an execution-only client except in respect of pension transfer or opt-out business and pension fund withdrawals; or
 - (iv) the arrangements are for the disposal of a packaged product by or for a personal representative; or
 - (v) the transaction involves the acquisition or disposal of an investment by accepting an offer or responding to an invitation made to the public or to the holders of securities of any body corporate or any class thereof or by exercising any right conferred by an investment to acquire, dispose of or convert an investment; or
- (c) managing investments within article 37 of the Regulated Activities Order where:
 - (i) that activity is performed on a non-discretionary basis;
 - (ii) the firm or an officer or employee of the firm holds a trustee appointment and acts on a discretionary basis; and
 - (aa) no remuneration is received for the discretionary management of the investments in addition to the remuneration which the firm or the officer or employee of it may receive in connection with their acting pursuant to the trustee appointment; or
 - (bb) any decisions to buy, sell, subscribe for or underwrite a particular investment are taken in accordance with the advice of a permitted third party which, if obtained by the firm, has been obtained by him or it having disclosed the basis on which he or it is acting; or
- (d) advising within article 53 (investments), article 53A (regulated mortgage contracts), article 53B (regulated home reversion plans) and article 53C (regulated home purchase plans) of the Regulated Activities Order where:

- (i) such advice constitutes the advice of a permitted third party and, if obtained by the firm, has been obtained by it acting as disclosed agent for a named client; or
 - (ii) in the case of investments the advice does not relate to listed securities; or
 - (iii) such advice concerns the disposal of a packaged product for a personal representative; or
 - (iv) such advice constitutes a recommendation not to buy or subscribe for investments, or a recommendation to vary the terms of, not to buy or not to subscribe for regulated mortgage contracts, regulated home reversion plans and regulated home purchase plans, or relates to the disposal of investments other than rights under a personal pension scheme or relates to the acquisition of investments issued by an unquoted company; or
 - (v) such advice constitutes advice to clients to seek further information or clarification from the authorised person; or
 - (vi) such advice constitutes advice to clients on the merits of advice given by an appropriately authorised or exempt person provided no recommendation is made that the client purchases a particular investment or regulated mortgage contract, regulated home reversion plans and regulated home purchase plans, other than that recommended by the authorised or exempt person; or
- (e) the provision of any designated investment business to:
- (i) an issuer, holder or owner of investments with regard to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, the investments, or any related matter; or
 - (ii) any company or partnership which relates to the manner in which, or the terms on which, or the persons by whom, any business, activities or undertakings relating to it, or any associate, are to be financed, structured, managed, controlled, regulated or reported upon; or
 - (iii) any company in connection with a proposed or actual take-over by or on behalf of that company or its holding company or subsidiary or a merger, de-merger, re-organisation or reconstruction involving any investments issued by such a company; or
 - (iv) any shareholder or prospective shareholder of a company established or to be established for the purpose of effecting a take-over.

In relation to contracts of insurance other than contracts of long-term insurance and contracts of long-term care insurance, firms may carry on the following insurance mediation activities provided they have first complied with regulation 4(3):

- (f) dealing as agent in the manner specified by article 21 of the Regulated Activities Order; or

2.3 Designated Professional Body Regulations

- (g) making arrangements in the manner specified by article 25 of the Regulated Activities Order; or
- (h) assisting in the administration and performance of contracts of insurance within article 39A of the Regulated Activities Order; or
- (i) advising in the manner specified by article 53 of the Regulated Activities Order.

(2) *Prohibited activities*

No firm may carry out any activity that relates to:

- (a) accepting deposits of a kind specified by article 5 of the Regulated Activities Order;
- (b) effecting and carrying out contracts of insurance as specified by article 10 of the Regulated Activities Order;
- (c) dealing as principal in investments within the meaning of article 14 of the Regulated Activities Order;
- (d) establishing, operating or winding up a collective investment scheme; act as a trustee of an authorised unit trust scheme or act as the depository or sole director of an open-ended investment company as specified within article 51 of the Regulated Activities Order;
- (e) establishing, operating or winding up a personal pension scheme or stakeholder pension scheme within article 52 of the Regulated Activities Order;
- (f) recommendations to buy or subscribe for securities or contractually based investments which are admitted to dealing on an exchange or other market within article 53 of the Regulated Activities Order;
- (g) advising on the merits of entering into a regulated mortgage contract within article 53A, a regulated home reversion plan within article 53B and a regulated home purchase plan within article 53C of the Regulated Activities Order;
- (h) advising on the merits of entering into or varying the terms of a contract of long-term insurance, a contract of long-term care insurance or other insurance-based investment in the manner specified by article 53 of the Regulated Activities Order;
- (i) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified under article 57 of the Regulated Activities Order;
- (j) entering as provider into a funeral plan contract within article 59 of the Regulated Activities Order;
- (k) entering into or administering a regulated mortgage contract, regulated home reversion plans and regulated home purchase plans within articles 61, 63B and 63F of the Regulated Activities Order;
- (l) advising a person to become a member of a particular Lloyd's syndicate;

- (m) holding, or receiving, any money belonging to a client in the course of carrying on exempt regulated activities for a client which is not immediately due and payable on demand to the firm for its own account;
- (n) acting as a personal pension scheme or stakeholder pension scheme manager;
- (o) managing investments as a plan manager of a PEP or an ISA;
- (p) carrying on the activity of safeguarding and administering assets within article 40 of the Regulated Activities Order;
- (q) carrying on any investment activity relating to derivatives;
- (r) promoting, issuing or approving any investment advertisements;
- (s) undertaking any business involving pension transfers and pension fund withdrawals;
- (t) entering into a broker funds arrangement;
- (u) sponsoring or advising on issues of securities on the Stock Exchange, Alternative Investment Market (AIM) or Off Exchange (OFEX).

In addition to the prohibition on firms from carrying out any of the above activities, firms may not agree to carry on any activity contained in regulation 4(2).

This list will be reviewed from time to time and will be revised as necessary.

(3) Special requirements for firms intending to carry on, or agree to carry on, insurance mediation activity

A firm wishing to carry on insurance mediation activity (i.e. the activities set out in regulations 4(1)(a), (b) and (d) in relation to insurance-based investments and the activities set out in regulations 4(1)(f) to (i)) must:

- (a) effect professional indemnity insurance with minimum limits of indemnity equivalent (at the time the policy is effected or renewed) to 1,000,000 euros in relation to each and every claim and 1,500,000 euros in the aggregate per year for all claims, except where the activity comprises providing information to a policyholder or potential policyholder or a permitted third party in the context of making arrangements with a view to transactions in the manner specified by article 25(2) of the Regulated Activities Order;
- (b) where the firm is not a sole practitioner, nominate an individual or individuals within the management of the firm who will be responsible for such activities;
- (c) ensure that a reasonable proportion of the persons within the management structure of the firm who are responsible for insurance mediation activity and all other persons directly involved in insurance mediation activity demonstrate the knowledge and ability necessary for the performance of their duties;

2.3 Designated Professional Body Regulations

- (d) where the firm intends to establish a branch in, or provide cross border services to, another state of the European Economic Area (EEA), satisfy the conditions in paragraph 19 or 20 (as appropriate) of Part III of Schedule 3 to the Act;
- (e) satisfy the conditions that no person within the management structure of the firm or within the staff directly involved in insurance mediation activity is an undischarged bankrupt or has a criminal conviction for any serious offences relating to financial activities or crimes against property;
- (f) register with the Association for insurance mediation activity; and
- (g) before carrying on such activities, ensure that the following details appear on the FSA Register and have been updated, as informed by the firm to the Association:
 - (i) the firm's name and address;
 - (ii) details of the individuals referred to within regulation 4(3)(b); and
 - (iii) where relevant, each EEA state in which the firm has established a branch or is providing cross border services under the Insurance Mediation Directive.

A firm which undertakes insurance mediation activity and whose details do not appear on the FSA Register will be committing a criminal offence. While the Association will pass a firm's details to the FSA as part of its regulatory obligations, it is the firm's responsibility to ensure that its details appear on the FSA Register and are correct and up to date.

(4) Activities which do not constitute insurance mediation activity

The following activities do not constitute insurance mediation activity and, as such, firms are free to carry on such activities as they do not fall within the Designated Professional Body Regulations:

- (a) advising in general terms on the need for or level of insurance cover or providing information to the policyholder or potential policyholder of a general nature on insurance products, provided that no recommendation is made of particular contracts of insurance, product providers or permitted third parties other than independent financial advisers;
- (b) carrying on insurance mediation activity where all of the following conditions are met:
 - (i) the principal activity of the person is other than insurance mediation activity;
 - (ii) the contract of insurance is not a contract of long-term insurance;
 - (iii) the contract of insurance has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;
 - (iv) the contract of insurance has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euros or less, or the equivalent amount in other currency;

- (v) the insurance covers non-motor goods or travel insurance;
 - (vi) the contract of insurance does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract);
 - (vii) the insurance is complementary to the non-motor goods or service supplied by any provider; and
 - (viii) the contract of insurance is of such a nature that the only information needed is the cover provided;
- (c) carrying on insurance mediation activity not by way of business. The “by way of business” test comprises two elements:
- (i) whether the person receives remuneration for the activity (whether monetary, non-monetary or in the form of an expectation of economic benefit);
 - (ii) whether the person pursues the activity with a degree of regularity or for commercial purposes.

Chapter 5 Conduct of business regulations

5. Independence

(1) Inducements

A firm must take reasonable steps to ensure that neither it nor any of its agents offers, gives, solicits or accepts any inducement which is likely significantly to conflict with any duties of the recipient or the recipient’s employer owed to clients in connection with the firm’s exempt regulated activities.

(2) Material interest

Where a firm has a material interest in a transaction to be entered into with or for a client or a relationship which gives rise to a conflict of interest in relation to such a transaction, the firm must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the client.

(3) Arrangements with third parties

- (a) A firm must not enter into any soft commission agreement whereunder a firm which deals in securities on an advisory basis receives goods or services in return for an assurance that not less than a certain amount of such business will be put through or in the way of another person.
- (b) A firm may only accept an appointment as another person’s appointed representative where the appointing organisation is itself, and at all times continues to be, free from any restriction which may result in the firm being constrained or induced to recommend to a client transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others, unless constrained by law.

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- (c) A firm may only advise in relation to the disposal of packaged products as an independent intermediary and, for the avoidance of doubt, to the extent such activities constitute exempt regulated activities.

6. Relations with clients

(1) Fair and clear communications

- (a) A firm must avoid any representation to a client that it is authorised under the Act or regulated by the FSA or that the regulatory protections provided by the Act are available. Where a firm is conducting insurance mediation activity, it is particularly important that the client understands that the firm's inclusion on the FSA Register is not the same as being authorised under the Act.
- (b) A firm may make a communication with another person which is designed to promote the provision of exempt regulated activities only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.
- (c) A firm must take reasonable steps to ensure that any agreement, written communication, notification or information which it gives or sends to a client to whom it provides exempt regulated activities is presented fairly and clearly.
- (d) A firm must ensure that the client receives sufficient information about the recommended investment so that he has an adequate basis on which to accept or reject the recommendations. The firm must make clear that it will supply the client with more detailed information if he so requires.

(2) Clients' rights

- (a) A firm must not, in any written communication or agreement, seek to exclude or restrict any duty or liability to a client which it has under the Act, or under the regulatory system.
- (b) Similarly, unless it is reasonable to do so in the circumstances, a firm must not, in any written communication or agreement, seek to exclude or restrict:
 - (i) any other duty to act with the skill, care and diligence which is owed to a client in connection with the provision to him of exempt regulated activities; or
 - (ii) any liability owed to a client for failure to exercise the degree of skill, care and diligence which may reasonably be expected of it in the provision of exempt regulated activities.
- (c) A firm must not seek unreasonably to rely on any provision seeking to exclude or restrict any such duty or liability.

(3) Charges

The amount a firm charges to a client for the provision of exempt regulated activities must not be unreasonable in the circumstances.

(4) Client agreements

- (a) Where a firm provides exempt regulated activities to a client, the written agreement which must be entered into before any business is conducted must set out in adequate detail the basis on which those services are provided and must include, inter alia, a statement of the following:
- (i) the firm's name and address; and
 - (ii) that the firm is regulated in the conduct of exempt regulated activities by the Association (if a firm makes a reference to the FSA any such statement should not lead the client to suppose that the FSA has direct regulatory responsibility for that firm); and
 - (iii) the nature of the regulated activities provided by the firm and the fact that these are limited in scope and, where appropriate, the fact that the firm is using the services of a permitted third party; and
 - (iv) where the firm provides exempt regulated activities other than insurance mediation activity, that the firm is not an authorised person; and
 - (v) that the client will not have access to any compensation scheme in respect of the firm's services; and
 - (vi) the client's investment objectives; and
 - (vii) any restrictions on the investments which may be acquired or that there are no restrictions; and
 - (viii) the nature of the complaints and redress procedures available to clients; and
 - (ix) the basis on which the firm is to charge for its services.
- (b) Where a firm provides insurance mediation activity services, the written agreement must also provide the following information:
- (i) the following statement in a way that is clear, fair and not misleading and no less prominent than any other information provided to the client at the same time:

“[This firm is/We are] not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Association of Chartered Certified Accountants. The register can be accessed via the Financial Services Authority website at www.fsa.gov.uk/register.”;
 - (ii) whether the firm has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;

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- (iii) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the firm.
- (c) Where a firm acts as a disclosed agent for a named client with or through a permitted third party or relies upon the advice of a permitted third party in acting for or advising a client, the firm must inform the permitted third party in writing of that fact and that accordingly the permitted third party will be responsible to the client in respect of its activities or advice.
- (d) (i) Where a firm is treating a client as an execution-only client it must:
 - (aa) notify the client accordingly and must obtain a written acknowledgement from the client. In addition, written evidence of specific instructions from execution-only clients must be made, including written confirmation that the client did not seek or receive advice from the firm regarding a transaction. The transaction must have been entered into on the client's explicit instructions; and
 - (bb) have reasonably assessed and concluded that the client can be expected to understand the risks involved in the transaction.
- (ii) Copies of the written notification and acknowledgement and evidence of instructions and assessment referred to in this regulation are required to be retained for six years.

(5) Cessation of business

Where a firm withdraws from providing any exempt regulated activities to clients, the firm must ensure that any such business which is outstanding is properly completed or is transferred to another firm. In addition, where the interests of clients would be significantly affected by the death or incapacity of an individual within the firm, the firm must make arrangements to protect the interests of those clients in that event.

(6) Information about the firm

A firm may, in all its business letters, notices and other publications which relate to its exempt regulated activities, state that it is regulated to conduct exempt regulated activities by the Association. Any such statement should also comply with the requirements set out in regulation 6(4) relating to client agreements.

Note on the use of statements on business letters, notices and other publications

Firms that are regulated by the Association for exempt regulated activities may use the following statement on their professional stationery:

“Regulated for a range of investment business activities by the Association of Chartered Certified Accountants.”

(7) Information about contracts of insurance

This regulation applies where a firm carries on insurance mediation activity.

Firms are reminded of the provisions of paragraph 10 of Code of Ethics and Conduct section 3.15, Activities through corporate or non-corporate organisations, which provides that firms are not permitted to enter into any association or arrangement which may adversely affect the firm's independence. As such, firms are not permitted to enter into contractual obligations to conduct insurance mediation activity exclusively with one or more insurance undertakings.

- (a) The client must be informed of the following in relation to each contract of insurance:
 - (i) whether the advice is given based on the firm's obligation to provide a fair analysis (see regulation 6(7)(b) below); or
 - (ii) whether even though the firm is not under a contractual obligation to conduct insurance mediation activity exclusively with one or more insurance undertakings, the firm does not give advice based on the firm's obligation to provide a fair analysis. In that case, the firm shall, at the client's request, provide the names of the insurance undertakings with which the firm may and does conduct business.

Where information is to be provided solely at the client's request, a firm must inform the client that he has the right to request such information.

- (b) Where a firm informs the client that the advice is given on the basis of a fair analysis, the firm is obliged to give that advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market, to enable the firm to make a recommendation, in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer's needs.
- (c) Prior to the conclusion of a contract of insurance, a firm must specify, in particular on the basis of information provided by the client, the demands and needs of the client as well as the underlying reasons for any advice given to the client on a specific contract of insurance. These details must be modulated according to the complexity of the insurance contract being proposed.

(8) Method of communicating with client

This regulation applies where a firm carries on insurance mediation activity.

- (a) All information to be provided to clients under this regulation 6 must be communicated:
 - (i) (aa) on paper or any other durable medium available and accessible to the client; or
 - (bb) orally, if the client requests it or where immediate cover is necessary, in which case the information shall be provided in accordance with regulation 6(8)(a)(i)(aa) immediately after the conclusion of the contract of insurance; and

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- (ii) in a clear and accurate manner, comprehensible to the client; and
 - (iii) in an official language of the Member State of the commitment or in any other language agreed with the client.
- (b) Where a firm conducts insurance mediation activity over the telephone, the prior information given to the client must comply with Article 3 of the Distance Marketing Directive. Information must then be provided to the client in accordance with regulation 6(8)(a) immediately after the conclusion of the contract of insurance.

(9) Life policies

When advising on the disposal of a life policy in accordance with regulation 4(1)(d)(iv), a firm must advise its client on:

- (a) the risks and costs of keeping the policy;
- (b) the various means of disposal available to the client and the advantages and disadvantages of each.

Surrendering the policy is unlikely to realise its full value. Examples of other means of disposal are selling the policy on the second-hand market, converting a joint life policy to single life, assigning the policy or making the policy paid up. If a firm is unable to fully advise its client, it should obtain the advice of a permitted third party.

(10) Distance contracts

While firms are unlikely to be undertaking activities within the scope of regulation 4(1) by way of a distance contract, firms should be aware that if they do so they must comply with the provisions of the Distance Marketing Directive.

7. Compliance procedures

(1) Compliance

A firm must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with all regulations and regulations applicable to the conduct by the firm of exempt regulated activities.

(2) Records

- (a) A firm must ensure that sufficient information is recorded and retained about its exempt regulated activities as is necessary for the proper conduct of that business and to enable it to demonstrate compliance with the regulatory system, including but not limited to records:
 - (i) of the receipt of income from the client in respect of exempt regulated activities;
 - (ii) of the receipt of commissions, or any other pecuniary reward or advantage, from product providers or any third parties, which are adequate to demonstrate that the firm has accounted to the client for the commissions or other pecuniary reward or advantage;

- (iii) which are adequate to demonstrate that the firm has carried on only exempt regulated activities; and
 - (iv) records of complaints received and action taken.
- (b) Any record required to be produced by this regulation should be retained for a minimum of six years.

(3) Complaints

A firm must have procedures to ensure:

- (a) the proper handling of complaints from clients and third parties relevant to its compliance with the regulatory system;
- (b) that any appropriate remedial action on those complaints is promptly taken; and
- (c) where the complaint is not promptly remedied, that the client is advised of any further avenue for complaint available to him under the regulatory system;

and those procedures must include provisions to ensure that:

- (i) complaints are acknowledged within a reasonable time of their being received and in any event within 14 days;
- (ii) where a complaint has been made orally, the letter of acknowledgement states the member's understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement; and
- (iii) complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint.

(4) Continuity

Firms shall enter into a continuity agreement in accordance with regulation 11 of The Chartered Certified Accountants' Global Practising Regulations 2003.

(5) Notification

A firm that becomes an authorised person to conduct any regulated activities or becomes an appointed representative of another organisation should notify the Association immediately in writing of this change of status.

Chapter 6 Enforcement

8. Enforcement

(1) Monitoring

Members and firms entitled to carry out exempt regulated activities shall be subject to a monitoring visit from the Association in accordance with regulation 14 of The Chartered Certified Accountants' Global Practising Regulations 2003.

(2) Intervention Orders

- (a) If it appears to the Admissions and Licensing Committee that it is desirable to take measures for the protection of investors or for the protection of the Association or for both reasons, and that:

- (i) it is desirable to prohibit a firm from disposing of or otherwise dealing with any of its assets, or any specified assets; or
- (ii) a firm is not fit and proper to carry on exempt regulated activities either generally or of a particular kind or to the extent to which it is or is intending to carry on that business; or
- (iii) a firm has committed, or intends, or is likely to commit a breach of these regulations or some other act of misconduct; or
- (iv) for more than one of these reasons;

the Admissions and Licensing Committee may make and serve on the firm concerned a written Intervention Order (an "Order").

- (b) An Order may operate for a specified period or until the occurrence of a specified event or until the firm complies with specified conditions and may, at the Admissions and Licensing Committee's discretion, come into effect either immediately on service or at such later time as the Admissions and Licensing Committee may determine.

- (c) An Order served on a firm may require the firm to take specified steps and/or may forbid the firm:

- (i) in whole or in part, to carry on exempt regulated activities;
- (ii) to dispose of or otherwise deal with any assets or any specified assets (whether held in the United Kingdom or outside the United Kingdom) or to act otherwise than in the manner specified in the Order;
- (iii) to enter into transactions of a specified kind or enter into them except in specified circumstances or to a specified extent;
- (iv) to solicit business from persons of a specified kind or otherwise than from such persons or in a specified country or territory; and/or
- (v) to carry on business in a specified manner or otherwise than in a specified manner.

- (d) An Order shall specify:
- (i) the reasons for its issue;
 - (ii) the date and time at which the Order shall come into effect;
 - (iii) the period for which the Order shall operate, which may be expressed to end with the occurrence of a specified event or when the firm has complied with the requirements of the Order;
 - (iv) where relevant, in regard to an Order to which regulation 7(2)(a)(iii) above applies, the act or omission which constituted or would constitute breach of the regulations and the regulation which has been or would be contravened; and
 - (v) the officer of the Admissions and Licensing Committee to whom a request can be made for a stay of execution of the Order.
- (e) The Admissions and Licensing Committee, or the Chairman of the Admissions and Licensing Committee acting on its behalf, may, at any time before or after an Order comes into effect, revoke the Order or vary its terms, and where the terms of an Order are varied the variation shall be effected by a new Order being served on the firm concerned.
- (f) Subject to regulation 7(3) the Association shall publish the Order at or after the time it comes into effect.

(3) Application for stay of execution

After service of the Order, its recipient may apply to the Association for a stay of execution of the Order or any part of it and/or of its publication. The application shall be considered by the officer specified pursuant to regulation 2(d)(v) above who in his discretion may grant or refuse the stay or grant it subject to conditions.

(4) Reference to the Appeal Committee

A firm served with an Order may appeal against the Order in the same way and subject to the same limitations as it may appeal against any other decision of the Admissions and Licensing Committee.

The Association may appeal against the Order in the same way and subject to the same limitations as it may appeal against any other decision of the Admissions and Licensing Committee.

9. Waivers and service

(1) Waivers and modifications

- (a) A firm is entitled to apply in writing to the Admissions and Licensing Committee to waive, vary or suspend the requirements of any of these regulations in order to adapt it to the firm's circumstances or to any particular kind of business which the firm is carrying on or intends to carry on. The Admissions and Licensing Committee shall not grant the application unless it appears that compliance with it would be unduly

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burdensome having regard to the benefit which compliance would confer on investors and the exercise of the power would not result in any undue risk to investors.

- (b) The Admissions and Licensing Committee may grant such an application on conditions. If it does so, the applicant firm must comply with any such conditions.
- (c) Following an application under this regulation, or of its own volition, the Admissions and Licensing Committee may modify or waive any of these regulations. Where it does so, it may impose conditions and any firm which acts upon modification or waiver extended to it must comply with any such condition.
- (d) Any waiver given under this regulation shall apply for such period as the Admissions and Licensing Committee shall specify.
- (e) Any waiver or modification by the Admissions and Licensing Committee cannot vary the conditions contained in section 327(2)–(7) of the Act or the effect of a direction or Order made by the FSA under section 328 or section 329 of the Act.

(2) *Consents*

Where provided for in these regulations any consent to be given by the Admissions and Licensing Committee may be given or withheld in its absolute discretion, but if withheld the Admissions and Licensing Committee shall notify the firm of the reasons why it has been withheld.

(3) *Service*

Except as otherwise provided in these regulations, any notice or other document required or authorised by these regulations to be served on any firm may be served by leaving it at or sending it by post to the firm's address notified to the Association in accordance with these regulations.

10. Liability

Neither the Association nor any of its officers or servants or agents nor any members of any committee of Council shall be liable in damages or otherwise for anything done or omitted to be done in the discharge or purported discharge of any function under the Act set out below unless the act or omission is shown to have been in bad faith. The functions referred to above are the functions of the Association so far as relating to or to matters arising out of:

- (a) the bye-laws, regulations and arrangements of the Association so far as they relate to or are applied in respect of the carrying on of exempt regulated activities or any other matters concerning the Act and/or to which the requirements in section 325(4) of the Act require the Association to comply;
- (b) the obligations with which section 325(4) of the Act requires the Association to comply;
- (c) any guidance issued by the Association in respect of any matter dealt with by such regulations as are mentioned in (a) above; or
- (d) the obligations to which the Association is subject by virtue of the Act.

2.4

The Chartered Certified Accountants' Irish Investment Business Regulations 1999

Code of Conduct of the Financial Regulator

(1) *Firms* should:

- (a) act honestly and fairly in conducting their business activities in the best interests of their *clients* and the integrity of the market;
- (b) act with due skill, care and diligence in the best interests of their *clients* and the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;
- (d) seek from their *clients* information regarding their financial situations, investment experience and objectives as regards the services requested;
- (e) make adequate disclosure of relevant material information including commissions in their dealings with their *clients*;
- (f) make a reasonable effort to avoid conflicts of interests and, when they cannot be avoided, ensure that their *clients* are fairly treated; and
- (g) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of their *clients* and the integrity of the market;

and the *Financial Regulator* may impose conditions or requirements on a *firm* or any class of *firm* in respect of compliance with the provisions of this code of conduct or any other code of conduct or rules of like effect.

(2) This code of conduct shall not apply to any class of *certified person* specified by the *Financial Regulator* in respect of which the *Financial Regulator* is satisfied that there are sufficient provisions in the rules of an *approved professional body* or elsewhere governing the conduct of such *certified persons* in respect of matters referred to in paragraphs (a) to (g) of section (1) above or such other matters as the *Financial Regulator* deems necessary.

The Chartered Certified Accountants' Irish Investment Business Regulations 1999

Amended 1 January 2007

The *Council* of the Association of Chartered Certified Accountants, in exercise of all the powers conferred on it by *bye-laws* 6 and 27 of the *Association's bye-laws* and all other powers enabling it, hereby makes the following regulations:

(Note: Words or phrases which are defined in regulation 2(1) are shown in italics in the text of the regulations throughout.)

1. Citation, commencement and application

(1) Citation

These regulations may be cited as The Chartered Certified Accountants' Irish Investment Business Regulations 1999 as amended.

(2) Commencement

These regulations as amended shall come into force on 1 January 2007.

(3) Application

- (a) These regulations, in so far as they are relevant, shall apply to all *members*, and to *firms*, and to individuals who have agreed and undertaken to be bound by them. In addition, to the extent provided for in the regulations, these regulations shall continue to apply to *members* after they have ceased to be *members* and to *firms* and such other persons after the *investment business certificate (Ireland)* issued to the *firm*, or the *firm* in relation to which they are *specified persons*, has lapsed.
- (b) Regulations 5 to 14 apply only to the provision of *investment business services* and *investment advice* by a *firm* which are either:
 - (i) carried on from the *firm's* place of business in the Republic of Ireland for *clients* in the Republic of Ireland; or
 - (ii) carried on from a permanent place of business of the *firm* in the Republic of Ireland for *clients* in the *United Kingdom*; or
 - (iii) carried on from a permanent place of business of the *firm* in the *United Kingdom* for *clients* in the Republic of Ireland.

In other words, where *firms* holding an *investment business certificate (Ireland)* have a branch in the UK, that branch will not be bound by regulations 5 to 14 unless it is providing *investment business services* or *investment advice* to *clients* based in the Republic of Ireland. Such branches may instead be subject to UK legislation and The Chartered Certified Accountants' Designated Professional Body Regulations 2001.

- (c) *Members and firms* and all persons who have agreed and undertaken to be bound by these regulations shall be subject to any provisions of the *Act* not specifically set out in these regulations and shall comply with any such provisions, where necessary, as if these provisions were specifically set out in these regulations. Where there is a conflict between the provisions of these regulations and the provisions of the *Act*, the provisions of the *Act* shall take precedence.

2. Interpretation

(1) Definitions

In these regulations, unless the context otherwise requires:

accounting year means a financial year of the *firm*;

Act means the Investment Intermediaries Act, 1995, as amended;

Admissions and Licensing Committee means the committee of *Council* responsible, inter alia, for administering these regulations, or such other committee to whom *Council* may delegate such responsibilities, or *Council*;

advertise includes cause to be advertised;

agent, in relation to a person, means any person (including an *employee*) who acts on that person's behalf;

Appeal Committee means the committee of *Council* responsible, inter alia, for hearing appeals from decisions of the *Admissions and Licensing Committee*, or such other committee to whom *Council* may delegate such responsibility, or *Council*;

applicant means a person who or which has applied or is in the course of applying to the *Association* for or to renew or to amend an *investment business certificate (Ireland)*;

approved professional body has the meaning given by section 55 of the *Act*;

associate, in relation to a person, shall be construed as follows:

(a) in relation to an individual, *associate* means:

- (i) that individual's spouse or minor child or step-child;
- (ii) any body corporate of which that individual is a director; and
- (iii) any *employee* or partner of that individual;

(b) in relation to a body corporate, *associate* means:

- (i) any body corporate of which that body is a director;
- (ii) any body corporate in the same *group* as that body; and
- (iii) any *employee* or partner of that body or of any body corporate in the same *group*;

Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

2.4 Irish Investment Business Regulations

BES investment means an investment which provides income tax relief as referred to in section 489 (Part 16) of The Taxes Consolidation Act 1997;

bye-laws means the bye-laws from time to time of the *Association*;

certified person has the meaning given by section 55 of the *Act*;

client means a person to whom a *firm* provides *investment business services* or *investment advice* and includes an *indirect client* but does not include a trust beneficiary;

collective investment scheme means any collective investment scheme subject to the regulation of the *Financial Regulator*;

Companies Acts means The Companies Acts, 1963 to 2003 and Investment Funds, Companies and Miscellaneous Provisions Act, 2005;

company includes any body corporate;

Compensation Act means the Investor Compensation Act, 1998;

controller means, in relation to any *company*, a person who either alone or with any *associate* or *associates* is entitled to exercise or control the exercise of 15 per cent or more of the rights to vote on all, or substantially all, matters at general meetings of the *company* or another *company* of which it is a *subsidiary*;

Council means the Council of the *Association* from time to time and includes any duly authorised committee of Council;

credit institution means a credit institution within the meaning of Article 1 of Council Directive 77/780/EEC of 12 December, 1977(1) as amended by Council Directive 89/646/EEC of 15 December, 1989 but does not include the institutions referred to in Article 2 (2) of that Directive;

deposit means a deposit with a credit institution and shall be construed as including a shareholding in as well as a deposit with a building society;

deposit agent means any person who holds an appointment in writing from a single credit institution enabling him to receive deposits on behalf of that institution and prohibiting him from acting in a similar capacity on behalf of another credit institution;

deposit broker means any person who brings together with credit institutions persons seeking to make deposits in return for a fee, commission or other reward;

derivatives means any investment falling within sub-paragraphs (d)–(h) of the definition of “investment instruments” within section 2 of the *Act* (which is wider than the definition at 4(2) of these regulations) and sub-paragraphs (k) and (l) to the extent the option or hybrid instrument relates to such an instrument within sub-paragraphs (d)–(h);

distance contract for the supply of a financial service has the same meaning as that set out in regulation 3 of European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853/2004);

Distance Marketing of Consumer Financial Services Regulations means the EU (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853/2004);

employee means an individual who is employed in connection with the *firm's* investment business under a contract of service or under a contract for services such that he is held out as an *employee* or consultant of the *firm*;

execution-only means the effecting or arranging of a transaction by a *firm* for a *client* in circumstances in which the *firm* can reasonably assume that the *client* is not relying upon the *firm* to advise him on or to exercise any judgement on his behalf as to the merits of or the suitability for him of the transaction and where the *client* has agreed in writing that the *firm* has not provided and is not responsible for providing him with *investment advice* or for exercising any judgement on his behalf as to the merits of or the suitability for him of the transaction; and *execution-only client* shall be construed accordingly;

film investment has the meaning given in section 481 of the Taxes Consolidation Act, 1997 (Relief for investment in films);

Financial Regulator means the Irish Financial Services Regulatory Authority (IFSRA);

firm means an individual (including a sole trader), partnership or *company* holding a current, valid *investment business certificate (Ireland)* or, as the context requires, which has held such a certificate;

group, in relation to a body corporate, means the body corporate, any other body corporate which is its *holding company* or *subsidiary* and any other body corporate which is a *subsidiary* of that *holding company*;

higher volatility investment means an *investment instrument* the risks in respect of which are increased by reason of the investor's holding being geared;

holding company has the meaning given by Section 155 of the Companies Act, 1963;

incidental manner has the meaning given by regulation 3(4) of these regulations;

indirect client means, where a *client* is known to be acting as *agent*, an identified principal who would be a *client* if he were dealt with direct;

inducement does not include disclosable commission;

insurance mediation means any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims under insurance contracts), but does not include such an activity that:

- (a) is undertaken by an insurance undertaking or an employee of such an undertaking in the employee's capacity as such, or
- (b) involves the provision of information on an incidental basis in conjunction with some other professional activity, so long as the purpose of the activity is not to assist a person to enter into or perform an insurance contract, or
- (c) involves the management of claims of an insurance undertaking on a professional basis, or
- (d) involves loss adjusting or expert appraisal of claims for reinsurance undertakings;

2.4 Irish Investment Business Regulations

Insurance Mediation Regulations means the European Communities (Insurance Mediation) Regulations 2005, S.I. No. 13 of 2005;

investment advice has the meaning given by regulation 4(2) of these regulations;

investment business certificate (Ireland) means a certificate issued by the *Association* pursuant to section 55 of the *Act*;

investment business services has the meaning given by regulation 4(2) of these regulations;

investment instrument has the meaning given in regulation 4(2) of these regulations;

investment instrument transaction means:

- (a) the purchase or sale of an *investment instrument*; or
- (b) the subscription for an *investment instrument*;

life assurance means assurance of a class specified in Part A of Annex 1 to the European Communities (Life Assurance) Framework Regulations 1994 (which, for the avoidance of doubt, includes pension policies);

member means an individual admitted to membership of the *Association* pursuant to the *bye-laws* of the *Association*;

non-life insurance means insurance of a class specified in Part A of Annex 1 to the European Communities (Non-life Insurance) Framework Regulations 1994;

non-private client means a person who is not a *private client*, or who has elected to be treated as a *non-private client* and in respect of whom the requirements of regulation 9(5) of these regulations have been complied with;

offer includes an invitation to treat;

officer means, in relation to a *firm* which is a partnership, a partner, and in relation to a *firm* which is a *company*, a director or shadow director;

order means an intervention order made pursuant to regulation 12;

ordinary business investor means:

- (a) a government, local authority or public authority; or
- (b) a *company* or partnership which satisfies any of the following size requirements:
 - (i) that it is a body corporate which has more than 20 members (or is the *subsidiary* of a *company* which has more than 20 members) and it (or any of its *holding companies* or *subsidiaries*) has a called up share capital or net assets of 635,000 euro or more; or
 - (ii) that it is a body corporate and it (or any of its *holding companies* or *subsidiaries*) has a called up share capital or net assets of 6,350,000 euro or more; or
 - (iii) if it is not a body corporate, it has net assets of 6,350,000 euro or more; or

- (c) a trustee of a trust which satisfies either of the following size requirements:
- (i) that the aggregate value of the cash and investments which form part of the trust's assets (before deducting the amount of its liabilities) is 12,700,000 euro or more; or
 - (ii) that aggregate value has been 12,700,000 euro or more at any time during the previous two years;

practising certificate means a practising certificate issued by the *Association* and referred to in regulation 5(1) of The Chartered Certified Accountants' Global Practising Regulations 2003;

practising certificate (Ireland) means a *practising certificate* issued by the *Association* relating to the carrying on of *public practice* in the Republic of Ireland issued only to *members* who are eligible therefor;

private client means a *client* who is an individual and who is not acting in the course of providing *investment business services* or *investment advice* or, unless he is reasonably believed to be an *ordinary business investor*, a *client* who is a *small business investor* and who is not acting in the course of providing *investment business services* or *investment advice*;

product producer means a firm, institution, collective undertaking or investment company of the kind referred to in section 26 (1) (i) to (vii) of the *Act*;

PRSA means Personal Retirement Savings Account;

public practice has the meaning given by regulation 4 of The Chartered Certified Accountants' Global Practising Regulations 2003;

RAIPI means a restricted activity investment product intermediary, in accordance with Section 26 of the Investment Intermediaries Act 1995, as amended by Section 59 of the Investor Compensation Act 1998 and Section 23 of the Insurance Act 2000;

readily realisable investment means a foreign exchange transaction or any *investment instrument* which is traded frequently on or under the regulations of an investment exchange;

regulatory system means the arrangements for regulating a *firm* under the *Act* and these regulations;

small business investor means:

- (a) a *company*, partnership or unincorporated association; or
- (b) a trustee acting for a trust,

which does not satisfy a size requirement enabling the *company*, partnership or trustee to be treated as an *ordinary business investor* and is not otherwise an *ordinary business investor*;

specified person means, in relation to a *firm* which is a partnership any partner in that *firm* and in relation to any *firm* which is a body corporate any director of that *firm*;

2.4 Irish Investment Business Regulations

subsidiary means a subsidiary undertaking within the meaning of Regulation 4 of the European Communities (Companies: Group Accounts) Regulations, 1992;

turnover means the total income of a *firm* for the accounting year in question;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland;

unsolicited call means a personal visit or oral communication made without express invitation.

(2) Interpretation

- (a) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.
- (b) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.
- (c) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.
- (d) All references to Acts are to Acts of the Republic of Ireland unless otherwise specified.
- (e) These regulations shall be interpreted in accordance with Irish law.

3. Eligibility for an investment business certificate (Ireland)

(1) Eligibility – Sole practitioners

A sole practitioner will only be eligible for an *investment business certificate (Ireland)* where:

- (a) he is a *member*; and
- (b) he holds a *practising certificate (Ireland)*; and
- (c) he provides *investment business services* or *investment advice* in an *incidental manner*; and
- (d) he holds minimum net business assets (see regulation 3(5) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and
- (e) he is practising otherwise than in partnership or in a *company*.

(2) Eligibility – Partnerships

A partnership will only be eligible for an *investment business certificate (Ireland)* where:

- (a) each of the partners is
 - (i) a *member*; or

- (ii) a member of another *approved professional body* and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; or
 - (iii) entitled to practise accountancy and is regulated by another professional body and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; and
- (b) the partners who are neither *members* of the *Association* nor of another *approved professional body* (if any) do not form a majority of the partners of the *firm*; and
 - (c) at least one of the partners in the *firm* is a *member*; and
 - (d) the partnership provides *investment business services* or *investment advice* in an *incidental manner*; and
 - (e) the partnership holds minimum net business assets (see regulation 3(5) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and
 - (f) each partner who is a *member* holds a *practising certificate (Ireland)* and each partner who is not a *member* holds such other qualification as is deemed adequate by the *Admissions and Licensing Committee*.

(3) *Eligibility – Companies*

A *company* will only be eligible for an *investment business certificate (Ireland)* where:

- (a) each director and *controller*
 - (i) is a *member*; or
 - (ii) is a member of another *approved professional body* and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; or
 - (iii) is entitled to practise accountancy and is regulated by another professional body and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; and
- (b) the directors who are neither *members* of the *Association* nor of another *approved professional body* (if any) do not form a majority of the board; and
- (c) at least one of the directors in the *firm* is a *member*; and
- (d) the *company* provides *investment business services* or *investment advice* in an *incidental manner*; and
- (e) the *company* holds minimum net business assets (see regulation 3(5) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and

2.4 Irish Investment Business Regulations

- (f) each director who is a *member* holds a *practising certificate (Ireland)* and each director who is not a *member* holds such other qualification as is deemed adequate by the *Admissions and Licensing Committee*.

(4) Meaning of incidental manner

- (a) In order for a *firm* to qualify as providing *investment business services* or *investment advice* in an *incidental manner*, the *Admissions and Licensing Committee* will need to be satisfied that:
 - (i) the main activity of the *firm* is *public practice*, other than the provision of *investment business services* or *investment advice*; and
 - (ii) the provision of the *investment business services* or *investment advice* is not isolated from the other activities of the *firm* so that it is in effect a separate business (this would, however, not exclude a *firm* operating specialist departments within it).
- (b) In relation to the “main activity” test in (a)(i) above, if less than 20 per cent of the *firm’s* total *turnover* on an annual basis derives from *investment business services* or *investment advice*, the test is satisfied.
- (c) The test in (a)(ii) above can be assessed by reference to various indicators, such as:
 - (i) It should be clear to a potential *client* when advertising *investment business services* that the *firm* is an accountancy *firm* which also provides *investment business services* and *investment advice*.
 - (ii) The offices dealing with *investment business services* and *investment advice* should be in the same location as the offices from which the accountancy services are provided.
 - (iii) The *investment business services* and *investment advice* should normally be provided in conjunction with the accountancy services of the *firm*.
 - (iv) The *firm’s* policy should be to endeavour to provide its full range of services to its *clients*, where these services are appropriate.
 - (v) The *firm* should fully accept that its provision of *investment business services* and *investment advice* is within the scope of the general ethical code or the rules governing the profession.
 - (vi) It should be clear that in terms of the way the *investment business services* and *investment advice* are managed by the *firm*, that this activity does not act on a stand-alone basis separate from the main activities of the *firm*.
 - (vii) The provision of *investment business services* and *investment advice* should be managed on a day-to-day basis by persons who are members of an *approved professional body*.
- (d) The question as to whether a *firm* complies with regulation 3(4)(a) will be determined by the *Admissions and Licensing Committee* on the particular circumstances of each case.

(5) *Net business assets*

The net business assets of a sole trader or partnership are defined as follows:

- (a) Fixed assets plus current assets less “creditors” (including those due after more than one year).
- (b) Fixed assets are defined as assets that have been specified as being business assets and are included on the balance sheet of the sole trader or partnership and are used on a regular basis in the conduct of the business. Assets used mainly for the purpose of entertainment and intangible assets are excluded from the definition of fixed assets for the purpose of determining whether the capital adequacy requirements have been satisfied.
- (c) Current assets include those assets that would be included under this heading if the business were incorporated except that the following are excluded:
 - (i) unbilled partner time included in work in progress;
 - (ii) amounts due to the firm from any individual connected with a principal of the firm (a connected person is defined as a spouse, child or parent of the principal); and
 - (iii) any bank account not designated as a business account.
- (d) “Creditors” includes all liabilities incurred in conjunction with the operation of the business, and for the purpose of establishing net business assets under this regulation includes personal liabilities of a sole trader or his spouse, or a partner or his spouse, incurred to enable funds to be introduced into the business.

The net business assets of a limited company are determined in accordance with generally accepted accounting practice for the preparation of company accounts. For the avoidance of doubt, “creditors” due after more than one year are to be deducted in the calculation of net business assets.

Every *firm* shall keep accounting records which are sufficient to show and explain the *firm's* transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the *firm* at that time, and its compliance with the requirements to have a minimum level of net business assets on an ongoing basis.

(6) *Main activity*

For the purposes of regulations 3(1) to 3(3), where more than 20 per cent of a *firm's* total turnover on an annual basis derives from *investment business services* or *investment advice*, this fact must be notified to the *Association* who will refer the matter to the *Admissions and Licensing Committee* and to the *Financial Regulator* for its consideration.

(7) *Other restrictions*

- (a) No *applicant* with a branch or office outside the Republic of Ireland and the *United Kingdom* shall be issued with an *investment business certificate (Ireland)*.

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- (b) An *applicant* shall not be eligible for an *investment business certificate (Ireland)* if he or it is authorised to provide *investment business services* or *investment advice* other than pursuant to these regulations.

4. Scope

(1) Prohibition on carrying on investment business

No *member*, nor any partnership or company in relation to which he is a *specified person*, may act as an investment business firm otherwise than in compliance with the provisions of section 9(1) of the *Act*.

(2) Category A authorisation

A Category A *firm* may carry on any activity for the provision of *investment business services* or *investment advice* within the meaning of this regulation 4(2).

“*Investment advice*” means the giving, or offering or agreeing to give, to any person:

- (a) advice on the purchasing, selling, or subscribing for an *investment instrument* or on the making of a *deposit* or on the exercising of any right conferred by an *investment instrument* to acquire, dispose of, or convert an *investment instrument* or *deposit*; or
- (b) advice on choice of a person providing *investment business services* or *investment advice*;

and includes advice on *BES investments* and *film investments*, but does not include any of the following:

- (a) advice given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services*;
- (b) advice given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services* and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a person attending such event and arising out of such attendance, in relation to *investment instruments* or *deposits* or in relation to the choice of a person providing *investment business services*;
- (c) advice given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services*;
- (d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings.

“*Investment business services*” includes all or any of the following services:

- (a) receiving and transmitting, on behalf of investors, of orders in relation to one or more *investment instruments*;
- (b) execution of orders in relation to one or more *investment instruments*, other than for own account;
- (c) acting as a *deposit broker* (but not a *deposit agent*);
- (d) undertaking *insurance mediation* activities.

“*Investment instruments*” includes:

- (a) transferable securities including shares, warrants, debentures including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness issued by or on behalf of any body corporate or mutual body; government and public securities, including loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority; bonds or other instruments creating or acknowledging indebtedness; certificates representing securities; or money market instruments;
- (b) non-transferable securities creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority;
- (c) units or shares in undertakings for collective investments in transferable securities within the meaning of European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any subsequent amendments thereto; units in a unit trust; shares in an investment company; capital contributions to an investment limited partnership;
- (d) agreements for the borrowing and lending of transferable securities;
- (e) certificates or other instruments which confer all or any of the following rights, namely:
 - (i) property rights in respect of any *investment instrument* referred to in paragraph (a) of this definition; or
 - (ii) any right to acquire, dispose of, underwrite or convert an *investment instrument*, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
 - (iii) a contractual right (other than an option) to acquire any such *investment instrument* otherwise than by subscription;
- (f) tracker bonds or similar instruments;
- (g) *life assurance* policies (for the avoidance of doubt, *life assurance* includes pensions);

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(h) *non-life insurance* policies;

(i) *PRSA*s.

(3) *Category B authorisation*

(a) A *Category B firm* may carry out a limited number of *Category A* activities. Those activities are all or any of the following:

- (i) receiving and transmitting orders on behalf of investors in the following instruments:
 - (aa) units or shares in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989, and any subsequent amendments thereto;
 - (bb) units in a unit trust;
 - (cc) other *collective investment scheme* instruments;
 - (dd) shares in a company which are listed on a stock exchange or bonds so listed;
 - (ee) prize bonds;
 - (ff) tracker bonds;
 - (gg) *life assurance* policies (for the avoidance of doubt, *life assurance* includes pensions);
 - (hh) *non-life insurance* policies;
 - (ii) *PRSA*s; or
 - (ii) acting as a *deposit broker* (but not a *deposit agent*); or
 - (iii) giving, or offering or agreeing to give, to any person, advice on the purchasing, selling, or subscribing for one of the instruments listed at regulation 4(3)(a)(i) above or on the making of a *deposit*; or
 - (iv) giving, or offering or agreeing to give, to any person, advice on choice of a person providing *investment business services*.
- (b) In the course of engaging in any of the activities listed at regulation 4(3)(a) above, a *category B firm* may transmit orders only to all or any of the following *product producers*, namely:
- (i) investment firms authorised in accordance with Directive 93/22/EEC of 10 May 1993 by a competent authority of another Member State, or to an authorised investment business firm, not being a *RAIP* or a certified person, or to a member firm within the meaning of the Stock Exchange Act 1995 in the State;

- (ii) *credit institutions* authorised in accordance with Directives 77/780/EEC of 12 December 1977 and 89/646/EEC of 15 December 1989;
- (iii) such other branches of investment business firms or credit institutions authorised in a third country as the *Financial Regulator* may approve from time to time;
- (iv) collective investment undertakings authorised under the law of a Member State of the European Union to market units in collective investments to the public and to the managers of such undertakings;
- (v) investment companies with fixed capital as defined in Article 15(4) of Council Directive 77/91/EEC of 13 December 1976 of the securities of which are listed or dealt in on a regulated market in a Member State;
- (vi) the Prize Bond Company Ltd. Or any successor to it as operator of the Prize Bond scheme;
- (vii) insurance undertakings.

(4) *Excluded activities*

(a) No *firm* may:

- (i) deal in one or more *investment instruments* for own account as if it were a market maker. A *firm* shall not act collectively for a *client* or *clients* and on its own account. In no circumstances may the *firm* allocate to a *client* a transaction originally effected for the *firm's* own account or allocate for the *firm's* own account a bargain originally effected for a *client*;
- (ii) manage portfolios of *investment instruments* or *deposits* in accordance with mandates given by investors on a discretionary client-by-client basis where such portfolios include one or more *investment instrument* or one or more *deposit*;
- (iii) underwrite in respect of issues of one or more *investment instruments* or the placing of such issues or both;
- (iv) act as a *deposit agent*;
- (v) administer *collective investment schemes*, including the performance of valuation services or fund accounting services or act as transfer agents or registration agents for such funds;
- (vi) carry out custodial operations involving the safekeeping and administration of *investment instruments*;
- (vii) act as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act, 1985;
- (viii) carry out any activity, including for this purpose the issue of an advertisement, relating to *derivatives*;

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- (ix) carry on any other activity constituting the provision of investment business services or investment advice within the meaning of section 2 of the *Act* other than an activity falling within regulation 4(2);
 - (x) hold or receive any money belonging to a *client*, or any money received from a *client* which belongs to a *product producer*, in the course of carrying on *investment business services* for a *client* which is not immediately due and payable on demand to the *firm* for its own account.
- (b) A *firm* may not hold *clients'* funds or securities nor funds received from a *client* which belong to a *product producer*, such as insurance premiums. This shall not prevent a *firm* from taking non-negotiable cheques or similar instruments made out to a *product producer* for the purposes of the receipt and transmission of orders.
- (c) Regulation 4(4)(a)(i) is designed to ensure that *firms* do not, for own account in a personal capacity, buy investment instruments from, or sell investment instruments to, a *client* with a view to making a personal profit or to cause loss to the *client*. The rule prohibits personal own account trading with *clients*.

The requirements of regulations 5 to 11 apply to all clients, both *private* and *non-private*.

5. Independence

(1) *Inducements*

A *firm* must take reasonable steps to ensure that neither it nor any of its *agents* offers, gives, solicits or accepts any *inducement* which is likely to conflict significantly with any duties of the recipient or the recipient's employer owed to *clients* in connection with the provision by the *firm* of *investment business services* or *investment advice*.

(2) *Material interest*

Where a *firm* has a material interest in a transaction to be entered into with or for a *client* or a relationship which gives rise to a conflict of interest in relation to such a transaction, the *firm* must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the *client*.

(3) *Arrangements with third parties*

A *firm* shall not, unless constrained to do so by law, in connection with the provision by the *firm* of *investment business services* or *investment advice*, have any association or arrangement with any other person under which it will be constrained to recommend to its *clients* or to effect with or for them (or refrain from doing so) transactions in some *investment instruments* but not in others, with some persons but not with others, or through the agencies of some persons but not of others.

6. Advertising

(1) General

- (a) A *firm* shall not *advertise*, or supply, or offer to supply, *investment business services* or *investment advice*, or make any other solicitation in respect of *investment business services* or *investment advice* or hold itself out to be a *firm* authorised to undertake such activities unless:
 - (i) the requirements of this regulation 6 are complied with in relation to that advertisement;
 - (ii) the *firm* has applied appropriate expertise; and
 - (iii) the *firm* is able to show that it believes on reasonable grounds that the advertisement is fair and not misleading.
- (b) Where the Association's Code of Ethics and Conduct is more stringent than these regulations (or vice versa), the more stringent requirements apply.
- (c) "Appropriate expertise" means that the *firm* should have knowledge and understanding of the type of matter covered by the advertisement.
- (d) Any advertisement issued by a *firm* will be subject to the overriding requirement of these regulations that the provision of *investment business services* or *investment advice* is effected in an *incidental manner*.

(2) Advertisements regarding the firm's services

- (a) A *firm* may inform the public of the *investment business services* or *investment advice* it is capable of providing by means of advertising provided that the advertisement contains no other matter than any of the following:
 - (i) the identity of the *firm*;
 - (ii) the address of the *firm*;
 - (iii) the telephone number of the *firm*;
 - (iv) a description of the *firm's* business;
 - (v) the fees charged by the *firm* for its services; or
 - (vi) the names of *investment instruments*, prices indicative of those at which the *firm* may arrange for the buying or selling of those *investment instruments*, how those prices differ from or relate to previous prices for, and income yields from, those *investment instruments*.
- (b) In all advertisements, a *firm* must refer to its authorisation in accordance with regulation 7(2).

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(3) *Advertisements promoting particular investment instruments*

- (a) Subject to sub-paragraph 6(3)(b), where a *firm* issues an advertisement promoting particular *investment instruments* or *investment business services*, it must take reasonable steps to ensure that the advertisement contains, where applicable, the information set out in Appendix 2.
- (b) Regulation 6(3)(a) shall not apply to advertisements which clearly state that the *investment instrument* or *investment business services* which are the subject of the advertisement are not available to *private clients*.
- (c) All advertisements within the scope of this regulation should be prepared with care and with the conscious aim of ensuring that members of the public fully grasp the nature of any commitment into which they may enter as a result of responding to an advertisement. *Firms* should take into account that the complexities of finance may be beyond many of those to whom the opportunity they offer will appeal and that therefore they bear a direct responsibility to ensure that in no sense do their advertisements take advantage of inexperience or credulity. *Firms* inviting an immediate commitment (e.g. by coupon) should take particular care to ensure thorough comprehensibility.

(4) *Offence*

Firms should note that failure to comply with the requirements of this regulation 6 will constitute a criminal offence under the *Act*.

7. Relations with clients

(1) *Fair and clear communications*

- (a) A *firm* may make a communication with another person which is designed to promote the provision of *investment business services* or *investment advice* only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.
- (b) A *firm* must take reasonable steps to ensure that any agreement, written communication, notification or information which it gives or sends to a *client* to whom it provides *investment business services* or *investment advice* is presented fairly and clearly.

(2) *Information about the firm*

A *firm* must, in all its business letters, electronic communications, notices and other publications including advertisements, state that it is authorised as a *firm* by the *Association*. The required wording is as follows:

“Authorised to undertake investment business services in Ireland by the Association of Chartered Certified Accountants.”

The authorisation statement must also be displayed in the public area of each office from which the firm operates.

(3) *Unsolicited calls*

- (a) A *firm* must not provide, and must not enter into an agreement to provide, *investment business services* or *investment advice* in the course of or in consequence of an *unsolicited call* unless the *client* has an existing relationship with the *firm* and the *client* has signed a statement giving the *firm* permission to make personal visits or oral communications.
- (b) A visit or oral communication may only be made to a potential *client* where the potential *client* has, within the last six months, signed a statement giving the *firm* permission to make personal visits or oral communications.
- (c) An "existing relationship" exists where the *firm* has dealt on behalf of the *client* or has provided advice to the *client* within the immediately preceding two years.

(4) *Clients' rights*

- (a) A *firm* must not, in any written communication or agreement, seek to exclude or restrict any duty or liability to a *client* which it has under the *Act*, or under the *regulatory system*.
- (b) Similarly, unless it is reasonable to do so in the circumstances, a *firm* must not, in any written communication or agreement, seek to exclude or restrict:
 - (i) any other duty to act with skill, care and diligence which is owed to a *client* in connection with the provision to him of *investment business services* or *investment advice*; or
 - (ii) any liability owed to a *client* for failure to exercise the degree of skill, care and diligence which may reasonably be expected of it in the provision of *investment business services* or *investment advice*.
- (c) A *firm* must not seek unreasonably to rely on any provision seeking to exclude or restrict any such duty or liability.
- (d) Where a *firm* provides *investment business services* or *investment advice* to a *client* it must comply with any procedures set out in any relevant codes of conduct under the *Act*.

(5) *Charges*

- (a) The amount of a *firm's* charges to a *client* for the provision of *investment business services* or *investment advice* to him must not be unfair or unreasonable in the circumstances.
- (b) *Firms* must comply with the requirements of paragraphs 7 to 10 of section 3.6, Conflicts of interest, of the Association's Code of Ethics and Conduct, which provide among other things that where a *firm* receives commission in connection with a transaction arranged by the *firm*, the *firm* shall disclose the total commission payable in connection with the transaction in writing.
- (c) If as a result of a subsequent variation of the proposed transaction, the amount of the commission receivable is increased, this fact must be communicated in writing to the *client*.

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(6) *Client agreements*

- (a) Where a *firm* provides *investment business services* or *investment advice* to a *client*, it must do so on written contractual terms. The *firm* shall ensure that each *client* is given a copy of the agreement not later than the time of providing the first service to that *client* after the coming into force of these rules.
- (b) The agreement shall set out in adequate detail the basis on which the *firm's* services are provided, and shall include at least the following:
 - (i) an outline of the services to be provided;
 - (ii) an outline of the *firm's* understanding of the *client's* investment objectives and investment restrictions, if any;
 - (iii) details of the *firm's* charges and any commission structures;
 - (iv) an outline of the *firm's* policies in relation to conflicts of interest;
 - (v) a summary of the *firm's* complaints procedure;
 - (vi) details of the remedies available to the *firm* in the event of default by the *client*;
 - (vii) confirmation that the *firm* is a member of a compensation scheme and the nature and level of the protection available from such scheme.
- (c) Where a *firm* changes the basis upon which its services are provided, it shall notify the change to any *client* affected by it.
- (d) A *firm* shall not be entitled to recommend to or undertake for a *client* any transactions as the *Financial Regulator* may stipulate from time to time, unless the *client* has previously signed a statement acknowledging the risks resulting from such transactions. The *Financial Regulator* may from time to time issue guidance on the contents of such statements. Any statement issued by a *firm* in accordance with this paragraph shall explain the risks of the transaction at least as fully as any such guidance.
- (e) Where a *firm* accepts an order subject to any condition it shall maintain a written note of the condition to which the instruction or order is subject.
- (f) A *firm* or an *agent* of a *firm* shall not exert undue pressure or undue influence on a *client* in order to induce him:
 - (i) to purchase, sell or retain an investment; or
 - (ii) to exercise, or refrain from exercising, any right conferred by an investment.

(7) *Receipts*

- (a) *Firms* must issue a receipt for each non-negotiable or negotiable instrument or other payment received for the purposes of transmitting an order or a deposit to a *product producer*. By way of example, a receipt would have to be issued in respect of a

cheque from a *client* made out to a *product producer*, or a share certificate in the name of the *client* which is to be transmitted to a stockbroker.

- (b) All receipts must comply with section 30 of the *Act*, the provisions of which are set out at Appendix 1 for ease of reference.
- (c) All receipts must be retained for at least six years after they are issued.
- (d) *Firms* should note that failure to issue such receipts will constitute a criminal offence under the *Act*.

(8) *Cessation of business*

Where a *firm* withdraws from providing any *investment business services* or *investment advice* to *clients*, the *firm* must ensure that any such business which is outstanding is properly completed or is transferred to another *firm*. In addition, where the interests of *clients* would be significantly affected by the death or incapacity of an individual within the *firm*, the *firm* must make arrangements to protect the interests of those *clients* in that event.

8. Effecting transactions for clients

(1) *Clients' best advantage*

- (a) A *firm* must take reasonable care in executing transactions for its *clients* to ensure that it deals to the best advantage of those *clients*. In deciding whether or not a *firm* has taken such reasonable care, regard will be had to all the relevant circumstances of the transaction including:
 - (i) the nature of the transaction;
 - (ii) the price and availability of the *investment instrument*, where appropriate, as well as the general condition of the market at the time;
 - (iii) the services which the *firm* holds itself out as providing;
 - (iv) all charges which will be levied on the investment concerned;
 - (v) the size of the order;
 - (vi) the nature and extent of enquiries made by the *firm* in the market place;
 - (vii) the terms of the order given by the *client*, including the date on which the order was placed.
- (b) A *firm* may be required to justify its actions to the *Association* in order to show that it has dealt to the best advantage of its *client*.
- (c) *Firms* should record the time and date of dealing for all transactions for their *clients* and, where appropriate, the time of receipt of order and should retain this information in a readily accessible form.

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- (d) *Firms* may aggregate a transaction for a *client* with transactions for other *clients* or with own account transactions where it is reasonably unlikely that the aggregation will operate to the disadvantage of any of the *clients* whose transactions have been aggregated and where the *firm* discloses to any *client* who may be adversely affected that aggregation may occur.

(2) *Allocation of transactions between clients*

A *firm* shall only act on behalf of a named or otherwise identifiable *client*. In any situation where the *firm* finds itself obliged to allocate an *investment instrument transaction* between different *clients*, and all cannot be satisfied, the *investment instrument transaction* shall as soon as reasonably practicable thereafter be allocated between the *clients*:

- (a) in a manner which the *firm* in good faith believes does not unfairly benefit one *client* at the expense of another;
- (b) so as to be reasonable in the interests of each *client*;
- (c) so as not to conflict with any instructions a *client* may have given the *firm*;
- (d) so as not to conflict with any limitations which may have been placed on the *firm's* discretion to act; and
- (e) on a pro rata basis with a detailed explanation providing for any deviation from that basis.

(3) *Timely execution*

- (a) Once a *firm* has agreed to effect a transaction for a *client*, it must do so as soon as reasonably practicable.
- (b) A *firm* must ensure that, once it has transmitted an order to a *product producer*, it obtains confirmation from the *product producer* that the transaction has been processed properly and promptly.

(4) *Notes containing the essential details of a transaction*

A *firm* which effects a transaction for a *client* shall ensure that there is sent to the *client* as soon as possible either:

- (a) such contract note or statement as is received by the *firm* from any firm or a firm regulated under the Stock Exchange Act 1995 involved in the transaction (or a copy or relevant part thereof); or
- (b) a note containing the essential details of the transaction (as set out in Appendix 3 to these regulations), unless those details are already known to the *client*.

9. Advising clients

(1) *Advice on choice of person providing investment business services or investment advice*

- (a) *Firms* may not refer a *client* to a person who will only advise on one particular product or group of products. For example, *firms* may not refer a *client* to an adviser who will advise only on the products of one *product producer*.

- (b) *Firms* must take reasonable steps to ensure that they refer *clients* to an independent adviser. If a *firm* is unable to do so, it must be able to show that it took reasonable steps to establish that the person was suitable and had access to a suitable range of products.

(2) *Know your client*

- (a) Subject to regulation 9(2)(d), a *firm* shall not provide any *investment business services* or provide any *investment advice* to a *client* unless it has taken such reasonable steps as are possible in the circumstances to ascertain from the *client* such facts about his personal and financial situation as may reasonably be expected to be relevant to the proper performance of those services in accordance with these regulations. The *firm* shall keep a specific record of this information such as a factfind.
- (b) The record referred to in regulation 9(2)(a) should be kept for a minimum of six years from the enquiry concerning the *client's* personal and financial situation to which the record relates. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates.
- (c) A factfind includes details of the information relating to the personal and financial circumstances both current and future that is necessary to provide comprehensive *investment advice*.
- (d) Where a *firm* gives advice to a *client* in relation to *non-life insurance* or on the choice of a person providing *investment business services* or *investment advice*, regulations 9(2)(a)–(c) do not apply, but in the latter case the *firm* must comply with regulation 9(1).

(3) *Suitability*

- (a) A *firm* must take reasonable steps to ensure that it does not make any personal recommendation to or effect a transaction for a *private client* in relation to an *investment instrument* or *deposit* unless the recommendation or transaction is suitable for him having regard to the facts disclosed by that *client* and other relevant facts about the *client* of which the *firm* is, or reasonably should be, aware. The *firm* must supply the *client* with a statement of the reasons why the product is suitable for the *client*.
- (b) A *firm* must not effect a transaction for a *private client* which the *client* has instructed the *firm* to effect if the *firm* believes that such a transaction is unsuitable for that *client* unless the *firm* has advised the *client* not to proceed with his proposal and the *client*, following the giving of that advice, has repeated his instructions.
- (c) A *firm* shall not make a recommendation to a *client* to buy a policy of *life assurance* (for the avoidance of doubt, *life assurance* includes pensions) or a *collective investment scheme* instrument unless:
 - (i) it has taken reasonable steps to inform itself about such products which are generally available on the market; and
 - (ii) it is not aware of another such product which would better meet the *client's* needs.

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- (d) A *firm* must not make a personal recommendation to a *private client* to deal if the dealing would reasonably be regarded as too frequent in the circumstances.
- (e) A *firm* shall not effect transactions with or for a *private client* for whom the *firm* exercises discretion as to how the *private client's* funds are invested, with unnecessary frequency or in excessive size.
- (f) A *firm* shall not make recommendations to any *client* which are likely to lead to transactions being effected by the *firm* or an *associate* of the *firm* with or for him with unnecessary frequency or in excessive size.

(4) Understanding of risk (*private clients*)

- (a) A *firm* must not recommend a transaction to a *private client* unless it has taken reasonable steps to enable him to understand the nature of the risks involved. The *firm* must provide the *client* with a statement setting out why the transaction is in the best interests of the *client*.
- (b) A *firm* must not recommend to a *private client* a transaction involving an *investment instrument* which is not a *readily realisable investment* unless it warns him of the difficulties in establishing a proper market price and, if the recommendation concerns a purchase, in making a subsequent sale.
- (c) In appropriate circumstances, one way of complying with this regulation 9(4) would be to give similar warnings as are required in the case of advertisements, which should be explained to the *private client* and set out in writing.

(5) Understanding of risk (*non-private clients*)

A *firm* shall not provide *investment business services* or *investment advice* for a *non-private client* unless it has:

- (a) reasonably concluded that the *non-private client* can be expected to understand the risks involved in a transaction or a particular type of transaction;
- (b) provided written notification to the *non-private client* that it regards him as such a client and explained to the *non-private client* the consequences of his being so treated; and
- (c) obtained a written acknowledgement from the *non-private client* after he has had a proper opportunity to consider that notice.

10. Additional requirements in certain circumstances

(1) *Collective investment schemes*

- (a) Product particulars:
 - (i) Before or when a *firm* recommends to a *client* to acquire or vary a holding in a *collective investment scheme*, the *firm* must provide the *client* with a self-contained statement of the particulars of the product.

- (ii) In the case of a variation from accumulation to income units or vice versa, there is no need to provide further product particulars if the *client* has already received them.
- (iii) If the transaction is on an *execution-only* basis, the product particulars need only be provided within five business days after the transaction and in any event no later than the contract note relating to the transaction is issued.
- (iv) In any event, if a *product producer* provides the *firm* with product particulars, the *firm* must provide them to the *client*.

(b) Confirmations:

- (i) Where a *firm* arranges a transaction relating to a *collective investment scheme* where the *client* persists in wishing the transaction to be effected despite advice from the *firm*, the *firm* shall send the *client* written confirmation that:
 - (aa) the *client* was given advice from the *firm* in connection with the transaction but nevertheless persisted in wishing the transaction to be effected; and
 - (bb) the transaction was entered into on the *client's* explicit instructions;
 and shall ensure that the confirmation is signed by a *certified person* and retained for at least six years. *Firms* should consider keeping the confirmation until the expiry of the term of the investment to which it relates.
- (ii) *Firms'* attention is also drawn to the provisions of regulation 10(5) relating to the confirmations to be sent to *execution-only clients*, in particular regulations 10(5)(c)(iv) and 10(5)(e).

(2) *Life assurance (for the avoidance of doubt, life assurance includes pensions)*

- (a) The schedules referred to in this regulation 10(2) are Schedules 1–6 of the Life Assurance (Provision of Information) Regulations 2001 and are set out at Appendix 4 for ease of reference.
- (b) Subject to regulation 10(2)(d) below, where *life assurance* policies are concerned a *firm* must comply with the following:
 - (i) Before the *client* signs a proposal or application form for a policy of *life assurance*, the *firm* must provide the *client* with information in the form specified in Schedule 1.
 - (ii) The *firm* must ensure that the illustrative tables contained in Schedule 1:
 - (aa) are prepared by the insurer in accordance with Schedule 2, the advice of the actuary and any guidance notes issued by the Society of Actuaries in Ireland; and
 - (bb) contain values specific to the *client* and to the premium proposed to be paid by the *client*; and

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- (cc) do not deviate from the specified form unless subject to the advice of the actuary.
- (iii) If it is not practicable to use the specific values referred to in regulation 10(2)(b)(ii)(bb),
 - (aa) the values used must be those which apply to a standard policy of that type and to the premium payable in respect of such standard policy; and
 - (bb) except in the case of industrial assurance policies, when the policy is issued the insurer must provide illustrative tables which relate to the proposal submitted by the *client*.
- (iv) The *firm* must ensure that before the contract is concluded and during the term of the policy the information specified in Schedule 3 is provided to the *client* and to the policyholder.
- (v) When the information in Schedules 1 and 3 is provided by the *firm*, the *firm* must ensure that the *client* signs a declaration in the form specified in Schedule 4.
- (c) The certificate at Schedule 5 and declaration at Schedule 6 are provided for information only, as it is the duty of the actuary and insurer respectively to sign them on an annual basis and submit them to the Minister for Enterprise, Trade and Employment.
- (d) Regulation 10(2)(b) does not apply to a policy of *life assurance* where:
 - (i) none of the *clients* is an individual, unless it is a policy issued in connection with a housing loan where the *client* is the lender or a person other than the mortgagor; or
 - (ii) the policy is issued to the trustees of an occupational pension scheme within the meaning of section 2 of the Pensions Act 1990; or
 - (iii) the policy is effected for the purpose of insuring the repayment of a loan, where the lender is the policyholder or it is intended that the policy will be assigned to or deposited with the lender, unless it is a policy issued in connection with a housing loan.

(3) PRSAs

- (a) A *client*-specific factfind must be completed for each *client*. Where the sale of a non-standard *PRSA* is concerned, a more comprehensive factfind will be required than for a standard *PRSA*.
- (b) The *client* must be provided with:
 - (i) a copy of the leaflet entitled *PRSA* (Personal Retirement Savings Account) which is published by the *Financial Regulator* and is available from its website at www.ifsra.ie; and

- (ii) a written statement of why the relevant *PRSA* is considered to be in the best interests of the *client*. Generic statements may not be used. Where a non-standard *PRSA* is recommended, the statement must demonstrate why the non-standard *PRSA* is more appropriate than a relevant standard *PRSA*.
- (c) Where a non-standard *PRSA* is recommended to a *client*, both the *client* and the *firm* must complete a copy of a declaration in the form prescribed by the *Financial Regulator* which is set out at Appendix 5.
- (d) *Firms* must retain in their files a copy of the statement referred to in sub-paragraph (b)(ii) and the original of the declaration referred to in sub-paragraph (c).

(4) *Guarantees*

A *firm* shall not itself give a guarantee (in any form) to a *client* of investment performance in respect of any *investment instrument* or of any transaction relating to any *investment instruments*.

Before recommending or effecting for a *client* a transaction relating to *investment instruments* in respect of which a guarantee (in any form) of investment performance has been or will be given, a *firm* shall notify the *client* in writing of the following:

- (a) the precise nature and extent of the guarantee, including any limit of whatsoever kind upon the guarantee;
- (b) that no guarantee (in any form) of investment performance can be given by a *firm* in respect of any *investment instrument* or any transaction relating to the *investment instrument*; and
- (c) that the *client* will not be able to bring a claim for compensation in respect of any failure of investment performance to match a guarantee given or representation made (whether in writing or not) by the guarantee.

(5) *Execution-only clients*

Where a *firm* is treating a *client* as an *execution-only client* it must:

- (a) make written evidence of specific instructions from the *client*; and
- (b) have reasonably assessed and concluded that the *client* can be expected to understand the risks involved in the transaction; and
- (c) send the *client* a written confirmation that:
 - (i) the *client* is being treated as an *execution-only client*;
 - (ii) the *client* did not seek or receive any advice from the *firm* regarding the transaction;
 - (iii) the transaction was entered into on the *client's* explicit instructions; and

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- (iv) in the case of an *investment instrument*, that the *client* was clearly warned that the value of such instruments can fall as well as rise, but the *client* nevertheless wished the transaction to be effected; and
- (d) ensure that the written confirmation referred to in regulation 10(5)(c) above is signed by a *certified person* and retained for at least six years. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates; and
- (e) in the case of an *investment instrument*, ensure that the *client* signs the written confirmation referred to in regulation 10(5)(c) above.

11. Compliance procedures

(1) Compliance

A *firm* must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its *officers* and *agents* act in conformity with all regulations applicable to the provision by the *firm* of *investment business services* or *investment advice*.

(2) Records

- (a) A *firm* must ensure that sufficient information is recorded and retained about its *investment business services* or *investment advice* as is necessary for the proper conduct of that business and to enable it to demonstrate compliance with the *regulatory system*, including but not limited to records:
 - (i) of the receipt of commissions;
 - (ii) which are adequate to demonstrate the amount of its fees charged to *clients* which are attributable to *investment business services* and *investment advice* as permitted by regulation 4;
 - (iii) of complaints received and action taken;
 - (iv) of the names of *clients* to whom *investment business services* and *investment advice* is provided and the agreement setting out the *firm's* terms of business issued to each;
 - (v) of details of non-independent advisers and their product ranges to whom *clients* have been referred, which adequately demonstrate that reasonable steps have been taken regarding suitability in accordance with regulation 9(1)(b);
 - (vi) of the facts obtained about *clients* pursuant to regulation 9(2);
 - (vii) of written notification and acknowledgement and evidence of instructions relating to transactions, including records relating to *execution-only clients* and *collective investment scheme* transactions maintained pursuant to regulations 10(5) and 10(1)(b) respectively;

- (viii) of details of recommendations which adequately demonstrate that reasonable steps have been taken regarding suitability in accordance with regulation 9(3)(a);
 - (ix) which are adequate to demonstrate that the *client* has been informed of the risks attendant on a transaction pursuant to regulation 9(4);
 - (x) of the date and, where appropriate, the time of both receipt and transmission of all orders for *clients*, in a readily accessible form;
 - (xi) of each receipt issued in accordance with regulation 7(7);
 - (xii) of the information provided to the *client* in accordance with regulations 10(2)(b)(i) and 10(2)(b)(iv);
 - (xiii) of the declarations signed by the *client* in accordance with regulation 10(2)(b)(v);
 - (xiv) of the factfind completed for the *client* in accordance with regulation 10(3)(a);
 - (xv) of the statement of best interests provided to the *client* in accordance with regulation 10(3)(b)(ii);
 - (xvi) of the declaration completed by the *firm* and the *client* in accordance with regulation 10(3)(c);
 - (xvii) of the information notified to the *client* of any guarantee in accordance with regulation 10(4);
 - (xviii) of the *firm's* own position as follows:
 - (aa) income and expenditure;
 - (bb) assets and liabilities, including off-balance sheet items and any commitments including contingent liabilities;
 - (cc) correspondence with the *Association*.
- (b) Each record maintained under this regulation shall be kept for six years from the performance of any *investment business services* or the provision of any *investment advice* to which the record relates. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates.
- (c) *Firms* should note that:
- (i) failure to keep such records, or any other records prescribed under the *Act*, will constitute a criminal offence under the *Act*;
 - (ii) if a *firm* is wound up and is unable to pay its debts and it is found that the prescribed records have not been kept, any or all of the officers and/or beneficial owners of the *firm* may be personally liable for the *firm's* debts and liabilities.

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(3) Complaints

- (a) A *firm* must have procedures to ensure:
- (i) the proper handling of complaints from *clients* relevant to its compliance with the *regulatory system*;
 - (ii) that any appropriate remedial action on those complaints is promptly taken; and
 - (iii) where the complaint is not promptly remedied, that the *client* is advised of any further avenue for complaint available to him under the *regulatory system*.
- (b) The procedures established under this regulation must include adequate provisions to ensure that:
- (i) complaints are acknowledged in writing within a reasonable time of their being received and in any event within 14 days;
 - (ii) where a complaint has been made orally the letter of acknowledgement states the *firm's* understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement;
 - (iii) complaints are investigated by a person of sufficient experience, seniority and competence who was not directly involved in the particular act or omission giving rise to the complaint;
 - (iv) subject to the requirements of a *firm's* professional indemnity insurers, the complainant receives regular written updates on the progress of the investigation at intervals no greater than two months;
 - (v) subject to the requirements of a *firm's* professional indemnity insurers, within seven days of completion of the investigation, the complainant is advised in writing of the outcome and, if appropriate, an explanation of the terms of any offer or settlement;
 - (vi) where the complainant is not satisfied with the outcome of the investigation, he is notified immediately of his right to refer the matter to the *Association*.

(4) Compensation scheme

- (a) *Firms* shall not provide any *investment business services* unless they are either:
- (i) contributors to the compensation scheme established by the Investor Compensation Company Limited under the *Compensation Act* providing for compensation to *clients* who have suffered losses, short details of which are set out in regulation 11(4)(b) below; or
 - (ii) members of a compensation scheme set up by an *approved professional body*, which scheme has been approved of by the *Financial Regulator* and provides compensation to *clients* who have suffered losses, short details of which are set out in regulation 11(4)(b) below.

- (b) The compensation schemes referred to in regulation 11(4)(a) above provide for a sum of money of not less than 90% of the amount of a *client's* "net loss" or 20,000 euro, whichever is the lesser. "Net loss" in this context means the amount of the liability of the *firm* in respect of:
- (i) money owed to or belonging to the *client* and held on behalf of the *client* by the *firm* in connection with the provision of *investment business services* by the *firm*; and
 - (ii) *investment instruments* belonging to the *client* and held, administered or managed on behalf of the *client* by the *firm* in connection with the provision of *investment business services* by the *firm*.

(5) *Companies Act 1990*

Each *employee* of a *firm* shall, as part of their contract of employment, be required to sign an undertaking relating to the provisions of part V of the Companies Act, 1990 (Insider Dealing) declaring that the *employee* has read and understood them and shall as part of their contract comply with such procedures as may from time to time be introduced for the purpose of ensuring compliance therewith.

12. Enforcement

(1) *Intervention Orders*

- (a) If it appears to the *Admissions and Licensing Committee* that for the protection of investors or for the protection of the *Association* or for both reasons, that:
- (i) it is desirable to prohibit a *firm* from disposing of or otherwise dealing with any of its assets, or any specified assets; and/or
 - (ii) a *firm* is not fit and proper to provide *investment business services* or *investment advice* either generally or of a particular kind or to the extent to which it is or is intending to carry on that business; and/or
 - (iii) a *firm* has committed, or intends, or is likely to commit a breach of these regulations or some other act of misconduct; and
 - (iv) it is desirable to take protective measures,
- the *Admissions and Licensing Committee* may make and serve on the *firm* concerned a written Intervention Order (an "*Order*").
- (b) An *Order* may operate for a specified period or until the occurrence of a specified event or until the *firm* complies with specified conditions and may, at the *Admissions and Licensing Committee's* discretion, come into effect either immediately on service or at such later time as the *Admissions and Licensing Committee* may determine.
- (c) An *Order* served on a *firm* may require the *firm* to take specified steps and/or may forbid the *firm*:
- (i) in whole or in part, to provide *investment business services* or *investment advice*;

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- (ii) to dispose of or otherwise deal with any assets or any specified assets (whether held in the Republic of Ireland or outside the Republic of Ireland) or to act otherwise than in the manner specified in the *Order*;
 - (iii) to enter into transactions of a specified kind or enter into them except in specified circumstances or to a specified extent;
 - (iv) to solicit business from persons of a specified kind or otherwise than from such persons or in a specified country or territory; and/or
 - (v) to carry on business in a specified manner or otherwise than in a specified manner.
- (d) An *Order* shall specify:
- (i) the reasons for its issue;
 - (ii) the date and time at which the *Order* shall come into effect;
 - (iii) the period for which the *Order* shall operate, which may be expressed to end with the occurrence of a specified event or when the *firm* has complied with the requirements of the *Order*;
 - (iv) where relevant, in regard to an *Order* to which regulation 12(1)(a)(iii) applies, the act or omission which constituted or would constitute breach of the regulations and the regulation which has been or would be contravened; and
 - (v) the officer of the *Admissions and Licensing Committee* to whom a request can be made for a stay of execution of the *Order*.
- (e) The *Admissions and Licensing Committee*, or the Chairman of the *Admissions and Licensing Committee* acting on its behalf, may, at any time before or after an *Order* comes into effect, revoke the *Order* or vary its terms; and where the terms of an *Order* are varied the variation shall be effected by a new *Order* being served on the *firm* concerned.
- (f) Subject to regulation 12(2) the *Association* shall publish the *Order* at or after the time it comes into effect and shall notify the *Financial Regulator* that an *Order* has been published.

(2) Application for stay

After service of the *Order*, its recipient may apply to the *Association* for a stay of execution of the *Order* or any part of it and/or of its publication. The application shall be considered by the officer specified pursuant to regulation 12(1)(d)(v) who in his discretion may grant or refuse the stay or grant it subject to conditions.

(3) Reference to the Appeal Committee

A *firm* served with an *Order* may appeal against the *Order* in the same way and subject to the same limitations as it may appeal against any other decision of the *Admissions and Licensing Committee*.

(4) Right of the Association to appeal against an Order

The *Association* may appeal against an *Order* in the same way and subject to the same limitations as it may appeal against any other decision of the *Admissions and Licensing Committee*.

(5) Offences

Firms should note that the *Act* prescribes penalties of varying severity for breaches of its provisions:

- (a) Section 74 of the *Act* lists the provisions which, if breached, would not amount to a criminal offence but could attract a penalty of a reprimand, and/or a fine of up to 635,000 euro, and/or publicity, and/or payment of costs.
- (b) Section 79 of the *Act* lists the provisions which, if breached, amount to a criminal offence and could attract a penalty of a fine of up to 1,270,000 euro maximum and/or imprisonment for up to 10 years. Some of those offences are referred to within these regulations.

13. Waivers and service

(1) Waivers and modifications

- (a) A *firm* is entitled to apply in writing to the *Admissions and Licensing Committee* to waive, vary or suspend the requirements of any of these regulations in order to adapt them to the *firm's* circumstances or to any particular kind of business which the *firm* is carrying on or intends to carry on. The *Admissions and Licensing Committee* shall not grant the application unless it appears that compliance with the regulations would be unduly burdensome having regard to the benefit which compliance would confer on investors and the exercise of the power would not result in any undue risk to investors. Any waiver, variation or suspension given by the *Admissions and Licensing Committee* shall be granted subject to the prior approval of the *Financial Regulator*.
- (b) The *Admissions and Licensing Committee* may grant such an application on conditions. If it does so, the applicant *firm* must comply with any such conditions.
- (c) Following an application under this regulation, or of its own volition, the *Admissions and Licensing Committee* may waive, vary or suspend any of these regulations. Where it does so, it may impose conditions and any *firm* which acts upon the waiver, variation or suspension extended to it must comply with any such condition.
- (d) Any waiver, variation or suspension given under this regulation shall apply for such period as the *Admissions and Licensing Committee* shall specify.

(2) Consents

Where provided for in these regulations any consent to be given by the *Admissions and Licensing Committee* may be given or withheld in its absolute discretion but if withheld the *Admissions and Licensing Committee* shall notify the *firm* of the reasons why it has been withheld.

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(3) Service

Except as otherwise provided in these regulations, any notice or other document required or authorised by these regulations to be served on any *firm* may be served by leaving it at or sending it by post to the *firm's* address or faxing it to the number notified to the *Association* in accordance with these regulations.

14. Liability

Neither the *Association* nor any of its *officers* or servants or *agents* nor any members of any committee of *Council* shall be liable in damages or otherwise for anything done or omitted to be done in the discharge or purported discharge of any function under the *Act*, or these regulations, or any other rules or regulations referred to in these regulations unless the act or omission is shown to have been in bad faith.

Appendix 1 (Regulation 7(7)(b))

Receipt in compliance with section 30 of the Act

(1) The receipt shall state succinctly the terms and conditions upon which the transaction was entered into.

(2) The receipt shall state that it is issued pursuant to section 30 of the Act and shall, subject to such alterations or additions as may be prescribed by the *Financial Regulator*, specify the following:

- (a) the name and address of the *firm*;
- (b) the name and address of the *client* or other person furnishing the instrument or payment, or an alternative form of identification approved by the *Financial Regulator* for the purpose;
- (c) the value of the instrument or payment received and the date on which it was received;
- (d) the purpose of the payment;
- (e) the name of the *product producer* in whose favour the payment is made;
- (f) where *life assurance* (for the avoidance of doubt, *life assurance* includes pensions) or *non-life insurance* is concerned, that the acceptance by the *firm* of a completed insurance proposal does not itself constitute the effecting of a policy of insurance.

Appendix 2 (Regulation 6(3)(a))

Advertisements

Part 1: General contents requirements

(a) Clarity of purpose

The purpose of any promotional material included in the advertisement must not be disguised in any way.

(b) Clarity of subject

The nature or type of the *investment instrument* or *investment advice* or the *investment business services* to which the advertisement relates must be clear.

(c) Statements, promises or forecasts

Any statement, promise or forecast must be fair and not misleading in the form of and context in which it appears, and where any promise or forecast is based on assumptions, these must be stated within the advertisement.

(d) No false indications

The advertisement must not provide false indications, in particular as to:

- (i) the *firm's* independence;
- (ii) the *firm's* scale of activities;
- (iii) the extent of the resources of the *firm*;
- (iv) the services the *firm* intends to provide; or
- (v) the scarcity of the *investment instrument* or *investment business services* or *investment advice* concerned.

(e) Design and presentation

The design and presentation of advertisements should allow them to be easily and clearly understood. Where footnotes are used they should be of sufficient size and prominence and easily legible; where appropriate they should be linked to the relevant part of the main copy.

(f) Prescribed statements to be clearly visible

Any statements made or risk warnings given in the advertisement in accordance with this regulation 6 must not be obscured or disguised in any way by the content, design or format of the advertisement.

(g) Disrepute

Advertisements should contain nothing which brings the law or these requirements into disrepute.

(h) Understanding of firm's proposal

The design and presentation of advertisements should be such as to allow each part of the *firm's* proposal to be easily grasped and clearly understood.

(i) Clarity of advertisement

An advertisement should not mislead *clients* or potential *clients* about any matter likely to influence their attitudes to the advertised product or the *firm* either by inaccuracy, ambiguity, exaggeration, omission or otherwise.

(j) Clarity of presentation

An advertisement should always be so designed and presented that anyone who looks at it can see immediately that it is an advertisement.

(k) No undue pressure

A *firm* must not exert undue pressure or undue influence on a *client* in order to induce him:

- (i) to purchase, sell or retain an investment, or
- (ii) to exercise, or refrain from exercising, any right conferred by an investment.

Part 2: Specific contents requirements

(a) Guarantees

The advertisement must not describe an *investment instrument* as guaranteed unless there is a legally enforceable arrangement with a third party who undertakes to meet in full an investor's claim under the guarantee and gives details about both the guarantor and the guarantee sufficient for an investor to make a fair assessment about the value of the guarantee.

(b) Commendations

Any commendations quoted must be:

- (i) complete or a fair representation;
- (ii) accurate and not misleading at the time of issue; and
- (iii) relevant to the *investment instrument* or *investment advice* or the *investment business services* advertised.

The author must have given his consent to the commendation and, if he is an *associate* or *employee* of the issuer, the advertisement must state that fact.

2.4 Irish Investment Business Regulations

(c) Comparisons

Comparisons or contrasts must:

- (i) be based either on facts verified by the issuer, or on assumptions stated within the advertisement;
- (ii) not mislead;
- (iii) be presented in a fair and balanced way; and
- (iv) not omit anything material to the comparison.

(d) Material interest

Where the *firm* knows that it or its *associate*:

- (i) has or may have a position or holding in the *investment instrument* concerned or in a related *investment instrument*; or
- (ii) is providing or has provided within the previous 12 months significant advice or *investment business services* in relation to the *investment instrument* concerned or a related *investment instrument*,

it must include a statement to this effect in the advertisement.

(e) Past performance

Any information about the past performance of *investment instruments* or of a *firm* must:

- (i) be relevant to the performance or the *investment instrument* or *firm* advertised;
- (ii) be a complete record of, or a fair and not misleading representation of, the past performance of the *investment instrument* or *firm*;
- (iii) not be selected so as to exaggerate the success or disguise the lack of success of the *investment instrument* or *firm*;
- (iv) state the source of the information; and
- (v) be based on the actual past performance of the investment or *firm*, and not be based on simulated figures.

Any advertisement which contains information on past performance must also contain a warning that neither past experience nor the current situation is necessarily a guide to future performance.

(f) Taxation

If the advertisement contains any reference to the impact of taxation, it must:

- (i) state the assumed rate of taxation on which any matter is based;

- (ii) state that tax reliefs are as those currently applying and state that the value of the tax reliefs referred to in the advertisement apply directly to the investor, to the provider of the *investment instrument* or to the fund in which the investor participates, as appropriate;
- (iii) state if it is the case, that the matters referred to are only relevant to a particular class or classes of investor with particular tax liabilities, identifying the class or classes and liabilities concerned;
- (iv) not describe the *investment instrument* as being free from any liability to income tax unless equal prominence is given to a statement, if applicable, that the income is payable from a fund from which income tax has already been paid; and
- (v) not describe the *investment instrument* as being free from any liability to capital gains tax unless equal prominence is given to a statement, if applicable, that the value of the *investment instrument* is linked to a fund which is liable to that tax.

Part 3: Risk warnings

A *firm* must take reasonable steps to ensure that the advertisement adequately explains any unusual risks involved and, where appropriate contains the warnings about the *investment instrument* or the *investment business services* as follows:

(a) *Fluctuations in value*

Where the *investment instrument* can fluctuate in price or value, a statement must be made that prices, values or income may fall against the investor's interests or, if applicable, a warning must be made that the investor may get back less than he invested.

(b) *Suitability*

Where the advertisement contains or refers to a recommendation about a specific *investment instrument* or *investment business service*, a statement must be made warning that the *investment instrument* or *investment business service* may not be suitable for all recipients of the advertisement and a recommendation that, if they have any doubts, they should seek advice from their investment adviser.

(c) *Investment income*

Where an *investment instrument* is described as being likely to yield income, or as being suitable for an investor particularly seeking income from his investment, the investor must be warned, if it is the case, that:

- (i) income from the investment may fluctuate; and
- (ii) part of the capital invested may be used to pay that income.

(d) *Foreign currency denominated investments*

Where an *investment instrument* is denominated in a currency other than that of the country in which the advertisement is issued, the investor must be warned that changes in rates of exchange may have an adverse effect on the value, price or income of the *investment instrument*.

2.4 Irish Investment Business Regulations

(e) *Past performance*

Where the advertisement contains information concerning the past performance, it must also contain a warning that the past is not necessarily a guide to future performance.

(f) *Taxation*

Where the advertisement contains any reference to the impact of taxation it must also contain a warning that the levels and bases of taxation can change.

(g) *Investments which are not readily realisable investments*

An advertisement for an *investment instrument* which is not a *readily realisable investment* must state that it may be difficult:

- (i) for the investor to sell or realise the *investment instrument*, and
- (ii) to obtain reliable information about its value or the extent of the risks to which it is exposed.

(h) *Investments for which the market is restricted*

An advertisement for a security (except units in a *collective investment scheme*) for which a market is made by only one market maker must state that fact and, if it is the case, the fact that the only market is the issuer of the advertisement or an *associate* of the *firm* of the advertisement.

(i) *Front-end loading*

- (i) An advertisement for an *investment instrument* subject to front-end loading must state that deductions for charges and expenses are not made uniformly throughout the life of the *investment instrument*, but are loaded disproportionately onto the early years, and the investor must be warned that, if he withdraws from the *investment instrument* in the early years, he may not get back the amount he has invested.
- (ii) An advertisement for an *investment instrument* subject to charges which arise only on the redemption of that *investment instrument* (redemption charges) must state that deductions for charges and expenses are not made uniformly throughout the life of the *investment instrument*, but are loaded disproportionately at the redemption of the *investment instrument*, and the investor must be warned that this will impact on the amount of money which he receives and that he may not get back the amount he has invested.
- (iii) In relation to an investment, “front-end loading” means one where deductions for charges and expenses are not made uniformly throughout the life of the investment but are charged disproportionately to the early years.

(j) Cancellation

Where cancellation rights apply:

- (i) the advertisement must state that upon cancellation the investor may not obtain a full refund or the amount invested; and
- (ii) if the advertisement relates to a *higher volatility investment*, the advertisement must state, if it is the case, that the shortfall in the amount recovered by the investor on cancellation may be large.

(k) Property funds

- (i) An advertisement for a fund which invests in property, or which refers to the fact that a fund may be invested in land or interests in land, must state that the value of the property or land is a matter of a valuer's opinion.
- (ii) Where an advertisement for a fund which invests in property, or which refers to the fact that a fund may be invested in land, is in respect of a fund which is not open-ended, the advertisement must state that the land and buildings may be difficult to sell and there may be times when the units cannot be sold.

(l) Forecasts or projections

Where an advertisement contains any forecast or projections, whether of specific growth rate or of a specific return or rate of return, it should make clear the basis upon which that forecast or projection is made, explaining for instance:

- (i) whether reinvestment of income is assumed;
- (ii) whether account has been taken of the incidence of any taxes or duties and, if so, how; and
- (iii) whether the forecast or projected rate of return will be subject to any deduction either upon premature realisation or otherwise.

Appendix 3 (Regulation 8(4)(b))

Essential details of a transaction

The essential details of a transaction effected by a *firm* to be sent to a *client* as referred to in regulation 8(4)(b) are as follows:

- (a) the name of the *firm*;
- (b) the date of the transaction;
- (c) the time at which the transaction was entered into or a statement that this will be available on request;
- (d) the *investment instrument* concerned, the size involved and whether the transaction was a purchase or sale;
- (e) the price at which the transaction was executed or averaged and the total consideration due to or from the *client*;
- (f) the settlement date;
- (g) the amount of the *firm's* charges to the *client*, if any, in connection with the transaction except where the *firm* has been requested to issue the contract note on a net basis by a professional client and has maintained a written note of such request;
- (h) a statement, if this is the case, that any dividend, bonus or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the relevant *investment instrument*, will not pass to the purchaser under the transaction;
- (i) the amount or basis of any charges shared by the *firm* with another person (except employees) or the fact that this will be made available on request;
- (j) the amount or basis of any remuneration which the *firm* has received or will receive from another person in connection with the transaction;
- (k) if any interest which has accrued or will accrue on the relevant security is accounted for separately from the transaction price, the aggregate amount of the interest which the purchaser will receive or the number of days for which he or she will receive interest and the applicable rate of interest accruing;
- (l) the amount of any costs, including transaction taxes, which are incidental to the transaction and which will not be paid by the *firm* out of the charges mentioned in (g) above;
- (m) if the transaction involved a foreign currency, the rate of exchange involved and the date of calculation of such if other than the date of the transaction;
- (n) a statement, if this is the case, that the *firm* has acted as principal.

In addition, where the *member* and/or the *firm* has entered into a *distance contract for the supply of a financial service* after 15 February 2005, the *member* or *firm* entering into such contract shall comply with the *Distance Marketing of Consumer Financial Services Regulations 2004*.

Appendix 4 (Regulation 10(2))

Schedules 1 to 6 of the Life Assurance (Provision of Information) Regulations 2001

SCHEDULE 1 INFORMATION TO BE PROVIDED TO CLIENT BEFORE CLIENT SIGNS A PROPOSAL OR APPLICATION FORM FOR A POLICY OF LIFE ASSURANCE

A. INFORMATION ABOUT THE POLICY

The following information shall be provided to the client using the prominent titles indicated in this paragraph.

(1) "MAKE SURE THE POLICY MEETS YOUR NEEDS!"

- (i) The purpose and intention of the policy (e.g. whether protection or savings or a combination thereof).
- (ii) The type of policy (e.g. regular premium savings policy, regular premium protection policy, term assurance policy, decreasing term assurance policy, regular premium pensions policy, single premium investment policy, single premium annuity or single premium pensions policy, whether critical illness cover or permanent health insurance is included, whether convertible, whether index-linked).
- (iii) The long-term nature of the policy under which a commitment is given by the client to pay a premium in the form of a lump sum, or a regular weekly, monthly, quarterly or yearly premium, as the case may be and a statement indicating that unless the client is fully satisfied as to the nature of the commitment, having regard to the needs, resources and circumstances of that client, the client should not enter into that commitment.
- (iv) Whether the proposed life assurance policy replaces in whole or in part an existing policy with the insurer concerned or any other insurer which has been or is to be cancelled or reduced and where an existing policy has been or is to be cancelled or reduced, that the insurer or insurance intermediary, insofar as the insurer or insurance intermediary is aware of or ought reasonably to be aware of such an existing policy, has advised the client as to the financial consequences of replacement and of possible financial loss as a result of replacement, and the declaration referred to in Regulation 6(3) (the form of which is set out in Schedule 4) shall include in a prominent position the following warning:

"WARNING

If you propose to take out this policy in complete or partial replacement of an existing policy, please take special care to satisfy yourself that this policy meets your needs. In particular, please make sure that you are aware of the financial consequences of replacing your existing policy. If you are in doubt about this, please contact your insurer or insurance intermediary."

(2) “WHAT HAPPENS IF YOU WANT TO CASH IN THE POLICY EARLY OR STOP PAYING PREMIUMS?”

There shall be a statement in a prominent position indicating—

- (i) whether or not the policy acquires a surrender value,
- (ii) the consequences of non-payment of premium, and
- (iii) that early surrender of the policy (where a policy can be surrendered early), either voluntarily or as a consequence of the non-payment of premiums, may result in a return less than the amount of the premiums paid into the policy over the same period.

(3) “WHAT ARE THE PROJECTED BENEFITS UNDER THE POLICY?”

- (i) An Illustrative Table of Projected Benefits and Charges shall be provided to the client in the form set out in the Table to this subparagraph.
- (ii) Where the policy does not acquire a surrender or maturity value the client shall be informed of this fact.
- (iii) The Illustrative Table shall contain in a prominent position the following notice:

“IMPORTANT
 THESE ILLUSTRATIONS ASSUME A RETURN OF (RATE)% PER ANNUM. THIS RATE IS FOR ILLUSTRATION PURPOSES ONLY AND IS NOT GUARANTEED. ACTUAL INVESTMENT GROWTH WILL DEPEND ON THE PERFORMANCE OF THE UNDERLYING INVESTMENTS AND MAY BE MORE OR LESS THAN ILLUSTRATED.”

TABLE
 ILLUSTRATIVE TABLE OF PROJECTED BENEFITS AND CHARGES

	A	B	C	D	E=A+B-C-D
	£	£	£	£	£
Year	Total amount of premiums paid into the policy to date	Projected investment growth to date	Projected expenses and charges to date	Projected cost of protection benefits to date	Projected policy value
1					
2					
3					
4					
5					
10					
15					
20					
MATURITY					

2.4 Irish Investment Business Regulations

(4) "WHAT INTERMEDIARY REMUNERATION OR SALES REMUNERATION IS PAYABLE?"

An Illustrative Table of Intermediary Remuneration or Sales Remuneration shall be provided to the client in the form set out in the Table to this subparagraph.

TABLE
ILLUSTRATIVE TABLE OF
INTERMEDIARY REMUNERATION OR SALES REMUNERATION

Year	Premium payable in that year £	Projected total intermediary/ sales remuneration/brokerage fee payable in that year £
1		
2		
3		
4		
5		
10		
15		
20		
Year of Maturity		

(5) "ARE RETURNS GUARANTEED AND CAN THE PREMIUM BE REVIEWED?"

- (i) Where the premium shown is not guaranteed to provide the benefits as illustrated, there shall be a statement in a prominent position to that effect accompanying the illustration and, where appropriate, a statement—
 - (I) that the premium may need to be increased in order to achieve the benefits so illustrated, or
 - (II) if the premium is not so increased, that the benefits illustrated may not be achieved, should the investment return prove to be less than that assumed in the illustration.
- (ii) Where the policy is a unit-linked protection policy, under which the insurer may increase the premium payable for the same level of cover or where cover can be reduced by the insurer for the same premium, there shall be a statement in a prominent position to that effect accompanying the illustration indicating the period, if any, during which the insurer may not increase the premium payable for the same level of cover or reduce cover for the same premium.

(6) "CAN THE POLICY BE CANCELLED OR AMENDED BY THE INSURER?"

- (i) Subject to the terms and conditions of the policy, the circumstances in which a policy may be cancelled or materially amended at the option of the insurer, shall be stated.
- (ii) A statement shall be included as to the consequences of failing to disclose material facts and or providing incorrect information when completing a proposal or application form for a policy of life assurance.

(7) "INFORMATION ON TAXATION ISSUES"

The following information shall be provided to the client in relation to taxation issues:

- (i) the circumstances under which tax reliefs are available on premiums and pension product contributions and the extent of such tax reliefs;
- (ii) the circumstances and extent to which the proceeds or benefits are taxable (for example, whether as income tax or capital gains tax, as appropriate).

B. INFORMATION ON SERVICE FEE

Where a service fee is charged by an insurer or insurance intermediary, the amount of the service fee shall be disclosed in writing to the client and shall be expressed as a monetary amount whether in relation to an initial service fee or in relation to an assumed renewal or annual service fee.

C. INFORMATION ABOUT THE INSURER OR INSURANCE INTERMEDIARY OR SALES EMPLOYEE

The following information shall be provided to the client:

- (i)
 - (I) Names of the insurer and insurance intermediary in full including their legal form and, where applicable, the name of the sales employee.
 - (II) In the case of tied insurance agents and insurance agents, the name or names of every insurer for which that person or financial institution, as the case may be, is a tied insurance agent or insurance agent, should be stated.
- (ii) Contact telephone, fax number, e-mail address and relevant address for correspondence with the insurer and insurance intermediary or sales employee, as the case may be.
- (iii) The Member State in which the head office of the insurer is situated and, where appropriate, the Member State of the branch of the insurer which will enter into the insurance contract.
- (iv) Where the client deals directly with an insurance intermediary, any delegated authority or binding authority granted by the insurer, in relation to underwriting, claims handling and claims settlement, to that insurance intermediary.

SCHEDULE 2 COMPLETION OF ILLUSTRATIVE TABLES

PART 1 ILLUSTRATIVE TABLE OF PROJECTED BENEFITS AND CHARGES

1. For the purposes of completing the Illustrative Tables set out in paragraph A(3) and (4) of Schedule 1—

“projected investment growth to date” means the investment return earned on the policy value in the period up to and including the year referred to, and shall include any bonuses allocated to the policy;

“projected expenses and charges to date” means the projected total deductions to cover expenses and charges of the insurer made in the period up to and including the year referred to;

“projected cost of protection benefits to date” means the projected total deductions for the cost of protection benefits made in the period up to and including the year referred to;

“projected policy value” means the amount projected to be payable as a surrender value or a maturity value at the end of the year referred to, after deduction of any penalties applicable.

2. A rate not exceeding 8% per annum, before deduction of all anticipated expenses and charges, intermediary remuneration and sales remuneration related to the policy and before deduction of taxation, shall be used as the assumed projected rate of return in illustrating projected future benefits under the policy. In addition, a second Illustrative Table of Projected Benefits and Charges may be given to the client provided the basis of calculation of that second illustration is specified.

3. The Illustrative Table, or Tables, as the case may be, of Projected Benefits and Charges shall indicate the projected surrender or maturity value of the policy (Column E) after any penalties where applicable—

- (i) at the end of each of the first 5 years following the inception of the policy, and
- (ii) at the end of 10, 15 and 20 years following such inception and at maturity, where appropriate,

shown across from—

- (I) the total amount of premiums paid into the policy to date (Column A),
- (II) the projected investment growth to date (Column B),
- (III) the projected expenses and charges to date (Column C), and
- (IV) the projected cost of protection benefits to date (Column D),

so that the difference between the sum of the premiums paid and the projected investment growth, and the corresponding projected surrender or maturity values (Column E) is accounted for by the cost of either or both life assurance cover and other protection benefits and the charges and management expenses associated with the policy and surrender penalties.

4. (i) In illustrating the projected benefits of a unit-linked protection policy, the period of time for which the cover can be maintained by the premium shown, based on the assumptions underlying the illustration, shall be specified if this is less than the term of the policy.
 - (ii) The illustration shall state that an increased premium would be required to sustain the cover beyond the period of cover shown.
 5. Where the policy includes insurance cover in respect of either or both critical illness and permanent health insurance, the effects of a claim under such insurance cover on the projected surrender or maturity value shall be specified.
 6. (i) In the case of investment policies, the effect of all deductions, excluding the cost of deductions for protection benefits, on the projected investment yield on the gross premiums paid shall be stated in a prominent position below the Illustrative Table of Projected Benefits and Charges.
 - (ii) For the purposes of this paragraph “investment policy” means a contract where the projected maturity value in accordance with the Illustrative Table of Projected Benefits and Charges at least exceeds the cumulative amount of premiums paid.
 7. Column C of the Illustrative Table of Projected Benefits and Charges shall include charges and management expenses including deductions from the premium which do not contribute to the value of any benefit such as “bid/offer” spread, annual fund management charge and expense charges.
 8. (i) In the case of pension business contracts, an illustration shall be provided to the client indicating—
 - (I) the projected tax free sum available at retirement, where relevant,
 - (II) the projected balance of the fund available to purchase an annuity, and
 - (III) examples of projected monthly or weekly annuity payable at the illustrative rates of return.
 - (ii) The illustration shall be accompanied by a warning in a prominent position that—
 - (I) the illustration assumes a rate of return of _____%* per annum,
- * The rate applied by the insurer in the illustration
- (II) the rate is for illustration purposes only and is not guaranteed, and
 - (III) actual investment growth will depend on how the investment performs and may be more or less than illustrated.
9. A statement shall be included that the premium payable includes the cost of the protection benefits, and all charges, expenses, intermediary remuneration and sales remuneration, where applicable.

PART 2 ILLUSTRATIVE TABLE OF INTERMEDIARY REMUNERATION OR SALES REMUNERATION

1. The Illustrative Table of Intermediary Remuneration or Sales Remuneration shall state the projected premium payable and the projected cost of total payments, benefits and services payable to insurance intermediaries or sales employees to cover intermediary remuneration or sales remuneration in connection with the policy in the policy year in question.

2. Where an arrangement exists between an insurer and an insurance broker or an insurance agent (other than a tied insurance agent) under which payments, benefits or services may be provided by the insurer to the insurance broker or the insurance agent which are contingent on the insurance broker or the insurance agent placing a minimum level of business with the insurer, then, where a policy contributes to the achievement of such contingent payments, benefits or services, a statement describing the arrangement that applies shall immediately follow the Illustrative Table of Intermediary Remuneration or Sales Remuneration.

3. In the Table of Intermediary Remuneration or Sales Remuneration “intermediary remuneration” may be described as a “brokerage fee”.

SCHEDULE 3 INFORMATION FOR POLICYHOLDERS

The following information, which is to be communicated to the policyholder before the contract is concluded (A) and during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policyholder so requests and the law of the Member State so permits or the policyholder is free to choose the law applicable.

A. Before concluding the contract

Information about the assurance undertaking

- (a)1. The name of the undertaking and its legal form
- (a)2. The name of the Member State in which the head office and, where appropriate, the agency or branch concluding the contract is situated
- (a)3. The address of the head office and, where appropriate, of the agency or branch concluding the contract

Information about the commitment

- (a)4. Definition of each benefit and each option
- (a)5. Term of the contract
- (a)6. Means of terminating the contract
- (a)7. Means of payment of premiums and duration of payments
- (a)8. Means of calculation and distribution of bonuses
- (a)9. Indication of surrender and paid-up values and the extent to which they are guaranteed
- (a)10. Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate
- (a)11. For unit-linked policies, definition of the units to which the benefits are linked
- (a)12. Indication of the nature of the underlying assets for unit-linked policies

2.4 Irish Investment Business Regulations

- (a)13. Arrangements for application of the cooling-off period
- (a)14. General information on the tax arrangements applicable to the type of policy
- (a)15. The arrangements for handling complaints concerning contracts by policyholders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings
- (a)16. Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose

B. During the term of the contract

In addition to the policy conditions, both general and special, the policyholder must receive the following information throughout the term of the contract.

Information about the assurance undertaking

- (b)1. Any change in the name of the undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract

Information about the commitment

- (b)2. All the information listed in points (a)4 to (a)12 of A in the event of a change in the policy conditions or amendment of the law applicable to the contract
- (b)3. Every year, information on the state of bonuses

SCHEDULE 4 DECLARATION TO BE SIGNED BY CLIENT

WARNING

If you propose to take out this policy in complete or partial replacement of an existing policy, please take special care to satisfy yourself that this policy meets your needs. In particular, please make sure that you are aware of the financial consequences of replacing your existing policy. If you are in doubt about this, please contact your insurer or insurance intermediary.

Ref. Policy Number _____

Declaration of Insurer or Intermediary

I hereby declare that in accordance with Regulation 6(1) of the Life Assurance (Provision of Information) Regulations, 2001, _____* (the client) has been provided with the information specified in Schedule 1 to those Regulations and that I have advised the client as to the financial consequences of replacing an existing policy with this policy by cancellation or reduction, and of possible financial loss as a result of such replacement.

* Insert client name and address

Signed _____

Name of insurer or insurance intermediary

Date _____

Declaration of Client

I confirm that I have received in writing the information specified in the above declaration.

Signed _____

Name of client

Date _____

SCHEDULE 5 CERTIFICATE OF ACTUARY

Name and address of Insurer:

Financial Year Ended:

Name and address of Actuary:

I hereby certify that, in respect of the above financial year, in preparing the illustrative tables of projected benefits, expenses and charges, intermediary remuneration and sales remuneration provided to clients by the above insurer pursuant to the Life Assurance (Provision of Information) Regulations, 2001, the insurer has complied with my advice and the relevant guidance notes issued by the Society of Actuaries in Ireland [subject to the qualifications, amplifications or explanations in this certificate].*

* Delete where not applicable

I certify that no qualifications to, amplifications or explanations of this certificate are necessary.*

* Delete where not applicable

This certificate is subject to the following qualifications, amplifications or explanations:*

* Delete where not applicable

Signed _____

Name of actuary

Date _____

SCHEDULE 6 DECLARATION OF INSURER

Name and address of Insurer:

Financial Year Ended:

Names and addresses of Directors:

and

Name and address of Chief Executive:

OR WHERE APPLICABLE

Name and address of Authorised Agent:

and

Name of officer or employee of insurance undertaking:

We declare that the information requested by the actuary pursuant to his or her functions under the Life Assurance (Provision of Information) Regulations, 2001, has been provided to the actuary and is accurate [subject to the qualifications, amplifications and explanations set out in this declaration].*

* Delete where not applicable

We declare that no qualifications, amplifications and explanations to this declaration are necessary.*

* Delete where not applicable

This declaration is subject to the following qualifications, amplifications and explanations:*

* Delete where not applicable

Signed _____

director

director

chief executive

Date _____

OR

Signed _____

chief executive

officer of employee

Appendix 5 (Regulation 10(3)(c))

Declaration – non-standard PRSAs

Non-Standard Personal Retirement Savings Account

DECLARATION

SECTION A TO BE COMPLETED BY THE CONSUMER

- I declare that I understand that the charges payable on a non-standard PRSA may be higher than those for a standard PRSA.
- I declare that I understand that the investment risks associated with a non-standard PRSA may be higher than those for a standard PRSA.
- I declare that I understand that the Irish Financial Services Regulatory Authority recommends that consumers should seek independent financial advice, before buying a non-standard PRSA.
- I declare that I am satisfied that I require a pension product and that, having reviewed the differences between standard and non-standard PRSAs, a non-standard PRSA is the most appropriate pension product for me.

Signed: _____ Date: _____

SECTION B TO BE COMPLETED BY THE VENDOR (WHETHER PRODUCT PRODUCER OR INTERMEDIARY)

- I declare that in my opinion it is in the best interests of the above named to purchase a non-standard PRSA rather than a standard PRSA.
- I declare that in my opinion the non-standard PRSA I propose to sell to the above named is the product most suited to this consumer from among all those I am able to advise on.
- I declare that I have fully explained to this consumer the differences between this non-standard PRSA and standard PRSAs, and, where this is the case, focussed on the fact that the charges are higher and the investment risks are greater for this non-standard PRSA.

Signed: _____ Date: _____

Name of Firm: _____ Position held: _____

The Irish Financial Services Regulatory Authority requires that prior to the sale/purchase of a non-standard Personal Retirement Savings Account (PRSA) both the consumer and the vendor must complete this declaration.

2.5

The Chartered Certified Accountants' Committee Regulations 2001

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 28 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and effect

(1) These regulations may be cited as The Chartered Certified Accountants' Committee Regulations 2001.

(2) These regulations as amended as set out herein shall come into force on 1 January 2008.

(3) These regulations specify the committees to which Council delegates certain of its functions. Any meeting of a committee appointed pursuant to these regulations at which a quorum is present shall be competent to discharge all the functions and to exercise all the powers conferred on the committee by these regulations. Members and relevant persons will be bound by the requirements and actions of committees so acting as if they were requirements and actions of Council and must comply with any act or request of a committee seeking to exercise any of its powers as specified or referred to in these regulations.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

Appeal Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

Appointments Committee means the committee appointed by Council pursuant to bye-law 28 and referred to in these regulations;

assessor means an independent person so appointed by the Appointments Committee with responsibility, inter alia, for carrying out the responsibilities and exercising the powers of the assessor in accordance with The Chartered Certified Accountants' Disciplinary Regulations 2001;

the *Association* means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

bye-laws means the bye-laws from time to time of the Association;

2.5 Committee Regulations

Compensation Committee means the committee appointed by Council pursuant to bye-law 28 and referred to in these regulations;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

Disciplinary Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

Disciplinary Regulations means The Chartered Certified Accountants' Disciplinary Regulations 2001;

Financial Regulator means the Irish Financial Services Regulatory Authority (*IFSR*);

investment advice has the meaning given in the Investment Intermediaries Act, 1995 of the Republic of Ireland;

investment business services has the meaning given in the Investment Intermediaries Act, 1995 of the Republic of Ireland;

member means an individual admitted to membership of the Association pursuant to the bye-laws;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

regulated activity means an activity included in the Financial Services and Markets Act (Regulated Activities) Order 2001;

regulatory assessor means an independent person so appointed by the Appointments Committee with responsibility, inter alia, for carrying out the responsibilities and exercising the powers of the Admissions and Licensing Committee in accordance with The Chartered Certified Accountants' Authorisation Regulations 1998;

relevant person means a member and any other person (whether an individual or a firm and (without limitation) including a registered student) who has undertaken with the Association to abide by and be bound by, inter alia, the bye-laws and the regulations made under them;

Secretary means the Secretary of the Association or any other person acting in such capacity by the direction of the Council;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

(3) Any reference to regulations and standing orders of the Association shall be to regulations and standing orders of the Association as amended from time to time.

(4) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the Regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act, 1937 of the Republic of Ireland shall apply to these Regulations in the same way as it applies to an enactment.

(5) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

3. Appointment of committees, Panel members, assessors and regulatory assessors

(1) Appointment

Council hereby appoints (or confirms the appointment of those committees which have already been appointed at the date these regulations become effective) the Disciplinary Committee, Admissions and Licensing Committee and Appeal Committee.

(2) Term of appointment

Each of the Disciplinary, Admissions and Licensing, and Appeal Committees shall remain in existence until such time as Council determines to discharge it.

(3) Appointments Committee

- (a) Council hereby appoints an Appointments Committee, which shall remain in existence until such time as Council determines to discharge it. Council shall appoint (and may also remove) the individual members of the Appointments Committee, in accordance with procedures, and on terms and conditions, adopted by Council from time to time, and subject to any restrictions set out in these regulations or the standing orders. The Appointments Committee shall consist of four lay members nominated by the Secretary, shall have a quorum of three, and shall determine its own procedures.
- (b) Each member of the Appointments Committee shall be appointed for an initial term of five years, which shall be renewed (if both the member and Council so agree) for a further five years, subject to automatic vacation of the appointment if the member is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction.

(4) The Panel, assessors and regulatory assessors

The Appointments Committee shall, inter alia, appoint individual members to a panel of committee members (hereafter referred to as "the Panel") in accordance with procedures determined by it from time to time, and the Disciplinary, Admissions and Licensing, and the Appeal Committees shall each consist of members of the Panel. The Appointments Committee shall, inter alia, have the power to fill any vacancy on the Panel, appoint additional persons to the Panel and remove any member of the Panel in the circumstances specified in regulation 3(5)(b) of these regulations. The Appointments Committee shall also appoint assessors and regulatory assessors, in accordance with procedures determined by it from time to time.

(5) Tenure and Code of Conduct of Panel members, assessors and regulatory assessors

- (a) Subject always to the operation of regulation 3(5)(b) of these regulations, each Panel member, each assessor and each regulatory assessor shall be appointed for an initial term of five years, which shall be renewed (if both the Appointments Committee and

2.5 Committee Regulations

the Panel member, assessor or regulatory assessor so agree) for a further five years, subject to automatic vacation of the appointment if the Panel member, assessor or regulatory assessor:

- (i) is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction; or (in the case of a Panel member only);
 - (ii) fails on six consecutive occasions to comply with sitting requirements for any committee without prior leave of absence from the Appointments Committee.
- (b) Each Panel member, each assessor and each regulatory assessor shall agree to be bound by a Code of Conduct (hereafter referred to as “the Code”), which shall be in such form as approved by Council from time to time. Alleged breaches of the Code shall be investigated and considered by the Appointments Committee in accordance with the terms of the Code, and the Appointments Committee shall, inter alia, have the power to remove any Panel member, any assessor or any regulatory assessor if, in its sole discretion, it finds any alleged breach to be proven.

(6) Incompatibility

No member of Council shall be eligible for service to the Panel or service as an assessor or regulatory assessor for the period of time during which he or she remains a member of Council, and for three years thereafter.

4. Constitution of Disciplinary, Admissions and Licensing and Appeal Committees and eligibility

(1) Disciplinary Committee, Admissions and Licensing Committee and Appeal Committee shall each consist of members of the Panel.

(2) Disciplinary Committee shall have a quorum of four, including the Chairman or the Deputy. Of the four, at least one must be a lawyer, at least two must be non-accountants and at least one must be an accountant. A lawyer may count as a non-accountant. Accountants shall not be in the majority.

(3) Admissions and Licensing Committee shall have a quorum of four, including the Chairman or the Deputy Chairman. Of the four, at least one must be a lawyer, at least two must be non-accountants and at least one must be an accountant. A lawyer may count as a non-accountant. Accountants shall not be in the majority.

(4) Appeal Committee shall have a quorum of four, including the Chairman or the Deputy Chairman (who shall be lawyers) and at least one other non-accountant and at least one accountant. If both the Chairman and the Deputy Chairman are present, the Deputy Chairman shall count as a non-accountant. Accountants shall not be in the majority.

(5) Each Panel member shall be eligible to sit as a member of each of the Disciplinary, Admissions and Licensing and Appeal Committees, save that no Panel member shall be eligible to hear an appeal if he or she was a member of the committee which considered the case at first instance.

5. Powers and responsibilities of Disciplinary, Admissions and Licensing and Appeal Committees

Disciplinary Committee, Admissions and Licensing Committee and Appeal Committee shall have the powers and responsibilities as set out in Appendix 1 to these regulations, the powers and responsibilities included in the terms of reference for each committee as specified in Council standing orders, and the powers and responsibilities as otherwise provided in the bye-laws or in regulation or standing order (including these regulations) as made or amended by Council from time to time.

6. Compensation Committee

(1) Appointment

Council hereby confirms the appointment of the Compensation Committee, which shall remain in existence until such time as Council determines to discharge it. Council shall appoint individual members to the Compensation Committee as and when it, in its absolute discretion, determines in accordance with the procedures adopted by it from time to time and subject to the restrictions set out in standing orders. In particular, Council may appoint any person to fill a vacancy in the Compensation Committee, may appoint an additional member to the Compensation Committee and may remove any member of the Compensation Committee.

(2) Constitution and quorum

The Compensation Committee shall consist of a minimum of five members. Its quorum shall be three, at least one of whom shall be a non-accountant.

(3) Powers and responsibilities

The Compensation Committee shall have the powers and responsibilities set out in Appendix 1 to these regulations, the powers and responsibilities included in the terms of reference for the Compensation Committee as specified in Council standing orders, and the powers and responsibilities as otherwise provided in the bye-laws or in regulation or standing order (including these regulations) as made or amended by Council from time to time.

7. General

(1) Compliance with constitutional requirements

Each of the committees appointed pursuant to these regulations may continue to act, provided its meeting is quorate, notwithstanding that its composition does not comply with the requirements of these regulations. In such a case, Council shall, as soon as practicable, use its powers to ensure compliance with the requirements of these regulations.

(2) Remuneration for assessors, regulatory assessors and committee members

Council may provide for the payment of remuneration to and the reasonable expenses of any assessor, regulatory assessor, member of the Panel, the Appointments Committee, and any member of the Compensation Committee who is not a member of Council, in each case in accordance with the principles laid down by Council from time to time.

2.5 Committee Regulations

(3) Telephone meetings

Meetings of any committee may be held by telephone conference, video conference or by other similar means provided all persons notionally attending the meeting are able to hear and be heard by all the other participants.

(4) Divisions

All committees appointed pursuant to these regulations shall have power to meet as divisions. Any division shall, provided it is quorate, have full power to act as the committee in question. For the avoidance of doubt, more than one division of a single committee may meet at the same time.

(5) Majority decisions

Except as otherwise provided by these regulations, all decisions of committees of Council shall be determined by a majority of the votes of the members of the committee present, with each member having one vote. In the case of an equality of votes, the Chairman of the relevant committee shall have a second or casting vote.

(6) Duty to co-operate

Members and relevant persons shall promptly comply with any request made by, and co-operate with, any committee appointed pursuant to these regulations in the performance of any of its responsibilities and the exercise of any of its powers.

(7) Decisions between meetings

The Chairman of each of the committees appointed pursuant to these regulations shall have the power to take decisions, relating to procedural matters, between meetings of his committee. Such decisions shall be reported to the next meeting of the relevant committee.

Appendix 1

1. Disciplinary Committee

The Disciplinary Committee shall have the powers and responsibilities set out in The Chartered Certified Accountants' Disciplinary Regulations 2001 and shall have the power to do anything which it deems to be necessary or desirable in connection therewith.

2. Compensation Committee

The Compensation Committee shall have the powers and responsibilities as set out in The Chartered Certified Accountants' Financial Services Compensation Regulations 1996.

3. Admissions and Licensing Committee

(1) Responsibilities

The Admissions and Licensing Committee shall be responsible for performing all the functions ascribed to it in The Chartered Certified Accountants' Membership Regulations 1996, The Chartered Certified Accountants' Authorisation Regulations 1998, The Chartered Certified Accountants' Global Practising Regulations 2003, The Chartered Certified Accountants' Irish Investment Business Regulations 1999, The Chartered Certified Accountants' Designated Professional Body Regulations 2001, and all matters related or incidental thereto.

(2) Powers

- (a) For the purposes of discharging its responsibilities, the Admissions and Licensing Committee shall have power to:
 - (i) require any relevant person to produce, at a time and place to be fixed by the Admissions and Licensing Committee, the accounting and other records of the relevant person, any other necessary documents, and to supply any other information and explanations relevant to the matter in question;
 - (ii) enter the business premises of any relevant person on such notice (if any) as the Admissions and Licensing Committee may think appropriate;
 - (iii) interview any employee or officer of a relevant person;
 - (iv) require the attendance at specified premises, upon reasonable notice, of any employee or officer of a relevant person;
 - (v) require any relevant person to attend before the Admissions and Licensing Committee on reasonable notice;
 - (vi) appoint any person as its agent or delegate for the purposes of carrying out any of the matters as referred to in paragraph 2(a)(i) or (ii) above;
 - (vii) appoint any one or more of its members or any officer of the Association or any regulatory assessor as its agent or delegate for the purpose of carrying out any of its responsibilities and exercising any of its powers.

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- (b) Every requirement made by the Admissions and Licensing Committee under this regulation shall be made in writing and given to him personally or sent by post or courier to the relevant person at his or its registered or last known place of address and, when so made and sent, shall be deemed to have been received by the relevant person within 72 hours (excluding Saturdays, Sundays, Bank and Public Holidays) after the time of despatch.

4. Appeal Committee

(1) Responsibilities

The Appeal Committee shall be responsible for hearing and determining appeals from the decisions of the Disciplinary and the Admissions and Licensing Committees in accordance with The Chartered Certified Accountants' Disciplinary Regulations 2001, The Chartered Certified Accountants' Membership Regulations 1996, or any other regulations and/or rules as may be relevant to the circumstances in question.

(2) Powers

The Appeal Committee shall have all the powers of the Disciplinary and the Admissions and Licensing Committees in discharging its responsibilities under these regulations, or any other regulations and/or rules as may be relevant to the circumstances in question.

5. Sharing of information and co-operation

(1) Any committee of Council appointed under these regulations may co-operate with other bodies in accordance with prevailing legislation, such co-operation to include, without limitation, the sharing of information and the observance of committee meetings. Such bodies include, without limitation:

- (a) any bodies having statutory responsibility for the regulation of a relevant person;
- (b) any bodies having statutory responsibility for the prevention or detection of crime, the apprehension or prosecution of offenders, or the assessment or collection of any tax or duty or of any imposition of a similar nature;
- (c) any bodies having statutory responsibility for matters of public protection.

(2) Any committee of Council appointed under these regulations may co-operate with Council and with any responsible officer or other committee of the Association; such co-operation to include, without limitation, the sharing of information and the observance of committee meetings.

(3) Any committee of Council appointed under these regulations may share information with the relevant person's professional indemnity and (if different) fidelity guarantee insurers and, in the case of insolvency practice, the relevant person's enabling bond insurer, on the basis that the recipient treats the information as confidential.

(4) Save as provided by paragraphs 5(1) to (3), all records and other documents produced to a committee in exercise by it of its powers hereunder shall be treated by the committee as confidential.

2.6

The Chartered Certified Accountants' Authorisation Regulations 1998

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 4, 5, 6, 27 and 28 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

- (1) These regulations may be cited as The Chartered Certified Accountants' Authorisation Regulations 1998.
- (2) These regulations as amended as set out herein shall come into force on 1 January 2008.
- (3) These regulations shall apply to all members and to all persons who otherwise agree to be bound by them.
- (4) These regulations may be amended by resolution of Council.

2. Interpretation

- (1) In these regulations, unless the context otherwise requires:

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

Appeal Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

applicant means a person who or which has applied or is in the course of applying to the Association for or to renew a certificate;

application means an application for or to renew a certificate submitted by an applicant;

Appointments Committee means the committee appointed by Council pursuant to bye-law 28 and referred to in these regulations;

Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

auditing certificate means a certificate issued by the Association and referred to in the Practising Regulations;

bye-laws means the bye-laws from time to time of the Association;

2.6 Authorisation Regulations

certificate means all or any of a practising certificate, auditing certificate, insolvency licence, and investment business certificate (Ireland);

committee officer means any officer of the Association (whether official, servant or agent, and whether employed by the Association or otherwise) with responsibility for the administration of the Admissions and Licensing Committee;

company includes any body corporate;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

employee means an individual who is employed in connection with the firm's business under a contract of service or under a contract for services such that he is held out as an employee or consultant of the firm and includes an appointed representative of the firm;

Financial Regulator means the Irish Financial Services Regulatory Authority (IFSRA);

firm means a sole practice, partnership, or body corporate including a limited liability partnership;

insolvency licence means the licence granted by the Association to one of its members to act as an insolvency practitioner;

insolvency practitioner means a person authorised to act as such in accordance with section 390(2) of the Insolvency Act 1986 of the United Kingdom;

investment business certificate (Ireland) means the certificate referred to in the Practising Regulations issued in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 1999;

member means an individual admitted to membership of the Association pursuant to the bye-laws;

officer means, in relation to a firm which is a partnership, a partner, in relation to a firm which is a limited liability partnership, a member, and in relation to a firm which is a company, a director;

practising certificate means a practising certificate issued by the Association and referred to in regulation 5(1) of The Chartered Certified Accountants' Global Practising Regulations 2003;

Practising Regulations means The Chartered Certified Accountants' Global Practising Regulations 2003;

registered student has the meaning ascribed to it in The Chartered Certified Accountants' Membership Regulations 1996;

regulatory assessor means an independent person so appointed by the Appointments Committee in accordance with The Chartered Certified Accountants' Committee Regulations 2001 and referred to in these regulations;

relevant person means an individual and a firm who or which has undertaken with the Association to abide by and be bound by, inter alia, all or some of these regulations;

Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "his" shall include "its" where the context requires.

(3) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act, 1937 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

(4) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

(5) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

3. Applications for certificates

(1) Form of application

- (a) An applicant must apply in writing in such form and give such undertakings and pay such fees as may be prescribed from time to time by Council.
- (b) It shall be for an applicant to satisfy the Admissions and Licensing Committee that he or it is eligible for the certificate applied for in accordance with the Practising Regulations, or, in the case of an investment business certificate (Ireland), the Irish Investment Business Regulations 1999.

(2) Procedure

- (a) Applications for a certificate shall be considered by the Admissions and Licensing Committee. The Admissions and Licensing Committee may require the applicant to provide any additional information required at any time after receipt of the application and before a decision is finally made in respect of the application.
- (b) Any information provided by the applicant shall, if the Admissions and Licensing Committee so requires, be verified in such a manner as the Admissions and Licensing Committee may specify.
- (c) The Admissions and Licensing Committee may additionally take into account any other information which it considers appropriate in relation to the applicant, provided such information is disclosed to the applicant where such a disclosure does not constitute a breach by the Admissions and Licensing Committee of any duty to any other person.
- (d) The applicant may, not less than 7 days (or such shorter time as the Admissions and Licensing Committee may, in exceptional circumstances, accept) prior to the time the

2.6 Authorisation Regulations

Admissions and Licensing Committee is due to make a decision on the application, serve on the Admissions and Licensing Committee any additional information and/or written comments or submissions for the Admissions and Licensing Committee's consideration.

- (e) Where the Admissions and Licensing Committee deems it appropriate to have regard to the finding of any other body in its consideration of an application, any finding which has not been set aside on appeal or otherwise shall be regarded as conclusive proof of the fact that it has been made and shall not be re-opened by the Admissions and Licensing Committee unless the Admissions and Licensing Committee in its absolute discretion determines otherwise.
- (f) After consideration of all of the information provided by the applicant and/or the applicant's comments or submissions, the Admissions and Licensing Committee shall make a decision on the application.

(3) The Admissions and Licensing Committee's decision

- (a) The Admissions and Licensing Committee may:
 - (i) grant the application;
 - (ii) refuse the application;
 - (iii) grant the application subject to such condition(s) as it considers appropriate; or
 - (iv) adjourn consideration of the application.
- (b) The Admissions and Licensing Committee may accept undertakings from any person as a condition of issuing a certificate.

(4) The hearing

- (a) Before making a decision under regulation 3(3), the Admissions and Licensing Committee shall consider the matter at a hearing. It shall determine the date of the hearing and shall give the applicant at least 21 days prior written notice of the date set unless a shorter period of notice is agreed between the applicant and the Association.
- (b) The applicant and the Association may appear at the hearing in person and/or by solicitor, counsel or other representative and may call witnesses who may give evidence and be cross-examined. The Admissions and Licensing Committee may, at any time, ask questions of the applicant, the Association, any representative or any witness, and shall announce its decision at the hearing.

(5) Communication of the decision

The Admissions and Licensing Committee shall notify the applicant in writing within 14 days of its decision, and a written statement of the reasons for the decision shall be given to the applicant within 21 days, or such longer period as shall be necessary in the circumstances.

(6) Application granted

- (a) When an application is granted, the applicant shall be issued with the certificate applied for. Where an application is granted subject to conditions, the applicant shall be issued with a certificate once any conditions attaching to its grant have been satisfied or issued with a certificate with the conditions noted on the certificate as appropriate, or issued with a certificate subject to conditions otherwise notified to the applicant in writing.
- (b) A certificate issued to a firm shall be in the name in which he or it carries on his or its practice and shall authorise the carrying on by him or it of the activities to which the certificate relates. A certificate issued to a partnership shall be issued in the partnership name and shall authorise the carrying on of the activities to which the certificate relates in that name:
 - (i) by the partnership to which the certificate is issued; and
 - (ii) by any partnership which succeeds to that business;
 - (iii) by any person who succeeds to that business having previously carried it on in partnership.
- (c) If there is a dissolution of a partnership to which a certificate has been issued and more than one firm subsequently claims to be the successor to the business of the partnership, the certificate shall be treated as having been withdrawn at the expiration of 28 days from the date of dissolution.
- (d) The authority conferred by a certificate shall, subject to these regulations, extend to the activities to which the certificate relates which are conducted by any individual in his capacity as an officer, employee or appointed representative of the firm.

(7) Certificates

- (a) Certificates shall be in such form as Council shall determine subject to compliance with any specific requirements of the Financial Regulator in respect of an investment business certificate (Ireland).
- (b) Certificates shall not be invalidated solely by reason of a clerical error on behalf of the Association or by reason of any failure to follow any procedural requirements of these regulations.

(8) Administration charge

If an application is withdrawn by the applicant, the Admissions and Licensing Committee may charge the applicant such sum as seems reasonable to it to pay or contribute towards the cost of processing the application between its receipt by the Admissions and Licensing Committee and its withdrawal by the applicant but, subject to this, shall return any fee submitted with the application.

4. Validity and renewal

(1) Validity

Certificates shall be valid only from the date of issue to the date specified on the certificate unless the Admissions and Licensing Committee otherwise directs or unless, in the case of an investment business certificate (Ireland), the Admissions and Licensing Committee otherwise directs with the agreement of the Financial Regulator.

(2) Renewal

- (a) All certificates are renewable annually and any person wishing to renew a certificate held by him must make an application to do so in accordance with regulation 3.
- (b) Any person who holds a certificate in relation to a particular territory and who wishes to apply for the same type of certificate in respect of another territory will be entitled to a certificate relating to the new territory provided that:
 - (i) the eligibility criteria, as referred to in the Practising Regulations, relating to the new territory are no more onerous than the eligibility criteria in the area that the person currently practises; and
 - (ii) the person notifies the Admissions and Licensing Committee at least 28 days in advance of his application for a certificate in the new territory.

If the eligibility criteria in the new territory are more onerous than the criteria in the area in which the person currently practises, the person will be required to apply for a certificate as if he were making a new application.

5. Withdrawal of, suspension of, or imposition of conditions on certificates

(1) Discretionary grounds

The Admissions and Licensing Committee may, if in its absolute discretion it thinks fit, withdraw, suspend or impose conditions upon a certificate if:

- (a) the holder of the certificate so requests;
- (b) it appears that any false, inaccurate or misleading information concerning the holder of the certificate or any of his, or its partners, directors or controllers, as the case may be, has been supplied to the Association;
- (c) the holder of the certificate has failed to submit a properly completed application for renewal as required by regulation 4(2) or fails to comply with a request for information or otherwise to co-operate with the Admissions and Licensing Committee in the exercise of its powers and responsibilities under these regulations;
- (d) the holder of the certificate fails to comply with any condition imposed by the Association pursuant to these regulations;
- (e) where the holder of the certificate is a partnership, following its dissolution there is any doubt in the opinion of the Admissions and Licensing Committee as to the identity or existence of a successor firm;

- (f) it is notified or becomes aware that a holder of a certificate or any of its partners, members, directors or controllers has committed a material breach of any of these regulations or other rules and regulations or codes of practice to which he or they are subject (or were subject prior to 1 January 1998) in the carrying on of the activities to which the certificate relates or authorises; or
- (g) the holder of the certificate is not a fit and proper person to hold the certificate in question within the meaning of the Practising Regulations.

In determining whether to exercise its powers under regulation 5(1) the Admissions and Licensing Committee shall have regard to such matters as it considers relevant. Without limitation, in determining whether the holder of a certificate is a fit and proper person, the Admissions and Licensing Committee shall have regard to all or any of the matters referred to in the Practising Regulations.

(2) Withdrawal

The Admissions and Licensing Committee shall withdraw a certificate if:

- (a) it is notified or becomes aware that the holder of the certificate has ceased to be, or never was, eligible to be issued with the certificate and:
 - (i) if the Admissions and Licensing Committee considers, in its absolute discretion, that the situation is remediable and it is appropriate to do so, and the holder has been notified of this situation in writing and the situation has not been remedied within the period of time specified in the notice; and
 - (ii) for holders of auditing certificates only, if the holder is a firm which has ceased to be “controlled by qualified persons” within the meaning of the Practising Regulations, the period of three months has elapsed from the date it ceased to be so controlled;
- (b) where the holder is a partnership, it has been dissolved without succession, and where it is a body corporate, it has been liquidated or dissolved.

(3) The hearing

- (a) Before making a decision to withdraw or suspend a certificate under regulations 5(1) or 5(2), the Admissions and Licensing Committee shall consider the matter at a hearing. It shall determine the date of the hearing and shall give the holder of the certificate at least 21 days prior written notice of the date set unless a shorter period of notice is agreed between the holder of the certificate and the Association.
- (b) The holder of the certificate and the Association may appear at the hearing in person and/or by solicitor, counsel or other representative and may call witnesses who may give evidence and be cross-examined. The Admissions and Licensing Committee may, at any time, ask questions of the holder of the certificate, the Association, any representative or any witness, and shall announce its decision at the hearing.

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- (c) The holder of the certificate may, not less than 7 days (or such shorter time as the Admissions and Licensing Committee may, in exceptional circumstances, accept) prior to the hearing, serve on the Admissions and Licensing Committee such information, written comments, submissions and/or documents as he may wish to be drawn to the Admissions and Licensing Committee's attention.
- (d) The procedure to be adopted in relation to any hearing shall, subject to the foregoing paragraphs of this regulation 5(3), be such as the Admissions and Licensing Committee shall, in its absolute discretion, determine.

(4) Short notice hearings

- (a) In exceptional circumstances, the Association may request the Admissions and Licensing Committee to convene a hearing at less than 21 days' prior notice ("a short notice hearing").
- (b) At a short notice hearing, the Admissions and Licensing Committee shall consider at the outset the appropriateness of short notice, including without limitation whether there is sufficient evidence to demonstrate a real risk of damage to the interests of clients, creditors and/or the general public if action is not taken at short notice.
- (c) If it is of the view that it is justified in all the circumstances, the Admissions and Licensing Committee may in its absolute discretion order that the hearing either proceed (whether or not the holder of the certificate is present) or be adjourned for such period and under such directions as it sees fit.
- (d) If the hearing proceeds at short notice, the Admissions and Licensing Committee may suspend or impose conditions upon the certificate. It may not withdraw a certificate until such time as a hearing on normal notice has taken place, which shall be no later than 30 days after the date of the short notice hearing unless a longer period is agreed between the holder of the certificate and the Association.

(5) Suspension

The suspension of a certificate pursuant to regulation 5(1) shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with. While the certificate is suspended, it shall be deemed not to be held.

(6) Conditions

- (a) Conditions may be imposed upon a certificate under regulation 5(1) of a type and for as long as the Admissions and Licensing Committee considers appropriate.
- (b) The Admissions and Licensing Committee may, in accordance with regulation 3(2)(vii) of Appendix 1 to The Chartered Certified Accountants' Committee Regulations 2001, appoint any regulatory assessor as its agent or delegate for the purpose of carrying out any of its responsibilities and exercising any of its powers to impose conditions on certificates.

(7) Continuity

- (a) Where a certificate has been suspended or withdrawn, the Admissions and Licensing Committee may order that the holder of the certificate request his continuity nominee to take responsibility for his practice.
- (b) In addition, where an insolvency licence has been suspended or withdrawn, the Admissions and Licensing Committee may order that the Association procure that an application is made to the Court to transfer any appointments held by the practitioner to his continuity nominee or other individual.

(8) Consideration of future applications

In addition to or in place of the withdrawal of, suspension of, or attachment of conditions to a certificate under regulation 5(1), the Admissions and Licensing Committee may specify that no future application for a certificate by the applicant will be entertained for a specified period or until the occurrence of a specified event.

(9) Notification

Formal written notice of any decision made by the Admissions and Licensing Committee under regulation 5 shall be given to the relevant person within 14 days of the decision, and a written statement of the reasons for the decision of the Admissions and Licensing Committee shall be given to the relevant person within 21 days, or such longer period as shall be necessary in the circumstances.

(10) Guidance

The Admissions and Licensing Committee may take instructions from the Financial Regulator concerning any of the matters listed in Part VII of the Investment Intermediaries Act, 1995 of the Republic of Ireland in respect of its responsibility for the issue or withdrawal of an investment business certificate (Ireland).

6. Imposition of conditions on certificates by a regulatory assessor

(1) Referral to a regulatory assessor

The regulatory assessor may, under regulation 5(6)(b) for the purpose of carrying out any of the Admissions and Licensing Committee's responsibilities and exercising any of its powers, impose conditions on certificates.

(2) Imposition of conditions on certificates by a regulatory assessor

The regulatory assessor may, if in his absolute discretion he thinks fit, impose conditions upon a certificate if:

- (a) the holder of the certificate so requests;
- (b) it appears that any false, inaccurate or misleading information concerning the holder of the certificate or any of his or its partners, directors, controllers or members, as the case may be, has been supplied to the Association;

2.6 Authorisation Regulations

- (c) the holder of the certificate has failed to submit a properly completed application for renewal as required by regulation 4(2) or fails to comply with a request for information or otherwise to co-operate with the regulatory assessor in the exercise of its powers and responsibilities under these regulations;
- (d) the holder of the certificate fails to comply with any condition imposed by the Association pursuant to these regulations;
- (e) where the holder of the certificate is a partnership, following its dissolution there is any doubt in the opinion of the regulatory assessor as to the identity or existence of a successor firm;
- (f) the Association is notified or becomes aware that a holder of a certificate or any of its partners, members, directors or controllers has committed a material breach of any of these regulations or other rules and regulations or codes of practice to which he or they are subject (or were subject prior to 1 January 1998) in the carrying on of the activities to which the certificate relates or authorises; or
- (g) the holder of the certificate is not a fit and proper person to hold the certificate in question within the meaning of the Practising Regulations.

In determining whether to exercise his powers under regulation 6(2) the regulatory assessor shall have regard to such matters as he considers relevant. Without limitation, in determining whether the holder of a certificate is a fit and proper person, the regulatory assessor shall have regard to all or any of the matters referred to in the Practising Regulations.

(3) The regulatory assessor's decision

The regulatory assessor may:

- (a) consider no regulatory action is necessary; or
- (b) impose conditions on the holder of a certificate; or
- (c) refer the case to the Admissions and Licensing Committee.

(4) Communication of the decision

The regulatory assessor's decision shall be notified to the holder of a certificate and shall include a written statement of the reasons for his decision.

(5) Right of referral to the Admissions and Licensing Committee

- (a) The holder of a certificate shall have the right to have his case referred to the Admissions and Licensing Committee for its consideration at a hearing if he disagrees with the decision of the regulatory assessor to impose conditions on a certificate.
- (b) If the holder of a certificate wishes to exercise his rights under sub-paragraph (a) above, he shall notify the Association in writing within 30 days of receiving the notification of the regulatory assessor's decision. Such notification shall include a description of the aspects of the decision the holder of a certificate disagrees with and why.

- (c) The Association shall have the right to have the case referred to the Admissions and Licensing Committee for its consideration at a hearing if it disagrees with the decision of the regulatory assessor.
- (d) If the Association wishes to exercise its rights under sub-paragraph (c) above, the Association shall notify the holder of a certificate in writing within 30 days of receiving the notification of the regulatory assessor's decision. Such notification shall include which aspects of the decision the Association disagrees with and why.
- (e) Regulations 5(3) to 5(4) shall apply to a hearing convened pursuant to regulations 6(5)(a) or 6(5)(c).

7. Correction of errors

(1) Where the order and/or written statement of the reasons for the decision of the Admissions and Licensing Committee contains an accidental error or omission, a party may apply by way of an application notice for it to be corrected. The application notice shall describe the error or omission and state the correction required.

(2) The Chairman of the Admissions and Licensing Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(3) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(4) If the application is opposed, it should be heard by the same Admissions and Licensing Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.

(5) The Admissions and Licensing Committee may of its own volition vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

8. Appeals, effective date and publicity

(1) Appeals procedure

A person ("the appellant") aggrieved by any decision of the Admissions and Licensing Committee notified to him or it or made pursuant to regulations 3(3) and 5 of these regulations may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in The Chartered Certified Accountants' Appeal Regulations 2006 (hereafter referred to as "the Appeal Regulations"). Any such appeal shall be dealt with in accordance with the Appeal Regulations.

The Association may appeal against a decision of the Admissions and Licensing Committee in accordance with the Appeal Regulations.

2.6 Authorisation Regulations

(2) Effective date

Any decision made by the Admissions and Licensing Committee pursuant to regulations 3 or 5 shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations unless:

- (i) the appellant shall duly give notice of appeal prior to the expiry of such period in which case it shall become effective (if at all) as described in the Appeal Regulations; or
- (ii) the Admissions and Licensing Committee directs that, in the interests of the public, the order should have immediate effect, subject to its being varied or rescinded on appeal as described in the Appeal Regulations.

(3) Publicity

The Admissions and Licensing Committee shall give advance publicity of any oral hearing taking place in accordance with these regulations in such terms and manner as it thinks fit, save that in any such advance publication no relevant person shall be named.

Where the Admissions and Licensing Committee has withdrawn a certificate or certificates pursuant to these regulations, the decision may, as soon as it has become effective, be published in such a manner as it thinks fit and, unless in exceptional circumstances the Admissions and Licensing Committee otherwise directs, in such publication the relevant person shall be named and the decision made stated.

(4) Open hearings

Oral hearings before the Admissions and Licensing Committee shall be open to the public unless the Admissions and Licensing Committee determines that the public shall be excluded from all or any part of the hearing on any one or more of the following grounds:

- (i) in the interests of morals, public order or national security in a democratic society;
- (ii) where the interests of juveniles or the protection of the private lives of the parties so require; or
- (iii) to the extent strictly necessary in the opinion of the Admissions and Licensing Committee in special circumstances, where publicity would prejudice the interests of justice.

9. Re-application

(1) Any former certificate holder may re-apply for a certificate. Such application should be made in the same manner as the original application and will be considered by the Admissions and Licensing Committee in the ordinary way, and in accordance with regulation 3 above, save that:

- (a) the Admissions and Licensing Committee shall have specific regard to the circumstances in which he previously ceased to be a certificate holder, and

- (b) the Admissions and Licensing Committee may, in its absolute discretion, require him to pass further examinations and/or tests and/or satisfy other requirements before it considers his application for a new certificate.

(2) No former certificate holder who has been the subject of a decision made pursuant to these regulations specifying that no future application for a certificate by the applicant will be entertained for a specific period or until the occurrence of a specified event, may do so prior to the expiry of such period or the occurrence of such event.

10. General

(1) Notices

- (a) Any notice or other document required to be given to a relevant person may be given to him personally or by sending it by post or courier to his or its registered place or address. If the relevant person has no registered address any notice or document should be sent by post or courier to the relevant person's address last known to the Association. Any such notice or document so sent shall be deemed to have arrived within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.
- (b) Any notice or document required to be given to the Association may be given by sending it to the Committee Officer at the principal office of the Association.

(2) Hearings

Where a matter is to proceed by way of a hearing in accordance with these regulations, and is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Admissions and Licensing Committee or the Secretary may, at their discretion, direct that any hearing before the Admissions and Licensing Committee take place in that country. In the absence of any such direction, hearings before the Admissions and Licensing Committee shall take place in London.

(3) Legal adviser

The Admissions and Licensing Committee may, at any time, instruct a solicitor or barrister to act as its legal adviser, and the legal adviser shall be entitled to attend any hearing.

(4) Waivers

Pursuant to various regulations of the Association, the Admissions and Licensing Committee may consider applications for waivers, variations or suspensions of such regulations.

(5) Adjournments

- (a) Either party to a hearing may make a written request to the Admissions and Licensing Committee that the application be adjourned to a future meeting. Such a request will be considered at the outset of the hearing and the Admissions and Licensing Committee may, in its absolute discretion, agree to the request.

2.6 Authorisation Regulations

- (b) Any such request made in advance of the hearing shall be considered by the Chairman of the Admissions and Licensing Committee, who may in his absolute discretion agree to the request. If such a request is denied by the Chairman, it shall be considered at the outset of the hearing by the other members of the Admissions and Licensing Committee in accordance with regulation 10(5)(a) above.
- (c) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Admissions and Licensing Committee may itself direct that the case should be adjourned.
- (d) The Admissions and Licensing Committee may impose such conditions as it may determine upon the grant of an adjournment.
- (e) The Admissions and Licensing Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning a relevant matter are pending to which the applicant is a party.

2.7

The Chartered Certified Accountants' Disciplinary Regulations 2001

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

- (1) These regulations may be cited as The Chartered Certified Accountants' Disciplinary Regulations 2001.
- (2) These regulations as amended as set out herein shall come into force on 1 January 2008.
- (3) These regulations shall apply to all persons subject to bye-laws 8 to 11.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

AADB means the Accountancy and Actuarial Discipline Board;

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

allegations has the meaning ascribed to it in regulation 3(2);

Appointments Committee means the committee appointed by Council pursuant to bye-law 28 and referred to in these regulations;

assessor means an independent person so appointed by the Appointments Committee in accordance with The Chartered Certified Accountants' Committee Regulations 2001 and referred to in these regulations;

the *Association* means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

bye-laws means the bye-laws from time to time of the Association;

case presenter has the meaning ascribed to it in regulation 5(4)(c);

certificate means all or any of a practising certificate, auditing certificate, insolvency licence, and investment business certificate (Ireland);

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complainant means any person or persons who bring to the attention of the Association any matters, acts or circumstances which appear to render a relevant person liable to disciplinary action;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

Designated Professional Body Regulations means The Chartered Certified Accountants' Designated Professional Body Regulations 2001;

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

Disciplinary Committee and *Appeal Committee* mean the committees of Council appointed pursuant to regulations made under bye-law 28;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

investigating officer means the Secretary or other officer of the Association charged with the responsibility of investigating matters and performing the other functions described in these regulations;

investment business certificate (Ireland) means the certificate referred to in the Practising Regulations issued in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 1999;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

order means any order of the Disciplinary Committee made under regulation 5, and includes any direction as to the payment of a sum in respect of costs to or by the Association and as to the publicity to be given to such an order and shall include any finding, term or condition in consequence of or upon which the order is made and shall include where the context requires more than one such order;

practising certificate means a practising certificate issued by the Association and referred to in regulation 5(1) of the Chartered Certified Accountants' Global Practising Regulations 2003;

privileged material means communications between a legal adviser, his client or any person representing his client and any other person together with any enclosure or attachment with such communication created either (a) in connection with the giving of legal advice to the client, or (b) in connection with or in contemplation of legal proceedings and for the purposes of those proceedings: save that a communication or item shall not be privileged material if it is created or held with the intention of furthering a criminal purpose;

registered student has the meaning ascribed to it in The Chartered Certified Accountants' Membership Regulations 1996;

relevant person means a member and any other person (whether an individual or a firm and (without limitation) including a registered student) who has undertaken with the Association to abide by and be bound by, inter alia, the bye-laws and these regulations;

report means a statement of the allegations together with a summary of the relevant facts and provisions of the rules, together with such documentary evidence in the possession of the investigating officer as he may consider to be relevant to the allegations;

Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council;

specified person means, in relation to a firm which is a partnership, any partner in that firm, in relation to a firm which is a limited liability partnership, any member in that firm, and in relation to a firm which is a body corporate, any director of that firm.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "his" shall include "its" where the context requires.

(3) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

3. Investigation of cases

(1) Investigation by investigating officer

The investigating officer shall consider and, if he considers it appropriate, investigate any matters, acts or circumstances that may come to his attention which appear to render a relevant person liable to disciplinary action. The investigating officer may seek such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his investigation and such advice may, if he so decides, be included as evidence in the case.

(2) Comments of the relevant person

In the event that the matter is investigated as described in regulation 3(1), the investigating officer shall notify the relevant person of the allegations he is minded to investigate in light of the matters, acts or circumstances that have come to his attention and invite the relevant person to comment in writing upon the allegations.

(3) Duty to co-operate

- (a) Every relevant person is under a duty to co-operate with the investigation into the allegations. Co-operation includes providing promptly such information, books, papers or records as the investigating officer may from time to time request to assist him in the investigation. Failure to co-operate with the investigation shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.
- (b) A relevant person is not permitted to make a charge to the complainant for the cost of co-operating with the investigating officer.

(4) Privileged material

Nothing in these regulations shall require the relevant person to produce, disclose or permit inspection of privileged material.

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(5) Deferral of investigation

The investigation of the matter may, if the investigating officer so decides, be deferred if the relevant person so requests or the investigating officer otherwise decides it is appropriate to do so, such as where criminal or civil proceedings concerning a relevant matter are pending to which a relevant person is a party.

4. The decision

(1) Decision of the investigating officer

- (a) If the investigating officer considers in all the circumstances that the investigation should be concluded without referral to an assessor, or direct to the Disciplinary Committee, the investigating officer shall notify the relevant person and the complainant accordingly, giving reasons for his decision, and no record of the allegations for disciplinary purposes shall be retained on the relevant person's file after the expiry of the period for review under regulation 4(5).
- (b) Save as provided under regulation 4(1)(a), the investigating officer shall cause a report to be prepared in respect of any allegations against a relevant person and shall invite the relevant person to comment in writing upon the report.
- (c) Unless the investigating officer determines that it is in the public interest for the allegations to be adjudicated upon urgently, the report shall be sent by the investigating officer to an assessor. Where the investigating officer determines that it is in the public interest for the allegations to be adjudicated upon urgently, the investigating officer shall not provide the report to an assessor but shall provide the report direct to the Disciplinary Committee for consideration at the next available hearing for a substantive determination of the case, upon notice being given in accordance with regulation 5(1).

(2) Decision of the assessor

- (a) The assessor shall consider the report and shall determine whether or not there is a case to answer against the relevant person. The assessor may, in his discretion, amend, add to and/or delete any or all of the allegations made against the relevant person.
- (b) If the assessor is unable to determine whether there is a case to answer against the relevant person, the assessor may, if he so chooses, seek further evidence or such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his review, including advice from one or more other assessors, and may adjourn his review for that purpose.
- (c) The relevant person against whom the allegations are made is under a duty to co-operate with the assessor in his review of the allegations. Co-operation includes providing promptly such information, books, papers or records as the assessor may from time to time request to assist him in his review. Failure to co-operate with the assessor shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

- (d) Before reaching his decision the assessor shall be satisfied that the relevant person has been invited to comment in writing upon the allegations against him and upon the report prepared by the investigating officer.

(3) No case to answer

If the assessor determines that there is no case to answer against a relevant person, he shall give reasons for his decision and the relevant person and the complainant shall be notified accordingly and no record of the allegations for disciplinary purposes shall be retained on the relevant person's file after the expiry of the period for review under regulation 4(5).

(4) Case to answer

- (a) If the assessor determines that there is a case to answer against a relevant person, the assessor shall decide whether:
 - (i) the case should be referred to the Disciplinary Committee and, if so, what allegations should be proceeded with; or
 - (ii) the allegations should rest on the relevant person's file, in which case he shall give reasons for his decision.
- (b) In addition, the assessor may refer a case to the practice monitoring department of the Association, in which case he shall give reasons for his decision.
- (c) Without limitation, in reaching his decision, an assessor shall be entitled to take into account any facts or matters which have been considered on previous occasions in relation to the relevant person concerned (in respect of which, although a case to answer had been found, no allegations were referred to the Disciplinary Committee) and if he decides to refer any allegations to the Disciplinary Committee, then the allegations may include all or any of the facts and matters which were previously considered.
- (d) The assessor's decision shall be notified to the relevant person and to the complainant.

(5) Complainant's right of review

- (a) Where the investigating officer, pursuant to regulation 4(1)(a), considers in all the circumstances that the investigation should be concluded without a referral to an assessor or direct to the Disciplinary Committee, the complainant shall have the right to have the investigating officer's decision reviewed by an assessor. The assessor may, if he so chooses, seek further evidence or such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his review, including advice from one or more other assessors, and may adjourn his review for that purpose. At the conclusion of his review, the assessor shall give reasons for his decision. The assessor shall have the power to direct the Association to prepare a report for consideration by a second assessor in accordance with regulations 4(1)(b) and (c), in which case he shall specify the allegations which should be the subject of the report.

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- (b) Where the assessor, pursuant to regulations 4(3) or 4(4)(a)(ii), decides that either there is no case to answer or there is a case to answer but the allegations should rest on file, the complainant shall have the right to have the decision reviewed by a second assessor. The second assessor shall be provided with a report, to include the first assessor's reasons for his decision, the complainant's grounds for review and any further documentary evidence that has been obtained. The second assessor shall consider the report in accordance with regulations 4(2) to 4(4).
- (c) If the complainant wishes to exercise his rights under sub-paragraphs (a) or (b) above, he shall notify the Association in writing within 30 days of receiving notification of the decision. Such notification shall include the complainant's detailed grounds for review, setting out which aspects of the decision he disagrees with and why.
- (d) The investigating officer shall procure that the relevant person is notified that a review of the decision has been requested by the complainant and that accordingly the decision will be reviewed in accordance with this regulation 4(5).

(6) Referral to Disciplinary Committee

- (a) If an assessor decides to refer a case to the Disciplinary Committee, he shall procure that (1) a notice of the allegations and (2) a summary of the case setting out the relevant facts and matters relied on in support of the case and (3) a copy of the evidence are sent to the relevant person and placed before the Disciplinary Committee as soon as practicable.
- (b) In the event that new evidence is received in a case referred to the Disciplinary Committee, or for any other reason it is felt desirable by the case presenter for the assessor to reconsider a case referred to the Disciplinary Committee, the case may be referred back to the assessor for further consideration. In that event, the assessor shall have the same powers in relation to it as he had in respect of his initial consideration of the case.
- (c) The case presenter may at any time elect not to proceed with any of the allegations made against a relevant person, or defer proceeding with the allegations for a period of time, and shall endeavour to notify the relevant person of any such decision as soon as possible.

(7) Rest on file

If the assessor decides to rest a case on the relevant person's file, he shall notify the relevant person of the following:

- (a) the allegation(s) in respect of which he found a case to answer against the relevant person;
- (b) the fact that he has determined in all the circumstances not to refer the matter to the Disciplinary Committee but rather to rest the matter on the relevant person's file;
- (c) that the allegation(s) will be treated as rendering the relevant person liable to disciplinary action and that whilst no action in respect of the allegation(s) will be taken on this occasion, they may subsequently be referred to the Disciplinary

Committee in the event of a further allegation concerning the relevant person being considered by an investigating officer and/or an assessor;

- (d) that the relevant person may request that the allegation(s) be referred to the Disciplinary Committee if he so wishes and notifies the assessor accordingly within 30 days of his being so notified, in which case the assessor will refer the allegation(s) to the Disciplinary Committee and the first paragraph of regulation 4(6) shall apply; and
- (e) that the matter will rest on the relevant person's file for three years from the date of the assessor's written decision, unless the allegation(s) are referred to the Disciplinary Committee in accordance with regulation 4(7)(d) or the allegation(s) are reviewed by a second assessor in accordance with regulation 4(5)(b) and the decision of the first assessor is overturned.

Where the allegation(s) are referred to a second assessor in accordance with regulation 4(5)(b) and the second assessor upholds the decision of the first assessor to rest the matter on file, the matter will rest on the relevant person's file for three years from the date of the written decision of the first assessor.

(8) Further enquiries

After any case has been referred to the Disciplinary Committee, an assessor or investigating officer may make such further enquiries as he/they shall consider appropriate in order to assist in the preparation of the case to the Disciplinary Committee. It shall be the duty of the relevant person to co-operate with such enquiries and failure by the relevant person to do so shall constitute a breach of these regulations and may render him liable to disciplinary action.

5. Disciplinary Committee

(1) Provision of documents

On a case being referred to the Disciplinary Committee, the Association shall determine the date the case is to be heard and no later than 21 days before the date set the relevant person shall be provided with the following documents:

- (a) a notice describing the allegations against him and notifying him of the time and place fixed for the hearing of the case;
- (b) a summary of the case setting out the relevant facts and matters relied on in support of the case and a copy of the evidence to be relied on in the presentation of the case;
- (c) a paper summarising the procedure before the Disciplinary Committee and the Association's disciplinary process, in a form approved by the Disciplinary Committee; and
- (d) a letter inviting the relevant person to indicate whether or not he accepts all or any of the allegations made and whether or not he intends to attend the hearing and be represented and, if he accepts any of the allegations, inviting him to make such statements in mitigation as he may wish to be drawn to the Disciplinary Committee's attention.

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Such information may be provided at different times and supplemented as necessary from time to time.

In the event that the Association has not complied with the requirement to provide the relevant person with the documents no later than 21 days before the date set for the hearing, the Disciplinary Committee may, in its absolute discretion, provided that it is satisfied that the relevant person has received the documents and has not been prejudiced in the conduct of his case, order that the hearing shall proceed.

In exceptional circumstances, the Association may provide the documents above to the relevant person less than 21 days before the date set for the hearing ("an urgent hearing"). At an urgent hearing, the Disciplinary Committee shall consider at the outset the appropriateness of short notice and may in its absolute discretion, if it is of the view that it is justified in all the circumstances, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.

(2) Submission of documents

The relevant person may submit such documentary evidence as he may wish to be drawn to the Disciplinary Committee's attention, provided that any such documentary evidence must be submitted not less than 7 days prior to the hearing of his case. Documents submitted less than 7 days prior to the hearing will only be considered by the Disciplinary Committee in exceptional circumstances.

(3) Technical defects

At any stage in the proceedings the Disciplinary Committee may order that technical defects in a complaint be amended provided that the relevant person is not prejudiced in the conduct of his defence.

(4) Hearings, representation and adjournments

(a) Representation

At the hearing of his case, the relevant person shall be entitled to be heard before the Disciplinary Committee and/or to be represented by such person as he may wish.

(b) Proceeding in the absence of the relevant person

Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Disciplinary Committee is satisfied that he has been served with the documents referred to in regulation 5(1) in accordance with regulation 7(1).

(c) Case presenter

The case against the relevant person shall be presented to the Disciplinary Committee on behalf of the Association by such person as it may nominate (the "case presenter").

(d) Advisers to the Disciplinary Committee

The Disciplinary Committee may also instruct a solicitor or barrister to act as its legal adviser at the hearing of any case. At a hearing concerning a relevant person's state of health as described in regulation 6, the Disciplinary Committee may instruct a medical expert to act as its medical adviser.

(e) Adjournments

- (i) The relevant person or the case presenter may make a written request to the Disciplinary Committee that the hearing be adjourned to a future meeting. Such request shall be considered at the outset of the hearing and the Disciplinary Committee may in its absolute discretion agree to the request if it is of the view that it is justified in all the circumstances.
- (ii) Any such request made in advance of the hearing shall be considered as follows.

If the request is made after the provision of documents in accordance with regulation 5(1), it shall be considered by the Chairman of the Disciplinary Committee, who may in his absolute discretion agree to the request if he is of the view that it is justified in all the circumstances. If such request is denied by the Chairman, it shall be reconsidered at the outset of the hearing by the other members of the Disciplinary Committee in accordance with regulation 5(4)(e)(i).

If the request is made by the relevant person before the provision of documents in accordance with regulation 5(1), the Association may agree to the request. If the Association opposes the request, it shall be considered by the Chairman of the Disciplinary Committee in accordance with this regulation. If such request is denied by the Chairman, it shall be reconsidered at the outset of the hearing by the other members of the Disciplinary Committee in accordance with regulation 5(4)(e)(i).

- (iii) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Disciplinary Committee may itself direct that the case should be adjourned.
- (iv) The Disciplinary Committee may impose such conditions as it may determine upon the grant of an adjournment.
- (v) The Disciplinary Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning the allegations are pending to which the relevant person is a party.

(5) Indication whether allegations admitted

- (a) At the hearing of his case, if the relevant person is in attendance he shall be invited to indicate whether or not he admits each of the allegations made against him.

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- (b) If the relevant person is not in attendance, the Disciplinary Committee shall refer to any written response to the letter referred to in regulation 5(1)(d) or other correspondence or note of conversation indicating his admission or otherwise of the allegations made against him.

(6) Presentations where all allegations admitted

- (a) If the relevant person admits or (if he is not in attendance) the Disciplinary Committee finds that he has admitted all of the allegations made against him, the case against him will be presented in abbreviated form with the object of assisting the Disciplinary Committee in determining the seriousness of the case. If the relevant person is in attendance he will then be invited to respond to any of the comments made by the case presenter. The Disciplinary Committee will then make a formal finding to the effect that all the allegations made against the relevant person have been proved.
- (b) If the relevant person is in attendance he will then be invited to put forward any statement in mitigation. If he is not in attendance, reference will then be made to any statement in mitigation which he has previously made.
- (c) The Disciplinary Committee may at any time ask any question of the case presenter or the relevant person and, if the Disciplinary Committee considers it appropriate, may invite the complainant (if present) to comment.

(7) Presentations where one or more allegations not admitted

- (a) If the relevant person does not or (if he is not in attendance) has not admitted all of the allegations made against him, the case against him will be presented and the case presenter shall be entitled to call witnesses in support, who may include the complainant.
- (b) The relevant person may ask questions of the case presenter in order to clarify the case against him.
- (c) The relevant person shall then be invited to respond by presenting his defence and may also call witnesses in support.
- (d) Witnesses may be cross-examined by the relevant person and the case presenter. The case presenter may cross-examine the relevant person.
- (e) The case presenter and the relevant person may present closing submissions.
- (f) At the conclusion of the presentations, the Disciplinary Committee will retire to consider its verdict and return to announce its findings in respect of each of the allegations.
- (g) In deciding whether any of the allegations have been proved, the standard of proof to be applied by the Disciplinary Committee shall be the balance of probabilities.
- (h) If the Disciplinary Committee has found that any of the allegations has been proved, the relevant person will be invited (if he is in attendance) to make any statement in mitigation. If he is not in attendance reference will be made to any statement in mitigation previously provided by the relevant person. The Disciplinary Committee

may at any time ask questions of the case presenter, the relevant person or any witness and, if the Disciplinary Committee considers it appropriate, may invite the complainant (if present) to comment.

(8) Evidential material

The Disciplinary Committee shall be entitled to treat the judgment of any court (whether of a civil or criminal jurisdiction) as conclusive evidence of any findings of facts made in the judgment for the purpose of determining whether the relevant person has participated in any type of activity, whether of a professional nature or not, which is disreputable to the relevant person, the Association or the profession of accountancy as a whole.

(9) Orders

Once the Disciplinary Committee has announced its findings in relation to each of the allegations made against the relevant person, it shall be informed of any other matter in respect of which he has been disciplined by the Association.

When considering what orders to make, the Disciplinary Committee may also take account of existing decisions concerning similar cases as well as the arguments presented to it by the parties and the circumstances surrounding the misconduct or breach.

The Disciplinary Committee may make any one or more of the following orders against the relevant person or may order that no further action be taken where it determines that none of the following orders is appropriate in the circumstances:

- (a) if the relevant person is a member:
 - (i) that he be excluded from membership;
 - (ii) that he be severely reprimanded, reprimanded or admonished;
 - (iii) that he be fined a sum not exceeding £50,000;
 - (iv) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (v) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (b) if the relevant person is a firm:
 - (i) that it be severely reprimanded, reprimanded or admonished;
 - (ii) that it be fined a sum not exceeding £50,000;
 - (iii) that it pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that it waive or reduce its fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;

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- (c) if the relevant person is a registered student:
 - (i) that he be removed from the student register;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the student's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible for such period as shall respectively be specified in the order to sit for such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order;
 - (iv) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
 - (v) that he be severely reprimanded, reprimanded or admonished;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (d) if the relevant person is an affiliate:
 - (i) that he be removed from the affiliate register;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the affiliate's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible to be admitted to membership for such period as shall be specified in the order;
 - (iv) that he be severely reprimanded, reprimanded or admonished;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (e) if the relevant person is a former member or former firm:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) that he be fined a sum not exceeding £50,000;
 - (iii) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (f) if the relevant person is a former registered student:
 - (i) that he be severely reprimanded, reprimanded or admonished;

- (ii) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
- (iii) any of the orders set out in regulation 5(9)(h) where applicable;
- (g) if the relevant person is a former affiliate:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) any of the orders set out in regulation 5(9)(h) where applicable;
- (h) in all cases:
 - (i) that the relevant person produce any necessary documents and supply any other information and explanations relevant to the matter in question, whether by attendance upon reasonable notice before the Disciplinary Committee or otherwise;
 - (ii) that the relevant person allow any officer of the Association to enter the business premises of the relevant person on such notice (if any) as the Disciplinary Committee may think appropriate and interview any employee of the relevant person;
 - (iii) that the relevant person procure the attendance of any of his employees at specific premises, upon reasonable notice;
 - (iv) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the date of the order;
 - (v) only in conjunction with an order under regulation 5(9)(h)(iv), that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions specified in the order, until an order of the Admissions and Licensing Committee has been made;
 - (vi) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee;
 - (vii) in the case of a relevant person who is an individual, that the relevant person's membership be suspended until further order of the Disciplinary Committee or Appeal Committee;

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- (i) in all cases, that the hearing be adjourned and referred to a health hearing before a differently constituted Disciplinary Committee.

(10) *Conditions and costs*

- (a) Conditional order

Any order made by the Disciplinary Committee may be made upon such terms and conditions as the Disciplinary Committee may consider appropriate.

- (b) Compensation to be paid by the relevant person to the complainant

The Disciplinary Committee shall specify that any compensation to be paid to the complainant shall be remitted to the Association, for onward transmission to the complainant.

- (c) Costs to be paid by the relevant person to the Association

The Disciplinary Committee may direct that the relevant person pay such sum by way of costs to the Association as the Disciplinary Committee considers appropriate. In considering what sum shall be paid by way of costs, if any, the Disciplinary Committee shall take into account any effect the relevant person's actions in relation to the conduct of the case have had upon the costs of dealing with the case, whether beneficial or otherwise.

- (d) Costs to be paid by the Association to the relevant person

Where the Disciplinary Committee has not found any allegation proven against a relevant person, it may direct the Association to pay a sum to the relevant person by way of contribution to his costs incurred in connection with the case in such amount as the Disciplinary Committee shall in its discretion think fit.

- (e) Costs to be paid by the Association to the complainant

In exceptional circumstances, the Disciplinary Committee may direct the Association to pay a sum to the complainant by way of contribution to his costs incurred with the case in such amount as the Disciplinary Committee shall in its discretion think fit.

(11) *Notification*

The Disciplinary Committee shall announce its decision at the hearing and, where the relevant person is in attendance, shall inform him of his right to appeal to the Appeal Committee in respect thereof. Formal written notice of the terms of the order shall be notified to the relevant person within 14 days of the hearing and a written statement of the reasons for the decision of the Disciplinary Committee shall be given to the relevant person within 21 days or such longer period as shall be necessary in the circumstances.

(12) *Appeal*

- (a) A relevant person against whom any order has been made by the Disciplinary Committee may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in The Chartered Certified Accountants'

Appeal Regulations 2006 (hereafter referred to as “the Appeal Regulations”), save that no appeal shall lie solely on the question of costs. Any such appeal shall be dealt with in accordance with the Appeal Regulations.

- (b) The Association may appeal against a decision of the Disciplinary Committee, subject to the conditions and procedures set out in the Appeal Regulations.

(13) Correction of errors

- (a) Where the order and/or written statement of the reasons for the decision of the Disciplinary Committee contains an accidental error or omission, a party may apply by way of an application notice for it to be corrected. The application notice shall describe the error or omission and state the correction required.
- (b) The Chairman of the Disciplinary Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.
- (c) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.
- (d) If the application is opposed, it should be heard by the same Disciplinary Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.
- (e) The Disciplinary Committee may of its own volition vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

(14) Effective date

An order made by the Disciplinary Committee shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations unless:

- (a) the relevant person shall duly give notice of appeal prior to the expiry of such period in which case it shall become effective (if at all) as described in the Appeal Regulations; or
- (b) the order is made under regulation 5(9)(a)(i), 5(9)(a)(iii), 5(9)(b)(ii) or 5(9)(c)(i) and the Disciplinary Committee directs that, in the interests of the public, the order should have immediate effect, in which case it shall have immediate effect, subject to the order being varied or rescinded on appeal as described in the Appeal Regulations.

(15) Publicity

- (a) The Disciplinary Committee shall give advance publicity of its meetings, and of the hearing of any case by it, by way of a press release in such terms and manner as it thinks fit, save that in any such advance publication no relevant person shall be named.

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- (b) (i) The findings and order of the Disciplinary Committee shall, as soon as the order has become effective, be made available by way of a press release, provided that where the order is that no further action be taken, the findings and order shall only be made available by way of a press release if the relevant person so requests.
- (ii) Unless in exceptional circumstances the Disciplinary Committee otherwise directs, in such press release the relevant person shall be named and the findings and order made against him stated.
- (iii) The press release shall be sent to such publications as the Disciplinary Committee thinks fit.

(16) Open hearings

- (a) Meetings of the Disciplinary Committee shall be open to the public unless the Committee determines that the public shall be excluded from attending all or part of any meeting at any time, including during the hearing of any case by it, on any of any one or more of the following grounds:
 - (i) in the interests of morals, public order or national security in a democratic society;
 - (ii) where the interests of juveniles or the protection of the private lives of the parties so require; or
 - (iii) to the extent strictly necessary in the opinion of the Disciplinary Committee in special circumstances, where publicity would prejudice the interests of justice.
- (b) The Disciplinary Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its meetings and the procedure to be adopted in respect of any meeting shall, subject to the foregoing paragraphs of this regulation, be such as the Disciplinary Committee in its absolute discretion shall determine.

(17) Advice

In addition to any of the other things or acts the Disciplinary Committee may do, it may communicate with any relevant person with a view to assisting him with or alerting him to problems identified by the Disciplinary Committee and may advise him to obtain advice from a source specified by the Disciplinary Committee. Any failure by a relevant person to act in accordance with such a communication or advice may be noted on the relevant person's file.

6. Ill health

Where it is asserted on behalf of a relevant person, either during the course of an investigation or after a case has been referred to the Disciplinary Committee, that he is too ill to participate in the process ("the disciplinary process"), the relevant person may apply for an adjournment and the following regulations apply.

(1) Submission of evidence

- (a) Within seven days of the assertion that he is too ill to participate in the disciplinary process, the relevant person shall submit:
 - (i) medical evidence to support the assertion, including a prognosis and indication as to when, if at all, the relevant person would be well enough to participate in the disciplinary process; and
 - (ii) details of the arrangements he has made for the continuity of his practice during the period of his ill health.

(2) Deferral or withdrawal of the disciplinary process

- (a) The investigating officer shall have a discretion to defer the investigation, in accordance with regulation 3(5).
- (b) The case presenter shall have a discretion not to proceed with the allegations against the relevant person, in accordance with regulation 4(6)(c). For the purpose of this regulation, the decision may be to withdraw the allegations completely or defer proceeding with the allegations for a period of time.

(3) Right to require relevant person to be examined

At any time, the Association shall have the right to require the relevant person to be examined by a doctor or other medical professional of the Association's choice.

(4) Referral to health hearing

At any time, at the request of the Association or by order of the Disciplinary Committee, the question of the relevant person's fitness to participate in the disciplinary process shall be considered by the Disciplinary Committee at a health hearing (see regulation 6(5) below). This should be done in any event where the disciplinary process has, in the Association's view, been deferred for an unreasonable period of time with no agreement between the relevant person and the Association as to how to proceed. What will be an unreasonable period of time will depend on the circumstances of each case.

(5) Health hearing

- (a) It shall be for the relevant person to satisfy the Disciplinary Committee that he is unfit to participate in the disciplinary process.
- (b) If the relevant person is too ill to be present at the hearing, he may attend by way of telephone or video link.
- (c) The Association and the relevant person may submit documentary evidence (medical or otherwise) not less than seven days prior to the health hearing. Documents submitted less than seven days prior to the hearing will only be considered by the Disciplinary Committee in exceptional circumstances.
- (d) During the health hearing, the Disciplinary Committee shall be entitled to make a determination on the evidence before it of the allegations against the relevant person, for the purpose of deciding whether the seriousness of the allegations is such that it

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would be in the public interest to make an order under regulation 6(5)(e) and/or that the disciplinary process should be resumed notwithstanding the relevant person's assertion of ill health. Such determination shall be disregarded for the purposes of any subsequent disciplinary or appeal hearing before a differently constituted Committee.

- (e) The Disciplinary Committee may order that any certificate and/or licence issued to the relevant person by the Association and/or the relevant person's eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations be suspended or made subject to conditions for a specified period or until further order of the Disciplinary Committee or Appeal Committee. Such conditions may include, in the case of a sole practitioner, that the relevant person's continuity provider step in to run the practice and, in the case of a partner or co-director, that the relevant person take no part in the client work of the practice or business.
- (f) The Disciplinary Committee shall make an order as to whether the disciplinary process shall be resumed, withdrawn, or deferred for such period as it sees fit (but for no longer than six months) and brought before a further health hearing at that time if there has been no agreement between the Association and the relevant person as to how to proceed.
- (g) In addition to its powers under this regulation 6, the Disciplinary Committee shall have the power to make any one or more of the orders set out in regulation 5(9)(h) at a health hearing. It shall not have the power to make any of the orders set out in regulation 5(9)(a)–(g) at a health hearing.
- (h) The Disciplinary Committee shall specify whether any elements of its orders in sub-paragraphs (e) or (g) above are to have immediate effect regardless of any appeal that may be made by the relevant person. The Disciplinary Committee may not so specify in relation to an order under sub-paragraph (f).

(6) Publicity

Health hearings shall be heard in private, but the Disciplinary Committee's decision shall be subject to publicity in accordance with regulation 5(15).

(7) Right of appeal

There shall be a right of appeal from a decision of the Disciplinary Committee at a health hearing, in accordance with regulation 5(12).

(8) Applicability of Disciplinary Regulations

The other Disciplinary Regulations will apply to health hearings unless they conflict with any paragraph within regulation 6, in which case the relevant provision of regulation 6 shall take precedence.

7. General

(1) Notices

- (a) Any notice or other document required to be provided to a relevant person may be provided to him personally or sent by post or courier to his registered place of address. If the relevant person has no registered address any notice or document should be sent by post or courier to the relevant person's address last known to the Association. Any such notice or document so sent shall be deemed to have been provided within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.
- (b) Any notice or document to be provided to the Association may be provided by sending it to the investigating officer at the principal office of the Association.

(2) Payment

Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless Council otherwise agrees) and, where the relevant person the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

(3) Attendance

A relevant person may attend a hearing of the Disciplinary Committee where he is the relevant person concerned notwithstanding that he may have previously indicated that he did not intend to attend.

(4) Hearings

Where a case is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Disciplinary Committee or the Secretary may direct that the hearing before the Disciplinary Committee take place in that country. In the absence of any such direction, hearings before the Disciplinary Committee shall take place in London.

(5) Public interest cases

- (a) The Association shall refer a case to AADB where:
 - (i) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and
 - (ii) it considers that a relevant person may have committed an act of misconduct in relation to the case; and
 - (iii) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other AADB participant in relation to the conduct in question.

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- (b) Where the Association receives notice that AADB has decided to deal with a case relating to a relevant person, either in response to a referral under regulation 7(5)(a) or of its own volition, the Association shall suspend any investigation relating to the case and, upon AADB's request, provide to AADB any such documentary information in its possession or control which it can lawfully provide.
- (c) IAASA may undertake its own investigation into a case relating to a relevant person, if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.
- (d) It is the duty of all relevant persons to co-operate with the AADB and IAASA during the course of any investigations they may undertake. Failure to co-operate with the AADB or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

2.8

The Chartered Certified Accountants' Appeal Regulations 2006

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 2 to 6, 9, 27 and 28 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Appeal Regulations 2006.

(2) These regulations as set out herein shall come into force on 1 January 2008.

(3) These regulations shall apply to:

- (a) all members, affiliates and registered students and, to the extent that they are relevant, to former members, affiliates and registered students;
- (b) all persons subject to bye-laws 8 to 11; and
- (c) all persons who otherwise agree to be bound by them.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

AADB means the Accountancy and Actuarial Discipline Board;

Admissions and Licensing Committee, Disciplinary Committee and Appeal Committee mean the committees appointed by Council pursuant to regulations made under bye-law 28;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

appellant means a party appealing to the Appeal Committee against a decision made by the Disciplinary Committee or Admissions and Licensing Committee;

assessor means an independent person so appointed by the Appointments Committee in accordance with The Chartered Certified Accountants' Committee Regulations 2001 and referred to in these regulations;

the *Association* means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

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Authorisation Regulations means The Chartered Certified Accountants' Authorisation Regulations 1998;

bye-laws means the bye-laws from time to time of the Association;

case presenter has the meaning ascribed to it in regulation 9(3);

committee officer means any officer of the Association with responsibility for the administration of the Disciplinary Committee or Admissions and Licensing Committee;

complainant means any person or persons who bring to the attention of the Association any matters, acts or circumstances which appear to render a relevant person liable to disciplinary action;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

decision means any decision of the Admissions and Licensing Committee made under the Authorisation Regulations or Membership Regulations, and shall include where the context requires more than one such decision;

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

Disciplinary Regulations means The Chartered Certified Accountants' Disciplinary Regulations 2001;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

investigating officer means the Secretary or any other officer of the Association charged with the responsibility of investigating matters and performing the other functions described in the Disciplinary Regulations;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

Membership Regulations means The Chartered Certified Accountants' Membership Regulations 1996;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

order means any order of the Disciplinary Committee made under regulation 5 of the Disciplinary Regulations and any order of the Appeal Committee made under these regulations and includes any direction as to the payment of a sum in respect of costs to or by the Association and as to the publicity to be given to such an order and shall include any finding, term or condition in consequence of or upon which the order is made and shall include where the context requires more than one such order;

relevant person means a member and any other person (whether an individual or a firm and, without limitation, including a registered student) who has undertaken with the Association to abide by and be bound by, inter alia, the bye-laws and these regulations;

respondent means the person who is the opposite party in the appeal brought by the appellant;

Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "his" shall include "its" where the context requires.

(3) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

3. Appeal

(1) Any person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee may apply for permission to appeal within 30 days after service of the written statement of the reasons for the decision of such Committee (or such longer period as the Chairman of the Appeal Committee may allow where there is good reason for the appellant having failed to meet the time limit). No appeal shall lie solely on the question of costs.

(2) In exceptional circumstances, where there is a clear public interest in the decision being reviewed, the Association may apply for permission to appeal against a decision made by the Disciplinary Committee or Admissions and Licensing Committee within 14 days after service of the written statement of the reasons for the decision of such Committee.

4. Applying for permission to appeal

(1) An application for permission to appeal shall be made by filing with the committee officer an application notice in the form specified in regulation 5(1).

(2) Where an application notice is filed by the Association, the committee officer shall notify the respondent and supply a copy to him within 14 days. The respondent may submit grounds of opposition within 30 days thereafter.

5. Form of application notice and grounds of appeal

(1) The application notice:

- (a) shall be in writing addressed to the committee officer;
- (b) shall state the appellant's name and address;
- (c) shall state whether the appellant has authorised a representative to act for him in the appeal and, if so, state the representative's name and address;
- (d) shall state whether the appellant intends to appear at the hearing of the appeal if permission is granted;
- (e) in the case of an appeal from a decision made by the Disciplinary Committee, shall state whether the appellant appeals against one or more of its findings and orders or one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Disciplinary Committee failing;

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- (f) in the case of an appeal from a decision made by the Admissions and Licensing Committee, shall state which of the orders is appealed and shall state the orders which the appellant wishes the Appeal Committee to make;
- (g) shall state which of the grounds of appeal set out in this regulation 5 the appellant is putting forward in support of his application (and the grounds so stated shall not thereafter be amended except with the leave of the Appeal Committee);
- (h) shall state the reasons in support of each ground of appeal; and
- (i) may include any documents which the appellant wishes the Appeal Committee to take into account.

(2) An appeal by a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee may be successful only upon one or more of the following grounds:

- (a) the Committee made an error of fact or law, which would have altered one or more of the findings or orders made in the case;
- (b) the Committee misinterpreted any of the Association's bye-laws or regulations or any relevant guidance or technical standards, which would have altered one or more of the findings or orders made in the case;
- (c) the Committee failed to take into account certain relevant evidence, which would have altered one or more of the findings or orders made in the case;
- (d) there is new evidence not previously available, which would have altered one or more of the findings or orders made in the case;
- (e) the Committee's order is disproportionate and/or unreasonable in light of its findings;
- (f) the Committee's findings and/or order are unjust because of a serious procedural irregularity in the proceedings.

(3) An appeal by the Association against a decision of the Disciplinary Committee or Admissions and Licensing Committee may be successful only upon the ground that the decision was one that no Committee acting reasonably would have made.

6. Permission to appeal

(1) *Initial consideration of the application notice*

- (a) An application notice served by the Association shall be considered by the Appeal Committee in accordance with regulation 6(2).
- (b) An application notice served by any other party shall initially be considered by the Chairman of the Appeal Committee, who shall direct that either:
 - (i) the appeal shall proceed in accordance with regulation 7 because he is satisfied that the appeal would have a real prospect of success on one or more of the grounds under regulation 5(2) that are set out in the appellant's application notice; or

- (ii) the application notice shall be considered by the Appeal Committee in accordance with regulation 6(2).
- (c) Before making any direction under regulation 6(1)(b), or in conjunction with such a direction, the Chairman of the Appeal Committee may make such other directions as he deems to be necessary or desirable.
- (d) The Chairman of the Appeal Committee may limit his direction under regulation 6(1)(b)(i) to one or some of the grounds of appeal specified in the application notice. In such situation, the remaining grounds specified in the application notice shall be considered by the Appeal Committee in accordance with regulation 6(2) unless the appellant elects to withdraw those grounds.
- (e) The Chairman of the Appeal Committee shall not be permitted to sit on any Appeal Committee that he has directed to consider an application notice pursuant to regulation 6(1)(b)(ii). Nor shall he be permitted to sit on any Appeal Committee in relation to the case thereafter.

(2) Consideration of the application notice by the Appeal Committee

- (a) The application notice shall be considered by the Appeal Committee on the papers in private without a hearing; or, if the appellant or respondent requests to be heard, at a hearing. If the application notice is being considered on the papers, the Appeal Committee may at any time direct that the matter should be adjourned for consideration at a hearing in order to give the parties an opportunity to make oral submissions.
- (b) The Appeal Committee shall be supplied with:
 - (i) all the documents which had been placed before the Committee whose decision is the subject of the application notice;
 - (ii) the notice of the Committee's decision;
 - (iii) the statement of the Committee's reasons for its decision;
 - (iv) the application notice and any documents submitted with it;
 - (v) any written submissions that may have been made by the respondent at this time;
 - (vi) any other documents or information which the Appeal Committee may request.
- (c) If the appellant so requests, the Appeal Committee may grant permission to amend any ground of appeal submitted by the appellant for one or more of the grounds of appeal set out in regulation 5. The Appeal Committee may of its own volition amend the application notice to add one or more of the grounds of appeal set out in regulation 5.
- (d) The Appeal Committee may grant or refuse permission to appeal.
- (e) The Appeal Committee may limit its permission to one or more of the grounds of appeal specified in the application notice.

2.8 Appeal Regulations

- (f) If the Appeal Committee grants permission to appeal, that same Committee may proceed to hear the appeal immediately thereafter, or at such convenient time as the Committee may direct, provided that all parties to the appeal give their explicit consent.
- (g) Before making a decision under this regulation 6(2), or in conjunction with such a decision, the Appeal Committee may make such directions as it deems to be necessary or desirable.

(3) Decision where the appellant is a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee

Where the application notice has been filed by a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee, the Appeal Committee may grant permission to appeal only if it is satisfied that either:

- (a) the appeal would have a real prospect of success on one or more of the grounds under regulation 5(2) that are set out in the appellant's application notice; or
- (b) there is some other compelling reason why the appeal should be heard on one or more of the grounds under regulation 5(2).

(4) Decision where the appellant is the Association

Where the application notice has been filed by the Association, the Appeal Committee may grant permission to appeal only if it is satisfied that:

- (a) there is a clear public interest in the decision being reviewed; and
- (b) the appeal would have a real prospect of success on the ground set out in regulation 5(3).

(5) Notice of the decision

- (a) Within 14 days after the Appeal Committee's decision to grant or refuse permission, formal written notice of the decision shall be given to the parties. Where permission to appeal has been granted, the notice shall state upon which of the grounds within regulation 5 permission has been granted.
- (b) Within 14 days after the Appeal Committee's decision, the parties shall be given copies of the documents supplied to the Appeal Committee under regulation 6(2)(b) if they have not already been supplied.
- (c) A statement of the reasons for the Appeal Committee's decision, which may be in summary form, shall be given to the parties within 21 days after the decision, or such longer period as shall be necessary in the circumstances.

7. The appeal

The grounds of appeal upon which permission to appeal has been granted, or the grounds of appeal set out in an application notice in respect of which the Chairman of the Appeal Committee has directed the appeal may proceed, shall be considered by the Appeal Committee at a hearing except where the appeal is withdrawn by the appellant.

8. Preparation for the appeal hearing

(1) Further enquiries

Where the appeal is from a decision of the Disciplinary Committee, an investigating officer may make such further enquiries as he shall consider appropriate in order to assist in the preparation of the case to the Appeal Committee. It shall be the duty of the person who is the subject of the decision under appeal to co-operate with such enquiries and failure by him to do so shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

(2) Submissions and documents

The appellant and respondent may submit such written submissions and additional documentary evidence as they may wish to be drawn to the Appeal Committee's attention, provided that any such written submissions and documentary evidence must be submitted not less than 7 days prior to the hearing of the appeal. Written submissions and documents submitted less than 7 days prior to the hearing will only be considered by the Appeal Committee in exceptional circumstances.

9. Notice, representation and adjournments

(1) Notice

The Association shall provide the parties with no less than 21 days prior written notice of the time and place of the hearing of the appeal. In the event that the Association has not complied with this requirement the Appeal Committee may, in its absolute discretion, provided that it is satisfied that the appellant has received written notice of the time and place of the hearing of the appeal and that the appellant has not been prejudiced in the conduct of his appeal, order that the hearing shall proceed.

In exceptional circumstances, the parties may be provided with less than 21 days prior written notice of the hearing ("an urgent hearing"). At an urgent hearing, the Appeal Committee shall consider at the outset the appropriateness of short notice and may, in its absolute discretion, if it is of the view that it is justified in all the circumstances, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.

(2) Proceeding in the absence of a party

The appeal may be heard in the absence of a party provided that the Appeal Committee is satisfied that he has been served with no less than 21 days prior written notice of the date set for the hearing or, in the case of an urgent hearing, that proceeding with the hearing is justified in all the circumstances.

(3) Representation

- (a) At the hearing of the appeal, the person who is the subject of the decision under appeal shall be entitled to be heard before the Appeal Committee and/or to be represented by such person as he may wish.
- (b) The Association shall be represented by such person as it may nominate (the "case presenter").

2.8 Appeal Regulations

(4) Advisers to the Appeal Committee

The Appeal Committee may also instruct a solicitor or barrister to act as its legal adviser on the hearing of any appeal. At a hearing concerning a party's state of health as described in regulation 19, the Appeal Committee may instruct a medical expert to act as its medical adviser.

(5) Adjournments

- (a) A party may make a written request to the Appeal Committee that the hearing be adjourned to a future meeting. Such request will be considered at the outset of the hearing and the Appeal Committee may, in its absolute discretion, agree to the request.
- (b) Any such request made in advance of the hearing shall be considered as follows.

If the request is made after the provision of notice in accordance with regulation 9(1), it shall be considered by the Chairman of the Appeal Committee, who may in his absolute discretion agree to the request. If such request is denied by the Chairman, it shall be considered at the outset of the hearing by the other members of the Appeal Committee in accordance with regulation 9(5)(a).

If the request is made by the person who is the subject of the decision under appeal before the provision of notice in accordance with regulation 9(1), the Association may agree to the request. If the Association opposes the request, it shall be considered by the Chairman of the Appeal Committee in accordance with this regulation. If such request is denied by the Chairman, it shall be considered at the outset of the hearing by the other members of the Appeal Committee in accordance with regulation 9(5)(a).

- (c) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Appeal Committee may itself direct that the case should be adjourned.
- (d) The Appeal Committee may impose such conditions as it may determine upon the grant of an adjournment.
- (e) The Appeal Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning a relevant matter are pending to which the person who is the subject of the decision under appeal is a party.

10. The hearing

(1) Constitution of Appeal Committee

The Chairman of the Appeal Committee who considered the application notice in accordance with regulation 6(1)(b) may hear the appeal if he directed that the appeal should proceed pursuant to regulation 6(1)(b)(i). He shall not be permitted to hear the appeal if he directed that the application notice be considered by the Appeal Committee pursuant to regulation 6(1)(b)(ii).

(2) Burden and standard of proof

On the hearing of any appeal it shall be for the appellant to satisfy the Appeal Committee that the grounds of the appeal are made out. The standard of proof to be applied by the Appeal Committee shall be the balance of probabilities.

(3) Amendment of grounds of appeal

If the appellant so requests, the Appeal Committee may grant permission to amend any ground of appeal submitted by the appellant for one or more of the grounds of appeal set out in regulation 5. The Appeal Committee may of its own volition amend the application notice to add one or more of the grounds of appeal set out in regulation 5.

(4) Evidential material

- (a) The Appeal Committee shall be entitled to consider as evidence the Committee's reasons for the decision under appeal.
- (b) If permission to appeal has been granted following consideration of the application notice by the Appeal Committee, the Appeal Committee hearing the appeal shall be entitled to consider as evidence the reasons for the decision to grant permission.
- (c) The Appeal Committee shall be entitled to admit additional evidence which was not before the Committee whose decision is under appeal. The Appeal Committee may give directions as to the matter and time in which such evidence is to be submitted.

(5) Presentations

The appellant shall present his case first, followed by the respondent. The appellant then has a right of response.

(6) Witnesses

Either party may call witnesses in support of his case. Any witnesses called shall be liable to cross-examination by the other party. The Appeal Committee may ask questions of either party and their witnesses (if any), at any time.

11. Orders of Appeal Committee

(1) On the conclusion of the hearing of the appeal, the Appeal Committee shall consider the appeal.

(2) In the case of an appeal against one or more of the findings and orders of the Disciplinary Committee, the Appeal Committee may do any one or more of the following:

- (a) affirm or vary any findings of the Disciplinary Committee;
- (b) affirm, vary or rescind any order of the Disciplinary Committee;
- (c) substitute any other order which the Disciplinary Committee could have made;
- (d) order that the case be heard afresh by the Disciplinary Committee.

2.8 Appeal Regulations

(3) In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Appeal Committee may do either or both of the following:

- (a) affirm, vary or rescind any order of the Disciplinary Committee;
- (b) substitute any other order which the Disciplinary Committee could have made.

(4) In the case of an appeal against the decision of the Admissions and Licensing Committee, the Appeal Committee may make such order as it sees fit in respect of the appeal.

12. Costs

In this regulation 12, reference to “the appeal” includes a permission hearing in accordance with regulation 6(2).

(1) Costs to be paid by the appellant to the Association

Where the appellant is a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee, the Appeal Committee may direct the appellant to pay to the Association by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Appeal Committee shall take into account (and without limiting its discretion in any way) any effect the appellant’s actions in relation to the conduct of the appeal have had upon the costs of dealing with the appeal, whether beneficial or otherwise.

(2) Costs to be paid by the Association to the appellant

Where the appellant is a person who is the subject of a decision made by the Disciplinary Committee, and the Appeal Committee has wholly rescinded a finding of the Disciplinary Committee in respect of an allegation and has itself found the allegation not proved, the Appeal Committee may direct the Association to pay a sum to the appellant by way of contribution to his costs incurred in connection with the case and the appeal in such amount as the Appeal Committee shall in its discretion decide.

(3) Costs to be paid by the Association to the complainant

Where the appeal is against a decision of the Disciplinary Committee, the Appeal Committee may in exceptional circumstances direct the Association to pay a sum to a complainant by way of contribution to his costs incurred with the case in such amount as the Appeal Committee shall in its discretion think fit.

(4) Costs to be paid by the Association to the respondent

Where the Association is the appellant and has not been successful on all the grounds of its appeal, the Appeal Committee may direct that the Association pay to the respondent by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate.

13. Effect on costs of withdrawal of appeal

(1) Costs of the complainant

Where the appeal is against a decision of the Disciplinary Committee, the Appeal Committee may in exceptional circumstances direct the Association to pay a sum to the complainant by way of contribution to his costs incurred in the case in such amount as the Appeal Committee shall in its discretion think fit.

(2) Costs of the respondent to be covered by the appellant

If at any time prior to the conclusion of the hearing of the appeal the appellant makes a request to withdraw the appeal, the Appeal Committee shall make such order as it sees fit in respect of costs. In particular, the Appeal Committee may order the appellant to pay to the respondent by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Appeal Committee shall take into account (but without limiting its discretion in any way) any effect that the appellant's actions in relation to the conduct of the appeal and its withdrawal have had upon the costs of dealing with the appeal up to the time of the withdrawal, whether beneficial or otherwise.

14. Notification

The Appeal Committee shall announce its decision at the hearing. Formal written notice of the order made shall be notified to the parties within 14 days after the hearing, and a written statement of the reasons for the decision of the Appeal Committee shall be given to the parties within 21 days after the hearing, or such longer period as shall be necessary in the circumstances.

15. Correction of errors

(1) Where the order and/or written statement of the reasons for the decision of the Appeal Committee contains an accidental error or omission, a party may apply by way of an application notice for it to be corrected. The application notice shall describe the error or omission and state the correction required.

(2) The Chairman of the Appeal Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(3) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(4) If the application is opposed, it should be heard by the same Appeal Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.

(5) The Appeal Committee may of its own volition vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

16. Effective date

Any order made by the Appeal Committee shall take effect from the date it is made (that is, for the avoidance of doubt, the date its decision is announced and not the date it is formally notified to the appellant) unless the Appeal Committee, in its absolute discretion, directs that it shall take effect as from some other date (not being earlier than the date of the decision under appeal) as shall be specified in the order of the Appeal Committee.

17. Publicity

(1) In the case of an appeal against a decision of the Disciplinary Committee:

- (a) the Appeal Committee shall give advance publicity of its meetings, and of the hearing of any case by it, by way of a press release in such terms and manner as it thinks fit, save that in any such advance publication no appellant shall be named; and
- (b)
 - (i) any finding and/or order of the Appeal Committee shall, as soon as it has become effective, be made available by way of a press release, provided that where the order is that no further action be taken any finding and/or order shall only be made available by way of a press release if the appellant so requests;
 - (ii) unless in exceptional circumstances the Appeal Committee otherwise directs, in such press release the appellant shall be named and any finding and/or order made against him stated;
 - (iii) the press release shall be sent to such publications as the Appeal Committee thinks fit.

(2) In the case of an appeal against the decision of the Admissions and Licensing Committee, where the Appeal Committee has ordered the withdrawal of a certificate or certificates pursuant to the Authorisation Regulations, the order may, as soon as it has become effective, be made available by way of a press release and sent to such publications as the Appeal Committee thinks fit. Unless in exceptional circumstances the Appeal Committee otherwise directs, in such press release the appellant shall be named and the order made against him stated.

18. Open hearings

Save where otherwise specified in these regulations, meetings of the Appeal Committee shall be open to the public, unless the Appeal Committee determines that the public shall be excluded from attending all or part of any meeting at any time, including during the hearing of any case by it, on any one or more of the following grounds:

- (a)
 - (i) in the interests of morals, public order or national security in a democratic society;
 - (ii) where the interests of juveniles or the protection of the private lives of the parties so requires; or
 - (iii) to the extent strictly necessary in the opinion of the Appeal Committee in special circumstances where publicity would prejudice the interests of justice.

- (b) The Appeal Committee may establish such procedures as it deems necessary or desirable in connection with attendance by the public at its meetings and the procedure to be adopted in respect of any meeting shall, subject to the foregoing paragraphs of this regulation, be such as the Appeal Committee, in its absolute discretion, so determines.

19. Ill health

Where it is asserted on behalf of an appellant, after a case has been referred to the Appeal Committee, that he is too ill to participate in the process ("the appeal process") but does not wish to withdraw his appeal, the appellant may apply for an adjournment and the following regulations apply.

(1) Submission of evidence

- (a) Within seven days of the assertion that he is too ill to participate in the appeal process, the appellant shall submit:
 - (i) medical evidence to support the assertion, including a prognosis and indication as to when, if at all, the appellant would be well enough to participate in the appeal process; and
 - (ii) details of the arrangements he has made for the continuity of his practice during the period of his ill health.

(2) Right to require appellant to be examined

At any time, the Association shall have the right to require the appellant to be examined by a doctor or other medical professional of the Association's choice.

(3) Referral to health hearing

- (a) At any time, at the request of the Association or by order of the Appeal Committee, the question of the appellant's fitness to participate in the appeal process shall be considered by the Appeal Committee at a health hearing (see regulation 19(4) below). This should be done in any event where the appeal process has, in the Association's view, been deferred for an unreasonable period of time with no sufficient improvement in the appellant's health nor any agreement between the appellant and the Association as to how to proceed. What will be an unreasonable period of time will depend on the circumstances of each case.
- (b) Reviews of a decision of the Disciplinary Committee or Appeal Committee made at a first health hearing shall be referred to a differently constituted Appeal Committee.

(4) Health hearing

- (a) At a hearing under regulation 19(3)(a), it shall be for the appellant to satisfy the Appeal Committee that he is unfit to participate in the appeal process. At a review hearing under regulation 19(3)(b), it shall be for the appellant to satisfy the Appeal Committee on the grounds of the review.
- (b) If the appellant is too ill to be present at the hearing, he may attend by way of telephone or video link.

2.8 Appeal Regulations

- (c) The respondent and the appellant may submit documentary evidence (medical or otherwise) not less than seven days prior to the health hearing. Documents submitted less than seven days prior to the hearing will only be considered by the Appeal Committee in exceptional circumstances.
- (d) During the health hearing, the Appeal Committee shall be entitled to make a determination on the evidence before it of the allegations against the appellant, for the purpose of deciding whether the seriousness of the allegations is such that it would be in the public interest to make an order under Disciplinary Regulation 6(5)(e) and/or an order that the disciplinary or appeal process should be resumed notwithstanding the appellant's assertion of ill health. Such determination shall be disregarded for the purposes of any subsequent disciplinary or appeal hearing before a differently constituted Committee.
- (e) The Appeal Committee has the power to make any order which the Disciplinary Committee could have made at a health hearing, save that it may not order that the appeal process be withdrawn. Where the Appeal Committee is reviewing a decision of the Disciplinary Committee made at a health hearing, it may do any one or more of the following:
 - (i) affirm, vary or rescind the order of the Disciplinary Committee;
 - (ii) substitute any other order which the Disciplinary Committee could have made.
- (f) Where the Appeal Committee is hearing a case other than a review of a decision of the Disciplinary Committee, it shall specify whether any elements of its orders are to have immediate effect regardless of any request for review that may be made by the appellant. The Appeal Committee may not so specify in relation to an order directing that the appeal process be resumed or deferred.

(5) Publicity

Health hearings shall be heard in private, but the Appeal Committee's decision shall be subject to publicity in accordance with regulation 17(1).

(6) Right of appeal

There shall be a right of review of a decision of the Appeal Committee made following a referral under regulation 19(3)(a). There shall be no right of review of a decision of the Appeal Committee made following a review under regulation 19(3)(b).

(7) Applicability of Appeal Regulations

The other Appeal Regulations will apply to health hearings unless they conflict with any paragraph within regulation 19, in which case the relevant provision of regulation 19 shall take precedence.

20. General

(1) General procedure

The procedures to be adopted in relation to any meeting of the Appeal Committee shall, subject to the foregoing regulations, be such as the Appeal Committee shall, in its absolute discretion, determine. In particular, the Appeal Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its meetings.

(2) Notices

- (a) Any notice or other document required to be provided to a party may be provided to him personally or sent by post or courier to his or its registered place of address. If the party has no registered address any notice or document should be sent by post or courier to his address last known to the Association. Any such notice or document so sent shall be deemed to have been provided within 72 hours (excluding Saturdays and Sundays and Public and Bank Holidays) of despatch.
- (b) Any notice or document required to be provided to the Association may be provided by sending it to the principal office of the Association addressed as follows:
 - (i) in the case of a notice or document relating to an appeal against the findings or order of the Disciplinary Committee, to the investigating officer; and
 - (ii) in the case of a notice or document relating to an appeal against a decision of the Admissions and Licensing Committee, to the committee officer.

(3) Payment

Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless Council otherwise agrees) and, where the appellant who is the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

(4) Attendance

A party may attend a hearing of the Appeal Committee where he is a party concerned notwithstanding that he may have previously indicated that he did not intend to attend.

(5) Hearings

Where a case is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Appeal Committee or the Secretary may direct that the hearing before the Appeal Committee take place in that country. In the absence of any such direction, hearings before the Appeal Committee shall take place in London.

2.8 Appeal Regulations

(6) *Public interest cases*

- (a) The Association shall refer a case to the AADB where:
 - (i) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and
 - (ii) it considers that a relevant person may have committed an act of misconduct in relation to the case; and
 - (iii) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other AADB participant in relation to the conduct in question. This regulation 20(6)(a)(iii) is unlikely to be satisfied in the case of an appeal unless evidence of the conduct in question was not available prior to the hearing of the Disciplinary Committee.
- (b) Where the Association receives notice that AADB has decided to deal with a case relating to a relevant person, either in response to a referral under regulation 20(6)(a) or of its own volition, the Association shall suspend any investigation relating to the case and, upon AADB's request, provide to AADB any such documentary information in its possession or control which it can lawfully provide.
- (c) IAASA may undertake its own investigation into a case relating to a relevant person if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.
- (d) It is the duty of all relevant persons to co-operate with the AADB and IAASA during the course of any investigations they may undertake. Failure to co-operate with the AADB or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

Section 3

Code of Ethics and Conduct

3.1

Introduction

1. ACCA registered students, affiliates and members are required to observe proper standards of professional conduct.
2. ACCA registered students, affiliates and members must specifically refrain from what is described in ACCA's bye-law 8(a)(i) as misconduct. Registered students, affiliates and members must also refrain from taking any action which amounts to a departure from the standards set out in this Code of Ethics and Conduct as specified in bye-law 8(a)(ii).
3. Those failing to observe the standards expected of them may be required to answer a complaint before ACCA's Disciplinary Committee.
4. It is not possible to specify all those combinations of circumstances in which a member may be held by Disciplinary Committee to have committed professional misconduct, as defined above. However, this section of the Rulebook (which may be added to or varied from time to time) sets out ACCA's ethical requirements in relation to those professional situations that most commonly arise.
5. ACCA registered students, affiliates and members who are in doubt as to their correct course of action in particular cases should obtain further guidance from ACCA. It is advisable to seek guidance prior to embarking on a course of action.
6. Where statutory and regulatory requirements are concerned, ACCA registered students, affiliates and members are reminded that they must also refer to, and comply with, the legislation and regulatory requirements of the countries in which they work.
7. The Code of Ethics and Conduct applies to all registered students, affiliates and members.

Registered students and affiliates

8. Registered students and affiliates are bound by the ethical requirements of ACCA, as affirmed by their signature on the application forms to be enrolled as registered students.
9. Registered students remain bound by ACCA's ethical requirements during the period between successful completion of the examinations and their admission to membership (i.e. those having affiliate status). On admission to membership they become subject to the same requirements in their new capacity.
10. For ease of drafting, reference throughout the Code of Ethics and Conduct will be made to "members". Registered students and affiliates should note that the rules and guidance contained within the Code of Ethics and Conduct also apply to them.

The relationship between the Code of Ethics and Conduct and other regulations

11. In some specialist areas of work, such as audit, insolvency and financial services, members are subject to a variety of statutory and regulatory requirements. Where the Code of Ethics and Conduct imposes a more stringent requirement than statutory and regulatory requirements, or vice versa, the more stringent requirement will apply, unless prohibited by law or regulation.

Failure to comply with the Code of Ethics and Conduct

12. An ACCA registered student, affiliate or member who fails to comply with the Code of Ethics and Conduct will be liable to disciplinary action.

Enforcement of the Code of Ethics and Conduct

13. Two committees have been appointed by Council to enforce ACCA's ethical standards: Disciplinary and Appeal. The committees derive their powers from the bye-laws.

The Code of Ethics and Conduct

14. The Code of Ethics and Conduct establishes the ethical requirements for members. It sets out the fundamental principles and provides a conceptual framework for applying those principles.

15. Members are required to apply this conceptual framework to identify threats to compliance with the fundamental principles, to evaluate their significance and, if such threats are other than clearly insignificant, to apply safeguards to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.

16. Throughout the Code of Ethics and Conduct, examples are included that are intended to illustrate how the conceptual framework is to be applied. The examples are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by members that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for members to merely comply with the examples presented; rather, the framework should be applied to the particular circumstances encountered by members.

17. A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, members' responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest, members should observe and comply with the ethical requirements of this Code.

Definitions

18. In this Code of Ethics and Conduct, the following expressions are defined as follows:

advertising means the communication to the public of information as to the services or skills provided by members with a view to procuring professional business;

assurance client means the responsible party that is the person (or persons) who:

- (a) in a direct reporting engagement, is responsible for the subject matter information; or
- (b) in an assertion-based engagement, is responsible for the subject matter information and may be responsible for the subject matter;

(For an assurance client that is a financial statement audit client see the definition of financial statement audit client.)

assurance engagement means an engagement in which members express a conclusion designed to enhance the degree of confidence of intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria;

(For guidance on assurance engagements see the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board which describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply.)

assurance team means:

- (a) all members of the engagement team for the assurance engagement;
 - (b) all others within a firm who can directly influence the outcome of the assurance engagement, including:
 - (i) those who recommend the compensation of, or who provide direct supervisory, management or other oversight of, the assurance engagement partner in connection with the performance of the assurance engagement. For the purposes of a financial statement audit engagement, this includes those at all successively senior levels above the engagement partner through the firm's chief executive;
 - (ii) those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and
 - (iii) those who provide quality control for the assurance engagement;
- and
- (c) for the purposes of a financial statement audit client, all those within a network firm who can directly influence the outcome of the financial statement audit engagement;

3.1 Introduction

clearly insignificant means a matter that is deemed to be both trivial and inconsequential;

close family means a parent, child or sibling, who is not an immediate family member;

contingent fee means a fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. A fee that is established by a court or other public authority is not a contingent fee;

direct financial interest means a financial interest:

- owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or
- beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control;

director and officer means those charged with the governance of an entity, regardless of their title, which may vary from country to country;

engagement partner means the partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body;

engagement quality control review means a process designed to provide an objective evaluation, before the report is issued, of the significant judgements the engagement team has made and the conclusions they reached in formulating the report;

engagement team means all personnel performing an engagement, including any experts contracted by the firm in connection with that engagement;

existing accountant means an individual or firm currently holding an audit appointment or carrying out accounting, taxation, consulting or similar services for a client;

financial interest means an interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest;

financial statement audit client means an entity in respect of which a firm conducts a financial statement audit engagement. When the audit client is a listed or other public interest entity, financial statement audit client will always include its related entities;

financial statement audit engagement means a reasonable assurance engagement in which members express an opinion whether the financial statements are prepared in all material respects in accordance with an identified financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing. This includes a statutory audit which is a financial statement audit required by legislation or other regulation;

financial statements means the balance sheets, income statements or profit and loss accounts, statements of changes in financial position (which may be presented in a variety of ways, for example as a statement of cash flows or a statement of fund flows), notes and other statements and explanatory material which are identified as being part of the financial statements;

firm means:

- a sole practitioner, partnership or corporation of professional accountants;
- an entity that controls such parties; and
- an entity controlled by such parties;

immediate family means a spouse (or equivalent) or dependent;

independence means:

- independence of mind – the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional judgement; and
- independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional scepticism had been compromised; and

indirect financial interest means a financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control;

key audit partner means an audit partner of the assurance team (including engagement partner) who is at group level responsible for reporting on significant matters, such as on significant subsidiaries or divisions of the financial statement audit client, or on significant risk factors that relate to the financial statement audit of that client. Where there are no group accounts, the definition should be taken to refer to company level;

key management position means any position at the financial statement audit client which involves the responsibility for fundamental management decisions that include the ability to influence the accounting policies and the preparation of the financial statements of the financial statement audit client. A key management position also includes contractual and factual arrangements which by substance allow an individual to participate in exercising this management function in a different way, e.g. via a consulting contract. Such a position would generally include appointments as director and anyone in a senior financial position on whose advice the directors are accustomed to act;

listed entity means an entity whose shares, stock or debt are quoted or listed on a recognised stock exchange, or are marketed under the regulations of a recognised stock exchange or other equivalent body;

members in business means members employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not-for-profit sector, regulatory bodies or professional bodies, or members contracted by such entities;

3.1 Introduction

members in public practice means members, irrespective of functional classification (for example, audit, tax or consulting) in a firm that provides professional services. This term is also used for firms in public practice;

network firm means an entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party, having knowledge of all relevant information, would reasonably conclude as being part of the network nationally or internationally;

office means a distinct sub-group, whether organised on geographical or practice lines;

professional services means services requiring accountancy or related skills performed by members including accounting, auditing, taxation, investment business, management consulting and financial management services;

public interest entities means entities, other than listed entities, which are of significant public interest because of their business, their size or their number of employees or their corporate status is such that they have a wide range of stakeholders. Examples of such entities might include credit institutions (for example banks), insurance companies, investment firms and pension firms;

related entity means an entity that has any of the following relationships with the client:

- (a) an entity that has direct or indirect control over the client provided the client is material to such entity;
- (b) an entity with a direct financial interest in the client provided that such entity has significant influence over the client and the interest in the client is material to such entity;
- (c) an entity over which the client has direct or indirect control;
- (d) an entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and
- (e) an entity which is under common control with the client (hereinafter a "sister entity") provided the sister entity and the client are both material to the entity that controls both the client and sister entity.

19. The following definitions will become effective for assurance reports dated on or after 31 December 2008, and the existing definitions of "firm" and "network firm" will be withdrawn:

firm means:

- (a) a sole practitioner, partnership or corporation of professional accountants;
- (b) an entity that controls such parties through the ownership, management or other means; and
- (c) an entity controlled by such parties through ownership, management or other means;

network firm means a firm or entity that belongs to a network;

*network*¹ means a larger structure:

- (a) that is aimed at co-operation; and
- (b) that is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, a common business strategy, the use of a common brand name, or a significant part of professional resources.

¹ This definition is to be read in the context of the guidance provided in paragraphs 21 to 34 in section 3.4, Integrity, objectivity and independence.

3.2

The fundamental principles

Introduction

1. The fundamental principles set out the obligations placed on all members, whether or not they are in practice.
2. This section establishes the fundamental principles of professional ethics for members and section 3.3, The conceptual framework, provides the framework for applying those principles.
3. Members are required to apply this conceptual framework to identify threats to compliance with the fundamental principles, to evaluate their significance and, if such threats are other than clearly insignificant, to apply safeguards to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.

Fundamental principles

4. Members are required to comply with the following fundamental principles.

Integrity

5. Members should be straightforward and honest in all professional and business relationships.

Objectivity

6. Members should not allow bias, conflicts of interest or undue influence of others to override professional or business judgements.

Professional competence and due care

7. Members have a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. Members should act diligently and in accordance with applicable technical and professional standards when providing professional services.

Confidentiality

8. Members should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority or unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of members or third parties.

3.2 The fundamental principles

Professional behaviour

9. Members should comply with relevant laws and regulations and should avoid any action that discredits the profession.

10. Each of these fundamental principles is discussed in more detail below.

Integrity

11. The principle of integrity imposes an obligation on all members to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

12. Members should not be associated with reports, returns, communications or other information where they believe that the information:

- (a) contains materially false or misleading statements;
- (b) contains statements or information furnished recklessly; or
- (c) omits or obscures information required to be included where such omission or obscurity would be misleading.

Objectivity

13. The principle of objectivity imposes an obligation on all members not to compromise their professional or business judgement because of bias, conflict of interest or the undue influence of others.

14. Members may be exposed to situations that may impair their objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence professional judgement of members should be avoided.

Professional competence and due care

15. The principle of professional competence and due care imposes the following obligations on members:

- (a) to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and
- (b) to act diligently in accordance with applicable technical and professional standards when providing professional services.

16. Competent professional service requires the exercise of sound judgement in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

- (a) attainment of professional competence; and
- (b) maintenance of professional competence.

- 17.** The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development develops and maintains the capabilities that enable members to perform competently within the professional environment.
- 18.** Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully, thoroughly and on a timely basis.
- 19.** Members should take steps to ensure that those working under their authority in a professional capacity have appropriate training and supervision.
- 20.** Where appropriate, members should make clients, employers or other users of the professional services aware of limitations inherent in the services to avoid the misinterpretation of an expression of opinion as an assertion of fact.

Confidentiality

- 21.** The principle of confidentiality imposes an obligation on members to refrain from:
- (a) disclosing outside the firm or employing organisation confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - (b) using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 22.** Members should maintain confidentiality even in a social environment. Members should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or immediate family member.
- 23.** Members should also maintain confidentiality of information disclosed by a prospective client or employer.
- 24.** Members should also consider the need to maintain confidentiality of information within the firm or employing organisation.
- 25.** Members should take all reasonable steps to ensure that staff under the member's control and persons from whom advice and assistance is obtained respect the member's duty of confidentiality.
- 26.** The need to comply with the principle of confidentiality continues even after the end of the relationship between a member and a client or employer. When members change employment or acquire new clients, members are entitled to use prior experience. Members should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 27.** The following are circumstances where members are or may be required to disclose confidential information or when such a disclosure may be appropriate:

3.2 The fundamental principles

- (a) disclosure is permitted by law and is authorised by the client or the employer;
- (b) disclosure is required by law, for example:
 - (i) production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) disclosure to the appropriate public authorities of infringements of the law that come to light; and
- (c) there is a professional duty or right to disclose, when not prohibited by law:
 - (i) to comply with the quality reviews of ACCA or other professional body;
 - (ii) to respond to an inquiry or investigation by ACCA or other regulatory body;
 - (iii) to protect the professional interests of a member in legal proceedings; or
 - (iv) to comply with technical standards and ethics requirements.

28. In deciding whether to disclose confidential information, members should consider:

- (a) whether the interests of any parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by members;
- (b) whether all the relevant information is known and substantiated, to the extent it is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any; and
- (c) the type of communication that is expected and to whom it is addressed. In particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients.

Professional behaviour

29. The principle of professional behaviour imposes an obligation on members to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.

30. Members should behave with courtesy and consideration towards all with whom they come into contact in a professional capacity.

31. In marketing and promoting themselves and their work, members should not bring the profession in disrepute. Members should be honest and truthful and not:

- (a) make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
- (b) make disparaging references or unsubstantiated comparisons to the work of others.

3.3

The conceptual framework

1. The circumstances in which members operate may give rise to specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates such threats and specify the appropriate mitigating action. In addition, the nature of engagements and work assignments may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires members to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest. This section provides a framework to assist members to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant, members should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level, such that compliance with the fundamental principles is not compromised.
2. Members have an obligation to evaluate any threats to compliance with the fundamental principles when members know, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.
3. Members should take qualitative as well as quantitative factors into account when considering the significance of a threat. If members cannot implement appropriate safeguards, members should decline or discontinue the specific professional service involved, or, where necessary, resign from the client (in the case of members in public practice) or the employing organisation (in the case of members in business).
4. Members may inadvertently violate a provision. Such an inadvertent violation, depending on the nature and significance of the matter, may not compromise compliance with the fundamental principles provided, once the violation is discovered, the violation is corrected promptly and any necessary safeguards are applied.
5. Throughout, examples are included that are intended to illustrate how the conceptual framework is to be applied. The examples are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by members that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for members to merely comply with the examples presented; rather, the framework should be applied to the particular circumstances encountered by members.

Threats and safeguards

6. Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

- (a) self-interest;
- (b) self-review;
- (c) advocacy;
- (d) familiarity;
- (e) intimidation.

Self-interest threat

7. Self-interest threats may occur as a result of the financial or other interests of members or of immediate or close family members. Circumstances that may create self-interest threats for members include, but are not limited to:

- (a) financial interests, loans or guarantees;
- (b) incentive compensation arrangements;
- (c) concern over employment security;
- (d) commercial pressure from outside the employing organisation;
- (e) inappropriate personal use of corporate assets;
- (f) close personal or business relationships;
- (g) a financial interest in a client or jointly holding a financial interest with a client;
- (h) undue dependence on fees from a client.

Self-review threat

8. Self-review threats may occur when a previous judgement needs to be re-evaluated by members responsible for that judgement. Circumstances which may give rise to self-review threats include, but are not limited to:

- (a) business decisions or data being subject to review and justification by the same person responsible for making those decisions or preparing those data;
- (b) an analyst, or member of a board, audit committee or audit firm being in a position to exert direct and significant influence over the financial reports;
- (c) the discovery of a significant error during a re-evaluation of the work undertaken by the member;

- (d) reporting on the operation of financial systems after being involved in their design or implementation;
- (e) a member of the assurance team being, or having recently been, employed by the client in a position to exert direct and significant influence over the subject matter of the engagement;
- (f) performing a service for a client that directly affects the subject matter of an assurance engagement.

Advocacy threat

9. Advocacy threats may occur when members promote a position or opinion to the point that subsequent objectivity may be compromised. It is natural for members to advocate their client's/employer's position and there is nothing improper in this provided it does not result in misleading information being given. Circumstances which may give rise to advocacy threats include, but are not limited to:

- (a) commenting publicly on future events in particular circumstances, having made assertions without detailing the assumptions;
- (b) where information is incomplete or advocating an argument which is unlawful;
- (c) promoting shares in a listed entity when that entity is a financial statement audit client;
- (d) acting as an advocate on behalf of an assurance client in litigation or disputes with third parties.

Familiarity threat

10. Familiarity threats may occur when, because of a close relationship, members become too sympathetic to the interests of others. Circumstances that may create familiarity threats include, but are not limited to:

- (a) a person in a position to influence financial or non-financial reporting or business decisions having an immediate or close family member who is in a position to benefit from that influence;
- (b) long association with business contacts influencing business decisions;
- (c) acceptance of gifts or preferential treatment, unless the value is clearly insignificant;
- (d) over-familiarity with the management of the organisation such that professional judgement could be compromised;
- (e) a former partner of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.

Intimidation threat

11. Intimidation threats may occur when members may be deterred from acting objectively by threats, actual or perceived. Circumstances that may create intimidation threats include, but are not limited to:

- (a) threat of dismissal or replacement of the member, or a close or immediate family member, over a disagreement about the application of an accounting principle or the way in which financial and performance information is to be reported;
- (b) a dominant personality attempting to influence the decision-making process, for example with regard to the awarding of contracts or presentation of financial information, or controlling relations with auditors or other oversight bodies;
- (c) being threatened with litigation;
- (d) being pressured to reduce inappropriately the extent of work performed in order to reduce fees.

Other threats

12. Members may also find that specific circumstances give rise to other threats to compliance with one or more of the fundamental principles. In all professional and business relationships, members should always be on the alert for such circumstances and threats.

Safeguards to offset the threats

13. The examples given below are only intended to be illustrative and alternative action may need to be considered depending on the circumstances.

14. Safeguards that may eliminate or reduce to acceptable levels the threats faced by members fall into three broad categories:

- (a) safeguards created by the profession, legislation or regulation;
- (b) safeguards in the work environment;
- (c) safeguards created by the individual.

15. Safeguards created by the profession, legislation or regulation include, but are not restricted to:

- (a) educational, training and experience requirements for entry into the profession;
- (b) continuing professional development requirements;
- (c) corporate governance regulations;
- (d) professional standards;
- (e) professional or regulatory monitoring and disciplinary procedures;

- (f) external review by a legally empowered third party of the reports, returns, communications or information produced by a member.

16. Safeguards in the work environment include, but are not restricted to:

- (a) the employing organisation's systems of corporate oversight or other oversight structures;
- (b) the employing organisation's ethics and conduct programmes;
- (c) recruitment procedures in the employing organisation emphasising the importance of employing high-calibre, competent staff;
- (d) strong internal controls;
- (e) appropriate disciplinary processes;
- (f) leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner;
- (g) policies and procedures to implement and monitor the quality of employee performance;
- (h) policies and procedures to implement and monitor quality control of engagements;
- (i) documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level;
- (j) timely communication of the employing organisation's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures;
- (k) using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to clients;
- (l) policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement;
- (m) policies and procedures to empower employees to communicate to senior levels with the employing organisation any ethical issues that concern them without the fear of retribution. This includes informing employees of the procedures open to them;
- (n) discussing ethical issues with those charged with governance of the client;
- (o) disclosing to those charged with governance of the client the nature of the services provided and extent of fees charged;
- (p) consultation with another appropriate professional accountant.

3.3 The conceptual framework

17. Safeguards created by the individual include, but are not restricted to:

- (a) complying with continuing professional development requirements;
- (b) keeping records of contentious issues and approach to decision-making;
- (c) maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals;
- (d) using an independent mentor;
- (e) maintaining contact with legal advisers and professional bodies.

18. Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organisation, include, but are not restricted to:

- (a) effective, well-publicised complaints systems operated by the employing organisation, the profession or a regulator, which enable colleagues and employers to draw attention to unprofessional or unethical behaviour;
- (b) an explicitly stated duty to report breaches of ethical requirements.

19. The nature of the safeguards to be applied will vary depending on the circumstances. In exercising professional judgement, members should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be unacceptable.

Ethical conflict resolution

20. In evaluating compliance with the fundamental principles, members may be required to resolve a conflict in the application of the fundamental principles.

21. When initiating either a formal or informal conflict resolution process, members should consider the following, either individually or together with others, as part of the resolution process:

- (a) relevant facts;
- (b) ethical issues involved;
- (c) fundamental principles related to the matter in question;
- (d) established internal procedures;
- (e) alternative courses of action.

22. Having considered these issues, members should determine the appropriate course of action that is consistent with the fundamental principles identified. Members should also weigh the consequences of each possible course of action. If the matter remains unresolved, members should consult with other appropriate persons within the firm or employing organisation for help in obtaining resolution.

23. Where a matter involves a conflict with, or within, an organisation, members should also consider consulting with those charged with governance of the organisation, such as the board of directors or the audit committee.

24. It may be in the interests of members to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

25. If a significant conflict cannot be resolved, members may wish to obtain professional advice from ACCA or legal advisers, and thereby obtain guidance on ethical issues without breaching confidentiality. For example, members may have encountered a fraud, the reporting of which could breach members' responsibility to respect confidentiality. Members should consider obtaining legal advice to determine whether there is a requirement to report.

26. If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, members should, where possible, refuse to remain associated with the matter creating the conflict. Members may determine that, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organisation.

3.4

Integrity, objectivity and independence

Introduction

1. The fundamental principles require that a member should behave with integrity in all professional and business relationships and that he/she should strive for objectivity in all professional and business judgements. Objectivity is a state of mind, but in certain roles the preservation of objectivity needs to be protected and demonstrated by the maintenance of a member's independence from influences which could affect his/her objectivity. Members' attention is drawn to the discussion of the conceptual framework in section 3.3, The conceptual framework.
2. Members should consider when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or directors, officers or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.
3. Members who provide assurance services are required to be independent of the assurance client. Independence of mind and in appearance is necessary to enable members in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others. Section A provides specific guidance on independence requirements for members when performing an assurance engagement.
4. The existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that members are performing.
5. Members should evaluate the significance of the identified threats and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:
 - (a) withdrawing from the engagement team;
 - (b) supervisory procedures;
 - (c) terminating the financial or business relationship giving rise to the threat;
 - (d) discussing the issue with higher levels of management within the firm; and
 - (e) discussing the issue with those charged with governance of the client.
6. Section A of this statement deals with the independence for assurance engagements.

3.4 Integrity, objectivity and independence

7. Section B deals with situations outside the areas dealt with in Section A where certain aspects of the independence guidance are relevant, and where a member must remain conscious of the need to preserve their objectivity and to observe appropriate safeguards so that their judgement is not swayed by considerations of self interest or the interests of family or close personal or business relationships.

Note: The Auditing Practices Board (APB) has issued Ethical Standards to be applied in the audit of historical financial information in the United Kingdom and the Republic of Ireland. APB Ethical Standards are effective for audits of historical financial information for periods commencing on or after 15 December 2004 (subject to transitional provisions set out therein or in accompanying guidance). Any audit firm, any person in an audit firm who is directly involved in an audit and any person in an audit firm who is part of the chain of command for an audit to which APB Ethical Standards apply must comply with their requirements. Where relevant, members must therefore comply with both APB's Ethical Standards and this section 3.4. Where there is any apparent conflict between requirements, members must comply with the requirement that is more stringent.

Section A – Independence for assurance engagements

8. In the case of an assurance engagement, it is in the public interest and, therefore, required by this Code of Ethics, that members of assurance teams, firms and, when applicable, network firms be independent of assurance clients.

9. Assurance engagements are designed to enhance intended users' degree of confidence about the outcome of the evaluation or measurement of a subject matter against criteria. The International Framework for Assurance Engagements (the Assurance Framework) issued by the International Auditing and Assurance Standards Board describes the elements and objectives of an assurance engagement, and identifies engagements to which International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply. For a description of the elements and objectives of an assurance engagement reference should be made to the Assurance Framework.

10. As further explained in the Assurance Framework, in an assurance engagement members express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

11. The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term "subject matter information" is used to mean the outcome of the evaluation or measurement of subject matter. For example:

- (a) the recognition, measurement, presentation and disclosure represented in the financial statements (subject matter information) result from applying a financial reporting framework for recognition, measurement, presentation and disclosure, such as International Financial Reporting Standards, (criteria) to an entity's financial position, financial performance and cash flows (subject matter);

- (b) an assertion about the effectiveness of internal control (subject matter information) results from applying a framework for evaluating the effectiveness of internal control, such as COSO¹ or CoCo², (criteria) to internal control, a process (subject matter).

12. Assurance engagements may be assertion-based or direct reporting. In either case they involve three separate parties: a public accountant in public practice, a responsible party and intended users.

13. In an assertion-based assurance engagement, which includes a financial statement audit engagement, the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

14. In a direct reporting assurance engagement members either directly perform the evaluation or measurement of the subject matter, or obtain a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

15. Independence requires:

- (a) Independence of mind:

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity and exercise objectivity and professional scepticism.

- (b) Independence in appearance:

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional scepticism had been compromised.

16. The use of the word "independence" on its own may create misunderstandings. Standing alone, the word may lead observers to suppose that a person exercising professional judgement ought to be free from all economic, financial and other relationships. This is impossible, as every member of society has relationships with others. Therefore, the significance of economic, financial and other relationships should also be evaluated in the light of what a reasonable and informed third party, having knowledge of all relevant information, would reasonably conclude to be unacceptable.

1 COSO means the Committee of Sponsoring Organisations of the Treadway Commission

2 CoCo means Criteria for Control of the Canadian Institute of Chartered Accountants

3.4 Integrity, objectivity and independence

17. Many different circumstances, or combinations of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to independence and specify the appropriate mitigating action that should be taken. In addition, the nature of engagements may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires firms and members to identify, evaluate and address threats to independence, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest.

A conceptual approach to independence

18. Members of assurance teams, firms and network firms are required to apply the conceptual framework contained in section 3.3, The conceptual framework, to the particular circumstances under consideration. In addition to identifying relationships between the firm, network firms, members of the assurance team and the assurance client, consideration should be given to whether relationships between individuals outside of the assurance team and the assurance client create threats to independence.

19. The examples presented are intended to illustrate the application of the framework and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances that may create threats to independence. Consequently, it is not sufficient for a member of an assurance team, a firm or a network firm merely to comply with the examples presented; rather, they should apply the principles in this section to the particular circumstances they face.

20. The nature of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level differ depending on the characteristics of the individual assurance engagement: whether it is a financial statement audit engagement or another type of assurance engagement; and in the latter case, the purpose, subject matter information and intended users of the report. A firm should, therefore, evaluate the relevant circumstances, the nature of the assurance engagement and the threats to independence in deciding whether it is appropriate to accept or continue an engagement, as well as the nature of the safeguards required and whether a particular individual should be a member of the assurance team.

Networks and network firms

21. Paragraphs 22 to 34 are effective for assurance reports dated on or after 31 December 2008.

22. An entity that belongs to a network might be a firm, which is defined in this code as a sole practitioner, partnership or corporation of professional accountants and an entity that controls or is controlled by such parties, or the entity might be another type of entity, such as a consulting practice or a professional law practice. The independence requirements in this section that apply to a network firm apply to any entity that meets the definition of a network firm irrespective of whether the entity itself meets the definition of a firm.

23. If a firm is considered to be a network firm, the firm is required to be independent of the financial statement audit clients of the other firms within the network. In addition, for assurance clients that are not financial statement audit clients, consideration should be given

to any threats the firm has reason to believe may be created by financial interests in the client held by other entities in the network or by relationships between the client and other entities in the network.

24. To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends upon the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is considered to be a network.

25. The judgement as to whether the larger structure is a network should be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgement should be applied consistently throughout the network.

26. Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is considered to be a network. However, the sharing of immaterial costs would not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network. Further an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product would not in itself create a network.

27. Where the larger structure is aimed at co-operation and the entities within the structure share common ownership, control and management, it is considered to be a network. This can be achieved by contract or other means.

28. Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is considered to be a network. For this purpose common quality control policies and procedures would be those designed, implemented and monitored across the larger structure.

29. Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is considered to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not considered to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision of a professional service.

30. Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is considered to be a network. A common brand name includes common initials or a common name. A firm is considered to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an assurance report.

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31. Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional material to being a member of an association of firms. Accordingly, a firm should carefully consider how it describes any such memberships in order to avoid the perception that it belongs to a network.

32. If a firm sells a component of its practice, the sales agreement sometimes provides that, for a limited period of time, the component may continue to use the name of the firm, or an element of the name, even though it is no longer connected to the firm. In such circumstances, while the two entities may be practising under a common name, the facts are such that they do not belong to a larger structure aimed at co-operation and are, therefore, not network firms. Those entities should carefully consider how to disclose that they are not network firms when presenting themselves to outside parties.

33. Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is considered to be a network. Professional resources include:

- (a) common systems that enable firms to exchange information such as client data, billing, and time records;
- (b) partners and staff;
- (c) technical departments to consult on technical or industry specific issues, transactions or events for assurance engagements;
- (d) audit methodology or audit manuals; and
- (e) training courses and facilities.

34. The determination of whether the professional resources shared are significant, and therefore the firms are network firms, should be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be considered to be significant. The same applies to a common training endeavour. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

Assertion-based assurance engagements

35. *Financial statement audit engagements*

Financial statement audit engagements are relevant to a wide range of potential users; consequently, in addition to independence of mind, independence in appearance is of particular significance. Accordingly, for financial statement audit clients, the members of the assurance team, the firm and network firms are required to be independent of the financial statement audit client. Such independence requirements include prohibitions regarding certain relationships between members of the assurance team and directors, officers

and employees of the client in a position to exert direct and significant influence over the subject matter information (the financial statements). Also, consideration should be given to whether threats to independence are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter (the financial position, financial performance and cash flows).

36. Other assertion-based assurance engagements

- (a) In an assertion-based assurance engagement where the client is not a financial statement audit client, the members of the assurance team and the firm are required to be independent of the assurance client. Such independence requirements include prohibitions regarding certain relationships between members of the assurance team and directors, officers and employees of the client in a position to exert direct and significant influence over the subject matter information. Also, consideration should be given to whether threats to independence are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter of the engagement. Consideration should also be given to any threats that the firm has reason to believe may be created by network firm interests and relationships.
- (b) In the majority of assertion-based assurance engagements, that are not financial statement audit engagements, the responsible party is responsible for the subject matter information and the subject matter. However, in some engagements the responsible party may not be responsible for the subject matter. For example, when members are engaged to perform an assurance engagement regarding a report that an environmental consultant has prepared about a company's sustainability practices, for distribution to intended users, the environmental consultant is the responsible party for the subject matter information but the company is responsible for the subject matter (the sustainability practices).
- (c) In those assertion-based assurance engagements that are not financial statement audit engagements, where the responsible party is responsible for the subject matter information but not the subject matter, the members of the assurance team and the firm are required to be independent of the party responsible for the subject matter information (the assurance client). In addition, consideration should be given to any threats the firm has reason to believe may be created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Direct reporting assurance engagement

37. In a direct reporting assurance engagement the members of the assurance team and the firm are required to be independent of the assurance client (the party responsible for the subject matter).

Restricted use reports

38. In the case of an assurance report in respect of a non-financial statement audit client expressly restricted for use by identified users, the users of the report are considered to be knowledgeable as to the purpose, subject matter information and limitations of the report through their participation in establishing the nature and scope of the firm's instructions

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to deliver the services, including the criteria against which the subject matter are to be evaluated or measured. This knowledge and the enhanced ability of the firm to communicate about safeguards with all users increase the effectiveness of the safeguards to independence in appearance. These circumstances may be taken into account by the firm in evaluating the threats to independence and considering the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level. At a minimum, it will be necessary to apply the provisions of this section in evaluating the independence of members of the assurance team and their immediate and close family. Further, if the firm had a material financial interest, whether direct or indirect, in an assurance client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Limited consideration of any threats created by network firm interests and relationships may be sufficient.

Multiple responsible parties

39. In some assurance engagements, whether assertion-based or direct reporting, that are not financial statement audit engagements, there might be several responsible parties. In such engagements, in determining whether it is necessary to apply the provisions in this section to each responsible party, the firm may take into account whether an interest or relationship between the firm, or a member of the assurance team, and a particular responsible party would create a threat to independence that is other than clearly insignificant in the context of the subject matter information. This will take into account factors such as:

- (a) the materiality of the subject matter information (or the subject matter) for which the particular responsible party is responsible; and
- (b) the degree of public interest associated with the engagement.

If the firm determines that the threat to independence created by any such interest or relationship with a particular responsible party would be clearly insignificant, it may not be necessary to apply all of the provisions of this section to that responsible party.

Other considerations

40. The threats and safeguards identified in this section are generally discussed in the context of interests or relationships between the firm, network firms, members of the assurance team and the assurance client. In the case of a financial statement audit client that is a listed entity or other public interest entity, the firm and any network firms are required to consider the interests and relationships that involve that client's related entities. Ideally those entities and the interests and relationships should be identified in advance. For all other assurance clients, when the assurance team has reason to believe that a related entity of such an assurance client is relevant to the evaluation of the firm's independence of the client, the assurance team should consider that relevant entity when evaluating independence and applying appropriate safeguards.

41. The evaluation of threats to independence and subsequent action should be supported by evidence obtained before accepting the engagement and while it is being performed. The obligation to make such an evaluation and take action arises when a firm, a network firm or a member of the assurance team knows, or could reasonably be expected to know,

of circumstances or relationships that might compromise independence. There may be occasions when the firm, a network firm or an individual inadvertently violates this section. If such an inadvertent violation occurs, it would generally not compromise independence with respect to an assurance client provided the firm has appropriate quality control policies in place to promote independence and, once discovered, the violation is corrected promptly and any necessary safeguards are applied.

42. Throughout this section, reference is made to significant and clearly insignificant threats in the evaluation of independence. In considering the significance of any particular matter, qualitative as well as quantitative factors should be taken into account. A matter should be considered clearly insignificant only if it is deemed to be both trivial and inconsequential.

Objective and structure of this section

43. The objective of this section is to assist firms and members of the assurance teams in:

- (a) identifying threats to independence;
- (b) evaluating whether these threats are clearly insignificant;
- (c) in cases when the threats are not clearly insignificant, identifying and applying appropriate safeguards to eliminate or reduce the threats to an acceptable level.

44. Consideration should always be given to what a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude to be unacceptable. In situations when no safeguards are available to reduce the threat to an acceptable level, the only possible actions are to eliminate the activities or interests creating the threat, or refuse to accept or continue the assurance engagement.

45. This section concludes with some examples of how this conceptual approach to independence is to be applied to specific circumstances and relationships. The examples discuss threats to independence that may be created by specific circumstances and relationships. Professional judgement is used to determine the appropriate safeguards to eliminate threats to independence or to reduce them to an acceptable level. In certain examples, the threats to independence are so significant that the only possible actions are to eliminate the activities or interests creating the threat, or to refuse to accept or continue the assurance engagement. In other examples, the threat can be eliminated or reduced to an acceptable level by the application of safeguards. The examples are not intended to be all inclusive.

46. When threats to independence that are not clearly insignificant are identified, and the firm decides to accept or continue the assurance engagement, the decision should be documented. The documentation should include a description of the threats identified and the safeguards applied to eliminate or reduce the threats to an acceptable level.

47. The evaluation of the significance of any threats to independence and the safeguards necessary to reduce any threats to an acceptable level takes into account the public interest. Certain entities may be of significant public interest because, as a result of their business, their size or their corporate status, they have a wide range of stakeholders. Examples of such entities may include listed companies, credit institutions, insurance companies and pension

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funds. Because of the strong public interest in the financial statements of listed entities, certain paragraphs in this section deal with additional matters that are relevant to the financial statement audit of listed entities. Consideration should be given to the application of the framework in relation to the financial statement audit of listed entities and to other financial statement audit clients that may be of significant public interest.

48. Audit committees can have an important corporate governance role when they are independent of client management and can assist the board of directors in satisfying themselves that a firm is independent in carrying out its audit role. There should be regular communications between the firm and the audit committee (or other governance body if there is no audit committee) of listed entities (or other public interest entities) regarding relationships and other matters that might, in the firm's opinion, reasonably be thought to bear on independence.

49. Firms should establish policies and procedures relating to independence communications with audit committees, or others charged with governance of the client. In the case of the financial statement audit of listed entities and other public interest entities, the firm should communicate orally and in writing, at least annually, all relationships and other matters between the firm, network firm and the financial statement audit client that in the firm's professional judgement may reasonably be thought to bear on independence. Matters to be communicated will vary in each circumstance and should be decided by the firm, but should generally address the relevant matters set out in this section.

Engagement period

50. The members of the assurance team and the firm should be independent of the assurance client during the period of the assurance engagement. The period of the engagement starts when the assurance team begins to perform assurance services and ends when the assurance report is issued, except when the assurance engagement is of a recurring nature. If the assurance engagement is expected to recur, the period of the assurance engagement ends with the notification by either party that the professional relationship has terminated or the issuance of the final assurance report, whichever is later.

51. In the case of a financial statement audit engagement, the engagement period includes the period covered by financial statements reported on by the firm. When an entity becomes a financial statement audit client during or after the period covered by the financial statements that the firm will report on, the firm should consider whether any threats to independence may be created by:

- (a) financial and business relationships with the audit client during or after the period covered by the financial statements, but prior to the acceptance of the financial statement audit engagement; or
- (b) previous services provided to the audit client.

52. Similarly, in the case of an assurance engagement that is not a financial statement audit engagement, the firm should consider whether any financial or business relationships or previous services may create threats to independence.

53. If a non-assurance service was provided to the financial statement audit client during or after the period covered by the financial statements but before the commencement of professional services in connection with the financial statement audit and the service would be prohibited during the period of the audit engagement, consideration should be given to the threats to independence, if any, arising from the service. If the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards may include:

- (a) discussing independence issues related to the provision of the non-assurance service with those charged with governance of the client, such as the audit committee;
- (b) obtaining the client's acknowledgement of responsibility for the results of the non-assurance service;
- (c) precluding personnel who provided the non-assurance service from participating in the financial statement audit engagement; and
- (d) engaging another firm to review the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

54. A non-assurance service provided to a non-listed financial statement audit client will not impair the firm's independence when the client becomes a listed entity provided:

- (a) the previous non-assurance service was permissible under this section for non-listed financial statement audit clients;
- (b) the service will be terminated within a reasonable period of time of the client becoming a listed entity, if it is impermissible under this section for financial statement audit clients that are listed entities; and
- (c) the firm has implemented appropriate safeguards to eliminate any threats to independence arising from the previous service or reduce them to an acceptable level.

Application of framework to specific situations

Introduction

55. The following examples describe specific circumstances and relationships that may create threats to independence. The examples describe potential threats created and the safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level in each circumstance. The examples are not all inclusive. In practice, the firm, network firms and the members of the assurance team will be required to assess the implications of similar, but different, circumstances and relationships and to determine whether safeguards can be applied to satisfactorily address the threats to independence.

56. Some of the examples deal with financial statement audit clients while others deal with assurance engagements for clients that are not financial statement audit clients. The examples illustrate how safeguards should be applied to fulfil the requirement for

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the members of the assurance team, the firm and network firms to be independent of a financial statement audit client, and for the members of the assurance team and the firm to be independent of an assurance client that is not a financial statement audit client. The examples do not include assurance reports to a non-financial statement audit client expressly restricted for use by identified users. As stated in paragraph 38 for such engagements, members of the assurance team and their immediate and close family are required to be independent of the assurance client. Further, the firm should not have a material financial interest, direct or indirect, in the assurance client.

57. The examples illustrate how the framework applies to financial statement audit clients and other assurance clients. The examples should be read in conjunction with paragraph 39 which explains that, in the majority of assurance engagements, there is one responsible party and that responsible party comprises the assurance client. However, in some assurance engagements there are two responsible parties. In such circumstances, consideration should be given to any threats the firm has reason to believe may be created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Financial interests

58. A financial interest in an assurance client may create a self-interest threat. In evaluating the significance of the threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, it is necessary to examine the nature of the financial interest. This includes an evaluation of the role of the person holding the financial interest, the materiality of the financial interest and the type of financial interest (direct or indirect).

59. When evaluating the type of financial interest, consideration should be given to the fact that financial interests range from those where the individual has no control over the investment vehicle or the financial interest held (for example, a mutual fund, unit trust or similar intermediary vehicle) to those where the individual has no control over the financial interest (for example, as a trustee) or is able to influence the investment decision. In evaluating the significance of any threat to independence, it is important to consider the degree of control or influence that can be exercised over the intermediary, the financial interest held, or its investment strategy. When controls exist, the financial interest should be considered direct. Conversely, when the holder of the financial interest has no ability to exercise such control, the financial interest should be considered indirect.

Provisions applicable to all assurance clients

60. If a member of the assurance team, or their immediate family member, has a direct financial interest, or a material indirect financial interest, in the assurance client, the self-interest threat created would be so significant that the only safeguards available to eliminate the threat or reduce it to an acceptable level would be to:

- (a) dispose of the direct financial interest prior to the individual becoming a member of the assurance team;

(b) dispose of the indirect financial interest in total or dispose of a sufficient amount of it so that the remaining interest is no longer material prior to the individual becoming a member of the assurance team; or

(c) remove the member of the assurance team from the assurance engagement.

61. If a member of the assurance team, or their immediate family member, receives, by way of, for example, an inheritance, gift or as a result of a merger, a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat would be created. The following safeguards should be applied to eliminate the threat or reduce it to an acceptable level:

(a) disposing of the financial interest at the earliest practical date; or

(b) removing the member of the assurance team from the assurance engagement.

62. During the period prior to disposal of the financial interest or removal of the individual from the assurance team, consideration should be given to whether additional safeguards are necessary to reduce the threat to an acceptable level. Such safeguards may include:

(a) discussing the matter with those charged with governance, such as the audit committee; or

(b) involving an additional professional accountant to review the work done or otherwise advise as necessary.

63. When a member of the assurance team knows that their close family member has a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat may be created. In evaluating the significance of any threat, consideration should be given to the nature of the relationship between the member of the assurance team and the close family member and the materiality of the financial interest. Once the significance of the threat has been evaluated, safeguards should be considered and applied as necessary. Such safeguards might include:

(a) the close family member disposing of all or a sufficient portion of the financial interest at the earliest practical date;

(b) discussing the matter with those charged with governance, such as the audit committee;

(c) involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team with the close family relationship or otherwise advise as necessary; or

(d) removing the individual from the assurance engagement.

64. When a firm or a member of the assurance team holds a direct financial interest or a material indirect financial interest in the assurance client as a trustee, a self-interest threat may be created by the possible influence of the trust over the assurance client. Accordingly, such an interest should only be held when:

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- (a) the member of the assurance team, an immediate family member of the member of the assurance team, and the firm are not beneficiaries of the trust;
- (b) the interest held by the trust in the assurance client is not material to the trust;
- (c) the trust is not able to exercise significant influence over the assurance client; and
- (d) the member of the assurance team or the firm does not have significant influence over any investment decision involving a financial interest in the assurance client.

65. Consideration should be given to whether a self-interest threat may be created by the financial interests of individuals outside of the assurance team and their immediate and close family members. Such individuals would include:

- (a) partners, and their immediate family members, who are not members of the assurance team;
- (b) partners and managerial employees who provide non-assurance services to the assurance client; and
- (c) individuals who have a close personal relationship with a member of the assurance team.

66. Whether the interests held by such individuals may create a self-interest threat will depend upon factors such as:

- (a) the firm's organisational, operating and reporting structure; and
- (b) the nature of the relationship between the individual and the member of the assurance team.

67. The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) where appropriate, policies to restrict people from holding such interests;
- (b) discussing the matter with those charged with governance, such as the audit committee; or
- (c) involving an additional professional accountant who did not take part in the assurance engagement to review the work done or otherwise advise as necessary.

68. An inadvertent violation of this section as it relates to financial interests in an assurance client would not impair the independence of the firm, the network firm or a member of the assurance team when:

- (a) the firm, and the network firm, have established policies and procedures that require all professionals to report promptly to the firm any breaches resulting from the purchase, inheritance or other acquisition of a financial interest in the assurance client;

- (b) the firm, and the network firm, promptly notify the professional that the financial interest should be disposed of; and
- (c) the disposal occurs at the earliest practical date after the identification of the issue, or the professional is removed from the assurance team.

69. When an inadvertent violation of this section relating to a financial interest in an assurance client has occurred, the firm should consider whether any safeguards should be applied. Such safeguards might include:

- (a) involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team; or
- (b) excluding the individual from any substantive decision-making concerning the assurance engagement.

Provisions applicable to financial statement audit clients

70. If a firm, or a network firm, has a direct financial interest in a financial statement audit client of the firm, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Consequently, disposal of the financial interest would be the only action appropriate to permit the firm to perform the engagement.

71. If a firm, or a network firm, has a material indirect financial interest in a financial statement audit client of the firm, a self-interest threat is also created. The only actions appropriate to permit the firm to perform the engagement would be for the firm, or the network firm, either to dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

72. If a firm, or a network firm, has a material financial interest in an entity that has a controlling interest in a financial statement audit client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. The only actions appropriate to permit the firm to perform the engagement would be for the firm, or the network firm, either to dispose of the financial interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

73. If the retirement benefit plan of a firm, or network firm, has a financial interest in a financial statement audit client, a self-interest threat may be created. Accordingly, the significance of any such threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

74. If other partners, including partners who do not perform assurance engagements, or their immediate family, in the office in which the engagement partner practises in connection with a financial statement audit hold a direct financial interest or a material indirect financial interest in that audit client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Accordingly, such partners or their immediate family should not hold any such financial interests in such an audit client.

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75. The office in which the engagement partner practises in connection with the financial statement audit is not necessarily the office to which that partner is assigned. Accordingly, when the engagement partner is located in a different office from that of the other members of the assurance team, judgement should be used to determine in which office the partner practises in connection with that audit.

76. If other partners and managerial employees who provide non-assurance services to the financial statement audit client, except those whose involvement is clearly insignificant, or their immediate family, hold a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Accordingly, such personnel or their immediate family should not hold any such financial interests in such an audit client.

77. A financial interest in a financial statement audit client that is held by an immediate family member of (a) a partner located in the office in which the engagement partner practises in connection with the audit or (b) a partner or managerial employee who provides non-assurance services to the audit client is not considered to create an unacceptable threat provided it is received as a result of their employment rights (e.g. pension rights or share options) and, where necessary, appropriate safeguards are applied to reduce any threat to independence to an acceptable level.

78. A self-interest threat may be created if the firm, or the network firm, or a member of the assurance team has an interest in an entity and an audit client, or a director, officer or controlling owner thereof, also has an investment in that entity. Independence is not compromised with respect to the audit client if the respective interests of the firm, the network firm, or member of the assurance team, and the audit client, or director, officer or controlling owner thereof, are both immaterial and the audit client cannot exercise significant influence over the entity. If an interest is material, to either the firm, the network firm or the audit client, and the audit client can exercise significant influence over the entity, no safeguards are available to reduce the threat to an acceptable level and the firm, or the network firm, should either dispose of the interest or decline the audit engagement. Any member of the assurance team with such a material interest should either:

- (a) dispose of the interest;
- (b) dispose of a sufficient amount of the interest so that the remaining interest is no longer material; or
- (c) withdraw from the audit.

Provisions applicable to non-financial statement audit assurance clients

79. If a firm has a direct financial interest in an assurance client that is not a financial statement audit client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Consequently, disposal of the financial interest would be the only action appropriate to permit the firm to perform the engagement.

80. If a firm has a material indirect financial interest in an assurance client that is not a financial statement audit client, a self-interest threat is also created. The only action appropriate to permit the firm to perform the engagement would be for the firm to either dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

81. If a firm has a material financial interest in an entity that has a controlling interest in an assurance client that is not a financial statement audit client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. The only action appropriate to permit the firm to perform the engagement would be for the firm either to dispose of the financial interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

82. When a restricted use report for an assurance engagement that is not a financial statement audit engagement is issued, exceptions to the provisions in paragraphs 60 to 67 and 79 to 81 are set out in paragraph 38.

Loans and guarantees

83. A loan, or a guarantee of a loan, from an assurance client that is a bank, or a similar institution, to the firm would not create a threat to independence provided the loan, or guarantee, is made under normal lending procedures, terms and requirements and the loan is immaterial to both the firm and the assurance client. If the loan is material to the assurance client or the firm, it may be possible, through the application of safeguards, to reduce the self-interest threat created to an acceptable level. Such safeguards might include involving an additional professional accountant from outside the firm, or network firm, to review the work performed.

84. A loan, or a guarantee of a loan, from an assurance client that is a bank, or a similar institution, to a member of the assurance team or their immediate family would not create a threat to independence provided the loan, or guarantee, is made under normal lending procedures, terms and requirements. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

85. Similarly, deposits made by, or brokerage accounts of, a firm or a member of the assurance team with an assurance client that is a bank, broker or similar institution would not create a threat to independence provided the deposit or account is held under normal commercial terms.

86. If the firm, or a member of the assurance team, makes a loan to an assurance client that is not a bank or similar institution, or guarantees such an assurance client's borrowing, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm or the member of the assurance team and the assurance client.

87. Similarly, if the firm or a member of the assurance team accepts a loan from, or has borrowing guaranteed by, an assurance client that is not a bank or similar institution, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm or the member of the assurance team and the assurance client.

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88. The examples in paragraphs 83 to 87 above relate to loans and guarantees between the firm and an assurance client. In the case of a financial statement audit engagement, the provisions should be applied to the firm, all network firms and the audit client.

Close business relationships with assurance clients

89. A close business relationship between a firm or a member of the assurance team and the assurance client or its management, or between the firm, a network firm and a financial statement audit client, will involve a commercial or common financial interest and may create self-interest and intimidation threats. The following are examples of such relationships:

- (a) having a material financial interest in a joint venture with the assurance client or a controlling owner, director, officer or other individual who performs senior managerial functions for that client;
- (b) arrangements to combine one or more services or products of the firm with one or more services or products of the assurance client and to market the package with reference to both parties; and
- (c) distribution or marketing arrangements under which the firm acts as a distributor or marketer of the assurance client's products or services, or the assurance client acts as the distributor or marketer of the products or services of the firm.

90. In the case of a financial statement audit client, unless the financial interest is immaterial and the relationship is clearly insignificant to the firm, the network firm and the audit client, no safeguards could reduce the threat to an acceptable level. In the case of an assurance client that is not a financial statement audit client, unless the financial interest is immaterial and the relationship is clearly insignificant to the firm and the assurance client, no safeguards could reduce the threat to an acceptable level. Consequently, in both these circumstances the only possible courses of action are to:

- (a) terminate the business relationship;
- (b) reduce the magnitude of the relationship so that the financial interest is immaterial and the relationship is clearly insignificant; or
- (c) refuse to perform the assurance engagement.

Unless any such financial interest is immaterial and the relationship is clearly insignificant to the member of the assurance team, the only appropriate safeguard would be to remove the individual from the assurance team.

91. In the case of a financial statement audit client, business relationships involving an interest held by the firm, a network firm or a member of the assurance team or their immediate family in a closely held entity when the audit client or a director or officer of the audit client, or any group thereof, also has an interest in that entity do not create threats to independence provided:

- (a) the relationship is clearly insignificant to the firm, the network firm and the audit client;

- (b) the interest held is immaterial to the investor, or group of investors; and
- (c) the interest does not give the investor, or group of investors, the ability to control the closely held entity.

92. The purchase of goods and services from an assurance client by the firm (or from a financial statement audit client by a network firm) or a member of the assurance team would not generally create a threat to independence providing the transaction is in the normal course of business and on an arm's length basis. However, such transactions may be of a nature or magnitude so as to create a self-interest threat. If the threat created is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) eliminating or reducing the magnitude of the transaction;
- (b) removing the individual from the assurance team; or
- (c) discussing the issue with those charged with governance, such as the audit committee.

Family and personal relationships

93. Family and personal relationships between a member of the assurance team and a director, an officer or certain employees, depending on their role, of the assurance client may create self-interest, familiarity or intimidation threats. It is impracticable to attempt to describe in detail the significance of the threats that such relationships may create. The significance will depend upon a number of factors including the individual's responsibilities on the assurance engagement, the closeness of the relationship and the role of the family member or other individual within the assurance client. Consequently, there is a wide spectrum of circumstances that will need to be evaluated and safeguards to be applied to reduce the threat to an acceptable level.

94. When an immediate family member of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, or was in such a position during any period covered by the engagement, the threats to independence can only be reduced to an acceptable level by removing the individual from the assurance team. The closeness of the relationship is such that no other safeguard could reduce the threat to independence to an acceptable level. If application of this safeguard is not used, the only course of action is to withdraw from the assurance engagement. For example, in the case of an audit of financial statements, if the spouse of a member of the assurance team is an employee in a position to exert direct and significant influence on the preparation of the audit client's accounting records or financial statements, the threat to independence could only be reduced to an acceptable level by removing the individual from the assurance team.

95. When an immediate family member of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, threats to independence may be created. The significance of the threats will depend on factors such as:

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- (a) the position the immediate family member holds with the client; and
- (b) the role of the professional on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) removing the individual from the assurance team;
- (b) where possible, structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the immediate family member; or
- (c) policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them.

96. When a close family member of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, threats to independence may be created. The significance of the threats will depend on factors such as:

- (a) the position the close family member holds with the client; and
- (b) the role of the professional on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) removing the individual from the assurance team;
- (b) where possible, structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the close family member; or
- (c) policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them.

97. In addition, self-interest, familiarity or intimidation threats may be created when a person who is other than an immediate or close family member of a member of the assurance team has a close relationship with the member of the assurance team and is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement. Therefore, partners and employees of the firm are responsible for identifying any such relationships and for consulting in accordance with firm procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the closeness of the relationship, the interaction of the firm professional with the assurance team, the position held within the firm, and the role of the individual within the assurance client.

98. Consideration should be given to whether self-interest, familiarity or intimidation threats may be created by a personal or family relationship between a partner or employee of the firm who is not a member of the assurance team and a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement. Therefore, partners and employees of the firm are responsible for identifying any such relationships and for consulting in accordance with firm procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the closeness of the relationship, the interaction of the firm professional with the assurance team, the position held within the firm, and the role of the individual within the assurance client.

99. An inadvertent violation of this section as it relates to family and personal relationships would not impair the independence of a firm or a member of the assurance team when:

- (a) the firm has established policies and procedures that require all professionals to report promptly to the firm any breaches resulting from changes in the employment status of their immediate or close family members or other personal relationships that create threats to independence;
- (b) either the responsibilities of the assurance team are restructured so that the professional does not deal with matters that are within the responsibility of the person with whom he or she is related or has a personal relationship, or, if this is not possible, the firm promptly removes the professional from the assurance engagement; and
- (c) additional care is given to reviewing the work of the professional.

100. When an inadvertent violation of this section relating to family and personal relationships has occurred, the firm should consider whether any safeguards should be applied. Such safeguards might include:

- (a) involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team; or
- (b) excluding the individual from any substantive decision-making concerning the assurance engagement.

Employment with assurance clients

101. A firm's or a member of the assurance team's independence may be threatened if a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement has been a member of the assurance team or partner of the firm. Such circumstances may create self-interest, familiarity and intimidation threats particularly when significant connections remain between the individual and his or her former firm. Similarly, a member of the assurance team's independence may be threatened when an individual participates in the assurance engagement knowing, or having reason to believe, that he or she is to, or may, join the assurance client some time in the future.

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102. If a member of the assurance team, partner or former partner of the firm has joined the assurance client, the significance of the self-interest, familiarity or intimidation threats created will depend upon the following factors:

- (a) the position the individual has taken at the assurance client;
- (b) the amount of any involvement the individual will have with the assurance team;
- (c) the length of time that has passed since the individual was a member of the assurance team or firm; and
- (d) the former position of the individual within the assurance team or firm.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) considering the appropriateness or necessity of modifying the assurance plan for the assurance engagement;
- (b) assigning an assurance team to the subsequent assurance engagement that is of sufficient experience in relation to the individual who has joined the assurance client;
- (c) involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary; or
- (d) quality control review of the assurance engagement.

In all cases all of the following safeguards are necessary to reduce the threat to an acceptable level:

- (a) the individual concerned is not entitled to any benefits or payments from the firm unless these are made in accordance with fixed pre-determined arrangements. In addition, any amount owed to the individual should not be of such significance to threaten the firm's independence; and
- (b) the individual does not continue to participate or appear to participate in the firm's business or professional activities.

103. A self-interest threat is created when a member of the assurance team participates in the assurance engagement while knowing, or having reason to believe, that he or she is to, or may, join the assurance client some time in the future. This threat can be reduced to an acceptable level by the application of all of the following safeguards:

- (a) policies and procedures to require the individual to notify the firm when entering serious employment negotiations with the assurance client; and
- (b) removal of the individual from the assurance engagement.

In addition, consideration should be given to performing an independent review of any significant judgements made by that individual while on the engagement.

104. A member, whether a principal or not, should not personally take part in the conduct of a financial statement audit if he/she has, during the period upon which the report is to be made, or at any time in the two years prior to the first day thereof, been an officer (other than auditor) or employee of that company or has been seconded to that company from the practice.

105. Similarly, in the case of a financial statement audit client, a key audit partner should not accept a key management position with their audit client unless at least two years have elapsed since the conclusion of the audit.

Recent service with an assurance client

106. To have a former officer, director or employee of the assurance client serve as a member of the assurance team may create self-interest, self-review and familiarity threats. This would be particularly true when a member of the assurance team has to report on, for example, subject matter information he or she had prepared or elements of the financial statements he or she had valued while with the assurance client.

107. If, during the period covered by the assurance report or preceding two years on which a report was given by the firm, a member of the assurance team had served as an officer or director of the assurance client, or had been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement, the threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Consequently, such individuals should not be assigned to the assurance team.

108. If, prior to the period specified in paragraph 107, covered by the assurance report, a member of the assurance team had served as an officer or director of the assurance client, or had been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement, this may create self-interest, self-review and familiarity threats. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the assurance client, is to be evaluated in the current period as part of the current assurance engagement. The significance of the threats will depend upon factors such as:

- (a) the position the individual held with the assurance client;
- (b) the length of time that has passed since the individual left the assurance client; and
- (c) the role the individual plays on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) involving an additional professional accountant to review the work done by the individual as part of the assurance team or otherwise advise as necessary; or
- (b) discussing the issue with those charged with governance, such as the audit committee.

Serving as an officer or director on the board of assurance clients

109. If a partner or employee of the firm serves as an officer or as a director on the board of an assurance client, the self-review and self-interest threats created would be so significant that no safeguard could reduce the threats to an acceptable level. In the case of a financial statement audit engagement, if a partner or employee of a network firm were to serve as an officer or as a director on the board of an audit client, the threats created would be so significant that no safeguard could reduce the threats to an acceptable level. Consequently, if such an individual were to accept such a position, the only course of action is to refuse to perform, or to withdraw from, the assurance engagement.

110. The position of company secretary has different implications in different jurisdictions. The duties may range from administrative duties such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulations or providing advice on corporate governance matters. Generally this position is seen to imply a close degree of association with the entity and may create self-review and advocacy threats.

111. If a partner or employee of the firm or a network firm serves as company secretary for a financial statement audit client, the self-review and advocacy threats created would generally be so significant that no safeguard could reduce the threat to an acceptable level. When the practice is specifically permitted under local law, professional rules or practice, the duties and functions undertaken should be limited to those of a routine and formal administrative nature such as the preparation of minutes and maintenance of statutory returns.

112. Routine administrative services to support a company secretarial function or advisory work in relation to company secretarial administration matters are generally not perceived to impair independence, provided client management makes all relevant decisions.

Long association of senior personnel with assurance clients

General provisions

113. Using the same senior personnel on an assurance engagement over a long period of time may create a familiarity threat. The significance of the threat will depend upon factors such as:

- (a) the length of time that the individual has been a member of the assurance team;
- (b) the role of the individual on the assurance team;
- (c) the structure of the firm; and
- (d) the nature of the assurance engagement.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied to reduce the threat to an acceptable level. Such safeguards might include:

- (a) rotating the senior personnel off the assurance team;

- (b) involving an additional professional accountant who was not a member of the assurance team to review the work done by the senior personnel or otherwise advise as necessary; or
- (c) independent internal quality reviews.

Financial statement audit clients that are listed entities or other public interest entities

114. Using the same engagement partner, other key audit partners or the same responsible individual for the engagement quality control review on a financial statement audit over a prolonged period may create a familiarity threat. This threat is particularly relevant in the context of the audit of listed or other public interest entities and safeguards should be applied in such situations to reduce such a threat to an acceptable level. Accordingly, for the audit of listed or other public interest entities:

- (a) the engagement partner should be rotated after a pre-defined period, normally no more than five years, and should not return to the engagement until a period of five years has elapsed;
- (b) other key audit partners should be rotated after a pre-defined period, normally no more than seven years, and should not return to the engagement until a period of two years (or five years if returning as engagement partner) has elapsed; and
- (c) the individual responsible for the engagement quality control review should be rotated after a pre-defined period, normally no more than seven years, and should not return to the engagement until a period of two years has elapsed.

115. When a financial statement audit client becomes a listed or other public interest entity, the length of time the engagement partner, other key audit partners or the individual responsible for the engagement quality control review has served the audit client in that capacity should be considered in determining when the individual should be rotated. However, the person may continue to serve as the engagement partner, other key audit partner or the individual responsible for the engagement quality control review for two additional years before rotating off the engagement.

116. While the engagement partner, other key audit partners or the individual responsible for the engagement quality control review should be rotated after such a pre-defined period, some degree of flexibility over the timing of the rotation may be necessary in certain circumstances. Examples of such circumstances include:

- (a) situations when the person's continuity is especially important to the audit client, for example, when there will be major changes to the financial statement audit client, for example, when there will be major changes to the audit client's structure that would otherwise coincide with the rotation of the person(s); and
- (b) situations when, due to the size of the firm, rotation is not possible or does not constitute an appropriate safeguard.

In all such circumstances, when the person is not rotated after such a pre-defined period, equivalent safeguards should be applied to reduce any threats to an acceptable level.

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117. When a firm has only a few people with the necessary knowledge and experience to serve as engagement partner, other key audit partner or individual responsible for the engagement quality control review on a financial statement audit client that is a listed or other public interest entity, rotation of the lead partner may not be an appropriate safeguard. In these circumstances the firm should apply other safeguards to reduce the threat to an acceptable level. Such safeguards would include involving an additional professional accountant who was not otherwise associated with the assurance team to review the work done or otherwise advise as necessary. This individual could be someone from outside the firm or someone within the firm who was not otherwise associated with the assurance team.

Provision of non-assurance services to assurance clients

118. Firms have traditionally provided to their assurance clients a range of non-assurance services that are consistent with their skills and expertise. Assurance clients value the benefits that derive from having these firms, who have a good understanding of the business, bring their knowledge and skill to bear in other areas. Furthermore, the provision of such non-assurance services will often result in the assurance team obtaining information regarding the assurance client's business and operations that is helpful in relation to the assurance engagement. The greater the knowledge of the assurance client's business, the better the assurance team will understand the assurance client's procedures and controls, and the business and financial risks that it faces. The provision of non-assurance services may, however, create threats to the independence of the firm, a network firm or the members of the assurance team, particularly with respect to perceived threats to independence. Consequently, it is necessary to evaluate the significance of any threat created by the provision of such services. In some cases it may be possible to eliminate or reduce the threat created by the application of safeguards. In other cases no safeguards are available to reduce the threat to an acceptable level.

119. The following activities would generally create self-interest or self-review threats that are so significant that only avoidance of the activity or refusal to perform the assurance engagement would reduce the threats to an acceptable level:

- (a) authorising, executing or consummating a transaction, or otherwise exercising authority on behalf of the assurance client, or having the authority to do so;
- (b) determining which recommendation of the firm should be implemented; and
- (c) reporting, in a management role, to those charged with governance.

120. The examples set out in paragraphs 126 to 165 are addressed in the context of the provision of non-assurance services to an assurance client. The potential threats to independence will most frequently arise when a non-assurance service is provided to a financial statement audit client. The financial statements of an entity provide financial information about a broad range of transactions and events that have affected the entity. The subject matter information of other assurance services, however, may be limited in nature. Threats to independence, however, may also arise when a firm provides a non-assurance service related to the subject matter information of a non-financial statement audit assurance engagement. In such cases, consideration should be given to the significance of the firm's involvement with the subject matter information of the engagement, whether any self-review threats are created and whether any threats to independence could be reduced to

an acceptable level by the application of safeguards, or whether the engagement should be declined. When the non-assurance service is not related to the subject matter information of the non-financial statement audit assurance engagement, the threats to independence will generally be clearly insignificant.

121. The following activities may also create self-review or self-interest threats:

- (a) having custody of an assurance client's assets;
- (b) supervising assurance client employees in the performance of their normal recurring activities; and
- (c) preparing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).

The significance of any threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- (a) making arrangements so that personnel providing such services do not participate in the assurance engagement;
- (b) involving an additional professional accountant to advise on the potential impact of the activities on the independence of the firm and the assurance team; or
- (c) other relevant safeguards set out in national regulations.

122. New developments in business, the evolution of financial markets, rapid changes in information technology, and the consequences for management and control, make it impossible to draw up an all-inclusive list of all situations when providing non-assurance services to an assurance client might create threats to independence and of the different safeguards that might eliminate these threats or reduce them to an acceptable level. In general, however, a firm may provide services beyond the assurance engagement provided any threats to independence have been reduced to an acceptable level.

123. The following safeguards may be particularly relevant in reducing to an acceptable level threats created by the provision of non-assurance services to assurance clients:

- (a) policies and procedures to prohibit professional staff from making management decisions for the assurance client, or assuming responsibility for such decisions;
- (b) discussing independence issues related to the provision of non-assurance services with those charged with governance, such as the audit committee;
- (c) policies within the assurance client regarding the oversight responsibility for provision of non-assurance services by the firm;
- (d) involving an additional professional accountant to advise on the potential impact of the non-assurance engagement on the independence of the member of the assurance team and the firm;

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- (e) involving an additional professional accountant outside of the firm to provide assurance on a discrete aspect of the assurance engagement;
- (f) obtaining the assurance client's acknowledgement of responsibility for the results of the work performed by the firm;
- (g) disclosing to those charged with governance, such as the audit committee, the nature and extent of fees charged; or
- (h) making arrangements so that personnel providing non-assurance services do not participate in the assurance engagement.

124. Before the firm accepts an engagement to provide a non-assurance service to an assurance client, consideration should be given to whether the provision of such a service would create a threat to independence. In situations when a threat created is other than clearly insignificant, the non-assurance engagement should be declined unless appropriate safeguards can be applied to eliminate the threat or reduce it to an acceptable level.

125. The provision of certain non-assurance services to financial statement audit clients may create threats to independence so significant that no safeguard could eliminate the threat or reduce it to an acceptable level. However, the provision of such services to a related entity, division or discrete financial statement item of such clients may be permissible when any threats to the firm's independence have been reduced to an acceptable level by arrangements for that related entity, division or discrete financial statement item to be audited by another firm or when another firm re-performs the non-assurance service to the extent necessary to enable it to take responsibility for that service.

Preparing accounting records and financial statements

126. Assisting a financial statement audit client in matters such as preparing accounting records or financial statements may create a self-review threat when the financial statements are subsequently audited by the firm.

127. It is the responsibility of financial statement audit client management to ensure that accounting records are kept and financial statements are prepared, although they may request the firm to provide assistance. If firm, or network firm, personnel providing such assistance make management decisions, the self-review threat created could not be reduced to an acceptable level by any safeguards. Consequently, personnel should not make such decisions. Examples of such managerial decisions include the following:

- (a) determining or changing journal entries, or the classifications for accounts or transaction or other accounting records without obtaining the approval of the financial statement audit client;
- (b) authorising or approving transactions; and
- (c) preparing source documents or originating data (including decisions on valuation assumptions), or making changes to such documents or data.

128. The audit process involves extensive dialogue between the firm and management of the financial statement audit client. During this process, management requests and receives significant input regarding such matters as accounting principles and financial statement disclosure, the appropriateness of controls and the methods used in determining the stated amounts of assets and liabilities. Technical assistance of this nature and advice on accounting principles for financial statement audit clients are an appropriate means to promote the fair presentation of the financial statements. The provision of such advice does not generally threaten the firm's independence. Similarly, the financial statement audit process may involve assisting an audit client in resolving account reconciliation problems, analysing and accumulating information for regulatory reporting, assisting in the preparation of consolidated financial statements (including the translation of local statutory accounts to comply with group accounting policies and the transition to a different reporting framework such as International Financial Reporting Standards), drafting disclosure items, proposing adjusting journal entries and providing assistance and advice in the preparation of local statutory accounts of subsidiary entities. These services are considered to be a normal part of the audit process and do not, under normal circumstances, threaten independence.

General provisions

129. The examples in paragraphs 130 to 133 indicate that self-review threats may be created if the firm is involved in the preparation of accounting records or financial statements and those financial statements are subsequently the subject matter information of an audit engagement of the firm. This notion may be equally applicable in situations when the subject matter information of the assurance engagement is not financial statements. For example, a self-review threat would be created if the firm developed and prepared prospective financial information and subsequently provided assurance on this prospective financial information. Consequently, the firm should evaluate the significance of any self-review threat created by the provision of such services. If the self-review threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level.

Financial statement audit clients that are not listed or other public interest entities

130. The firm, or a network firm, may provide a financial statement audit client that is not a listed or other public interest entity with accounting and bookkeeping services, including payroll services, of a routine or mechanical nature, provided any self-review threat created is reduced to an acceptable level. Examples of such services include:

- (a) recording transactions for which the audit client has determined or approved the appropriate account classification;
- (b) posting coded transactions to the audit client's general ledger;
- (c) preparing financial statements based on information in the trial balance; and
- (d) posting audit client approved entries to the trial balance.

The significance of any threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

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- (a) making arrangements so that such services are not performed by a member of the assurance team;
- (b) implementing policies and procedures to prohibit the individual providing such services from making any managerial decisions on behalf of the audit client;
- (c) requiring the source data for the accounting entries to be originated by the audit client;
- (d) requiring the underlying assumptions to be originated and approved by the audit client; or
- (e) obtaining audit client approval for any proposed journal entries or other changes affecting the financial statements.

Financial statement audit clients that are listed or other public interest entities

131. The provision of accounting and bookkeeping services, including payroll services and the preparation of financial statements or financial information which forms the basis of the financial statements on which the audit report is provided, on behalf of a financial statement audit client that is a listed or other public interest entity, may impair the independence of the firm or network firm, or at least give the appearance of impairing independence. Accordingly, no safeguard other than the prohibition of such services, except in emergency situations and when the services fall within the statutory audit mandate, could reduce the threat created to an acceptable level. Therefore, a firm or a network firm should not, with the limited exceptions below, provide such services to listed or other public interest entities that are financial statement audit clients.

132. The provision of accounting and bookkeeping services of a routine or mechanical nature to divisions or subsidiaries of a financial statement audit client that is a listed or other public interest entity would not be seen as impairing independence with respect to the audit client provided that the following conditions are met:

- (a) the services do not involve the exercise of judgement;
- (b) the divisions or subsidiaries for which the service is provided are collectively immaterial to the audit client, or the services provided are collectively immaterial to the division or subsidiary; and
- (c) the fees to the firm, or network firm, from such services are collectively clearly insignificant.

If such services are provided, all of the following safeguards should be applied:

- (a) the firm, or network firm, should not assume any managerial role nor make any managerial decisions;
- (b) the listed or other public interest audit client should accept responsibility for the results of the work; and
- (c) personnel providing the services should not participate in the audit.

Emergency situations

133. The provision of accounting and bookkeeping services to financial statement audit clients in emergency or other unusual situations, when it is impractical for the audit client to make other arrangements, would not be considered to pose an unacceptable threat to independence provided:

- (a) the firm, or network firm, does not assume any managerial role or make any managerial decisions;
- (b) the audit client accepts responsibility for the results of the work; and
- (c) personnel providing the services are not members of the assurance team.

Valuation services

134. A valuation comprises the making of assumptions with regard to future developments, the application of certain methodologies and techniques, and the combination of both in order to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.

135. A self-review threat may be created when a firm or network firm performs a valuation for a financial statement audit client that is to be incorporated into the client's financial statements.

136. If the valuation service involves the valuation of matters material to the financial statements and the valuation involves a significant degree of subjectivity, the self-review threat created could not be reduced to an acceptable level by the application of any safeguard. Accordingly, such valuation services should not be provided or, alternatively, the only course of action would be to withdraw from the financial statement audit engagement.

137. Performing valuation services for a financial statement audit client that are neither separately, nor in the aggregate, material to the financial statements, or that do not involve a significant degree of subjectivity, may create a self-review threat that could be reduced to an acceptable level by the application of safeguards. Such safeguards might include:

- (a) involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary;
- (b) confirming with the audit client their understanding of the underlying assumptions of the valuation and the methodology to be used and obtaining approval for their use;
- (c) obtaining the audit client's acknowledgement of responsibility for the results of the work performed by the firm; and
- (d) making arrangements so that personnel providing such services do not participate in the audit engagement.

In determining whether the above safeguards would be effective, consideration should be given to the following matters:

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- (a) the extent of the audit client's knowledge, experience and ability to evaluate the issues concerned, and the extent of their involvement in determining and approving significant matters of judgement;
- (b) the degree to which established methodologies and professional guidelines are applied when performing a particular valuation service;
- (c) for valuations involving standard or established methodologies, the degree of subjectivity inherent in the item concerned;
- (d) the reliability and extent of the underlying data;
- (e) the degree of dependence on future events of a nature which could create significant volatility inherent in the amounts involved; and
- (f) the extent and clarity of the disclosures in the financial statements.

138. When a firm, or a network firm, performs a valuation service for a financial statement audit client for the purposes of making a filing or return to a tax authority, computing an amount of tax due by the assurance client, or for the purpose of tax planning, this would not create a significant threat to independence because such valuations are generally subject to external review, for example by a tax authority.

139. When the firm performs a valuation that forms part of the subject matter information of an assurance engagement that is not a financial statement audit engagement, the firm should consider any self-review threats. If the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

Provision of taxation services to financial statement audit clients

140. In many jurisdictions, the firm may be asked to provide taxation services to an audit client. Taxation services comprise a broad range of services, including compliance, planning, provision of formal taxation opinions and assistance in the resolution of tax disputes. Such assignments are generally not seen to create threats to independence.

Provision of internal audit services to financial statement audit clients

141. A self-review threat may be created when a firm, or network firm, provides internal audit services to a financial statement audit client. Internal audit services may comprise an extension of the firm's audit service beyond requirements of generally accepted auditing standards, assistance in the performance of a client's internal audit activities or outsourcing of the activities. In evaluating any threats to independence, the nature of the service will need to be considered. For this purpose, internal audit services do not include operational internal audit services unrelated to the internal accounting controls, financial systems or financial statements.

142. Services involving an extension of the procedures required to conduct a financial statement audit in accordance with International Standards on Auditing (or equivalent local standards) would not be considered to impair independence with respect to an audit client provided that the firm's or network firm's personnel do not act or appear to act in a capacity equivalent to a member of audit client management.

143. When the firm, or a network firm, provides assistance in the performance of a client's internal audit activities or undertakes the outsourcing of some of the activities, any self-review threat created may be reduced to an acceptable level by ensuring that there is a clear separation between the management and control of the internal audit by client management and the internal audit activities themselves.

144. Performing a significant portion of the financial statement audit client's internal audit activities may create a self-review threat and a firm, or network firm, should consider the threats and proceed with caution before taking on such activities. Appropriate safeguards should be put in place and the firm, or network firm, should, in particular, ensure that the audit client acknowledges its responsibilities for establishing, maintaining and monitoring the system of internal controls.

145. Safeguards that should be applied in all circumstances to reduce any threats created to an acceptable level include ensuring that:

- (a) the audit client is responsible for internal audit activities and acknowledges its responsibility for establishing, maintaining and monitoring the system of internal controls;
- (b) the audit client designates a competent employee, preferably within senior management, to be responsible for internal audit activities;
- (c) the audit client, the audit committee or supervisory body approves the scope, risk and frequency of internal audit work;
- (d) the audit client is responsible for evaluating and determining which recommendations of the firm should be implemented;
- (e) the audit client evaluates the adequacy of the internal audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining and acting on reports from the firm; and
- (f) the findings and recommendations resulting from the internal audit activities are reported appropriately to the audit committee or supervisory body.

146. Consideration should also be given to whether such non-assurance services should be provided only by personnel not involved in the financial statement audit engagement and with different reporting lines within the firm.

Provision of IT systems services to financial statement audit clients

147. The provision of services by a firm or network firm to a financial statement audit client that involve the design and implementation of financial information technology systems that are used to generate information forming part of a client's financial statements may create a self-review threat.

148. The self-review threat is likely to be too significant to allow the provision of such services to a financial statement audit client unless appropriate safeguards are put in place ensuring that:

- (a) the audit client acknowledges its responsibility for establishing and monitoring a system of internal controls;
- (b) the audit client designates a competent employee, preferably within senior management, with the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system;
- (c) the audit client makes all management decisions with respect to the design and implementation process;
- (d) the audit client evaluates the adequacy and results of the design and implementation of the system; and
- (e) the audit client is responsible for the operation of the system (hardware or software) and the data used or generated by the system.

149. Consideration should also be given to whether such non-assurance services should be provided only by personnel not involved in the financial statement audit engagement and with different reporting lines within the firm.

150. The provision of services by a firm or network firm to a financial statement audit client which involve either the design or the implementation of financial information technology systems that are used to generate information forming part of a client's financial statements may also create a self-review threat. The significance of the threat, if any, should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

151. The provision of services in connection with the assessment, design and implementation of internal accounting controls and risk management controls is not considered to create a threat to independence provided that firm or network firm personnel do not perform management functions.

Temporary staff assignments to financial statement audit clients

152. The lending of staff by a firm, or network firm, to a financial statement audit client may create a self-review threat when the individual is in a position to influence the preparation of a client's accounts or financial statements. In practice, such assistance may be given (particularly in emergency situations) but only on the understanding that the firm's or network firm's personnel will not be involved in:

- (a) making management decisions;
- (b) approving or signing agreements or other similar documents; or
- (c) exercising discretionary authority to commit the client.

Each situation should be carefully analysed to identify whether any threats are created and whether appropriate safeguards should be implemented. Safeguards that should be applied in all circumstances to reduce any threats to an acceptable level include:

- (a) the staff providing the assistance should not be given audit responsibility for any function or activity that they performed or supervised during their temporary staff assignment; and
- (b) the audit client should acknowledge its responsibility for directing and supervising the activities of firm, or network firm, personnel.

Provision of litigation support services to financial statement audit clients

153. Litigation support services may include such activities as acting as an expert witness, calculating estimated damages or other amounts that might become receivable or payable as the result of litigation or other legal dispute, and assistance with document management and retrieval in relation to a dispute or litigation.

154. A self-review threat may be created when the litigation support services provided to a financial statement audit client include the estimation of the possible outcome and thereby affect the amounts or disclosures to be reflected in the financial statements. The significance of any threat created will depend upon factors such as:

- (a) the materiality of the amounts involved;
- (b) the degree of subjectivity inherent in the matter concerned; and
- (c) the nature of the engagement.

The firm, or network firm, should evaluate the significance of any threat created and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

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- (a) policies and procedures to prohibit individuals assisting the audit client from making managerial decisions on behalf of the client;
- (b) using professionals who are not members of the assurance team to perform the service; or
- (c) the involvement of others, such as independent experts.

155. If the role undertaken by the firm or network firm involved making managerial decisions on behalf of the financial statement audit client, the threats created could not be reduced to an acceptable level by the application of any safeguard. Therefore, the firm or network firm should not perform this type of service for an audit client.

Provision of legal services to financial statement audit clients

156. Legal services are defined as any services for which the person providing the services must either be admitted to practise before the Courts of the jurisdiction in which such services are to be provided, or have the required legal training to practise law. Legal services encompass a wide and diversified range of areas including both corporate and commercial services to clients, such as contract support, litigation, mergers and acquisition advice and support and the provision of assistance to clients' internal legal departments. The provision of legal services by a firm, or network firm, to an entity that is an audit client may create both self-review and advocacy threats.

157. Threats to independence need to be considered depending on the nature of the service to be provided, whether the service provider is separate from the assurance team and the materiality of any matter in relation to the entity's financial statements. The safeguards set out in paragraph 123 may be appropriate in reducing any threats to independence to an acceptable level. In circumstances when the threat to independence cannot be reduced to an acceptable level the only available action is to decline to provide such services or withdraw from the financial statement audit engagement.

158. The provision of legal services to a financial statement audit client which involve matters that would not be expected to have a material effect on the financial statements is not considered to create an unacceptable threat to independence.

159. There is a distinction between advocacy and advice. Legal services to support a financial statement audit client in the execution of a transaction (e.g. contract support, legal advice, legal due diligence and restructuring) may create self-review threats. However, safeguards may be available to reduce these threats to an acceptable level. Such a service would not generally impair independence, provided that:

- (a) members of the assurance team are not involved in providing the service; and
- (b) in relation to the advice provided, the audit client makes the ultimate decision or, in relation to the transactions, the service involves the execution of what has been decided by the audit client.

160. Acting for a financial statement audit client in the resolution of a dispute or litigation in such circumstances when the amounts involved are material in relation to the financial statements of the audit client would create advocacy and self-review threats so significant that no safeguard could reduce the threat to an acceptable level. Therefore, the firm should not perform this type of service for a financial statement audit client.

161. When a firm is asked to act in an advocacy role for a financial statement audit client in the resolution of a dispute or litigation in circumstances when the amounts involved are not material to the financial statements of the audit client, the firm should evaluate the significance of any advocacy and self-review threats created and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- (a) policies and procedures to prohibit individuals assisting the audit client from making managerial decisions on behalf of the client; or
- (b) using professionals who are not members of the assurance team to perform the service.

162. The appointment of a partner or an employee of the firm or network firm as General Counsel for legal affairs to a financial statement audit client would create self-review and advocacy threats that are so significant that no safeguards could reduce the threats to an acceptable level. The position of General Counsel is generally a senior management position with broad responsibility for the legal affairs of a company and consequently no member of the firm or network firm should accept such an appointment for a financial statement audit client.

Recruiting senior management

163. The recruitment of senior management for an assurance client, such as those in a position to affect the subject matter information of the assurance engagement, may create current or future self-interest, familiarity and intimidation threats. The significance of the threat will depend upon factors such as:

- (a) the role of the person to be recruited; and
- (b) the nature of the assistance sought.

The firm could generally provide such services as reviewing the professional qualifications of a number of applicants and provide advice on their suitability for the post. In addition, the firm could generally produce a short-list of candidates for interview, provided it has been drawn up using criteria specified by the assurance client.

The significance of the threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. In all cases, the firm should not make management decisions and the decision as to whom to hire should be left to the client.

Corporate finance and similar activities

164. The provision of corporate finance services, advice or assistance to an assurance client may create advocacy and self-review threats. In the case of certain corporate finance services, the independence threats created would be so significant that no safeguards could be applied to reduce the threats to an acceptable level. For example, promoting, dealing in, or underwriting of an assurance client's shares is not compatible with providing assurance services. Moreover, committing the assurance client to the terms of a transaction or consummating a transaction on behalf of the client would create a threat to independence so significant that no safeguard could reduce the threat to an acceptable level. In the case of a financial statement audit client, the provision of those corporate finance services referred to above by a firm or a network firm would create a threat to independence so significant that no safeguard could reduce the threat to an acceptable level.

165. Other corporate finance services may create advocacy or self-review threats. However, safeguards may be available to reduce these threats to an acceptable level. Examples of such services include assisting a client in developing corporate strategies, assisting in identifying or introducing a client to possible sources of capital that meet the client specifications or criteria, and providing structuring advice and assisting a client in analysing the accounting effects of proposed transactions. Safeguards that should be considered include:

- (a) policies and procedures to prohibit individuals assisting the assurance client from making managerial decisions on behalf of the client;
- (b) using professionals who are not members of the assurance team to provide the services; and
- (c) ensuring the firm does not commit the assurance client to the terms of any transaction or consummate a transaction on behalf of the client.

Fees and pricing

Fees – relative size

166. When the total fees generated by an assurance client represent a large proportion of a firm's total fees, the dependence on that client or client group and concern about the possibility of losing the client may create a self-interest threat. The significance of the threat will depend upon factors such as:

- (a) the structure of the firm; and
- (b) whether the firm is well established or newly created.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) discussing the extent and nature of fees charged with the audit committee, or others charged with governance;
- (b) taking steps to reduce dependency on the client;

- (c) external quality control reviews; and
- (d) consulting a third party, such as ACCA or another professional accountant.

167. A self-interest threat may also be created when the fees generated by the assurance client represent a large proportion of the revenue of an individual partner. The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- (a) policies and procedures to monitor and implement quality control of assurance engagements; and
- (b) involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary.

168. The weight of some factors, such as the desire of a practice not to lose a prestigious client, may be difficult to assess. Nor is it possible to set rigid limits even to more quantifiable factors such as the proportion of fees received. Nevertheless and subject to the next paragraph, the public may perceive that a member's objectivity is likely to be in jeopardy where the fees for audit and other recurring work paid by one client or group of connected clients exceed 15 per cent of the firm's total fees or, in the case of a member practising part-time, 15 per cent of their gross earned income. Where the public interest is involved, it is particularly important that objectivity is seen to be preserved, and in the case of listed and other public interest entities the appropriate figure should be 10 per cent of the firm's total fees.

169. It is recognised that a new practice seeking to establish itself or an established practice reducing its activities may not be able to comply with this criterion. Such practices therefore should take particular care to safeguard their independence (see paragraph 166).

170. The figures in paragraph 168 indicate only the extremes beyond which the public may perceive that a member's objectivity is likely to be at risk. It is the duty of the firm regularly to satisfy itself that it is not open to criticism in respect of any assurance engagement, having regard to all the circumstances of the case. For this purpose a firm should, before accepting an assurance assignment, carefully consider against the criteria set out in this section the propriety of accepting or retaining each client or group of associated clients the fees from which for assurance and other recurring work represent 10 per cent or more of the firm's total fees or of the gross earned income of a member practising part-time. In the case of a listed company or other public interest entity, a figure of not more than 5 per cent is the appropriate point to initiate review.

Fees – overdue

171. A self-interest threat may be created if fees due from an assurance client for professional services remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

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- (a) discussing the level of outstanding fees with the audit committee, or others charged with governance; and
- (b) involving an additional professional accountant who did not take part in the assurance engagement to provide advice or review the work performed.

The firm should also consider whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed.

Pricing

172. When a firm obtains an assurance engagement at a significantly lower fee level than that charged by the predecessor firm, or quoted by other firms, the self-interest threat created will not be reduced to an acceptable level unless:

- (a) the firm is able to demonstrate that appropriate time and qualified staff are assigned to the task; and
- (b) all applicable assurance standards, guidelines and quality control procedures are being complied with.

Contingent fees

173. Contingent fees are fees calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. For the purposes of this section, fees are not regarded as being contingent if a court or other public authority has established them.

174. A contingent fee charged by a firm in respect of an assurance engagement creates self-interest and advocacy threats that cannot be reduced to an acceptable level by the application of any safeguard. Accordingly, a firm should not enter into any fee arrangement for an assurance engagement under which the amount of the fee is contingent on the result of the assurance work or on items that are the subject matter of the assurance engagement.

175. A contingent fee charged by a firm in respect of a non-assurance service provided to an assurance client may also create self-interest and advocacy threats. If the amount of the fee for a non-assurance engagement was agreed to, or contemplated, during an assurance engagement and was contingent on the result of that assurance engagement, the threats could not be reduced to an acceptable level by the application of any safeguard. Accordingly, the only acceptable action is not to accept such arrangements. For other types of contingent fee arrangements, the significance of the threats created will depend on factors such as:

- (a) the range of possible fee amounts;
- (b) the degree of variability;
- (c) the basis on which the fee is to be determined;

- (d) whether the outcome or result of the transaction is to be reviewed by an independent third party; and
- (e) the effect of the event or transaction on the assurance engagement.

The significance of the threats should be evaluated and, if the threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threats to an acceptable level. Such safeguards might include:

- (a) disclosing to the audit committee, or others charged with governance, the extent and nature of fees charged;
- (b) review or determination of the final fee by an unrelated third party; or
- (c) quality and control policies and procedures.

Gifts and hospitality

176. Accepting gifts or hospitality from an assurance client may create self-interest and familiarity threats. When a firm or a member of the assurance team accepts gifts or hospitality, unless the value is clearly insignificant, the threats to independence cannot be reduced to an acceptable level by the application of any safeguard. Consequently, a firm or a member of the assurance team should not accept such gifts or hospitality.

177. A similar consideration will apply to an immediate or close family member of a member of the assurance team other than where a person receives a benefit in their own right and not because of the connection.

Actual and threatened litigation

178. When litigation takes place, or appears likely, between the firm or a member of the assurance team and the assurance client, a self-interest or intimidation threat may be created. The relationship between client management and the members of the assurance team must be characterised by complete candour and full disclosure regarding all aspects of a client's business operations. The firm and the client's management may be placed in adversarial positions by litigation, affecting management's willingness to make complete disclosures and the firm may face a self-interest threat. The significance of the threat created will depend upon such factors as:

- (a) the materiality of the litigation;
- (b) the nature of the assurance engagement; and
- (c) whether the litigation relates to a prior assurance engagement.

Once the significance of the threat has been evaluated, the following safeguards should be applied, if necessary, to reduce the threats to an acceptable level:

- (a) disclosing to the audit committee, or others charged with governance, the extent and nature of the litigation;

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- (b) if the litigation involves a member of the assurance team, removing that individual from the assurance team; or
- (c) involving an additional professional accountant in the firm who was not a member of the assurance team to review the work done or otherwise advise as necessary.

If such safeguards do not reduce the threat to an appropriate level, the only appropriate action is to withdraw from, or refuse to accept, the assurance engagement.

Section B – Independence in professional roles other than those covered in Section A

Introduction

179. This section deals with work other than the work covered by section A of this statement including:

- taxation services;
- preparation of accounts;
- corporate advisory services other than the preparation of documents for public use;
- management consultancy;
- reporting to management/secondment to management.

180. In these circumstances independence in the strict sense applicable to assurance assignments (section A above) is not essential, provided that members are not also providing assurance services to the client and that any relevant relationships and conflicts of interest are appropriately disclosed.

181. There are nevertheless certain factors affecting independence which, by their nature, are a threat to objectivity in any professional role. Accordingly the considerations referred to in section A (above) apply to the professional assignments referred to in paragraph 179 above. Members should nevertheless be mindful of the following:

Family and personal relationships

182. An objective approach to any assignment may be threatened or appear to be threatened as a consequence of a family or other close personal or business relationship.

183. In particular, problems may arise where members, or an immediate or close family member, has a mutual business interest with a client or with an officer or employee of a client. Where an engagement involving such relationships is accepted, or where such an interest arises in the course of an engagement, appropriate safeguards should be set up within the firm. The safeguards should include:

- (a) initial consideration by the member(s) involved as to whether it is proper to accept appointment in the context of any conflict of interest which may exist;

- (b) adequate disclosure of every such conflict to all relevant parties;
- (c) continual review of the appropriateness of members continuing to act, including, if necessary, e.g. in the case of sole or small practitioners, arrangements to consult with another professional accountant outside the firm.

Loans and guarantees

184. Loans, or a guarantee of a loan, to or from a client constitute a threat or an apparent threat to objectivity, and the considerations set out in paragraphs 83 to 88 of section A apply to the professional assignments referred to in paragraph 179 above.

185. The attention of members is also drawn to the warning in paragraph 171 of section A, that the existence of significant overdue fees from a client can be a threat to objectivity akin to that of a loan.

Gifts and hospitality

186. Members, or an immediate or close family member, may be offered gifts and hospitality from a client. Such an offer ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift from a client is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.

187. The significance of such threats will depend on the nature, value and intent behind the offer. Where gifts or hospitality which a reasonable and informed third party, having knowledge of all relevant information, would consider clearly insignificant are made, members may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, members may generally conclude that there is no significant threat to compliance with the fundamental principles.

188. If evaluated threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, members should not accept such an offer. Gifts or hospitality should only, therefore, be accepted if the value of any benefit is modest.

Beneficial interests in shares and other investments

189. Members should avoid any investment in any company with which they have a business relationship where the value of the investment to the investing member is such as to cast doubts on the objectivity of the member in performing the role or roles which he has contracted to discharge.

190. In this connection the attention of members is drawn to the guidance on improper use of confidential information in sections 3.2, The fundamental principles, and 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others.

Other situations

Business advisers

191. Where a member or a firm acts as a business adviser to a client, he/she or it may invest in that client, and, if the client is a company, act as sponsor or promoter of its shares, provided that the relationship is clearly declared to relevant parties.

192. Members who hold office in a client company, or have a comparable business relationship with a client, should be aware of the dangers inherent in seeking to combine such a role with that of adviser, whereby their necessary objectivity as a professional adviser is imperilled, or perceived to be so by third parties. In such circumstances, members should be aware of the distinctive nature of each of the roles in which they are engaged, and observe the requirements in paragraph 5 of the Introduction to this section.

Second and other opinions

193. Situations where members are asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may give rise to threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant, or is based on inadequate evidence. The significance of the threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgement.

194. When asked to provide such an opinion, members should evaluate the significance of the threats and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include seeking client permission to contact the existing accountant, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant with a copy of the opinion.

195. If the company or entity seeking the opinion will not permit communication with the existing accountant, members should consider whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

196. Not at issue are opinions provided pursuant to litigation, expert testimony and assistance provided to other firms and their clients jointly.

197. Members giving an opinion on the application of accounting standards or other standards or principles, relating to a hypothetical situation and not based on the specific facts or circumstances of a particular organisation, should ensure that the nature of the opinion is made clear.

3.5

Professional duty of confidence in relation to defaults and unlawful acts of clients and others

Introduction

1. Members acquiring information in the course of their professional work should not disclose any such information to third parties without first obtaining permission from their clients. Likewise, students and affiliates must treat any information given by members in the strictest confidence. Members in business should remember that their “client” for the purpose of this section is their employer. Members’ attention is drawn to the discussion of the fundamental principles in section 3.2, The fundamental principles, and the conceptual framework in section 3.3, The conceptual framework.

2. There are, however, circumstances where members may disclose information to third parties without first obtaining permission. This would be where, for example, there is a statutory right or duty to disclose, or where members are served with a court order or some other form of witness summons, under which they are obliged to disclose information.

3. This section looks at situations where members may be required to disclose information about their clients without first obtaining permission to do so.

4. Members may suspect or encounter a number of criminal offences during the course of their work, most commonly occurring are:

- (a) money laundering;
- (b) drug trafficking or terrorism;
- (c) theft, obtaining by deception, false accounting, and suppression of documents;
- (d) fraud and forgery;
- (e) offences under company law;
- (f) perjury and offences under legislation for the prevention of corruption;
- (g) bankruptcy or insolvency offences, frauds on creditors, false trade descriptions, and offences arising out of relations between employers and employees;
- (h) conspiracy, soliciting or inciting to commit crime and attempting to commit crime;
- (i) tax evasion;
- (j) insider dealing.

3.5 Professional duty of confidence

Members should note that in some jurisdictions money laundering will be a crime not only in relation to serious offences but in relation to all offences.

5. Members who suspect or acquire knowledge indicating that a client (incorporated or un-incorporated) or an officer or employee of a client may have been guilty of some default or unlawful act should normally notify the client's management as soon as practicable and at an appropriate level. In the case of unlawful acts which may amount to money laundering, members may be required, depending on local legislation, to report the suspicion or knowledge internally or to the appropriate external authority (see section 3.8, Money laundering, for further details). In such circumstances, members must avoid doing anything which might tip off the client that a report has been made.

6. If a member's concerns are not satisfactorily resolved, they should consider reporting the matter to non-executive directors or to the client's audit committee where these exist. Where this is not possible or fails to resolve the matter members may wish to consider making a report to a third party.

7. Guidance is provided below on reporting suspected defaults or unlawful acts to third parties.

8. Members should note that references within this chapter to "client" include former clients.

9. Members acquiring information in the course of their professional work in respect of non-clients (for example potential clients) should not disclose any such information to third parties without first obtaining permission from the individual or entity concerned.

10. Members should consider seeking legal advice before making any disclosure, particularly when contemplating disclosing information to a third party.

Relationship between members and their clients

11. Members should explain to their clients that they may only act for those clients who agree to disclose in full all information relevant to an engagement.

12. Members should not agree to act for those clients who will not consent to make full disclosure of relevant information.

13. If, during the course of an engagement, members are unable to obtain from their client the information which they consider necessary, they have a duty to indicate this fact in any report that they may make. In the case of an audit report, auditors may have a statutory obligation to do so (as they do in the United Kingdom by virtue of Section 237(3) of the Companies Act 1985). In either case, members may consider that they can no longer act.

14. It is likely to be an offence (as it is in the United Kingdom under Section 389A(2) of the Companies Act 1985) for an officer of a company knowingly or recklessly to make misleading, false or deceptive statements to the company's auditor. This applies to all information, explanations and statements provided by the company's officers to the auditors whether in written or oral form.

15. Members are reminded that in many jurisdictions (including the United Kingdom and the Republic of Ireland) an auditor is an officer of a company.

Verification of information by reference to the records of a third party who is also a client

16. Sometimes in the course of their work members may obtain information from a client (client A) bearing on information supplied to them by another client (client B). In such circumstances it would be a breach of confidence to reveal the information to the second client (client B) without the permission of the first client (client A). In all probability, any attempt to obtain that permission from client A would result in a breach of the duty of confidence owed to the second client (client B).

17. Members should instead endeavour to substantiate the information with evidence obtained from the books and records of the second client (client B). If this proves impossible, members should seek the consent of the second client (client B) to obtain direct confirmation of the information concerned from the first client (client A).

18. If the second client (client B) refuses permission to contact the first client (client A), members should, where undertaking an audit assignment, consider qualifying their report and/or resigning. Where relevant, members should consider making an appropriate statement of any circumstances connected with the resignation which the member believes should be brought to the notice of the members or creditors of the company, without revealing the name of the first client (client A). In the United Kingdom, auditors who resign are required under Section 394 of the Companies Act 1985 to either make such a statement or confirm that no such circumstances exist. In the case of non-audit engagements where consent is refused the member should consider ceasing to act.

Disclosure of defaults or unlawful acts

19. Confidentiality is an implied term of members' contracts with their clients. For this reason members should not, as a general rule, disclose to other persons, against their client's wishes, information about a client's affairs acquired during and as a result of their professional relationship. The obligation of confidentiality continues even though a professional relationship has ended.

20. It is in the public interest that this confidential relationship is maintained. Without the benefit of confidentiality clients might be reluctant to seek advice from members. Unintended defaults or unlawful acts may be averted as a result of the client acting on members' advice, because clients are able to discuss their plans in confidence.

21. Members who become aware that a client has, or may have, committed a default or unlawful act are normally under no legal obligation to disclose what they know to any persons other than the directors of the client or some person having their authority. However, in certain circumstances, whilst there may be no obligation in law to make a disclosure, members may consider it to be in the "public interest" that a disclosure is made. Those members who consider making a disclosure in the "public interest" are advised to seek legal advice before making such a disclosure.

Obligatory disclosure

22. Members based in the United Kingdom who believe that a client has committed terrorist offences, or has reasonable cause to believe that a client has committed treason, are bound to disclose that knowledge to the proper authorities immediately. Members in other jurisdictions should also take appropriate steps to report such offences to an appropriate authority whilst having regard to the requirements of local laws and regulations.

23. Members are likely to commit an offence if they assist anyone whom they know or suspect to be laundering money generated by a crime. This is certainly the case in the United Kingdom. If a member forms a suspicion of money laundering in the course of their professional activities, they must report it to a proper authority. Members are likely to commit an offence if they fail to make a report. This is the case in the United Kingdom, where the Proceeds of Crime Act 2002 provides a specific exemption from all confidentiality requirements (including those imposed by ACCA's Code of Ethics and Conduct) when reporting knowledge or suspicions relating to funds derived from criminal conduct; the report must be made in good faith. Members are referred to section 3.8, Money laundering, for further guidance.

24. Members must disclose information if compelled by the process of law, for example under a court order.

25. Members, in certain circumstances, may be obliged to disclose certain information to the liquidator, administrative receiver or administrator of a client (e.g. Section 235 of the Insolvency Act 1986 of the United Kingdom – corporate or Section 366 of the Insolvency Act 1986 of the United Kingdom – bankruptcy).

26. In most circumstances, lawyers and their intermediate agents are not required to disclose oral or documentary communication passing between them and their client in professional confidence without the express consent of the client. However, this legal privilege does not extend to the relationship between accountants and their clients.

27. Firms which carry on financial services work, such as investment business, and act in connection with a take-over, merger or acquisition, must co-operate with the relevant regulator for such take-overs and mergers. For example, auditors of clients within the financial services sector in the United Kingdom should refer to the Auditing Practices Board Statement of Auditing Standards 620: The auditors' right and duty to report to regulators in the financial sector.

28. For auditors, the whistleblowing requirements of auditing standards mean that there is the potential to fall foul of regulations, for example, for auditors of entities registered in the United Kingdom and the Republic of Ireland, Statement of Auditing Standard 120: Consideration of law and regulations, and Statement of Auditing Standard 620: Right and duty to report to regulators. Failure to report is likely to be an offence, as it is in the United Kingdom and the Republic of Ireland, and may, in certain specified circumstances, leave members facing fines or even imprisonment. Members are referred to section 3.9, Whistleblowing responsibilities placed on auditors, for further guidance.

29. Members may be entitled, as they are in the United Kingdom and the Republic of Ireland, to the benefit of the ordinary privilege that they need not disclose any information which would incriminate them.

Voluntary disclosure

30. In certain cases members are free to disclose information, whatever its nature. These circumstances fall into four categories of disclosure:

- (a) in the public interest;
- (b) to protect a member's interests;
- (c) authorised by statute;
- (d) to non-governmental bodies.

Disclosure in the public interest

31. A member may disclose information which would otherwise be confidential if disclosure can be justified in the "public interest". Whilst it is a concept recognised by the courts, there is no definition of "public interest" which places members in a difficult position as to whether or not disclosure is justified. However, it is likely that these exceptions to the duty of confidentiality are permitted only where the disclosure is made to "one who has a proper interest to receive that information" (as set out in the United Kingdom case of *Initial Services v Putteril* (1967) All ER145). The proper authorities may, for example, be the police, the government department responsible for trade and industry, or a recognised stock exchange, and will depend upon the particular circumstances. Members are referred to section 3.9, Whistleblowing responsibilities placed on auditors, for further guidance.

32. When considering whether or not disclosure is justified, members should take the following into account:

- (a) the relative size of the amounts involved and the extent of the likely financial damage;
- (b) whether members of the public are likely to be affected;
- (c) the possibility or likelihood of repetition;
- (d) the reasons for the client's unwillingness to disclose the matters to the proper authority;
- (e) the gravity of the matter;
- (f) relevant legislation, accounting standards and auditing standards, etc.;
- (g) any legal advice obtained.

33. Determination of where the balance of public interest lies will require very careful consideration and it will often be appropriate to take legal advice before making a decision. The reasons underlying any decision whether or not to disclose should be fully documented.

Disclosure to protect a member's interests

34. Members may disclose to the proper authorities information concerning their clients where their own interests require disclosure of that information to:

- (a) enable members to defend themselves against a criminal charge or to clear themselves of suspicion;
- (b) resist proceedings for a penalty in respect of a taxation offence, for example, in a case where it is suggested that they assisted or induced their client to make or deliver incorrect returns or accounts;
- (c) resist a legal action brought against them by a client or some third person;
- (d) enable members to defend themselves against disciplinary proceedings or criticism of them which is the subject of enquiry by ACCA, or another regulatory body;
- (e) enable members to sue for their fees.

Disclosure authorised by statute

35. There are cases of express statutory provision where disclosure of information to a proper authority overrides the duty of confidentiality. Members should refer to the legislation relevant to the economic sector in which their client operates. Each statute should be considered carefully to determine the protection offered to the person making a disclosure since this varies from statute to statute. Members are referred to sections 3.9, Whistleblowing responsibilities placed on auditors, and 3.8, Money laundering, for further guidance.

Disclosure to non-governmental bodies

36. Members may be approached by recognised but non-governmental bodies seeking information concerning suspected acts of misconduct not amounting to a crime or civil wrong. Some of these bodies have statutory powers to require persons to supply information, in which case members should comply. Where there is no such statutory power, members should not supply information without consent from the relevant client.

Prosecution of a client or former client

37. Where members are approached by the police, the tax authorities or other public authority making enquiries which may lead to the prosecution of a client or former client for an offence (other than treason, certain terrorist offences or money laundering), members should act with caution.

38. Members should ascertain whether or not the person requesting information has a statutory right to demand it and seek legal advice before giving any information. Members should consider the nature of the alleged offence and whether if they were to give the information they would be justified because of an overriding public interest in disclosure or would be acting contrary to professional ethics.

39. Unless ordered by the court or acting under a statutory authority members should refuse to give the information until they have obtained their client's authority, or received independent legal or other professional advice, that they should or may give the information whether or not they have obtained their client's consent. Members should state that in the meantime they are not in a position to discuss their client's affairs. Members should, however, keep in close touch with their legal or other professional adviser(s) on the legal aspects of their position.

Appearance as a witness

40. Members invited to appear in court as a witness against a client or former client, whether in civil or criminal proceedings, should normally refuse until served with a subpoena or other form of witness summons. However, where criminal proceedings are concerned, members should carefully consider agreeing to appear as a witness and should seek legal advice before making a decision.

41. Members must answer any questions that are put to them, even though they may thus disclose information obtained in a confidential capacity. Members may ask the court for confirmation that they are obliged to answer particular questions.

42. Members must produce any documents in their ownership or possession if directed to do so by the courts. Advance warning will normally be given of the intention to call for such documents.

Members' relations with the authorities on clients' behalf

43. Practising members acting in any professional capacity, have access to much information of a confidential nature. It is essential that they should normally treat such information as available to them for the purpose only of carrying out the professional duties for which they have been engaged. To divulge information about a client's affairs would normally be a breach of professional confidence, which might have the most serious legal and professional consequences.

Members' own relations with authorities

44. Members commit a criminal offence if they:

- (a) incite a client to commit a criminal offence, whether or not the client accepts their advice; or
- (b) help or encourage a client in the planning or execution of a criminal offence which is committed; or
- (c) agree with a client or anyone else to pervert or obstruct the course of justice by concealing, destroying or fabricating evidence or by misleading the police by statements which they know to be untrue.

45. Members who know that a client has committed money laundering, treason or certain terrorist offences, but who fail to disclose what they know to the proper authorities, are likely to commit a criminal offence by failing to do so, as is the case in the United Kingdom.

3.5 Professional duty of confidence

46. Members who know or believe that a client has committed an arrestable offence would themselves commit a criminal offence if they were to act with the intention of impeding the arrest or prosecution of the client. (Under the law of the United Kingdom, an arrestable offence is one “for which the sentence is fixed by the law or for which a person not previously convicted may under or by virtue of any enactment be sentenced to imprisonment for a term of five years” – Section 2(1) Criminal Law Act 1967.)

47. To be convicted of the offence of impeding the arrest or prosecution of a client members would have to do some positive act to assist a client to escape arrest or prosecution for an arrestable offence. A member’s refusal to answer questions by the police about a client’s affairs or to produce documents relating to a client’s affairs without that client’s consent, would not constitute an act to impede the arrest or prosecution of a client.

48. Where members know or believe that a client has committed an arrestable offence, and they have information which may be of material assistance in the prosecution of the client for the offence, they would be committing a criminal offence if they were to accept, or agree to accept, any consideration in return for not disclosing that information. In these circumstances, the acceptance of a reasonable fee for professional services rendered would not be an offence.

Company investigation

49. Members are reminded that when they act as auditor of a limited company it is the company which is the client, not the directors.

50. If it is necessary for an auditor to qualify an audit report, the qualifications should indicate clearly the offences which have been committed and have given rise to the qualification. Members are referred to section 3.9, Whistleblowing responsibilities placed on auditors, for further guidance.

51. An auditor cannot avoid bringing to the attention of shareholders circumstances which may indicate that offences have been committed by resigning from office without making a report. On resignation, an auditor should include in the notice of resignation either a statement of any circumstances connected with the resignation which the out-going auditor believes should be brought to the notice of the members or creditors of the company or a statement to the effect that there are no such circumstances to be brought to the attention of the members and creditors. Such statements are mandatory for auditors of entities registered in the United Kingdom (Section 394 of the Companies Act 1985), where an auditor’s resignation will be treated as ineffective unless a statement has been made.

52. In many cases, the interests of the members and creditors will best be served if the auditor completes the audit and reports to shareholders on the accounts (for example, in accordance with Section 235 of the Companies Act 1985 of the United Kingdom). The auditors may then indicate that they do not wish to be considered for re-appointment at the next annual general meeting of the company.

53. Where auditors believe that they may need to refer to the commission of offences, either in the audit report or in the notice of resignation, they should be aware of the danger of an action for defamation. Auditors should therefore seek legal advice as to the terms in which they should either report or make a statement in their notice of resignation.

Transmission of report to shareholders

54. In normal circumstances an auditor's duty is fulfilled when the audit report is sent to the secretary or directors of the company for onward transmission to the company's shareholders. However, if the auditor knows, or has good reason to believe that, for example the audit report:

- (a) has not been sent to shareholders; or
- (b) has been sent to shareholders in an altered form; or
- (c) has been sent to shareholders unaltered, but in a misleading context;

it will be necessary for the auditor to consider what steps should be taken to rectify the situation.

55. The steps available to the auditor in these circumstances may include communicating directly with the shareholders. Often the mere threat of direct communication with the shareholders will result in the desired action.

56. If it is decided that direct communication with the shareholders should take place, the auditor must be aware of the danger of an action for defamation being brought against the auditor. Special care is required in the event of those exceptional cases where the difficulty of communication or the urgency of the situation necessitates a public announcement being made. Where this need arises, the auditor must take special care to guard against the possibility of defamation.

57. As soon as the possibility of making a communication to shareholders arises, the auditor should seek legal advice on an auditor's duty to the shareholders in the particular circumstances of the case. Additionally, the auditor should seek legal advice as to the method of any communication the auditor is required to make and the terms in which the communication should be made.

58. If the auditor is aware of third parties who may be affected by the situation the auditor should also consider taking the steps outlined in paragraphs 63 to 67 or paragraphs 68 to 70 below, as appropriate.

Urgent cases

59. An auditor may sometimes become aware of information which suggests that offences or other unlawful acts or defaults have been committed by a director(s) or an employee(s) of the company. The facts may be of such a nature that, even though they may ultimately give rise to a qualification of the auditor's report, it would be contrary to the interests of the company for their disclosure to await the transmission of the audit report.

60. On the occasions when this arises, it is likely to be because the conduct is both serious and liable to be repeated. In such a case it will be necessary for an auditor to report at once to the directors.

3.5 Professional duty of confidence

61. There may also be cases in which the involvement of the directors themselves will make it necessary for the auditor to consider taking further steps to ensure that the matter is brought promptly to the attention of shareholders. These steps may include resignation by a notice stating the circumstances or even direct communication with shareholders.

62. Occasions which call for such steps will be rare, and an auditor who is considering taking them should seek legal advice.

Past accounts and reports

63. Where an auditor discovers that past accounts on which they reported are defective, the auditor must consider the position in relation to the shareholders, regulatory bodies, the tax authorities and third parties.

Shareholders

64. Reference should be made to the relevant auditing standards applicable in the jurisdiction under which the member has carried out the audit, for example International Standards on Auditing 560 – Subsequent Events.

Tax authorities

65. The auditor should follow the same procedure as in the case of an individual client.

Other third parties

66. An auditor may be liable if having prepared a report which the auditor later discovers to be false in some material respect, he/she subsequently fails to take appropriate action to correct that report. In such circumstances the auditor should ordinarily take legal advice as to the steps which are appropriate. These might include the following:

- (a) Where the report was prepared for the company alone or for statutory purposes, the auditor's appropriate course will generally be to disclose the relevant facts to the directors and ascertain what steps they intend to take to bring it to the attention of third parties who are affected.
- (b) If the directors fail to take such steps, the proper course for the auditor to adopt will depend on the gravity of the error and the nature of the reliance which has been or is likely to be placed upon it by the third party.
- (c) The courses open to the auditors include resignation by a notice which contains a statement of the relevant facts and of the directors' failure to bring those facts to the attention of those affected. In the United Kingdom, if a notice containing such a statement is deposited at the company's registered office, the company is required by Section 394 of the Companies Act 1985 to send a copy within 14 days to the Registrar of Companies and to every person having a statutory right to receive the accounts. The auditor may also require the directors of the company to convene (at the company's expense) an extraordinary general meeting of the company to receive, and consider such explanation of the circumstances connected with the auditor's resignation as the auditor may wish to place before the meeting. Where the

auditor has resigned and deposited a statement of the relevant facts, it will often be unnecessary to take any further steps to bring the facts to the attention of the third parties.

- (d) There may, however, be cases in which reliance has been placed or may be placed upon the auditor's report by a third party who is not likely to receive a copy of the auditor's notice of resignation and statement of reasons, either because the third party is not one of those entitled to receive copies of the accounts or because the company does not propose to send the notice and statement to such persons or does not intend to do so sufficiently quickly. In these cases it may be appropriate for the auditor to communicate directly with those third parties known to be affected, stating that they have resigned as auditor, that a statement of reasons for the auditor's resignation has been deposited with the company to be forwarded to, inter alia, the regulator responsible for company registration, and that those reasons may affect the interests of persons who have read the company's accounts and the auditor's report upon those accounts.
- (e) An auditor who believes that a company may fail to forward a copy of the notice of resignation and statement of reasons to the regulator responsible for company registration may, and in some cases should, notify the regulator that they have deposited such a notice and statement with the company and enquire whether it has been received. Auditors should also inform the company that they have notified the regulator of the resignation.

Save in exceptionally urgent cases it will usually be appropriate to notify the company in advance of what the auditor intends to do, so that the company may have an opportunity itself to bring the relevant facts to the attention of those affected.

67. An auditor may sometimes be instructed to prepare a report (other than a statutory report) for the purpose of being submitted to a third party. Such a report will usually amount in law to a representation made by the auditor to that third party. Where this is the case and the auditor subsequently discovers that it is false in a material respect, the auditor is entitled to communicate a correction directly to the third party, and should normally do so.

Removal of the auditor

68. The distinction between the directors and the shareholders will sometimes have little or no relevance, either because the directors hold a controlling interest or because all the shareholders are directors. When in these circumstances the directors fail to comply with the auditor's advice they may wish to prevent the auditor from completing the audit and making a report containing qualifications. They could achieve this by calling a general meeting at which the sole business would be the removal of the auditor (for example, in the United Kingdom under Section 391 of the Companies Act 1985).

69. If this procedure is followed the auditor may wish to take one of three courses:

- (a) make written representation to the company (which, for example, an auditor is authorised to make under Section 391A of the Companies Act 1985 of the United Kingdom), or

3.5 Professional duty of confidence

- (b) attend the general meeting and be heard (which, for example, an auditor has a right to do under Section 391 of the Companies Act 1985 of the United Kingdom), or
- (c) resign before the general meeting, and include a statement of circumstance in the notice of resignation (which, for example, is required by Section 394 of the Companies Act 1985 of the United Kingdom).

70. Where there are persons who would be affected by a qualification to the report and who would not be entitled to receive representations (for example, under Section 391A of the Companies Act 1985 of the United Kingdom) or to attend the meeting, resignation with a statement of the circumstances will often be the more appropriate course.

Disclosure of information to office holders under insolvency legislation

71. Liquidators, administrators and administrative receivers may have a statutory right to call for “such information concerning the company and its promotion, formation, business, dealings, affairs or property as the (liquidator, administrator or administrative receiver) may ... reasonably require”, from any person who is or was at any time an officer of the company. In the United Kingdom, such statutory right exists under Sections 235 and 236 of the Insolvency Act 1986 and the courts have held that an auditor is an “officer” of a company.

72. A member who is required by a liquidator, administrative receiver or administrator to supply information in these cases should normally do so unless the liquidator, administrator or administrative receiver is acting beyond their respective powers, or for a purpose unrelated to their official functions or in breach of their duties. A member dealing with a liquidator, administrative receiver or administrator in good faith is entitled to assume that they are acting within their powers. In this respect, members in the United Kingdom should bear in mind that the courts have held that the Official Receiver, whether acting as a liquidator or not, has the right to invoke Sections 235 and 236 of the Insolvency Act 1986 to require a former auditor to provide information solely in connection with his preparation of a case against an individual director under the Company Directors Disqualification Act 1986 (*Re Pantmaenog Timber Co Ltd*, [2003] UKHL 49).

73. Receivers, as opposed to administrative receivers or administrators, are unlikely to have a general statutory power to obtain information. They do not have such power in the United Kingdom. Moreover, although the extent of their powers will depend on the terms of the deed or court order pursuant to which they were appointed, it is unlikely that their powers will extend to requiring information from a member without the specific consent of the company or an order of the court.

74. In the case of a client’s bankruptcy, there is unlikely to be an express obligation for a member to co-operate with, or pass information to, the trustee. However, a bankrupt may be obliged to deliver to the trustee all property, books, papers or other records that relate to the bankrupt’s estate or affairs and of which the bankrupt has possession or control (for example, under Section 312 of the Insolvency Act 1986 of the United Kingdom). Members with a client subject to a bankruptcy order can, therefore, expect the client to direct them to transfer to the trustee such of the client’s books, papers and records as are in their possession. Members should also be aware that they may be liable to be summoned to produce to the

court any documents in their possession or control relating to the bankrupt or the bankrupt's dealings, affairs or property or to answer questions or provide information relating to such matters (for example, under Section 366 of the Insolvency Act 1986 of the United Kingdom).

75. In the case of an individual's voluntary arrangement with creditors (known in the United Kingdom as an Individual Voluntary Arrangement (IVA)), a nominee, in preparing the report for the court on the debtor's proposal, will wish to have access to the debtor's accounts and records. In view of the nature of the voluntary arrangement, it is possible that the debtor will choose to authorise additional co-operation during the course of the arrangement. Accordingly, members can expect clients to authorise them to disclose this information to the nominee. In the United Kingdom, there is no general provision in the Insolvency Act or Rules for an accountant to pass information to a nominee or supervisor.

76. Similar rules to those set out in paragraph 75 above will apply in a company voluntary arrangement with creditors (known in the United Kingdom as a Company Voluntary Arrangement (CVA)). In the case of such an arrangement, it is the directors who will wish to allow access by the nominee to their company's accounts and records.

Auditors of companies in liquidation

77. Although the appointment of an auditor of a company is made by the shareholders in general meeting (or in the case of a newly formed company by the directors) the auditor's appointment is by the company as a legal entity and the auditor's duty of confidence is to the company as distinct from the individual shareholders.

78. If the company goes into liquidation the company's rights remain vested in the company as an entity and it is therefore still the company to which the auditor has a duty of confidence. The liquidator will, however, normally be the proper agent of the company for the purpose of enforcing any rights which the company could have enforced, including the company's right to permit its auditors to provide information to others. Moreover, a liquidator may be able to exercise a statutory power to call for information, such as that conferred by Section 235 of the Insolvency Act 1986 of the United Kingdom, referred to at paragraph 71 above.

79. The auditor of a company which is in liquidation may be approached by the police for assistance in enquiries which may lead to a director or other individual being prosecuted. The auditor is under no legal obligation to give to the police any information obtained in the course of the professional relationship with the client. In normal circumstances, the auditor should not assist the police by the disclosure of information, etc. unless the liquidator has given permission for this action (the liquidator being the person who could exercise the right of the company to release the auditor from the duty of confidence). If the liquidator does not give permission to the auditor, unless there are considerations of public interest (as noted in paragraphs 31 to 33 of this chapter), the auditor should explain to the police that the information is confidential and may not be disclosed without permission.

Defamation

80. If an auditor forms the view that unlawful acts or defaults have occurred and communicates the relevant facts to persons who have a legitimate interest in receiving them, the auditor may enjoy qualified privilege from liability for defamation, as is the case in the United Kingdom. Unless malice is proved against the auditor, that privilege will amount to complete defence, even if the facts should prove to be wrong. This statement gives only general guidance on the circumstances in which an auditor may have a duty to communicate such facts; each case must be considered in the light of its own particular circumstances. An auditor who is in any doubt as to the available options should take legal advice about the auditor's rights and duties in such situations.

81. In particular, an auditor who is contemplating making a public announcement or communicating directly with shareholders should bear in mind that such an announcement, even if justified by the particular circumstances of the case, may cause serious damage to the company or to individuals, and such a step should not normally be taken without taking legal advice.

Members' working papers

82. In most, but not all, circumstances, a member's working papers are the member's own property and any request for their production should normally be refused. All documents relating to clients are confidential. They should not be disclosed to third parties unless:

- (i) the clients agree to the disclosure before it is made; or
- (ii) disclosure is authorised by statute or court order; or
- (iii) disclosure is otherwise in accordance with this Code of Ethics and Conduct of ACCA.

Members should refer to section 3.13, Legal ownership of, and rights of access to, books, files, working papers and other documents, in order to determine whether the papers in question are the property of the member or the client.

83. However, if a tax authority requests the production of the working papers relating to a particular client whose affairs are under investigation, members should bear in mind that they have a duty to act in the best possible interests of their clients.

84. The member must check the powers under which the request for the production of records and information is made. If persons requesting the records and information are utilising statutory powers available to them which compel the production of records and information then the member must comply. In other cases, where mandatory powers are not being utilised, the member should consider the circumstances on a case by case basis.

85. If members are of the opinion that their clients would best be served by producing the documents then, provided that the clients do not object, members may deliver the required items and information. In some instances schedules, notes, etc., may well be helpful in supporting members' reports and contentions. Correspondence and notes of interviews with clients and/or members' legal advisers will frequently be of an extremely confidential nature and should only be produced in exceptional circumstances – and even then only with clients'

authority. In all such cases members should consider obtaining legal advice and, where appropriate, recommend the clients to obtain their own legal advice.

86. The decision whether or not to produce working papers is entirely one for the member, even if the client concerned has no objection to the disclosure of information contained therein.

Taxation offences and the proceeds of crime

87. Of the wrongful acts of clients discovered by members, taxation offences of various kinds are likely to be amongst the more frequent. Tax legislation prescribes a number of offences for which monetary penalties are recoverable. The recovery of penalties against taxpayers does not rule out the possibility of criminal proceedings against them.

88. Any act or omission directed to or resulting in the evasion or attempted evasion of tax may be the subject of criminal charges under both tax law and money laundering legislation. Tax evasion may relate to direct tax such as income tax or corporation tax, or indirect tax such as a tax on goods and services (VAT in the United Kingdom). The proceeds of such offences, like any other crime, will be subject to the money laundering legislation. Members who suspect or are aware of tax evasion activities by a client may themselves commit an offence if they do not report their suspicions to the appropriate money laundering authority (in addition to any notification to the tax authorities). Members should refer to section 3.8, Money laundering, for further guidance.

89. When members find that clients have misinformed or misled them as to their affairs in order to obtain a tax advantage, members must consider carefully not only their clients' positions but also their own positions vis-à-vis the tax authorities. Members should, in particular, consider the matters set out in paragraphs 90 to 105 below.

Past accounts

90. Members may discover that accounts already prepared and/or reported on by them and/or computations and returns based thereon are no longer accurate. If these have already been submitted to the tax authorities, members cannot allow the tax authorities to continue to rely on them. They should advise their clients to make full disclosure, or to authorise them to do so, without delay.

91. Members should dissociate themselves from any returns or accounts that may be affected by their clients' concealment. If clients refuse to make or authorise disclosure, members should inform them that they can no longer act for them. Members should also inform such clients that it will be necessary to inform the tax authorities in the terms set out in paragraph 92 below.

92. In these circumstances, members should inform the tax authorities that, since the documents concerned were submitted, they have become aware of information which has led them to conclude that they would no longer be prepared to report on the documents in the same terms as previously and that they have ceased to act for the client. In so informing the tax authorities, members are under no duty to indicate in what way the accounts are defective and should not normally do so unless their clients have consented to such disclosure.

Current accounts

93. Where the information obtained affects accounts or statements that members are currently preparing or auditing, they are in a position to deal with the matter themselves. If the client fails to provide such information as members may require, or objects to the manner in which members consider that the accounts should be presented, it is the members' professional duty to qualify their reports on the accounts in such a way that the respects in which they are defective are made clear. Members should also consider whether they ought to continue to act for that client.

New clients

94. Members preparing or auditing accounts for new clients may become aware that accounts previously submitted to the tax authorities are defective. If so, they should advise their clients to make full and prompt disclosure. Members have no responsibility for past accounts except in so far that errors in them affect the accuracy of accounts that they are currently preparing or auditing. If the errors do have that effect, then members must inform their clients that an appropriate adjustment must be made in the current accounts. If clients are unwilling to agree to such adjustments, members should qualify their reports on the accounts accordingly, and may wish to consider whether they should continue to act for that client.

Private returns

95. Where members have acted or are acting on personal tax matters and acquire information indicating that any returns or accounts prepared and/or reported on by them and/or computations based thereon are no longer accurate, they should follow the procedure set out in paragraphs 90 to 92 above.

Professional responsibility towards clients

96. Whatever line of conduct may be appropriate for members to protect their own position, they are still under a professional duty to ensure, so far as they can, that clients understand the seriousness of offences against the tax authorities. They should also ensure that clients are aware of the probable consequences of a notification from members to the tax authorities that they are no longer acting for a client. In other words, members should always urge on their clients the desirability of authorising them to make full disclosure, subject to any legal advice obtained. Any accounts, returns, computations or reports submitted on behalf of taxpayers are deemed to be submitted by them and/or with their consent unless they prove otherwise.

97. This emphasises the need for members to obtain appropriate instructions from their clients and to ensure that clients have signed or otherwise approved the accounts. Where members have not been instructed to deal with taxation work for a client, they have no authority to deal with the tax authorities.

Tax authority powers

98. Members should ensure that they familiarise themselves with the statutory powers that the tax authorities have to compel disclosure in particular instances. In dealing with disclosures sought under such powers, members should ensure that the statutory power being invoked actually covers the information sought and, if in any doubt, should take legal advice.

99. Tax authorities sometimes ask for information to be provided on a voluntary basis, notwithstanding that they might be able to obtain disclosure under statute. Although clients are not obliged to provide the information voluntarily, members may in some cases think that it is advisable for them to do so. In other cases members may believe that the client should decline to provide the information and await the exercise of statutory powers.

Errors in the taxpayers' favour

100. The tax authorities may mistakenly make an excessive repayment of tax to taxpayers, even though full disclosure of the facts has been made to it. Where an excessive repayment is paid directly to clients, members should urge their clients to refund the excess sum to the tax authorities as soon as they become aware of the error. Clients could be committing a civil and/or criminal offence if they have knowledge of the error and fail to correct it. Should a client refuse to refund the payment to the tax authorities, members must consider whether, in all the circumstances, they should continue to act for the client. Where members cease to act, they should notify the tax authorities that they no longer act for the client but are under no duty to give the tax authorities any further details.

101. Where the excessive repayment is made to members on their clients' behalf, members should notify the tax authorities. Failure to do so could involve both members and their clients in a civil and/or criminal offence.

Knowledge of offences relating to VAT or its equivalent

102. Members who suspect that clients have committed offences relating to VAT or its equivalent must ensure that they in no way facilitate or assist their clients to commit any potential or actual criminal offence. Members should advise those clients to seek legal advice, particularly if criminal charges are likely to be made against them. Where it seems likely that the tax authorities will settle without proceedings, members should, subject to legal advice, advise clients to make a full disclosure to the tax authorities and provide full facilities for investigations, so that a private settlement may be obtained, and having proceedings brought against the clients with the accompanying publicity may be avoided.

103. If clients refuse to make or authorise disclosure, members should inform them that they can no longer act for them. Members should also inform such clients that it will be necessary to inform the tax authorities in similar terms to those set out in paragraph 92 above.

104. For their own protection, in the event that the matter comes to the notice of the tax authorities before clients have disclosed it, members should ensure that their records of their advice to their client are such as to rebut any allegation that members themselves were knowingly involved in the commission of any offence.

VAT or its equivalent and accounts

105. If members acquire information indicating that accounts they have prepared or audited, which have been submitted to the tax authorities, are defective, they should proceed in accordance with the guidance contained in paragraphs 90 to 92 above.

3.6

Conflicts of interest

Conflicts between members' and clients' interests

1. Members should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when members compete directly with a client or have a joint venture or similar arrangement with a major competitor of a client. A threat to objectivity or confidentiality may also be created when members perform services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.
2. For this reason, members and firms should not accept or continue engagements in which there are, or are likely to be, significant conflicts of interest between members, firms and clients.
3. Any form of financial gain which accrues or is likely to accrue to members or firms as a result of engagements, or as a result of using information known to them about their clients, will always amount to a significant conflict of interest for the purpose of paragraphs 1 and 2 above unless the financial gain is declared under the provisions of paragraph 8.
4. Whether any other form of interest is such as to amount to significant conflict will depend on all the circumstances of the case.
5. Members should evaluate the significance of any threats. Evaluation includes considering, before accepting or continuing a client relationship or specific engagement, whether members have any business interests or relationships with the client or a third party that could give rise to threats. If threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.
6. The test is whether a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would consider the conflict of interest as likely to affect the judgement of members and firms.

Commission and other financial gains

7. In certain circumstances members may receive a referral fee or commission relating to a client. For example, where members do not provide the specific service required, a fee may be received for referring a client to another accountant or expert. Members may receive a commission from a third party (for example a software vendor) in connection with the sale of goods or services to a client. Accepting such a referral fee or commission may give rise to threats to compliance with the fundamental principles (for example, a self-interest threat to objectivity and professional competence and due care).

3.6 Conflicts of interest

8. Where any commission, fee, reward or other financial gain is received by firms or anyone in them, in return for the introduction of clients, as a result of advice or other services given to clients, or as a result of using information known about clients, members should establish safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards should include:

- (a) disclosing to the client in writing any arrangement to receive a referral fee, both of the fact that such commission, fee, reward or other financial gain will be or has been received and, as soon as practicable, of its amount and terms; and
- (b) obtaining advance agreement from the client for any referral arrangement in connection with the sale by a third party of goods or services to the client.

9. The provisions in paragraph 8 apply to any commission, fee, reward or other financial gain received, whether it relates to a single transaction concerning a client or more than one client, or a series or group of transactions concerning a client or more than one client. For the avoidance of doubt, this includes “override” commission, whereby in some jurisdictions commission may be earned if the number of financial products of a particular type sold by a member reaches a certain level.

10. Where the commission, fee, reward or other financial gain results from advice given to clients, special care should be taken that the advice is in fact in the best interests of clients.

Agency work

11. The acceptance by members or their firms of an agency for the supply of services or products may present a conflict of interest which threatens compliance with the fundamental principles.

12. Before accepting or continuing an agency, members and firms should satisfy themselves that:

- (a) their compliance with the fundamental principles would not be compromised; and
- (b) such acceptance or continuance would not be rendered inappropriate by the nature of the services they are to provide under the agency, or the manner in which those services may be brought to the attention of the public.

13. In this section, references to “clients” are references to clients of the firm. A person does not become a client of the firm merely by virtue of being a customer or member of the organisation for which the firm is an agent. However, where the firm provides advice to such a person (whether gratuitously or for a fee) that person may become a client of the firm.

Conflicts between the interests of different clients

14. There is, on the face of it, nothing improper in firms having two or more clients whose interests may be in conflict, provided the work that the firm undertakes is not, itself, likely to be the subject of dispute between those clients.

15. In such cases, however, the firm's work should be so managed as to avoid the interests of one client adversely affecting those of another.

16. Where the acceptance or continuance of an engagement would, even with safeguards, materially prejudice the interests of any client, the appointment should not be accepted or continued.

17. Such prejudice might arise in a variety of ways, including the leakage of information from one client to another and firms being forced into a position where they have to choose between the interests of different clients.

Managing conflicts between clients' interests

18. All reasonable steps should be taken to ascertain whether any conflict of interest exists, or is likely to arise in the future, both in regard to new engagements and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.

19. Relationships with clients and former clients need to be reviewed before accepting a new appointment and regularly thereafter.

20. Relationships which ended over two years before are unlikely to constitute conflict. The nature of the engagement is relevant in this connection. (Members are referred to section 3.22, Corporate finance advice including take-overs.)

Disclosure

21. Depending upon the circumstances giving rise to the conflict, safeguards should ordinarily include members:

- (a) notifying the client of the member's (and his firm's) business interest or activities that may represent a conflict of interest, and obtaining their consent to act in such circumstances; or
- (b) notifying all known relevant parties that the member is acting for two or more parties in respect of a matter where their respective interests are in conflict, and obtaining their consent to so act; or
- (c) notifying the client that the member does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service), and obtaining their consent to so act.

Other safeguards

22. Where members and firms become aware of possible conflicts between the interests of two or more clients, all reasonable steps should be taken to manage them and thereby avoid any adverse consequences.

3.6 Conflicts of interest

23. The following additional safeguards should also be considered:

- (a) the use of separate engagement teams; and
- (b) procedures to prevent access to information (for example, strict physical separation of such teams, confidential and secure data filing); and
- (c) clear guidelines for members of the engagement team on issues of security and confidentiality; and
- (d) the use of confidentiality agreements signed by employees and partners of the firm; and
- (e) regular review of the application of safeguards by a senior individual not involved with relevant client engagements; and
- (f) advising one or both clients to seek additional independent advice.

24. Where a conflict of interest poses a threat to one or more of the fundamental principles, including objectivity, confidentiality or professional behaviour, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, members should conclude that it is not appropriate to accept a specific engagement or that resignation from one or more conflicting engagements is required.

25. Where members have requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, then they must not continue to act for one of the parties in the matter giving rise to the conflict of interest.

Sole practitioners and small firms

26. Any decision on the part of sole practitioners should take account of the fact that the safeguards at (a) to (f) of paragraph 23 will not be available to them. Similar considerations apply to small firms.

Conflicts between the interests of members and firms

27. Members obtaining confidential information as a result of their role as principals or employees of a firm should not use, or appear to use, that information for their personal advantage or the advantage of a third party.

28. Such a requirement should normally be incorporated in the partnership agreement or contract of employment. However, before incorporating such a requirement into the partnership agreement or contract of employment, members are strongly recommended to seek legal advice.

Disengagement

29. Wherever firms are required to disengage from existing engagements, they should do so as speedily as is compatible with the interests of the clients concerned.

3.7

The ethical responsibilities of members in business

Introduction

1. Members in business owe a duty of loyalty to their employers as well as to their profession.
2. Members in business are bound by the same fundamental principles and the same standards of behaviour and competence as apply to all other members of ACCA. Members must therefore comply with the appropriate technical and professional standards relevant to their work. The “client” of an employed member is his employer.
3. The Introduction to the Code of Ethics and Conduct at 3.1, 3.2, The fundamental principles, 3.3, The conceptual framework, and 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others, are also of relevance to members in business and should be read in conjunction with this section.
4. All members, whether employed or not, are liable to disciplinary action under the by-laws.
5. Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, may all rely on the work of members. Members may be solely or jointly responsible for the preparation and reporting of financial and other information, on which both their employing organisations and third parties may rely. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters, including reviewing internal controls.
6. Members may be salaried employees, directors (whether executive or non-executive), owner managers, consultants, partners, volunteers or others engaged in one or more employing organisation. The legal form of the relationship with the organisation in which they are engaged has no bearing on the ethical responsibilities incumbent on members.
7. Members have a responsibility to further the legitimate aims of their employing organisation. This Code does not seek to hinder members from properly fulfilling that responsibility, but considers circumstances in which conflicts may arise with their duty to comply with the fundamental principles.
8. In some cases, members working in the public sector may, by law or public expectation, need to maintain a degree of independence greater than that normally expected of an employee, and where this applies the guidelines should be interpreted accordingly.

3.7 The ethical responsibilities of members in business

9. Members often occupy senior positions within employing organisations. The more senior they become, the greater will be their ability and opportunity to influence events, practices and attitudes. Members in such positions are expected, therefore, to encourage an ethics-based culture in their employing organisations.

10. The following sections are intended to illustrate the application of the fundamental principles and the types of safeguards that can be implemented. These sections are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by members that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for members merely to comply with the examples; rather, they should apply the principles to the particular circumstances they face.

11. In circumstances where members in business believe that, after exhausting all relevant possibilities, the matter remains unresolved, members should, where possible, disassociate themselves from the matter. They may also consider whether, in the circumstances, it is appropriate to withdraw from the specific project or in extreme circumstances resign from the organisation in which they are engaged.

12. This section does not provide detailed advice on the legal obligations of members.

Independence

13. The concept of independence, which is central to the role of members in public practice, has no direct relevance to members in business, whose first duty is to their employer.

14. Independence is not an end in itself, it is merely a means of securing a more important result, namely an objective approach to work. The requirement for objectivity is of equal importance to all members.

15. Members in business cannot be fully independent of their employers and thus it is all the more important that they strive constantly to maintain objectivity in every aspect of their work.

Objectivity

16. Objectivity is described in section 3.2, The fundamental principles, as the state of mind which has regard to all considerations relevant to the task in hand but no other. It presupposes intellectual honesty.

17. It follows that the interests of a member's employer should no more affect the objectivity of a member's judgement in a professional matter than his/her own interests.

Integrity

18. Members in business must observe the terms of their employment. These cannot, however, require them to be implicated in dishonest transactions.

19. If members in business are instructed or encouraged to engage in any activity which is unlawful, they are entitled, and required, to decline.

Examples

Potential conflicts

20. Members have a professional obligation to comply with the fundamental principles. There may be times, however, when their responsibilities to an employing organisation and their professional obligations to comply with the fundamental principles are in conflict. Ordinarily, members should support the legitimate and ethical objectives established by their employing organisation and the rules and procedures drawn up in support of those objectives. Nevertheless, where compliance with the fundamental principles is threatened, members must consider their response to the circumstances.

21. As a consequence of their responsibilities to their employing organisation, members may find themselves under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles. Such pressure may be explicit or implicit; it may come from supervisors, managers, directors or other individuals within the employing organisation. As a result, members may find themselves under pressure to:

- (a) act contrary to law or regulation;
- (b) act contrary to technical or professional standards;
- (c) facilitate unethical or unlawful earnings management strategies;
- (d) lie to, or otherwise intentionally mislead (including misleading by keeping silent), others, in particular
 - (i) those acting as auditors to the employing organisation; or
 - (ii) regulators;
- (e) issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:
 - (i) the financial statements;
 - (ii) tax compliance;
 - (iii) legal compliance; or
 - (iv) reports required by regulators.

22. The significance of threats arising from such pressures, such as intimidation threats, should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Safeguards that might mitigate such pressures include:

- (a) obtaining advice where appropriate from within the employing organisation, an independent professional advisor or a relevant professional body;

3.7 The ethical responsibilities of members in business

- (b) the existence of a formal dispute resolution process within the employing organisation; and
- (c) seeking legal advice.

Preparation and reporting of information

23. Members are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include but is not limited to financial or management information, for example forecasts and budgets, financial statements, management discussion and analysis, and the management letter of representation provided to the auditors as part of an audit of financial statements. Members should prepare or present such information fairly, objectively, honestly and in accordance with relevant professional standards so that the information will be understood in its context.

24. Members should maintain information for which they are responsible in a manner that:

- (a) describes clearly the true nature of business transactions, assets or liabilities;
- (b) classifies and records information in a timely and proper manner; and
- (c) does not materially misrepresent the facts.

25. Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to objectivity, competence and performance, may arise where members may be pressurised (either externally or by the possibility of personal gain) to become associated with misleading information or to become associated with misleading information through the actions of others.

26. Accordingly, members should not be associated with reports, returns, communications or other information where they believe that the information:

- (a) contains a materially false or misleading statement;
- (b) contains statements or information furnished recklessly;
- (c) has been prepared with bias; or
- (d) omits or obscures information required to be included where such omission or obscurity would be misleading.

27. The significance of such threats will depend on factors such as the source of the pressure and the degree to which the information is, or may be, misleading. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards might include consultation with superiors within the employing organisation, for example the audit committee or other body responsible for governance, or with ACCA or another relevant professional body.

28. Where it is not possible to reduce the threat to an acceptable level, members should refuse to remain associated with information they consider is, or may be, misleading. Should they be aware that the issuance of misleading information is either significant or persistent, they should consider informing appropriate authorities in line with the guidance in section 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others. They may also wish to seek legal advice or resign.

Acting with sufficient expertise

29. The fundamental principle of professional competence and due care requires that members should only undertake significant tasks for which they have, or can obtain, sufficient specific training or experience. Members should not intentionally mislead employers as to the level of expertise or experience possessed, nor should members fail to seek appropriate expert advice and assistance when required.

30. Circumstances that may threaten the ability of members to perform their duties with the appropriate degree of professional competence and due care include:

- (a) insufficient time for properly performing or completing the relevant duties;
- (b) incomplete, restricted or otherwise inadequate information for performing the duties properly;
- (c) insufficient experience, training and/or education; and
- (d) inadequate resources for the proper performance of the duties.

31. The significance of such threats will depend on factors such as the extent to which members are working with others, their relative seniority in the business and the level of supervision and review applied to their work. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards that may be considered include:

- (a) obtaining additional advice or training;
- (b) ensuring that there is adequate time available for performing the relevant duties;
- (c) obtaining assistance from someone with the necessary expertise; and
- (d) consulting, where appropriate, with:
 - (i) superiors within the employing organisation;
 - (ii) independent experts; and
 - (iii) a relevant professional body, such as ACCA.

32. Where threats cannot be eliminated or reduced to an acceptable level, members should consider whether to refuse to perform the duties in question. If members determine that refusal is appropriate, the reasons for doing so should be clearly communicated.

Financial interests

33. Members may have financial interests, or may know of financial interests of immediate or close family members, that could, in certain circumstances, give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or duty of confidentiality may be created through the existence of the motive and opportunity to manipulate price-sensitive information in order to gain financially.

34. Examples include situations where the member or an immediate or close family member:

- (a) holds a significant direct or indirect financial interest in the employing organisation and the value of that financial interest could be directly affected by decisions made by the member;
- (b) is eligible for a profit-related bonus and the value of that bonus could be directly affected by decisions made by the member;
- (c) holds, directly or indirectly, share options in the employing organisation, the value of which could be directly affected by decisions made by the member;
- (d) holds, directly or indirectly, share options in the employing organisation, the value of which are, or will soon be, eligible for conversion; or
- (e) may qualify for share options in the employing organisation or performance-related bonuses if certain targets are achieved.

35. In evaluating the significance of such a threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, members must examine the nature of the financial interest. This includes an evaluation of the significance of the financial interest and whether it is direct or indirect. Clearly, what constitutes a significant or valuable stake in an organisation will vary from individual to individual, depending on personal circumstances.

36. If threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards might include:

- (a) policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management;
- (b) disclosure of all relevant interests, and of any plans to trade in relevant shares, to those charged with the governance of the employing organisation, in accordance with any internal policies;
- (c) consultation, where appropriate, with superiors within the employing organisation;
- (d) consultation, where appropriate, with those charged with the governance of the employing organisation or relevant professional bodies such as ACCA;
- (e) internal and external audit procedures; and

- (f) up-to-date education on ethical issues and the legal restrictions and other regulations around potential insider trading.

37. Members should neither manipulate information nor use privileged information for personal gain.

Inducements

Receiving offers

38. Members or immediate or close family members may be offered an inducement intended to encourage unethical behaviour. Inducements may take various forms, including gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.

39. Offers of inducements may create threats to compliance with the fundamental principles. When members or their immediate or close family members are offered inducements, the situation should be carefully considered. Self-interest threats to objectivity or confidentiality are created where an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the member or an immediate or close family member.

40. The significance of such threats will depend on the nature and value of the offer and the intent behind the offer. If a reasonable and informed third party, having knowledge of all relevant information, would consider the inducement insignificant and not intended to encourage unethical behaviour, then members may conclude that the offer is made in the normal course of business and may generally conclude that there is no significant threat to compliance with the fundamental principles.

41. If evaluated threats are other than clearly insignificant, members should not accept the inducement. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of inducements but, sometimes, merely from the fact of the offer having been made, additional safeguards should be adopted. Members should assess the risk associated with all such offers and consider whether the following actions should be taken:

- (a) where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organisation;
- (b) inform third parties of the offer – for example, a professional body (for example ACCA) or the employer of the individual who made the offer; members should, however, consider seeking legal advice before taking such a step;
- (c) advise immediate or close family members of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example as a result of their employment situation; and
- (d) inform higher levels of management or those charged with governance of the employing organisation where immediate or close family members are employed by competitors or potential suppliers of that organisation.

Making offers

42. Members may find themselves in situations where they are expected to, or are under other pressure to, offer inducements to subordinate the judgement of another individual or organisation, influence a decision-making process or obtain confidential information.

43. Such pressure may come from within the employing organisation, for example from a colleague or superior. It may also come from an external individual or organisation suggesting actions or business decisions that would be advantageous to the employing organisation, possibly influencing the member improperly.

44. Members should not offer an inducement to improperly influence the professional judgement of a third party.

45. Where the pressure to offer such an unethical inducement comes from within the employing organisation, members should follow the principles and guidance regarding ethical dilemma resolution set out in section 3.3, The conceptual framework.

Disclosing confidential information

46. Members should observe the principle of confidentiality. Confidentiality is the duty to keep private another person's information given or obtained in confidence. The duty of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Members should not disclose confidential information acquired or received in the course of their work unless they have a right or obligation to do so or they have received informed consent from their employer to whom the duty of confidentiality is owed.

47. The possession of confidential information may give rise to specific threats to confidentiality in certain circumstances. For example, the non-disclosure of confidential information in a member's possession may threaten compliance with the fundamental principles when members:

- (a) are required by law to disclose information to the appropriate public authorities or suspected infringements of the law that come to light, for example in connection with anti-money laundering or anti-terrorist legislation;
- (b) are required to produce documents or other provision of evidence in the course of legal proceedings;
- (c) are permitted by law to disclose and are authorised by the organisation in which they are engaged;
- (d) believe that confidential information should be disclosed in the public interest, for example where the employing organisation has committed, or proposes to commit, a crime or fraudulent act; or
- (e) have a professional duty or right to disclose, when not prohibited by law:
 - (i) to comply with technical standards and ethics requirements;

- (ii) to protect the professional interests of a member in legal proceedings;
- (iii) to comply with the quality review of a professional body such as ACCA; or
- (iv) to respond to an inquiry or investigation by ACCA or a regulatory body.

Whistleblowing

48. Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either themselves or their employing organisation, members should always disclose that information in compliance with relevant legal requirements.

49. In some circumstances, members may consider disclosing information outside the employing organisation, when not obligated to do so by law or regulation, because they believe it would be in the public interest. When considering such disclosure, members should, where appropriate, follow the internal procedures of the employing organisation in an attempt to rectify the situation. If the matter cannot be resolved within the employing organisation, members should consider the following:

- (a) legal constraints and obligations;
- (b) whether members of the public are likely to be adversely affected;
- (c) the gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage;
- (d) the possibility or likelihood of repetition;
- (e) the reliability and quality of the information available; and
- (f) the reasons for the employing organisation's unwillingness to disclose matters to the relevant authority.

50. In deciding whether to disclose confidential information, they should also consider the following points:

- (a) when the employer gives authorisation to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;
- (b) whether or not all the relevant information is known and substantiated, to the extent this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any;
- (c) the type of communication that is expected and to whom it is addressed; in particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
- (d) the legal or regulatory obligations and the possible implications of disclosure for the member.

Advisory Services

51. Members in business faced with an ethical problem may call upon the Advisory Services Section within ACCA for confidential advice.

52. Members are also referred to guidance ACCA has issued for members in business to assist them in discharging their professional obligations. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

53. There are also independent organisations which have been established to provide support for employees troubled by ethical dilemmas at work, such as Public Concern at Work (www.pcaw.co.uk) and Freedom to Care (www.freedomtocare.org) in the United Kingdom, both of which can provide more detailed guidance on the requirements of the whistleblowing legislation.

54. Guidance for non-executive directors may be obtained from ACCA's corporate governance resource at <http://www.accaglobal.com/publicinterest/activities/library/governance/>.

3.8

Money laundering

Introduction

1. Money laundering is a global phenomenon that affects all countries to varying degrees. It is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activity, often with the unwitting assistance of professionals such as accountants and lawyers. If undertaken successfully, it allows them to maintain control over the proceeds and, ultimately, to provide a legitimate cover for their sources of income. Money laundering also encompasses the process by which terrorists attempt to conceal the destination and ultimate purpose of funds (legitimate or otherwise) which are likely to be used for the purposes of terrorism.

2. The overarching principles set out in this section are intended to be consistent with the Recommendations issued by the Financial Action Task Force on Money Laundering (FATF), which today constitute the international benchmark for good practice in combating money laundering and the financing of terrorism. Most countries around the world now have legislation in place which is based on the Recommendations, although the way that different countries translate the Recommendations into local law often differs in material respects.

3. The guidance contained in this section sets out the type of preventative measures that members should adopt and the circumstances in which they should consider reporting any knowledge or suspicions of money laundering activity to the authorities in the country in which they operate. Members should ensure that they and their staff are fully aware of their obligations under local legislation, and are reminded that those obligations may be more stringent than the requirements of this section. In particular, members should be aware that failure to follow legislative requirements will be a criminal offence in many jurisdictions, leading to fines and/or imprisonment.

4. Guidance as to the principles of law that govern these issues is found elsewhere. Given the serious consequences of prosecution for money laundering offences, members are advised to take legal advice whenever they are uncertain as to their conduct. The legal position and its application to any given set of facts may not be straightforward.

Relationship with the local law

5. Members must obey the law. It is the responsibility of members to familiarise themselves with the law that applies to them and ensure that they work within the law. In particular, they are expected to familiarise themselves with any particular definition of the term 'money laundering' which is used in local legislation and interpret this section by reference to that definition.

3.8 Money laundering

6. So far as this section may be inconsistent with any local statutory provision, rule of law or any direction or order of a court of competent jurisdiction that may from time to time be applicable to a member, compulsion of law shall be a defence to a breach of any provision of the regulations and this section shall be read as being subject to the applicable provision of the law.

Internal controls and policies

7. Members should ensure that relevant staff in their firms receive regular training to ensure that client identification procedures are carried out in respect of new clients and that they are competent to identify money laundering or terrorist financing activity where they come across it.

8. Members should ensure that their firms identify for the benefit of relevant staff a clear procedure for the in-house reporting of suspected money laundering and terrorist financing activity which they come across in the course of their work in the firm. This procedure could involve the appointment of a suitable senior member of the firm as the person to whom queries are directed and suspicions reported. Where there is a local legal requirement for firms to report knowledge or suspicions to the authorities, the person performing this role could make the final judgement on, and take the final responsibility for, deciding on behalf of the firm whether a matter should be reported.

Client identification

9. Before any work is undertaken, members should verify the identity of the potential client by reliable and independent means. Members should retain on their own files copies of such evidence, as set out in paragraph 17. This will involve the following:

- (a) where the client is an individual: by obtaining independent evidence of the client's identity, such as a passport and proof of address;
- (b) where the client is a company or other legal entity: by obtaining proof of incorporation; by establishing the primary business address and, where applicable, registered address; by establishing the structure, management and ownership of the company; and by establishing the identities of those persons instructing the member on behalf of the company and verifying that those persons are authorised to do so;
- (c) in either case: by establishing the identity and address of any other individuals exercising ultimate control over the client and/or who will be the ultimate beneficiaries of the work or transactions to be carried out; and
- (d) by establishing precisely what work or transaction is desired to be carried out and to what purpose.

10. If members are unable to satisfy themselves as to the potential client's identity, no work should be undertaken.

11. Save where paragraph 12 applies, where members are instructed by another person on behalf of their principal, members should satisfy themselves of both the identity of the person instructing the member and their principal as if both were clients under paragraph 9. Members should retain these copies on their files in line with the requirement in paragraph 17 below.

12. Where members are instructed by another Regulated Professional on behalf of their client, members should satisfy themselves that the identity of the common client has been sufficiently established by asking to see copies of the evidence obtained by the Regulated Professional. Members should retain these copies on their files in line with the requirement in paragraph 17 below. “Regulated Professional” means for the purposes of this section a professional who is subject to equivalent anti-money laundering legislation which complies with the FATF Recommendations. The countries which currently have legislation in place that complies with the FATF Recommendations can be viewed at <http://www1.oecd.org/fatf/>.

13. Once a member has established on reasonable evidence that they are instructed by another Regulated Professional, it is generally not necessary for members to obtain and evidence further proof of the identity and structure of the instructing Regulated Professional.

14. Subject to any local legal requirement to the contrary, members are not required to verify the identity of existing clients, provided they are known personally to a member and the member has acted for them on a regular basis in the past three years. Where there has been little or no contact with clients in the preceding three year period, the identity of such clients should be established as if they were new clients prior to any work being undertaken by a member.

15. If at any time during the course of a client relationship members begin to have doubts about the client's identity, further evidence should be obtained. If members are unable to satisfy themselves, the client relationship should be terminated.

16. During the course of the client relationship, members should regularly review the history of the relationship to satisfy themselves that the work or transactions being carried out is/are consistent with the client's usual activities. Anything which appears to be out of the ordinary for that particular client, such as an unusual pattern of transactions or an unusually large transaction, should be closely examined and a written record made of the member's conclusions. If members' suspicions are aroused, a report should be made in accordance with paragraph 20 below.

Record keeping

17. Subject to any local legal requirement for a longer period of record retention, members should retain all client identification records for at least five years after the end of the client relationship. Records of all transactions and other work carried out, in a full audit trail form, should be retained for at least five years after the conclusion of the transaction.

Recognition of suspicion

18. Suspicion can be described as being more than speculation but falling short of proof based on firm evidence. A particular set of circumstances which may be suspicious in relation to one client may not be suspicious in relation to another client. Therefore, the key to recognising a suspicious transaction or situation is for members to have sufficient understanding of clients and their activities.

19. Members should pay special attention to transactions in which their clients are involved that appear to have no apparent economic or visible lawful purpose. Whenever such transactions occur, their background and purpose should, as far as possible, be examined and any findings recorded in writing. If no purpose for the transaction can be established, this may be a ground for suspicion.

Reporting suspicious transactions

20. In most countries, accountants in practice will be subject to a legal requirement to report knowledge or suspicions of money laundering or terrorist financing to an appropriate national authority. All countries which follow the FATF Recommendations are expected to impose such a requirement. The requirement to report may be broadly based, and apply in respect of information that accountants come across in any part of their professional work, or it may be more focused, and apply only to information they acquire while carrying out specified activities, such as dealing with client funds. Members are expected to familiarise themselves with the exact nature of any local reporting obligation. Where a requirement to report applies, however, members are expected to comply promptly with their obligation to do so. In this context, members are reminded that tax evasion will usually be deemed a crime and that they may be required to make an additional report to the tax authorities.

21. Some countries may require a report to be made only where the suspicion relates to the proceeds of specified serious crimes, or to proceeds of crimes which exceed a set monetary threshold. By contrast, in other countries (the United Kingdom, for example) suspicions relating to the proceeds of any crime must be reported.

22. Subject to any local legal requirement to the contrary, where the work done by members for their clients is covered by legal professional privilege, members are not required to report their suspicions. Whether or not legal professional privilege applies to members and in what circumstances will depend on local law and members are strongly advised to seek legal advice as and when the issue arises.

Tipping off

23. Members should not “tip off” a client that a report has been made. If a suspicion has arisen during the course of client identification procedures, members should take extra care that carrying out those procedures will not tip off the client. In particular, ceasing to act for a client without giving any plausible explanation might tip off the client that a report has been made. However, any attempts to persuade a client not to proceed with an intended crime will not constitute tipping off.

Advisory Services

24. Members faced with money laundering issues may call upon the Advisory Services Section within ACCA for confidential advice.

25. Guidance may be obtained from ACCA's money laundering resource at http://www.accaglobal.com/publicinterest/activities/library/money_laundering/.

3.9

Whistleblowing responsibilities placed on auditors

Introduction

1. In certain circumstances, auditors may be required to report to the appropriate regulator if a client has not complied with any law or regulation or if any other matters occur which give rise to a reporting obligation. For example, auditors of financial institutions which are subject to statutory regulation in the United Kingdom are required to report to the regulator any information which may be of material significance to that regulator, such as the client's breach of a regulation or a serious downward turn in the client's financial position.
2. Auditors must ensure that they are aware of the requirements identified in the relevant local legislation and regulatory frameworks which assist them in identifying matters that should be reported.
3. Failure to report may constitute an offence and could render an auditor liable to fines or even imprisonment.
4. Members are referred to the International Standards on Auditing or the equivalent standards of the country in which the member practises for further detail as to the types of non-compliance that must be reported and the appropriate authorities to whom reports should be made.

Whistleblowing duty: non-compliance with law or regulation

5. Where auditors become aware of a suspected or actual non-compliance with law and regulation, which gives rise to a statutory right or duty to report, they should report this to the proper authority immediately.
6. Save where paragraph 7 applies, where auditors become aware of a suspected or actual non-compliance with law or regulation and they conclude that it is a matter that should be disclosed in the public interest, they should notify the directors, trustees, etc. in writing of their view. If the entity does not voluntarily make a disclosure of the default, or is unable to provide evidence that the matter has been reported, they should report it themselves to the proper authority.
7. Where there is a real risk that disclosure to the directors or trustees might prejudice any investigation or court proceedings or is proscribed by law (for example in the UK where it might constitute the offence of "tipping off") and auditors become aware of a suspected or actual non-compliance with law or regulation, they should make their report to the proper authority without delay and without first informing the directors, trustees, etc. Occasions

3.9 Whistleblowing responsibilities placed on auditors

when disclosure may give rise to prejudice include where the disclosure is of a matter which casts doubt on the integrity of the directors, trustees, etc., or their competence to conduct the business of the regulated entity and which gives rise to a statutory duty to report.

Circumstances indicating non-compliance with law or regulation

8. Auditors should have a general understanding of the laws and regulations that are central to an entity's ability to carry out its business.

9. The laws and regulations affecting companies may vary from country to country. The following examples (a) to (d), whilst not exhaustive, highlight some circumstances where an entity may be in breach of a law or regulation under UK law:

- (a) an entity whose main activity is the development of a single property should be complying with the appropriate planning regulations (including planning permission);
- (b) an entity whose main activity is waste disposal should hold the relevant licences to allow it to dispose of hazardous waste;
- (c) an entity whose main activity is financial services work, such as investment business, should hold appropriate authorisation to undertake this type of activity;
- (d) when undertaking an audit of a pension scheme, auditors need to ensure that they understand concepts such as the minimum funding requirement, the contributions schedule etc., since they will be required to report any breach of the scheme's rules, that is material to the regulator, to the proper authority.

Professional duty of confidence

10. Disclosure by an auditor shall not constitute a breach of any obligation of confidence imposed by the fundamental principle of confidentiality provided that:

- (a) disclosure is made in the public interest;
- (b) disclosure is made to a proper authority; and
- (c) there is no malice motivating the disclosure; or
- (d) disclosure is made under compulsion of law.

11. Auditors are reminded that the duties of confidence owed to clients are also questions of law and that the law may vary from country to country. Auditors should take legal advice before making a decision on whether a disclosure of a suspected or actual non-compliance with law or regulation should be made to a proper authority in the public interest.

Method of reporting

12. Auditors making a disclosure of a suspected or actual non-compliance with law or regulation directly to a proper authority should ensure that their report includes:

- (a) the name of the entity;
- (b) the statutory authority under which the report is made;
- (c) the auditing standard under which the report has been prepared;
- (d) the context in which the report is made;
- (e) the matters giving rise to the report;
- (f) a request that the recipient acknowledge that the report has been received; and
- (g) their name and the date on which the report was written.

Whistleblowing duty: other matters of material significance

13. Members should familiarise themselves with and comply with the law. Auditors not only have a professional duty but may also have a statutory duty to report directly to regulators where, in the course of their work, they become aware of matters that are, or are likely to be, of material significance in determining either, by way of illustration, in the UK:

- (a) whether a person is a fit and proper person to carry on the regulated work; or
- (b) whether disciplinary action should be taken, or powers of intervention exercised, in order to protect clients against significant risk of loss.

14. The following circumstances may require auditors to make a report:

- (a) when there has been an adverse change in the circumstances of the business;
- (b) where an event has resulted in a material loss or loss of control over the assets or records which would impact on the entity's ability to adhere to the rules and regulations for the conduct of the regulated business; and
- (c) where the financial position of the entity is such that clients' interests might be better safeguarded if the matter were reported to the regulator.

15. Auditors of certain entities may be required to report directly to regulators where they discover non-compliance with law or regulation.

Non-audit assignments

16. Whilst the whistleblowing responsibilities outlined above apply to auditors, members should bear in mind the foregoing guidance for non-audit situations.

17. Where members become aware of a suspected or actual non-compliance with law or regulation, they should consider its impact on the reporting entity. Members have a professional duty to ensure that all accounts/returns that they are party to are not in any way incorrect or misleading.

3.9 Whistleblowing responsibilities placed on auditors

18. Where members become aware of irregularity and the client does not take steps to correct it and notify the proper authority, they should not only consider their position but whether they should make voluntary disclosure to a third party. Before making any disclosure, members should consider taking legal advice and are referred to section 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others, for further guidance.

3.10

Advertising, publicity and obtaining professional work

Introduction

1. Subject to the requirements which follow, and to any law that may apply to them, members may seek publicity for their services and achievements and may advertise their services and products in any way they think fit.
2. Members may inform the public of the services they are capable of providing by means of advertising or other forms of promotion subject to the general requirement that the medium should not reflect adversely on the member, ACCA or the accountancy profession.
3. When members solicit new work through advertising or other forms of marketing, there may be potential threats to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behaviour is created if services, achievements or products are marketed in a way that is inconsistent with that principle.
4. Advertisements and promotional material prepared or produced by members or firms should not (either in content or presentation):
 - (a) bring ACCA into disrepute or bring discredit to the member, firm or the accountancy profession;
 - (b) discredit the services offered by others whether by claiming superiority for the member's or firm's own services or otherwise;
 - (c) be misleading, either directly or by implication;
 - (d) fall short of any local regulatory or legislative requirements, such as the requirements of the United Kingdom Advertising Standards Authority's Code of Advertising and Sales Promotion, notably as to legality, decency, clarity, honesty, and truthfulness.
5. An advertisement should be clearly distinguishable as such.

Fees

6. Where reference is made in promotional material to fees, the basis on which those fees are calculated, hourly or other charging rates, etc., should be clearly stated.
7. The greatest care should be taken to ensure that any reference to fees does not mislead the reader as to the precise range of services and time commitment that the reference is intended to cover.

3.10 Advertising, publicity and obtaining professional work

8. Members may make comparisons in promotional material between their fees and the fees of other accounting practices, whether members or not, providing that any such comparison does not give a misleading impression.

9. When making comparisons members must ensure that they pay appropriate attention to relevant local codes or legislation, such as the United Kingdom Advertising Standards Authority's Code of Advertising and Sales Promotion and the EC Directive on Comparative Advertising (97/55/EC). The following conditions, which are extracted from the aforementioned sources but should be followed by all members as best practice, should normally be met:

- (a) it compares the services meeting the same needs or intended for the same purpose;
- (b) it objectively compares one or more material, relevant, verifiable and representative features of those services, which may include fees;
- (c) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;
- (d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- (e) for products with designation of origin, it relates in each case to products with the same designation;
- (f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products; and
- (g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

10. The danger of giving a misleading impression is particularly pronounced when constraints of space limit the amount of information which can be given.

11. Promotional material which is based on the offer of percentage discounts on existing fees is permitted.

12. A member may offer a free consultation at which levels of fees will be discussed.

Promotional material and promotional activities

13. Promotional material may contain any factual statement, the truth of which a member is able to justify, but it should not make unflattering references to, or unflattering comparisons with, the services of others.

14. Members are reminded that any promotional activity should be carried out in accordance with any relevant legislation. For example, members should comply with legislation relating to the making of unsolicited telephone calls, facsimile transmissions or other electronic communication to a non-client with a view to obtaining professional work.

15. Any promotional activity undertaken by a member, or his agent, should not amount to harassment of the non-client.

Introductions

16. Members may, in return for the introduction of a client, give or offer a commission, fee or reward to any third party. The payment of such a referral fee may create threats to compliance with the fundamental principles.

17. Members should not pay a referral fee or commission, unless members have established safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards include disclosing to the client any arrangements to pay a referral fee to a third party.

18. Those members or firms concerned with the special situation of introducing insolvency business in the United Kingdom should refer to section 3.23, The practice of insolvency.

19. Those members carrying out exempt regulated activities in the United Kingdom and firms which carry on investment business in the Republic of Ireland should refer to regulation 5 of the Designated Professional Body Regulations 2001 and regulation 5 of the Irish Investment Business Regulations 1999 respectively.

Investment business

20. Rules for members in the United Kingdom on advertising of exempt regulated activities are set out in regulation 4(2)(r) of the Designated Professional Body Regulations 2001 and those for members carrying on investment business in the Republic of Ireland in regulation 6 of the Irish Investment Business Regulations 1999 respectively.

Responsibility for promotional activities

21. For the purpose of this chapter, promotional activities carried out in the name of a firm should be construed as promotional activities carried out by the individual members of that practice, whether carried out personally or through agents.

Advisory Services

22. Members with queries regarding promotional activities may call upon the Advisory Services Section within ACCA for advice.

23. Members are also referred to guidance ACCA has issued for members on obtaining professional work. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

3.11

Descriptions of members and firms and the names of practising firms

General

1. This chapter is split into two parts: Section A deals primarily with descriptions of members and firms and Section B deals with the names of practising firms.
2. For the purpose of this chapter, a firm is one whose main business is that of the provision of services customarily provided by Chartered Certified Accountants.
3. The terms “firm” and “practice” include partnerships, corporations (including limited liability partnerships) and sole practitioners.

Section A – Descriptions of members and firms

Members' descriptions

4. Members of ACCA may be either Members or Fellows and both are entitled to use the professional designation “Chartered Certified Accountant” or “Certified Accountant”.
5. Members may use the designatory letters “ACCA” (for members) or “FCCA” (for fellows).
6. Members are not permitted to add Honours or Hons after the designations noted in paragraph 4 above, nor are they permitted to add Honours or Hons after the designatory letters noted in paragraph 5 above, even though they may have earned a place of merit in the final examination and have been so shown in the pass list. No honours are awarded in ACCA's examinations.

Membership of other accountancy bodies

7. Members may use on their professional stationery words showing membership of other accountancy bodies or of organisations in any field related to accountancy.
8. Where members belong to two or more accountancy bodies they should either use all their designatory letters on their professional stationery or none at all.

Other designatory letters

9. Members who hold a civil or service honour (such as CBE, DSO, DFC, etc.) or a civil office (such as MP, etc.) are entitled to use the appropriate designatory letters on their professional stationery if they so wish. The designatory letters for a Justice of the Peace (JP) or its equivalent outside the United Kingdom must not be included on professional stationery.

3.11 Descriptions of members and firms

10. Before including designatory letters members should consider carefully how far (if at all) a statement of such honours or offices is relevant to the professional services they offer.

11. Any reference to honours or appointments would be entirely inappropriate in signing any audit report or other expression of professional opinion.

Compliance with ACCA Charter, bye-laws, regulations and Code of Ethics and Conduct

12. A firm which uses any of the descriptions, statements or logos set out in paragraphs 13 to 19 below is deemed to have undertaken to comply with the ACCA Charter, bye-laws, regulations and Code of Ethics and Conduct.

Practice descriptions

13. The descriptions “Chartered Certified Accountant(s)”, “Certified Accountant(s)” or “Registered Auditor(s)” must not form part of the name of a firm, company or limited liability partnership. (For example, a limited liability company must not include the description in the name which is registered with Companies House in the United Kingdom or its equivalent elsewhere.)

14. A firm (containing holders of practising certificates of whatever category or insolvency licences) may describe itself as a firm of “Chartered Certified Accountants”, “Certified Accountants” or “an ACCA practice” only where:

- (a) at least half of the partners (or directors in the case of a company, or members in the case of a limited liability partnership) are ACCA members, and
- (b) the principals noted in 14(a) above control at least 51 per cent of the voting rights under the firm’s partnership agreements (or constitution).

Statements on professional stationery

15. A firm in which all the partners are Chartered Certified Accountants may use the description “Members of the Association of Chartered Certified Accountants”.

16. A mixed firm may wish to make it clear that some partners (or directors) are Chartered Certified Accountants and some are (to give a United Kingdom example) Chartered Accountants. Such a firm may not use the description “Chartered Certified Accountants and Chartered Accountants” or “Chartered and Certified Accountants”, but may use the following statement on its stationery (providing the Chartered Accountants within the firm have permission from their own Institute(s) to use the statement):

“The partners (or directors) of this firm are members of either the Association of Chartered Certified Accountants or the Institute of Chartered Accountants in England and Wales (of Scotland / in Ireland)”.

17. Generally, the designation of any overseas body should not be used in combination with “Chartered Certified Accountant(s)” or “Certified Accountant(s)”, other than in the style of the statement set out in paragraph 16 above, unless the legislation of the country in which the practitioner is based overrides this requirement.

Use of the ACCA logo

18. A firm that has at least one ACCA member as a partner or director may use the ACCA logo on letterheads, other stationery and on an Internet site. The logo should be used in an appropriate manner, so that it cannot be confused with the logo of the firm, for example, in conjunction with the regulation statement in respect of audit or financial services, such as exempt regulated activities in the United Kingdom.

19. The overriding design consideration is that the positioning, size and colour of the logo should not compromise its recognition. The ACCA logo is square and must not be cropped or altered in any way. It is recommended that the logo should appear in black. However, firms may use the logo in any single colour where black is not available. On stationery, the recommended minimum size for the logo is 8 x 8mm and the maximum 15 x 15mm. The logo is available from ACCA by telephoning +44 (0)141 582 2000, or e-mail members@accaglobal.com. Alternatively, it may be downloaded from ACCA's website at www.accaglobal.com.

Registered Auditors

20. Firms in the United Kingdom or the Republic of Ireland holding a firm's auditing certificate issued by ACCA may describe themselves as “Registered Auditors”.

21. Firms meeting the conditions set out in paragraph 20 above may add the following statement to their business stationery:

“Registered as auditors by the Association of Chartered Certified Accountants”.

22. Where appropriate, the statement set out in paragraph 21 may be combined with the exempt regulated activities statement (paragraph 25 below) as follows:

“Registered as auditors and regulated for a range of investment business activities by the Association of Chartered Certified Accountants”.

23. Members are reminded that, under the terms of the Association's recognition under the Companies Act 1989 of the United Kingdom, the term “Registered Auditor(s)” must be used when signing any company audit report. This includes limited company audits, audits of other bodies specified under the Companies Act 1989 or other entities required by their constitutions to be audited by a Registered Auditor. (A similar requirement arises from the Republic of Ireland's Companies Act 1990.)

24. In the Republic of Ireland, in the event that an audit report is signed by a firm with a firm's auditing certificate, the audit report shall additionally identify the member(s) and/or other specified person(s) in relation to that firm responsible for the conduct of that audit.

Investment business

25. Firms that carry on exempt regulated activities in the United Kingdom are referred also to regulation 6(6) of the Designated Professional Body Regulations 2001. The approved wording for the purpose of regulation 6(6) is as follows:

“Regulated for a range of investment business activities by the Association of Chartered Certified Accountants”.

26. Firms that conduct exempt regulated activities may, without undue prominence, use the logos of investment business organisations of which they are a member on their professional stationery. (Members should also refer to the Designated Professional Body Regulations 2001.)

27. Firms that carry on investment business in the Republic of Ireland are referred to regulation 7(2) of the Irish Investment Business Regulations 1999. The approved wording for the purpose of regulation 7(2) is as follows:

“Authorised to undertake investment business services in Ireland by the Association of Chartered Certified Accountants”.

Insolvency practitioners

28. A member who holds a current insolvency licence in the United Kingdom may describe himself/herself as a “Licensed Insolvency Practitioner”. Members who hold a current insolvency licence issued by ACCA must add either one of the following statements to their business stationery:

“Licensed to act as an insolvency practitioner by the Association of Chartered Certified Accountants” or

“Insolvency Practitioner licensed by the Association of Chartered Certified Accountants”.

29. Firms composed wholly of insolvency licence holding partners/directors (whether issued by ACCA or other Recognised Professional Bodies or the Competent Authority under the Insolvency Act 1986 or Insolvency (Northern Ireland) Order 1989) may describe themselves as a firm of “Licensed Insolvency Practitioners”.

Sole practitioners

30. Sole practitioners may use the plural form of Chartered Certified Accountants or Certified Accountants and/or Registered Auditors and/or Licensed Insolvency Practitioners to describe their firms providing they hold the appropriate certificate, and either:

(a) they apply the suffix “& Co.” after their name, or

(b) otherwise trade under a business name which is not the same as their personal name.

31. A member who is a sole practitioner may describe himself/herself as a “Member of the Association of Chartered Certified Accountants”.

Specialisms

32. A firm may include a list of the services it provides on its professional stationery.
33. A firm may use a description indicating a specialism in any area of work, for example, "Tax advisers", provided that:
- (a) it is competent to provide the specialisms shown, and
 - (b) the content and presentation of the descriptions do not bring ACCA into disrepute or bring discredit to the firm or the accountancy profession.

Persons named on professional stationery

34. It should be clear from reading a firm's professional stationery whether any person named on it is a principal in that firm (i.e. a partner, sole practitioner or director).
35. Firms may include the name of any person who is not a principal of the practice on the professional stationery of the practice. Where such a person is named on the stationery a description about this person, e.g. "Manager", "Tax Consultant", etc. must also be included by their name.
36. The names and descriptions of principals must be clearly separated from those of non principals so that they cannot be mistaken for each other.
37. Any person named on professional stationery must be competent and have the necessary eligibility and qualifications to provide any specialism shown. They should be described only by the titles, descriptions and designatory letters to which they are properly entitled.
38. Any description used on a firm's professional stationery should not bring ACCA into disrepute or bring discredit to the practice or the accountancy profession.

Section B – The names of practising firms

General

39. Subject to the bye-laws and the following rules, members may practise under whatever name or title they see fit.
40. A practice name should be consistent with the dignity of the profession in the sense that it should not project an image inconsistent with that of a professional bound by high ethical and technical standards.
41. A practice name should not be misleading.
42. A practice name would be objectionable if in all the circumstances there was a real risk that it could be confused with the name of another firm, even if the member(s) of the practice could lay justifiable claim to the name.
43. A practice name may indicate the range or type of services offered by the firm.

3.11 Descriptions of members and firms

44. It has been the custom of the profession for members to practise under a firm's name based on the names of past or present members of the firm itself or of a firm with which it has merged or amalgamated. A practice name so derived will usually be in conformity with this guidance.

Discussion

45. It would be misleading for a firm with a limited number of offices to describe itself as "international" even if one of them was overseas.

46. A firm may trade under different names from different offices providing that this does not mislead.

47. A firm may be a member of a trading association and may indicate this on the firm's note paper or elsewhere in proximity to the practice name. However, the practice name of such a firm should be clearly distinguishable from the name of the associated firm or group. Thus, it would be misleading for a member of a trading group to bear the same name as the group. There would be no objection to a firm practising under its own name and including a statement on its professional stationery to the effect that it is "a member of (a named) accountancy group".

48. It would be misleading for sole practitioners to add the suffix "and partners" to their firm's name.

49. Similarly, it would be misleading for firms to add the suffix "and Associates" to their business name unless they have two or more formal associations/consultancies in existence which can be demonstrated to exist.

Investment business

50. Investment business certificates (Ireland) issued by ACCA authorise the firm named in the certificate to carry on investment business in that name only. Accordingly, if a firm wishes to conduct investment business under another practice name, it must apply for a separate investment business certificate (Ireland) and pay the appropriate fee.

Exempt regulated activities

51. In the United Kingdom, ACCA as a designated professional body regulates firms in carrying out a limited range of investment business activities which are incidental to the provision of professional services in that name only.

Legal requirements

52. A practice name must comply with partnership, limited liability partnership and company law as appropriate, and with any other local legislation, such as the Business Names Act 1985 in the United Kingdom. Practising firms may describe themselves in any manner conformable to the practice of the profession locally provided that the principles set out in paragraphs 39 to 41 of this chapter are observed.

New and changed names

53. When choosing a firm's name or considering changing a firm's name firms and members are recommended, as a means of ensuring compliance with this guidance, to consult with the Advisory Services Section as to the propriety of the proposed name. This is particularly so where the new name will not be based on the name of past or present members of the firm itself or of a firm with which it has merged or amalgamated.

Use of firm's name and premises

54. Members and firms should not give permission to third parties to use their name, the firm's name, premises, professional stationery, etc. There is a real danger that the public could mistake the third party for the member or firm if such permission were to be given.

Advisory Services

55. Members with queries regarding description of members and firms may call upon the Advisory Services Section within ACCA for advice.

56. Members are also referred to guidance ACCA has issued for members on description of members and firms. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

3.12

Professional appointments

General

1. Clients are free to choose their accountants/auditors, or other advisers, and to change them as they wish.
2. Members invited to act as accountants/auditors by clients must contact the existing accountants/auditors to ascertain if there are any matters they should be aware of when deciding whether or not to accept the appointment.
3. Members should follow the same procedures with regard to changes in professional appointments whether they are dealing with members or non-members, including unqualified accountants.
4. Members asked to undertake work additional to that carried out by an existing accountant should refer to paragraphs 49 to 52.
5. References in subsequent paragraphs to an 'accountant' should be taken to apply equally when the appointment under consideration is that of an auditor, reporting accountant or accountant.

Client acceptance

6. Before accepting a new client relationship, members should consider whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management and activities).
7. Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.
8. The significance of any threat should be evaluated. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.
9. Appropriate safeguards may include obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities, or securing the client's commitment to improve corporate governance practices and internal controls.

3.12 Professional appointments

10. Where it is not possible to reduce the threats to an acceptable level, members should decline to enter into the client relationship.

11. Acceptance decisions should be periodically reviewed for recurring client engagements.

Engagement acceptance

12. Members should agree to provide only those services that members are competent to perform. Before accepting a specific client engagement, members should consider whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competences necessary to properly carry out the engagement.

13. Members should evaluate the significance of identified threats and, if they are other than clearly insignificant, safeguards should be applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:

- (a) acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work performed;
- (b) acquiring knowledge of relevant industries or subject matters;
- (c) possessing or obtaining experience with relevant regulatory or reporting requirements;
- (d) assigning sufficient staff with the necessary competences;
- (e) using experts where necessary;
- (f) agreeing on a realistic time frame for the performance of the engagement; and
- (g) complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

14. When members intend to rely on the advice or work of an expert, members should evaluate whether such reliance is warranted. Members should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in professional appointment

15. Members who are asked to replace another accountant, or are considering tendering for an engagement currently held by another accountant, should determine whether there are any professional or other reasons, such as circumstances that threaten compliance with the fundamental principles, for not accepting the engagement. For example, there may be a threat to professional competence and due care if members accept the engagement before knowing all the pertinent facts.

16. The significance of the threats should be evaluated. Depending on the nature of the engagement, this may require direct communication with the existing accountant to establish the facts and circumstances behind the proposed change so that members can decide whether it would be appropriate to accept the engagement. For example, the apparent reason for the change may not fully reflect the facts and may indicate disagreements with the existing accountant that may influence the decision as to whether to accept the appointment.

17. Communication with the existing accountant is not just a matter of professional courtesy. Its main purpose is to enable members to ensure that there has been no action by the client which would on ethical grounds preclude members from accepting the appointment and that, after considering all the facts, the client is someone for whom members would wish to act. Thus, members must communicate with the existing accountant on being asked to accept appointment for any recurring work, except where the client has not previously had an accountant acting for them.

18. An existing accountant is bound by confidentiality. The extent to which members can and should discuss the affairs of a client with a prospective accountant will depend on the nature of the engagement and on:

- (a) whether the client's permission to do so has been obtained; or
- (b) the legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

19. In the absence of specific instructions by the client, an existing accountant should not ordinarily volunteer information about the client's affairs. Circumstances where it may be appropriate to disclose confidential information are set out in paragraph 27 of section 3.2, The fundamental principles.

20. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

21. Such safeguards may include:

- (a) discussing the client's affairs fully and freely with the existing accountant;
- (b) asking the existing accountant to provide known information on any facts or circumstances that, in the existing accountant's opinion, the prospective accountant should be aware of before deciding whether to accept the engagement; and
- (c) when replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that enquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.

22. Members will ordinarily need to obtain the client's permission, preferably in writing, to initiate discussions with an existing accountant. Once that permission is obtained, the existing accountant should comply with the relevant legal and other regulations governing such requests. The prospective accountant should write to the existing accountant requesting

3.12 Professional appointments

all the information which ought to be made available to enable the prospective accountant to decide whether or not to accept the appointment. Where the existing accountant provides information, it should be provided honestly and unambiguously.

23. If the prospective accountant is unable to communicate with the existing accountant, the prospective accountant should try to obtain information about any possible threats by other means, such as through enquiries of third parties or background investigations on senior management or those charged with governance of the client.

24. Where the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, members should, unless there is satisfaction as to necessary facts by other means, decline the engagement.

25. If the existing accountants continue to fail to reply, or fail to supply satisfactory replies, prospective accountants should send a further letter by a recorded delivery service.

26. The letter referred to in paragraph 25 above should state that unless a reply is received within a stated period, say seven days, the prospective accountants will assume there are no matters of which they should be aware and, at the end of the stated period, will proceed to accept the appointment.

27. If clients refuse permission to the existing accountants to discuss their affairs, the existing accountants should inform the prospective accountants of this fact. The prospective accountants should inform clients that they are not prepared to accept the appointment.

Matters to be communicated to prospective clients

28. Prospective accountants should ask clients to write to their existing accountants to:

- (a) notify them of the proposed change, and
- (b) give permission for the existing accountants to discuss the clients' affairs with the prospective accountants.

29. If existing accountants receive a communication from a prospective accountant but have not received permission, as set out in paragraph 28 above, they should notify the client of the contact. Additionally, they should write to the prospective accountant declining to give information and stating their reasons.

30. Where the existing accountants receive permission, as set out in paragraph 28(b) above, they should provide all reasonable information (in addition to transfer information) in response to a request from the prospective accountants. It is for the existing accountants to decide what information is reasonable and what they consider may be relevant to the prospective accountants' decision on whether or not to accept the appointment. (The issue of transfer information is considered separately at paragraph 47 of this section.)

31. Existing accountants may not prevent prospective accountants from acting on behalf of clients.

Matters to be communicated to prospective accountants

- 32.** If existing accountants consider there are matters to be brought to the attention of prospective accountants, they must be prepared to specify the nature and details of such matters.
- 33.** If existing accountants consider there are no matters to be brought to the attention of prospective accountants, they should write to state this fact.
- 34.** It is recommended that existing and prospective accountants communicate in writing. If oral discussions take place, each party should make and retain their own contemporaneous record of matters discussed and decisions and agreements made.
- 35.** Where existing accountants have suspicions of some guilty or unlawful act, e.g. defrauding the tax authorities, but have no proof, it is for the existing accountants to decide whether, and to what extent, their suspicions should be conveyed to prospective accountants.

Prospective accountants

- 36.** Any information supplied by existing accountants should be considered carefully before deciding to accept or reject the appointment.
- 37.** Prospective accountants should try to find out the reason for the change of accountants. Prospective accountants should be careful that by accepting an appointment they are not assisting clients to act improperly or unlawfully.
- 38.** For example, prospective accountants may find that the existing accountants have been conscientious in their duty as independent professionals, but have encountered client opposition. The existing accountants may have declined to give way on what they consider to be a matter of principle. In such circumstances prospective accountants should probably decline appointment.
- 39.** Prospective accountants must treat any information given by existing accountants in the strictest confidence.

Unpaid fees of previous accountant

- 40.** Prospective accountants are not expected to refuse to act where there are unpaid fees owed to the existing accountants.
- 41.** It is a matter for the prospective accountant's own judgement to decide how far they may properly go in assisting the existing accountants to recover their fees.
- 42.** Prospective accountants would normally be expected to draw the attention of their client to the fact that fees are due and unpaid and to suggest that they should be paid.

Transfer of books and papers

43. Once a new accountant has been appointed or on ceasing to hold office, the former accountants should ensure that all books and papers belonging to their former client which are in their possession are promptly transferred, whether the new accountant or the client has requested them or not, except where they claim to exercise a lien or other security over them in respect of unpaid fees.

44. Members should refer to section 3.13, Legal ownership of, and rights of access to, books, files, working papers and other documents.

Transfer of information

45. In order to ensure continuity of treatment of a client's affairs, former accountants should promptly provide the new accountants with all reasonable transfer information that they request, free of charge.

46. All reasonable transfer information must be provided even where there are unpaid fees.

47. "Reasonable transfer information" in paragraph 45 above is defined as:

- (a) a copy of the last set of accounts formally approved by the client; and
- (b) a detailed trial balance that is in agreement with the accounts referred to in paragraph 47(a) above.

48. Any information in addition to the reasonable transfer information, as defined in paragraph 47 above, is provided purely at the discretion of the former accountants, who may render a charge to the person requesting the information.

Additional professional work

49. Members may be asked to undertake work that is complementary or additional to the work of existing accountants, who are not being replaced or superseded. Such circumstances may give rise to potential threats to professional competence and due care resulting from, for example, a lack of complete information. Safeguards against such threats may include notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

50. Before accepting such work, members should communicate with the existing accountants employed by a client to inform them of the general nature of the work being done.

51. It is in the client's interest that the existing accountants are aware of the additional work being undertaken. This will facilitate the transfer of information between the advisers and aid them in carrying out their respective appointments.

52. In very exceptional circumstances members may not be required to communicate with the existing accountants. Members are responsible for checking with the Advisory Services Section whether, in their particular circumstances, they may dispense with the usual procedure of communicating with the existing accountants.

Changes in audit appointment

53. Members must comply with the local law with regard to the change of auditor.

54. The proposed auditors should ensure that they have been properly appointed and that their predecessors have vacated office in a correct and valid manner.

Casual vacancy in auditorship

55. Where there is a casual vacancy in the auditorship of a company, that vacancy will normally be filled by the directors appointing an auditor.

56. Members invited to fill a casual vacancy should follow a course of action similar to that outlined in this chapter.

57. If the casual vacancy has arisen through the death or incapacity of the previous auditor, the necessary contacts will have to be made with the former auditor's partners, if any, or with the person who is temporarily responsible for maintaining the practice.

Advisory Services

58. Members with queries regarding professional appointments may call upon the Advisory Services Section within ACCA for advice.

59. Members are also referred to guidance ACCA has issued for members on professional appointments. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

3.13

Legal ownership of, and rights of access to, books, files, working papers and other documents

Introduction

1. This section sets out the requirements governing the ownership of records, documents and papers. In the course of practice, members will either create or come into possession of records, documents and papers which may belong to members or may belong to members' clients. In certain circumstances members may be able to retain records, documents and papers belonging to clients pending payment of outstanding fees. It should be noted that such rights to a lien may be subject to important qualifications which enable clients and third parties to have access to any records, documents and papers in members' possession.
2. The term "documents and papers" does not just mean documents stored on paper. The term extends to information stored on microfilm, and also to information stored electronically.
3. The underlying principles of ownership and liens over records, documents and papers are governed by law and the contract that members enter into with their client. Members must comply with the requirements of the local law that applies to their dealings with their client.
4. Guidance as to the principles of law that govern these issues is found elsewhere. Members are advised to take legal advice wherever an issue as to ownership or possession of records, documents and papers may arise. The legal position and its application to any given set of facts may not be straightforward. Under English law, by way of illustration, the position may be summarised as follows:
 - (a) Documents belonging to clients must be given to clients, or their agents, on request, except for those cases where members are able to exercise a right of lien.
 - (b) For documents belonging to members, the decision whether to allow clients (or their agents) to inspect them rests with the members. Clients have no rights to demand access.
 - (c) Where clients ask members to disclose documents to a third party and those documents belong to clients, members must disclose the documents unless they are exercising their rights of lien. Where documents belong to members, they are not obliged to comply with the request.

3.13 Legal ownership of documents

5. Members are reminded that they may act for their clients in different capacities and this may affect their rights to ownership and possession of records, documents and papers. Thus, by way of illustration, under English law an accountant may find himself acting for clients either as principal or as an agent, depending on the nature of the work covered by the engagement.

Relationship with the local law

6. Members must obey the law. It is the responsibility of members to familiarise themselves with the law that applies to them and ensure that they work within the law.

7. So far as the requirements of this section may be inconsistent with any local statutory provision, rule of law or any direction or order of a court of competent jurisdiction that may from time to time be applicable to a member, compulsion of law shall be a defence to a breach of any provision of the requirements and these requirements shall be read as being subject to the applicable provision of the law.

The contract

8. It is permissible for members (to the extent they are permitted by law) to record and regulate any rights to ownership over any or any identified classes of records, documents and papers created by the member in the contract between members and their clients.

9. It is permissible for members (to the extent they are permitted by law) to record and regulate any right to assert a lien or other security and the rights attaching to the same for their unpaid fees over records, documents and papers owned by the member in the contract between members and their clients.

Preservation of documents

10. Where a member retains possession over documents that belong to a client whether to undertake work or to assert any lien or security over them, it is the duty of the member to make effective and appropriate arrangements to ensure that such records, documents and papers are at all times preserved safely, orderly and securely.

11. Where a member ceases to be entitled to retain possession over a client's records, documents and papers and their return has been demanded by a client, he must deliver up all such records, documents and papers to his client or to his client's lawyer or accountant promptly and safely. Nothing herein shall prevent a member from retaining (to the extent permitted or required by law) a copy of a client's file.

Liens

12. Nothing in this section shall prevent a member from asserting (to the extent permitted by law) a lien or other security for unpaid fees to retain possession of property owned by a member's client until the client pays what he/she owes the member.

13. The exercise of a right of lien does not absolve members from the requirement to supply the transfer of information required by section 3.12, Professional appointments, paragraphs 45 to 47.

14. Members are recommended to obtain legal advice before seeking to exercise a lien in any but the most straightforward of cases. Members should advise clients disputing a right of lien of a member to consult their own solicitors. By way of illustration, under English law no lien can exist:

- (a) over books or documents of a registered company that, either by statute or by the articles of association of the company, have to be available for public inspection or to be kept at the registered office or some other specified place or be dealt with in any special way;
- (b) over accounting records within Section 221 of the Companies Act 1985;
- (c) over VAT returns.

Duty of confidentiality

15. The duty of confidentiality owed by a member to his/her client is not affected by whether the member owns the record, document or paper or not.

16. The duty of confidentiality owed by a member to his/her client is not affected by whether the member asserts a lien or other security over the client's record, document or paper or not.

17. Members are reminded that voluntary access to information or documents should be given only where one of the following applies:

- (a) the client has given his/her consent before disclosure; or
- (b) the member's duty of confidentiality is overridden by the powers of a third party to require access; or
- (c) the member considers himself/herself to be obliged to volunteer information in the circumstances set out in the fundamental principle of confidentiality and section 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others.

Access to client papers

18. Subject to any lawful assertion of a lien or other security, a member should permit his client access to such records, documents and papers as belong to his/her client.

19. Where a request for access to records, documents or papers is made by a person other than the client or on behalf of a client (for example by a director seeking access to the papers of a company), it is permissible for a member, given his duty to maintain client confidentiality, to withhold or defer access to a client's records, documents and papers until the member is satisfied that he has seen appropriate and adequate authorisation to make such disclosure.

3.13 Legal ownership of documents

20. A member must obtain written authority from his/her client before the member permits access by any third party to a client's books, records or papers whether such records, documents or papers are owned by the client or the member. Members are recommended that such written authority include an indemnity from any claims arising out of the disclosure and that the letter should identify the proposed transaction in connection with which access has been requested, and record the fact that the working papers were not prepared or obtained with that transaction in mind. It is appropriate to reflect in the letter the parties' agreement that:

- (a) the papers and any information provided by the member will not be used for any purpose other than the proposed transaction;
- (b) access to the papers and information will be restricted to the purchasers, the investigating accountants and the purchasers' other professional advisers;
- (c) any reliance that the purchasers or their investigating accountants may wish to place on the papers is entirely at their risk;
- (d) the member disclosing the papers accepts no duty or liability resulting from any decisions made or action taken consequent upon access to the working papers or the provision of information, explanations or representations by the member; and that
- (e) the purchasers will indemnify and hold harmless the member disclosing the papers against any claims from third parties arising out of permitting access or providing information, explanations or representations.

21. A member should not disclose information about a client's affairs to a third party unless the client consents to disclosure or unless required by law or by a provision of the rules. By way of illustration, a non-exhaustive list under English law of occasions on which this principle may be overridden by third party rights of access might include:

- (a) where the member is compelled by a witness summons in litigation;
- (b) where a request is made of a member as secondary auditor in a group for access to papers by its primary auditor: see Auditing Standard *The Relationship between Principal Auditors and Other Auditors*, SAS 510 (ISA 5 Using the Work of Another Auditor);
- (c) to prevent a crime;
- (d) where the member is required by a liquidator, administrator or administrative receivers to make delivery to them of any documents belonging to the company;
- (e) where required by ACCA, as a statutory regulator in respect of auditors, insolvency practitioners, those who undertake investment business or exempt regulated activities and in relation to its disciplinary functions;
- (f) where access is being sought by HM Inspectors of Taxes or the Commissioners of HM Customs under the Taxes Management Act 1970 and the Value Added Tax Act 1994;

- (g) where required by an Inspector appointed by the Department of Trade and Industry to report on the affairs of a company under Section 434, Companies Act 1985;
- (h) where required by the Secretary of State for Trade and Industry (and any officer or other competent person authorised by him/her) under section 447 of the Companies Act 1985;
- (i) where required under the Financial Services and Markets Act 2000 or the Banking Act 1987;
- (j) where required by an authorised officer of the European Commission under Article 11 of Council Regulation 17.

Advisory Services

22. Members with queries regarding ownership and access to books and records may call upon the Advisory Services Section within ACCA for advice.

23. Members are also referred to guidance ACCA has issued for members on ownership and access to books and papers. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

3.14

Retention periods for books, files, working papers and other documents

Introduction

1. In determining the period for which audit, tax and other working papers and general client information should be retained, consideration needs to be given to the following:

- (a) legal requirements that specify the period of retention;
- (b) the period of time during which actions may be brought in the courts for which the working papers may need to be available as evidence;
- (c) the period of time for which information in the working papers may be required for use in compiling tax returns;
- (d) the possibility that a company may seek a quotation on a recognised stock exchange;
- (e) whether the papers in question form part of the books and records of a company.

2. Members are reminded that the period over which documents are retained may be influenced by questions of law. Those issues include but are not limited to, for the client, duties on the client to retain and make available records (for example to the tax authorities) and, for the member, considerations like preserving their records for at least the limitation period so that they are available to meet any allegation of breach of contract or professional negligence. The law may differ from country to country. Members should obtain their own legal advice on the law applicable in their countries.

Trusteeships

3. Members who act as trustees have a continuing responsibility to the beneficiaries. All records should be retained at least until all transactions have been independently audited and a discharge received from all interested persons.

General considerations

4. The retention of working papers involves expenditure on storage space and staff costs. It is permissible for members, subject to statutory requirements to retain and preserve accounting records, to adopt a policy of retaining working papers relating to current clients for a longer period than for those clients for whom they no longer act.

3.14 Retention periods for documents

Minimum periods for retention

5. Members should use their own judgement in determining the period for which working papers should be retained. The minimum period for which members must retain working papers are as follows:

Audit working papers	7 years
Files on clients' or former clients' chargeable assets and gifts	8 years (then return them to the client or former client or obtain authority from the client or former client for their destruction)
Files of member as trustee (other than trustee in bankruptcy)	For the period of trusteeship and 7 years thereafter
Investment business advice	For the life of the policy and 3 years thereafter

6. Tax files and other papers that are legally the property of the client or former client should be returned to the client (or former client) after 7 years or his/her specific authority obtained for their destruction.

7. Where it is possible that a defect in advice rendered to clients or former clients may not become apparent for a longer period than those set out above, members may consider it prudent to retain working papers for at least this period of time. For example, members should consider retaining advice given on the creation of a trust for the period until the trust comes to an end.

3.15

Activities through corporate or non-corporate organisations

Introduction

1. Subject to the provisions of this section, members may carry on activities through any convenient vehicle, provided that in doing so they do not contravene local law or regulation.

Provision of accountancy services through companies

2. Members may participate, whether as directors and/or members and/or employees, in limited or unlimited companies and limited liability partnerships, which offer auditing and/or accountancy services to the public, provided that in doing so, they do not contravene the law of the country in which they practise.

3. Under English law, office holders under the Insolvency Act 1986, receivers, and trustees under deeds of arrangement must be individuals.

4. Where members become directors of limited or unlimited companies or members of limited liability partnerships which offer auditing services to the public, they shall hold practising certificates from ACCA. For the purposes of this paragraph, “auditing services” shall include the provision of reports and/or certificates relating to the financial statements.

5. Limited and unlimited companies and limited liability partnerships referred to in paragraph 2 above are permitted to advertise in accordance with section 3.10, Advertising, publicity and obtaining professional work.

Non-accountancy services

6. Members may participate in any capacity, in organisations, whether corporate or non-corporate, which offer services other than accountancy services to the public (“non-accountancy organisations”). In this context, “accountancy services” means services of a kind usually offered by firms of accountants.

7. Where members participate in non-accountancy organisations, and, in addition, participate in organisations offering services to the public:

- (a) these organisations may operate from the same address; and
- (b) the non-accountancy organisations may, if linked with other organisations, indicate the connection in their name, but that name must differ distinctively from that of the other organisations. Non-accountancy organisations must not, in any other way, be used to attract audit or accountancy work to the other organisations.

3.15 Activities through organisations

8. Non-accountancy organisations may:

- (a) advertise their services in accordance with section 3.10, Advertising, publicity and obtaining professional work; and
- (b) use any appropriate description, but may not describe themselves as “Chartered Certified Accountants” or “Certified Accountants”.

Organisations offering accountancy and non-accountancy services

9. There is nothing to prevent members from participating in any capacity in corporate or non-corporate organisations which offer both accountancy and non-accountancy services to the public but, in such cases, members must comply with the rules contained in section 3.10, Advertising, publicity and obtaining professional work, which relate to accountancy organisations.

Appointed representatives under the Financial Services and Markets Act 2000 in the United Kingdom

10. In order that a firm at all times be free in the actions it undertakes of any interest which might detract from its objectivity it should not enter into any association or arrangement with any person which may result in the practice being constrained or induced to recommend to a client transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others, unless so constrained by law.

11. Paragraph 10 does not apply to an appointment as an appointed representative within the meaning of Section 39 of the Financial Services and Markets Act 2000 where the appointing organisation is itself, and at all times continues to be, free from any such interests or restrictions.

12. Insofar as appointments as a person’s representative in accordance with Section 39 of the Financial Services and Markets Act 2000 are concerned, firms may accept such appointments within the scope of regulation 5(3)(b) of the Designated Professional Body Regulations.

13. Practising members who do not conduct exempt regulated activities (for example, firms authorised by FSA) should nevertheless safeguard their independence by regarding the provision contained in paragraph 10 above as applying to them.

General

14. Members who engage in activities under this section are subject to the same ethical requirements as other members.

15. Members in doubt about the application of these provisions to their own circumstances should consult the Advisory Services Section and, if necessary, obtain the approval of the Admissions and Licensing Committee before undertaking any activities hereunder.

3.16

Fees

Basis of fees

1. Letters of engagement should state the fees to be charged or the basis upon which the fees are calculated.
2. Where the letter of engagement is not explicit with regard to the basis on which fees are calculated, members must charge a fee which is fair and reasonable. This may have regard to any or all of the following to the extent that they are not referred to in the letter of engagement:
 - (a) the seniority and professional expertise of the persons necessarily engaged on the work;
 - (b) the time expended by each;
 - (c) the degree of risk and responsibility which the work entails;
 - (d) the urgency of the work to the client; and
 - (e) the importance of the work to the client.
3. ACCA does not prescribe the basis for calculating fees nor does it set charge-out rates.
4. Members are, however, reminded that they have certain professional responsibilities in relation to fees, and these aspects are discussed further in the following paragraphs.

Percentage and contingency fees

5. Fees on a percentage, contingency or similar basis are widely used for certain types of non-assurance assignments. They may, however, give rise to threats to compliance with the fundamental principles in certain circumstances. They may give rise to a self-interest threat to objectivity. The significance of such threats will depend on factors including:
 - (a) the nature of the engagement;
 - (b) the range of possible fee amounts;
 - (c) the basis for determining the fee; and
 - (d) whether the outcome or result of the transaction is to be reviewed by an independent third party.

3.16 Fees

6. The significance of such threats should be evaluated and, if other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards may include:

- (a) an advance written agreement with the client as to the basis of remuneration;
- (b) disclosure to intended users of the work performed by members and the basis of remuneration;
- (c) quality control policies and procedures; and
- (d) review by an objective third party of the work performed by members.

7. In order to preserve members' objectivity, fees should not be charged on a percentage, contingency or similar basis, save where that course of action is generally accepted practice for certain specialised work or as provided for in the succeeding paragraphs. Particularly, members are reminded that fees charged in respect of expert or insolvency work may be subject to the requirements of local law.

Insolvency work in the UK

8. In appointments under the Insolvency Act of the United Kingdom, receiverships, and similar work, the remuneration is dependent upon the manner of appointment and the relevant statutes.

9. Members are referred to Statement of Insolvency Practice 9 for guidance in respect of remuneration of insolvency office holders contained in the separate ACCA publication setting out the Statements of Insolvency Practice.

Management buy-out and raising venture capital

10. There are circumstances, such as advising on a management buy-out or the raising of venture capital, where in some instances fees cannot realistically be charged save on a contingency basis, for example, where the ability of clients to pay is dependent upon the success or failure of the venture.

11. Where work is subject to a contingency or percentage fee, the capacity in which members have worked and the basis of their remuneration should be made clear in any document upon which a third party may rely.

Fee quotations

12. When entering into negotiations regarding professional services, members may quote whatever fee is deemed to be appropriate. The fact that one accountant may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price.

13. The significance of such threats will depend on factors such as the level of fee quoted and the services to which it applies. In view of these potential threats, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards which may be adopted include:

- (a) making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fees; and
- (b) assigning appropriate time and staff to the task.

14. If, in the course of an investigation into allegations of unsatisfactory work, there is evidence of the work having been obtained or retained through quoting a fee that is not economic in terms of the factors mentioned in paragraph 13 above, that fact may be taken into account in considering members' conduct having regard to the fundamental principles.

Fee disputes

15. When members are about to render a fee note which is substantially different from fees rendered to the same client on earlier occasions for which the work would appear to be comparable, it is good practice to explain to clients the reason for the variation.

16. To the extent that the increased fee reflects a charge for extra work, the reason for the extra work should be explained in writing to the client. To the extent that the increased fee reflects an increase in disbursements or costs, this should also be explained in writing to the client.

17. In cases where the fee note rendered is in excess of a quotation or estimate or indication of fees, clients may consider it to be excessive. Clients may be prepared to pay a smaller amount and may tender such a sum. If members do not wish to waive the balance of their fees, it is recommended that members should accept the sum but, at the same time, notify the client in writing that the sum is accepted in part payment of their fees.

18. When clients behave in such a manner, it is possible that they have genuine doubts as to the propriety of the fee, and are not actuated by malice or lack of means. In such circumstances, members are reminded that, on written application by both the parties to the dispute, ACCA can arrange for an arbitrator to be appointed to determine any dispute over fees charged.

19. Members whose fees have not been paid may in certain circumstances exercise a lien over certain books and papers of clients upon which they have been working. Members are referred to section 3.13, Legal ownership of, and rights of access to, books, files, working papers and other documents.

20. Members should be prepared to provide clients with reasonable explanations of the fees charged. The explanation should be provided without charge and should be sufficient to enable the client to understand the nature of the work carried out. Members should also take all reasonable steps to resolve speedily any dispute which arises.

Investment business in the UK and Ireland

21. Firms which carry on exempt regulated activities in the United Kingdom and firms which carry on investment business in the Republic of Ireland are referred to regulation 6(3) of the Designated Professional Body Regulations 2001 and regulation 7(5) of the Irish Investment Business Regulations 1999 respectively.

Advertisements

22. The attention of members is drawn to the guidance contained in section 3.10, Advertising, publicity and obtaining professional work, relative to the mention of fees in advertisements.

Commission on indemnity terms

23. Members may receive commission in respect of transactions effected for clients on the basis that this must be repaid in certain circumstances. In these circumstances, members may agree with clients any one of the following options:

- (a) to delay refunding the clients' commission until the expiry of the term; or
- (b) to place the commission into a designated deposit account until the expiry of the term and then to refund the commission to clients with interest; or
- (c) to rebate the clients' commission annually over the term; or
- (d) to request persons paying commission to pay only the commission due each year, retaining the balance; or
- (e) to forgo all commission; or
- (f) to instruct the persons offering commission to retain the commission for the benefit of clients' pension or other policies.

24. Nothing in these regulations prohibits a member from refunding the commission to clients either with or without clients' confirmation that they would reimburse members in the event that the commission became repayable.

3.17

The obligations of consultants

1. Consultant members must refrain from any action tending to change the relationship between other practitioners and their clients.
2. Any consultant member retained by another practitioner on a consultancy basis on behalf of a client should not accept any work from the client which, at the time of consultation, was being carried out by the instructing practitioner unless:
 - (a) the instructing practitioner consents (such consent should not unreasonably be withheld); or
 - (b) a period of at least one year has elapsed since completion of the consultancy assignment; or
 - (c) exceptionally, where the interests of clients would otherwise be prejudiced.
3. Members must consult the Advisory Services Section prior to accepting work on the basis of paragraph 2(c) above.
4. To the extent that there is any discrepancy between this section and the requirements of local legislation or regulation, members should follow whichever imposes upon them the more stringent requirement.

3.18

Professional liability of accountants and auditors

Introduction

1. This section is concerned only with the liability for professional negligence which a member may incur because of an act or default by him/her or by one of his/her employees or associates which results in financial loss to a client or third party to whom a duty of care is owed. It does not deal with liability arising from other causes (for example criminal acts, breaches of trust, or breaches of contract other than the negligent performance of its terms, and certain heads of liability arising by statute independently of contract).

2. In recent years there have been a number of cases where substantial sums have been claimed as damages for negligence against accountants and auditors. In a number of cases it appears that the claims may have arisen as a result of some misunderstanding as to the degree of responsibility which the accountant was expected to assume in giving advice or expressing an opinion. It is therefore important to distinguish between:

- (a) disputes arising from misunderstandings regarding the duties assumed; and
- (b) negligence in carrying out agreed terms.

3. This chapter sets out the global rules governing members and how they contract with clients or deal with third parties. The underlying principles are governed by law and the contract that members enter into with their client. Members must comply with the requirements of the local law that applies to their dealings with their client.

4. Guidance as to the principles of law that govern these issues is found elsewhere. Members are advised to take legal advice wherever an issue may arise. The legal position and its application to any given set of facts may not be straightforward.

Engagement letters

5. Members must record in writing and send to their client a letter of engagement which sets out the terms under which they are agreeing to be engaged by their client before any work is undertaken or, if this is not possible, as soon as practicable after the engagement commences. The member must ensure that at the time he/she agrees to perform certain work for the client a letter of engagement is prepared which clearly defines the scope of his/her responsibilities and the terms of his/her contract with his/her client. The letter of engagement should set out in detail the actual services to be performed, the fees to be charged, or the basis upon which fees are calculated, and the terms of the engagement should be accepted by the client so as to minimise the risk of disputes regarding the duties assumed. Accordingly, members must ensure they retain a copy of the engagement letter

3.18 Professional liability of accountants and auditors

which has been signed by the client. Where new work is to be undertaken or any terms have changed, the member should send a new letter of engagement. It may also be helpful for the avoidance of misunderstandings to indicate any significant matters which are not included in the scope of responsibilities undertaken, although it will rarely be possible to provide a comprehensive list of matters excluded. Again, members must retain a copy of the new engagement letter which has been signed by the client.

Excluding or restricting liability to a client

6. It is permissible for a member to include in the letter of engagement terms limiting or restricting a member's liability for negligence or breach of contract to a client. Members are reminded that an agreement with a client designed to exclude or restrict a member's liability will not always be effective in law. By way of illustration under English, Welsh and Northern Ireland law:

- (a) Section 310 of the Companies Act 1985 makes void any provision in a company's articles or any contractual arrangement purporting to exempt the auditor from or to indemnify him/her against any liability for negligence, default, breach of duty or breach of trust.
- (b) Section 2 of the Unfair Contract Terms Act 1977 renders void any contractual exclusion or restriction of liability for negligence, even in a case where the client has agreed to it and where legal consideration exists, unless the person seeking to rely on that exclusion or restriction can show that it was reasonable.
- (c) The Unfair Terms in Consumer Contracts Regulations 1999 make unenforceable any "unfair term" in a contract between a supplier and a "consumer"; but if a term limiting liability has been found to be "reasonable" for the purposes of the 1977 Act, it is thought unlikely that it would be held to be "unfair" for the purposes of the 1999 Regulations.

Whilst members may wish to make specific disclaimers of responsibility in appropriate, defined circumstances, ACCA does not encourage the use of standard disclaimer clauses in audit reports. Such clauses could have the effect of devaluing the report in the eyes of many and should not be necessary in order to protect auditors' interests if the audit has been properly carried out.

Advice on limited information

7. Accountants may be called upon to give opinions and advice, including financial advice, in connection with many matters, for example investigations or management consultancy assignments, the preparation or audit of the accounts of sole traders, partnerships and charities, and in the field of taxation. Whilst it is permissible for members to give such advice either within or outside the scope of a letter of engagement, members are recommended to make clear to the beneficiary of that advice the extent of the responsibility they agree to undertake and whom that advice is intended for and restricted to, making particular reference to the information supplied to them as a basis for their work and to those areas (if any) to be excluded from their examination. In particular, if clients require "snap" answers to complicated problems, it is recommended that members record such advice in writing (or alternatively to state orally and forthwith confirm in writing) that the problems are

complicated, that they have been given a very limited time in which to study them, that further time is required in order to consider them in depth and that the opinion or advice tendered might well be revised if further time were available to them. Members should also state that the client is responsible for the accuracy of the information supplied to the accountant. Except in the case of a genuine emergency the client should be warned against acting on the “snap” advice tendered before further investigation has been carried out.

Avoiding liability to third parties

8. It is permissible for members to take appropriate steps to reduce their exposure to the claims of third parties. By way of illustration, in England and Wales such steps might include:

- (a) identifying the purpose for which the advice is given or document is prepared;
- (b) identifying and limiting the audience of the advice or document, for example including the notice “CONFIDENTIAL. This report (statement) has been prepared for the private use of X (the client) only and on condition that it must not be disclosed to any other person without the written consent of Y (the accountant).”;
- (c) including a disclaimer, for example: “Whilst every care has been taken in the preparation of this document, it may contain errors for which we cannot be responsible” or “This report is prepared for the use of X (the client) only. No responsibility is assumed to any other person.”;
- (d) where a document is prepared in the first instance for discussion with or approval by the client or others, and is liable to be altered before it appears in its final form, over-stamping the document on each page: “Unrevised draft”;
- (e) where accounts are prepared on behalf of a client, identifying that the source of the information set out in the accounts is the client and not the accountant and that the client has checked the document. It is a sensible precaution in such a case for the accountant expressly to draw the attention of the client to the need to check the document before submitting it.

9. Members should, however, be aware that disclaimers may be inappropriate or ineffective. Disclaimers will be inappropriate in circumstances where their use will tend to impair the status of practising accountants by indicating a lack of confidence in their professional work. By way of illustration, under English law it would not, for example, be proper to endorse copies of accounts filed in accordance with Sections 226 (as amended by the Companies Act 1985 (International Accounting Standards and other Accounting Amendments) Regulations 2004) and 241 of the Companies Act 1985 (as amended by the Companies Act 1989) with a disclaimer by the auditor of liability to persons other than shareholders.

Inclusion of the accountant’s name on a document issued by a client

10. Members are recommended to endeavour to ensure that no statement or document issued by their client (other than unabridged accounts which have been reported on by them as auditors) will bear their name unless their prior consent has been obtained. It is often desirable for a suitable paragraph to be included in the engagement letter. If a member

3.18 Professional liability of accountants and auditors

learns that a client proposes to cite his/her name, he/she should inform the client that his/her permission must first be obtained and in appropriate cases he/she should withhold his/her permission.

Specialist advice

11. Members are reminded that, from time to time, circumstances may warrant (whether because of the complexity of an assignment or otherwise) that a member should advise his/her client that he/she considers it desirable to take specialist advice. In certain circumstances it may be appropriate for a member either to consult another accountant or to instruct or to suggest to his/her client to instruct a member of another profession to advise.

Internal complaints-handling procedures

12. In accordance with lead regulator recommendations, members in the UK and Ireland must implement adequate procedures to handle client complaints in respect of fee, service and contractual disputes. Members elsewhere are highly recommended to implement such procedures.

13. Many complaints can be resolved without recourse to litigation where adequate internal complaints procedures exist within firms. In this way, not only would the level of client care improve, but issues of poor service might be resolved without the need for investigation by ACCA. A guidance note to assist members, which includes suggested procedures, can be found on ACCA's website at www.accaglobal.com/professionalstandards.

14. It is recommended that any complaints procedures adopted by a firm should ensure:

- (a) the proper handling of complaints from clients relevant to its compliance with the regulatory system;
- (b) that complaints are acknowledged promptly;
- (c) where a complaint has been made orally, that the letter of acknowledgement states the member's understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement;
- (d) that complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint;
- (e) that any appropriate remedial action on those complaints is promptly taken; and
- (f) where the complaint is not promptly remedied, that the client is advised of any further avenue for complaint available to him/her under the regulatory system (e.g. taking the matter up with ACCA).

15. Members are recommended to include details of the firm's internal complaints-handling procedures in the letter of engagement.

16. Members are reminded that on written application by both the parties to the dispute, ACCA can arrange for an arbitrator to be appointed.

Advisory Services

17. Members with queries regarding professional liability of accountants and auditors may call upon the Advisory Services Section within ACCA for advice.

18. Members are also referred to guidance ACCA has issued for members on liability for professional negligence. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

3.19

The incapacity or death of a practitioner

General

1. Practising certificates are granted to members on the condition that they have made arrangements for continuity in the management of their practice, in the event of their death or incapacity. Members are referred to the detailed provisions in regulation 11 of the Global Practising Regulations 2003.
2. Principals in the same practice (partnership or corporation) may arrange continuity through their fellow partners, or directors, providing these persons are suitably qualified to carry out work which they will be called on to undertake in the role of continuity nominees.
3. When entering into an agreement with another firm (a sole practitioner, a partnership or a corporation) for the provision of continuity, members should try to find a compatible practice where procedures, fee structure and the work in general are of a similar kind. Practical considerations, such as geographic location, staff availability and skills, client characteristics, etc., should be taken into consideration.
4. Continuity nominees must be suitably qualified at the time they agree to be nominated as such and at all times thereafter. In the event that a nominee fails to retain his/her qualification he/she will no longer be a valid continuity nominee and the practitioner will have to find a replacement.
5. Members should ensure that their executors and family will be aware, in the event of the member's death or incapacity, of the arrangements made for the management of the practice.

Insolvency practitioners: UK

6. As a condition of obtaining a licence to practise insolvency under United Kingdom legislation, members are obliged to enter into a continuity of practice agreement with another firm or individual for the purpose of transferring their insolvency appointments in the event of their incapacity or death.

Content of continuity agreement

7. A continuity agreement must be evidenced in writing.
8. A continuity agreement must include clauses within it which set out:
 - (a) the precise nature of the legal relationship between the principal and the continuity nominee;

3.19 The incapacity or death of a practitioner

- (b) the circumstances which will cause the management arrangement under the continuity agreement to commence operating;
- (c) a statement of the maximum duration of the management of the practice under the continuity agreement;
- (d) provisions for the review of the arrangements should circumstances warrant an extension of time;
- (e) the continuity nominee's obligations;
- (f) the continuity nominee's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operating bank accounts;
- (g) the basis on which the continuity nominee will be remunerated;
- (h) the letter to be sent to clients in the event of the principal's death or incapacity.

9. Members may include additional clauses in their continuity agreement which deal with matters other than those included in paragraph 8 above.

10. Members may include clauses in their continuity agreement which deal with the sale of the practice. (Parties to such transactions should normally be independently advised.)

11. Members are strongly advised to seek legal advice when drawing up a continuity agreement.

12. Copies of model continuity agreements are available from ACCA at http://www.accaglobal.com/members/professionalstandards/prac_info/pib.

Descriptions

13. The name of the continuity nominee who is managing the practice under the continuity agreement should be disclosed on the letterhead of the incapacitated/deceased practitioner as soon as possible, e.g.

David J Smith
Chartered Certified Accountant (or Certified Accountant)
Manager: Henry R Jones FCCA
or
Manager Davies and Jones
Chartered Certified Accountants
(or Certified Accountants).

Records

14. Practitioners are recommended to maintain adequate records in relation to practice matters, and to inform the continuity nominee of the firm's practices and procedures. Such information will assist the continuity nominee to undertake his/her duties when called upon to act.

Incapacity of a practitioner

15. A principal, in spite of his/her incapacity continues to be the owner of the practice and also will be responsible for the actions of the continuity nominee appointed to manage the practice during the period of his/her incapacity.

16. Where a practitioner is incapacitated, it is important that professional indemnity insurers and other insurers are informed of the new circumstances; this includes notifying insurers of the appointment of a continuity nominee to manage the practice in accordance with the continuity agreement.

17. Where the incapacity of the principal is likely to be prolonged, clients should be informed of the arrangements in place for the continuance of service to them.

Death of a practitioner

18. It is recommended that all practitioners make a will and appoint executors who will be able to administer their estate. It may be advantageous if one of the executors is professionally qualified. Executors can act at once to protect a practice. By way of illustration, under English law, if practitioners die intestate, their administrators will have no authority to act until they have obtained a grant of administration. The resulting delay in obtaining a grant of administration may result in the late practitioner's affairs, and those of his/her clients, not being properly controlled and managed.

19. Whether members die intestate, or having made a will, certain matters should be addressed without delay:

- (a) the fact that personal representatives of the deceased have taken over conduct of the practice means that it cannot strictly be described as a firm of Chartered Certified Accountants; nevertheless, for a temporary period the old name and description of the practice may normally be retained for the purpose of realisation, provided the fact that the practice is under management is indicated;
- (b) insurers should be advised of the changed circumstances, especially those concerned with indemnity insurance;
- (c) as in the case of incapacity, the continuity agreement should note the scope of the continuity nominee's authority for administration of the practice including control of staff, operation of bank accounts, etc.

Statutory audits

20. In some countries, an incapacitated member will retain his/her appointment as a statutory auditor and can be removed only in accordance with the appropriate statutory procedures.

21. There may be exceptions to paragraph 20: in the United Kingdom, for example, if an individual is appointed as auditor to a Friendly/Industrial and Provident Society, the individual will cease to be eligible for re-appointment if incapacitated.

3.19 The incapacity or death of a practitioner

22. Some kinds of incapacity are more permanent than others and considerations of practical common sense will indicate the course to be followed.

23. Where the incapacity of the practitioner is likely to be of considerable duration or affect normal audit procedures, the directors or other persons responsible for the appointment of the auditor should be fully informed of the circumstances and the arrangements made for the continuation of the practice.

24. If the directors wish to appoint the continuity nominee as auditor, the continuity nominee may quite properly accept, emphasising that they do so on a temporary basis. Sometimes, however, the continuity nominee may subsequently find himself/herself in an embarrassing situation if the client then wishes to invite the continuity nominee to accept the appointment permanently. The continuity nominee may accept the appointment, but in that event ACCA would expect the continuity nominee to be ready to negotiate with the incapacitated member, or his/her agent, as to the financial terms on which the continuity nominee does so, otherwise the value of the practice would be diminished.

25. Where a practitioner dies during the course of an audit, it may leave the firm not under the control of qualified persons within the meaning of regulation 8 of Annexes 1 and 2 to the Global Practising Regulations 2003. The firm would therefore be ineligible to retain its auditing certificate. In such circumstances, the client will need to appoint new auditors, but in the meantime the firm's continuity provider should step in and fill the vacancy to complete the audit and sign the audit report. The deceased practitioner's firm would not be permitted to sign any audit reports nor take on any new audit clients.

Ethical considerations

26. In the event that members are called upon to act under the continuity agreement they must not seek any personal gain from the arrangement apart from reasonable remuneration for the work they undertake.

27. Continuity nominees should not accept clients from the practice they are assisting without the express agreement of the principal or the principal's representatives. This prohibition should be applied from the date on which the continuity nominee commences to act under the continuity agreement, to two years after the arrangement is terminated. The exception to this is where the continuity nominee purchases the practice. Continuity nominees may be subjected to disciplinary action if they fail to comply with this rule.

28. Continuity nominees should, whenever possible, interview clients and staff of the incapacitated member at the principal's office.

29. The continuity nominee may wish to acquire the practice from the incapacitated member or from his/her personal representatives and this is in no way unethical, and may be a very satisfactory solution. The continuity nominee should negotiate with the personal representatives of a deceased member (who should normally be independently advised), or in the case of incapacity with the member or his/her representatives. As noted at paragraph 14, the continuity agreement may include clauses which deal with arrangements for the sale of the practice.

ACCA approved employer

30. In the event of a principal or director of an ACCA approved employer dying, or being incapacitated, the remaining principals or directors (in the case of a sole practitioner his/her continuity nominee or personal representatives) should contact ACCA to inform them of this fact.

31. It is important that the arrangements for the training and supervision of students and members arising as a result of the death or incapacity of a principal are reviewed by ACCA to establish whether or not the arrangements for students and members continue to be satisfactory.

Advisory Services

32. Members with queries regarding the continuity of the practice in the event of incapacity or death of a practitioner may call upon the Advisory Services Section within ACCA for advice.

33. Members are also referred to guidance ACCA has issued for members on continuity of practice. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.

3.20

Clients' monies and other assets

General

1. Members should not assume custody of clients' monies or other assets unless permitted to do so by law and, if so, in compliance with any additional duties (legal or otherwise) imposed on members holding such assets.

2. The holding of client assets creates threats to compliance with the fundamental principles. For example, there is a self-interest threat to professional behaviour and may be a self-interest threat to objectivity arising from holding client assets. To safeguard against such threats, members entrusted with assets belonging to others should:

- (a) keep such assets separately from personal or firms' assets;
- (b) use such assets only for the purpose for which they are intended;
- (c) at all times, be ready to account for those assets, and any income, dividend or gains generated, to any persons entitled to such accounting; and
- (d) comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.

3. In addition, members should be aware of threats to compliance with the fundamental principles through association with such assets, for example if the assets were found to be derived from illegal activities, such as money laundering. As part of the client and engagement acceptance procedures, members should make appropriate enquiries about the source of such assets and should consider their legal and regulatory obligations. They may also consider seeking legal advice.

Clients' monies

4. Members are strictly accountable for all clients' monies which they receive.

5. In this chapter, the term "clients' monies" includes all monies received by members to be held or disbursed by them on the instructions of the persons from whom or on whose behalf they are received and includes insolvency monies.

6. Firms in the UK which carry on exempt regulated activities and are not authorised by FSA to carry on regulated activities, and firms which carry on investment business in the Republic of Ireland and are not authorised by IFSRA to carry on such business, are referred to regulation 4(2) of the Designated Professional Body Regulations 2001 and regulation 4(4)(a)(x) of the Irish Investment Business Regulations 1999 respectively, which prohibit the holding of investment business client money.

3.20 Clients' monies and other assets

7. The remaining paragraphs of this chapter are concerned only with clients' monies that are not governed by regulation 4(2) of the Designated Professional Body Regulations 2001 or regulation 4(4)(a)(x) of the Irish Investment Business Regulations 1999.

Clients' accounts

8. Clients' monies should be paid without delay into a bank account, separate from other accounts of the firm.

9. Such accounts may be either general accounts or accounts in the name of the specific client. All such accounts should in all cases include in their title the word "client". Any such bank accounts are referred to herein as "a client account".

10. Where it is anticipated that the monies of individual clients in excess of £10,000 or its equivalent will be held by the firm for more than 30 days, the money should be paid into a separate bank account designated by the name of the client or number allocated to the client account.

11. The term "bank" is defined in paragraph 31 below.

Opening a client bank account

12. Whenever firms open a client account, they should give written notice in clear terms to the bank concerned as to the nature of the account.

13. The notice must require the bank to acknowledge in writing that it accepts the terms of the notice.

Payments into a client bank account

14. Where firms receive cheques or drafts that include both clients' monies and other monies, they should pay them into a client account.

15. Once the monies have been received into such a client account, the firm should withdraw from that account such part of the sum received as can properly be transferred to an office account in accordance with the guidance set out in paragraphs 17 to 18 below.

16. Save as referred to in paragraph 15 above, no monies other than clients' monies should be paid into a client account.

Withdrawals from a client bank account

17. The following may be withdrawn from a client bank account, provided that the sums withdrawn do not exceed the total of the monies held for the time being in the account of the clients concerned:

- (a) monies properly required for a payment to or on behalf of clients;
- (b) monies properly required for or towards payment of debts due to the firm from clients, otherwise than in respect of fees or commissions earned by the firm;
- (c) monies properly required for or towards payment of fees or commissions payable to the firm by clients for work properly carried out by the firm;
- (d) monies drawn on clients' authority or in conformity with any contract between the firm and clients.

18. Monies should not be withdrawn from a client bank account for or towards payment of fees or commissions payable under paragraph 17 above unless:

- (a) the clients have been notified in writing that monies held or received on clients' behalf will be applied against those fees or commissions, and have not disagreed; and
- (b) principals of the firm have expressly authorised the withdrawal; and
- (c) either:
 - (i) 30 days have elapsed since the date of delivery to clients of the notification; or
 - (ii) the precise amounts to be withdrawn have been agreed with clients in writing or have been finally determined by a court or arbitrator.

19. Firms should be careful to differentiate, both in their records and, where appropriate, in their use of client accounts, between monies held on behalf of clients in their personal capacity and those, with the knowledge of the firm, held on behalf of those same clients as trustees for others. A separate client account should be opened to receive the trust monies of each separate trust.

20. Bank charges for maintaining client accounts should be paid out of the firm's own account and not from any client account.

Fees paid in advance

21. Fees paid by clients in advance for professional work agreed to be performed and clearly identifiable as such shall not be regarded as clients' monies for the purposes of these regulations.

22. Members are reminded that where professional work paid for in advance is not carried out, fees advanced by the client must be returned to him or her. Members must ensure that sufficient financial resources to meet any such repayment are available to them.

Interest payable on client account monies

23. In respect of all monies held by firms on behalf of clients, firms should pay clients interest of not less than the amount which would have been earned by way of gross interest if all clients' monies held by the firm for clients had been kept in separate interest-bearing accounts at the small deposit rate with the bank concerned.

24. The above obligation may be over-ridden by express written agreement between the firm and the clients. For instance, clients could agree to forgo sums of interest of less than, say, UK £10, or in respect of bank credits until they have been cleared.

25. Members should note that interest on trust accounts must be paid and guidance given in paragraph 23 is not applicable to trust monies.

Monies held by the firm as stakeholder

26. Monies held by members as stakeholders should be regarded as clients' monies and should be paid into a separate bank account maintained for the purpose or into a client bank account.

Maintaining records

27. Firms should at all times maintain accurate records and controls (e.g. by way of reconciliations) so as to show clearly the monies they have received, held, or paid on account of their clients, and the details of any other monies dealt with by them through a client account, clearly distinguishing the monies of each client from the monies of other clients and from the firm's monies.

28. Members should maintain such records for a period of not less than six years from the date of the last transaction recorded.

Fees and fee disputes

29. The attention of members is drawn to the guidance on fees contained in section 3.16, Fees.

30. Members must not withhold due payment out of monies to clients for the sole reason that a dispute exists in relation to fees.

Bank

31. The term "bank" comprises an institution authorised within the meaning of the Banking Act 1987 of the United Kingdom, the Bank of England, the central bank of another member state of the European Community, a building society within the meaning of the Building Societies Act 1986 of the United Kingdom (which has adopted the power to provide unrestricted money transaction services) and equivalent institutions around the world.

Insolvency work: UK

32. Members are referred to Statement of Insolvency Practice 11, Handling of funds in formal insolvency appointments, for guidance in respect of clients' monies. The Statement is contained in the separate ACCA publication setting out the Statements of Insolvency Practice.

33. Members must not retain insolvency monies in a general client account; such funds must be retained in a designated client account and any interest earned accounted to the insolvent estate. It is nevertheless acceptable for members to use a general client account to clear funds received by cheque which cannot be endorsed to the insolvent estate. Such funds paid into a general client account should be transferred to the insolvent estate to which they relate as soon as possible.

Untraceable funds

34. In exceptional circumstances client money may be withdrawn from a client account or a client bank account on the written authorisation of the Association, which may impose the condition that the money be paid by the member to a charity which gives an indemnity against any legitimate claim subsequently made for the money in question.

3.21

Estates of deceased persons

1. The administration of the estates of deceased persons is a matter of law and of the terms of the wills or relevant intestacy rules. Members are reminded that they must comply with the requirements of the applicable law that governs the deceased person's estates and the administration of his affairs. Members are recommended to seek legal advice when acting as the personal representatives of clients.
2. It is perfectly acceptable for members to be named as personal representatives (executors) in the wills of clients. Similarly, it is perfectly acceptable for members to be appointed as personal representatives (administrators) where an individual has died intestate. Members are, however, reminded that acting as such for directors or shareholders of a company and also acting for the company itself may appear to compromise their independence and it may be appropriate to make disclosure in the accounts and establish review procedures to safeguard their independence.
3. As with all appointments, members should carry out their work with a proper regard for the technical and professional standards expected of them. To this end, members should not undertake any work which they are not competent to perform, whether because of the lack of experience or the necessary technical or other skills to ensure that the work is properly completed.

3.22

Corporate finance advice including take-overs

Introduction

1. Corporate finance activities are wide-ranging in their nature.
2. In many cases, auditors will give corporate finance advice which is incidental to the audit relationship.
3. The role and nature of advice expected of members may change in character when the clients become involved in, or anticipate particular transactions, such as take-over bids or issues of securities.
4. It is at this point that problems of independence and conflicts of interest can arise.
5. The guidance which follows is designed to assist members who find themselves advising in these and related circumstances.

The regulator for take-overs and mergers

6. Attention is drawn to the need to comply with any local regulations, for example in the United Kingdom the City Code on Take-overs and Mergers and the Rules Governing Substantial Acquisition of Shares, which are expressly applied to professional advisers as well as to those engaged in the securities markets.

Objectivity and integrity

7. Provided that members maintain and can demonstrate objectivity and integrity throughout, both in regard to their clients and to other interested parties, there can be no objection to their accepting engagements which are designed primarily with a view to advancing their clients' case.
8. The concept of impartiality has no application in these circumstances.

Conflicts of interest

9. It may be in the best interests of client companies for financial advice to be provided by their auditors, and there is nothing improper in auditors supporting clients in this way.
10. There is, however, a variety of situations in which conflicts can arise.
11. It is not, on the face of it, improper for firms to continue to act as auditors to both parties in take-over situations, even if the take-overs are contested.

3.22 Corporate finance advice including take-overs

12. Firms may find themselves acting as auditors or advisers for two or more parties involved in take-overs subject to local regulations on take-overs and mergers. For firms to cease to act for a client within the limited period of the take-over on the basis that a conflict might arise, could damage the client's interests.

13. Accordingly, in such circumstances, firms may continue to act for more than one party as auditors, as reporting accountants, on any profit forecast, and in the provision of incidental advice consistent with these roles. However, firms should not act as lead advisers for any of the parties involved, or issue a critique of a client's accounts, and should implement proper safeguards. Members are referred to paragraph 28 below.

14. The attention of firms is also directed to regulations dealing with conflicts of interest that may apply to them. By way of illustration, in the UK this would include the possession of "material confidential information" in the United Kingdom City Code on Take-overs and Mergers. Members in doubt as to their position should consult the regulator for take-overs and mergers.

15. Where take-overs are not subject to regulations, and there are no substantial public interests involved, firms may, subject to the implementation of appropriate safeguards (see paragraph 28 below), continue to advise both sides. However, firms should ensure that the interests of minority shareholders are protected, and should consider the desirability of one company having wholly independent advisers.

16. Firms should not underwrite or sponsor issues to the public of the shares or securities of clients which they audit, or on which they have reported or will report, or undertake to accept nomination as auditors of the company being sponsored. Financial involvement of this kind would endanger the independence of firms in the audit and/or reporting function. Auditors may, however, assist clients in raising capital by approaching institutional investors.

17. It is not inappropriate for members to conduct acquisition searches, which could identify other clients as targets, provided the searches are based solely on the information which is not confidential to those clients.

Avoiding conflicts of interest

18. All reasonable steps should be taken to ascertain whether conflicts of interest exist or are likely to arise in the future between firms and their clients, both in regard to new engagements and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.

19. Relationships with clients and former clients need to be reviewed before accepting new appointments, and regularly thereafter.

20. Relationships which ended over two years ago are unlikely to give rise to a conflict.

21. Where it is clear that material conflicts of interest exist, firms should decline to act as financial advisers.

22. It would be neither reasonable nor necessary to discontinue acting in any capacity in anticipation of every potential conflict. It could in some instances give rise to harmful rumour or speculation for firms to disengage from a situation before a bid had become public knowledge.

23. Where there appear to be conflicts of interest between clients, but after careful consideration, firms consider that these conflicts of interest are not material and unlikely to prejudice seriously the interests of any of those clients, firms may accept or continue engagements, but not without first informing the clients concerned. Firms should consider seeking independent advice in such cases.

24. Firms should not act, or continue to act, for two or more clients if the disclosure called for in paragraph 23 could seriously prejudice the interests of clients.

25. Where conflicts of interest are likely to seriously prejudice the interests of clients, engagements should not be accepted or continued, even at the informed request of the clients concerned.

26. Where firms are required for any reason to disengage from existing clients, they should do so as speedily as practicable, having regard to the interests of the clients.

Safeguards

27. Where firms act or continue to act for two or more clients following disclosures in accordance with the previous paragraphs, all reasonable steps should be taken to manage the conflicts which arise and thereby avoid adverse consequences.

28. These steps will include some or all of the following safeguards:

- (a) the use of different partners and teams for different engagements;
- (b) all necessary steps to prevent the leakage of confidential information between different teams and sections within firms;
- (c) regular review of the situation by a senior partner or compliance officer not personally involved with either client; and
- (d) advising the clients to seek additional independent advice.

29. Any decision on the part of sole practitioners must take account of the fact that the safeguards at (a) to (c) of paragraph 28 will not be available to them. Similar considerations apply to small practices.

Documents for public use

30. Where, in the course of corporate finance advice, firms prepare information for clients, for example, a critique of the accounts of another company, they may be called upon to do so:

- (a) in a document which is for the consumption of the client only;
- (b) in order to assist the client to produce a document which will go out solely under the client's name and authority, whether including quotations from the original document or not; or
- (c) as part of a document which is published under the name of the member firm.

31. Any statements or observations in a document prepared for clients must be such as, taken individually and as a whole, are justifiable on an objective examination of the available facts.

32. Firms are, in the absence of any indication to the contrary, entitled to assume that the published accounts of the company on which they are commenting have been properly prepared and are in accordance with all relevant International Financial Reporting Standards. Where scope for alternative accounting treatment exists and the accuracy of the comment or observation is dependent on an assumption as to the actual accounting treatment chosen, that assumption must be stated, together with any other assumptions material to the commentary. Where firms are not in possession of sufficient information to warrant a clear opinion this should be declared in the document.

33. In the case of a document prepared solely for clients and their professional advisers, it should be a condition of the engagement that the document should not be disclosed to any third party without the firm's express permission.

34. Firms must take responsibility for anything published under their name and the published document must make clear the client for whom they are acting. To prevent misleading or out-of-context quotations, it should be a condition of the engagement that, if anything less than the full document is to be published, the form of the text and its content would have to be agreed with the firm.

35. Any document whether for private or public use should be prepared in accordance with normal professional standards of integrity and objectivity and with a proper degree of care.

Fees

36. Where members undertake engagements for fees which are contingent upon the successful outcome of a transaction such as a bid, offer, purchase, sale or raising finance, members should take particular care to ensure that the arrangements do not prejudice their independence and objectivity with regard to any other role which they may have, such as auditors or reporting accountants of either the bidder or the target.

3.23

The practice of insolvency

Members should comply with any conduct and ethical requirements applicable to insolvency work in the country in which they carry out such work. The following Guide applies to members who administer insolvency procedures under the Insolvency Act 1986 of the United Kingdom (“the Act”), including insolvency licence holders and, where applicable, their employees. Nevertheless, members carrying out insolvency work under non-United Kingdom legislation may find its principles helpful.

The Guide is common to all bodies that license insolvency practitioners under the Act. In applying the Guide, members should also have regard to the other provisions of the Code of Ethics and Conduct, in particular in relation to conflicts of interest (section 3.6) and obtaining professional work (section 3.10) to the extent that those matters are not addressed in this Guide.

For the purpose of this Guide, “principal” means a sole practitioner, a partner in a firm or a director of a corporate practice.

A Guide to Professional Conduct and Ethics

Preface

1. This Guide to Professional Conduct and Ethics comprises two parts: first, the Insolvency Ethical Principles to which all insolvency practitioners must adhere; and secondly an annexed list of “particular circumstances”, common situations in which practitioners may face ethical dilemmas, analysed by reference to a framework.

Introduction

2. The practice of insolvency is principally governed by statute and secondary legislation. This document guides insolvency practitioners in relation to circumstances applying outside both. Practitioners’ principal guide will be the Insolvency Ethical Principles.

The Insolvency Ethical Principles

3. An insolvency practitioner must:

- (a) behave with integrity in all professional appointments. Integrity implies not merely honesty but fair dealing and truthfulness; (“Integrity”)
- (b) strive for objectivity in all professional judgements. Objectivity is the state of mind that has regard to all considerations relevant to the task in hand but no other; (“Objectivity”)

3.23 The practice of insolvency

- (c) not accept or perform work which he or she is not competent to undertake unless the practitioner obtains such advice and assistance as will enable him or her competently to carry out the work; (“Competence”)
- (d) carry out professional work with due skill, care, diligence and expedition and with proper regard for the technical and professional standards expected of a practitioner; (“Due Skill”)
- (e) conduct himself or herself with courtesy and consideration towards all with whom they come into contact during the course of performing their work. (“Courtesy”)

Spirit of the Guide to Professional Conduct and Ethics

4. It is the Guide to Professional Conduct and Ethics, and the spirit that underlies it, that govern the conduct of practitioners. Failure to observe the Guide may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of a practitioner. Whereas the competence of practitioners is a statutory requirement for the granting of a licence (and is therefore assessed by monitoring), the Insolvency Ethical Principle of Objectivity is the most common to be applied to the situations in which practitioners work, and experience has shown it is in this respect that practitioners need detailed guidance. It is therefore to that Insolvency Ethical Principle that the following framework is addressed, though it has to be stressed that the others are of equal importance and application.

The framework

Threats to objectivity

5. This Guide provides a framework within which practitioners can identify actual or potential threats to objectivity, and whether there are any safeguards that might be available to offset them. The practitioner’s objectivity is most likely to be impaired by a conflict of interest. The framework is directed to situations which involve potential conflicts of one kind or another. The practitioner should beware of conflicts of interest. They threaten the practitioner’s objectivity in two ways, (A) self-review, and (B) self-interest.

Framework identification of (A) self-review threats and (B) self-interest threats

6. Objectivity can be impaired in two principal ways:

- (A) if the practitioner’s exercise of professional judgement may be influenced by an earlier such exercise in relation to the same entity, in which case a question of “self-review” may arise. It might also be that the practitioner’s familiarity, either with the individuals or subject-matter connected with the appointment, is too great; and
- (B) if the practitioner has a “self-interest” in an appointment.

7. (A) Self-review threats relate to situations where the practitioner has or had a “material professional relationship” with the company or individual in relation to which or whom the appointment is taken. “Material professional relationship” is explained more fully below

and see the Annex for specific examples. There is a subset of self-review threats, known as Familiarity or Trust threats. These threats arise from personal contacts, either before or after the commencement of the insolvency process, between the insolvency practitioner and other individuals; be they the individual to whom, or individuals connected with the entity to which, the insolvency appointment is made. The insolvency practitioner may be over-influenced by the personality and qualities of those individuals or by trusting representations they make, or may fail to make adequate enquiries as to either.

8. (B) Self-interest threats are those which can affect the reasoning the practitioner applies because it is, or might be, affected by considerations that either favour or are prejudicial or disadvantageous to the practitioner. Again, Familiarity or Trust threats may be present in this context, where, for example, there is a personal connection between the insolvency practitioner and a director of an insolvent company.

9. Threats falling either within (A) or (B) may be general in nature or peculiar to the particular circumstances of the case. They require the practitioner to consider them in the light of the circumstances in which the appointment is offered or undertaken. It is always a matter for the practitioner to assess whether he or she may accept and/or continue an engagement in the particular context that obtains at the time.

10. It will always be up to the practitioner to justify his or her actions in cases of doubt. Whether the practitioner takes or continues an appointment will depend on what threats there are and whether, in that event, the introduction of safeguards would overcome those threats. Sometimes, though, the mere perception of risk or conflict will tend to undermine confidence in the practitioner's objectivity, and so make acceptance or continuation unwise.

11. The practitioner must not only be satisfied as to the actual objectivity which he or she can bring to their judgement, decisions and conduct, but also must be mindful of how they will be perceived by others. A practitioner should also be aware of the threat to objectivity if he or she were to engage in regular or reciprocal arrangements in relation to appointments with another practice or organisation. The framework is essentially rule/prohibition-based because of the nature of insolvency.

12. The annexed groups of (A) self-review and (B) self-interest threats require the practitioner to decline or resign appointment, unless in the individual examples of each there is stated a means by which appointment can be accepted.

(A) The self-review threats

13. These threats relate to circumstances existing before the appointment is offered compared with those existing at the date of acceptance (or during the currency) of an insolvency appointment. Where there has been a material professional relationship with the company or individual, there will be a self-review threat. The threat that lies behind a material professional relationship is that the insolvency practitioner, who is the custodian of what are often competing interests in the prosecution of an insolvency appointment, may improperly and inappropriately advocate or favour one or more of those interests. In that way, the practitioner's objectivity is lost. Any such relationship will normally require the practitioner to decline appointment. There appears in the Annex a series of the most common situations in which practitioners are required to decline a particular appointment.

(B) The self-interest threats

14. It is improper for a practitioner to be influenced by a significant financial or other benefit accruing, or which might accrue, to the practitioner or to anyone with whom the practitioner is associated or connected, or by the avoidance of disadvantage to all or some of these. There appears in the “Annex of particular circumstances” a number of situations in which “self-interest” threats have to be identified and assessed before an appointment is accepted.

Note: The Annex is a non-exclusive list of common situations in which groups (A) and (B) are often present. As such, it is subordinated to the body of the Guide, and the Insolvency Ethical Principles in particular.

Annex of particular circumstances

Group A – Examples of the self-review threats

Introduction

15. Paragraphs 16 to 27 inclusive refer to specific situations in which a practitioner may not properly accept appointment because the concept of “material professional relationship” is central to them. In situations other than those dealt with, a practitioner should only accept office in any insolvency role sequential to one in which the practitioner or his or her practice or a current employee or partner of the practice has previously acted after giving careful consideration to the implications of acceptance in all the circumstances of the case, and satisfying himself or herself that objectivity is unlikely to be, or appear to be, impaired, by a prospective conflict of interest or otherwise. If the practitioner remains in doubt as to his or her position, the matter should be drawn to the attention of his/her authorising body. The attention of practitioners is drawn to the statutory disqualification on acting as an insolvency practitioner in Section 390 of the Insolvency Act 1986.

The concept of material professional relationship

16. A material professional relationship with a client, such as is referred to in paragraphs 17 to 19 below, arises where a practice or, subject to the provisions of paragraph 34 (below), a principal or employee of the practice, is carrying out, or has during the previous three years carried out, material professional work for that client. Material professional work would include the following:

- (a) where a practice or person has carried out, or has been appointed to carry out, audit work for a company or individual to which the appointment is being considered; or
- (b) where a practice or person has carried out one or more assignments, whether of a continuing nature or not, of such overall significance or in such circumstances that a practitioner’s objectivity in carrying out a subsequent insolvency appointment might be, or be seen to be, impaired.

A material professional relationship with a company or individual (as referred to in paragraphs 17 to 19 below) includes any material professional relationship with companies or entities controlled by that company or individual or under common control, where the relationship is material in the context of the company or individual to whom appointment is being sought or considered. A material professional relationship could also arise where a practice or person has carried out professional work for any director or shadow director of a company of such a nature that a practitioner's objectivity in carrying out a subsequent insolvency appointment in relation to that company could be or could reasonably be seen to be prejudiced. In forming views as to whether a material professional relationship exists, practitioners should have regard to existing or previous relationships with firms with which they are, or have been, associated which might impair, or appear to impair, their objectivity, including relationships whereby they or their firm are held out by name, association or other public statements as being part of a national or international association. A practitioner should take reasonable steps prior to his acceptance of any insolvency appointment to ascertain whether any of the above work has been performed.

Appointment as nominee and/or supervisor of a company voluntary arrangement, administrator, administrative or other receiver

17. Where there has been a material professional relationship (as to which see paragraph 16 above) with a company, no principal or employee of the practice should accept appointment as nominee or supervisor of a voluntary arrangement, administrator or administrative or other receiver in relation to that company. (See also paragraphs 20 and 34 below.)

Appointment as nominee and/or supervisor of an individual voluntary arrangement, trustee in bankruptcy or trustee under a deed of arrangement

18. Where there has been a material professional relationship (as to which see paragraph 16 above) with an individual, no principal or employee of the practice should accept appointment as nominee or supervisor of a voluntary arrangement or as trustee in bankruptcy or as a trustee under a deed registered under the Deeds of Arrangement Act 1914 in relation to that individual. (See also paragraph 34 below.)

Appointment as liquidator

19. Where there has been a material professional relationship (as to which see paragraph 16 above) with a company, no principal or employee of the practice should accept appointment as liquidator of the company if the company is insolvent. Where the company is solvent such appointments should not be accepted without careful consideration being given to all the implications of acceptance in the particular case, and a practitioner should satisfy himself or herself that the directors' declaration of solvency is likely to be substantiated by events. (See also paragraph 34 below.)

Appointment as investigating accountant at the instigation of a creditor

20. A material professional relationship would not normally arise where the relationship is one which springs from the appointment of the practice by, or at the instigation of, a creditor or other party having a financial interest in a company or business, to investigate, monitor or advise on its affairs provided that:

- (a) there has not been a direct involvement by a principal or employee of the practice in the management of the company or business; and
- (b) the practice continues to have its main client relationship with the creditor or other party, rather than with the company or proprietor of the business, and the company or the proprietor of the business is aware of this.

If the circumstances of the initial appointment are such as to prevent the open discussion of the financial affairs of the company with the directors, an investigating practitioner or other principal in the practice may be called upon to justify the propriety of their acceptance of the subsequent appointment. Where a practitioner or his/her firm has undertaken an investigation into the financial affairs of a company at the request of a secured creditor of the company, and he/she is asked, as a consequence, by that creditor to accept appointment as administrator or administrative receiver, he/she must satisfy himself/herself that the company, acting by its board of directors, does not object to his/her acceptance of the appointment. If the company does object, but the creditor still wishes to appoint the practitioner, he/she should separately consider whether the circumstances are such that, in accepting the appointment, he/she will be able to act and be seen to act independently and effectively. Where in exceptional circumstances prior warning of an appointment is not given to the company by the secured creditor, the practitioner should objectively and independently consider all relevant issues, including the reasons for such decision, before accepting appointment.

Conversion of members' voluntary winding-up into creditors' voluntary winding-up

21. Where a practitioner has accepted appointment as liquidator in a members' voluntary winding-up and is obliged to summon a creditors' meeting under Section 95 of the Insolvency Act 1986 because it appears that the company will be unable to pay its debts in full within the period stated in the directors' declaration of solvency, the practitioner's continuance as liquidator will depend on whether he or she believes that the company will eventually be able to pay its debts in full or not.

- (a) If the company will not be able to pay its debts in full and the practitioner has previously had a material professional relationship with the company such as is set out in paragraph 16 above, the practitioner should not accept nomination under the creditors' winding-up.
- (b) If the company will not be able to pay its debts in full but the practitioner has had no such material professional relationship, the practitioner may accept nomination by the creditors and continue as liquidator with the creditors' approval, subject to giving

careful consideration as to the implications, etc. referred to in the Introduction to the Annex.

- (c) If the practitioner believes that the company will eventually be able to pay its debts in full, the practitioner may accept nomination by the creditors and continue as liquidator. However, if it should subsequently appear that this belief was mistaken, the practitioner must then resign, and may not accept re-appointment, if he or she has previously had a material professional relationship with the company.

Insolvent liquidation following an appointment as administrative or other receiver

22. Where a principal or employee of a practice (subject to the provisions of paragraph 34 below) is, or in the previous three years has been, administrative receiver of a company, or a receiver under the Law of Property Act 1925 or otherwise, of any of its assets, no principal or employee of the practice should accept appointment as liquidator of the company in an insolvent liquidation. This restriction does not apply where the previous appointment was made by the Court. However, before a Court-appointed receiver accepts subsequent appointment as liquidator, the practitioner should give careful consideration as to whether his or her objectivity might be, or appear to be, impaired and, if so, the appointment should be refused.

Liquidation following appointment as supervisor of a voluntary arrangement or administrator

23. Where a practitioner, or any principal or employee of his or her practice, has been supervisor of a voluntary arrangement or administrator of a company, the practitioner may, if the considerations indicated in the Introduction to the Annex above are satisfied, accept appointment as liquidator if so nominated by the creditors or appointed by the Secretary of State under Section 137 of the Insolvency Act 1986. However, where the relevant previous role is that of administrator, the practitioner should not accept nomination or appointment as liquidator unless either:

- (a) the practitioner has the support of a creditors' committee appointed under Section 26 of the Insolvency Act 1986; or
- (b) the practitioner has the support of a meeting of creditors called either under the Act or informally, of which all known creditors have been given notice.

Bankruptcy following appointment as supervisor of an individual voluntary arrangement

24. Where a practitioner, or any principal or employee of his or her practice, has been supervisor of a voluntary arrangement in relation to a debtor, the practitioner may, provided the considerations indicated in the Introduction to the Annex above are satisfied, accept appointment as trustee in bankruptcy of that debtor provided that it is effected by a general meeting of the creditors under the provisions of Section 292(1)(a) of the Insolvency Act 1986, or if the practitioner has been appointed by the Court under Section 297(5) of the Act, or by the Secretary of State under Section 296 of the Act.

Administrator, nominee and/or supervisor of a voluntary arrangement following appointment as administrative receiver or LPA or other receiver

25. Where a principal or employee of a practice (subject to the provisions of paragraph 34 below) is, or in the previous three years has been, an administrative receiver of a company, or a receiver under the Law of Property Act 1925 or otherwise of any of its assets, no principal or employee of the practice should accept appointment as administrator or nominee and/or supervisor of a voluntary arrangement of the company, unless the previous appointment was made by the Court.

Audit following appointment as supervisor of a voluntary arrangement, administrator or administrative or other receiver

26. Where a principal or employee of a practice (subject to the provisions of paragraph 34 below) has acted as supervisor of a voluntary arrangement, administrator or administrative receiver of a company, or receiver of any of its assets, no principal or employee of the practice should accept appointment as auditor of the company for any accounting period during which the supervisor, administrator or receiver acted.

Pension schemes of companies in liquidation, administration or receivership – appointment of “Independent Trustee”

27. A practitioner should not appoint a principal or employee of his or her practice, or any close connection of any of the above or of himself or herself, as “Independent Trustee” of the pension scheme of a company of which he or she is the liquidator, administrator or administrative or other receiver.

Group B – Examples of the self-interest threats

Personal relationships

28. The current legislation includes specific duties to report on the conduct of directors or shadow directors of an insolvent company. (See for example the requirement under Section 7 (a) of the Company Directors Disqualification Act 1986 to report “unfit” conduct to the Secretary of State, and Sections 213 and 214 of the Insolvency Act 1986 on fraudulent trading and wrongful trading.) Practitioners should have regard at all times to the spirit of objectivity and should not accept an insolvency appointment in relation to a company where any personal connection with a director, former director or shadow director of the company is such as to impair or reasonably appear to impair the practitioner’s objectivity. Nor should a practitioner accept an insolvency appointment in relation to an individual where any personal connection with the individual is such as to impair or reasonably appear to impair the practitioner’s objectivity. The attention of practitioners is also drawn to the definitions relating to persons “connected” with a company in Sections 249 and 435 of the Insolvency Act 1986. This concept of “connection” or “relationship” is explored in a different context below (see paragraph 33).

Relationship with a debenture holder

29. A practitioner should, in general, decline to accept an insolvency appointment in relation to a company if he or she, or a principal or employee of the practice, has such a personal or close and distinct business connection with the debenture holder as might impair or appear to impair the practitioner's objectivity. It is not considered likely that a "close and distinct business connection" would normally exist between an insolvency practitioner and, for example, a clearing bank or other major financial institution. However, such a close and distinct business connection would exist where a practitioner, or a principal or employee of the practice, holds an insolvency appointment to such a bank or financial institution.

Purchase of the assets of an insolvent company or debtor

30. The Insolvency Rules 1986 contain prohibitions on members of a liquidation or creditors' committee acquiring any asset in the estate of an insolvent company or debtor (save with leave of the Court or the committee). Save in circumstances which clearly do not impair the practitioner's objectivity, a practitioner appointed to any insolvency appointment in relation to a company or debtor should not himself or herself acquire, directly or indirectly, any of the assets of the company or debtor, nor knowingly permit any principal or employee of his or her practice, or any close relative of the practitioner or of a principal or employee, directly or indirectly, to do so. Where a contract is already in existence between the insolvent company or debtor and a principal or employee of the practitioner's practice, the practitioner should draw the matter to the attention of his/her authorising body.

Obtaining insolvency work

31. The special nature of insolvency appointments makes the payment or offer of any commission for, or the furnishing of any valuable consideration towards, the introduction of insolvency appointments inappropriate. This does not, however, preclude an arrangement between a practitioner and a bona fide employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the practitioner through the efforts of the employee.

Other potential conflicts of interest

Group, associated and family-connected companies

32. Practitioners should be particularly aware of the difficulties likely to arise from the existence of inter-company transactions or guarantees in group, associated or "family-connected" company situations. Acceptance of an insolvency appointment in relation to more than one company in the group or association may raise issues of conflict of interest. Nevertheless it may be impracticable for a series of different insolvency practitioners to act. A practitioner should not accept multiple appointments in such situations unless the practitioner is satisfied that he or she is able to take steps to minimise problems of conflict and that his or her overall integrity and objectivity are, and are seen to be, maintained.

Relationships between insolvent individuals and insolvent companies

33. A practitioner who, or a principal or employee of whose practice, is acting as insolvency practitioner in relation to an individual may be asked to accept an insolvency appointment in relation to a company of which the debtor is a major shareholder or creditor or where the company is a creditor of the debtor. It is essential, if the practitioner is to accept the new appointment, that the practitioner should be able to show that the steps indicated in the paragraph above have been taken. Similar considerations apply if it is the company appointment which precedes the individual appointment.

Transfer of principals and employees including practice merger

34. When two or more practices merge, principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new insolvency appointments to clients of either of the former practices. However, existing appointments which are rendered in apparent breach of guidance by such merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate conflict, such as a potential need to sue a new colleague. Where a principal or an employee of a practice has, in any former practice, undertaken work upon the affairs of a company or debtor in a capacity which is incompatible with an insolvency assignment of his new practice, the practitioner should not personally work or be employed on that assignment, save in the case of an employee of such junior status that his or her duties in the former practice did not involve the exercise of any material professional judgement or discretion.

Joint appointments

35. A practitioner who is invited to accept an insolvency appointment jointly with another practitioner should be guided by similar principles to those set out in relation to sole appointments. Where a practitioner is specifically precluded by the guidance herein from accepting an insolvency appointment as an individual, a joint appointment will not render the appointment acceptable.

Solicitation for proxies

36. In addition to any statutory consequences which it may incur, solicitation for insolvency work in any way amounting to that which a reasonable person would regard as harassment, or otherwise so as to represent a breach of the guidance, will be taken into account when considering whether a practitioner should continue to be authorised. In terms of the Insolvency Rules 1986, remuneration may be disallowed to a liquidator (Rule 4.150) or trustee (Rule 6.148) whose appointment has been procured by improper solicitation.

Examples in respect of cases conducted under Scottish Law

Appointment as Trustee under a Trust Deed for creditors, Trustee in Bankruptcy or as an agent of the Accountant in Bankruptcy

37. Where there has been a material professional relationship with a client, no principal or employee of the practice should accept appointment as Trustee in a Trust Deed or as Interim or Permanent Trustee in Sequestration or as an agent of the Accountant in Bankruptcy in relation to that client.

Bankruptcy following appointment as Trustee under a Trust Deed for creditors and where the Accountant in Bankruptcy is Permanent Trustee

38. Where a member, or any principal or employee of his practice, has been Trustee under a Trust Deed for creditors, the member may, provided the considerations under the self-review threat and the material professional relationship clauses are satisfied, accept appointments as Interim or Permanent Trustee in Sequestration. Where the Accountant in Bankruptcy is the Permanent Trustee, a member may, provided the considerations above are satisfied, accept appointments as agent in the sequestration.

