

GUIDANCE FOR REGULATORY ORDERS

**ADMISSIONS, STAFF ADMISSIONS, READMISSIONS AND
BANKRUPTCY**

To be used in the Association's regulatory proceedings
from 1 April 2009

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SECTION 1: INTRODUCTION

- 1.1 The Guidance for Regulatory Orders has been developed by ACCA's Regulatory Board, which oversees the regulatory and disciplinary committees and reports to ACCA's Council on the fairness and impartiality of the arrangements in place.
- 1.2 The Guidance for Regulatory Orders is for use by the Admissions and Licensing and Appeal Committees (described in this publication as "the Committee") when they are considering what orders to impose upon an individual or firm.
- 1.3 It is important that an individual knows, prior to any decision being made, what the Committee's range of options are and which matters the Committee members may take into account when coming to a decision.
- 1.4 Each case will always be judged on its own facts. It is essential that members of the Committee are free to exercise their own judgement in making decisions but they must have regard at all times to the regulatory framework set out by ACCA contained in the Rulebook and any other relevant guidance.
- 1.5 This information is provided in the interests of fairness and transparency and in line with ACCA's duty to uphold public confidence in the profession. It is a 'living document' which will be updated and revised when the need arises.

SECTION 2: THE ROLE AND REGULATORY POWERS OF THE COMMITTEE

2.1 INTRODUCTION

2.1.1 The Committee is totally independent of ACCA and is free to exercise its own judgement in making decisions:

- according to the evidence provided and facts found
- in accordance with the burden and standard of proof, which on regulatory matters is generally accepted to be on the balance of probabilities, as modified by the seriousness of the matter
- with regard at all times to the regulatory framework set out by ACCA contained in the Rulebook, policy statements issued by the Regulatory Board and any other relevant guidance
- balancing the need to maintain public confidence in the profession with appropriate proportionality.

2.2 ROLE OF THE COMMITTEE

2.2.1 The Admissions and Licensing Committee is responsible for considering applications for:

- admission or readmission to the membership register, affiliate register or student register
- eligibility of an individual to retain his membership, affiliate or registered student status following a bankruptcy event
- admission to membership from members of ACCA staff.

2.3 PURPOSE OF AN ORDER

2.3.1 It is a settled principle of law that the purpose of orders issued by a professional regulatory body is to:

- protect the public interest
- maintain public confidence in the profession
- maintain proper standards of conduct.

2.3.2 The purpose of the Admissions and Licensing Committee is not to discipline the applicant for any past wrongdoing of which he may be culpable. Its purpose is to take appropriate action for the future to protect the public and maintain the reputation of the profession. In carrying out these roles the Committee is maintaining public confidence in the profession.

2.3.3 It was noted in Bolton v The Law Society [1994] 2 ALL ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.

2.4 REGULATORY POWERS

2.4.1 Admission and readmission

2.4.1.1 Membership Regulation 9(3) sets out the orders available to the Committee, in considering applications from applicants seeking admission or readmission to the relevant register.

The Admissions and Licensing Committee may decide to:

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

2.4.1.2 Membership Regulations 14(1)(a) and (b) and 14(2) provide the criterion in respect of readmission cases.

2.4.1.3 The Committee will take into account the following regulations, as applicable:

- Membership Regulation 3: Eligibility for membership
- Membership Regulation 5: Eligibility for affiliate status
- Membership Regulation 7: Eligibility for registered student status.

2.4.2 Application for staff admission to membership

2.4.2.1 The Committee will consider all applications for admission to membership from ACCA staff under Membership Regulation 3(e).

2.4.2.2 Council has previously decided that applications for membership should be dealt with administratively by staff with the Admissions and Licensing Committee having a general oversight role. Since Council's decision, staff have dealt with applications under Membership Regulation 3 administratively with the option of referring them to the Committee where appropriate. Applications from staff under regulation 3(e) are automatically referred to the Committee so that an independent decision can be made.

2.4.2.3 The Committee should consider when making its decision whether the applicant has shown that he will be better able to represent ACCA and his advice and comments will have enhanced credibility, should he be admitted. In this regard the Committee is to take into account support for the application from the relevant Executive Director or Head of Department.

2.4.3 Eligibility to remain a member, affiliate or registered student following a bankruptcy event

2.4.3.1 Membership Regulation 13(3) sets out the orders available to the Committee.

2.4.3.2 The Committee will take into account the following regulations, as applicable:

- Membership Regulation 3: Eligibility for membership
- Membership Regulation 5: Eligibility for affiliate status
- Membership Regulation 7: Eligibility for registered student status
- Membership Regulation 13: Bankruptcy.

2.4.4 Certificates

2.4.4.1 Authorisation Regulation 3(3)(a) sets out the orders available to the Committee, in considering applications for certificates.

The Admissions and Licensing Committee may:

- grant the application
- refuse the application
- grant the application subject to such condition(s) as it considers appropriate
- adjourn consideration of the application.

2.4.4.2 Authorisation Regulation 5(1)(g) applies to members who currently hold certificates. The Committee may, if in its absolute discretion it thinks fit, withdraw, suspend or impose conditions upon a certificate if the holder of the certificate is not a fit and proper person to hold the certificate in question within the meaning of the Global Practising Regulations.

2.4.4.3 The Committee will take into account the following Global Practising Regulations when it considers an applicant's eligibility for a certificate.

- Global Practising Regulation 4: Meaning of public practice
- Global Practising Regulation 6: Eligibility for a practising certificate
- Global Practising Regulation 7: Qualifications
- Global Practising Regulation 8: Fit and proper persons
- Global Practising Regulation 9: Professional indemnity insurance
- Global Practising Regulation 10: Continuing professional development
- Global Practising Regulation 11: Continuity of practice.

2.4.5 Appeals

2.4.5.1 The Appeal Committee may make such order as it sees fit in respect of the appeal.

2.5 PROPORTIONALITY

2.5.1 In deciding on the appropriate order, the Committee needs to weigh the interests of the applicant against the need for public protection. The Committee in considering an appropriate order will have regard to the public interest. This includes the protection of members of the public, maintaining public confidence in the profession and maintaining proper standards of conduct.

2.5.2 In order to ensure that the order and conditions imposed are the minimum necessary to achieve the purpose, the Committee will need to consider whether the applicant:

- has shown a proper understanding of the past events so that the matters at issue are unlikely to recur
- will not contravene any of ACCA's bye-laws, rules or regulations if admitted or readmitted to membership or the student register, and as the case may be, is granted a certificate
- has any character and/or other references adduced in support of the applicant.

2.6 PUBLICITY

2.6.1 Publicity of the decision is not currently required and it is not usually the practice for applications for admission, readmissions and affiliate or registered students following a bankruptcy event.

SECTION 3: THE BASIC APPROACH FOR COMMITTEES WHEN CONSIDERING APPLICATIONS

3.1 INTRODUCTION

3.1.1 This guidance summarises the approach developed by the Committee for the consideration of applications for:

- admission to membership or to become a registered student following the disclosure of a previous conviction, bankruptcy event or exclusion by another professional body on disciplinary grounds
- readmission to membership, affiliate or registered student status following exclusion by ACCA on disciplinary grounds, resignation due to bankruptcy, or removal by ACCA as a result of a bankruptcy (including when the bankruptcy has not been notified to ACCA within one month of the event)
- certificates from applicants who are applying for admission or readmission to membership and require a certificate because they are engaged in public practice
- an individual's eligibility to remain a member, affiliate or registered student of ACCA following a bankruptcy event.

3.1.2 **In all cases, it is for the applicant to satisfy the Committee as to his eligibility for the relevant application which includes the applicant's general character and suitability.**

3.2 BROAD PRINCIPLES

3.2.1 The Committee will always consider each case on its own merits. However, the following broad principles are relevant factors that the Committee may consider in its deliberations on an applicant's eligibility, upon which the applicant must satisfy the Committee:

1. The underlying facts and surrounding circumstances of the matter for which the applicant was convicted, excluded or removed from ACCA membership or membership of another professional body or by which he became bankrupt.
2. The changes which have occurred since the applicant's conviction, misconduct or bankruptcy.
3. The applicant's current attitude to his conviction, previous misconduct or former or current bankruptcy.

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4. The applicant's current work and circumstances, and reasons for wishing to be admitted or readmitted.
5. Any recommendations made by ACCA's Disciplinary Committee or any other relevant professional body.
6. In cases involving criminal convictions, whether the conviction is spent under the Rehabilitation of Offenders Act 1974 (the Association is not bound by this Act, but it is, nevertheless, a factor to consider).
7. In cases involving a disqualification under the Company Directors Disqualification Act 1986, whether the period of disqualification has now expired.
8. In cases involving bankruptcy, where an individual:
 - (a) is applying for admission to ACCA following the disclosure of a previous bankruptcy event; or
 - (b) notifies the Association that he has become the subject of a bankruptcy event and wishes to remain a member, affiliate or registered student, the Committee should assess the following:
 - (i) the background and circumstances leading to the bankruptcy event and, in particular, whether the individual was dishonest and/or reckless, incompetent or simply unlucky, with relevant evidence from the Official Receiver and/or Trustee in Bankruptcy;
 - (ii) the individual's conduct during the bankruptcy, with relevant evidence from the Official Receiver and/or Trustee in Bankruptcy;
 - (iii) the individual's current and future prospects, and reasons for wishing to be admitted, readmitted to ACCA or to remain a member, affiliate or registered student, as shown by detailed information provided by him; and
 - (iv) any past or outstanding disciplinary matters relating to the individual.
9. Whether the applicant will contravene any of the bye-laws, rules or regulations upon admission, readmission to ACCA or if permitted to remain a member, affiliate or registered student of ACCA following a bankruptcy event.

10. Whether the applicant has been the subject of further complaints or legal action since the conviction, exclusion from ACCA or membership of another professional body, or bankruptcy event.
11. That the applicant is not currently bankrupt or subject to judgment debts (for cases involving bankruptcy, please refer to paragraph 8 above).
12. The applicant is professionally competent with firm evidence of high professional standards. The applicant will need to demonstrate his professional competence for undertaking his specific chosen sphere of work, including issues such as whether he will be a sole practitioner, a partner or an employee.
13. References provided by the applicant in support of his suitability for admission or readmission, which can be verified by ACCA.

3.3 REFERENCES

- 3.3.1 The Committee is entitled to consider references provided by an applicant to deduce his suitability for admission or readmission to ACCA or eligibility to retain his membership, affiliate or registered student status following a bankruptcy event. All references must be in writing, signed and dated by the referee. **If the applicant is employed, the Committee would expect that one of the references provided is from the applicant's current employer.**
- 3.3.2 Relevant factors that may be taken into consideration (this list is not exhaustive):
 - references which are prepared specifically for the furtherance of the relevant application
 - the referee's personal or professional credentials and the capacity under which the reference is provided (for example, a personal or professional reference)
 - number of years and the circumstances under which the applicant is known to the referee
 - the referee's opinion of the applicant's personal or professional attributes which, in his view, makes the applicant eligible for the relevant application
 - confirmation from the referee that he is fully aware of the applicant's background, (for example, previous conviction, exclusion from ACCA or membership of another professional body or bankruptcy), including a view as to why he believes that the applicant should be considered for the relevant application.

3.4 READMISSION

3.4.1 The Committee may not consider any application from a former member, affiliate or registered student where a disciplinary order made against him prohibits him from seeking reinstatement to membership, affiliate or registered student status before a specified period has expired (*see section 2 of this publication*).

3.4.2 Under the Membership Regulations, the Committee is required to have specific regard to the circumstances of the applicant's cessation as a member, affiliate or registered student (*see section 2 of this publication*). The Committee will therefore be provided with a copy of the order(s) made by the Disciplinary Committee and where appropriate the Appeal Committee, together with the Reasons for the relevant Committee's decision. Any past or outstanding disciplinary matters will also be disclosed to the Committee.

3.5 CERTIFICATES

3.5.1 If an applicant seeking admission or readmission to membership is engaged in public practice work, his application must always be accompanied simultaneously by an application for a relevant certificate. **The Committee cannot grant the applicant membership without granting him a practising certificate.** This is because when the applicant becomes a member he will be in breach of ACCA's Global Practising Regulations for engaging in public practice without holding an ACCA practising certificate.

3.5.2 Eligibility for a certificate

3.5.2.1 In all cases, it is for the applicant to satisfy the Committee that he is eligible for the certificate applied for in accordance with the relevant Global Practising Regulations (*see Section 2 of this publication for the powers available to the Committee*).

3.5.2.2 Relevant factors that may be taken into consideration (this list is not exhaustive):

- the applicant's specific chosen sphere of work, including issues such as whether he will be a sole practitioner, a partner or an employee
- whether the applicant holds a valid certificate from a recognised national body or regulatory authority
- in cases involving readmission, whether the applicant:
 - (i) held a certificate prior to his exclusion
 - (ii) was excluded for matters that related to his practice

- whether the applicant should be issued with a certificate subject to conditions, for example, a Members' Advisory Visit by a set date post admission or readmission to membership.

3.5.3 Members' Advisory Visit (MAV)

- 3.5.3.1 An applicant who was excluded for matters that involved his practice is advised to consider whether it will assist his application to undergo a Members' Advisory Visit (MAV) at his own cost and/or complete a test of competence before his application is presented to the Committee. The MAV would be arranged by ACCA, on request, and the MAV report will contain information which the Committee will then be able to take into account.

SECTION 4: DESCRIPTION OF THE AVAILABLE ORDERS AND CONDITIONS AND APPLICATION GUIDELINES

4.1 INTRODUCTION

4.1.1 In this section reference to an ‘application’ includes those for:

- admission to membership or to become a registered student following the disclosure of a previous conviction, bankruptcy event or exclusion by another professional body on disciplinary grounds
- readmission to membership, affiliate or registered student status following exclusion by ACCA on disciplinary grounds
- certificates from applicants who are applying for admission or readmission to membership and require a certificate because they are engaged in public practice.

4.1.2 **Before reaching a decision, the Committee will consider whether the order it has arrived at is appropriate to achieve the purpose of balancing the interests of the applicant and the public, in accordance with the principle of proportionality outlined in Section 2.5 of this publication.**

4.1.3 **The Committee may depart from ACCA’s recommendation and the guideline orders and conditions; however, the Committee should have regard to the guidance in this document and ensure that the written reasons for decision clearly explain the exceptional circumstances which resulted in any such departure.**

4.2 AVAILABLE ORDERS

Admission and readmission

4.2.1 Grant the application

4.2.1.1 This order is appropriate where the applicant satisfies the Committee that he is eligible for admission or readmission and, where applicable, a certificate without condition, in accordance with the relevant regulations and as to his general character and suitability.

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4.2.1.2 Relevant factors to take into consideration (this list is not exhaustive):

- personal understanding demonstrating that the matter which led to the applicant's exclusion on disciplinary grounds, previous conviction or bankruptcy event is unlikely to recur in future
- a good attitude to the previous misconduct, conviction or bankruptcy and an understanding and appreciation of the seriousness of actions or consequences
- satisfactory submissions received regarding the events and circumstances surrounding the applicant's previous conviction, misconduct, or bankruptcy
- a genuine expression of regret for the previous conviction, past conduct or bankruptcy
- current work and circumstances that demonstrate high professional standards
- discharge of any recommendations by the Disciplinary Committee or any other professional body
- in cases involving disqualification under the Company Director's Disqualification Act 1986, that the period of disqualification has lapsed
- in cases involving certificates, whether the applicant held a previous certificate and was not excluded for matters involving his practice
- sufficient good references.

4.2.2 Refuse the application

4.2.2.1 This order is appropriate where the applicant has failed to satisfy the Committee that he is eligible for admission or readmission and, where applicable, a certificate in accordance with the relevant regulations and as to his general character and suitability.

4.2.2.2 Relevant factors to take into consideration (this list is not exhaustive):

- the nature and circumstances for which the applicant was convicted, or excluded from ACCA membership or another professional body on disciplinary grounds was serious and is likely to recur in future
- poor attitude to the previous misconduct or bankruptcy, evidenced by a persistent lack of insight, understanding or appreciation of the seriousness of actions or consequences
- the applicant's actions in the circumstances were considered to be reckless
- the applicant is subject to further complaints or legal action
- the applicant is bankrupt and has not satisfied the Committee as to his eligibility
- the applicant is subject to judgment debts

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- in readmission cases, a failure to discharge any recommendations made by the Disciplinary Committee. For example, no readmission for a specified period of time or before the occurrence of a specified event
- in cases involving disqualification under the Company Directors Disqualification Act 1986, the period of disqualification has not lapsed.

4.2.3 Grant the application subject to a condition(s) as it considers appropriate

4.2.3.1 Any condition must be:

- appropriate
- proportionate
- workable and
- measurable.

4.2.3.2 The Committee may take advice from a relevant ACCA officer at the hearing as to the workability of proposed conditions, bearing in mind that the principle of proportionality requires that any condition imposed should be the minimum necessary to protect the public (*see Section 4 of this publication*). The advice must be taken in the presence of the member and he or she should have an opportunity to comment on the advice provided.

4.2.3.3 Relevant factors to take into consideration (this list is not exhaustive):

- whether a safeguard is required to enable the applicant to remedy deficiencies in his practice whilst at the same time protecting clients
- evidence that suggests that the applicant would benefit from training
- issues of eligibility for a certificate that require remedying or confirmation.

4.2.4 Order to adjourn the consideration or postpone the admission of the applicant (not available for certificate applications)

4.2.4.1 The Committee may agree to order an adjournment of the consideration of an application, at its absolute discretion. This order is available to the Committee in advance of the hearing, at the outset of the hearing, or at any time during the hearing.

4.2.4.2 The Committee may consider it appropriate to postpone the admission or readmission of the applicant, where it agrees to grant the application, but defers the admission or readmission until after the occurrence of a specified event.

Eligibility to remain a member, affiliate or registered student following a bankruptcy event

(Reference to an 'individual' refers to members, affiliates or registered students.)

4.2.5 Permit the individual to retain his membership, affiliate or registered student status

4.2.5.1 This order is appropriate where the individual satisfies the Committee that he is eligible to remain a member, affiliate or registered student without condition, in accordance with the relevant regulations and as to his general character and suitability.

4.2.5.2 Relevant factors to take into consideration (this list is not exhaustive):

- satisfactory submissions received regarding the events and circumstances surrounding the applicant's bankruptcy
- an understanding and appreciation of the seriousness of actions or consequences
- evidence confirming that the matter which led to the bankruptcy event is unlikely to recur in future
- evidence confirming the individual's co-operation with officials during the bankruptcy process
- current work and circumstances that demonstrate high professional standards
- appropriate explanation of current circumstances and how ACCA membership is beneficial
- no disciplinary history or current complaints.

4.2.6 Withdraw the individual's membership, affiliate or registered student status

4.2.6.1 This order is appropriate where the applicant has failed to satisfy the Committee that he is eligible to remain a member, affiliate or registered student, in accordance with the relevant regulations and as to his general character and suitability.

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4.2.6.2 Relevant factors to take into consideration (this list is not exhaustive):

- failure to explain adequately the circumstances leading to the bankruptcy event, and provide independent confirmation of assertions made, where necessary
- failure to show sufficient insight or understanding of the events leading to bankruptcy
- the applicant's actions in the circumstances were considered to be reckless
- no evidence to confirm that the individual has co-operated with officials during the bankruptcy process
- nature and circumstances of the bankruptcy event is serious and the individual may be in contravention of ACCA bye-laws, rules and regulations.

4.2.7 Permit the individual to retain his membership, affiliate or registered student status subject to such condition(s) as it may specify

4.2.7.1 Any condition must be:

- appropriate
- proportionate
- workable and
- measurable.

4.2.7.2 The Committee may take advice from a relevant ACCA officer at the hearing as to the workability of proposed conditions, bearing in mind that the principle of proportionality requires that any conditions imposed should be the minimum necessary to protect the public.

4.2.7.3 An individual engaged in public practice work is advised to consider whether it will assist his application to undergo a Members' Advisory Visit (MAV) at his own cost and/or complete a test of competence before his application is presented to the Committee. The MAV would be arranged by ACCA, on request, and the MAV report will contain information which the Committee will then be able to take into account.

4.2.7.4 Relevant factors to be take into consideration (list is not exhaustive):

- whether a safeguard is required to enable the applicant to remedy deficiencies in his practice whilst at the same time protecting clients
- evidence that suggests the applicant would benefit from training
- issues of eligibility to continue holding a certificate that require remedying or confirmation.

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4.2.8 Make such other decision as it thinks fit in respect of the individual

4.2.8.1 The Committee may require and take into account any information it considers appropriate regarding an individual's eligibility to remain a member, affiliate or a registered student. In all cases, the Committee has a wide discretion in terms of the decision it considers to be appropriate.

4.3 APPLICATION GUIDELINES

4.3.1 The guideline orders set out below relate to the most common types of applications that are brought before the Committee.

4.3.2 The guideline orders are for **guidance only** and are not intended to be treated as appropriate in all cases. Each case will be judged on its own facts and merits.

4.3.3 In assessing the appropriate order, the Committee must consider factors relevant to the application in question. The Committee is free to attach such weight as it thinks fit in its absolute discretion to any factor. The list of factors is not exhaustive.

Admission and readmission

4.3.4 Guideline: grant the application:

4.3.4.1 Relevant factors (list is not exhaustive):

- applicant is eligible in accordance with relevant regulations and has satisfied all or a combination of the relevant factors under the broad principles regarding his character and suitability for admission or readmission
- evidence of the applicant's understanding and appreciation of past failings
- a genuine expression of regret
- in readmission cases, a previous good history prior to exclusion
- in certificate cases, the applicant held a previous relevant certificate and demonstrates his fitness and propriety, in accordance with the relevant regulations, to be issued with another.

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4.3.5 Guideline: refuse the application:

4.3.5.1 Relevant factors (list is not exhaustive):

- failure to comply with any recommendations or conditions made under an exclusion order without reasonable excuse
- the applicant is engaged in public practice and is found to be ineligible for a certificate
- applicant refuses to disclose information to any relevant person(s) that the Committee considers to be essential under the circumstances
- admission or readmission to ACCA would render the applicant in breach of ACCA's bye-laws and regulations.

4.3.6 Guideline: grant the application subject to conditions:

4.3.6.1 Relevant factors (list is not exhaustive):

- committee is satisfied that the applicant is eligible for membership and a certificate but there are issues in relation to his certificate or practice that can be remedied within a specified period
- applicant may be in breach of ACCA's bye-laws and regulations if admitted or readmitted to membership if not subject to the imposition of a condition.

4.3.6.2 *Examples:*

- (a) The applicant is granted admission or readmission to membership and a practising certificate after attending a practical audit course, approved by ACCA, and passing paper P7, Advanced Audit and Assurance, of ACCA's professional examinations (applicable for applications for practising certificates and audit qualification).
- (b) The applicant is granted admission or readmission to membership and a practising certificate subject to successful completion of an open book case study and a viva (applicable for applications for practising certificates for general practice).
- (c) The applicant is granted admission or readmission to membership and a practising certificate and is required to undergo a Members' Advisory Visit (MAV), at his own cost, within a set period of time, following the issue of the practising certificate.

4.3.6.3 In respect of (c) the Committee needs to consider whether it wishes the report to be referred back to the Committee or whether this should be left to the discretion of ACCA.

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4.3.6.4 NB There is a cost to the member associated with each of the above conditions.

4.3.7 Guideline: adjourn consideration of any application or postpone the admission or readmission:

4.3.7.1 Relevant factors (list is not exhaustive):

- applicant has failed to make the appropriate disclosure of his previous conviction, past misconduct or bankruptcy to any relevant person(s)
- applicant is eligible for membership but admission or readmission is postponed until the occurrence of a specified event, for example, the lapse of a period of disqualification under the Company Directors Disqualifications Act 1986
- applicant is engaged in public practice and is eligible for membership, but is required to undergo training or to pass further examinations and/or tests before he is granted a relevant certificate.

Eligibility to remain a member, affiliate or registered student following a bankruptcy event

4.3.8 Guideline: permit the individual to retain his membership, affiliate or registered student status

4.3.8.1 Relevant factors (list is not exhaustive):

- the individual is eligible in accordance with relevant regulations and has satisfied all or a combination of the relevant factors under the broad principles regarding his character and suitability to remain a member, an affiliate or a registered student
- circumstances that led to the bankruptcy event appear to be an isolated incident, not deliberate
- evidence of the individual's understanding and appreciation of causes of the bankruptcy
- written confirmation to show that the individual has co-operated with the bankruptcy process
- previous good history.

4.3.9 Guideline: withdraw the individual's membership, affiliate or registered student status

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4.3.9.1 Relevant factors (list is not exhaustive):

- nature and circumstances of the bankruptcy event shows that the bankruptcy resulted from the individual's deliberate or reckless actions
- insufficient independent information regarding the background and circumstances leading to the bankruptcy event, for example confirmation from the Official Receiver and/or Trustee in Bankruptcy
- no evidence to confirm that the individual has co-operated with the bankruptcy process
- relevant disciplinary history
- persistent lack of understanding and appreciation of the seriousness of actions or consequences.

4.3.10 Guideline: permit the individual to retain his membership, affiliate or registered student status subject to such condition(s) as it may specify

4.3.10.1 Evidence that a safeguard is necessary to ensure the standards of the individual's audit or general practice work, as applicable, or that he requires training or to pass further examinations and/or tests before he is permitted to retain his membership and where appropriate his certificate, affiliate or registered student status.

4.3.10.2 *Examples:*

- (a) The application is granted, subject to the member attending a practical audit course, approved by ACCA, and passing paper P7, Advanced Audit and Assurance, of ACCA's professional examinations (applicable for holders of practising certificates and audit qualification).
- (b) The application is granted, subject to successful completion of an open book case study and a viva (applicable for holders of practising certificates for general practice).

4.3.10.3 In respect of (a) and (b), the Committee will need to specify what action should be taken if the individual fails to meet the requirement(s) of any the conditions imposed within a specified period.

(c) Application is granted and a monitoring visit be carried out on the member's firm before a set date.

(d) Application is granted and the individual is required to undergo a Member's Advisory Visit (MAV), at his own cost, before a set date.

4.3.10.4 In respect of (c) and (d), the Committee needs to consider whether it wishes the report to be referred back to the Committee or whether this should be left to the discretion of ACCA.

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4.4.11 Guideline: make such other decision as it thinks fit in the respect of the individual

4.4.11.1 The Committee may require and take into account any information it considers appropriate regarding an individual's eligibility to remain a member, affiliate or a registered student. In all cases, the Committee has a wide discretion in terms of the decision it considers to be appropriate.

Application for admission to membership from a member of ACCA staff

4.4.12 Guideline: grant the application

- The applicant has demonstrated that he or she will be better able to represent ACCA as a member and his or her advice and comments will have enhanced credibility
- The Executive Director or Head of Department has confirmed that he or she supports the application.

4.4.13 Guideline: refuse the application

- The applicant has not demonstrated that he or she will be better able to represent ACCA as a member and that his or her advice and comments will have enhanced credibility
- The Executive Director or Head of Department has not provided confirmation that he or she supports the application.

GUIDANCE FOR REGULATORY ORDERS

APPLICATIONS FOR WAIVERS OF REGULATIONS

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SECTION 1: INTRODUCTION

- 1.1 This section of the Guidance for Regulatory Orders (“Guidance”) concerns applications for waivers of ACCA regulations.
- 1.2 The Guidance has been developed by ACCA’s Regulatory Board, which oversees the regulatory and disciplinary committees and reports to ACCA’s Council on the fairness and impartiality of the arrangements in place. The purpose of the Guidance is to assist the Admissions and Licensing and Appeal Committees (“the Committee”) in the exercise of their powers. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency of approach.
- 1.3 The Guidance is for use by:
 - the Committee when they are considering what order to make
 - ACCA certificate or licence holders so that they are aware, prior to any decision being made, of what the Committee’s range of options are and which matters the Committee members may take into account when coming to a decision.
- 1.4 The Guidance is a ‘living document’ which will be updated and revised when the need arises.

SECTION 2: THE ROLE AND REGULATORY POWERS OF THE COMMITTEE

2.1 INTRODUCTION

2.1.1 The Committee is totally independent of ACCA and is free to exercise its own judgement in making decisions:

- according to the evidence provided and facts found
- in accordance with the burden and standard of proof, which on regulatory matters is generally accepted to be on the balance of probabilities, as modified by the seriousness of the matter
- with regard at all times to the regulatory framework set out by ACCA contained in the Rulebook, policy statements issued by the Regulatory Board and any other relevant guidance
- balancing the need to maintain public confidence in the profession with appropriate proportionality.

2.2 THE ROLE OF THE COMMITTEE

2.2.1 The Admissions and Licensing Committee is responsible for considering applications. Provided an application meets the criteria specified from time to time by the Committee, the power to grant the application is usually delegated to ACCA staff.

2.3 PURPOSE OF AN ORDER

2.3.1 It is a settled principle of law that the purpose of orders issued by a professional regulatory body is to:

- protect the public interest
- maintain public confidence in the profession
- maintain proper standards of conduct.

2.3.2 It is vitally important that the holder of a certificate or licence issued by ACCA meets the high standards expected by the public. The function of the Committee is to take appropriate action for the future to ensure that the holder maintains proper standards of conduct, thereby maintaining public confidence in the profession. Their function is not to discipline the firm or individual for any past wrongdoing of which it or he may be culpable.

2.3.3 It was noted in *Bolton v The Law Society* [1994] 2 ALL ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.

2.4 REGULATORY POWERS

2.4.1 The Admissions and Licensing Committee has powers to grant waivers of the requirements of certain ACCA regulations. It is specified within the body of the regulation whether the Committee has waiver powers over that regulation. In accordance with Authorisation Regulation 3(3) the Committee may grant or refuse the application, and where it grants the application may impose any conditions it believes appropriate. The Committee may also accept undertakings from any person as a condition of issuing a certificate.

2.4.2 The Committee may impose whatever conditions it believes are appropriate on a member's practising certificate or individual's insolvency licence or a firm's auditing certificate or investment business certificate. Any conditions must be:

- appropriate;
- proportionate (see below);
- workable; and
- measurable.

2.5 PROPORTIONALITY

2.5.1 In deciding on the appropriate order and conditions to impose, the Committee needs to weigh the interests of the individual against the need to fulfil the three purposes of a regulatory order set out in paragraph 2.3.1.

2.5.2 In order to ensure that the order and conditions imposed is the minimum necessary to achieve the purpose, the Committee will need to consider:

- the member's and firm's evidence in support of its or his request for a waiver of a regulation having regard to the fact that it is for the applicant to convince the Committee
- the possible risks to the public of granting the waiver and the conditions which the Committee could put in place for the future to reduce these risks.

2.6 PUBLICITY

2.6.1 Publicity of the decision is not currently required and it is not usually the practice for applications for waivers, whether or not they are granted.

SECTION 3: THE BASIC APPROACH FOR CONSIDERING APPLICATIONS FOR WAIVERS AND GUIDANCE FOR THE COMMITTEE

3.1 INTRODUCTION

3.1.1 In all cases, it is for the applicant to satisfy the Committee that he is eligible for a waiver. For most types of waiver the applicant must demonstrate that exceptional circumstances exist and these will be particular to each application. It is not appropriate to provide a list of exceptional circumstances and the Committee always considers each case on its own merits. However, set out below are the broad principles and relevant factors that the Committee considers in making its decisions on applications for waivers of particular regulations.

3.2 QUALIFICATIONS FOR A PRACTISING CERTIFICATE (GPR 7)

3.2.1 The requirement for members to obtain post-membership experience in order to apply for a practising certificate is linked to established practice across the accountancy profession. Therefore, the onus is on the applicant to demonstrate that they meet by some equivalent means the requirements of the regulation, particularly the need for experience at a more senior level after obtaining membership, AND that some exceptional circumstance exists to warrant granting the waiver of the requirements which all other members have to meet. The fact that an applicant does not want to wait until he meets the eligibility requirements in order to go into public practice immediately is not in itself an exceptional circumstance.

3.2.2 The Committee needs first to be satisfied that some exceptional circumstance exists. For example, an unexpected event has occurred, such as redundancy or the incapacity or unexpected retirement of the member's employer, which means that the member is not able to complete the experience requirement, as he planned. The unexpected offer of a partnership which will be lost if not accepted immediately may also be regarded as an exceptional circumstance.

3.2.3 If the Committee is satisfied that there are exceptional circumstances it then considers whether the member has sufficient experience at a senior level taking into account any references from employers and clients provided in support of the application. The Committee also consider the member's CPD and, if he intends to practise on his own, the arrangements he has made for advice and support.

3.3 PROFESSIONAL INDEMNITY INSURANCE (GPR 9)

3.3.1 Professional indemnity insurance (PII) ensures that clients will receive any compensation due to them. It also provides an effective means of protecting firms against the consequences of negligence and other claims made by clients. Therefore, waivers are granted only in exceptional circumstances and pose a risk to clients and the onus is on the applicant to demonstrate that not to grant the waiver would cause him undue hardship.

3.3.2 Applications may be of a waiver of any of the following:

- The requirement to hold cover of 25 times the firm's largest fee from the previous year
- The requirement for cover to be on an each and every claim basis
- The requirement to hold run-off cover for six years following cessation of practice.

25 times largest fee

3.3.3 Firms sometimes receive large, one-off fees which result in an increase in their level of cover and therefore the premium. The Committee has previously indicated that cost alone is not a sufficient reason for granting a waiver. Nevertheless, the Committee takes account of the increase in the premium as well as the level of risk attached to the work for which the fee was charged, the likely amount of a claim, and whether the fee is a one-off and will not recur in the future.

Each and every claim

- 3.3.4 Firms can sometimes only obtain cover on an aggregate basis rather than an each and every claims basis. The Committee considers the reasons why the firm cannot obtain cover on the required basis and, in particular, whether the firm has provided documentary evidence from the insurers confirming that cover on an each and every claim basis is not available.

Run-off cover

- 3.3.5 Members are required to ensure that PII cover remains in place for six years after they cease to practise. The Committee considers the level of risk attached to the member's work prior to his ceasing in practice and the member's financial circumstances. For instance, some members continue to practice at a low level, following retirement from full time practice, with a handful of long standing personal clients. The Committee considers the risk of and likely amount of claims based on the information provided about and from the clients.

3.4 CONTINUING PROFESSIONAL DEVELOPMENT (GPR 10)

- 3.4.1 Members are required to achieve 40 units of continuing professional development (CPD) per year, at least 21 of which must be verifiable. The CPD scheme is very flexible as members can achieve verifiable CPD in a number of different ways, such as structured courses and e-learning (for example, videos, CD-ROMs and internet courses). Members may also make up any shortfall during the following year.
- 3.4.2 Due to the flexibility of the CPD scheme it is not expected that there will be many waiver applications. Nevertheless the Committee may adapt the regulation to meet any individual's requirements, if it believes appropriate. Waivers can be granted in respect of one calendar year only.
- 3.4.3 Waivers of the non-verifiable CPD requirement can be granted only in exceptional circumstances.

- 3.4.4 In all cases the Committee considers the member's compliance with the CPD requirements in previous years, how the member intends to comply in future years, whether the member has undertaken any non-verifiable CPD to compensate for any shortfall in verifiable CPD and whether it would be possible and appropriate for the member to make up some or all of the shortfall in future years. In addition, for members applying for a waiver on the grounds of ill health, the Committee considers whether the member has provided a medical report explaining the medical issues that prevented the member achieving the required amount of CPD, while he was able to continue to work.
- 3.4.5 In addition, if the application is for a waiver of any of the non-verifiable CPD requirement the Committee considers whether the applicant has established that there are exceptional circumstances.

3.5 CONTINUITY OF PRACTICE (GPR 11)

- 3.5.1 Practitioners in the UK, Ireland, Channel Islands, Isle of Man, Cyprus and Zimbabwe are required to make arrangements for the continuity of their practice in the event of their death or incapacity. Practitioners outside of these territories can apply for a waiver of this requirement. At its meeting on 22 August 2006 the Committee agreed that waivers could be granted administratively by staff to members outside of the UK, Ireland, Channel Islands, Isle of Man, Cyprus and Zimbabwe provided that a practising certificate is held from the member's recognised national accountancy body or regulatory authority and that continuity is not a requirement of that body or authority. Where a firm does not meet the requirements for an administrative waiver, the Committee considers whether the applicant has established that exceptional circumstances exist to justify the granting of a waiver.

3.6 QUALIFICATION REQUIREMENTS FOR AN INSOLVENCY LICENCE (REGULATION 11 OF ANNEX 1)

3.6.1 Applicants for an insolvency licence must obtain a minimum number of hours' insolvency experience, as set out in the GPR. If an applicant is unable to meet any of the three options and applies for a waiver the Committee considers the reasons why the applicant failed to meet the requirement and the effect this may have on his competence to be responsible for insolvency cases. It considers the types of work that the member undertook in the years that he failed to achieve the minimum hours, for instance whether the work was insolvency-related, and also whether the member undertook an extended programme of verifiable CPD to compensate for not meeting the required hours of relevant insolvency experience.

3.7 QUALIFICATIONS REQUIRED TO OBTAIN A UK OR IRISH AUDIT QUALIFICATION (REGULATION 7(5) OF ANNEXES 1 AND 2)

3.7.1 Applicants for a UK and/or Irish practising certificate and audit qualification are required to obtain three years of supervised experience in an ACCA approved employer (audit), two years of which must be post-membership. If an applicant has been working in a firm that is not registered as an ACCA approved employer (audit) in the belief that his experience would count the Committee can consider granting a waiver if the firm would be eligible to register as an ACCA approved employer (audit). For example, if the firm is approved for audit training by another professional body, such as ICAEW. This is intended to not disadvantage a member who believed he was getting the relevant experience but who subsequently found out that his employer was not appropriately approved.

3.8 QUALIFICATION REQUIREMENTS FOR AN AUDIT QUALIFICATION JERSEY, GUERNSEY AND DEPENDENCIES AND THE ISLE OF MAN (REGULATION 7(2)(b)(1) OF ANNEX 1)

3.8.1 Under The Companies (Jersey) Law 1991, The Companies (Guernsey) Law 2008 and the Isle of Man Companies Act 1982 members of ACCA are recognised as qualified for appointment as auditor of a company in these territories. There is no additional requirement under these laws for individuals to hold practising certificates from their professional body. However, ACCA's regulations stipulate that any member wishing to undertake audit work in any of the designated territories (UK,

Ireland, Channel Islands, and Isle of Man) must hold a practising certificate and audit qualification valid for the relevant territory. Therefore, to comply with ACCA's regulations members in these territories are required to hold a practising certificate and audit qualification. They may not, however, meet the experience requirement.

- 3.8.2 Waivers can be granted of the experience requirement. In considering the request for the waiver of the experience requirement, the Committee determines whether the member has obtained sufficient experience at a senior managerial level in an ACCA approved employer, and whether this is supported by references.

3.9 ELIGIBILITY FOR AN IRISH INVESTMENT BUSINESS CERTIFICATE (IRISH INVESTMENT BUSINESS REGULATION 3)

- 3.9.1 ACCA can only authorise firms whose main business is the provision of public practice services. The test for this is that no more than 20% of a firm's total income on an annual basis should be derived from investment business services or investment advice. The Committee considers the reasons why the firm exceeded the limit. In most cases it will need to be satisfied that it will not recur, for example, the firm received a large one-off fee that took its level of income from investment business services and investment advice over 20%, and that this will not recur. Whether the firm has exceeded the limit in the past will also be relevant.
- 3.9.2 Any waiver granted is subject to approval by the Central Bank of Ireland.

SECTION 3: THE BASIC APPROACH FOR CONSIDERING APPLICATIONS FOR WAIVERS AND
GUIDANCE FOR THE COMMITTEE

SECTION 4: DESCRIPTION OF THE AVAILABLE ORDERS AND APPLICATION GUIDELINES

4.1 INTRODUCTION

4.1.1 In this section, reference to an application includes an application for a waiver of any of the regulations above on the terms allowed in the relevant regulation. Please note that the orders available to the Committee for applications for waivers of particular regulations may differ, but the principles behind the process are the same. The onus is always on the applicant to convince the Committee that he, she or it is entitled to a waiver.

4.1.2 **Before reaching a decision, the Committee will consider whether the order it has arrived at is appropriate to achieve the purpose of balancing the interests of the applicant and the public, in accordance with the principle of proportionality outlined in Section 2.5 of this publication.**

4.1.3 **The Committee may depart from ACCA's recommendation and the guideline orders and conditions; however, the Committee should have regard to the guidance in this document and ensure that the written reasons for decision clearly explain the exceptional circumstances which resulted in any such departure.**

4.2 AVAILABLE ORDERS

4.2.1 The Committee may make any one or more of the following orders:

Order to adjourn consideration of the application

4.2.2 It would be appropriate for the Committee to adjourn consideration of the application if questions arise on the day which it would have been difficult for the applicant to have anticipated and the answers to which are vital for the Committee to decide the case. For example, the Committee may have questions which the applicant can answer only by reference to documents which he does not have and will have to obtain. In addition, it may be appropriate for the Committee to consider adjourning a case, although the applicant by his own choice is not present, if the Committee believes that it may be able to grant the application if it has the opportunity of putting certain questions to the applicant to satisfy itself on certain matters.

Order to grant the application subject to a condition(s)

- 4.2.3 It would be appropriate for the Committee to grant an application subject to conditions if the Committee is satisfied that there are exceptional circumstances and that not to grant the waiver would cause undue hardship to the member or firm. However, the Committee may wish to put safeguards in place to protect the public.
- 4.2.4 For example, a waiver of the post-membership experience requirements for a practising certificate may be granted in exceptional circumstances subject to the member passing a test of competence.
- 4.2.5 As well as imposing conditions, the Committee may add a note or reminder to its order. For example, a waiver of the requirement to hold professional indemnity insurance cover of 25 times the firm's largest fee may be granted in exceptional circumstances but the Committee may remind the firm that this does not mean that it will still not be vulnerable to a claim for professional negligence for an amount which may have been covered if the firm had had the cover required by the regulations.

Refuse the application

- 4.2.6 It would be appropriate for the Committee to refuse an application for a waiver if the Committee is not satisfied that there are exceptional circumstances and that refusing the waiver would not cause the member or firm any undue hardship.
- 4.2.7 For example, a member applying for a waiver of the post-membership experience requirements for a practising certificate may have chosen:
- to delay applying for membership and without the delay would have been eligible for a practising certificate administratively, and/or
 - to work for a firm that is not eligible to register as an ACCA approved employer so that their experience would not count towards obtaining a practising certificate, and/or
 - to go into practice on their own account in breach of the regulations so that they would not obtain any supervised experience towards obtaining a practising certificate.

- 4.2.8 In the above examples the applicants have failed to take account of ACCA's regulations and by their own choice put themselves in the position of requiring a waiver. In such circumstances it will be more difficult for applicants to show that there are exceptional circumstances to grant them a waiver of the requirements which all other members are required to meet.

Grant the application

- 4.2.9 It would be appropriate for the Committee to grant an application and not impose any conditions if the Committee is satisfied that there are exceptional circumstances and that not to grant the waiver would cause undue hardship to the member or firm.
- 4.2.10 For example, a waiver of the experience requirements for an insolvency licence may be granted in exceptional circumstances as the member is short of hours in only one of the three years and has satisfied all other conditions for holding a licence.

4.3 APPLICATION GUIDELINES

- 4.3.1 The guidelines set out on the pages to follow relate to the most common types of applications that are made to the Committee. The guidelines are not intended to be treated as appropriate for all cases. Each case will be judged on its own facts.
- 4.3.2 In deciding the appropriate order, the Committee must consider all factors relevant to the application. The Committee is free to attach such weight as it thinks fit in its absolute discretion to any factor. The list of factors is not exhaustive.

4.3.3 GPR 7(3): WAIVER IN EXCEPTIONAL CIRCUMSTANCES OF THE EXPERIENCE REQUIREMENT FOR OBTAINING A PRACTISING CERTIFICATE

Guideline: refuse the application

- The member chose to go into public practice in breach of ACCA's regulations
- The member chose to work for a firm which was not eligible for ACCA approved employer status
- The member chose to delay applying for membership
- The member has no, or insufficient, senior level experience
- The member has no, or insufficient, experience in an ACCA approved employer
- The member is unable to provide documentary evidence that a partnership in a qualified firm of practising accountants has been offered, where he has indicated this is to happen
- The member has not provided adequate, recent references in support of the application
- The member has not provided references from qualified practising accountants
- The member has not provided evidence that he will have access to technical and ethical support from another qualified practising accountant or firm of practising accountants.

Guideline: grant the application

- An unforeseen or unexpected event has occurred which is outside the member's control (for example, the member has been made redundant or the member's employer has retired or become incapacitated)
- The member has been offered a partnership in a qualified firm of practising accountants and this has been confirmed in writing, and, if the waiver is not granted, the member will be deprived of an opportunity that may not come around again
- The member has already obtained at least two years of supervised experience at a senior level, although not in an ACCA approved employer
- The member has already obtained at least three years of experience in an ACCA approved employer but not two years' post-membership
- The member has provided good, recent references in support of the application, including references from qualified practising accountants

- The member has provided confirmation that he will have access to technical and ethical support from another qualified practising accountant or firm of practising accountants
- The member has provided a PCTR showing that he has already achieved the required competences for a practising certificate and this has been signed off by an acceptable supervising principal
- Not to grant the waiver would cause undue hardship to the staff and clients of the firm
- The member has provided recent CPD records showing that he is up to date on current public practice issues
- The member was given incorrect advice by ACCA that a practising certificate was not required and has provided documentary evidence of this
- There was an administrative error by ACCA
- The member is based in a country where the recognised national accountancy body/regulatory authority does not issue practising certificates or only issues practising certificates to individuals undertaking audit work

Conditions:

The Committee may wish to order the member to undertake a test of competence at the member's own expense. The test of competence may comprise:

- successfully complete an extended open-book case study
- successfully complete a viva.

The Committee may also wish to order that should the member fail to successfully complete the test of competence:

- the waiver is refused, or
- the matter be referred back to the Committee.

If the matter is referred back to the Committee it may then order that the waiver be refused or the member be allowed one further opportunity, at his/her own expense, to:

- successfully complete another extended open-book case study
- successfully complete another viva
- receive a Members Advisory Visit at the member's own expense within six months of being issued with a practising certificate.

4.3.4 GPR 9(7): WAIVER IN EXCEPTIONAL CIRCUMSTANCES OF THE REQUIREMENTS FOR PROFESSIONAL INDEMNITY INSURANCE

There are three types of PII waiver requests:

- The requirement to hold cover of 25 times the firm's largest fee from the previous year
- The requirement for cover to be on an each and every claim basis
- The requirement to hold run-off cover for six years following cessation of practice.

Guideline: refuse the application

25 times largest fee

- The level of risk attached to the work is high
- The fee is not a one-off or an exceptional fee and may recur in the future
- The cost of cover of 25 times the largest fee is not unreasonable given the amount of the fee received
- There is no evidence that the increase in the cost of cover will cause the member or firm undue hardship.

Each and every claim

- The firm is unable to provide any documentary evidence from the insurer that cover on an each and every claim is unavailable and that cover can only be obtained on an aggregate basis.

Run-off cover

- The level of risk attached to the work is high
- The cost of run-off cover is not unreasonable

Guideline: grant the application

25 times largest fee

- The level of risk attached to the work is low and not proportionate to the level of fee charged
- The largest fee is a one-off, exceptional, non-recurring fee (i.e. it has not occurred before and is unlikely to recur in future)
- The majority of the largest fee is derived from non-public practice work
- The proportion of the largest fee which is derived from public practice work is low and the level of cover held by the member is sufficient to cover that part of the fee
- The firm's second largest fee is far lower and typical of the level of fee normally received by the firm
- The cost of cover of 25 times the largest fee is unreasonable given the amount of the fee received
- Evidence has been provided that the increase in the cost of cover will cause the member or firm undue hardship
- Cover of 25 times the largest fee is unobtainable and the broker has confirmed this in writing

The Committee may wish to advise the firm that the waiver does not mean that it will not be vulnerable to a claim for professional negligence for an amount which may have been covered if the firm had arranged the cover required by the regulations.

Each and every claim

- The firm has provided documentary evidence from the insurer that cover on an each and every claim is not available and that cover can only be obtained on an aggregate basis.

The Committee may wish to advise the firm that the waiver is granted for one year only and that if a waiver is required in future years the firm must reapply.

Run-off cover

- The level of risk attached to the work is low
- The cost of run-off cover is unreasonable
- The member is retired or unemployed and has limited income

SECTION 4: DESCRIPTION OF THE AVAILABLE ORDERS AND APPLICATION GUIDELINES

The Committee may wish to advise the member that the waiver does not mean that he is not still vulnerable to a claim for professional negligence being made against him.

4.3.5 MR 4(4)(F): WAIVER OF REQUIREMENTS ON VERIFIABLE CPD AND IN EXCEPTIONAL CIRCUMSTANCES OF NON-VERIFIABLE CPD

Guideline: refuse the application

Verifiable CPD

- The member has not provided documentary evidence in support of the application (e.g. a medical report explaining any medical issues)
- The member did not undertake an extended programme of non-verifiable CPD to compensate for the lack of verifiable CPD
- The member has failed to meet the verifiable CPD requirements on more than one occasion.

Non-verifiable CPD

- The member has not provided documentary evidence in support of the application (e.g. medical report explaining any medical issues)
- The member has not established that there are exceptional circumstances to justify granting a waiver
- The member has failed to comply with the non-verifiable CPD requirements in previous years
- The member has not provided details of how he intends to comply with the non-verifiable CPD requirements in future years.

Guideline: grant the application

Verifiable CPD

- The member has provided documentary evidence in support of the application (e.g. a medical report explaining any medical issues)
- The member has undertaken an extended programme of non-verifiable CPD to compensate for the lack of verifiable CPD
- The member has complied with the verifiable CPD requirements in previous years
- The member has provided details of how he intends to comply with the verifiable CPD requirements in future years.

Conditions:

The Committee may ask the member to make up some of the shortfall in future years.

Non-verifiable CPD

- The member has provided documentary evidence in support of the application (e.g. a medical report explaining any medical issues)
- The member has established that there are exceptional circumstances to justify granting a waiver
- The member has complied with the non-verifiable CPD requirements in previous years
- The member has provided details of how he intends to comply with the non-verifiable CPD requirements in future years.

Conditions:

The Committee may ask the member to make up some of the shortfall in future years.

4.3.6 GPR 11: WAIVER IN CERTAIN RESTRICTED CIRCUMSTANCES OF THE REQUIREMENTS FOR PRACTICE CONTINUITY ARRANGEMENTS

Waivers of the continuity of practice requirements are granted administratively by staff to members outside of the UK and Ireland provided that a practising certificate is held from their recognised national accountancy body or regulatory authority and that continuity is not a requirement of that body or authority. The Committee has no power to grant waivers to members in the UK, Ireland, Channel Islands, Isle of Man, Cyprus and Zimbabwe. Therefore, it is not expected that there will be many waiver requests brought to the Committee.

Guideline: refuse the application

- The member could make continuity arrangements with an ACCA or locally qualified practising accountant but has chosen not to do so
- The member has not provided details of any steps he has undertaken to forge links with other practising certificate holders in order to make appropriate arrangements
- The member has not satisfactorily explained who would look after the professional needs of his clients if he became incapacitated.

Guideline: grant the application

- The member does not hold a local practising certificate as there is no recognised local body or the recognised local body does not issue practising certificates
- The member has tried to make continuity arrangements with other practising certificate holders but has been unsuccessful and has provided documentary evidence of this
- The member is requesting a temporary waiver for a short period to allow him time to forge links with other practising certificate holders.

Conditions:

The Committee may grant the member a temporary waiver and if he is unable to make arrangements within the time period set by the Committee the application must be referred back to the Committee.

4.3.7 REGULATION 11(4) OF ANNEX 1 TO THE GPRS: WAIVER IN EXCEPTIONAL CIRCUMSTANCES OF THE CONTINUING EXPERIENCE REQUIREMENTS FOR ELIGIBILITY TO HOLD AN INSOLVENCY LICENCE

Guideline: refuse the application

- The applicant has not achieved at least 600 hours of insolvency experience in total
- The applicant has not undertaken an extended programme of verifiable CPD to compensate for not meeting the experience requirements
- The nature of the work undertaken by the applicant in the year(s) where the applicant did not achieve the required hours of experience was not insolvency-related.

Guideline: grant the application

- The applicant has achieved at least 600 hours of insolvency experience in total but not the requirement for at least 150 hours to be in each of three calendar years
- The applicant has undertaken an extended programme of verifiable CPD to compensate for not meeting the experience requirements in the relevant year(s)
- The nature of the work undertaken by the applicant in the year(s) where the applicant did not achieve the required hours of experience was insolvency-related.

Conditions:

The Committee may require the insolvency practitioner to limit the number or type of appointment he holds.

**4.3.8 REGULATIONS 7(5) OF ANNEX 1 AND ANNEX 2 TO THE GPRS:
WAIVER IN EXCEPTIONAL CIRCUMSTANCES OF THE REQUIREMENTS
RELATING TO OBTAINING AN AUDIT QUALIFICATION FOR THE UK
AND/OR IRELAND**

Guideline: refuse the application

- The member has been working in an employer that is not eligible to register as an ACCA approved employer (audit)
- The member has not provided evidence that he believed his employer was registered as an ACCA approved employer (audit)
- The employer is not registered as a training office with another professional body
- The employer is not regulated by a competent authority
- The employer has no other offices that are registered as ACCA approved employers
- The member has not met all the other qualification requirements for a practising certificate and audit qualification
- The member has not provided adequate, recent references in support of the application.

Guideline: grant the application

- The member has been working in an employer that was not registered as an ACCA approved employer (audit) for all or part of the member's training but the employer would have been eligible to register
- The member has provided evidence that he believed his employer was registered as an ACCA approved employer (audit)
- The employer is registered as a training office with another professional body
- The employer is regulated by a competent authority
- The employer has other offices that are registered as ACCA approved employers
- The member has met all the other qualification requirements for a practising certificate and audit qualification
- The member has provided adequate, recent references in support of the application.

4.3.9 REGULATION 4 OF APPENDIX 2 OF ANNEX 1 TO THE GPRS: WAIVER IN EXCEPTIONAL CIRCUMSTANCES OF THE REQUIREMENTS RELATING TO OBTAINING AN AUDIT QUALIFICATION IN THE CHANNEL ISLANDS

Guideline: refuse the application

- The member has no, or insufficient, senior level experience
- The member has no, or insufficient, experience in an ACCA approved employer
- The member is unable to provide documentary evidence that a partnership has been offered, where he has indicated this is to happen
- The member has not provided adequate, recent references in support of the application
- The member has not provided evidence that he will have access to technical help and support from another practising accountant or firm of practising accountants.

Guideline: grant the application

- The member does not require a practising certificate and audit qualification for the UK or Ireland
- The member has already obtained at least two years of supervised experience at a senior level
- The member has already obtained at least three years of experience in an ACCA approved employer
- The member has been offered a partnership in a firm and this has been confirmed in writing, and, if the waiver is not granted, the member will be deprived of an opportunity that may not come around again
- The member has provided good, recent references in support of the application.

The Committee may wish to remind the member that to apply for a practising certificate and audit qualification for the UK or Ireland in the future the member would be required to meet the eligibility requirements in full.

4.3.10 IIBR 3(4)(b): WAIVER IN RESTRICTED CIRCUMSTANCES OF THE REQUIREMENT THAT TO BE ELIGIBLE FOR AN INVESTMENT BUSINESS CERTIFICATE A FIRM CAN EARN NO MORE THAN 20% OF ITS INCOME FROM INVESTMENT BUSINESS

Guideline: refuse the application

- The factors that led to the firm's income from investment business services or investment advice exceeding 20% of its total income may recur
- The firm has indicated that it may exceed the 20% limit again in future years.

Guideline: grant the application

- The firm received a large, one-off, non-recurring fee that took its level of investment business income over the 20% limit
- The firm does not expect to exceed the 20% limit in future years
- The firm has never exceeded the 20% limit before.

Conditions:

The Committee's order to grant a waiver is subject to the approval of the Central Bank of Ireland. If this has not already been received the order should be subject to this condition.

GUIDANCE FOR REGULATORY ORDERS

**ELIGIBILITY FOR CERTIFICATES OR LICENCES AND
UNSATISFACTORY OUTCOMES TO MONITORING VISITS**

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SECTION 1: INTRODUCTION

- 1.1 This section of the Guidance for Regulatory Orders (“Guidance”) concerns:
- matters concerning the eligibility of a firm for an auditing certificate or investment business certificate or an individual for a practising certificate or insolvency licence; or
 - the conduct of audit and regulated work, insolvency work or investment business found at a monitoring visit.
- 1.2 The Guidance has been developed by ACCA’s Regulatory Board, which oversees the regulatory and disciplinary committees and reports to ACCA’s Council on the fairness and impartiality of the arrangements in place. The purpose of the Guidance is to assist the Admissions and Licensing, Interim Orders and Appeal Committees (“the Committee”) and the Regulatory Assessors (“Assessor”) in the exercise of their powers. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency of approach.
- 1.3 Part B of the Guidance reflects a progressive approach to those firms or individuals that fail to comply with the requirements relating to auditing, investment business and insolvency. It is based on the principles and practice set out in the Regulatory Board’s Policy Statement on ACCA’s approach to non-compliance with auditing standards, issued in July 2009 and updated in May 2014.
- 1.4 The Guidance is for use by:
- ACCA staff when they are considering the appropriate action to take, for example based on the outcome of a monitoring visit
 - the Committee and the Assessor when they are considering what order or decision to make
 - ACCA certificate or licence holders so that they are aware, prior to any decision being made, of what the Committee’s or Assessor’s range of options are and which matters the Committee members or the Assessor may take into account when coming to a decision
- 1.5 The Guidance is a ‘living document’ which will be updated and revised when the need arises.

SECTION 2: THE ROLE AND REGULATORY POWERS OF THE COMMITTEE AND ASSESSOR

2.1 INTRODUCTION

2.1.1 The Committee and the Assessors are totally independent of ACCA and are free to exercise their own judgement in making decisions:

- according to the evidence provided and facts found
- taking account of the relevant regulatory history of the certificate or licence holder
- in accordance with the standard of proof, which on regulatory matters is generally accepted to be on the balance of probabilities
- with regard at all times to the regulatory framework set out in ACCA's Rulebook, policy statements issued by the Regulatory Board and any other relevant guidance
- balancing the need to maintain public confidence in the profession with appropriate proportionality

2.2 THE ROLE OF THE COMMITTEE AND ASSESSOR

2.2.1 The Admissions and Licensing Committee is responsible for considering applications and continuing eligibility for a practising certificate, auditing certificate, insolvency licence and investment business certificate (Ireland). Provided an application meets the criteria specified from time to time by the Committee, the power to grant the application is usually delegated to ACCA staff.

2.2.2 The Assessor has the delegated power of the Committee to impose conditions on a certificate and/or conditions on a future reapplication for a certificate that the holder has voluntarily relinquished.

2.3 PURPOSE OF AN ORDER

2.3.1 It is a settled principle of law that the purpose of orders issued by a professional regulatory body is to:

- protect the public interest
- maintain public confidence in the profession
- maintain proper standards of conduct

2.3.2 It is vitally important that the holder of a certificate or licence issued by ACCA meets the high standards expected by the public. The function of the Assessor and Committee is to take appropriate action for the future to ensure that the holder maintains proper standards of conduct, thereby maintaining public confidence in the profession. Their function is not to discipline the firm or individual for any past wrongdoing of which it or he may be culpable.

2.3.3 **It was noted in Bolton v The Law Society [1994] 2 ALL ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.**

2.4 REGULATORY POWERS

2.4.1 In accordance with Authorisation Regulation 7(3) the Assessor may either:

- consider that no regulatory action is necessary; or
- impose conditions on the holder of a certificate; or
- if he decides that the withdrawal or suspension of a certificate should be considered, refer the case to the Committee for consideration.

2.4.2 In accordance with Authorisation Regulation 6(15)(a) the Committee has the following basic options for an existing certificate:

- to make no order; or
- to order that the certificate be withdrawn; or
- suspend the certificate; or
- impose conditions on the certificate.

2.4.3 In the event that the holder voluntarily relinquishes a certificate before the matter can be considered, in accordance with Authorisation Regulations 6(18) and 7(4) respectively the Committee and the Assessor have the power to specify that no future application for a certificate will be entertained for a specified period or until the occurrence of a specified event.

2.4.4 In accordance with Authorisation Regulation 3(4), where the Committee is considering an application for a certificate it may grant or refuse the application, and where it grants the application may impose such conditions as it believes appropriate.

2.4.5 The Assessor or Committee may impose whatever conditions on a certificate that he or it believes are appropriate. Any conditions must be:

- appropriate;
- proportionate (see below);
- workable; and
- measurable.

2.5 PROPORTIONALITY

2.5.1 In deciding on the appropriate decision and conditions to impose, the Assessor or the Committee needs to weigh the interests of the firm or individual against the need to fulfil the three purposes of a regulatory order set out in paragraph 2.3.1.

2.5.2 Any order and conditions imposed should, taking into account all the circumstances of the case, be proportionate to the level of seriousness in the failure of the firm or individual to:

- carry out work in accordance with the requirements relating to audit, insolvency or investment business
- show eligibility for a certificate

2.5.3 In order to ensure that the decision (including any conditions imposed) is the minimum necessary to achieve the purpose, the Assessor or Committee will need to consider:

- any evidence provided by the firm or individual in attempting to refute the findings of the visit
- any explanation offered for the inadequate performance of the relevant work
- the apparent willingness and ability of the holder to achieve the standard of work expected
- whether or not the firm or individual has been subject to a conditions in the past and the risk that similar or alternative conditions will not be effective in bringing about a sustained improvement in the standard of the work
- if the firm or individual has taken action to remedy the inadequate performance of the relevant work since the most recent monitoring visit, why appropriate action was not taken previously and whether the apparent improvement can be relied on as effective, representative and sustainable
- the action the firm or individual has or intends to take where eligibility for a certificate is in question.

2.6 PUBLICITY

Withdrawal, suspension or conditions on an existing certificate

2.6.1 Authorisation Regulation 6(12)(c)(i) requires that, where the Committee has withdrawn, suspended or imposed conditions on a certificate pursuant to regulation 6(15)(a), the decision **shall** be published as soon as practicable. The regulation stipulates that the decision shall be published as the Committee thinks fit and, unless in exceptional circumstances the Committee otherwise directs, the relevant person shall be named in such publicity.

2.6.2 Authorisation Regulation 7(6)(a) indicates that all conditions imposed by an Assessor relating to an existing certificate pursuant to regulation 7(2) **may** be published as soon as practicable. Regulation 7(6)(b) indicates that the certificate holder **may** be named in such publicity, unless the Assessor otherwise directs.

Conditions on future reapplication for a certificate

- 2.6.3 Authorisation Regulation 6(12)(c)(vi) provides that, in the event that the holder relinquishes the certificate before the hearing takes place, details of that fact and of any consequential orders shall be published as the Committee thinks fit. Similarly, regulation 7(6)(h) provides that, in the event that the holder relinquishes the certificate before the Assessor makes a decision, details of that fact shall be published as the Assessor thinks fit. The Committee and Assessor therefore have discretion, in these circumstances, as to whether to make any publicity order.
- 2.6.4 The normal order for publicity is that a press release be issued to ACCA's website and the local press referring to the individual or firm by name.
- 2.6.5 However, the Committee and Assessor have complete discretion to decide where the press release should be issued.

PART A:
ELIGIBILITY FOR CERTIFICATES OR
LICENCES

SECTION 3: THE APPROACH ADOPTED BY ACCA

3.1 ELIGIBILITY FOR AN AUDITING CERTIFICATE

- 3.1.1 The eligibility requirements for a firm's auditing certificate are set out in Practising Regulation (PR) 6 of both Annex 1, applicable to the UK, and Annex 2, applicable to Ireland, of the Global Practising Regulations.
- 3.1.2 Where a firm applies for, or already holds, an auditing certificate but does not appear to meet one or more of the requirements ACCA refers the application or matter to the Committee for consideration. Firms may apply for waivers of the application of some regulations and this is dealt with in another section of the Guidance.
- 3.1.3 Compliance with certain of the requirements is fairly well defined, for instance on professional indemnity insurance and practice continuity arrangements. However, for certain requirements the facts may be open to different interpretations and these are dealt with separately below.

Control by qualified persons

- 3.1.4 The meaning of 'control by qualified persons' is set out in PR 8 of both Annex 1, applicable to the UK, and Annex 2, applicable to Ireland, of the Global Practising Regulations.
- 3.1.5 ACCA will consider the substance of the arrangements the firm has in place, not just the legal form. Where it identifies that the requirements of PR 8 are not met and the firm appears unable or willing to remedy the situation, ACCA will refer the case to the Committee.

Audit independence and influence by others

- 3.1.6 Firms with an auditing certificate must, under PR 6(g), have arrangements to prevent individuals who do not hold an audit qualification 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. This influence may occur even where the firm meets the requirements of PR 8. For example, an audit qualified person (principal or employee), in a firm which is not eligible for audit registration, sets up another firm which he legally controls in accordance with PR 8. This firm obtains an auditing certificate in order to accept appointment as auditor to any clients which the ineligible firm has which require an audit. Although the new firm is legally separate from the ineligible firm, it is questionable whether it is effectively separate. If ACCA has concerns that the arrangements do not appear to be adequate to prevent influence, it will refer the matter to the Committee.
- 3.1.7 Auditor independence is the foundation upon which the integrity of the audit is built. In addition, independence is as much a matter of appearance as it is a matter of the auditor's mind. On monitoring visits firms are sometimes found to be in apparent breach of the requirement for an auditor to be seen to be independent of an audit client or of a third party. The requirements on independence are contained in both the Financial Reporting Council's (FRC) Ethical Standards and in the Code of Ethics and Conduct. The former tends to be more prescriptive while the latter is now largely principles-based.
- 3.1.8 Occasionally, concerns are raised where an audit firm obtains a significant proportion of its fee income from a single source. FRC Ethical Standard 4 states that, where it is expected that the total fees for both audit and non-audit services receivable from a non-listed audited entity and its subsidiaries audited by the audit firm will regularly exceed 15% of the annual fee income of the audit firm...the firm shall not act as the auditor of that entity and shall either resign as auditor or not stand for reappointment, as appropriate.

- 3.1.9 However, the situation is less clear-cut where a significant proportion of total fee income is not derived from a single client and its subsidiaries, but from several clients with a common connection. For example, sometimes an audit firm obtains a number of audit clients by referral from another accountancy firm which is itself not eligible for an auditing certificate. Although Sections 290.217 to 290.219 of the Code of Ethics and Conduct do not prohibit such an arrangement, in ACCA's view a self-interest threat arises where 15% or more of a firm's total income is derived from a single source. The presumption is that the ineligible firm will be able to influence its clients, for example in their choice of auditor and on whether to retain the services of a particular auditor. It is this latter point which renders the auditor vulnerable to a threat to his objectivity. In ACCA's view, the 15% threshold in FRC Ethical Standard 4 is an appropriate benchmark to apply in other situations where a number of audit clients are under common control or have a common connection which could result in a significant influence being exerted on the auditor.
- 3.1.10 Section 280 of the Code of Ethics and Conduct contains a note that, where relevant, a professional accountant in public practice shall comply with both the FRC Ethical Standards and Section 290. **Where there is any apparent conflict between requirements, the professional accountant shall comply with the requirement that is more stringent.**
- 3.1.11 Where the firm agrees to put adequate safeguards in place or, where this is not possible and the firm resigns from the audit appointment and gives assurances acceptable to ACCA that it will prevent such a threat arising in future, the matter will not be referred to the Committee.

Fitness and propriety

- 3.1.12 A firm has to be fit and proper to hold an auditing certificate in accordance with PR 6(c). PR 13 states that, in addition to its provisions, all the provisions of GPR 8 which concern individuals apply. If ACCA has significant concerns about a matter which appears to impact fitness and propriety, it will refer the case to the Committee.

3.2 ELIGIBILITY FOR OTHER CERTIFICATES AND LICENCES

3.2.1 ACCA may refer applications for other certificates or licences to the Committee for consideration, for instance:

- where there may be doubts as to the applicant's fitness and propriety to hold a certificate
- because of the applicant's previous disciplinary history with ACCA or another professional body
- where an applicant has previously held a certificate or licence from another body which informs ACCA that its monitoring has found that the applicant has not performed the relevant work to a satisfactory standard.

SECTION 4: GUIDANCE FOR THE COMMITTEE

4.1 ELIGIBILITY FOR AN AUDITING CERTIFICATE

Control by qualified persons (PR 8)

4.1.1 In the following circumstances a firm does not meet the requirements of PR 8:

- the partnership agreement does not give the audit qualified partners control in terms of voting rights
- persons who are not audit qualified control the majority of the shares with voting rights in the company
- the majority of directors are not audit qualified and there is no agreement which gives the audit qualified directors the majority of voting rights at board meetings.

4.1.2 In all cases it is for the Committee to decide if the firm is eligible for audit registration based on information provided by the firm which will ensure the audit qualified principals have effective control of the firm. Authorisation Regulation 5(1)(a) allows the Committee to give the firm time to make arrangements for the control of the firm where it regards the situation as remediable.

Audit independence and influence by others (PR 6(g))

4.1.3 ACCA will set out the factors that give rise to its concerns about the firm's arrangements to comply with PR 6(g) in the written report to the Committee and orally when presenting the case at the hearing. The Committee considers each case on its individual facts and takes into account the following (this list is not exhaustive):

- the income of the firm and whether this provides the audit qualified individual(s) with sufficient income to assert their independence from the ineligible firm
- the clients of the firm and whether it has any clients which are not also clients of the ineligible firm
- the name of the firm and what association, if any, this implies with the ineligible firm
- the firm's office and staffing arrangements and whether these are common with the ineligible firm
- the status of the audit qualified individuals in the ineligible firm, whether employees, sub-contractors or principals
- the professional qualifications, if any, of the other principals in the ineligible firm and whether or not they are required to comply with ethical principles which would prohibit them from attempting to exert influence over the way in which an audit is conducted
- any safeguards put in place by the audit-registered firm, such as independent external reviews of the audit appointment and the arrangements for the direction, supervision, conduct and review of the audit work.

4.1.4 In cases concerning auditor independence, the Committee will be required to consider the matter where either the firm does not agree that there is a problem or fails to reduce to an acceptable level the threat to its objectivity. The Committee will decide the case on the individual facts, having regard to the relevant requirements of the FRC Ethical Standards and ACCA's Code of Ethics and Conduct. It is usually possible for a solution to be found in which case an order with appropriate conditions to ensure the firm takes the necessary action is appropriate. Nevertheless, where the Committee finds that there is a continuing breach of the audit independence requirements, which the firm either will not or cannot remedy, the Committee has the power to withdraw the firm's auditing certificate.

Fitness and propriety

- 4.1.5 Under GPR 8 and PR 13 there are various matters the Committee may consider concerning fitness and propriety and the eligibility of a firm for a certificate. The Committee may also be required take into account any relevant matters relating to any individual associated with, or employed by, the firm.

4.2 ELIGIBILITY FOR OTHER CERTIFICATES AND LICENCES

- 4.2.1 The Committee considers whether to grant the application and, if so, whether to place any conditions on the certificate. The Committee decides each case based on the individual facts and will take into account the approach taken for individuals and firms which have held certificates continuously from ACCA.

SECTION 5: DESCRIPTION OF THE AVAILABLE ORDERS AND APPLICATION GUIDELINES

5.1 INTRODUCTION

5.1.1 **Before reaching a decision, the Committee will consider whether the order, including any conditions, it is imposing is the minimum necessary to achieve the purpose, in accordance with the principle of proportionality outlined in Section 2 of this publication. As part of this the Committee will need to consider:**

- the firm's or individual's visit history and the effectiveness of any previous order;
- the explanations provided for past failures to comply with the requirements;
- the actions already taken by the individual or firm to render him or it eligible for the relevant certificate; and
- the likelihood that the firm's or individual's remedy will be effective and sustained in the longer term.

5.1.2 **The Committee may depart from ACCA's recommendation and the guideline orders and conditions; however, the Committee should have regard to the guidance in this document and ensure that the written reasons for decision clearly explain the exceptional circumstances which resulted in any such departure.**

5.2 AVAILABLE ORDERS

No order

See [Order A1](#).

5.2.1 In all cases the Committee may decide not to make an order.

5.2.2 Relevant factors to take into consideration (this list is not exhaustive):

- the firm or individual has remedied the matter in question and has provided evidence to support this to the satisfaction of the Committee
- it appears that the breach of the eligibility requirements had not happened before, was inadvertent and will not recur
- the public is not at risk
- there would be no purpose served by placing conditions on the firm's or individual's certificate or licence.

Order placing conditions on the firm's or individual's certificates

See [Order A2](#).

5.2.3 An order placing conditions on a firm's or individual's certificate is effectively the alternative to withdrawal or suspension where the firm or individual currently appears to be ineligible. The imposition of conditions allows the firm or individual to remedy the situation while at the same time protecting clients and the public. Orders imposing conditions on a certificate must be publicised, as set out in section 2.6 of this document.

5.2.4 Relevant factors to take into consideration (this list is not exhaustive):

- the firm or individual does not currently appear to be eligible for a certificate
- it appears that the situation is remediable and in the meantime adequate safeguards can be put in place to protect the interests of the public
- the firm or individual has made proposals which it appears will remedy the problem but which have not yet been implemented
- it does not appear that the problem will recur or, if it may, the firm or individual has put procedures in place which will ensure that it is appropriately dealt with.

5.2.5 The Committee may impose whatever conditions it wishes but they must be appropriate, proportionate, workable and measurable. The conditions usually imposed include:

- for a firm which does not meet the eligibility requirements for an auditing or investment business certificate, allowing the firm to retain its certificate subject to the firm taking certain action within a set timescale failing which, at the Committee's discretion, the certificate should either be suspended or withdrawn or the matter should be referred back to the Committee
- for a firm or individual, placing ongoing conditions on it either permanently or until a specific date
- an early follow up visit by ACCA to ensure that the firm or individual is effectively operating any procedures it or he proposed putting in place or has kept to the conditions imposed; the firm or individual is usually ordered to contribute to the cost of the ordered early visit so that this cost does not fall on firms or individuals which have visits only on the routine cycle.

Order to withdraw or suspend the firm's or individual's certificate or licence

See **Order A3**.

- 5.2.6 Suspension of a certificate or licence until the occurrence of a specified event, or withdrawal of a certificate or licence, is appropriate where a firm or individual cannot show to the Committee's satisfaction that it will be able to meet the eligibility requirements in future or until some time in the future. Where the Committee does suspend or withdraw a certificate on eligibility grounds it may or may not be appropriate to place conditions on any re-application for the certificate. Orders to suspend or withdraw a certificate must be publicised, as set out in section 2.6 of this document.
- 5.2.7 Suspension or withdrawal of a firm's auditing certificate or an individual's practising certificate and audit qualification or insolvency licence prevents a firm or individual only from conducting audit or insolvency work. In most cases the individual will retain a practising certificate allowing him or her to conduct all other areas of public practice work, including accountancy and tax.
- 5.2.8 Relevant factors to take into consideration (this list is not exhaustive):
- the firm or individual has made no or wholly inadequate proposals for rectifying the situation
 - the situation has occurred before and the firm or individual has failed to carry out the proposals it made and/or has failed to ensure the situation did not occur again or failed again to deal with the matter appropriately.

Applications for certificates or licences

- 5.2.9 The Committee considers applications on the same basis as cases where a firm's or individual's eligibility for an existing certificate is in question. The Committee either grants or refuses the application. If it grants the application then it can impose whatever conditions it believes appropriate.

5.3 GUIDELINE ORDERS FOR THE COMMITTEE

5.3.1 The guideline orders are for **guidance only**. Each case will be judged on its own facts and the guideline orders will therefore not be appropriate in all cases.

Order A1: no regulatory action

The Committee decided to make no order.

Order A2: firm permitted to retain an auditing certificate subject to it taking appropriate remedial action by a specified date

The Committee ordered that M XX provide to ACCA, within 60 days of today's hearing, proof of his control of XX Limited. He must provide evidence that he has a majority of the voting rights and, as the qualified person on the board, the casting vote.

In the event that M XX does not provide the necessary evidence that he is in control of XX Limited by the specified date, then the firm's auditing certificate is to be withdrawn.

Order A3: withdrawal of firm's auditing certificate

The Committee found that the firm did not satisfy the eligibility requirements contained in Practising Regulation 6(*insert as appropriate*) and made an order pursuant to Authorisation Regulation 5(1)(a) that the firm's auditing certificate be withdrawn.

The Committee further ordered that any future re-application for audit registration by M XX, or by a firm in which he/she is a principal, must be referred to the Admissions and Licensing Committee.

PART B:
UNSATISFACTORY OUTCOMES TO
MONITORING VISITS

SECTION 6: THE APPROACH ADOPTED BY ACCA

6.1 FIRST VISIT

- 6.1.1 Where a firm's or individual's first visit has an unsatisfactory outcome resulting from significant and widespread deficiencies in compliance with the requirements relating to auditing, insolvency or investment business, the compliance officer informs the firm or individual at the end of the visit of all the deficiencies found and advises the firm on how to improve compliance and the standard of work.
- 6.1.2 The monitoring visit report that is prepared subsequently also identifies the deficiencies found and lists the action that the firm or individual should take to improve its/his work. The report warns the firm or individual that failure to make the necessary improvements will jeopardise its/his continuing eligibility to hold the certificate in question.
- 6.1.3 In most such cases ACCA will not refer the findings of a first unsatisfactory outcome to a visit to the Assessor or Committee but will usually conduct an accelerated second visit according to the perceived risk.
- 6.1.4 An exception to the approach described above is where:
- a firm or individual has failed to control its/his work properly or has made little or no attempt to comply with auditing standards or the requirements relating to insolvency or investment business;
 - there is a possibility of loss to clients; or
 - there is a public interest in the financial statements of the entity being audited.
- 6.1.5 Notwithstanding that it is the firm's or individual's first visit with an unsatisfactory outcome, in such cases ACCA will refer the firm or individual to the Assessor or Committee to consider what regulatory action is appropriate.

6.2 SECOND AND SUBSEQUENT VISITS

Second visit

- 6.2.1 At the second visit a firm or individual, which has had a previous unsatisfactory visit outcome, is expected to have made significant improvements in its work so that it is largely complying with the relevant requirements. Perfection is not expected and ACCA accepts that some deficiencies may remain. A firm or individual which had a satisfactory outcome at its first visit is expected to have maintained that standard.
- 6.2.2 Therefore, where ACCA finds that a firm or individual has made little or no improvement at the second visit and there remain significant and widespread deficiencies in the work, it refers the findings to the Assessor or Committee for him or it to consider taking regulatory action. In addition, ACCA may refer a visit's findings to the Assessor or Committee where a firm's or individual's standard of work has deteriorated significantly after a satisfactory first visit.
- 6.2.3 However, this does not mean that ACCA automatically refers the findings of an unsatisfactory outcome to a second monitoring visit to the Assessor or Committee. If a firm or individual has made a significant improvement but not yet achieved a satisfactory overall outcome, as long as it appears that significant deficiencies are few in number and the firm or individual should be able to achieve a satisfactory overall outcome within a short period of time then ACCA may decide not to refer the findings. Similarly, where a firm had a satisfactory first visit but an unsatisfactory outcome to its second visit ACCA's decision will depend on the degree of deterioration and whether it appears the firm will be able to achieve a satisfactory standard again by the next visit. Where ACCA decides not to refer the findings to the Assessor or Committee it will usually carry out an accelerated monitoring visit.

Third or subsequent visit

- 6.2.4 At a third or subsequent visit ACCA expects that a firm's or individual's work will be largely compliant with the relevant requirements and the outcome of the visit to be satisfactory. If it is not then ACCA will consider referring the findings to the Assessor or Committee. Such a referral is not automatic and ACCA may decide to carry out an accelerated monitoring visit instead, but expects the firm or individual to inform it of the action taken to ensure no further significant deficiencies occur.
- 6.2.5 ACCA considers the circumstances of each case and takes into account the following (this list is not exhaustive):
- the firm's or individual's visit history
 - the nature of the significant deficiencies and how widespread they are
 - whether the individual's or firm's more recent work is of a better standard
 - whether the significant deficiencies arise on the work of one individual
 - the firm's or individual's response to the visit findings.

6.3 LIKELY SCENARIOS

- 6.3.1 At a second, third or subsequent visit, there are four likely scenarios:

Previously satisfactory visit history

- 6.3.2 If the deterioration in the standard of the work is marginal and the firm or individual has produced an action plan to rectify the serious deficiencies which ACCA considers to be satisfactory, ACCA may decide to accelerate the next visit but take no further action. If the deterioration is significant, notwithstanding that this is the first visit with an unsatisfactory outcome, ACCA is likely to make a referral to the Assessor with the recommendation that he imposes conditions on the certificate.

One or more previous unsatisfactory visits but no previous regulatory order or decision

- 6.3.3 ACCA operates a rule of thumb that a second unsatisfactory outcome at any time in a firm's or individual's monitoring visit history is likely to result in a referral to the Assessor with the recommendation that he imposes conditions on the certificate. However, ACCA considers the facts of each case and may decide to accelerate the next visit but take no further action, provided that the serious deficiencies are isolated and the firm or individual has produced an action plan to rectify the serious deficiencies which ACCA considers to be satisfactory. Conversely, in some circumstances, ACCA may consider that the deterioration is so significant and the circumstances are such that there appears little prospect of the firm or individual achieving and sustaining a satisfactory standard of work in future. In such cases, ACCA is likely to refer the matter to the Committee with the recommendation that it withdraws the certificate.

Current visit was required by the Assessor or Committee

- 6.3.4 If the firm or individual is subject to existing conditions previously placed on it by the Assessor or Committee and the current visit has a satisfactory outcome then the firm or individual is released from those conditions.
- 6.3.5 However, if the firm or individual has still not achieved a satisfactory overall outcome, ACCA refers the findings to either the Assessor or Committee depending on the regulatory action that ACCA is recommending. If it appears that the firm or individual is not willing or able to achieve a satisfactory standard of work, ACCA's recommendation to the Committee will be that it withdraws the certificate. If ACCA considers that the firm or individual has made significant improvements under the existing order, is close to the required standard of work and is capable of achieving it within a short period of time, ACCA will refer the case to the Assessor with the recommendation that the individual or firm be permitted to retain the certificate subject to conditions, which are either similar to those already in place or which are more stringent.

Deterioration after being released from previous conditions

- 6.3.6 In this scenario (which will only occur at a third or subsequent visit) the firm or individual has previously been subject to conditions imposed by the Assessor or Committee and subsequently achieved a satisfactory standard of work but has then deteriorated. In most such cases it will appear that the previous conditions were not effective in the longer term and the individual or firm does not appear capable of sustaining a satisfactory standard of work. ACCA will refer these cases to the Committee with the recommendation that it withdraws the certificate. In exceptional cases, however, ACCA may consider that the deterioration is marginal and easily remedied, and will refer the findings to the Assessor with the recommendation that he imposes conditions for a second time.

SECTION 7: GUIDANCE FOR THE COMMITTEE AND ASSESSOR

7.1 INTRODUCTION

7.1.1 In all cases where it makes a referral, ACCA indicates in its report whether the firm or individual has improved or deteriorated and how significant and widespread are the deficiencies in the firm's or individual's work. ACCA also makes a recommendation based on the circumstances of the case and it is then for the Assessor or Committee to consider what action to take.

7.2 FIRST REFERRAL OF THE FINDINGS OF A MONITORING VISIT

7.2.1 As described ACCA does not normally refer the findings of a first visit to the Assessor or Committee unless the firm or individual has made little or no attempt to comply with the relevant requirements. Therefore it will usually not be until a second unsatisfactory outcome to a visit that the Assessor or Committee has the opportunity to consider the findings on a firm's or individual's work.

7.2.2 Therefore in almost all cases which the Assessor or Committee considers, a firm or individual will have had one or more previous monitoring visit and received advice both orally and in writing on how to improve the standard of its work and its compliance with the relevant requirements. In addition, it or he will have had a further period since the previous visit to improve its/his work, and, in spite of this, the firm or individual appears not to have achieved a satisfactory standard of work.

7.2.3 The Assessor or Committee does not usually consider withdrawing a firm's or individual's certificate at this stage but has adopted an approach which allows a firm or individual to continue to undertake the work to which the certificate relates while taking appropriate alternative regulatory action.

7.2.4 In cases concerning **audit work**, this usually involves making a decision on the lines of **Decision B2** (Assessor) and **Order B8** (Committee).

- 7.2.5 In **insolvency** cases, this usually involves making a decision on the lines of **Decision B3** (Assessor) and **Order B9** (Committee). In extreme cases where the interests of creditors could be jeopardised, it may be necessary to consider withdrawing the insolvency licence (see **Order B12**) or ordering the practitioner to transfer some types of case to another practitioner.
- 7.2.6 In **investment business** cases, this usually involves making an order on the lines of **Order B10**. In addition, given the possibility of loss to clients from poor investment advice, it may be necessary to consider the withdrawal of a firm's investment business authorisation (see **Order B13**) or preventing it from conducting advisory investment business.
- 7.2.7 The Assessor or Committee, however, takes account of the differing facts of each case, including the written representations from the firm or individual. They may, for instance, vary **Decision B2** and **Order B8** in the case of unsatisfactory audit work. For example, the Assessor or Committee may decide:
- to impose external 'hot' reviews if the firm has Public Interest Entity audits or accepts such appointments in future; or
 - to specify or restrict the number of such clients whose audit files are to be subject to 'hot' review.
- 7.2.8 The Assessor or Committee may decide that the withdrawal of a certificate should be considered even though the holder has not been subject to regulatory action previously. This is most likely where the work is of a poor standard and the holder has failed to act following the previous visit (where applicable) or to respond appropriately or at all to the report on the current visit. The referral to the Committee to consider certificate withdrawal may be made by ACCA or by the Assessor (see **Decision B4**). Whether the Committee will withdraw a certificate at this stage will then depend on the holder's action following the referral to the Committee and his or its representations at the hearing. Where the Committee decides not to withdraw the certificate it usually imposes conditions appropriate to the circumstances and the type of certificate held.

7.2.9 In some cases ACCA will refer the findings of a certificate holder's first monitoring visit to the Assessor or the Committee. This will usually be because of concerns over the holder's compliance with ACCA's regulations relating to its eligibility for a certificate or licence, in which case the referral will be direct to the Committee. Nevertheless there will be cases where the referral results solely from the firm's or individual's poor standard of work. In such cases the Assessor or Committee considers whether it is appropriate to treat the firm or individual differently from most other first visits with an unsatisfactory outcome. The decision will be based on the reasons given by ACCA for the referral, which are likely to concern the very poor standard of work and the lack of effort the firm or individual has made to comply with relevant requirements, and the representations from the firm or individual. The Assessor or Committee may decide to take no action (Decision B1 and Order B7), just warn the firm or individual or impose conditions (Decisions B2 and B3 and Orders B8, B9 and B10). The Committee could consider, as in any case, withdrawing the certificate (Orders B11, B12 and B13) but this would be unlikely following a first visit.

7.3 SECOND REFERRAL OF THE FINDINGS OF A MONITORING VISIT

7.3.1 A second referral may result from a certificate holder's failure to improve sufficiently at a visit required by the Assessor or the Committee or from the standard of work deteriorating after the holder being released from previous conditions imposed by the Assessor or Committee.

7.3.2 ACCA makes an initial decision on the appropriate action to take according to the facts of each case and, in most cases, will conclude that the appropriate action is to refer the firm or individual to the Committee with the recommendation that it withdraws the certificate. In cases involving audit work, in accordance with the Regulatory Board's Policy Statement on ACCA's approach to non-compliance with auditing standards, the Committee will normally order that the firm's audit registration be withdrawn (Order B11).

7.4 THIRD REFERRAL OF THE FINDINGS OF A MONITORING VISIT

7.4.1 Such referrals will be rare because in most cases the firm or individual will have had to convince the Committee that there were exceptional reasons not to withdraw the certificate at the second referral (see below). By this time a firm or individual will probably have had at least four visits and two warnings from the Assessor or the Committee. Therefore, if a firm or individual has not attained a satisfactory standard of work at this stage, its audit registration or other certificate is in serious jeopardy and the Committee should withdraw the certificate (Orders B11, B12 and B13).

7.5 EXCEPTIONAL REASONS FOR NOT WITHDRAWING A CERTIFICATE

7.5.1 In exceptional cases, despite ACCA's recommendation and the guidance contained in this document, the Committee may decide that the firm or individual should be given a further chance to achieve a satisfactory standard of work and imposes conditions similar to those which are currently, or were previously, in place (Orders B8, B9 and B10). Before taking such an exceptional course of action, however, the Committee will need to take account of the following:

- the reputation of a profession as a whole is more important than the fortunes of an individual member
- the number of previous opportunities the certificate holder has failed to take in order to show that it/he is willing and able to achieve and sustain a satisfactory standard of work
- the high probability (given the regulatory history) that conditions imposed for a second time are unlikely to ensure that the certificate holder will sustain any improvements indicated by an action plan.

7.5.2 The following should **not** be considered as exceptional reasons for allowing a firm or individual to retain a certificate:

- a) the firm or individual had not taken appropriate action following the previous unsatisfactory visit outcomes but now indicates that it is committed to making the necessary improvements

- b) the firm or individual wishes the Committee to take into account work completed since the most recent monitoring visit and reported on by a training company or other third party, which appears to show that the standard of the firm's or individual's work has improved; this should not be accepted as exceptional because:
- ACCA should not rely on the results of external reviews performed by a third party training company, for future licensing decisions
 - although usually reliable, the training company is not impartial and is being paid by the firm for the report
 - the post-visit audit work was not the firm's work at the time of the visit and, being done in the knowledge that it may affect its continuing registration, it is not representative of its "normal" work
 - taking into account reports on post-visit work undermines the Regulatory Board's Policy Statement because it gives the firm a further opportunity to continue auditing
 - the Admissions and Licensing Committee (and the Appeal Committee) has a responsibility to protect the public interest and so should not take the chance that recent work reviewed by a non-independent training company gives a better indication of future performance than the past few monitoring visits conducted by an ACCA compliance officer

7.6 RE-APPLICATION FOR A CERTIFICATE FOLLOWING ITS WITHDRAWAL BY THE COMMITTEE OR WHERE THE COMMITTEE OR ASSESSOR HAS PLACED CONDITIONS ON A FUTURE RE-APPLICATION

- 7.6.1 Where a firm re-applies for a certificate where the Committee or Assessor decided that any future application should be considered by the Committee, the applicant first has to meet any condition(s) placed on the re-application.

- 7.6.2 The Committee considers re-applications in the same way as other applications and, in addition, takes into account the circumstances in which the applicant previously ceased to hold the certificate. For instance, where the circumstances involved the unsatisfactory standard of work which the certificate enabled the holder to carry out, the Committee will consider the applicant's proposals on how he will ensure he carries out this work satisfactorily in future. Where the Committee decides to grant the application it considers whether to place any conditions on the certificate, bearing in mind that these must be the minimum required to achieve the purpose. The Committee also considers the need to order an early monitoring visit and whether this is to be at the applicant's cost.

SECTION 8: DESCRIPTION OF THE AVAILABLE DECISIONS/ ORDERS AND APPLICATION GUIDELINES

8.1 INTRODUCTION

- 8.1.1 In this section, references to 'work' include audit and regulated work, insolvency work and investment business; regulated work includes assignments where a firm or individual makes a report to a regulator. References to an 'individual' include ACCA members and others who are qualified to carry out audit work or investment business under a certificate issued by ACCA or who hold an insolvency licence from ACCA. Although ACCA's reports on audit work are usually concerned with the failings in a firm's work and the decisions made by the Assessor or the Committee may be imposed on the firm, they are usually imposed only on the relevant audit principals of the firm, including both ACCA members and members of other professional bodies. The order then follows the individual if he moves to another firm which holds an ACCA auditing certificate.
- 8.1.2 **Before imposing a decision, the Assessor or Committee will consider whether it, including any conditions, is the minimum necessary to achieve the purpose, in accordance with the principle of proportionality outlined in Section 2 of this publication. As part of this the Assessor or Committee will need to consider:**
- whether the firm's or individual's explanations and intentions for the future have been taken into account;
 - whether those intentions are likely to result in a sustained satisfactory standard of work in future taking into account the firm's or individual's visit history and the effectiveness of any previous conditions.
- 8.1.3 **The Assessor and Committee may depart from ACCA's recommendation and the guideline decisions/orders and conditions; however, the Assessor or Committee should have regard to the guidance in this document and ensure that the written reasons for decision clearly explain the exceptional circumstances which resulted in any such departure.**

8.2 AVAILABLE DECISIONS/ORDERS

No action

See [Decision B1 and Order B7](#).

8.2.1 The Assessor or Committee may decide to take no action. However, bearing in mind ACCA's decision-making process before making the referral, and the availability of safeguards to protect the public interest and maintain confidence in the profession, this option is usually only appropriate in a small minority of cases:

- where the firm or individual has refuted the findings of ACCA's report to the Assessor's or Committee's satisfaction; or
- the significant failings occurred for exceptional reasons, the firm or individual has acknowledged the weaknesses and taken appropriate action to prevent a recurrence.

For example, the significant deficiencies may have been limited to the work of one individual who has subsequently left the firm or been reassigned to other duties.

Decision placing conditions on the firm's or individuals' certificates

See [Decisions B2 and B3 and Orders B8, B9 and B10](#).

8.2.2 A decision placing conditions on a certificate is effectively the alternative to withdrawing a certificate or licence where the work is unsatisfactory but the holder appears to be willing and able to achieve and then maintain a satisfactory standard in future. The imposition of conditions allows the firm or individual to remedy any deficiencies in the work whilst at the same time putting in place safeguards to protect clients and the public. Orders by the Committee imposing conditions on a certificate **must** be publicised, as set out in section 2.6 of this document. Decisions by an Assessor imposing conditions **may** be publicised.

8.2.3 Where the individual or firm is subject to existing conditions, or has been subject to conditions in the past but has been released after achieving a satisfactory standard of work, the Assessor or Committee should be wary of imposing similar conditions for a second time. This is because the conditions were not effective in bringing about a

significant or sustained improvement in the standard of the work, and therefore the likelihood of similar conditions being effective in the future is reduced.

8.2.4 Relevant factors to take into consideration (this list is not exhaustive):

- the firm's or individual's work is generally of a poor standard
- the firm or individual has usually had two monitoring visits with unsatisfactory outcomes
- the existence and number of any monitoring visits with a satisfactory outcome in the firm's or individual's visit history
- the firm or individual appears willing and able to achieve a satisfactory standard of work
- appropriate safeguards are available to protect the interests of the public to allow the firm or individual time to improve
- the firm or individual has not been subject to previous conditions imposed by the Assessor or Committee.

8.2.5 The Assessor or Committee may impose whatever conditions he or it wishes but they should be the minimum necessary to protect the public and must be appropriate, proportionate, workable and measurable. The conditions usually imposed include:

- for audit and regulated work, restrictions on the number or type of audit appointments the firm is permitted to accept, attendance at relevant courses on auditing or (where the firm holds Public Interest Entity audit appointments or accepts such appointments in future) the requirement to notify ACCA and to have the audit files reviewed by an approved training company before the audit reports are signed ('hot' review) or a combination of these and other conditions
- for insolvency work, the requirement that the individual provides reports on the progress of cases periodically either by the individual or an appropriate third party, or that he does not take on further cases or limits the number of appointments held at any time, or a combination of these and other conditions
- for investment business, the requirement for the relevant principals and staff of the firm to attend appropriate courses to improve their knowledge, or to provide information on how procedures will be improved to ensure compliance with the regulations or a review and report back from an appropriate third party after a short period of time, or a combination of these and other conditions. Where there is a risk that non-compliance may result in financial loss to clients it may be appropriate to prevent a firm advising clients on specific investments for a period or until specific conditions are met
- in all cases an early follow up visit by ACCA compared with the routine cycles of six years for audit monitoring visits, three years for insolvency monitoring visits and five years for investment business monitoring visits; the firm or individual is usually required to pay a contribution towards the cost of the ordered early visit so that this cost does not fall on firms or individuals which have satisfactory outcomes to their visits
- in all cases warning the firm or individual that failure to improve the conduct of the relevant work will jeopardise the holding of the relevant certificate.

Order to withdraw or suspend the firm's or individual's certificate or licence

See **Decisions B4 and B5 and Orders B11, B12 and B13**

- 8.2.6 Suspension of a certificate or licence until the occurrence of a specified event, or withdrawal of a certificate or licence, is appropriate where a firm or individual is unable to satisfy the Committee that the work will improve to a satisfactory standard within an acceptable period of time and that the improvements will be sustained in future. Where the Committee does suspend or withdraw a certificate or licence it is usually appropriate to place conditions on any re-application for the certificate. For example, on **audit work** the audit principals are expected to show that they have improved their knowledge of auditing before reapplying by attending an appropriate course and passing an examination on auditing. Orders by the Committee suspending or withdrawing a certificate **must** be publicised, as set out in section 2.6 of this document.
- 8.2.7 The suspension or withdrawal of a certificate or licence prevents the holder only from conducting the relevant work. The individual will retain a practising certificate allowing him or her to conduct all other areas of public practice work, including accountancy and tax. It is unlikely that it would be appropriate to withdraw a member's practising certificate solely as a result of poor audit or insolvency work or investment business.

8.2.8 Relevant factors to take into consideration (this list is not exhaustive):

- the firm's or individual's work is generally of a poor standard
- the firm or individual has improved but has still not achieved a satisfactory standard of work in spite of previous advice
- the firm or individual has not shown over time that it is able or willing to achieve and sustain a satisfactory standard of work
- the firm or individual has previously been subject to conditions imposed as a result of unsatisfactory work but has either not improved sufficiently while subject to those conditions, or has not sustained the improvement following release
- the individual or firm has taken or proposed action designed to improve the work and maintain it at a satisfactory standard only after being advised that its certificate is at risk of being withdrawn following the unsatisfactory outcome to the most recent monitoring visit
- there is a risk of financial loss to clients (investment business) or creditors (insolvency) and there are no appropriate safeguards available which would reduce the risk to an acceptable level, such as restricting what the certificate holder may do.

8.2.9 In some cases the withdrawal of a certificate is considered a last resort for the following reasons:

- in **investment business** cases, the firm loses the protective cover the certificate provides in the event that the firm becomes incidentally involved in investment business in the course of providing tax and accountancy services; as an alternative the Committee can order that the firm in future provides no advice on specific investment products if it appears this will be effective in preventing potential loss to clients
- in **insolvency** cases, it will prevent the individual earning his living as an insolvency practitioner in future and will require that he or ACCA arranges for the transfer of all his appointments to another insolvency practitioner.

Conditions on future re-application following voluntary surrender of certificate

See Decision B6 and Orders B14, B15 and B16

- 8.2.10 Sometimes a holder relinquishes a certificate before the Assessor or the Committee can make a decision. This may happen following a first referral of a firm to the Assessor or the Committee or a second or subsequent referral. The Assessor or Committee always takes into account the particular facts of each case, but the decision tends to differ depending on whether the holder has previously been subject to conditions:
- on a **first referral**, because this is the stage where conditions would normally be imposed if the firm was continuing to carry out the work, the Assessor or Committee usually decides that any future re-application must be referred to the Committee, but does not normally impose any pre-condition such as passing a test of competence
 - on a **second referral**, because this is normally the stage where ACCA has referred the case to the Committee with the recommendation that it withdraws the certificate, the Committee usually imposes the same condition on re-application as it would if it had withdrawn the certificate i.e. an appropriate test of competence.
- 8.2.11 Orders by the Committee or decisions by an Assessor imposing conditions on a future reapplication for a certificate **may** be publicised, as set out in section 2.6 of this document.

8.3 GUIDELINE DECISIONS AND ORDERS

8.3.1 The guideline decisions and orders are for **guidance only** and relate to the most common situations where the Assessor or Committee is considering the action necessary following the unsatisfactory outcome to a monitoring visit. Each case will be judged on its own facts and the guideline decision/order will therefore not be appropriate in all cases.

Index to Guideline decisions and orders

Decision	Type of work	Authority	
		Regulatory Assessor	Admissions and Licensing Committee
No regulatory action	All	Decision B1	Order B7
Conditions on certificate	Audit	Decision B2	Order B8
	Insolvency	Decision B3	Order B9
	Investment business	N/A	Order B10
Certificate withdrawal is appropriate	Audit	Decision B4	Order B11
	Insolvency	Decision B5	Order B12
	Investment business	N/A	Order B13
Conditions on future reapplication	Audit	Decision B6	Order B14
	Insolvency	N/A	Order B15
	Investment business	N/A	Order B16

8.3.2 Guideline decisions for the Regulatory Assessor

Decision B1: no regulatory action

On the basis of the above I have decided pursuant to Authorisation Regulation 7(3)(a) that no regulatory action is necessary in this case.

Decision B2: conditions in audit cases where firm retains an auditing certificate

On the basis of the above I have decided pursuant to Authorisation Regulations 7(2)(f) and 7(3)(b) that M XX and M XX should be required to:

- i provide Governance - Practice Monitoring within 30 days of the date of written notification of this decision with a list of current audit clients, identifying any Public Interest Entity (PIE) audits;
- ii promptly notify Governance – Practice Monitoring if the firm accepts any new PIE audit appointments or if any of the PIE audits identified in i above ceases to be an audit client at any time in the future while this decision remains in effect;
- iii have all future audit work on all PIE audit clients identified in i and ii above and confirmed by Governance – Practice Monitoring reviewed by a training company before audit reports are signed, such training company being subject to ACCA approval;
- iv notify ACCA of the identity of the training company referred to in iii above within 14 days of the date of Governance - Practice Monitoring confirming the PIE audit clients to be subject to review in accordance with i and/or ii above;
- v submit all reports prepared by the nominated training company (including details of how the firm has addressed the points raised by the reviewer) pursuant to iii above to Governance – Practice Monitoring within seven days of signing the audit report;
- vi be subject to an accelerated monitoring visit before (*between 1-2 year's time*) at a cost to the firm of £1,000 and £400 for each additional audit qualified principal; and
- vii note that failure to make the necessary improvements in the level of compliance with auditing standards and with the requirements of any regulators by that time will jeopardise *his/her/their* and *his/her/their* firm's continuing audit registration.

Decision B3: conditions in insolvency cases where an individual retains an insolvency licence

On the basis of the above I have decided pursuant to Authorisation Regulations 7(2)(f) and 7(3)(b) that M XX should be required to:

- i have *all insolvency cases/one (or more) of each insolvency case type (or specify the type of cases), selected by Governance - Practice Monitoring*, reviewed by *a training company or an insolvency practitioner* between *(month and month, year)* and a written report on the conduct of each case submitted to ACCA by *(date)*, such training company or insolvency practitioner being subject to ACCA approval;
- ii notify ACCA within six weeks of the date of written notification of this decision of the *training company or insolvency practitioner* referred to in i above;
- iii prepare a report on the progress of *all insolvency cases/one (or more) of each insolvency case type (or specify the type of cases), selected by Governance - Practice Monitoring*, between *(month and month, year)* and submit this to ACCA by *(date)*;
- iv be subject to an accelerated monitoring visit before *(date in approximately 1 to 2 years' time)* at a cost to M XX of £1,000 per compliance officer per day; and
- v note that failure to make the necessary improvements in the level of compliance with the Insolvency Act 1986 and the subordinate legislation and the SIPs by that time will jeopardise *his/her* insolvency licence.

Decision B4: where it is appropriate for withdrawal of auditing certificate or audit qualification to be considered

On the basis of the above I have decided pursuant to Authorisation Regulation 7(3)(c) to refer this case to the Admissions and Licensing Committee so that it can consider whether to exercise its powers under Authorisation Regulation 5(2) to withdraw M XX's and M XX's and *his/her/their* firm's audit certificates.

Decision B5: where it is appropriate for withdrawal of an insolvency licence to be considered

On the basis of the above I have decided pursuant to Authorisation Regulation 7(3)(c) to refer this case to the Admissions and Licensing Committee so that it can consider whether to exercise its powers under Authorisation Regulation 5(2) to withdraw M XX's insolvency licence.

Decision B6: where the firm has already relinquished audit registration

I note that M XX has *relinquished/not renewed his/her* practising certificate with audit qualification and *his/her* firm's auditing certificate.

On the basis of the above I have decided pursuant to Authorisation Regulation 7(4) that any future re-application for audit registration by M XX, or by a firm in which *he/she* is a principal, must be referred to the Admissions and Licensing Committee, *which will not consider the application until he/she has attended a practical audit course, approved by ACCA and, following the date of this decision, passed paper P7, Advanced Audit and Assurance, of ACCA's professional examinations.*

8.3.3 Guideline orders for the Admissions and Licensing Committee

Order B7: no regulatory action

The Committee decided to make no order.

Order B8: conditions in audit cases where firm retains an auditing certificate

The Committee made an order pursuant to Authorisation Regulation 5(2)(f) that M XX and M XX be required to:

- i provide Governance - Practice Monitoring within 30 days of the date of written notification of this decision with a list of current audit clients, identifying any Public Interest Entity (PIE) audits;
- ii promptly notify Governance – Practice Monitoring if the firm accepts any new PIE audit appointments or if any of the PIE audits identified in i above ceases to be an audit client at any time in the future while this decision remains in effect;
- iii have all future audit work on all PIE audit clients identified in i and ii above and confirmed by Governance – Practice Monitoring reviewed by a training company before audit reports are signed, such training company being subject to ACCA approval;
- iv notify ACCA of the identity of the training company referred to in iii above within 14 days of the date of Governance – Practice Monitoring confirming the PIE audit clients to be subject to review in accordance with i and/or ii above;
- v submit all reports prepared by the nominated training company (including details of how the firm has addressed the points raised by the reviewer) pursuant to iii above to Governance – Practice Monitoring within seven days of signing the audit report;
- vi be subject to an accelerated monitoring visit before (*between 1-2 years' time*) at a cost to the firm of £1,000 and £400 for each additional audit qualified principal; and
- vii note that failure to make the necessary improvements in the level of compliance with auditing standards and with the requirements of any regulators by that time will jeopardise *his/her/their* and *his/her/their* firm's continuing audit registration.

Order B9: conditions in insolvency cases where an individual retains an insolvency licence

The Committee made an order pursuant to Authorisation Regulation 5(2)(f) that M XX be required to:

- i have *all insolvency cases/one (or more) of each insolvency case type (or specify the type of cases), selected by Governance - Practice Monitoring, reviewed by a training company or an insolvency practitioner* between *(month and month, year)* and a written report on the conduct of each case submitted to ACCA by *(date)*, such training company or insolvency practitioner being subject to ACCA approval;
- ii notify ACCA within six weeks of the date of written notification of this decision of the *training company or insolvency practitioner* referred to in i above;
- iii prepare a report on the progress of all insolvency cases/one (or more) of each insolvency case type (or specify the type of cases), selected by Governance - Practice Monitoring, between (month and month, year) and submit this to ACCA by (date)
- iv be subject to an accelerated monitoring visit before *(date in approximately 1 to 2 years' time)* at a cost to M XX of £1,000 per compliance officer per day; and
- v note that failure to make the necessary improvements in the level of compliance with the Insolvency Act 1986 and the subordinate legislation and the SIPs by that time will jeopardise *his/her* insolvency licence.

Order B10: conditions in investment business cases where firm retains an investment business certificate

The Committee made an order pursuant to Authorisation Regulation 5(2)(f) that *(name of firm)* be required to:

- i cease to advise on *all investments/certain investments* until it has produced written procedures to ensure future compliance with the Irish Investment Business Regulations which are satisfactory to ACCA *and/or* M XX and M XX have attended appropriate courses on investment products which are satisfactory to ACCA;
- ii produce the information requested in i within three months, failing which the case should be referred back to the Committee;
- iii be subject to an accelerated monitoring visit before *(approximately one year)* at a cost to the firm of £1,000 and £400 for each additional principal; and
- iv note that a failure to make the necessary improvements in the level of compliance with the Irish Investment Business Regulations by that time will jeopardise the firm's continuing investment business authorisation.

Order B11: withdrawal of auditing certificates

The Committee made an order pursuant to Authorisation Regulation 5(2)(f) that:

- i M XX's practising certificate with audit qualification and the firm's auditing certificate be withdrawn and he be issued with a practising certificate; and
- ii any future re-application for audit registration by M XX, or by a firm in which he is a principal, must be referred to the Admissions and Licensing Committee, which will not consider the application until he has attended a practical audit course, approved by ACCA and, following the date of this order, passed paper P7, Advanced Audit and Assurance, of ACCA's professional examinations.

Order B12: withdrawal of insolvency licence

The Committee made an order pursuant to Authorisation Regulation 5(2)(f) that M XX's insolvency licence be withdrawn, and that any future re-application for an insolvency licence by M XX must be referred to the Admissions and Licensing Committee *which will not consider the application until he/she has (insert condition).*

Order B13: withdrawal of investment business authorisation

The Committee made an order pursuant to Authorisation Regulation 5(2)(f) that the firm's investment business certificate be withdrawn, and that any future re-application for investment business authorisation by M XX and M XX, or by a firm in which *he/she/any of them* is a principal, must be referred to the Admissions and Licensing Committee, which will not consider the application until *he/she/they (insert condition).*

Order B14: where the firm has already relinquished audit registration

The Committee noted that M XX had *relinquished/not renewed his/her* practising certificate with audit qualification and *his/her* firm's auditing certificate.

The Committee made an order pursuant to Authorisation Regulation 6(18) that any future re-application for audit registration by M XX, or by a firm in which *he/she* is a principal, must be referred to the Admissions and Licensing Committee, *which will not consider the application until he/she has attended a practical audit course, approved by ACCA and, following the date of this order, passed paper P7, Advanced Audit and Assurance, of ACCA's professional examinations.*

Order B15: where the where the individual has already relinquished his insolvency licence

The Committee noted that M XX had *relinquished/not renewed his/her* insolvency licence.

The Committee made an order pursuant to Authorisation Regulation 6(18) that any future re-application for an insolvency licence by M XX must be referred to the Admissions and Licensing Committee *which will not consider the application until he/she has (insert condition)*.

Order B16: where the firm has already relinquished investment business authorisation

The Committee noted that the firm had *relinquished/not renewed* its investment business authorisation.

The Committee made an order pursuant to Authorisation Regulation 6(18) that any future re-application for investment business authorisation by M XX *and M XX*, or by a firm in which *he/she/any of them* is a principal, must be referred to the Admissions and Licensing Committee, which will not consider the application until *he/she/they (insert condition)*.