Think Ahead

ACCA

Rulebook 2017

Think Ahead

Rulebook

£20.00

ACCA
The Adelphi
1-11 John Adam Street
London
WC2N 6AU

Tel: +44 (0)141 582 2000
Fax: +44 (0)141 582 2222
E-mail: info@accaglobal.com

Internet: www.accaglobal.com

© The Association of Chartered Certified Accountants (ACCA) 2017
No part of this publication may be reproduced,
in any format, without the prior written permission of ACCA.

ISBN 978-1-85908-495-3
January 2017

Typeset & Printed in the UK by
Innerworkings Europe Ltd, Solihull B90 4GT

Rulebook

Contents

Page

Section 1
Royal Charter and bye-laws

1.1 Royal Charter 3

1.2 Bye-laws

Definitions 11
Members 12
Students 13
Practising certificates 14
Insolvency licences 15
Investment business 15
General 17
Liability to disciplinary action 17
Disciplinary process 19
Obligation to co-operate and inform 20
Application and interpretation 20
Appointment of regulatory board 21
Elections and appointments to Council 22
The Council 27
Committees 27
Local branches and committees 27
Proceedings of the Council 28
Staff 28
Accounts and audit 28
Indemnity 29
Investments 29
General meetings 30
Proceedings at general meetings 31
Common Seal 34
Notices 34
Annex 1 – The Chartered Certified Accountants' Fees Regulations 2016 35
Annex 2 – The Chartered Certified Accountants' Electronic Communications Regulations 2002 36
Annex 3 – The Chartered Certified Accountants' Online Provision of Annual Reports and Notices Regulations 2006 38

Section 2

Regulations

Introduction 42

Page

2.1 The Chartered Certified Accountants' Membership Regulations 2014

Citation, commencement and application 43
Interpretation 43
Eligibility for membership 46
Members' obligations and rights 48
Eligibility for affiliate status 52
Affiliates' obligations and rights 52
Eligibility for registered student status 53
Registered students' obligations and rights 54
Application procedure to become a member or registered student 57
Resignation of member, affiliate or registered student status 57
Removal of member, affiliate or registered student for non-payment 57
Removal of member for non-compliance with CPD regulations 58
Bankruptcy 58
Readmission 60
Service of notices and documents 60
Attendance 61
Hearings. 61
Waiver 61
Appendix 1 – ACCA Qualification examination structure 62
Appendix 2 – Practical experience requirement (PER) 63
Appendix 3 – Foundations in Accountancy Suite of Qualifications examination structure 65
Appendix 4 – Required experience to obtain Certified Accounting Technician status 66

2.2 The Chartered Certified Accountants' Global Practising Regulations 2003

Citation, commencement and application 68
Interpretation 68
Restrictions on carrying on public practice 70
Meaning of public practice 70
The practising certificate 71
Eligibility for a practising certificate 71
Qualifications 72
Fit and proper persons 73
Professional indemnity insurance 74
Continuing professional development 76
Continuity of practice 77
Notification 78
Conduct 80
Monitoring, quality assurance and compliance 80
Disclosure of information 80
Appendix 1 – Competences of practising certificate holders 81

Page

Annexes:
Annex 1 – Additional Practising Regulations for the United Kingdom, Jersey, Guernsey and Dependencies and the Isle of Man 83
Annex 2 – Additional Practising Regulations for the Republic of Ireland 104
Annex 3 – Additional Practising Regulations for Cyprus 120
Annex 4 – Additional Practising Regulations for Zimbabwe 125
Annex 5 – Additional Practising Regulations for Australia 130
Annex 6 – Additional Practising Regulations for the Republic of South Africa 133

2.3 The Chartered Certified Accountants' Designated Professional Body Regulations 2001
Citation, commencement and application 135
Interpretation 136
Eligibility to carry on regulated activities 146
Scope 149
Independence 154
Relations with clients 154
Credit-related regulated activities 158
Compliance procedures 158
Enforcement 159
Waivers and service 161
Liability 161

2.4 The Chartered Certified Accountants' Irish Investment Business Regulations 2013
Citation, commencement and application 162
Interpretation 163
Eligibility for an investment business certificate (Ireland) 166
Scope 169
Consumer Protection 172
Independence 173
Relations with clients 173
Effecting transactions for clients 174
Advising clients 175
Additional requirements in certain circumstances 176
Compliance procedures 178
Enforcement 179
Waivers and service 181
Liability 182
Appendix 1 – Receipt in compliance with section 30 of the Act 182
Appendix 2 – Essential details of a transaction 183

2.5 The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014
Citation, commencement and application 184
Interpretation 184

Page

Appointment and establishment of Regulatory Board, Appointments Board, Qualifications Board and Standards Board and appointment of members 186
Establishment of committees, and appointment of panel of committee members, assessors, regulatory assessors and legal advisers 188
Constitution of Disciplinary, Admissions and Licensing, Appeal, Health, Consent Orders and Interim Orders Committees and eligibility 189
Powers and responsibilities of Disciplinary, Admissions and Licensing, Appeal, Health, Consent Orders and Interim Orders Committees 190
General 190
Appendix 1 192

2.6 The Chartered Certified Accountants' Authorisation Regulations 2014

Citation, commencement and application 195
Interpretation 195
Applications and re-applications for certificates etc. 197
Validity and renewal 201
Withdrawal of, suspension of, or imposition of conditions on certificates: general 201
Withdrawal of, suspension of, or imposition of conditions on certificates: hearings 202
Imposition of conditions on certificates by a regulatory assessor 208
Correction of errors 210
Effective date and appeals 211
Costs 211
Service of notices and documents 211
Attendance 212
Hearings 212
Applications for waivers etc. 213
Cross-applicability of these regulations to other regulations dealing with applications for certificates, approvals, membership etc. 213
Waiver 213

2.7 The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014

Citation, commencement and application 214
Interpretation 214
Rights and obligations of the relevant person in relation to complaints, investigations and proceedings under these regulations 217
Consideration of complaint 217
Assessor: review of decision that a case should be closed or that allegations should rest on the relevant person's file 220
Assessor: decisions upon a report of disciplinary allegations 221
Rest on file 222
Consent orders 223
Referral to Disciplinary Committee and nomination of case presenter 225
Disciplinary Committee: notices, case management and ancillary provisions 226
Disciplinary Committee: publicity and open hearings 231
Disciplinary Committee: procedure and evidence at hearings 232

Page

Orders and sanction 233
Consequential orders 236
Costs 236
Compensation 236
Notice 236
Appeal 236
Correction of errors 237
Effective date 237
Ill health 237
Service of notices and documents 238
Payment 239
Attendance 239
Hearings 239
Public interest cases 239
Waiver 240
Extension of time 240

2.8 The Chartered Certified Accountants' Appeal Regulations 2014

Citation, commencement and application 241
Interpretation 241
Appeal 243
Applying for permission to appeal 243
Form of application notice and grounds of appeal 243
Permission to appeal 245
The appeal 248
Preparation for the appeal hearing 248
Notice, representation and adjournments 249
The hearing 250
Orders of Appeal Committee 251
Costs 252
Effect on costs of withdrawal of appeal 253
Notice 253
Correction of errors 253
Effective date 254
Publicity 254
Open hearings 255
Service of notices and documents 255
Payment 257
Attendance 257
Hearings 257
Public interest cases 257
Transitional provisions 258
General 258
Waiver 258

Page

2.9 The Chartered Certified Accountants' Interim Orders Regulations 2014

Citation, commencement and application ... 259
Interpretation ... 259
Interim orders ... 260
Basis of application ... 261
Notice of hearings ... 261
Publicity and open hearings ... 261
Procedure at hearings ... 262
Orders of the Interim Orders Committee ... 263
Review ... 263
Costs ... 264
Correction of errors ... 264

2.10 The Chartered Certified Accountants' Health Regulations 2014

Citation, commencement and application ... 265
Interpretation ... 265
Applicability ... 266
Ill health ... 266
Health hearing: procedure and evidence ... 267
Health hearing: determinations ... 268
Rest on file ... 270
Notice ... 270
Reviews ... 270
Publicity ... 270
Right of appeal ... 271
Costs ... 271
Correction of errors ... 271

Section 3

Code of Ethics and Conduct

Preface to the ACCA Code of Ethics and Conduct ... 275
Scope and authority of the Code ... 275
How to use the Code ... 275
To whom does the Code apply? ... 276
Non-compliance with the Code ... 276

Part A: General Application of the Code

100 Introduction and fundamental principles ... 278

Fundamental principles ... 278
Conceptual framework approach ... 279
Threats and safeguards ... 280
Conflicts of interest ... 281
Ethical conflict resolution ... 281
Communicating with those charged with governance ... 282

Page

110 Integrity 283

120 Objectivity 284

130 Professional competence and due care 285

140 Confidentiality 286

150 Professional behavior 288

Part B: Professional Accountants in Public Practice

200 Introduction 290
Threats and safeguards 290

210 Professional appointment 295
Client acceptance and continuance 295
Engagement acceptance 296
Changes in a professional appointment 296
Matters to be communicated to proposed clients 299
Matters to be communicated to proposed accountants 300
Unpaid fees of previous accountant 300
Transfer of books and papers 300
Transfer of information 301

220 Conflicts of interest 302
Conflicts between professional accountants' and clients' interests 306
Commission and other financial gains 307
Agency work 307
Conflicts between the interests of different clients 308
Managing conflicts between clients' interests 308
Conflicts between the interests of professional accountants and firms 309
Disengagement 309

225 Responding to non-compliance with laws and regulations 310
Purpose 310
Scope 311
Responsibilities of the client's management and those charged with governance 312
Responsibilities of professional accountants in public practice 312

230 Second opinions 322

240 Fees and other types of remuneration 323
Basis of fees 323
Referral fees and commission 324
Commission on indemnity terms 325
Insolvency work in the UK 326
Management buy-out and raising venture capital 326
Fee disputes 326
Investment business in the UK and Ireland 327
Advertisements 327

Page

250 Marketing professional services 328
Reference to fees in promotional material 329
Promotional material and promotional activities 330
Investment business 330

260 Gifts and hospitality 331

270 Custody of client assets 332
Clients' monies 332
Clients' accounts 333
Opening a client bank account 333
Payments into a client bank account 333
Withdrawals from a client bank account 333
Fees paid in advance 334
Interest payable on client account monies 334
Monies held by the firm as stakeholder 335
Maintaining records 335
Fees and fee disputes 335
Bank 335
Insolvency work: UK 335
Untraceable funds 336

280 Objectivity – All services 337

290 Independence – Audit and review engagements 338
Structure of section 339
A conceptual framework approach to independence 339
Networks and network firms 341
Public interest entities 342
Related entities 343
Those charged with governance 343
Documentation 344
Engagement period 344
Mergers and acquisitions 345
Breach of a provision of this section 346
Application of the conceptual framework approach to independence 349
Financial interests 349
Loans and guarantees 353
Business relationships 354
Family and personal relationships 355
Employment with an audit client 358
Temporary staff assignments 360
Recent service with an audit client 360
Serving as a director or officer of an audit client 361
Long association of senior personnel (including partner rotation) with an audit client 362

Page
Provision of non-assurance services to an audit client ... 363
Management responsibilities ... 364
Administrative services ... 365
Preparing accounting records and financial statements ... 366
Valuation services ... 367
Taxation services ... 369
Internal audit services ... 373
IT systems services ... 375
Litigation support services ... 376
Legal services ... 376
Recruiting services ... 378
Corporate finance services ... 378
Fees ... 380
Fees – Relative size ... 380
Fees – Overdue ... 381
Contingent fees ... 381
Compensation and evaluation policies ... 382
Gifts and hospitality ... 383
Actual or threatened litigation ... 383
Reports that include a restriction on use and distribution ... 384

291 Independence – Other assurance engagements ... 387
Structure of section ... 388
A conceptual framework approach to independence ... 388
Assurance engagements ... 390
Assertion-based assurance engagements ... 390
Direct reporting assurance engagements ... 391
Reports that include a restriction on use and distribution ... 391
Multiple responsible parties ... 392
Documentation ... 393
Engagement period ... 393
Breach of a provision of this section ... 394
Application of the conceptual framework approach to independence ... 395
Financial interests ... 396
Loans and guarantees ... 398
Business relationships ... 399
Family and personal relationships ... 400
Employment with assurance clients ... 402
Recent service with an assurance client ... 404
Serving as a director or officer of an assurance client ... 404
Long association of senior personnel with assurance clients ... 405
Provision of non-assurance services to an assurance client ... 406
Management responsibilities ... 406
Other considerations ... 407
Fees ... 408
Fees – Relative size ... 408

Page
Fees – Overdue ... 408
Contingent fees ... 409
Gifts and hospitality ... 409
Actual or threatened litigation ... 410

Interpretation 2005-01 ... 411

Supplementary requirements and guidance:

B1 Professional duty of confidence in relation to defaults and unlawful acts of clients and others ... 415
Introduction ... 415
Relationship between professional accountants and their clients ... 416
Verification of information by reference to the records of a third party who is also a client ... 417
Disclosure of defaults or unlawful acts ... 417
Obligatory disclosure ... 418
Voluntary disclosure ... 419
Disclosure in the public interest ... 419
Disclosure to protect a professional accountant's interests ... 420
Disclosure authorised by statute ... 420
Disclosure to non-governmental bodies ... 420
Prosecution of a client or former client ... 421
Appearance as a witness ... 421
Professional accountants' relations with the authorities on clients' behalf ... 421
Professional accountants' own relations with authorities ... 422
Company investigation ... 422
Transmission of report to shareholders ... 423
Urgent cases ... 424
Past accounts and reports ... 424
Shareholders ... 424
Tax authorities ... 424
Other third parties ... 425
Removal of the auditor ... 426
Disclosure of information to office holders under insolvency legislation ... 426
Auditors of companies in liquidation ... 428
Defamation ... 428
Professional accountants' working papers ... 429
Taxation offences and the proceeds of crime ... 430
Past accounts ... 430
Current accounts ... 431
New clients ... 431
Private returns ... 431
Professional responsibility towards clients ... 431
Tax authority powers ... 431

Page
Errors in the taxpayer's favour ... 432
Knowledge of offences relating to VAT or its equivalent ... 432
VAT or its equivalent and accounts ... 432

B2 Anti-money laundering ... 433
Introduction ... 433
Relationship with the local law ... 433
Internal controls and policies ... 434
Client identification ... 434
Record keeping ... 435
Recognition of suspicion ... 436
Reporting suspicious transactions ... 436
Tipping off ... 436
Advisory Services ... 436

B3 Whistleblowing responsibilities placed on auditors ... 437
Introduction ... 437
Whistleblowing duty: non-compliance with law or regulation ... 437
Circumstances indicating non-compliance with law or regulation ... 438
Professional duty of confidence ... 438
Method of reporting ... 438
Whistleblowing duty: other matters of material significance ... 439
Non-audit assignments ... 439

B4 Descriptions of professional accountants and firms and the names of practising firms ... 440
General ... 440
Part I – Descriptions of professional accountants and firms ... 440
Professional accountants' descriptions ... 440
Membership of other accountancy bodies ... 440
Other designatory letters ... 441
Compliance with ACCA Charter, bye-laws, regulations and Code of Ethics and Conduct ... 441
Practice descriptions ... 441
Statements on professional stationery ... 441
Use of the ACCA name and logo ... 442
Sole practitioners ... 442
Specialisms ... 443
Persons named on professional stationery ... 443

Part II – The names of practising firms ... 443
General ... 443
Discussion ... 443
Legal requirements ... 444
New and changed names ... 444
Use of firm's name and premises ... 444
Advisory Services ... 444

Page

Additional requirements for descriptions of professional accountants and firms and the names of practising firms for the UK ... 445
Registered auditors ... 445
Insolvency practitioners ... 446
Investment business ... 446
Additional requirements for descriptions of professional accountants and firms and the names of practising firms for Ireland ... 447
Registered auditors ... 447
Investment business ... 447

B5 Legal ownership of, and rights of access to, books, files, working papers and other documents ... 448
Introduction ... 448
Relationship with the local law ... 449
The contract ... 449
Preservation of documents ... 449
Liens ... 450
Duty of confidentiality ... 450
Access to client papers ... 451
Advisory Services ... 452

B6 Retention periods for books, files, working papers and other documents ... 453
Introduction ... 453
Trusteeships ... 453
General considerations ... 453
Minimum periods for retention ... 454

B7 Activities through corporate or non-corporate organisations ... 455
Introduction ... 455
Provision of accountancy services through companies ... 455
Non-accountancy services ... 455
Organisations offering accountancy and non-accountancy services ... 456
Appointed representatives under the Financial Services and Markets Act 2000 in the United Kingdom ... 456
General ... 456

B8 The obligations of consultants ... 457

B9 Professional liability of accountants and auditors ... 458
Introduction ... 458
Engagement letters ... 458
Excluding or restricting liability to a client ... 459
Advice on limited information ... 459
Avoiding liability to third parties ... 460
Inclusion of the accountant's name on a document issued by a client ... 461
Specialist advice ... 461
Internal complaints-handling procedures ... 461
Advisory Services ... 462

Page

B10 The incapacity or death of a practitioner 463
General 463
Insolvency practitioners: UK 463
Content of continuity agreement 463
Descriptions 464
Records 464
Incapacity of a practitioner 465
Death of a practitioner 465
Statutory audits 465
Ethical considerations 466
ACCA approved employer 467
Advisory Services 467

B11 Estates of deceased persons 468

B12 Corporate finance advice including take-overs 469
Introduction 469
The regulator for take-overs and mergers 469
Objectivity and integrity 469
Conflicts of interest 469
Avoiding conflicts of interest 470
Safeguards 471
Documents for public use 471
Fees 472

Part C: Professional Accountants in Business

300 Introduction 474
Advisory Services 477

310 Potential conflicts 478

320 Preparation and reporting of information 481

330 Acting with sufficient expertise 483

340 Financial interests, compensation and incentives linked to financial reporting and decision making 484

350 Inducements 486
Receiving offers 486
Making offers 487

360 Responding to non-compliance with laws and regulations 488
Purpose 488
Scope 488
Responsibilities of the employing organization's management and those charged with governance 490
Responsibilities of professional accountants in business 490
Responsibilities of senior professional accountants in business 490
Responsibilities of professional accountants other than senior professional accountants in business 494

Page

Supplementary requirements and guidance:

C1 Disclosing confidential information 496

C2 Whistleblowing 497

Part D: Insolvency Code of Ethics

Insolvency Code of Ethics 499
Code of Ethics for Insolvency Practitioners 499
Preface 499
Definitions 499

Part 1 General application of the Code 500
The practice of insolvency 500
Introduction 500
Fundamental principles 500
Framework approach 501
Identification of threats to the fundamental principles 501
Evaluation of threats 503
Possible safeguards 503

Part 2 Specific application of the Code 505
Insolvency appointments 505
Conflicts of interest 507
Practice mergers 507
Transparency 507
Professional competence and due care 508
Professional and personal relationships 509
Identifying relationships 509
Is the relationship significant to the conduct of the insolvency appointment? 509
Dealing with the assets of an entity 511
Obtaining specialist advice and services 511
Fees and other types of remuneration 512
Obtaining insolvency appointments 512
Gifts and hospitality 513
Record keeping 514

The application of the framework to specific situations 514
Introduction to specific situations 514
Part 1 – Examples that do not relate to a previous or existing insolvency appointment 515
Part 2 – Examples relating to previous or existing insolvency appointments 516
Part 3 – Examples in respect of cases conducted under Scottish law 517

Definitions 518

Section 1

Royal Charter and bye-laws

Introduction

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

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

1.1

Royal Charter

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

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

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

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

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

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

(a) *the Association* shall mean The Association of Chartered Certified Accountants as hereby incorporated;

(b) *the bye-laws* shall mean the bye-laws set forth in the Second Schedule hereto or other the bye-laws from time to time of the Association;

(c) *the Council* shall mean the Council of the Association hereinafter referred to and as from time to time constituted in accordance with the bye-laws;

(d) *public practice* means practice as a public accountant in the capacity of sole principal, in partnership or through the medium of a body corporate or otherwise and as applied to an accountant shall have the same connotation; the decision of the Council as to whether or not a person is engaged in public practice shall be conclusive;

(e) *industry and commerce* means the administration of organisations of whatever kind engaged in industrial and commercial activities of every type and shall include the nationalised industries; the decision of the Council as to whether or not a person is engaged in industry or commerce shall be conclusive;

(f) *the public service* means the administrative organisations of central, regional or local government and all public bodies of a non-industrial character; the decision of the Council as to whether or not a person is engaged in the public service shall be conclusive;

(g) *the 1989 Act* means the Companies Act 1989;

(h) words importing the singular only shall include the plural and vice versa, words importing the masculine gender only shall include the feminine gender and words importing persons shall include corporations;

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

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

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

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

(b) to purchase, take on lease or in exchange or hire in any other way acquire any real or personal property or options for acquiring the same in any part of the world considered necessary for the use of members and others or for any purposes of the

Association and to sell, lease, mortgage (by issue of debentures, debenture stock or otherwise), exchange, partition or otherwise deal with in any way any real or personal property, rights or assets of the Association; and to construct, alter and maintain in any part of the world any buildings considered necessary for the use of members and others or for any purposes of the Association and to provide the same with all property and necessary fixtures, fittings, furniture and other equipment;

(c) to accept any gift, endowment or bequest to the Association and to execute and perform any trust attaching thereto;

(d) to accept and take by way of gift and absorb upon any terms the undertaking and assets of any society or body whether incorporated or not having objects similar to those of the Association and to undertake all or such as may be agreed of the liabilities and engagements of any such other society or body but so that the exercise of the powers conferred by this paragraph shall be subject always to the approval of the Association in general meeting (of which meeting not less than twenty-one days' clear notice in writing shall have been given) by resolution passed by not less than two-thirds of the members entitled to vote and voting on such resolution and to the approval of the Lords of Our Most Honourable Privy Council (of which approval a Certificate under the hand of the Clerk of Our said Privy Council shall be conclusive evidence);

(e) to establish and administer or to participate in the establishment and administration of any organisation, whether incorporated or not and whether subsidiary to the Association or not, having as its principal object or one of its principal objects the advancement of the science of accountancy or any part thereof where in the opinion of the Council the interests of the accountancy profession may be most advantageously served through the medium of such an organisation and to establish, maintain, review and finance, alone or in conjunction with others, a body, whether incorporated or not, independent of the Association, having as its object the review of the schemes of regulation and discipline of the Association and other participant accountancy bodies;

(f) to undertake, execute and perform any trusts or conditions affecting any real or personal property of any description acquired by the Association;

(g) to organise, finance and maintain schemes for the granting of diplomas, certificates and other awards (with or without prior examinations or tests) to persons seeking admission to membership of the Association, members of other professional bodies or others and to issue certificates and diplomas to such persons and to provide for the use of designatory letters by such persons, provided that no such diploma, certificate or other award issued by or on the authority of the Association shall contain any statement expressing or implying that it is granted under the authority of any Department of Our Government or other authority unless in fact it is so granted; and provided that no such scheme, open only to members of the Association, as originally established or subsequently amended, shall provide for the use of designatory letters by members of the Association unless and until they shall have been approved by the Association in general meeting and by the Lords of Our Most Honourable Privy Council (of which approval a Certificate under the hand of the Clerk of Our said Privy Council shall be conclusive evidence); and provided also that no member shall in any circumstances be obliged to participate in any such schemes;

(h) to encourage the study of such subjects by providing scholarships, bursaries, prizes and donations on such terms and conditions as may be thought fit, by making grants to universities and other educational institutions, by providing courses, classes, lectures and other tuition for members and others or by making grants for the provision of the same or for research or by such other means as may be thought appropriate;

(i) to promote and facilitate the dissemination and exchange of information on matters of professional interest among members and others by the holding of conferences, meetings and seminars for the reading of papers and reports, by the publication of periodicals, books, monographs or papers and by the promotion, compilation and publication of research studies;

(j) to establish and maintain a library or libraries for the use of members and others;

(k) to provide such services including technical and advisory services as may promote and further the interest and efficiency of members and others and of the accountancy profession generally;

(l) to form local branches and committees or appoint local representatives in any part of the world with such powers and subject to such conditions as the Council may from time to time determine and to make such grants and contributions (if any) to the same as the Council shall think fit;

(m) to procure the Association to be registered or recognised in any overseas country or place and to exercise any of its objects or powers in any part of the world;

(n) to make and carry out any arrangement for joint working or co-operation with any other society or body, whether incorporated or not, carrying on work similar to any work for the time being carried on by the Association;

(o) to borrow or raise money on such terms and on such security as may be thought fit for any of the purposes of the Association; provided that no money shall be raised by the mortgage of any real or leasehold property of the Association without such consent or approval (if any) as may be required by law therefor;

(p) to establish, administer and contribute to any charitable purpose which in the opinion of the Council may tend to promote any of the objects of the Association or which has objects similar to those of the Association and to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and schemes for such purposes, and generally to contribute to or otherwise assist any charitable or benevolent institutions or undertakings and grant donations for any national or public purpose;

(q) to pay to officials and servants of the Association their expenses and such salaries, pensions, gratuities or other sums in recognition of services (including those rendered to the existing Association before the date of this Our Charter) and to make such provision for their widows, children or other dependants as the Council may from time to time think proper;

(r) to operate schemes of regulation and discipline of the Association's members and students and such other persons as agree to be subject to such schemes and, with

one or more other professional accountancy bodies, to establish and participate in a scheme (whether constituted as an incorporated body or not) for the investigation and discipline in certain circumstances of such persons as may be subject to the scheme pursuant to the procedures of that scheme rather than the Association's own disciplinary scheme;

(s) to take all such steps as it thinks fit to enable it to become and operate as a recognised professional body for the purposes of the Financial Services Act 1986 and do anything whatsoever incidental to or in connection therewith and (without prejudice to the generality thereof) may:

(i) implement certification procedures for the purposes of the said Act;

(ii) provide for the constitution of a scheme, fund or other arrangements for the compensation of persons dealing with persons certified by the Association for the purposes of the said Act;

(iii) accept undertakings and enter into agreements with firms or persons (whether individuals or corporations) in relation to the certification of such firms or persons or of firms in which such persons are partners or of corporations with which such persons are directly or indirectly concerned (whether through ownership, management or otherwise); and

(iv) make provision (whether by agreement or otherwise) for the application of disciplinary procedures and sanctions to firms and persons giving such undertakings or entering into such agreements;

(t) (i) to take all steps as it thinks fit to enable it to obtain and maintain recognition as a supervisory body for the purposes of the 1989 Act, any corresponding provision under the law of Northern Ireland and any other corresponding or similar provision of the law of any other jurisdiction anywhere in the world; and

(ii) to take all steps as it thinks fit to enable any qualifications offered by it to be declared a recognised professional qualification for the purposes of the 1989 Act so as to enable it to become a recognised qualifying body for the purposes of the 1989 Act, any corresponding provision under the law of Northern Ireland and any other corresponding or similar provision of the law of any other jurisdiction anywhere in the world; and

(iii) to perform on behalf of other bodies, which are recognised supervisory bodies under the 1989 Act, the functions of monitoring of compliance with the rules of such other bodies and of investigating complaints on behalf of such other bodies against that body or any other person; and

(iv) to do anything whatsoever incidental to or in connection with such powers (without prejudice to the generality of those powers) to:

(1) implement prodecures (including arrangements for monitoring and enforcement in relation to members or otherwise) to ensure that the requirements for recognition of the Association as a supervisory body, set out in Part II of Schedule 11 to the 1989 Act, are and continue to be fulfilled;

(2) implement procedures for the certification of any individual (whether or not a member of the Association) or firm as eligible for appointment as company auditor for the purposes of the 1989 Act;

(3) accept undertakings and make agreements with individuals (whether or not members of the Association) or firms in relation to such procedures and certification;

(4) make provision (whether by agreement or otherwise) for the application of disciplinary procedures and sanctions to individuals and firms giving such undertakings or entering into such agreements; and

(5) lay down requirements and implement procedures (including professional experience, examinations and practical training) to ensure that the requirements for recognition of a professional qualification, set out in Part II of Schedule 12 to the 1989 Act, are and continue to be fulfilled;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Warrant under the Queen's Sign Manual.

DOBSON

1.2

THE SECOND SCHEDULE

Bye-laws

Definitions

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

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

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

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

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

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

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

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

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

firm includes any body corporate;

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

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

month means a calendar month;

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

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

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

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

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

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

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

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

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

Members

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

(i) passed the examination or examinations;

(ii) undertaken the period (which shall be not less than two years in any case, except as otherwise required by applicable law) and type or types of accountancy experience; and

(iii) satisfied such other requirements;

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

(b) On admission to membership individuals shall become Members of the Association and individuals who have been Members continuously for a period of five years (or such other period as may be prescribed in regulation) shall advance to fellowship and become Fellows of the Association.

(c) Every member may denote his membership of the Association by the use of the professional designations Chartered Certified Accountant or Certified Accountant and/or the designatory letters FCCA in the case of Fellows and ACCA in the case of Members. Every person admitted as an honorary member in accordance with regulations prescribed by the Council may denote his status as such by the designation Hon. FCCA. An honorary member shall not be treated as a member for the purposes of the Charter and bye-laws or regulations made hereunder except to the extent they specifically otherwise provide.

(d) The Council shall from time to time prescribe or provide for in regulations:

(i) the conditions a person must satisfy to gain admission to membership of the Association, which conditions may prescribe different requirements for different classes of persons and include provision for reciprocal and honorary membership for persons who may not have satisfied the requirements of bye-law 2(a);

(ii) the qualifications of the Association available to members and other persons, provided that the only designation and designatory letters which by virtue of membership of the Association may be used by members shall be as set out in bye-law 2(c);

(iii) the procedure for making application for membership of the Association and by which the Association shall determine the success of such applications and the procedure for notifying successful applicants, which may include the issuance of a certificate in such form as the regulations may prescribe;

(iv) the obligations applicable to a member, including (without limitation) the paying of admission fees and annual subscriptions, the undertaking of continuing professional development and the notifying of a member's addresses and occupation, provided that any regulation prescribing or providing for the paying of admission fees and annual subscriptions in excess of 105% of the admission fees or, as the case may be, annual subscriptions in force prior to such regulation shall be subject to the approval of the Association in general meeting by resolution passed by not less than two thirds of the members entitled to vote and voting on such resolution;

(v) the maintenance by the Association of a register of members' names and addresses and of other information in relation to them as specified by the regulations;

(vi) the procedure for retiring from membership of the Association and the limitations on a member's right to retire where he is liable to disciplinary action, the circumstances in which a member shall automatically cease to be a member, and the circumstances in which and procedure whereby a former member may re-apply for admission to membership of the Association; and

(vii) such other matters relating to or connected with membership of the Association as the Council shall in its discretion consider necessary or desirable.

Students

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

(a) the conditions a person must satisfy to become and remain a registered student, which conditions may prescribe different requirements for different classes of persons, which may include a requirement that he undertake to be bound by the Charter, these bye-laws and all applicable regulations made hereunder;

(b) the way in which a registered student may describe himself whilst being a registered student, including whilst being an affiliate, and the qualifications of the Association available to registered students and other persons;

(c) the procedure for making application to become a registered student and by which the Association shall determine whether or not to accept such application and the procedure for notifying successful applicants, which may include the issuance of a certificate in such form as the regulations may prescribe;

(d) the examinations of the Association and all matters related thereto, including (without limitation) as to the appointment of examiners;

(e) the obligations applicable to a registered student, including (without limitation) the payment of fees, exam fees and annual subscriptions, the restrictions on description applicable to him and on the work that may be carried on by him and the notification of the Association of his address and occupation;

(f) the maintenance by the Association of a register of registered students' names and addresses and of other information in relation to them as specified by the regulations;

(g) the procedure for seeking removal from the register of registered students and the circumstances in which the right to be so removed shall be restricted, the circumstances in which a registered student shall automatically cease to be a registered student, and the circumstances in which and procedure whereby a former registered student may re-apply to become a registered student; and

(h) such other matters relating to or connected with registered students as the Council shall in its discretion consider necessary or desirable.

Certificates

Practising certificates

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

(a) the restrictions applicable to members and other individuals and firms who are subject to the regulations in the conduct of public practice, which restrictions may include restrictions on a member being connected with a firm which, or another person in relation to which, carries on public practice, and the meaning or meanings of public practice for this purpose and the purposes of these bye-laws;

(b) the qualifications which a person subject to the regulations must hold to be eligible to accept an appointment as company auditor, and the conditions which a firm subject to the regulations must satisfy to be so eligible, including (without limitation) conditions concerning the qualifications of persons responsible for company audit work on behalf of the firm and the control of the firm, and the examinations and other requirements of the Association's recognised professional qualification (within the meaning of the Companies Act 1989);

(c) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of practising certificates, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for a practising certificate shall be made, the procedure for appealing against a decision on such an application, the period of time for which a practising certificate shall remain valid and the fees payable for the issue or renewal of a practising certificate;

(d) the rules applicable to the holder of a practising certificate, including without limitation to the conduct of public practice and related activities;

(e) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of a practising certificate to them or to another person; and

(f) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations.

Insolvency licences

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

(a) the restrictions applicable to members and other persons who are subject to the regulations in their acting as an insolvency practitioner within the meaning of the Insolvency Act 1986, which restrictions may include restrictions on a member being connected with a firm another person in relation to which acts as an insolvency practitioner (as so defined) and restrictions on the carrying on of other similar activities;

(b) the qualifications which a person subject to the regulations must hold to be eligible to act as an insolvency practitioner (as so defined);

(c) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of insolvency licences, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for an insolvency licence shall be made, the procedure for appealing against a decision on such an application, the period of time for which an insolvency licence shall remain valid and the fees payable for the issue or renewal of an insolvency licence;

(d) the rules applicable to holders of an insolvency licence issued by the Association including (without limitation) to his acting as an insolvency practitioner within the meaning of the Insolvency Act 1986;

(e) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of an insolvency licence to them or to another person; and

(f) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations.

Investment business

6. (1) Investment business certificates

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

(a) the restrictions applicable to members and other individuals and firms who are subject to the regulations in the conduct of investment business within the meaning of the Financial Services Act 1986, which restrictions may include restrictions on a member being connected with a firm which, or another person in relation to which, carries on investment business (within the meaning of that Act) in the United Kingdom;

(b) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of investment business certificates issued by the Association, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for an investment business certificate shall be made, the procedure for appealing against a decision on such an application, the period of time for which an investment business certificate shall remain valid and the fees payable for the issue or renewal of an investment business certificate;

(c) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of an investment business certificate to them or to another person;

(d) the rules applicable to the holder of an investment business certificate issued by the Association, including (without limitation to) the conduct of investment business (within the meaning of the Financial Services Act 1986) and related activities;

(e) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations;

(f) the establishment of a compensation scheme for the compensation of investors who suffer loss in connection with the activities of a holder of an investment business certificate issued by the Association; and

(g) similar matters to those set out in paragraphs (a) to (f) of this bye-law relating to the Association acting as a body under such corresponding or similar legislation.

(2) Exempt regulated activities

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

(a) the restrictions applicable to members and other individuals and firms who are subject to the regulations in the conduct of exempt regulated activities, which restrictions may include restrictions on a member being connected with a firm which, or another person in relation to which, carries on exempt regulated activities;

(b) the conditions and eligibility criteria for carrying on exempt regulated activities;

(c) the acceptance of undertakings or agreements from persons other than members of the Association;

(d) the rules applicable to the member or other person including (without limitation) the conduct of exempt regulated activities and related activities;

(e) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations;

(f) the establishment of a compensation scheme for the compensation of investors who suffer loss in connection with the activities of a person subject to the regulations; and

(g) similar matters to those set out in paragraphs (a) to (f) of this bye-law 6(2) relating to the Association acting as a body under such corresponding or similar legislation.

General

7. (a) The Charter, bye-laws and applicable regulations for the time being in force shall apply to each member on and following his admission and, insofar as the Charter, bye-laws and such regulations provide, following his ceasing to be a member. In addition, the Charter, bye-laws and applicable regulations shall similarly apply to each person who undertakes or agrees to be bound by them.

(b) Any person ceasing by death, resignation or otherwise to be a member of the Association shall not, nor shall his representatives, have any claim upon or interest in the funds of the Association.

(c) Disciplinary proceedings under the bye-laws and applicable regulations shall take place in London unless the Association expressly determines to the contrary.

(d) The relationship between the Association and its members, relevant firms, registered students and all other persons to whom the Charter, bye-laws and applicable regulations apply shall be governed by the law of England and Wales, and (subject to bye-law 7(c) above) all disputes shall be subject to the exclusive jurisdiction of the High Court or County Court in London.

(e) For the avoidance of doubt, a former member, former relevant firm and former registered student shall be liable to pay any fine and satisfy any order for costs and/or compensation in respect of disciplinary action brought in relation to any matters which occurred while he or it was a member, relevant firm or registered student, as the case may be.

Liability to disciplinary action

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:

(i) he or it, whether in the course of carrying out his or its professional duties or otherwise, has been guilty of misconduct;

(ii) in connection with his or its professional duties, he or it has performed his or its work, or conducted himself or itself, or conducted his or its practice, erroneously, inadequately, inefficiently or incompetently;

(iii) he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound;

(iv) in the case of a relevant firm, any person has in the course of the business of that firm committed any breach of these bye-laws or of any regulations made under them in respect of which that person is bound;

(v) he is a specified person in relation to a relevant firm against which a disciplinary order has been made and which has become effective or which has been disciplined by another professional body;

(vi) he or it has been disciplined by another professional body;

(vii) he or it has made an assignment for the benefit of creditors, or has made an arrangement for the payment of a composition to creditors, or has had an interim order made by the court in respect of him, or is a specified person in relation to a relevant firm which has made such an assignment or composition or been wound up as an unregistered company, or entered into a voluntary arrangement, administration or liquidation, in each case where applicable under the Insolvency Act 1986, or other similar or analogous event has occurred in relation to him or it under applicable legislation;

(viii) he or it has failed to satisfy a judgment debt without reasonable excuse for a period of two months (the burden resting on him or it to prove such a reasonable excuse on the balance of probabilities) whether or not the debt remains outstanding at the time of the bringing of the disciplinary proceedings hereunder;

(ix) before a court of competent jurisdiction in the United Kingdom or elsewhere, he or it has pleaded guilty to, been found guilty of, or has accepted a caution in relation to, any offence discreditable to the Association or to the accountancy profession; or

(x) before a court of competent jurisdiction in the United Kingdom or elsewhere, in any civil proceedings in which he or it has been a party or witness, he or it has been found to have acted fraudulently or dishonestly.

(b) Each of the paragraphs in bye-law 8(a) shall be without prejudice to the generality of any of the other paragraphs therein.

(c) For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.

(d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:

(i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;

(ii) whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question;

(iii) the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.

(e) For the purposes of bye-law 8(a)(ix), a copy of the certificate or memorandum of conviction or caution, and of any final judgment, ruling or determination given in the criminal proceedings, shall be conclusive proof of the conviction or caution, and of any facts and matters found, as the case may be.

(f) For the purposes of bye-law 8(a)(x):

(i) where the person in question was a party to the proceedings, a copy of a certified judgment of the civil proceedings shall be conclusive proof of the facts and matters found;

(ii) where the person in question was a witness in the proceedings, a copy of a certified judgment of the civil proceedings shall be prima facie evidence of the facts and matters found.

(g) Subject to bye-law 8(f) above, any other finding of fact in any civil proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere shall be admissible as prima facie evidence in any disciplinary proceedings.

Disciplinary process

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

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

(a) the committees (consisting of members and/or other persons) or the individuals to whom Council may delegate the responsibility of determining whether or not a person subject to bye-law 8 is to be disciplined, the making of disciplinary orders (including consent orders) against persons who it is found are liable to disciplinary action and the making of intervention orders in appropriate circumstances, the method, timing and terms of appointment, constitution (where relevant), quorum (where relevant), powers, and responsibilities of each such committee or individual, and whether any such committee or individual is to be empowered to make any further regulations concerning any such matter or any of the other matters mentioned in this bye-law;

(b) the procedures to be followed by each such committee and in the preparation of cases to be heard by any of them, the manner in which cases may be presented to them and the circumstances in which matters are to be referred to them for consideration, which may include (without limitation) procedures for the hearing of cases in an expedited manner;

(c) the orders ("disciplinary orders") which may be made against a person in respect of whom a complaint is found proved in whole or in part, which without limitation may include an order that a person be excluded from membership, that any certificate issued by the Association to the person be withdrawn and that a fine be imposed on the person, which may be unlimited in amount, or be up to such maximum amount as may from time to time be prescribed by such regulations, and the times at which such disciplinary orders are to become effective;

(d) the making of certain types of disciplinary orders as specified in the regulations with the consent of the person concerned ("consent orders"), and the making in circumstances where it appears to be urgent for the protection of the public or members or both an order on a person requiring him to take such action as is specified in the order ("intervention orders"), which orders may be made without conducting the full disciplinary procedures which would apply in other circumstances;

(e) subject to bye-law 8(c), guidance as to the meaning of misconduct or other expression used in bye-law 8 and the relevance for disciplinary purposes of a person subject to bye-law 8 being found guilty of a criminal offence or having any matter found against him in any civil proceedings or being subject to discipline from a tribunal or other body in any such case whether in the United Kingdom or elsewhere;

(f) disciplinary proceedings (including the hearing of appeals) in respect of students where the alleged misconduct relates to examinations;

(g) the circumstances in which appeals against a disciplinary order may be brought and the procedures for dealing with such appeals;

(h) the making of orders as to costs, which may provide for different orders in respect of individuals and firms; and

(i) the publication of disciplinary orders in those cases where a complaint is found proved in whole or in part.

Obligation to co-operate and inform

10. (a) Every member, relevant firm and registered student shall, and every member shall use his best endeavours to ensure that every firm (whether or not a relevant firm) in relation to which he is a specified person shall, at all times, co-operate with the Council and the committees and/or individuals appointed by it under bye-law 9 in the administration of the Association's disciplinary process.

(b) Subject to any legislative or other legal obligation to the contrary, it shall be for every member and for any person to whom these bye-laws relate to bring promptly to the attention of the Secretary any facts or matters indicating that a member or relevant firm or registered student may have become liable to disciplinary action (including any facts or matters relating to himself or itself); and in any such case the Secretary shall lay the facts and matters before the relevant committee of Council or individual if he or she is of the opinion that the complaint ought to be investigated by that committee or individual.

Application and interpretation

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

(a) A member, relevant firm and registered student shall be liable to disciplinary action whether or not he was a member or registered student or (as the case may be) it was a relevant firm at the time of the occurrence giving rise to such liability.

(b) A former member, former relevant firm and former registered student shall continue to be liable to disciplinary action after his or its ceasing to be a member, relevant firm or registered student in respect of any matters which occurred whilst he or it was a member, relevant firm or registered student, provided that:

(i) a complaint is referred to the committee responsible for hearing the complaint,

(ii) disciplinary action is otherwise commenced, or

(iii) he or it is otherwise put on notice of the complaint,

within five years of his or its so ceasing to be a member, relevant firm or registered student (as the case may be), save where exceptional circumstances exist and it is in the public interest that disciplinary proceedings are brought later than five years after he or it so ceased to be a member, relevant firm or registered student.

(c) For the avoidance of doubt, a person shall be liable to disciplinary action in accordance with the bye-laws and regulations in force at the time the matters complained of took place. All disciplinary proceedings, however, shall (for the avoidance of doubt) be conducted in accordance with the bye-laws and regulations in force at the time of such proceedings.

(d) Bye-laws 8 to 10 shall, so far as they are capable of doing so, apply to a specified person (not being a member in public practice) in relation to a relevant firm in respect only of the undertakings given by that specified person to, and agreements made by that specified person with, the Association.

(e) In the case of a relevant firm in relation to which there is a specified person or specified persons other than members in public practice, the provisions of bye-laws 8 to 10 shall apply to that relevant firm in respect only of the undertakings which have been given to the Association and agreements which have been made with the Association by it or by each such specified person who is not a member in public practice, but this paragraph shall not in any way restrict the application of those bye-laws to a member in public practice who is a specified person in relation to such relevant firm.

(f) The Council may from time to time by regulation prescribe the persons (additional to partners in a firm which is a partnership and directors of a firm which is a body corporate) who are in these bye-laws to be specified persons in relation to a firm and such regulations may prescribe different persons as specified persons for different purposes.

(g) For the purposes of this bye-law and bye-laws 8 to 10, "member" includes an individual (not being a member as defined in bye-law 1) who has undertaken to be bound by, inter alia, such bye-laws and such bye-laws shall apply to such an individual insofar as the same are capable of doing so, mutatis mutandis, as they apply to a member as defined in bye-law 1.

Appointment of regulatory board

12. The Council shall appoint a regulatory board, which shall have a lay chairman and a majority of lay members. The regulatory board shall be instructed to report to the Council not less than once a year on the operation of the Association's disciplinary and regulatory procedures adopted pursuant to or for the purposes of the Association's bye-laws and regulations and its recognition under statute. The regulatory board shall undertake such other functions as the Council may from time to time specify. The Council shall have power to pay remuneration to and the reasonable expenses of the lay members of the regulatory board.

Elections and appointments to Council

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

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

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

(a) at the date of his nomination for election, or of his written notice of intention to offer himself for re-election (as the case may be), he is by reason of mental disorder neither detained in a hospital nor subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983, nor subject to any similar supervision in any other jurisdiction; and

(b) no disciplinary order (which for the purposes of bye-laws 13 to 26 shall be taken to include any order made pursuant to any joint disciplinary scheme operated by the Association with any other bodies) excluding him from membership or removing him from the student register has ever been made against him and become effective; and

(c) within the period of five years immediately preceding the date of his nomination, no disciplinary order has been made against him and become effective; and

(d) as at the date of the Annual General Meeting at which the result of the election is to be announced, he will not have served as a member of the Council for 9 years or more, whether consecutively or otherwise; and

(e) he has been duly nominated for election in accordance with bye-law 16, or he is exempt from nomination for election.

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

17. The Council may also require a member nominated for election, or offering himself for re-election to the Council, to make such declarations as it shall consider expedient for determining that none of the circumstances referred to in paragraphs (a) to (d) of bye-law 15 apply to that member. If the Council thinks fit, these declarations may be embodied in any form of nomination or notice of intention to seek re-election prescribed for the purposes of bye-law 16. The Council shall be entitled to rely upon the truth of any declarations made by a member pursuant to bye-law 15 or to bye-law 16 and to reject the nomination or notice of intention to seek re-election of any member who declines to make any such declaration or makes a false or inaccurate declaration. If any member is elected a member of the Council and one or more of his declarations pursuant to bye-law 15 was false or inaccurate and he would have been ineligible for election had such declaration been made truthfully or accurately, the Council shall declare the election of that member void. But any such declaration shall be without prejudice to the operation of bye-law 37 and shall not affect the validity of the election of any other member as a member of the Council. The vacancy arising as a result of any such declaration shall be treated as a casual vacancy. Each member of Council who is not retiring at the conclusion of an Annual General Meeting shall (i) notify the Secretary of his practising status and eligibility for appointment as a company auditor as at the date three months before the day of the Annual General Meeting not less than two weeks after such date and he shall be treated for the purposes of these bye-laws as holding such status and eligibility until any amending notice is served under this bye-law in any subsequent year, and (ii) submit to the Secretary a signed undertaking to comply with and be bound by Council's standing orders adopted in accordance with bye-law 33(a) and any Code of Practice for Council members adopted by Council from time to time.

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

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

(a) If the number of candidates duly nominated or seeking re-election is equal to or less than the number of vacancies to be filled, all such candidates shall be declared elected at such Annual General Meeting.

(b) If no declaration of elected candidates can be made in accordance with paragraph (a) of this bye-law, the election shall be made by ballot and the result shall be announced at the Annual General Meeting.

(c) If a ballot shall be necessary the Secretary shall cause the name of each candidate to be entered in the ballot paper. That paper shall be in a form approved by the Council. There shall be appended to the ballot paper short biographical notes respecting each candidate and such other information as the Council may direct.

(d) One such ballot paper shall be sent to each member of the Association not less than 28 days prior to the Annual General Meeting at which the result of the election is to be declared.

(e) A member shall be entitled to vote for any number of candidates up to but not exceeding the number of vacancies to be filled, but shall not cast more than one vote in respect of each candidate.

(f) A member may irrevocably nominate in his ballot paper some person (his "delegate"), being a member of the Association, to cast some or all of his votes on his behalf. Such a member, having made his nomination, shall send his ballot paper (marked with any votes which he has himself cast) to the delegate. The delegate shall be entitled to exercise his discretion as to how and to what extent he casts the votes delegated to him.

(g) Each ballot paper shall state the last date on which it may be returned to the Scrutineer appointed as described in paragraph (i) of this bye-law by a member or his delegate. Such last date shall be at least 7 days before the Annual General Meeting at which the result of the election is to be declared.

(h) Any ballot paper which does not comply with this bye-law shall be void.

(i) The President shall in good time prior to any ballot appoint (if not already appointed) an independent body of good repute to act as scrutineer (the "Scrutineer") in relation to the ballot to perform the functions described in this bye-law. The Scrutineer shall be responsible for:

(i) receiving ballot papers and determining which are void;

(ii) counting the votes duly cast;

(iii) determining which candidates have been successful in the election in accordance with the requirements of paragraph (j) of this bye-law, including by the drawing of lots, if applicable;

(iv) providing a written report to the President on the result of the ballot; and

(v) retaining all ballot papers received for a period of one month after the relevant Annual General Meeting.

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

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

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

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

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

(a) he is by reason of mental disorder either detained in a hospital or subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983 or is subject to similar supervision in any other jurisdiction; or

(b) there has ever been made in respect of him a disciplinary order excluding him from membership or removing him from the student register which has become effective; or

(c) there has within the period of five years immediately preceding the date of his proposed appointment been made in respect of him any disciplinary order which has become effective; or

(d) as at the date of his appointment, the member has served as a member of the Council for 9 years or more, whether as an elected or appointed member, consecutively or otherwise.

For the purpose of determining that a person is eligible for appointment as a member of the Council in accordance with this bye-law, the Council may require such person to make such declarations as it shall consider expedient, and shall be entitled to rely upon the truth of any declaration so made. If any such person is appointed a member of the Council and one or more of his declarations made with respect to paragraphs (a) to (c) (inclusive) of this bye-law is false or inaccurate and he would have been ineligible for appointment had such declaration been made truthfully or accurately the Council shall declare the appointment of that member void. But any such declaration shall be without prejudice to the operation of bye-law 37. The vacancy arising as a result of any such declaration shall be treated as a casual vacancy. Every person appointed as a member of the Council in accordance with this bye-law shall be required to make a declaration containing an undertaking to comply with and be bound by Council's standing orders adopted in accordance with bye-law 33(a) and any Code of Practice for Council members adopted by the Council from time to time. Any appointment which does not comply with this requirement shall be void.

23. In addition to members of the Council who have been elected in accordance with these bye-laws or appointed by the Council pursuant to bye-law 22, the Council may at any time appoint or reappoint any member of the Association to the Council, provided that a person shall not be so appointed if:

(a) he is by reason of mental disorder either detained in a hospital or subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983 or is subject to similar supervision in any other jurisdiction; or

(b) there has ever been made in respect of him a disciplinary order excluding him from membership or removing him from the student register which has become effective; or

(c) there has within the period of five years immediately preceding the date of his proposed appointment been made in respect of him any disciplinary order which has become effective; or

(d) such appointment would result in the number of members appointed to the Council other than to fill a casual vacancy exceeding 4; or

(e) as at the date of his appointment, the member has served as a member of the Council for 9 years or more, whether as an elected or appointed member, consecutively or otherwise.

Any appointment or reappointment to the Council in accordance with this bye-law shall be for such term as the Council may in its discretion determine, subject to the provisions of these bye-laws. For the purpose of determining that a person is eligible for appointment as a member of the Council in accordance with this bye-law, the Council may require such person to make such declarations as it shall consider expedient, and shall be entitled to rely on the truth of any declaration so made. If any such person is appointed as a member of the Council and one or more of his declarations made with respect to paragraphs (a) to (c) (inclusive) of this bye-law is false or inaccurate and he would have been ineligible for appointment had such declaration been made truthfully or accurately the Council shall declare the appointment of that member void. But any such declaration shall be without prejudice to the operation of bye-law 37. Every person appointed as a member of the Council in accordance with this bye-law shall be required to make a declaration containing an undertaking to comply with and be bound by Council's standing orders adopted in accordance with bye-law 33(a) and any Code of Practice for Council members adopted by the Council from time to time. Any appointment which does not comply with this requirement shall be void.

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

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

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

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

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

(a) ceases to be a member of the Association; or

(b) is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or Part III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction; or

(c) has made against him a disciplinary order which becomes effective; or

(d) commits a serious breach of any undertaking contained in a declaration given by him under bye-laws 16, 17, 22 or 23 as determined by Council or (for the avoidance of doubt and without limitation of Council's power to delegate to committees any of its other functions and powers in accordance with bye-law 28) committee of Council to which Council has delegated its responsibility to determine whether such a breach has occurred; or

(e) fails to attend three consecutive meetings of the Council without prior leave of absence from the Council.

The Council

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

Committees

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

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

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

Local branches and committees

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

Proceedings of the Council

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

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

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

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

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

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

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

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

Staff

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

Accounts and audit

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

40. At each Annual General Meeting the Association shall appoint one or more members in public practice or firms either holding a practising certificate or otherwise eligible to be appointed company auditor (within the meaning of section 24(2) of the Companies Act 1989)

as the auditor or auditors of the Association to hold office until the close of the next Annual General Meeting. The fees of the auditor or auditors shall be fixed by the Council. Any casual vacancy in the auditors may be filled by appointment by the Council of any member in public practice or firm which holds a practising certificate or which is otherwise so eligible. Any member or firm so appointed shall hold office until the close of the next Annual General Meeting.

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

(a) a member of the Council or an official or servant of the Association;

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

Indemnity

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

(a) shall be indemnified by the Association from all liability, expenses or costs which by virtue of any rule of law would otherwise attach to him in relation to the Association unless such liability arises from his own wilful default or (in the case of any auditor) from his own negligence or wilful default; and

(b) shall be entitled to be reimbursed by the Association the amount of any expenses (including, in the case of a member of the Council or of any committee or sub-committee of the Council, or of trustees, his expenses of attending any meeting of the Council or of any such committee or sub-committee or of trustees) properly incurred by him in or about the discharge of his duties to the Association, provided that the Council shall have power to determine, from time to time, what expenses shall be eligible for reimbursement pursuant to this paragraph.

Investments

43. *(1)* All moneys of the Association not immediately required for the purposes of the Association may be invested by the Council in any of the following:

(a) in the purchase of, or in mortgages of:

(i) freehold property in England and Wales or Northern Ireland;

(ii) leasehold property in those countries of which the unexpired term at the time of investment is not less than 60 years;

(b) in the purchase of heritable property, or of leasehold property of which the unexpired term at the time of investment is not less than 60 years, in Scotland;

(c) in loans on heritable security in Scotland;

(d) in deposits with any recognised bank or licensed deposit taker in the United Kingdom;

(e) in any other investment not above mentioned in which trustees are for the time being authorised to invest trust funds (including, without limitation, in investments specified in Schedule I of the Trustee Investments Act 1961);

(f) in the purchase of securities of any government, local authority, statutory undertaking or company quoted on one or more of the following Stock Exchanges, namely:

Adelaide, Amsterdam, Antwerp, Brisbane, Brussels, Copenhagen, Dusseldorf, Frankfurt, Johannesburg, Lisbon, Luxembourg, Madrid, Melbourne, Milan, Montreal, New York, Oslo, Paris, Perth, Singapore, Stockholm, Sydney, Tel Aviv, Tokyo, Toronto, Vienna or Zurich: provided always that at the time of the investment the paid-up capital and capital reserves (including the share premium account and capital redemption reserve fund) of such company shall together total one million pounds at least or its equivalent at the rate of exchange current at the date of investment and so that in the case of a company having shares of no par value such paid-up capital and capital reserves shall be deemed to be the capital sum and capital surplus appearing in the company's published accounts (but this requirement shall not prevent an application for and part payment in respect of shares offered for subscription to the public if the full subscription for such shares would cause the paid-up capital and capital reserves of the company concerned to total one million pounds at least or such equivalent as aforesaid);

(g) in making loans (not being loans authorised by any of the foregoing paragraphs) with or without security;

(h) in purchasing any real or personal property or interest therein, not herein before authorised, in any part of the world.

(2) The Council may from time to time vary any investments.

(3) In any case where the Council thinks fit, investments may be made in the name of a nominee or trustee instead of the name of the Association.

General meetings

44. (a) Unless the Council shall in any particular case otherwise determine, the Annual General Meeting of the Association shall be held, at such place as the Council shall appoint, on the third Thursday in September of each year. If the Council shall fix upon some other date for an Annual General Meeting, it shall notify the members of the Association of that other date not later than the day which falls six months before that date. Not more than fifteen months shall elapse between the date of one Annual General Meeting and that of the next, with the exception of the Annual General Meeting held in 2010.

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

(i) receiving the annual report of the Council;

(ii) declaration of the result of any election for members of the Council;

(iii) receiving the annual accounts of the Association and the auditors' report on them;

(iv) appointment of an auditor or auditors.

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

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

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

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

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

49. Not less than 21 clear days' notice of every general meeting specifying the time and place of the meeting and in the case of special business the nature of such business shall be given to every member. In the case of an Annual General Meeting, the Secretary shall also send to each such member with such notice a copy of the annual report of the Council, a copy of the annual accounts of the Association with the auditors' report thereon and a list of the persons nominated for membership of the Council and as auditors. The accidental omission to give any notice to or the non-receipt of any notice by any such member shall not invalidate the proceedings at any such meeting.

Proceedings at general meetings

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

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

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

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

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

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

56. On a poll being demanded as aforesaid, it shall be taken at such time (either at the meeting at which the poll is demanded or within 21 days after the said meeting) and place and in such manner as the Chairman shall direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The Chairman shall (if he has not already done so) appoint an independent body of good repute to act as scrutineer (the "Scrutineer") in relation to the taking of any such poll. The Scrutineer shall be responsible for:

(a) receiving any instrument of proxy deposited or sent in accordance with bye-law 61 and relating to the vote and collecting all voting papers utilised at the meeting at which the poll is taken and determining which are valid and duly completed;

(b) counting the votes duly cast;

(c) providing a written report to the Chairman on the result of the poll; and

(d) retaining all instruments of proxy and such voting papers for a period of one month after the date of the taking of the poll.

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

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

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

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

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

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

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

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

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

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

Resolution No. 1 ... *For/Against

Resolution No. 2 ... *For/Against

*Strike out whichever is not desired.

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

Signed this ..... day of ...."

(b) The instrument appointing a proxy shall be deemed to include authority to demand or join in demanding a poll.

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

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

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

Common Seal

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

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

Notices

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

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

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

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

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

Annex 1

The Chartered Certified Accountants' Fees Regulations 2016

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

1. These regulations may be cited as The Chartered Certified Accountants' Fees Regulations 2016. These regulations as amended as set out herein shall come into force on 1 December 2016.

2. The admission fees and annual subscriptions applicable for the calendar year 2017 shall be as follows:

(a) Admission Fees

On admission as a Member or as a Fellow £231

(b) Annual Subscriptions

All members other than those in retirement £231

Members on the Register of members in retirement ..... Nil

Annex 2

The Chartered Certified Accountants' Electronic Communications Regulations 2002

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

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Electronic Communications Regulations 2002.

(2) These regulations as amended as set out herein shall come into force on 1 January 2002.

(3) These regulations shall apply to all members.

2. Interpretation

(1) In these regulations, words and expressions defined in the bye-laws set forth in the Second Schedule to the Royal Charter of Incorporation granted to the Association in 1974 as amended or supplemented from time to time shall have the same meanings herein and the "bye-laws" shall mean those bye-laws set forth.

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

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

3. Election of members of Council

(1) Ballots

(a) Where there is a ballot for the election of members of Council, a member may vote either by signing and completing the ballot paper and returning it to the address stated on the ballot paper or by casting his votes electronically in accordance with the instructions on or referred to in the ballot paper.

(b) Votes will be deemed cast on the due receipt of the ballot paper by the Scrutineer or of the electronically cast votes by or on behalf of the Scrutineer. Once cast, votes may not be amended and the votes first received will take precedence over any votes later received.

(2) Delegated votes

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

(a) duly complete and send his ballot paper (marked with any votes which he wishes himself to cast) to the address stated on the ballot paper, or

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

4. Instruments of proxy

(a) A member wishing to appoint another member to act as his proxy for the purposes of voting at a general meeting of the Association (including without limitation an Annual General Meeting or Extraordinary General Meeting) may either:

(i) complete and sign the hard-copy form provided to him by the Association and deposit or send it to the Scrutineer in accordance with the bye-laws and instructions accompanying the form, or

(ii) complete and send electronically the electronic version of the form in accordance with the instructions accompanying or referred to in the hard-copy form.

(b) An electronic form of proxy shall be deemed received on its due receipt by or on behalf of the Scrutineer.

5. Requirements of the bye-laws

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

Annex 3

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

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

1. Citation, commencement and application

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

(2) These regulations as amended as set out herein come into force on 1 January 2010.

2. Interpretation

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

Association means the Association of Chartered Certified Accountants;

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

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

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

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

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

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

Secretary means the Secretary of the Association;

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

3. Application

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

4. Electronic publication

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

5. Consent of members

(1) The Association may validly deliver Publications pursuant to regulation 4 to members and members shall be deemed to have consented to its doing so in accordance with this regulation 5 unless the member has:

(a) opted to receive hard copies of Publications; or

(b) not provided the Association with an e-mail address.

(2) A member should make every effort to provide the Association with a valid e-mail address for notifications under regulation 7.

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

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

6. Format and access

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

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

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

7. Notification of availability

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

(a) the presence of the Publication on the Website;

(b) the address or URL of the Website;

(c) the place on the Website where it may be accessed; and

(d) how to access the document or information.

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

(a) on the date on which the notification required by regulation 7(1) above is sent to the member; or

(b) if later, on the date on which the Publication is first available on the Website after such notification is sent.

8. Validity

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

Section 2

Regulations

Introduction

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

2.1

The Chartered Certified Accountants' Membership Regulations 2014

Amended 1 July 2017

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 2, 3 and 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Membership Regulations 2014. These regulations as amended shall come into force on 1 July 2017.

(2) These regulations shall apply to all persons who are subject to bye-laws 8 to 11 or who otherwise agree to be bound by them.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

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

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

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

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

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

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

Authorisation Regulations means The Chartered Certified Accountants' Authorisation Regulations 2014;

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

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

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

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

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

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

disciplinary order means an order made against a person in respect of whom a complaint is found proved in whole or in part pursuant to The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 or The Chartered Certified Accountants' Appeal Regulations 2014, and includes a consent order approved by the Consent Orders Committee;

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

Foundations in Accountancy means a range of open access qualifications including Certified Accounting Technician that provide access to the main ACCA Qualification;

Foundations in Practical Experience Requirement means the mandatory work experience component of the Certified Accounting Technician qualification;

Foundations in Professionalism means an online professionalism module that forms a mandatory component of all Foundations in Accountancy qualifications;

IFAC means the International Federation of Accountants;

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

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

membership means membership of the Association;

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

practical experience supervisor means a suitably experienced member or another person having, in the opinion of the Council, adequate qualifications, with the knowledge of an ACCA trainee's work, who reviews their progress and achievement at work towards meeting ACCA's Practical Experience Requirement in accordance with Appendix 2;

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

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

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

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

relevant person includes an applicant, a registered student, a relevant firm, a specified person and a member;

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

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

(2) Words importing the masculine gender shall include the feminine and words in the singular shall include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

(3) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act 2005 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

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

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

3. Eligibility for membership

Criteria

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

(a)

(i) has passed or obtained exemptions from the Association's examinations set out in Appendix 1; and

(ii) has completed three years of approved experience in accordance with Appendix 2; and

(iii) has satisfactorily completed the Association's module in professional ethics; and

(iv) satisfies the Admissions and Licensing Committee as to his general character and suitability,

OR

(b) has the right to practise in the United Kingdom as a Chartered Certified Accountant pursuant to Regulation 29 of the European Communities (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059), having satisfied any requirements imposed on him pursuant to Regulation 30 thereof,

OR

(c)

(i) is a member of a body and the holder of an appropriate qualification recognised for the purposes of section 1219 or section 1221 of the UK Companies Act 2006; and/or

(ii) is, or intends to be, a partner, director, person responsible for audit or sole principal of a firm which holds, or intends to hold, an auditing certificate under The Chartered Certified Accountants' Global Practising Regulations 2003;

and satisfies the Admissions and Licensing Committee as to his general character and suitability,

OR

(d) meets the eligibility criteria for membership of the Association set out within the terms of the recognition agreement between the Association and the relevant organisation under (i) to (vii) below, as the case may be, and is:

(i) a member of the Hong Kong Institute of Certified Public Accountants; or

(ii) a member of the Institute of Singapore Chartered Accountants; or

(iii) a member of Chartered Professional Accountants of Canada; or

(iv) a Certified Public Accountant member of the Malaysian Institute of Certified Public Accountants; or

(v) a Chartered Accountant member of Chartered Accountants Australia and New Zealand; or

(vi) a member of the Union of Chambers of Certified Public Accountants of Turkey; or

(vii) a graduate of the Leading Accounting Talent Programme provided by the Beijing National Accounting Institute,

and satisfies the Admissions and Licensing Committee as to his general character and suitability,

OR

(e)

(i) is a:

member by examination of the Chartered Institute of Public Finance and Accountancy; or

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

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

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

without prejudice to rights under the European Communities (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059), is a member by examination of a professional body or holder of a qualification recognised under these EC Regulations; and

(ii) satisfies the Admissions and Licensing Committee as to his general character and suitability; and

(iii) has held such membership for a continuous period of not less than five years; or

(iv) has been employed as a member of staff on a full-time basis by the Association continuously for at least a year and in the opinion of the Secretary of the Association will derive benefit in his work for the Association from his being able to describe himself as a member of the Association; or

(v) holds, or is eligible to hold, a practising certificate from one of the above bodies (or on admission to the Association from his being able to describe himself as a member of the Association); or

(vi) holds, or is eligible to hold, a practising certificate from one of the above bodies (or on admission to membership of the Association will be eligible to hold a practising certificate from the Association); and

(aa) is in, or intends to enter into, partnership including limited liability partnership with a member of the Association, or is, or intends to become, a director of a body corporate another director of which is or will be a member of the Association, which partnership or body corporate will include in the description of such partnership or body corporate the words "Chartered Certified Accountants"; "Certified Accountants"; or

(bb) is, or intends to be, a partner, director, member or designated member in the case of a limited liability partnership, or sole principal of a firm which holds or intends to hold an auditing certificate under the Chartered Certified Accountants' Global Practising Regulations 2003; or

(cc) as an individual, holds, or intends to hold, a licence to act as an insolvency practitioner under The Chartered Certified Accountants' Global Practising Regulations 2003; or

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

OR

(f)

(i) has been invited by the Council to become a member of the Association; and

(ii) is a member of an accountancy body which is itself a member of the International Federation of Accountants or is eligible to be a company auditor in a European Union member state; and

(iii) has held such membership for a continuous period of not less than five years; and

(iv) satisfies the Council as to his general character and suitability; and

(v) has, in the opinion of the Council, made a significant contribution to the knowledge or practice of accountancy; and

(vi) will, in the opinion of the Council, bring benefits to the Association and/or its membership through his membership.

4. Members' obligations and rights

(1) Members and Fellows

(a) Subject to the provisions of Global Practising Regulations 3 and 4, on admission to membership an individual shall become a Member of the Association and may denote his membership of the Association by the use of the professional designation Chartered Certified Accountant or Certified Accountant and/or the designatory letters ACCA.

(b) A member who has been a Member of the Association for a continuous period of five years shall automatically advance to fellowship, and be a Fellow, of the Association and may denote his fellowship of the Association by the use of the professional designation Chartered Certified Accountant or Certified Accountant and/or the designatory letters FCCA, providing the member has not breached the continuing professional development requirements of regulation 4(4) during that time.

(c) Where a member resigns his membership under regulation 10, or is removed from the register of members under regulation 11, or ceases to be a member under regulation 12 and/or 13, the continuous period of membership of five years as specified in regulation 4(1)(b)) shall commence from the date of readmission under regulation 14.

(d) The Secretary shall maintain a register of members of the Association and the Council may if it thinks fit periodically publish lists of members, copies of which may be made available on such terms as the Council may determine.

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

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

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

(3) Admission fees and annual subscriptions

(a) Each member must pay an admission fee on admission to membership of the Association. In addition, for so long as he remains a member of the Association, he must pay an annual subscription to the Association.

(b) Admission fees are due on admission and annual subscriptions on 1 January of each year, unless the Council shall otherwise direct. Annual subscriptions shall be payable whether or not the member intends to remain a member for the entire year to which the subscription relates.

(c) The amount of the admission fee and annual subscription shall be as specified in regulations made from time to time pursuant to and in accordance with bye-law 2(d).

(d) The Council may, in its absolute discretion, vary, suspend or waive payment of the admission fee or annual subscription payable by any applicant for membership or by any member on such terms and for such period as it may think fit.

(4) Continuing professional development (CPD)

(a) All members must obtain CPD, and be able to demonstrate that they have obtained CPD, in accordance with this regulation 4(4).

(b) A member may obtain CPD in one of the following ways:

(i) with an employer who holds approved CPD employer status from the Association;

(ii) by following the unit scheme set out in regulations 4(4)(d) to 4(4)(g) below; or

(iii) by following the CPD scheme of another IFAC body of which he is also a member, provided that the scheme complies with the CPD requirements of IFAC.

(c) By no later than 1 January each year, all members must submit to the Association an annual CPD declaration in the prescribed form which has been properly completed and signed. Failure to comply with this regulation may lead to removal from the register of members in accordance with regulation 12.

(d) Units required

(i) Members must obtain at least 40 units per calendar year of acceptable CPD learning activities which are relevant to their work. One unit is equal to one hour spent on an acceptable CPD learning activity.

(ii) At least 21 units must be verifiable units. A unit will be verifiable if the member can prove that he or she was involved in an acceptable CPD learning activity. A unit will be non-verifiable if the member is unable to prove that the CPD learning activity has taken place.

(iii) Members may carry forward a credit of up to 21 verifiable units from one year to the next.

(iv) Members must obtain their CPD units in areas relevant to their work and must comply with regulations 4(4)(d)(v) and (vi) below.

(v) All members, regardless of their role, must:

(aa) maintain competence in professional ethics; and

(bb) keep their business and finance knowledge up to date.

(vi) All members carrying on public practice, including those holding practising certificates, insolvency licences and/or carrying on exempt regulated activities or investment business, must:

(aa) maintain competence in the specialised areas of their practice; and

(bb) obtain an appropriate proportion of CPD units in those areas.

(vii) Where a member works for 770 hours or less over the course of a calendar year, he need not comply with the requirements of regulation 4(4)(d)(i) and (ii) provided that he can demonstrate that he has undertaken CPD relevant and sufficient for his role, save that he must obtain at least 19 units of non-verifiable CPD. This regulation does not apply to a member who:

(aa) undertakes audit or other regulated work;

(bb) is involved in the preparation or presentation of accounts of listed or other public interest entities; or

(cc) is a non-executive director of a listed entity.

(e) Records

(i) Individuals subject to this regulation 4(4) shall maintain records of both verifiable and non-verifiable CPD units obtained and of the relevance of those units to their role. In the case of verifiable units, the records shall include proof that the individual was involved in an acceptable CPD learning activity.

(ii) Such records shall be retained for three years and shall be subject to examination and verification by the Association and shall be provided to the Association upon their being requested in writing. Such records shall be provided within the deadline specified in the request, which shall be no sooner than seven days after the date of the request. Failure to comply with this regulation may lead to removal from the register of members in accordance with regulation 12.

(f) Guidance

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

(g) Waiver and variations

(i) Subject to regulations 4(4)(g)(ii) and (iii) below, the Admissions and Licensing Committee may waive, vary or suspend the requirements of this regulation 4(4) at any time to adapt them to an individual's requirements as the Admissions and Licensing Committee, in its absolute discretion, thinks fit.

(ii) Any waivers or variations granted will be in respect of one calendar year only.

(iii) Waivers or variations in respect of non-verifiable CPD units will only be granted in exceptional circumstances.

(iv) Members who have been granted waivers are nevertheless required to comply with regulation 4(4)(c).

(v) Members must comply with the conditions of any variation granted pursuant to regulation 4(4)(g)(i). Failure to do so may lead to removal from the register of members in accordance with regulation 12.

(vi) Regulations 3 and 8 to 16 of the Authorisation Regulations, adapted as necessary so that reference is made to an application hereunder, shall apply to applications made under this regulation 4(4)(g).

(5) Annual return and members' addresses

(a) Every member shall make a return to the Association in such form and at such time as the Council may prescribe showing whether or not the member is in public practice and notifying a place of business or residence as his registered address.

(b) Each member must notify the Secretary forthwith of any change in his registered address(es) (place of business or residence) other than one which is merely temporary.

(6) Members in retirement

(a) A member who has been a member for at least 30 years, and who has, with a view to permanent retirement, retired from professional work or business, may apply to the Council to be placed on the register of members in retirement. Members on the register of retired members shall not be permitted to hold a practising certificate or an insolvency licence, save that this shall not apply to those members who transferred to the register of retired members prior to 1 January 1998 and who held a practising certificate or an insolvency licence on 31 December 1997.

(b) Insofar as the Council is provided with satisfactory evidence of the member's retirement, on his paying one additional year's full annual subscription at the rate current at the time of application, the member may be placed on the register of members in retirement, and shall thereafter be exempt from the requirement to pay the annual subscription referred to in regulation 4(3) for so long as he remains on the register of members in retirement.

(c) A member in retirement who does not hold a practising certificate or insolvency licence is not required to comply with regulation 4(4).

(7) Provision of data

The Association may process members' personal data subject to the provisions of the Data Protection Act 1998. In certain circumstances this may include disclosure of said data to third parties, including statutory regulators. This provision shall also be of application to affiliates and registered students.

(8) Honorary members

(a) On admission, an honorary member shall undertake to be bound by the Charter, the bye-laws and the regulations made under them insofar as the same are capable of applying to honorary members.

(b) An honorary member shall not be liable to pay admission fees or annual subscriptions under regulation 4(3) and shall not be eligible to be elected as a member of the Council. He shall not be entitled to receive notice of or attend or vote at any general meeting of the Association. Provided that none of these disabilities shall apply in the case of a person who, prior to his election as an honorary member, was a member of the Association in his own right.

(c) All applications for honorary membership of the Association shall be considered by the Council.

5. Eligibility for affiliate status

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

(a) has passed or obtained exemptions from the Association's examinations as set out in Appendix 1;

(b) has not yet completed three years of approved accountancy experience in accordance with Appendix 2; and/or

(c) has not yet satisfactorily completed the Association's module in professional ethics.

6. Affiliates' obligations and rights

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

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

(2) Descriptions

(a) An affiliate shall not be entitled to describe himself as a member of the Association, imply that he is a member, or use the Association's designatory letters ACCA.

(b) An affiliate may not hold himself out as being in public practice and shall abide by the obligations set out in Membership Regulation 8 (registered students' obligations and rights).

(3) Subscriptions

(a) An affiliate shall pay an affiliate subscription at a rate or rates set by the Association from time to time.

(b) In cases of exceptional hardship the Council may suspend or waive payment of the annual subscription payable on such terms and for such period as it may think fit.

(4) Continuing professional development

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

(5) Affiliates' addresses

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

7. Eligibility for registered student status

(1) ACCA Qualification

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

(a) has attained UK university entrance standard or equivalent or has successfully completed the requirements of the Diploma in Accounting and Business qualification examinations within the Foundations in Accountancy suite of qualifications described in regulation 7(2) or has satisfied the Association's requirements, as laid down from time to time, for acceptance of Certified Accounting Technician students on to the ACCA Qualification; and

(b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

(2) Foundations in Accountancy suite of qualifications

An individual shall be eligible to be registered to the ACCA Foundations in Accountancy suite of qualifications if he:

(a) satisfies the Association's requirements, as laid down from time to time, for acceptance on the Foundations in Accountancy suite of qualifications; and

(b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

To be awarded any qualification available within the Foundations in Accountancy suite of qualifications the student must pass the relevant examinations for the qualification and successfully complete the Foundations in Professionalism module. On completion of the three examinations of the Diploma in Accounting and Business qualification, the student will be exempted from papers F1, F2 and F3 of the ACCA Qualification examinations.

(3) Certified Accounting Technician (CAT) qualification

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

(a) satisfies the Association's requirements, as laid down from time to time, for acceptance on the Association's CAT qualification; and

(b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

(4) Association's Certificates and Diplomas

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

(a) satisfies the Association's requirements, as laid down from time to time, for acceptance on any of the Association's Certificates or Diplomas; and

(b) satisfies the Admissions and Licensing Committee as to his general character and suitability.

8. Registered students' obligations and rights

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

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

(2) Permitted activities of ACCA students

(a) ACCA students may not:

(i) claim to be members of the Association;

(ii) be, or hold themselves out to be, in public practice;

(iii) be, or hold themselves out to be, a partner or director of a firm, or a member of a limited liability partnership, where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business; or

(iv) hold rights in a firm where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, which in effect put him in the position of a principal of the firm.

(b) ACCA students are, however, permitted to provide basic book-keeping services to the public, for reward, provided that they do not refer to their studentship or potential membership of the Association. Basic book-keeping services are restricted to the recording of basic accounting data. This includes:

(i) the preparation of accounting records to trial balance stage

(ii) maintaining clients' records in respect of payroll and employment taxes, and

(iii) maintaining basic sales tax records.

For the avoidance of doubt, the taking of decisions usually reserved for management and the provision of advice to clients are indicative of services beyond basic book-keeping.

(c) Any accountancy services, other than basic book-keeping services, can only be provided for reward by an ACCA student working for, and under the supervision of, a person who, in the opinion of the Council, is suitably qualified and/or suitably experienced. The ACCA student may undertake such work either as an employee or as a self-employed person.

(d) The provision of basic book-keeping services directly to the public cannot constitute approved accountancy experience, for the purpose of regulation 3(a)(ii). However, basic book-keeping and other accountancy work undertaken under supervision may constitute approved accountancy experience.

(e) An ACCA student or affiliate who wishes to provide basic book-keeping services may obtain or seek such work by direct approaches to existing or prospective clients by mail or any other means unless prohibited by law in the country in which the student operates and subject to the requirements in paragraphs (e) and (f) below.

(f) An ACCA student may inform the public of his book-keeping services by means of advertising, or other forms of promotion, subject to the general requirement that the medium should not, in the opinion of the Council, reflect adversely on the ACCA student, the Association or the accountancy profession, nor should the advertisement or promotion material, in the opinion of the Council:

(i) as to content or presentation, bring the Association into disrepute or bring discredit to the ACCA student, firm or the accountancy profession;

(ii) discredit the services offered by others whether by claiming superiority for the ACCA student's services or otherwise;

(iii) contain comparisons with the services offered by others;

(iv) be misleading, either directly or by implication;

(v) fall short of the requirements of the Advertising Standards Authority as to legality, decency, honesty and truthfulness.

(g) Advertisements and other promotional material may refer to the basis on which fees are calculated, or to hourly or other charging rates, provided that the information given is not misleading.

(h) Where ACCA students provide services pursuant to the above rules, they are subject to the same rules of professional conduct which apply to members who provide such services.

(i) Regulations 8(2)(a)–(h) do not apply to ACCA students:

(i) who are members of one or more of the UK or Irish Institutes of Chartered Accountants or The Chartered Institute of Public Finance and Accounting and who hold practising certificates or the equivalent status from such bodies; or

(ii) who are authorised for appointment as company auditor under Section 1212 of the Companies Act 2006 of the United Kingdom; or

(iii) who hold licences which authorise them to act as an insolvency practitioner in accordance with the Insolvency Act 1986 of the United Kingdom and who do not carry on any activity constituting public practice which is outside the practice of acting as an insolvency practitioner; or

(iv) who are resident outside the United Kingdom, Jersey, Guernsey and Dependencies, the Isle of Man and the Republic of Ireland, or who are members of an IFAC member body situated outside the United Kingdom, Jersey, Guernsey and Dependencies, the Isle of Man and the Republic of Ireland, and hold a professional accountancy qualification which confers the right to practise.

ACCA students falling within these categories are permitted to engage in public practice provided that they describe themselves only as members of the professional bodies to which they belong (if any) and not as students of the Association. The provision of public practice services directly to the public by ACCA students, as a principal of a firm, cannot constitute approved accountancy experience for the purposes of regulation 3(a)(ii) of these regulations or regulation 7(1)(a)(i) of The Chartered Certified Accountants' Global Practising Regulations 2003.

(j) For anti-money laundering purposes in the UK, ACCA students who provide accountancy services within the terms of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 by way of business will be subject to supervision for compliance with the anti-money laundering provisions under those Regulations. In such cases, ACCA students should seek registration for supervision from HM Revenue and Customs or another body recognised for such purposes.

(k) For anti-money laundering purposes in the Republic of Ireland, ACCA students who provide accountancy services within the terms of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 by way of business will be subject to supervision for compliance with the anti-money laundering provisions under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. In such cases, ACCA students should seek registration for supervision from the Minister for Justice, Equality and Law Reform or the relevant competent authority for the time being, as defined by sections 60 and 61 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

(3) Foundations in Accountancy students

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

(4) CAT students

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

(b) CAT students are eligible to apply for CAT status and to use the letters "CAT" after their names if they:

(i) have passed or obtained exemptions from the Association's Certified Accounting Technician qualification examinations set out in Appendix 3; and

(ii) have completed one year of approved experience in accordance with Appendix 4.

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

(5) Certificate and Diploma students

The activities of Certificate and Diploma students referred to in regulation 7(4) are not restricted by the provisions of regulation 8(2) unless they are ACCA students.

(6) Students' addresses

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

9. Application procedure to become a member or registered student

(1) Form of application

(a) An applicant must apply in writing in such form, giving such undertakings and accompanied by such fees, as may be prescribed by the Council from time to time.

(b) It shall be for an applicant to satisfy the Admissions and Licensing Committee that he is eligible in accordance with these regulations for membership or, as the case may be, to become a registered student.

(2) Procedure: general

Save where the same conflict with any express provision of these regulations, regulations 3 and 8 to 16 of the Authorisation Regulations, adapted as necessary so that reference is made to an application hereunder, shall apply to applications made under this regulation 9.

10. Resignation of member, affiliate or registered student status

(1) Notice

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

(2) Fees and subscriptions

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

(3) Outstanding disciplinary matters

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

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

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

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

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

(4) Where a disciplinary order has been made against an individual member, affiliate or registered student or against a relevant firm in relation to which such person is a specified person, he will be removed from the register of members, affiliates or registered students if he fails to pay when due any amount imposed by way of a fine or costs payable to the Association or compensation payable to the complainant pursuant to such order. Provided that the Chairman of the Committee that made the order may at his absolute discretion and on such terms as he deems fit agree to defer the due date for payment on the application of the member prior to such date if he is of the opinion that such deferral is appropriate in all the circumstances.

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

12. Removal of member for non-compliance with CPD regulations

(1) Subject to the remainder of regulation 12 below, a member shall be removed from the register of members if he has breached regulations 4(4)(c), 4(4)(e)(ii) or 4(4)(g)(v) and such breach has not been remedied within three months after the breach occurred.

(2) The Council may in its absolute discretion, either on its own volition or on the application of the individual concerned, suspend the operation of regulation 12(1) where it is of the opinion it is reasonable to do so.

(3) Regulations 12(1) and 12(2) shall also apply to an individual where a complaint in respect of him or of a relevant firm in relation to which he is a specified person has been received by the Association and has not been finally disposed of within the Association's regulations.

(4) For the avoidance of doubt, the removal of an individual from the register of members pursuant to this regulation 12 does not preclude the Association from continuing to investigate any complaint in relation to that individual which had been received by it.

13. Bankruptcy

(1) Duty to notify

(a) If an individual becomes the subject of a bankruptcy event, he must notify the Association within one month of the event.

(b) If the individual wishes to remain a member, affiliate or registered student, in addition to complying with regulation 13(1)(a) he must make an application to the Admissions and Licensing Committee and satisfy it that he is still eligible in accordance with these regulations to remain a member, affiliate or registered student, notwithstanding the fact of the bankruptcy event.

(c) Any individual who fails to comply with regulation 13(1)(a) or fails to make an application pursuant to regulation 13(1)(b) will automatically cease to be a member or, as the case may be, an affiliate or registered student, on the expiry of one month from the date of the bankruptcy event.

(d) Regulation 13(1)(c) shall also apply to an individual where a complaint in respect of him or of a relevant firm in relation to which he is a specified person has been received by the Association and has not been finally disposed of within the Association's regulations.

(e) For the avoidance of doubt, the removal of an individual from the register of members pursuant to this regulation 13 does not preclude the Association from continuing to investigate any complaint in relation to that individual which had been received by it.

(2) Procedure

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

(3) The Admissions and Licensing Committee's decision

The Admissions and Licensing Committee may:

(a) permit the individual to retain his membership, affiliate or registered student status;

(b) withdraw the individual's membership, affiliate or registered student status;

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

(d) make such other decision as it thinks fit in respect of the individual.

(4) The hearing

Before making a decision under regulation 13(3), the Admissions and Licensing Committee shall consider the matter at a hearing and, save where the same conflict with any express provision of these regulations, regulations 3 and 8 to 16 of the Authorisation Regulations, adapted as necessary so that reference is made to an application hereunder, shall apply to applications made under this regulation 13.

(5) Open hearings

(a) Hearings of the Admissions and Licensing Committee shall be open to the public unless the Committee determines upon the application of either party or upon its own motion that the public shall be excluded from attending all or part of any hearing at any time, including during the hearing of any case by it, on the grounds that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public.

(b) The Admissions and Licensing Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its hearings and the procedure to be adopted in respect of any hearing shall, subject to the foregoing paragraph of this regulation, be such as the Admissions and Licensing Committee in its absolute discretion shall determine.

(6) Publicity

All decisions made by the Admissions and Licensing Committee under regulation 13(3) shall be published, together with the reasons for the same in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

14. Readmission

(1) Any former member, affiliate or registered student may apply for readmission provided that any outstanding sums due to the Association, including any fine or costs imposed by a disciplinary order, have been paid and any breach of regulation 4(4) has been rectified. Such application should be made in the same manner as the original application and it will be considered by the Admissions and Licensing Committee in the ordinary way, and in accordance with regulation 9 above, save that:

(a) the Admissions and Licensing Committee shall have specific regard to the circumstances of his cessation as a member, affiliate or registered student; and

(b) the Admissions and Licensing Committee may, in its absolute discretion, require him to pass further examinations and/or tests and/or satisfy other requirements before it considers his application for readmission.

(2) No former member, affiliate or registered student who has had a disciplinary order made against him excluding him from membership or, as the case may be, causing him to lose his affiliate or registered student status may apply for readmission until after the later of:

(a) the expiry of twelve months after the effective date of the disciplinary order; or

(b) where the disciplinary order prohibits him from applying for readmission to membership or, as the case may be, seeking restoration of his affiliate or registered student status for a specified period, the expiry of such period.

15. Service of notices and documents

(1) General

(a) Any notice or other document required to be given to or served on a relevant person may be provided to him personally, sent by post or courier to his or its registered address or to any other address nominated in writing by the relevant person for service of notices and correspondence for the purpose of these regulations, or sent by email as provided for under regulation 15(2) below. If the relevant person has no registered address any notice or document should be sent by post or courier to his address last known to the Association.

(b) Any notice or document required to be given to or served on the complainant may be provided to him personally, sent by post or courier to the address nominated in writing by the complainant for service of notices and correspondence for the purpose of these regulations, or sent by email as provided for under regulation 15(2) below.

(c) Any notice or document required to be given to or served on the Association may be provided by sending it by post or courier to the investigating officer at the principal office of the Association or sending it by email as provided for under regulation 15(2) below.

Any such notice or document so sent pursuant shall be deemed to have been given or served within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(2) Service by email

(a) Subject to the following provisions of this regulation 15(2), where a notice or document is to be served by the Association on a relevant person or complainant it may be served by email provided that the relevant person or complainant has previously indicated in writing to the Association that he is willing to accept service by email, has provided his email address to the Association in whatever form the Association deems appropriate, and has stipulated whether there are any limitations on his agreement to accept service by electronic means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

(b) For the purposes of regulation 15(2)(a) above, notice of willingness to accept service by email may be sent by the relevant person or complainant to the email address specified in the Association's communication to the relevant person or complainant. Unless and until the relevant person or complainant sends a further notice stating that he is no longer willing to accept service by email, service by the Association of any notice or document to the email address stipulated by the relevant person or complainant shall be deemed to be valid service for the purposes of this regulation.

(c) The Association is willing to accept service of any notice or document by email to the email address specified in the Association's communication to the relevant person or complainant. Any email attachment must not exceed 20,000 KB in size.

(d) Where a document is served by electronic means, the party serving the document (be it the Association, the relevant person or the complainant) need not in addition send or deliver a hard copy.

(e) The email address given by the relevant person and/or the complainant and/or the Association for the purposes of this regulation shall be deemed to be at the address for service.

(f) Service by email is deemed to be effective within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(g) For the avoidance of doubt, service by email may only validly be effected under this regulation 15(2) for the purposes of the current or concurrent proceedings under these regulations and any appeal.

16. Attendance

A relevant person may attend a hearing of the Admissions and Licensing Committee where he is the relevant person concerned notwithstanding that he may previously have indicated that he did not intend to attend.

17. Hearings

Where a case is of particular interest to a particular government or government agency, or primarily affects persons resident in a particular country, either the Admissions and Licensing Committee or the Secretary may direct that the hearing before the Admissions and Licensing Committee take place in that country. In the absence of any such direction, hearings before the Admissions and Licensing Committee shall take place in London.

18. Waiver

The Admissions and Licensing Committee may dispense with any requirement of these regulations in respect of notices, service or time in any case where it appears to the Committee to be in the interests of justice, having regard to all the circumstances.

Appendix 1

ACCA QUALIFICATION EXAMINATION STRUCTURE

Fundamentals

Knowledge

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

Skills

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

Professional

Essentials

P1 Governance, Risk and Ethics (GRE)
P2 Corporate Reporting (CR)
P3 Business Analysis (BA)

Options

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

Students are required to successfully complete all of the Professional Level examinations within a seven year timeframe. Each Professional Level examination pass is valid for seven years, after which time the student may re-sit the examination if they have not yet successfully completed the Professional Level. This rule applies to all students who register for the ACCA Qualification on or after 1 January 2016.

For students who register prior to 1 January 2016, there is a transitional arrangement from the previous rule, which required students to successfully complete all papers (Fundamentals and Professional) within a ten year timeframe. For such students, on reaching the tenth anniversary of initial registration, any Professional Level examinations successfully completed more than seven years previously will expire.

Appendix 2

PRACTICAL EXPERIENCE REQUIREMENT (PER)

(The content of this Appendix applies to all students and affiliates ("trainees") from 1 January 2016.)

Trainees must demonstrate that they have completed 36 months' work experience in one or more accounting and finance-related roles and have achieved 9 performance objectives.

Completion of performance objectives shows the trainee has achieved the right level of experience to be admitted as an ACCA member. The 9 performance objectives that must be achieved must include all 5 Essentials and any 4 Technical. A performance objective is achieved once it has been reviewed and signed off by a practical experience supervisor.

Trainees must regularly record their achievements using the Association's online recording tool. Trainees may be permitted, at the Association's discretion, to use alternative recording tools but must be able to demonstrate that they have met the PER and be able to provide corroboration of their achievement. The Association will view all trainees' records at admission to membership and will conduct an in-depth audit of a sample of records.

The following trainees may claim an exemption from the performance objective component of the PER in the circumstances set out below, but are still required to have completed 36 months' work experience in one or more accounting and finance-related roles:

1. trainees who are employed by an ACCA approved employer – trainee development – gold or platinum, provided they have the consent of their employer;

2. at ACCA's discretion, trainees who achieve membership of other IFAC member bodies which are International Education Standard 5 "Practical Experience Requirements" compliant.

ESSENTIALS

1 Professionalism and ethics
2 Stakeholder relationship management
3 Strategy and innovation
4 Governance risk and control
5 Leadership and management

TECHNICAL

Corporate reporting

6 Record and process transactions and events
7 Prepare external financial reports
8 Analyse and interpret financial reports

Financial management

9 Evaluate investment and financing decisions
10 Manage and control working capital
11 Identify and manage financial risk

Sustainable management accounting

12 Evaluate management accounting systems
13 Plan and control performance
14 Monitor performance

Taxation

15 Tax computations and assessments
16 Tax compliance and verification
17 Tax planning and advice

Audit and assurance

18 Prepare for and plan the audit process
19 Collect and evaluate evidence for an audit
20 Review and report on the findings of an audit

Appendix 3

FOUNDATIONS IN ACCOUNTANCY SUITE OF QUALIFICATIONS EXAMINATION STRUCTURE

Introductory Certificate in Financial and Management Accounting

Paper FA1 Recording Financial Transactions
Paper MA1 Management Information

Intermediate Certificate in Financial and Management Accounting

Paper FA2 Maintaining Financial Records
Paper MA2 Managing Costs and Finances

Diploma in Accounting and Business

Paper FAB Accountant in Business
Paper FFA Financial Accounting
Paper FMA Management Accounting

Specialist CAT Options (any two from three examinations)

Paper FAU Foundations in Audit
Paper FTX Foundations in Taxation
Paper FFM Foundations in Financial Management

Appendix 4

REQUIRED EXPERIENCE TO OBTAIN CERTIFIED ACCOUNTING TECHNICIAN STATUS

(The content of this Appendix applies to all Certified Accounting Technician students from 1 January 2016.)

Certified Accounting Technician students must demonstrate that they have completed the Foundations in Practical Experience Requirement (FPER), which consists of demonstrating that they have completed 12 months' work experience in one or more accounting and finance-related roles and have achieved a range of performance objectives.

Completion of the performance objectives shows that the student has achieved the right level of experience to be a Certified Accounting Technician. There are 24 Essentials and Technical performance objectives that cover a range of technical and personal effectiveness functions. Each performance objective relates to a specific skill, task or area of responsibility that may be demonstrated by a Certified Accounting Technician in the workplace. A performance objective is achieved if a Certified Accounting Technician student has met the associated performance criteria without close supervision or regular instruction from their practical experience supervisor and it has been reviewed and signed off by the practical experience supervisor.

The first two performance objectives have been identified as mandatory (Essentials) and the remaining have been identified as optional (Technical). To satisfy the Association's minimum competence requirements for Certified Accounting Technician status, students must achieve at least eight performance objectives, including the two Essentials. Successful completion of the Essentials can count towards two of the five Essentials performance objectives within the Practical Experience Requirement of the ACCA Qualification.

Certified Accounting Technician students must regularly record their achievements using the Association's online recording tool. Students may be permitted, at the Association's discretion, to use alternative recording tools but must be able to demonstrate they have met the FPER and be able to provide corroboration of their achievement. The Association will view all students' records when they apply for Certified Accounting Technician status and will conduct an in-depth audit of a sample of records.

Certified Accounting Technician students who are employed by an ACCA approved employer – trainee development CAT – gold or platinum may claim an exemption from the performance objective component of the FPER, provided they have the consent of their employer, but are still required to have completed 12 months' work experience in one or more accounting and finance-related roles.

Work-based exemptions from the first four CAT examinations are available for those students who can demonstrate competence in all Technical performance objectives linked with each examination from which they are claiming exemption.

The Essentials and Technical performance objectives within FPER are summarised below:

ESSENTIALS

Both must be completed

1 Professionalism and ethics
2 Stakeholder relationship management

TECHNICAL

Group 1 – linked to Introductory Certificate Level

3 Verify and record income and receipts from originating documents
4 Verify and record purchases and payments from originating documents
5 Prepare ledger accounts and an initial trial balance
6 Provide basic information on costs and revenues

Group 2 – linked to Intermediate Certificate Level

7 Correct errors and process accounting adjustments in the extended trial balance
8 Maintain records relating to capital acquisition and disposal
9 Prepare the final accounts of unincorporated entities
10 Prepare and complete sales tax/VAT returns
11 Record and analyse data relating to direct costs
12 Record and analyse information relating to indirect costs
13 Record and analyse information relating to costs, revenues and profit
14 Manage and control cash receipts, payments and balances

Group 3 – linked to Diploma Level

15 Draft financial statements for different business sectors
16 Interpret financial statements for different business sectors
17 Use management accounting techniques to support planning and decision-making
18 Measure and evaluate financial performance
19 Plan and control financial performance
20 Use and evaluate accounting systems and financial controls
21 Implement internal and external audit procedures
22 Prepare personal taxation computations and complete tax returns
23 Prepare business taxation computations and complete tax returns
24 Grant credit and monitor and control the collection of debts

2.2

The Chartered Certified Accountants' Global Practising Regulations 2003

Amended 1 July 2017

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

1. Citation, commencement and application

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

(2) These regulations and annexes as amended as set out herein shall come into force on 1 July 2017.

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

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

2. Interpretation

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

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

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

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

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

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

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

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

Disciplinary Regulations means The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014;

FGI means fidelity guarantee insurance;

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

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

Membership Regulations means The Chartered Certified Accountants' Membership Regulations 2014;

PII means professional indemnity insurance;

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

public practice has the meaning given by regulation 4;

registered student has the meaning given by The Chartered Certified Accountants' Membership Regulations 2014;

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

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

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

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

3. Restrictions on carrying on public practice

(1) Members

(a) No member shall carry on public practice in a designated territory or in a country or jurisdiction that, according to local legislative and/or regulatory requirements, requires a practising certificate issued by the Association, unless he holds a practising certificate which authorises the carrying on of the activity in question.

(b) A member may apply for a practising certificate where he can demonstrate that he meets the eligibility requirements set out in regulation 6, regardless of whether he requires a practising certificate under regulation 3(1)(a).

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

(d) Where a member carries on public practice in a country or jurisdiction other than where he is required to hold a practising certificate issued by the Association, he shall notify the Association that, having complied with any local legislative and/or regulatory requirements, he is eligible to carry on public practice, and he shall be placed on a register of practitioners.

(2) Members and firms

(a) No member shall be a sole proprietor, partner or director of a firm, or member of a limited liability partnership, where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, unless the member is in compliance with this regulation 3.

(b) No member shall hold rights in a firm where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, which in effect put him in the position of a principal of the firm, unless the member is in compliance with this regulation 3.

4. Meaning of public practice

(1) Activities

Subject to regulations 4(2) and 4(4), public practice, which may be carried on by an individual or a firm (the "practitioner"), means:

(a) accepting an appointment as an auditor; and/or

(b) signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the "third party"), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or

(c) holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of "Chartered Certified Accountant(s)", "Certified Accountant(s)", "Chartered Accountant(s)", "Accountant(s)" or "Auditor(s)" or any similar description or designation standing for any such description in the context of the practitioner's business shall be regarded as an example of such a holding out); and/or

(d) holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on.

(2) Book-keeping services

For the purposes of these regulations only, book-keeping services, as defined in paragraph 8(2)(b) of the Membership Regulations 2014, do not constitute public practice.

(3) Where carried on

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

(4) Honorary reports

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

(a) the accounts are of an entity which does not require the appointment of an auditor; and

(b) no fee is payable or other material benefit receivable in respect of the work performed; and

(c) the gross income of the entity for the year prior to the year in question does not exceed £100,000; and

(d) the aggregate of such gross income with such gross income of any other entity in respect of which the member has relied upon this regulation 4(4) in the calendar year in question does not exceed £200,000; and

(e) any third parties are made aware that the activity has been carried out by an Honorary Reporting Accountant; and

(f) the member does not hold himself out, or allow himself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on.

5. The practising certificate

The practising certificate shall authorise the carrying on of the activities as specified in the holder's application, as updated from time to time.

6. Eligibility for a practising certificate

A member shall be eligible for a practising certificate where:

(a) he is sufficiently qualified in accordance with regulation 7 to carry on any activity constituting public practice;

(b) he is fit and proper within the meaning of regulation 8;

(c) he holds the necessary PII in accordance with regulation 9; and

(d) he has made arrangements for the continuity of his practice in accordance with regulation 11.

7. Qualifications

(1) Qualification for a practising certificate

(a) To be qualified to hold a practising certificate authorising a member for the carrying on of any activity constituting public practice, except accepting appointments as an auditor, an individual must have been a member of the Association continuously for a period of not less than two years and either:

(i) (aa) completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, under the supervision of a suitably experienced member or another person having in the opinion of Council adequate qualifications; and

(bb) at least two years of practical training must be completed after the individual's admission to membership and must comply with the requirement at regulation 7(2). The remaining training period may be completed before or after, or partly before and partly after, the individual's admission to membership and must include experience in the matters set out in Appendix 2 of the Membership Regulations in an ACCA approved employer; and

(cc) completed a practising certificate training record; or

(ii) previously held an equivalent practising certificate issued by the Association.

(b) The requirements at regulations 7(1)(a)(i)(bb) and (cc) above do not apply to a practising certificate limited to Zimbabwe.

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

(2) Training requirements after admission to membership

(a) Training in an ACCA approved employer after admission to membership must cover all the following key areas of competence as set out in Appendix 1 to these regulations and must be recorded in the practising certificate training record:

(i) Professional Conduct (key area 1);

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

(iii) Management (key area 6).

(b) Candidates for a practising certificate must achieve proficiency in the following elements of competence as set out in Appendix 1 to these regulations, which must be recorded in the practising certificate training record:

(i) all 5 mandatory elements of competence in relation to Professional Conduct; and

(ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and

(iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

(3) Waiver

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

8. Fit and proper persons

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

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

(i) been convicted of a criminal offence; or

(ii) been the subject of a disciplinary order made by the Association or another professional body; or

(iii) been or is the subject of an investigation, whether criminal, disciplinary or otherwise, in respect of his conduct; or

(iv) committed a material breach of an applicable regulation of the Association; or

(v) fallen within any of the criteria set out at regulations 8(3) and (4); or

(vi) on any occasion given the Association false, inaccurate or misleading information or failed to co-operate with the Association.

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

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

(i) at any time bankrupt, signed a trust deed for creditors or entered into a deed of arrangement, scheme or composition in respect of his financial affairs (or any similar or analogous event); or

(ii) removed from the office of liquidator, trustee, administrative receiver, administrator or supervisor; or

(iii) the subject of a disqualification order or disqualification undertaking made under the Company Directors Disqualification Act 1986 of the United Kingdom; or

(iv) the subject of a bankruptcy restriction order or bankruptcy restriction undertaking under the Insolvency Act 1986 of the United Kingdom; or

(v) excluded from or refused membership of a professional body on disciplinary grounds; or

(vi) found to have failed to ensure that the experience and competence of his employees and practice associates are adequate, having regard to the nature of the work involved; or

(vii) a patient under the Mental Health Act 1983 of the United Kingdom; or

(viii) the equivalent of or similar to the above criteria under the corresponding legislation of any country or jurisdiction.

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

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

(i) any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice;

(ii) in the case of a partnership, any matter relating to any of the partners, any director or controller of any of the partners, any body corporate in the same group as any of the partners and any director or controller of any such other body;

(iii) in the case of a body corporate, any matter relating to any director or controller of the body, any other body corporate in the same group or any director or controller of any such other body; and

(iv) in the case of a limited liability partnership, any matter relating to any of the members or designated members of the limited liability partnership.

9. Professional indemnity insurance

(1) Holders of a practising certificate

(a) Subject to regulation 9(6), applicants for and holders of a practising certificate must hold professional indemnity insurance ("PII") covering the liabilities and according with the limits set out in this regulation 9 and, in the case of such a person whose firm employs full and/or part time staff, the firm must also hold a policy of fidelity guarantee insurance ("FGI") in respect of all partners, directors, members and designated members of limited liability partnerships and employees in accordance with this regulation. For the avoidance of doubt such FGI may, but need not, form a single policy with such PII and all such PII and FGI must remain in force for all of the period during which a relevant practising certificate is held.

(b) Such PII and FGI may be effected with any reputable insurance company or insurance companies or other underwriter provided that Council reserves the right to require applicants for or holders of a practising certificate not to use certain insurance companies or underwriters, if it so directs.

(2) Liabilities to be covered

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

(3) Limits

(a) Subject to regulation 9(3)(g), the limit of indemnity on PII in respect of each and every claim shall be:

(i) in the case of a person whose firm's total income for the accounting year immediately preceding the year in question (the "relevant total income" and "relevant accounting year") is less than or equal to £200,000, at least the greatest of:

(aa) two and one half times that firm's relevant total income; and

(bb) twenty-five times the largest fee raised by the firm during the relevant accounting year; and

(cc) £50,000;

(ii) in the case of a person whose firm's relevant total income exceeds £200,000 but is less than or equal to £700,000, at least the greater of:

(aa) the aggregate of £300,000 and the firm's relevant total income; and

(bb) twenty-five times the largest fee raised by the firm during the relevant accounting year;

(iii) in the case of a person whose firm's relevant total income exceeds £700,000, at least the greater of:

(aa) £1 million; and

(bb) twenty-five times the largest fee raised by the firm during the relevant accounting year.

(b) The limit of indemnity on PII in respect of year 2000 date recognition claims, where available, may be on an aggregate basis as opposed to an each and every claim basis. The minimum limit on this cover must be calculated in accordance with regulation 9(3)(a).

(c) A firm's "total income" is the aggregate of the firm's professional charges and all other income (including commissions) received by a firm in respect of and in the course of the firm's business, but excluding any commission which the firm passes on to the client.

(d) The "largest fee" raised by a firm relates, in all cases, to the highest cumulative amount of fees raised to a particular client during the year rather than the largest single invoice raised.

(e) Subject to regulation 9(3)(g), any uninsured excess (that is to say, the amount of any claim which is borne by the firm before there is any payment by the insurer) in accordance with a firm's PII and FGI shall be restricted to 2 per cent of the limit of indemnity in respect of each and every claim provided pursuant to the PII or, as the case may be, FGI or £20,000 per principal in respect of each and every claim, whichever amount is the lesser.

(f) Subject to regulation 9(3)(g), the annual limit of indemnity to be provided by a firm's FGI shall be not less than £50,000 in respect of each and every claim.

(g) Persons carrying on public practice in a country other than a designated territory may, instead of complying with regulations 9(3)(a), 9(3)(e) and 9(3)(f), comply with the minimum requirements of a recognised national body or regulatory authority in that country in respect of the limit of indemnity on PII and FGI and in respect of uninsured excess.

(4) Administrative provisions

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

(ii) In the event that PII is subject to an aggregate limit and claims are notified during the year in question but not met in that year, the aggregate limit for the following year and, if such claims are not by then met, subsequent years should be increased to take account of the amount (or a best estimate of that amount) either paid or reserved for such claims.

(b) The policy terms and wording shall be available for inspection by the Admissions and Licensing Committee.

(c) Each person subject to regulation 9(1) shall be deemed to have authorised the Admissions and Licensing Committee to seek, direct from the relevant insurer and/or broker, confirmation of matters of record.

(d) Each person subject to regulation 9(1) must keep a record of insurance claims made by him pursuant to his PII and, as the case may be, FGI.

(e) Such record, together with each annual renewal proposal form, must be available for inspection by the Admissions and Licensing Committee.

(5) Continuity following cessation

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

(6) Exception

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

(a) is a person subject to regulation 9(1) and holds PII in compliance with regulation 9(1); or

(b) holds PII which the Admissions and Licensing Committee regards as adequate.

(7) Waiver

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

10. Continuing professional development

Members must comply with Membership Regulation 4(4).

11. Continuity of practice

(1) Individuals

(a) A holder of a practising certificate must enter into and keep in force for all of the period during which a practising certificate is held a written agreement with another individual or firm (the "nominee"), providing for the nominee, or nominees if more than one, to be responsible for the individual's practice in the event of his death or incapacity.

(b) The nominee or nominees must:

(i) be based in the same country as the individual; and

(ii) hold an equivalent qualification and be authorised to carry on the individual's work for which they have undertaken to be responsible.

(c) Where the individual's practice is based in more than one country, he must comply with this regulation in respect of each country in which he is based, but may appoint different nominees in respect of different countries.

(2) Firms

(a) A firm must make provision for the continuity of its practice in the event of its dissolution, winding-up or liquidation, or the death or incapacity of an individual holder of a practising certificate who is a partner, director or member of the firm, by providing for another individual or firm (the "nominee" or "nominees" if more than one) to be responsible for the firm's practice in those circumstances.

(b) Such provision may be made in the partnership agreement (where the firm is a partnership) or in the Memorandum and Articles of Association (where a firm is a company) or in the incorporation document (where the firm is a limited liability partnership) or other such agreement as the members of the limited liability partnership may agree or by entering into and keeping in force for all of the period during which a practising certificate is held a written agreement with another firm.

(c) The nominee or nominees must:

(i) be based in the same country as the firm; and

(ii) hold an equivalent qualification and be authorised to carry on the firm's work for which they have undertaken to be responsible.

(d) An individual holder of a practising certificate who is the sole director and shareholder of his firm may not provide nominee services to his firm.

(e) Where the firm's practice is based in more than one country, it must comply with this regulation in respect of each country in which it is based and may appoint different nominees in respect of different countries.

(3) Exception for individuals

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

(4) Waiver

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

12. Notification

(1) Notification 28 days in advance

(a) A holder of a practising certificate shall notify the Association in writing of the following changes not less than 28 days before the change is implemented:

  (i) a change in the name of the holder, or where it is a body corporate, its registered name and, in the case of a firm, of any partner, member or designated member or director or controller of it;

  (ii) a change in the address of the holder's principal or, in the case of a body corporate, registered office or, if different, the address of the place for service of notices or documents;

  (iii) the opening or closure of a branch office of the holder;

  (iv) the disposal or cessation of a holder's practice.

(b) Notification of a change of name of a person holding a practising certificate shall be accompanied by an application for a new practising certificate of the relevant type from the stated date.

(2) Notification forthwith

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

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

(b) the appointment of a receiver, administrator, trustee, judicial factor or sequestrator of the assets of the holder (or the happening of any similar or analogous event) or, in the case of a firm, of any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it;

(c) the making or any proposals for the making of a composition or arrangement with creditors or any one creditor of the holder or, in the case of a firm, of any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it;

(d) where the holder is a partnership, an application or notice to dissolve the partnership and where it is a body corporate, the presentation of a petition for winding-up or the summoning of any meeting to consider a resolution to wind up the body corporate or any other body corporate in its group;

(e) the granting or refusal of any application for, or revocation of, a recognised professional qualification or any certificate entitling the holder or, in the case of a firm, any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it to carry on company audit work from another qualifying or supervisory body or authorisation to carry on insolvency, investment, banking or insurance business;

(f) the appointment of inspectors by a statutory or regulatory authority to investigate the affairs of the holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it;

(g) the imposition of disciplinary measures or sanctions on the holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it by any other regulatory authority or professional body of which he or such a person is a member;

(h) in relation to a holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it:

(i) the institution and abandonment or completion of proceedings in relation to and/or a conviction for any offence involving fraud or other dishonesty;

(ii) the institution and abandonment or completion of proceedings in relation to and/or a conviction for any offence under legislation relating to investment, banking, building societies, companies, consumer credit, credit unions, friendly societies, industrial and provident societies, insolvency, insurance or other financial services;

(iii) the presentation of a petition for a bankruptcy order or an award of sequestration;

(iv) the making of an order by a court disqualifying that individual from serving as director or as a restricted director or as a disqualified director of a company or from being concerned with the management of a company;

(v) the commencement by the police or any other authority of an investigation into any matter related to public practice, or any other matter which might reasonably affect the Admissions and Licensing Committee's willingness to grant or renew a practising certificate of a type relevant to the activities in question;

(i) the disappearance of a partner, member or designated member of a firm such that he is no longer contactable by the other partners or members of the firm;

(j) the happening of any event which causes the holder to cease to be eligible for the practising certificate;

(k) any changes in any of the information previously supplied to the Association;

(l) any other information relevant to the determination by the Admissions and Licensing Committee of the fitness and propriety of the holder in accordance with regulation 8;

(m) any other information that the Association may require in connection with the requirements of these regulations.

(3) Force Majeure

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

(4) Notification obligation

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

13. Conduct

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

(a) comply with the Code of Ethics and Conduct of the Association or of another recognised body which incorporates the International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants; and

(b) maintain documented (either paper-based or electronic) quality assurance systems and procedures for ensuring timely and accurate identification of client requirements; and

(c) apply to all relevant assignments the International Financial Reporting Standards issued by the International Accounting Standards Board or the equivalent standards of the country in which the individual carries on public practice; and

(d) apply to all relevant assignments the International Standards on Auditing issued by the International Auditing and Assurance Standards Board or the equivalent standards of the country in which the individual carries on public practice.

14. Monitoring, quality assurance and compliance

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

(a) monitoring by the Association, in order to monitor compliance with these regulations and with the bye-laws; and

(b) the Association's quality assurance programme;

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

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

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

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

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

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

15. Disclosure of information

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

Appendix 1

Competences of Practising Certificate Holders

M indicates a mandatory element

K indicates a key element

A indicates an audit element

Key Area 1 Professional Conduct

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

Key Area 2 Accounting

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

Key Area 3 Business Advice, Development and Measurement

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

Key Area 4 Taxation

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

Key Area 5 Business Assurance and Internal Review

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

Key Area 6 Management

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

Key Area 7 Audit

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

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

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

1. Application

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

2. Interpretation

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

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

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

appropriate qualification means a qualification in accordance with section 1219 of the Companies Act 2006 of the United Kingdom;

Audit Directive means Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts;

audit qualification means an audit qualification to the practising certificate issued by the Association to individuals holding the Association's recognised professional qualification and referred to in regulation 6 of Appendix 1, which authorises the individual to hold himself out as an auditor and to carry on audit work;

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

audit working papers and investigation reports means:

(a) any documents which are or have been held by a statutory auditor, an EEA auditor or a third country auditor and which are related to the conduct of an audit conducted by that auditor,

(b) any report of an inspection into the conduct of an audit by a statutory auditor, an EEA auditor or a third country auditor, or

(c) any report of an investigation into the conduct of a statutory auditor, and EEA auditor or a third country auditor;

auditing certificate means an auditing certificate issued by the Association to firms and referred to in regulation 5 of Appendix 1;

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

controller has the meaning given in paragraph 8(4) of Schedule 10 of the Companies Act 2006 of the United Kingdom;

EEA auditor means an individual who is approved in accordance with the Audit Directive by an EEA competent authority to carry on audit work;

EEA competent authority means a competent authority within the meaning of article 2.10 of the Audit Directive of an EEA state other than the United Kingdom;

EEA state means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time);

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

group means a parent undertaking and its subsidiary undertakings;

group auditor means a person appointed as auditor to conduct an audit of group accounts;

insolvency licence means the licence issued by the Association which authorises the holder in accordance with section 390(2) of the Insolvency Act 1986 of the United Kingdom to act as an insolvency practitioner, and referred to in regulations 5 and 6 of Appendix 4;

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

major audit means a statutory audit conducted in respect of:

(a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 of the United Kingdom); or

(b) any other person in whose financial condition there is a major public interest;

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

public interest entity means:

(a) an issuer whose transferable securities are admitted to trading on a regulated market;

(b) a credit institution within the meaning given by Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, other than one listed in Article 2 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and investment firms; or

(c) an insurance undertaking within the meaning given by Article 2(1) of Council Directive 1991/674/EEC of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings.

qualified person means:

(a) in relation to an individual a person qualified to hold:

(i) a practising certificate with an audit qualification; or

(ii) a corresponding qualification to audit accounts under the law of an EEA state, or part of an EEA state, other than the United Kingdom; and

(b) in relation to a firm:

(i) a firm that is eligible to be appointed as an auditor; or

(ii) a firm that is eligible for a corresponding appointment as an auditor under the laws of an EEA state, or part of an EEA state, other than the United Kingdom;

recognised professional qualification means a qualification declared as such for the purpose of Part 2 of Schedule 11 of the Companies Act 2006 of the United Kingdom;

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

senior statutory auditor means a person acting as such in accordance with section 504 of the Companies Act 2006 of the United Kingdom;

statutory auditor has the meaning given by section 1210 of the Companies Act 2006 of the United Kingdom;

supervisory body as the meaning given by section 1217(1) of the Companies Act 2006 of the United Kingdom;

third country means a country or territory that is not an EEA state or part of an EEA state;

third country auditor means a person, other than a person eligible for appointment as a statutory auditor, who is eligible to conduct audits of the accounts of bodies corporate incorporated or formed under the law of a third country in accordance with the law of that country;

third country competent authority means a body established in a third country exercising functions related to the regulation or oversight of auditors;

UK competent authority means the Financial Reporting Council Limited.

(2) For the purposes of these regulations, unless the context otherwise requires, a reference to the Companies Act 2006 of the United Kingdom or any of the provisions of that Act shall, in relation to the carrying on of public practice in Northern Ireland, the eligibility, the qualifications and other conditions in relation thereto and the functions of the Association as a supervisory body (or corresponding concept) in Northern Ireland, be deemed to be a reference to the corresponding legislation or provision of the law of Northern Ireland.

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

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

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

3. Meaning of public practice

(1) Activities

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

(2) Supervision for anti-money laundering

Members who provide accountancy services within the terms of the Money Laundering Regulations 2007 by way of business which fall outside the meaning described by regulation 4 of the Global Practising Regulations (for example book-keeping) will be subject to supervision for compliance with the anti-money laundering provisions under the Money Laundering Regulations 2007. In such cases, eligible members should consider obtaining a practising certificate from the Association in order to be supervised by the Association. Alternatively, members must register with HM Revenue and Customs or another body recognised for such purposes.

4. Restrictions on carrying on public practice

(1) Members

(a) A member holding an insolvency licence may not carry on an activity constituting public practice which is outside the practice of acting as an insolvency practitioner unless he holds a practising certificate.

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

(2) Members and firms

Firms that wish to accept an appointment as statutory auditor, or to be held out as available to accept such an appointment, and members who intend to be responsible for a firm's statutory audit work are required to comply with the requirements of Appendix 1.

5. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Qualifications required to obtain an audit qualification

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

(a) where the audit qualification is to relate to the United Kingdom, the requirements of regulation 6 in Appendix 1;

(b) where the audit qualification is to relate to Jersey, Guernsey and Dependencies, or the Isle of Man:

(i) comply with the relevant requirements in Appendix 3 of these regulations; or

(ii) have previously held an equivalent certificate issued by the Association. However, individuals will be required, prior to the audit qualification being granted, to demonstrate adequate competence in audit work by providing to the Association details of recent audit experience and recent audit-related CPD.

6. Restriction on carrying on exempt regulated activities

No member, nor any firm in relation to which he is a sole proprietor, partner or director, may carry on, or purport to carry on, exempt regulated activities in the United Kingdom unless he or, as the case may be, it is registered by the Association to carry on exempt regulated activities or is otherwise authorised, or exempted from the need for authorisation, in respect of such exempt regulated activities for the purposes of the Financial Services and Markets Act 2000 of the United Kingdom. However, any member, or firm, satisfying the eligibility requirements contained in regulation 3 of the Designated Professional Body Regulations can register to conduct exempt regulated activities in accordance with and from the effective date of those regulations. The exempt regulated activities must be the only regulated activities carried out, other than regulated activities in relation to which the member or firm is an exempted person. Exempt regulated activities are as defined in the Designated Professional Body Regulations.

7. Professional indemnity insurance

(1) Practising certificates

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

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 7(1) in respect of their ceasing to engage in public practice, insolvency work, exempt regulated activities or investment business services or investment advice.

(3) Insurance mediation

Regulation 9 of the Global Practising Regulations sets out the limits of indemnity in respect of all holders of practising certificates. In addition, firms wishing to carry on insurance mediation activities must comply with the special requirements set out in regulation 4(3) of The Chartered Certified Accountants' Designated Professional Body Regulations 2001.

8. Continuing professional development

Firms which carry on exempt regulated activities must require the individuals who are partners or directors or agents of the firm who are not members but who carry on exempt regulated activities in the United Kingdom on behalf of the firm to comply with Membership Regulation 4(4) as if they were members.

9. Conduct

(1) Accountants' reports

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

(2) Exempt regulated activities

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

10. Disclosure of information

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

11. Monitoring

Individuals holding practising certificates shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

Appendix 1

United Kingdom Audit Regulations 2016

1. Application

The regulations contained in this Appendix form part of Annex 1 to The Chartered Certified Accountants' Global Practising Regulations 2003.

2. Restrictions on carrying on public practice

(1) Members and firms

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

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

3. Where public practice is carried on

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

4. Eligibility for an audit qualification

Members responsible for a firm's audit work shall be required to obtain the Association's recognised professional qualification in accordance with regulation 6 in addition to complying with regulation 5 of the Global Practising Regulations as regards their practising certificate. The audit qualification will convey to the holder the necessary authorisation to carry on audit work.

5. Eligibility for an auditing certificate

(1) A firm that is not an EEA auditor shall be eligible for an auditing certificate if:

(a) each of the individuals responsible for the firm's audit work holds an audit qualification, or, in the case of non-members of the Association, holds an equivalent certificate;

(b) it is controlled by qualified persons within the meaning of regulation 7;

(c) it is fit and proper within the meaning of regulation 8;

(d) it holds the necessary PII in accordance with regulation 9;

(e) it has made arrangements for the continuity of its practice in accordance with regulation 11;

(f) it undertakes to be bound by the Global Practising Regulations including this Annex 1, the Complaints and Disciplinary Regulations, the Membership Regulations and the Charter and bye-laws insofar as they are applicable to it;

(g) it has arrangements to prevent individuals who do not hold an appropriate qualification for the purposes of Part 42 of the Companies Act 2006 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; and

(h) it satisfies any other eligibility criteria set by the UK competent authority.

(2) A firm that is an EEA auditor shall be eligible for an auditing certificate if:

(a) each of the individuals responsible for the firm's audit work holds an audit qualification, or, in the case of non-members of the Association, holds an equivalent certificate;

(b) the firm would be eligible for appointment as a statutory auditor if it were not an EEA auditor or is eligible for a corresponding appointment as an auditor under the law of an EEA state or part of an EEA state, other than the United Kingdom;

(c) if the firm is eligible for a corresponding appointment as an auditor under the law of an EEA state or part of an EEA state other than the United Kingdom, the firm provides proof of its eligibility in the form of a certificate, dated not more than three months before it is provided by the firm, from the competent authority of the EEA state concerned;

(d) it is fit and proper within the meaning of regulation 8;

(e) it holds the necessary PII in accordance with regulation 9;

(f) it has made arrangements for the continuity of its practice in accordance with regulation 11; and

(g) it undertakes to be bound by the Global Practising Regulations including this Annex 1, the Complaints and Disciplinary Regulations, the Membership Regulations and the Charter and bye-laws insofar as they are applicable to it.

A firm which has ceased to comply with the conditions under (1)(a), (1)(b) or (2)(a) above may be permitted to remain eligible for appointment as an auditor for a period of not more than three months.

6. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification:

(a) an individual (other than an EEA auditor) must:

(i) have obtained the Association's recognised professional qualification (in accordance with regulation 6(5) below); or

(ii) have a third country qualification approved by the Secretary of State under section 1221 of the Companies Act 2006 and have passed the Association's aptitude test in accordance with 6(3) below unless an aptitude test is not required (see 6(4) below); or

(iii) have previously held an equivalent certificate issued by the Association. However, individuals will be required, prior to the audit qualification being granted, to demonstrate adequate competence in audit work by providing to the Association details of recent audit experience and recent audit-related CPD; or

(b) an individual who is an EEA auditor must:

(i) hold an appropriate qualification; or

(ii) have been authorised to practise the profession of statutory auditor pursuant to Regulation 29 of the European Communities (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059) and have fulfilled any requirements imposed pursuant to regulation 32 of those Regulations;

and have passed an aptitude test in accordance with 6(3) below unless an aptitude test is not required (see 6(4) below).

(3) The aptitude test

The aptitude test:

(a) must test the person's knowledge of subjects:

(i) that are covered by a recognised professional qualification;

(ii) that are not covered by the recognised professional qualification already held by the person; and

(iii) the knowledge of which is essential to the pursuit of the profession of statutory auditor;

(b) may test the person's knowledge of rules of professional conduct;

(c) must not test the person's knowledge of any other matters.

(4) Aptitude test not required

No aptitude test is required if the subjects that are covered by a recognised professional qualification and the knowledge of which is essential in the pursuit of the profession of statutory auditor are covered by the professional qualification already held by the person.

(5) Recognised professional qualification of the Association

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

(a) have completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, of which at least two years must have been under the supervision of:

(i) a member who is authorised to carry on audit work by way of an audit qualification; or

(ii) any other person having in the opinion of Council adequate qualifications and experience and who is a fully qualified statutory auditor under paragraph 9(4) of Schedule 11 to the Companies Act 2006, such as statutory auditors practising in EEA states (or equivalent persons in relation to applicants for certificates relating to countries other than the United Kingdom);

and must comply with the requirements set out in Part 1 of Appendix 2;

(b) have successfully completed the English or Scottish paper F4, Corporate and Business Law, of the Association's examinations, or equivalent paper from a previous syllabus;

(c) have successfully completed UK papers F6, Taxation, and P7, Advanced Audit and Assurance, of the Association's examinations, or equivalent papers from a previous syllabus;

(d) have successfully completed the UK paper P2, Corporate Reporting, if this paper P2 was completed on or after 1 January 2011;

(e) if the member registered for the ACCA qualification on or after 1 January 2016, have successfully completed all the relevant Professional Level examinations within five years from the date on which the member completed the Fundamentals Level examinations (and, for the removal of doubt, completion of the Fundamentals Level examinations may include receiving exemption from any or all of the papers in that Level); and

(f) have been a member of the Association continuously for a period of not less than two years.

If the member accepted exemptions from all or part of the Fundamentals Level of the Association's syllabus on the basis of qualifications gained more than five years previously (at the date of initially submitting the qualifications as an ACCA student), the member will be required to pass those exempted papers by examination.

If the member registered for the ACCA Qualification on or after 1 January 2016, the member must have successfully completed all the relevant Fundamentals Level examinations within five years of becoming eligible to sit that part.

Additional requirements are in place for those members whose route to membership of the Association was from another qualifying body. These are set out in Appendix 2 Part 2.

(6) Waiver

In exceptional circumstances, to the extent permitted by the provisions of the Companies Act 2006 and the UK competent authority, the Admissions and Licensing Committee may waive, vary or suspend the requirements of regulation 6(5)(a) and/or regulation 6(5)(f) in its absolute discretion.

7. Meaning of firm controlled by qualified persons

Firms controlled by qualified persons are authorised for carrying on audit work in accordance with regulation 5.

(a) A firm shall only be regarded as controlled by qualified persons for the purposes of regulation 5 where:

(i) a majority of the partners or a majority of the directors and shareholders of the firm are qualified persons; and

(ii) if the firm's affairs are managed by a board of directors, committee or other management body, a majority of that body are qualified persons, or if the body consists of only two persons, at least one of them is a qualified person and has a casting vote.

(b) References in regulation 7(a) above to a person being qualified are, in relation to an individual, to his being qualified to hold an audit qualification in accordance with regulation 6(2) and that he spends a material amount of his time working in the firm concerned, or being otherwise eligible to be appointed as an auditor.

(c) A majority of the partners or a majority of the directors and shareholders of the firm in regulation 7(a)(i) means:

(i) where under the firm's constitution matters are decided on by the exercise of voting rights, partners or directors and shareholders holding a majority of the rights to vote on all, or substantially all, matters;

(ii) in any other case, partners or directors and shareholders having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.

(d) A majority of the members of the management body of a firm in regulation 7(a)(ii) means:

(i) where matters are decided at meetings of the management body by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;

(ii) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.

(e) The provisions of paragraphs 5 to 7 of Schedule 7 to the Companies Act 2006 (rights to be taken into account and attribution of rights) apply for the purposes of this regulation 7.

8. Fit and proper persons

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

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

(a) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor;

(b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;

(c) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

9. Professional indemnity insurance

(1) Auditing certificates held by firms

Regulation 9 of the Global Practising Regulations applies to applicants for and holders of auditing certificates by firms.

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 9(1) in respect of their ceasing to engage in public practice.

10. Continuing professional development

(1) Firms holding an auditing certificate must require the individuals who are partners or directors or agents of the firm who are not members but who are responsible for the firm's audit work to comply with Membership Regulation 4(4) as if they were members. This includes compliance with regulation 10(2) below.

(2) Members holding the recognised professional qualification must maintain competence in the area of audit, and obtain an appropriate proportion of CPD units in that area.

11. Continuity of practice

Regulation 11 of the Global Practising Regulations shall be applicable to all firms holding an auditing certificate.

12. Notification

Firms holding an auditing certificate must comply with regulation 12 of the Global Practising Regulations.

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

Firms holding an auditing certificate shall notify the Association in writing within 28 days after their acceptance of an appointment as auditor to a public interest entity whose audits are within the scope of the Audit Quality Review team of the UK competent authority.

13. Conduct of audit work

(1) In the conduct of audit work, holders of an audit qualification and firms holding an auditing certificate shall comply with all the applicable sections of the Association's Rulebook and in particular the ACCA Code of Ethics and Conduct, the International Standards on Auditing issued by the International Auditing and Assurance Standards Board and the technical, ethical and quality control standards issued by the UK competent authority under the Statutory Auditors and Third Country Auditors Regulations 2016.

(2) For accounting periods commencing on or after 6 April 2008, the audit report shall:

(a) state the name of the auditor and be signed and dated;

(b) where the auditor is an individual, be signed by him;

(c) where the auditor is a firm, be signed by the senior statutory auditor in his own name, for and on behalf of the auditor and use the designation "Senior Statutory Auditor" after his name;

(d) state the name of the firm as it appears on the register; and

(e) use the designation "Statutory Auditor" or "Statutory Auditors" after the name of the firm.

The auditor's name and, where the auditor is a firm, the name of the person who signed the report as senior statutory auditor may be omitted from published copies of the report and the copy of the report to be delivered to the registrar of companies if the conditions set out in section 506 of the Companies Act 2006 are met.

(3) In the case of a major audit, an auditor ceasing to hold office for any reason must notify the Financial Reporting Council. In the case of an audit which is not a major audit, an auditor ceasing to hold office before the end of his term in office must notify the Association. In each case the notice must inform the appropriate audit authority that he has ceased to hold office and be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 519 of the Companies Act 2006.

(4) A person ceasing to hold office as a statutory auditor shall make available to his successor in that office all relevant information which he holds in relation to that audit.

(5) In the conduct of group audit work, the group auditor shall:

(a) review for the purposes of a group audit the audit work conducted by other persons and record that review;

(b) retain copies of any documents necessary for the purposes of the review that it has received from third country auditors who are not covered by the working arrangements under section 1253E of the Companies Act 2006;

(c) agree with those third country auditors proper and unrestricted access to those documents on request.

14. Disclosure of information

(1) Register of auditors and available information

Holders of an audit qualification and firms holding an auditing certificate must supply the Association with all necessary information in accordance with, and to enable the Association to comply with any other obligations imposed upon it by regulations made under, sections 1239 and 1240 of the Companies Act 2006. This requirement shall apply for the duration of time that an audit qualification and auditing certificate are held.

(2) Responsibility of group auditor

In the case of a group audit where part of the group is audited by a third country auditor, an auditor must make arrangements so that, if requested by the Association or by a competent authority, it can obtain from that third country auditor all audit working papers and investigation reports necessary for a review of that third country auditor's audit work. An auditor shall make those documents available to:

(a) the Association;

(b) the UK competent authority or any recognised supervisory body to which the UK competent authority has delegated tasks in accordance with regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016;

(c) the Secretary of State.

If, after taking all reasonable steps, a group auditor is unable to obtain copies of the documents or the access to the documents necessary for the review, the group auditor shall record:

(a) the steps taken to obtain copies of or access to those documents;

(b) the reasons why the copies or access could not be obtained; and

(c) any evidence of those steps or those reasons.

(3) Transfer of audit documentation to third country competent authorities

In the case of a request by a third country competent authority, an auditor must provide that body with a copy of its audit working papers and investigation reports as soon as practicable, provided:

(a) the transfer is to an approved third country competent authority;

(b) the Secretary of State has approved the transfer;

(c) the transfer to the third country competent authority is made for the purpose of an investigation of an auditor or audit firm;

(d) the following conditions are met:

(i) the third country competent authority has requested the audit working papers and investigation reports for the purposes of an investigation, which has been initiated by itself or another third country competent authority established in that same third country;

(ii) the audit working papers and investigation reports relate to audits of companies that:

(aa) have issued securities in that third country; or

(bb) form part of a group issuing statutory consolidated accounts in that third country;

(iii) where the authority has made the request for the audit working papers and investigation reports directly to the statutory auditor, the authority has given the Secretary of State advance notice of the request, indicating the reasons for it;

(iv) the authority has entered into arrangements with the Secretary of State in accordance with section 1253E of the Companies Act 2006.

The statutory auditor must refuse to transfer audit working papers and investigation reports to a third country competent authority if the Secretary of State directs under section 1253E(6) of the Companies Act 2006.

The auditor must also inform the Association of the request.

15. Monitoring

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

(2) Firms holding auditing certificates must comply with the Association's monitoring arrangements, which may be performed by the UK competent authority or any recognised supervisory body to which the UK competent authority has delegated tasks in accordance with regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016.

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

(4) An order imposed by the UK competent authority in accordance with the Statutory Auditors and Third Country Auditors Regulations 2016 is to be treated as if it were an order imposed by the Association under The Chartered Certified Accountants' Authorisation Regulations 2014.

16. Investigation of complaints

Holders of the Association's recognised professional qualification and firms holding auditing certificates must comply with the Association's investigation arrangements, which may be performed by the UK competent authority or any recognised supervisory body to which the UK competent authority has delegated tasks in accordance with regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016.

17. Enforcement

(1) Sanctions available to the Disciplinary Committee are set out in The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014. For the avoidance of doubt, the sanctions available to the Disciplinary Committee include all those set out in paragraph 12(3)(b) of schedule 10 to the Companies Act 2006.

(2) A sanction imposed by the UK competent authority following the conclusion of an investigation in accordance with the Statutory Auditors and Third Country Auditors Regulations 2016 is to be treated as if it were a sanction imposed by the Association under The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014.

18. General

(1) In circumstances where and to the extent that a task delegated to the Association is reclaimed by the UK competent authority under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016, the UK competent authority may apply rules (and may vary the rules it applies) made by the Association in accordance with the requirements of Part 2 of Schedule 10 to the Companies Act 2006.

(2) In circumstances where and to the extent that a task delegated to the Association is reclaimed by the UK competent authority under regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016, and is delegated by the UK competent authority to another recognised supervisory body, that other recognised supervisory body may apply rules (and may vary the rules it applies) made by the Association in accordance with the requirements of Part 2 of Schedule 10 to the Companies Act 2006.

Appendix 2

Requirements for the recognised professional qualification

Part 1: Training requirements

To obtain the Association's recognised professional qualification (i.e. the UK audit qualification), members must have completed three years' (i.e. 132 weeks based on 44 weeks per annum) practical training in an ACCA approved employer.

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

(a) Audit (key area 7 – see below);

(b) Professional Conduct (key area 1);

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

(d) Management (key area 6).

Candidates for the Association's recognised professional qualification must:

(a) be proficient in all the competences shown for audit (key area 7) as described in more detail in the competences of practising certificate holders reproduced in Appendix 1 to the Global Practising Regulations;

(b) be proficient in:

(i) all 5 mandatory elements of competence in relation to Professional Conduct; and

(ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and

(iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

At least 44 weeks of the training must be in audit work. This should include:

(a) at least 22 weeks specifically in statutory audit, and

(b) a further 22 weeks which is either:

(i) audit work of companies established under the Companies Acts, or

(ii) audit work in respect of either:

(aa) organisations whose financial reporting requirements are laid down in statutes other than the Companies Acts (or equivalent provisions of the laws of the country to which the qualification is to relate), for example:

- nationalised industries;
- local councils, health authorities and self-governing trusts (excluding value for money audits and parish accounts);
- housing associations;
- insurance companies;
- trade unions;
- friendly or industrial and provident societies;
- building societies, or

(bb) other entities where the provisions of the Auditing Standards issued by the UK competent authority or the International Standards on Auditing issued by the International Auditing and Assurance Standards Board apply and where an opinion or certificate is placed on accounts stating that they give a true and fair view of the financial position of the entity or that they present fairly the financial position of the entity. The turnover of the entity must exceed the VAT threshold ruling at the date to which the accounts are made up. Examples of non-statutory audits include:

- partnerships or sole traders whose external reporting obligations are governed by legislation or regulatory bodies;
- professional bodies (e.g. the Association);
- charities;
- UK branches of overseas corporations;
- private partnerships and sole traders (subject to partnership agreements or bankers'/other third party demands).

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

Members whose audit experience is achieved some time before their application for the audit qualification will be required, prior to the award of the audit qualification, to demonstrate adequate competence in audit work by providing to the Association details of recent audit experience and recent audit-related CPD.

Part 2: Additional requirements for certain members

(a) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants (before 1 January 2012) or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass the UK paper P7, Advanced Audit and Assurance, of the Association's examinations to be eligible for the recognised professional qualification.

(b) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete the UK paper P7, Advanced Audit and Assurance, of the Association's examinations to be eligible for the recognised professional qualification.

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

The above requirements shall not apply where an applicant holds a qualification approved by the Secretary of State under section 1221 of the Companies Act 2006 of the United Kingdom and has successfully completed the Association's Aptitude Test.

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

Appendix 3

Qualification requirements for an audit qualification

Jersey, Guernsey and Dependencies and the Isle of Man

1. The requirements referred to in regulation 5(2)(b)(i) are:

   (a) the member has been a member of the Association continuously for a period of not less than two years; and

   (b) the member must have completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, under the supervision of:

      (i) a member holding an audit qualification; or

      (ii) any other person having in the opinion of Council adequate qualifications and experience and who is a fully qualified statutory auditor under paragraph 9(4) of Schedule 11 to the Companies Act 2006 of the United Kingdom;

and must comply with the requirements set out in Part 1 of Appendix 2.

2. The member shall have passed such local equivalents in the country of the examinations specified in Part 2 of Appendix 2 of these regulations as the Admissions and Licensing Committee shall from time to time specify as acceptable.

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

Appendix 4

United Kingdom Insolvency Regulations 2017

1. Application

The regulations contained in this Appendix form part of Annex 1 to The Chartered Certified Accountants' Global Practising Regulations 2003, and shall apply to all members and to all persons who otherwise agree to be bound by them.

2. Restrictions on carrying on public practice

(1) Subject to regulation 2(2), a member holding an insolvency licence may not carry on an activity constituting public practice which is outside the practice of acting as an insolvency practitioner unless he holds a practising certificate.

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

3. Meaning of public practice

Any activity carried on by a person acting as an insolvency practitioner shall constitute public practice. A member acting as an insolvency practitioner shall be deemed to be a member in practice for the purposes of the bye-laws concerning elections to Council.

4. Restrictions on carrying on insolvency practice

(1) Members

No member shall act as an insolvency practitioner unless he holds an insolvency licence issued by the Association or he is otherwise authorised so to act in accordance with section 390(2) of the Insolvency Act 1986 of the United Kingdom. Where the individual acts as an insolvency practitioner but does not hold an insolvency licence issued by the Association, he must hold a practising certificate and may not carry on any activity constituting public practice which is outside the practice of acting as an insolvency practitioner.

(2) Non-members

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

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

5. Eligibility for an insolvency licence

(1) Members and non-members

A person shall be eligible for an insolvency licence if:

(a) he is qualified in accordance with regulation 6;

(b) he is fit and proper within the meaning of regulation 7;

(c) he holds the necessary PII in accordance with regulation 8; and

(d) he has made arrangements for the continuity of his practice in accordance with regulation 9.

(2) Additional requirements for non-members

In addition to complying with regulation 5(1), non-members shall be required to provide undertakings to be bound by the following regulations as if they were members of the Association:

(a) the Global Practising Regulations;

(b) the continuing professional development requirements of Membership Regulation 4(4);

(c) the Authorisation Regulations, including the requirement at Authorisation Regulation 3(1)(a) to pay such fees as Council may from time to time require when applying for an insolvency licence;

(d) the Charter, bye-laws and regulations of the Association insofar as they are appropriate and applicable (other than those relating to members' rights to attend and vote at meetings of the Association and obligations to pay subscriptions); and

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

6. Qualification requirements for an insolvency licence

(1) Qualifications and experience

To be qualified for the purposes of regulation 5(1)(a), an individual must:

(a) if he is a member of the Association:

(i) have been a member of the Association for a continuous period of not less than two years; and

(ii) have passed the examinations set by the Joint Insolvency Examination Board; and

(iii) have completed three years of practical experience in a firm of accountants or insolvency practitioners, under the supervision of a licensed insolvency practitioner, or in an Official Receiver's office, of which two years must have been obtained subsequent to his admission as a member or as a member of another accountancy body recognised under section 391 Insolvency Act 1986 of the United Kingdom; and

(iv) have obtained a minimum of 600 hours' insolvency experience in the three years immediately preceding the application for an insolvency licence, of which at least 150 hours must have been gained in each of three years within such period; or

(b) if he is a non-member:

(i) have passed the examinations set by the Joint Insolvency Examination Board; and

(ii) have completed three years of practical experience under the supervision of a licensed insolvency practitioner or in an Official Receiver's office; and

(iii) have obtained a minimum of 600 hours' insolvency experience in the three years immediately preceding the application for an insolvency licence, of which at least 150 hours must have been gained in each of three years within such period; or

(c) have the right to practise in the United Kingdom as an insolvency practitioner pursuant to regulation 29 of the European Communities (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059) and have fulfilled any requirements imposed pursuant to regulation 30 thereof; or

(d) hold, or be eligible to hold, an insolvency licence issued by another recognised professional body or by the competent authority under sections 391 and 393 respectively of the Insolvency Act 1986 of the United Kingdom.

(2) Insolvency experience

The insolvency experience referred to in regulations 6(1)(a)(iv) and 6(1)(b)(iii) must have been gained in the course of:

(a) assisting an insolvency practitioner acting as such; or

(b) assisting or being an Official Receiver in accordance with section 399 Insolvency Act 1986 of the United Kingdom; or

(c) where the individual was authorised to act as an insolvency practitioner at the relevant time, acting as an insolvency practitioner.

(3) Experience on renewal

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

(a) 600 hours' experience gained over a period of more than three but less than or equal to five years immediately preceding the renewal application of which at least 150 hours must have been gained in each of three calendar years within such period; or

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

(c) 900 hours' experience gained over a period of more than eight years immediately preceding the renewal application of which at least 75 hours must have been gained in each of six calendar years within such period

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

(4) Waiver

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

7. Fit and proper persons

Regulation 8 of the Global Practising Regulations applies to members. Additionally, where insolvency licences are concerned, this regulation 7 shall apply to the Admissions and Licensing Committee's determination.

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

(a) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor or insolvency practitioner or to the carrying on of exempt regulated activities or the provision of investment business services or investment advice;

(b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the insolvency licence or of the Association in its regulation of such activities, including without limitation regulation 4 of the Insolvency Practitioners Regulations 2005 and the Guidance Notes for Persons Seeking Authorisation to Act as an Insolvency Practitioner issued by the DTI;

(c) may take into account any matter which relates to him and any matter relating to any person who is or will be employed by or associated with him.

8. Professional indemnity insurance

(1) Holders of insolvency licences

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

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 8(1) in respect of their ceasing to engage in public practice and insolvency work.

(3) Enabling bond

(a) In addition to holding PII, a holder of an insolvency licence must hold a bond by way of security or, in Scotland, a caution for the proper performance of his functions that complies with regulation 10 of, and Part 2 of Schedule 2 to, the Insolvency Practitioners Regulations 2005 of the United Kingdom (the "enabling bond").

(b) A holder of an insolvency licence shall comply with section 390(3) Insolvency Act 1986 of the United Kingdom and the Insolvency Practitioners Regulations 2005 of the United Kingdom as regards the enabling bond and shall ensure that:

  (i) the enabling bond is in force at a time when he is appointed to act as an insolvency practitioner in relation to a person; and

  (ii) there is in force in relation to the enabling bond with effect from the time when he is appointed so to act in relation to that person, specific penalty as required by the provisions of the Insolvency Practitioners Regulations 2005 of the United Kingdom.

(c) The enabling bond shall be lodged with the Association on application for or renewal of an insolvency licence issued by the Association.

9. Continuity of practice

Regulation 11 of the Global Practising Regulations shall be applicable to all holders of an insolvency licence. The nominee providing continuity of practice for a holder of an insolvency licence may be any person licensed to act as an insolvency practitioner and need not be an accountant.

10. Notification

Holders of insolvency licences must comply with regulation 12 of the Global Practising Regulations.

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

11. Conduct of insolvency work

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

12. Disclosure of information

Holders of an insolvency licence must supply the Association with all necessary information to enable the Association to comply with its obligations to the Insolvency Service and other bodies in its capacity as a recognised professional body under the Insolvency Act 1986 of the United Kingdom.

13. Monitoring

(1) Holders of an insolvency licence shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

(2) Holders of an insolvency licence must comply with the Association's monitoring arrangements, which shall, where the Association determines, be performed by the Insolvency Practitioners Association ("IPA") in accordance with the procedures and processes of the IPA and adopted by the Association. Holders of an insolvency licence must co-operate and must supply all information necessary to enable the IPA to complete its monitoring process on behalf of the Association.

(3) Holders of an insolvency licence shall be subject to the regulatory procedures and processes of the IPA and any order imposed shall be treated as if it were imposed under The Chartered Certified Accountants' Authorisation Regulations 2014.

14. Investigation of complaints

(1) Holders of an insolvency licence must comply with the Association's investigation arrangements, which shall, where the Association determines, be performed by the IPA in accordance with the procedures and processes of the IPA and adopted by the Association. Holders of an insolvency licence must co-operate and must supply all information necessary to enable the IPA to complete its investigation process on behalf of the Association.

(2) Holders of an insolvency licence shall be subject to the disciplinary procedures and processes of the IPA and any order imposed shall be treated as if it were imposed under The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014.

Additional Practising Regulations for the Republic of Ireland

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

1. Application

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

2. Interpretation

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

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

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

appropriate qualification means a qualification in accordance with regulation 45 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 and section 1441 of the Companies Act 2014 of the Republic of Ireland;

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

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

audit qualification means an audit qualification to the practising certificate issued by the Association to individuals holding the recognised professional qualification and referred to in regulation 4 of Appendix 1, which authorises the individual to hold himself out as an auditor and to carry on audit work;

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

audit working papers means material (whether in the form of data stored on paper, film, electronic media or other media or otherwise) prepared by or for, or obtained by, the statutory auditor or audit firm in connection with the performance of the audit concerned and includes:

(a) the record of audit procedures performed;

(b) the relevant audit evidence obtained; and

(c) conclusions reached;

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

auditor means a statutory auditor or statutory audit firm within the meaning of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland;

Central Bank means the Central Bank of Ireland;

competent authority means a competent authority within the meaning of article 2.10 of the Audit Directive;

EEA auditor means a member state auditor;

EEA state means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time) as adjusted by the Protocol signed at Brussels on 17 March 1993;

group means a parent undertaking and its subsidiary undertakings;

group auditor means the statutory auditor or audit firm carrying out the statutory audit of the group accounts concerned;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

insolvency practitioner means a person undertaking insolvency activities, or holding himself out or allowing himself to be held out as being available to undertake insolvency activities, including acting as a personal insolvency practitioner in accordance with part 3 of the Personal Insolvency Act 2012 of the Republic of Ireland, or as liquidator or provisional liquidator in accordance with chapter 8 of part 11 of the Companies Act 2014 of the Republic of Ireland;

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

investment business certificate (Ireland) means the certificate referred to in regulation 10, issued by the Association in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 2013;

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

member state means a member state of the European Union or an EEA state;

member state audit firm means an audit entity approved in accordance with the Audit Directive by a competent authority of another member state to carry out audits of annual or group accounts as required by European Union Law;

member state auditor means an auditor approved in accordance with the Audit Directive by a competent authority of another member state to carry out audits of annual or group accounts as required by European Union Law;

non-member means a person who is not registered as a member of the Association;

public auditor means a public auditor for the purposes of the Industrial and Provident Societies Acts, 1893 to 2014, and the Friendly Societies Acts, 1896 to 2014 of the Republic of Ireland;

public interest entity means:

(a) companies or other bodies corporate governed by the law of a member state whose transferable securities are admitted to trading on a regulated market of any member state within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;

(b) credit institutions as defined at Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions; and

(c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC;

qualified person means:

(a) in relation to an individual, a person qualified to hold:

(i) a practising certificate with an audit qualification; or

(ii) a corresponding qualification to audit accounts under the law of a member state, or part of a member state, other than Ireland; and

(b) in relation to a firm:

(i) a firm that is eligible to be appointed as an auditor; or

(ii) a firm that is eligible for a corresponding appointment as an auditor under the laws of a member state, or part of a member state, other than Ireland;

recognised professional qualification means an appropriate qualification for the purpose of regulation 45 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland;

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

statutory auditor means an individual who is approved in accordance with the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland to carry out statutory audits;

third country means a country or territory that is not a member state or part of a member state;

third country auditor means an individual who carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an individual who is registered as a statutory auditor in any member state as a consequence of approval in accordance with Articles 3 and 44 of the Audit Directive;

third country competent authority means a competent authority of a third country.

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

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

(4) The Interpretation Act, 2005 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

3. Meaning of public practice

(1) Activities

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

(2) Insolvency practice

Insofar as practitioners carrying on their professional activities in the Republic of Ireland are concerned, any activity carried on by a person acting as an insolvency practitioner shall constitute public practice. A member acting as an insolvency practitioner shall be deemed to be a member in practice for the purposes of the bye-laws concerning elections to Council.

(3) Supervision for anti-money laundering

Members who provide accountancy services within the terms of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 by way of business, including those who fall outside the meaning described by regulation 4 of the Global Practising Regulations (for example book-keeping), will be subject to supervision for compliance with the anti-money laundering provisions under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. In such cases, eligible members are required to obtain a practising certificate from the Association in order to be supervised by the Association.

4. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification relating to the Republic of Ireland, an individual must meet the requirements of regulation 6 in Appendix 1.

(3) Professional competence

Members who intend to practise in the Republic of Ireland are reminded that they are required to attain professional competence appropriate to the professional services that they intend to provide. As described in section 130 of the Code of Ethics and Conduct, members must maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service.

5. Restriction on carrying on investment business

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

6. Eligibility for an investment business certificate (Ireland)

The eligibility criteria for an investment business certificate (Ireland) are set out in The Chartered Certified Accountants' Irish Investment Business Regulations 2013.

7. Fit and proper persons

Regulation 8 of the Global Practising Regulations applies to members. Additionally, where investment business certificates (Ireland) are concerned, this regulation 7 shall apply to the Admissions and Licensing Committee's determination.

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

(a) may take into account whether that person has contravened any provision of law relating to the carrying on of investment business or the provision of investment business services or investment advice;

(b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;

(c) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice, investment business or investment business services or investment advice.

8. Professional indemnity insurance

(1) Practising certificates and investment business certificates (Ireland)

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

(a) practising certificates; and

(b) investment business certificates (Ireland).

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 8(1) in respect of their ceasing to engage in public practice, investment business or investment business services or investment advice.

(3) Insurance mediation

Firms wishing to carry on insurance mediation activities must obtain minimum cover of 1,250,000 euros in respect of each and every claim and 1,850,000 euros in aggregate per year for all claims.

(4) Liquidators

A liquidator of a company must obtain minimum cover of 1,500,000 euros (exclusive of defence costs) in respect of each and every claim, and obtain cover for defence costs, in compliance with the Companies Act 2014 (Professional Indemnity Insurance) (Liquidators) Regulations 2016 (S.I. 2016/127).

9. Continuing professional development

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

10. Continuity of practice

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

11. Notification

(a) Holders of an investment business certificate (Ireland) must comply with regulation 12 of the Global Practising Regulations.

(b) Additionally they shall give written notice forthwith of

(i) the commencing of proceedings against the firm or, as the case may be, any partner or controller of it, under the Investment Intermediaries Act, 1995 of the Republic of Ireland; and

(ii) the withdrawal or suspension of any qualification which is a condition of the firm's eligibility for an investment business certificate (Ireland) by reason of regulation 3(1)(b), regulation 3(2)(e) or regulation 3(3)(e) of The Chartered Certified Accountants' Irish Investment Business Regulations 2013.

12. Conduct

(1) Accountants' reports

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

(2) Investment business services and investment advice

In the conduct of investment business services and the provision of investment advice, a holder of an investment business certificate (Ireland) shall comply with the Chartered Certified Accountants' Irish Investment Business Regulations 2013 and the code of conduct of the Central Bank.

13. Disclosure of information

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

14. Monitoring

Members holding a practising certificate and/or an investment business certificate (Ireland) shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations, which shall include monitoring to meet the Association's obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Appendix 1

Republic of Ireland Audit Regulations 2017

1. Application

The regulations contained in this Appendix form part of Annex 2 to The Chartered Certified Accountants' Global Practising Regulations 2003.

2. Restrictions on carrying on public practice

(1) Members and firms

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

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

(3) An auditing certificate shall only authorise the carrying on of the activity of audit in the country to which the certificate relates.

(4) A firm carrying on public practice which involves the accepting of an appointment as a public auditor cannot be established as a body corporate.

3. Where public practice is carried on

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

4. Eligibility for an audit qualification

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

5. Eligibility for an auditing certificate

A firm shall be eligible for an auditing certificate if:

(a) each of the individuals responsible for the firm's audit work holds an audit qualification, or in the case of non-members of the Association, holds an equivalent certificate;

(b) it is controlled by qualified persons within the meaning of regulation 7;

(c) it is fit and proper within the meaning of regulation 8;

(d) it holds the necessary PII in accordance with regulation 9;

(e) it has made arrangements for the continuity of its practice in accordance with regulation 11;

(f) it undertakes to be bound by the Global Practising Regulations including this Annex 2, the Complaints and Disciplinary Regulations, the Membership Regulations and the Charter and bye-laws insofar as they are applicable to it; and

(g) it has arrangements to prevent individuals who do not hold an appropriate qualification 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.

A firm which has ceased to comply with the conditions (a) and (b) above may be permitted to remain eligible for appointment as an auditor for a period of not more than three months.

6. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Qualifications required to obtain an audit qualification

To be qualified to hold an audit qualification:

(a) an individual (other than an EEA auditor or third country auditor) must:

(i) have obtained the Association's recognised professional qualification (in accordance with regulation 6(5) below); or

(ii) have previously held an equivalent certificate issued by the Association. However, individuals will be required, prior to the audit qualification being granted, to demonstrate adequate competence in audit work by providing to the Association details of recent audit experience and recent audit-related CPD; or

(b) an individual who is an EEA auditor must:

(i) hold an appropriate qualification; and

(ii) meet the conditions for approval as a statutory auditor in accordance with regulation 43 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland; and

(iii) have passed an aptitude test in accordance with 6(3) below unless an aptitude test is not required (see 6(4) below); or

(c) an individual must be a third country auditor and:

(i) meet the conditions for approval as a statutory auditor in accordance with regulation 43 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland; and

(ii) have passed an aptitude test in accordance with 6(3) below unless an aptitude test is not required (see 6(4) below).

(3) The aptitude test

The aptitude test must meet the requirements of regulations 49 to 51 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016, and the contents of the aptitude test shall be approved by IAASA.

(4) Aptitude test not required

No aptitude test is required if the subjects that are covered by a recognised professional qualification and the knowledge of which is essential in the pursuit of the profession of statutory auditor are covered by the professional qualification already held by the person.

(5) Recognised professional qualification of the Association

To obtain the Association's recognised professional qualification (referred to in regulation 6(2)(a) above), members must:

(a) have completed three years' practical training in an ACCA approved employer, working either as an employee or sub-contractor, of which at least two years must have been under the supervision of:

(i) a member who is authorised to carry on audit work by way of an audit qualification; or

(ii) any other person having in the opinion of Council adequate qualifications and experience and who is a fully qualified statutory auditor under paragraph 9(4) of Schedule 11 to the Companies Act 2006 of the United Kingdom, such as statutory auditors practising in member states, subject to the relevant authorisations (or equivalent persons in relation to applicants for certificates relating to countries other than the United Kingdom);

and must comply with the requirements set out in Part 1 of Appendix 2;

(b) have successfully completed the Irish papers F4, Corporate and Business Law, F6, Taxation, and P7, Advanced Audit and Assurance, of the Association's examinations, or equivalent papers from a previous syllabus;

(c) have successfully completed the Irish paper P2, Corporate Reporting, if this paper P2 was completed on or after 1 January 2011;

(d) have successfully completed all the relevant Professional Level examinations within five years from the date on which the member completed the Fundamentals Level examinations (and, for the removal of doubt, completion of the Fundamentals Level examinations may include receiving exemption from any or all of the papers in that Level); and

(e) have been a member of the Association continuously for a period of not less than two years.

If the member accepted exemptions from all or part of the Fundamentals Level of the Association's syllabus on the basis of qualifications gained more than five years previously (at the date of initially submitting the qualifications as an ACCA student), the member will be required to pass those exempted papers by examination.

If the member registered for the ACCA Qualification on or after 1 January 2016, the member must have successfully completed all the relevant Fundamentals Level examinations within five years of becoming eligible to sit that part.

Additional requirements are in place for those members whose route to membership of the Association was from another qualifying body. These are set out in Appendix 2 Part 2.

(6) Waiver

In exceptional circumstances, to the extent permitted by the provisions of the Companies Act 2014, the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland and IAASA, the Admissions and Licensing Committee may waive, vary or suspend the requirements of regulation 6(5)(a) and/or 6(5)(e) in its absolute discretion.

7. Meaning of firm controlled by qualified persons

Firms controlled by qualified persons are authorised for carrying on audit work in accordance with regulation 5.

(a) A firm shall only be regarded as controlled by qualified persons for the purposes of regulation 5 where:

(i) a majority of the partners or a majority of the directors and shareholders of the firm are qualified persons; and

(ii) if the firm's affairs are managed by a board of directors, committee or other management body, a majority of that body are qualified persons, or if the body consists of only two persons, at least one of them is a qualified person and has a casting vote.

(b) References in regulation 7(a) above to a person being qualified are, in relation to an individual, to his being qualified to hold an audit qualification in accordance with regulation 6(2) and that he spends a material amount of his time working in the firm concerned, or being otherwise eligible to be appointed as an auditor.

(c) A majority of the partners or a majority of the directors and shareholders of the firm in regulation 7(a)(i) means:

(i) where under the firm's constitution matters are decided on by the exercise of voting rights, partners or directors and shareholders holding a majority of the rights to vote on all, or substantially all, matters;

(ii) in any other case, partners or directors and shareholders having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.

(d) A majority of the members of the management body of a firm in regulation 7(a)(ii) means:

(i) where matters are decided at meetings of the management body by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;

(ii) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.

8. Fit and proper persons

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

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

(a) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor;

(b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;

(c) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

9. Professional indemnity insurance

(1) Auditing certificates held by firms

Regulation 9 of the Global Practising Regulations applies to applicants for and holders of auditing certificates by firms.

(2) Continuity following cessation

Regulation 9(5) of the Global Practising Regulations applies to persons subject to regulation 9(1) in respect of their ceasing to engage in public practice.

10. Continuing professional development

(1) Firms holding an auditing certificate must require the individuals who are partners or directors or agents of the firm who are not members but who are responsible for the firm's audit work to comply with Membership Regulation 4(4) as if they were members. This includes compliance with regulation 10(2) below.

(2) Members holding the recognised professional qualification must maintain competence in the area of audit, and obtain an appropriate proportion of CPD units in that area.

11. Continuity of practice

Regulation 11 of the Global Practising Regulations shall be applicable to all firms holding an auditing certificate.

12. Notification

(a) Firms holding an auditing certificate must comply with regulation 12 of the Global Practising Regulations.

(b) Firms holding an auditing certificate shall notify the Association in writing within:

  (i) 28 days after their acceptance of an appointment as auditor to a public interest entity;

  (ii) one month of any change in the information contained in the public register of the Registrar of Companies.

13. Conduct of audit work

(a) In the conduct of audit work holders of an audit qualification and firms holding an auditing certificate shall comply with all the applicable sections of the Association's Rulebook and in particular:

  (i) for audits of financial periods beginning on or after 17 June 2016, the International Standards on Auditing (Ireland), the International Standard on Quality Control (Ireland) and the Ethical Standard for Auditors (Ireland) issued by IAASA;

  (ii) for audits of financial periods beginning before 17 June 2016, the International Standards on Auditing (UK and Ireland), the International Standard on Quality Control (UK and Ireland) and the Ethical Standards for Auditors issued by the Financial Reporting Council;

  (iii) on and from the adoption by the Commission of the European Union of international auditing standards, those standards.

(b) In the conduct of audit work in the Republic of Ireland, for accounting periods commencing on or after 20 May 2010, the audit report shall:

  (i) state the name of the auditor and be signed and dated;

  (ii) where the auditor is an individual, be signed by him;

  (iii) where the auditor is a firm, be signed by the statutory auditor in his own name, for and on behalf of the firm; and

  (iv) state the name of the firm as it appears on the public register of the Registrar of Companies.

(c) In the Republic of Ireland, an auditor ceasing to hold office for any reason before the end of his term in office must notify IAASA. In each case the notice must inform the appropriate audit authority that he has ceased to hold office and be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 403 of the Companies Act 2014 of the Republic of Ireland.

(d) In the Republic of Ireland, a person ceasing to hold office as statutory auditor or audit firm shall make available to his successor in that office all relevant information which he holds in relation to that audit in accordance with regulation 71 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland.

(e) In the Republic of Ireland, an auditor may not accept an appointment as a director or other officer of a public interest entity during a period of two years commencing on the date on which his appointment as auditor ended in accordance with regulation 103 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland. This regulation also applies to individuals who are no longer members of the Association.

(f) In the Republic of Ireland, in the conduct of group audit work, the group auditor shall:

(i) review for the purposes of a group audit the audit work conducted by other persons and record that review;

(ii) retain copies of any documents necessary for the purposes of the review that it has received from third country auditors who are not covered by the working arrangements under regulation 78 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016;

(iii) agree with those third country auditors proper and unrestricted access to those documents on request.

(g) In the Republic of Ireland, an auditor must comply with the requirements of relevant legislation, including the Audit Directive, the Companies Act 2014 of the Republic of Ireland, the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, and the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016.

14. Disclosure of information

(1) Conduct of audit work

In the conduct of audit work, holders of an audit qualification and firms holding an auditing certificate must supply the Association with all necessary information in accordance with, and to enable the Association to comply with any other obligations imposed upon it by regulations made under the Companies Act 2014 and regulation 72 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland. This requirement shall apply for the duration of time that an auditing certificate is held.

(2) Responsibility of group auditor

In the case of a group audit where part of the group is audited by a third country auditor, an auditor must make arrangements so that, if requested by the Association or by IAASA, it can obtain from that third country auditor all audit working papers necessary for a review of that third country auditor's audit work. An auditor shall make those documents available to:

(a) the Association;

(b) any other body with which the Association has entered into arrangements for the purposes of regulation 126 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland;

(c) IAASA.

If, after taking all reasonable steps, a group auditor is unable to obtain copies of the documents or the access to the documents necessary for the review, the group auditor shall record:

(a) the steps taken to obtain copies of or access to those documents;

(b) the reasons why the copies or access could not be obtained; and

(c) any evidence of those steps or those reasons.

The requirements of this regulation 14(2) for the group auditor regarding the review of a third country auditor's audit work are as a result of having no working arrangements under regulations 131(1)(c) or 132(c) of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland.

(3) Transfer of audit documentation to third country competent authorities

In the case of a request by a third country competent authority, an auditor must provide that body with a copy of its audit working papers as soon as practicable, provided:

(a) there is an agreement between the third country competent authority and IAASA in accordance with regulation 131 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland;

(b) the following four conditions are met:

(i) those audit working papers or other documents relate to the audit of a company which:

(aa) has issued securities in the third country concerned; or

(bb) forms part of a group of companies that issue statutory consolidated accounts in the third country concerned;

(ii) the third country competent authority meets requirements which have been declared adequate in accordance with Article 47(3) of the Directive;

(iii) there are working arrangements on the basis of reciprocity agreed between IAASA and the third country competent authority; and

(iv) the transfer of personal data to the third country concerned is in accordance with Chapter IV of Directive 95/46/EC; and

(c) IAASA, in response to receipt of a request, determines that the conditions for transfer as set out in regulation 14(3)(b) above are complied with and IAASA authorises such a transfer.

(d) By way of derogation from regulation 131 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland, IAASA may, in exceptional circumstances, allow a statutory auditor or audit firm to transfer audit working papers and other documents directly to a third country competent authority, provided that:

(i) an investigation has been initiated by that competent authority in the third country concerned;

(ii) the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to the competent authorities;

(iii) there are working arrangements with the third country competent authority of a reciprocal nature that allow IAASA direct access to audit working papers and other documents of audited entities in the third country concerned;

(iv) the third country competent authority informs in advance IAASA of each direct request for information, indicating the reasons therefor; and

(v) conditions similar to those specified in regulation 131(2)(a) to (d) of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland are satisfied.

The auditor must also inform the Association of the request.

15. Monitoring

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

(2) Firms holding auditing certificates must comply with the Association's monitoring arrangements, which may be performed by IAASA or any recognised accountancy body to which the monitoring function has been assigned in accordance with regulation 33 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland.

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

(4) An order imposed by IAASA in accordance with the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland is to be treated as if it were an order imposed by the Association under The Chartered Certified Accountants' Authorisation Regulations 2014.

16. Investigation of complaints

Holders of the Association's recognised professional qualification and firms holding auditing certificates must comply with the Association's investigation arrangements, which may be performed by IAASA or any recognised accountancy body to which the investigation function has been assigned in accordance with regulation 33 of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland.

17. Enforcement

(1) Sanctions available to the Disciplinary Committee are set out in The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014.

(2) A sanction imposed by IAASA following the conclusion of an investigation in accordance with the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland is to be treated as if it were a sanction imposed by the Association under The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014.

18. General

In circumstances where and to the extent that a task assigned to the Association is claimed by IAASA under regulation 33(3) of the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No. 537/2014) Regulations 2016 of the Republic of Ireland, IAASA may apply rules (and may vary the rules it applies) made by the Association.

Appendix 2

Requirements for the recognised professional qualification

Application

The regulations contained in this Appendix form part of Annex 2 to The Chartered Certified Accountants' Global Practising Regulations 2003.

Part 1: Training requirements

To obtain the Association's recognised professional qualification (i.e. the Irish audit qualification), members must have completed three years' (i.e. 132 weeks based on 44 weeks per annum) practical training in an ACCA approved employer.

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

(a) Audit (key area 7 – see below);

(b) Professional Conduct (key area 1);

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

(d) Management (key area 6).

Candidates for the Association's recognised professional qualification must:

(a) be proficient in all the competences shown for audit (key area 7) as described in more detail in Appendix 1 to the Global Practising Regulations;

(b) be proficient in:

(i) all 5 mandatory elements of competence in relation to Professional Conduct; and

(ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and

(iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

At least 44 weeks of the training must be in audit work. This should include:

(a) at least 22 weeks specifically in statutory audit, and

(b) a further 22 weeks which is either:

(i) audit work of companies established under the Companies Acts, or

(ii) audit work in respect of either:

(aa) organisations whose financial reporting requirements are laid down in statutes other than the Companies Acts, for example:

- nationalised industries;
- local councils, health authorities and self-governing trusts (excluding value for money audits and parish accounts);
- housing associations;
- insurance companies;
- trade unions;
- friendly or industrial and provident societies;
- building societies, or

(bb) other entities where the provisions of the Auditing Standards issued by the Financial Reporting Council or the International Standards on Auditing issued by the International Auditing and Assurance Standards Board apply and where an opinion or certificate is placed on accounts stating that they give a true and fair view of the financial position of the entity or that they present fairly the financial position of the entity. The turnover of the entity must exceed the VAT threshold ruling at the date to which the accounts are made up. Examples of non-statutory audits include:

- partnerships or sole traders whose external reporting obligations are governed by legislation or regulatory bodies;
- professional bodies (e.g. the Association);
- charities;
- credit unions;
- Irish branches of overseas corporations;
- private partnerships and sole traders (subject to partnership agreements or bankers'/other third party demands).

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

Members whose audit experience is achieved some time before their application for the audit qualification will be required, prior to the audit qualification being granted, to demonstrate adequate competence in audit work by providing to the Association details of recent audit experience and recent audit-related CPD.

Part 2: Additional requirements for certain members

(a) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants (before 1 January 2012) or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass the Irish paper P7, Advanced Audit and Assurance, of the Association's examinations to be eligible for the recognised professional qualification.

(b) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete the Irish paper P7, Advanced Audit and Assurance, of the Association's examinations to be eligible for the recognised professional qualification.

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

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

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

Additional Practising Regulations for Cyprus

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

1. Application

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

2. Interpretation

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

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

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

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

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

r*egulated work* means work conducted under a practising certificate with an audit qualification.

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

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

3. Restrictions on carrying on public practice

(1) Members

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

(2) Members and firms

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

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

4. Meaning of public practice

(1) Activities

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

(2) Where carried on

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

5. Eligibility for an audit qualification

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

6. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Qualifications required to obtain an audit qualification

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

(a) comply with the relevant requirements in parts 1 and 2 of Appendix 1 to these regulations; or

(b) have previously held an equivalent certificate issued by the Association. However, members will be required, prior to the audit qualification being granted, to demonstrate adequate competence in audit work by providing to the Association details of recent audit experience and recent audit-related CPD;

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

(3) Waiver

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

7. Fit and proper persons

General eligibility

(a) Regulation 8 of the Global Practising Regulations applies to members. Additionally, where audit qualifications are concerned, this regulation 7 shall apply to the Admissions and Licensing Committee's determination.

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

(i) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor;

(ii) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;

(iii) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

8. Disclosure of information

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

9. Monitoring

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

Appendix 1

Requirements for an audit qualification

Part 1: Additional requirements for certain members

(a) A person who was admitted to membership of the Association under Membership Regulation 3(a) must have successfully completed paper P7, Advanced Audit and Assurance, of the Association's examinations, or equivalent paper from a previous syllabus.

In addition, the member must have successfully completed all the relevant Professional Level examinations within five years from the date on which the member completed the Fundamentals Level examinations (and, for the removal of doubt, completion of the Fundamentals Level examinations may include receiving exemption from any or all of the papers in that Level).

If the member accepted exemptions from all or part of the Fundamentals Level of the Association's syllabus on the basis of qualifications gained more than five years previously (at the date of initially submitting the qualifications as an ACCA student), the member will be required to pass those exempted papers by examination.

If the member registered for the ACCA Qualification on or after 1 January 2016, the member must have successfully completed all the relevant Fundamentals Level examinations within five years of becoming eligible to sit that part.

(b) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants (before 1 January 2012) or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass paper P7, Advanced Audit and Assurance, of the Association's examinations.

(c) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete paper P7, Advanced Audit and Assurance, of the Association's examinations.

Part 2: Qualifications requirements for an audit qualification

1. For all members applying for the audit qualification under regulation 6(2)(a), the requirements are set out below.

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

(a) have been a member continuously for two years;

(b) have completed three years of training in an ACCA approved employer, at least two years of which shall have been obtained after admission to membership, save that the training in audit may be completed at any time in the three years; and

(c) pass any tests of competence and/or examinations as Council may prescribe in this appendix from time to time.

In exceptional circumstances, to the extent permitted by the laws of Cyprus and the Institute of Certified Public Accountants of Cyprus, the Admissions and Licensing Committee may waive, vary or suspend the requirements of this regulation 2 in its absolute discretion.

3. The training must consist of experience in all of the following key areas of competence as set out in Appendix 1 to the Global Practising Regulations:

(a) Audit (key area 7);

(b) Professional Conduct (key area 1);

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

(d) Management (key area 6).

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

(a) be proficient in all the competences shown for audit as described in the competences of practising certificate holders reproduced in Appendix 1 to the Global Practising Regulations; and

(b) be proficient in:

(i) all 5 mandatory elements of competence in relation to Professional Conduct; and

(ii) at least 8 elements of competence in relation to Technical skills, 6 of which must be key elements taken from at least 2 key areas; and

(iii) at least 2 elements of competence in relation to Management skills, 1 of which must be a key element.

5. The training must be obtained in an ACCA approved employer of which at least two years must be under the supervision of either:

(a) a principal who is entitled to practise and throughout the period of training does practise as an auditor in the country; or

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

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

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

Additional Practising Regulations for Zimbabwe

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

1. Application

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

2. Interpretation

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

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

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

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

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

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

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

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

3. Restrictions on carrying on public practice

(1) Members and firms

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

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

4. Meaning of public practice

(1) Activities

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

(2) Where carried on

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

5. Eligibility for an audit qualification

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

6. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Qualifications required to obtain an audit qualification

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

(a) comply with the relevant requirements in Parts 1 and 2 of Appendix 1 to these regulations; or

(b) have previously held an equivalent certificate issued by the Association;

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

(3) Waiver

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

7. Fit and proper persons

General eligibility

(a) Regulation 8 of the Global Practising Regulations applies to members. Additionally, where audit qualifications are concerned, this regulation 7 shall apply to the Admissions and Licensing Committee's determination.

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

(i) may take into account whether that person has contravened any provision of law relating to the seeking appointment or acting as auditor;

(ii) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;

(iii) may take into account any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

8. Disclosure of information

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

9. Monitoring

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

Appendix 1

Requirements for an audit qualification

Part 1: Additional requirements for certain members

(a) A person who was admitted to membership of the Association under Membership Regulation 3(a) must have successfully completed paper P7, Advanced Audit and Assurance, of the Association's examinations, or equivalent paper from a previous syllabus.

In addition, the member must have successfully completed all the relevant Professional Level examinations within five years from the date on which the member completed the Fundamentals Level examinations (and, for the removal of doubt, completion of the Fundamentals Level examinations may include receiving exemption from any or all of the papers in that Level).

If the member accepted exemptions from all or part of the Fundamentals Level of the Association's syllabus on the basis of qualifications gained more than five years previously (at the date of initially submitting the qualifications as an ACCA student), the member will be required to pass those exempted papers by examination.

If the member registered for the ACCA Qualification on or after 1 January 2016, the member must have successfully completed all the relevant Fundamentals Level examinations within five years of becoming eligible to sit that part.

(b) A person who was admitted to membership of the Association under Membership Regulation 3(e) as a member of the Chartered Institute of Management Accountants (before 1 January 2012) or the Chartered Institute of Public Finance and Accountancy (unless he has completed the papers specified within the Chartered Institute of Public Finance and Accountancy's professional accountancy qualification to be eligible for its audit qualification) must in addition to satisfying any other conditions laid down in these regulations pass paper P7, Advanced Audit and Assurance, of the Association's examinations.

(c) A person who was admitted to membership of the Association as the holder of a qualification recognised under Membership Regulation 3(c), (d) or (f) (or the former bye-law 7) must in addition to satisfying any other conditions laid down in these regulations successfully complete paper P7, Advanced Audit and Assurance, of the Association's examinations.

Part 2: Qualifications requirements for an audit qualification

1. For all members applying for the audit qualification under regulation 6(2)(a), the requirements are set out below.

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

(a) have completed three years of training in an ACCA approved employer; and

(b) pass any tests of competence and/or examinations as Council may prescribe in this appendix from time to time.

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

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

(a) Audit;

(b) Accounting; and

(c) Taxation.

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

(a) be proficient in all the performance objectives for audit and assurance as described in the Practical Experience Requirement as set out in Appendix 2 of the Membership Regulations; and

(b) endeavour to achieve proficiency in a broad range of practical experience in relation to accounting and taxation.

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

(a) a principal who is entitled to practise and throughout the period of training does practise as an auditor in the country; or

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

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

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

Additional Practising Regulations for Australia

Annex 5 to The Chartered Certified Accountants' Global Practising Regulations 2003

1. Application

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

2. Interpretation

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

BAS agent means a person or entity registered under the Tax Agent Services Act 2009 of Australia to provide a BAS service;

BAS service means a tax agent service which relates to:

(a) ascertaining or advising an entity about the liabilities, obligations or entitlements of the entity, or another entity, that arise, or could arise, under a BAS provision; or

(b) representing an entity in dealings with the Commissioner of Taxation in relation to a BAS provision

that is provided in circumstances where the entity can reasonably be expected to rely on the service for the purpose of

(a) satisfying liabilities or obligations that arise, or could arise, under a BAS provision; or

(b) claiming entitlements that arise, or could arise, under a BAS provision;

tax agent means a person or entity registered under the Tax Agent Services Act 2009 of Australia to provide a tax agent service;

tax agent service means any service that relates to:

(a) ascertaining or advising about the liabilities, obligations or entitlements of an entity under a taxation law; or

(b) representing an entity in their dealings with the Commissioner of Taxation

that is provided in circumstances where it is reasonable to expect that the entity will rely on the service to satisfy liabilities or obligations under a taxation law, or to claim entitlements under a taxation law;

TPB means the Tax Practitioners Board, established under the Tax Agent Services Act 2009 of Australia.

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

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

3. Restrictions on carrying on public practice

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

4. Meaning of public practice

(1) Activities

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

(2) Where carried on

Where the public practice consists of accepting an appointment as a BAS agent and/or a tax agent, or holding oneself out as available to do so, it shall be taken to be carried on in Australia, whose laws will apply to the appointment, or potential appointment.

5. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Waiver

In exceptional circumstances, the requirements of regulation 5(1) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

6. Fit and proper persons

General eligibility

(a) Regulation 8 of the Global Practising Regulations applies to members. Additionally, where members registered with the TPB are concerned, this regulation 6 shall apply to the Admissions and Licensing Committee's determination.

(b) In determining whether a person is "fit and proper", the Admissions and Licensing Committee may take into account:

(i) whether that person is of good fame, integrity and character;

(ii) whether one of these events occurred, to the individual, during the previous 5 years:

(aa) convicted of a serious taxation offence;

(bb) convicted of an offence involving fraud or dishonesty;

(cc) penalised for being a promoter of a tax exploitation scheme;

(dd) penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling;

(ee) become an undischarged bankrupt or gone into external administration;

(ff) sentenced to a term of imprisonment;

(iii) whether the individual had the status of an undischarged bankrupt at any time during the previous 5 years;

(iv) whether the individual served a term of imprisonment, in whole or in part, at any time during the previous 5 years;

(v) whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of the Association in its regulation of such activities;

(vi) any matter which relates to him or it and any matter relating to any person who is or will be employed by or associated with him or it for the purposes of or in connection with public practice.

7. Professional indemnity insurance

Regulation 9 of the Global Practising Regulations applies to members. Additionally, where members registered with the TPB are concerned, they shall comply with the PII requirements of the TPB as they apply to BAS agents and tax agents.

8. Disclosure of information

In the conduct of work as BAS agents or tax agents, members must supply the Association with all necessary information in accordance with applicable relevant legislation, and to enable the Association to comply with any other obligations it is legally obliged to meet. This requirement shall apply for the duration of time that the BAS agent and/or tax agent status is held.

9. Monitoring

Members holding a practising certificate shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

Additional Practising Regulations for the Republic of South Africa

Annex 6 to The Chartered Certified Accountants' Global Practising Regulations 2003

1. Application

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

2. Interpretation

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

controlling body means a body established, whether voluntarily or under a law, with power to take disciplinary action against a person who, in carrying on a profession, contravenes the applicable rules or code of conduct for the profession;

registered tax practitioner means a practitioner registered under section 240 of the Tax Administration Act 2011 of the Republic of South Africa;

SARS means the South African Revenue Service.

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

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

3. Restrictions on carrying on public practice

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

4. Meaning of public practice

(1) Activities

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

(2) Where carried on

Where the public practice consists of accepting an appointment as a registered tax practitioner, or holding oneself out as available to do so, it shall be taken to be carried on in the Republic of South Africa, whose laws will apply to the appointment, or potential appointment.

5. Qualifications

(1) Qualifications required to hold a practising certificate

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

(2) Waiver

In exceptional circumstances, the requirements of regulation 5(1) may be waived, varied or suspended at the direction of the Admissions and Licensing Committee in its absolute discretion.

6. Fit and proper persons

General eligibility

(a) Regulation 8 of the Global Practising Regulations applies to members. Additionally, where members registered with SARS are concerned, this regulation 6 shall apply to the Admissions and Licensing Committee's determination.

(b) In determining whether a person is "fit and proper", the Admissions and Licensing Committee shall take into account whether that person is compliant in respect of the taxation laws in the conduct of their personal affairs.

7. Continuing professional development (CPD)

Members must comply with Membership Regulation 4(4). CPD obtained by registered tax practitioners must include at least 15 units of tax related CPD per year. At least 9 of those units must be verifiable units.

Registered tax practitioners must retain their CPD records for five years.

8. Disclosure of information

In the conduct of work as registered tax practitioners, members must supply the Association with all necessary information in accordance with applicable relevant legislation, and to enable the Association to comply with any other obligations it is legally obliged to meet.

9. Monitoring

Members holding a practising certificate shall be subject to monitoring by the Association in accordance with regulation 14 of the Global Practising Regulations.

2.3

The Chartered Certified Accountants' Designated Professional Body Regulations 2001

Amended 1 March 2014

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

Chapter 1 Citation

1. Citation, commencement and application

(1) Citation

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

(2) Commencement

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

(a) regulations concerning activities related to regulated mortgage contracts on 31 October 2004;

(b) regulations concerning insurance mediation activities related to contracts of long-term care insurance on 31 October 2004;

(c) regulations concerning all other insurance mediation activities on 14 January 2005;

(d) regulations concerning regulated home purchase plans, regulated home reversion plans and rights under personal pension plans on 6 April 2007;

(e) regulations concerning the revised minimum levels of professional indemnity insurance for firms carrying on insurance mediation activities on 1 March 2009;

(f) regulations concerning credit-related regulated activities on 1 April 2014;

(g) all other regulations on 1 January 2005.

(3) Application

(a) These regulations shall apply to all members and firms.

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

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

(4) Approval by the FCA

These Chartered Certified Accountants' Designated Professional Body Regulations 2001 have been approved by the FCA under section 332(5) of the Act.

Chapter 2 Interpretation

2. Interpretation

(1) Definitions

In these regulations, unless the context otherwise requires:

Act means the Financial Services and Markets Act 2000;

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

Appeal Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

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

(a) in relation to an individual, "associate" means:
  (i) that individual's spouse or minor child or step-child;
  (ii) any body corporate of which that individual is a director; and
  (iii) any employee or partner of that individual;

(b) in relation to a body corporate, "associate" means:
  (i) any body corporate of which that body is a director;
  (ii) any body corporate in the same group as that body; and
  (iii) any employee or partner of that body or of any body corporate in the same group;

(c) in relation to a Scottish partnership, or a partnership constituted under the law of any other country or territory in which a partnership is a legal person, "associate" means:
  (i) any body corporate of which the partnership is a director;
  (ii) any employee of or partner in the partnership; and
  (iii) any person who is an associate of a partner in the partnership; and

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

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

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

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

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

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

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

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

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

company includes any body corporate;

Consumer Credit sourcebook means the specialist sourcebook for credit-related regulated activities in the FCA's handbook of rules and guidance;

contract of insurance means:

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

(2) (in relation to a contract) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any contract of insurance which is a long-term insurance contract or a general insurance contract, including:

  (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are:

    (i) effected or carried out by a person not carrying on a banking business;

    (ii) not effected merely incidentally to some other business carried on by the person effecting them; and

    (iii) effected in return for the payment of one or more premiums;

  (b) tontines;

  (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who:

    (i) does not carry on a banking business; and

    (ii) otherwise carries on the regulated activity of effecting or carrying out contracts of insurance;

  (d) contracts to pay annuities on human life;

  (e) contracts of a kind referred to in article 1(2)(e) of the Consolidated Life Directive (collective insurance etc); and

  (f) contracts of a kind referred to in article 1(3) of the Consolidated Life Directive (social insurance);

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

in this definition, "annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance

of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

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

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

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

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

credit broking has the meaning given by article 36A of the Regulated Activities Order;

credit information services has the meaning given by article 89A of the Regulated Activities Order;

credit-related regulated activity means any of the following activities specified in Part 2 or 3A of the Regulated Activities Order (Specified Activities):

(a) entering into a regulated credit agreement as lender

(b) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement

(c) credit broking

(d) debt adjusting

(e) debt counselling

(f) debt collecting

(g) debt administration

(h) entering into a regulated consumer hire agreement as owner

(i) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement

(j) providing credit information services

(k) providing credit references

(l) operating an electronic system in relation to lending

(m) agreeing to carry on a regulated activity so far as relevant to any of the activities in (a) to (l);

debt adjusting has the meaning given by article 39D(1) and (2) of the Regulated Activities Order;

debt administration has the meaning given by article 39G(1) and (2) of the Regulated Activities Order;

debt collecting has the meaning given by article 39F(1) and (2) of the Regulated Activities Order;

debt counselling has the meaning given by article 39E(1) and (2) of the Regulated Activities Order;

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

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

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

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

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

distance contract means any contract for financial services, the making or performance of which constitutes or is part of a regulated activity, concluded under an organised distance sales or service provision scheme run by the contractual provider of the service, who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded;

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

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

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

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

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

FCA means the Financial Conduct Authority*;*

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

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

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

(a) a person ("the customer") makes one or more payments to another person ("the provider"); and

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

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

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

(a) an authorised person; or

(b) an exempt person;

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

holding company has the meaning given by section 736 of the Companies Act 2006;

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

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

(a) dealing in investments as agent in the manner specified by article 21 of the Regulated Activities Order;

(b) arranging (bringing about) deals in investments in the manner specified by article 25(1) of the Regulated Activities Order:

(c) making arrangements with a view to transactions in investments in the manner specified by article 25(2) of the Regulated Activities Order;

(d) assisting in the administration and performance of a contract of insurance within article 39A of the Regulated Activities Order;

(e) advising on investments in the manner specified by article 53 of the Regulated Activities Order;

(f) agreeing to carry on a regulated activity in (a) to (e) within article 64 of the Regulated Activities Order;

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

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

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

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

officer means, in relation to a firm which is a partnership, a partner, and in relation to a firm which is a limited liability partnership, a member, and in relation to a firm which is a company, a director or company secretary; and in relation to the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

open-ended investment company means a collective investment scheme which satisfies both the property condition and the investment condition:

(a) the property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate ("BC") having as its purpose the investment of its funds with the aim of:
    (i) spreading investment risk; and
    (ii) giving its members the benefit of the results of the management of those funds by or on behalf of that body;
(b) the investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme:
    (i) expect that he would be able to realise, within a period appearing to him be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
    (ii) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements;

operating an electronic system in relation to lending has the meaning given by article 36H of the Regulated Activities Order;

packaged product means a life policy, personal pension scheme, stakeholder pension scheme, a unit in a regulated collective investment scheme, or an investment trust savings scheme;

pension fund withdrawals means in relation to a decision of a client in respect of a personal pension scheme, to defer the purchase of an annuity and to take:

(a) income withdrawals within the meaning of section 630 of the Income and Corporation Taxes Act 1988, as amended by section 58 and Schedule 11 of the Finance Act 1995; or
(b) payments made under interim arrangements in accordance with section 28A of the Pension Schemes Act 1993, as inserted by section 143 of the Pensions Act 1995;

and, in respect of an election to make pension fund withdrawals, a reference in these regulations to a client, an investor or a policyholder includes, after that person's death, his surviving spouse and/or anyone who is, at that time, his dependant;

pension transfer means any transaction by a client resulting from a decision to:

(a) opt out of or not join an occupational pension scheme of which a client is a current member, or which he is, or at the end of a waiting period will become eligible to join, in order to enter into a personal pension policy or stakeholder pension scheme; or
(b) make a payment into a personal pension scheme or stakeholder pension scheme of accrued pension benefits under an occupational pension scheme;

PEP means a plan which is a scheme of investment satisfying the conditions prescribed by the Personal Equity Plan Regulations 1989 (SI 1989/469);

permitted third party means in relation to a regulated activity, an authorised person with permission under Part IV of the Act to carry on that activity or an exempt person who is an exempt person in relation to that activity but in relation to packaged products does not include the regulated life office or operator of the regulated collective investment scheme in question, or an appointed representative of either; and in the case of any reference to the firm acting as disclosed agent where the permitted third party has confirmed to the firm that the client is or will be treated by the authorised person as its customer;

personal pension policy means a right to benefits obtained by the making of contributions to a personal pension scheme;

personal pension scheme means:

(a) (in relation to a specified investment) the investment specified in article 82(2) of the Regulated Activities Order (Rights under a pension scheme) which is rights under a personal pension scheme in (b);

(b) (in relation to a scheme) (in accordance with 3(1) of the Regulated Activities Order) a pension scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people:

(i) on retirement;

(ii) on having reached a particular age; or

(iii) on termination of service in an employment;

plan manager means in relation to:

(a) a group PEP, the PEP manager;

(b) a group ISA, the ISA manager;

(c) a group savings plan, the person primarily responsible for that group savings plan;

practising certificate means any practising certificate relating to the United Kingdom issued by the Association only to members pursuant to The Chartered Certified Accountants' Global Practising Regulations 2003;

providing credit references has the meaning given by article 89B of the Regulated Activities Order;

public practice accountancy services means services within the definition of public practice contained in The Chartered Certified Accountants' Global Practising Regulations 2003:

(a) which do not constitute carrying on a regulated activity, and

(b) the provision of which is supervised and regulated by a designated professional body;

Regulated Activities Order means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (Statutory Instrument 2001 No. 544) as amended;

regulated activity means an activity included in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

regulated collective investment scheme means an authorised unit trust scheme, a recognised scheme or a United Kingdom OEIC;

regulated consumer hire agreement has the meaning given by article 60N of the Regulated Activities Order;

regulated credit agreement has the meaning given by article 60B of the Regulated Activities Order;

regulated home purchase plan means an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

(a) the arrangement is one under which a person (the "home purchase provider") buys a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;

(b) where the undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in (c) below as beneficial tenants in common;

(c) the arrangement provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and

(d) the home purchaser (if he is an individual) or an individual who is a beneficiary of a trust (if the home purchaser is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period, and intends to do so;

in the context of a *regulated home purchase plan*:

"administering" means either or both of:

(i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan or to require that such action is or is not taken;

"qualifying interest" in land means:

(i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;

(ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant's right over or interest in a property subject to a lease;

(iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

"timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992;

"related person" in relation to the home purchaser or, where the home purchaser is a trustee, a beneficiary of the trust, means:

(i) that person's spouse or civil partner;

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationships between husband and wife; or

(iii) that person's parent, brother, sister, grandparent or grandchild;

for the purposes of (d) above, the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

regulated home reversion plan means an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

(a) the arrangement is one under which a person (the "plan provider") buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "reversion seller");

(b) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion seller is a trustee), or a related person, who is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; and

(c) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;

in the context of a *regulated home reversion plan*:

"administering" means any of:

(i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and

(ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan; and

(iii) taking any steps for the purposes of collecting or recovering payments due under the plan from the reversion seller;

but a person is not to be treated as administering a regulated home reversion plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken);

"qualifying interest" in land means:

(i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;

(ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant's right over or interest in a property subject to a lease;

(iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

"timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992;

"related person" in relation to the reversion seller or, where the reversion seller is a trustee, a beneficiary of the trust, means:

(i) that person's spouse or civil partner;

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationships between husband and wife; or

(iii) that person's parent, brother, sister, grandparent or grandchild;

"qualifying termination event", in relation to a person's entitlement to occupy land, means:

(i) the person becomes resident in a care home;

(ii) the person dies;

(iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement;

for the purposes of (b) above, the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

regulated mortgage contract means:

(a) (in relation to a contract) (in accordance with article 61(3) of the Regulated Activities Order) a contract which, at the time it is entered into, meets the following conditions:

(i) a lender provides credit to an individual or to trustees (the "borrower"); and

(ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40%

of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:

(aa) that person's spouse; or

(bb) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(cc) that person's parent, brother, sister, child, grandparent or grandchild;

(b) (in relation to a specified investment) the investment, specified in article 88 of the Regulated Activities Order, which is rights under a regulated mortgage contract within (a);

regulatory system means the arrangements for regulating a firm under the Act including these regulations;

securities means investments falling within articles 76 to 81 of the Regulated Activities Order;

share means an investment falling within article 76 of the Regulated Activities Order;

soft commission agreement means an agreement in any form, the terms of which permit a firm to receive certain goods or services from another person in return for transacting investment business with or through that other person;

specified investment means any of the investments specified in Part III of the Regulated Activities Order (Specified Investments);

stakeholder pension scheme means:

(a) (in relation to a specified investment) the investment specified in article 82 of the Regulated Activities Order (Rights under a stakeholder pension scheme) which is rights under a stakeholder pension scheme in (b);

(b) (in relation to a scheme) a scheme established in accordance with Part I of the Welfare Reform and Pensions Act 1999 and the Stakeholder Pension Schemes Regulations 2000;

subsidiary has the meaning given by section 736 of the Companies Act 2006;

trustee appointment means an appointment as a trustee, personal representative, donee of a power of attorney, receiver appointed by the Court of Protection, curator bonis, tutor or judicial factor;

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

United Kingdom OEIC has the meaning as defined in the Open-ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.

(2) Interpretation

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

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

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

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

Chapter 3 Eligibility

3. Eligibility to carry on regulated activities

Subject to regulation 1(3) the following eligibility criteria must be met in order for firms to carry out any of the activities permitted by regulation 4(1).

(1) Sole practitioners

A sole practitioner will only be eligible to carry on regulated activities where:

(a) he is a member; and

(b) he holds a practising certificate; and

(c) the main business of his practice is the provision of public practice accountancy services; and

(d) he is practising otherwise than in partnership.

(2) Partnerships

A partnership will only be eligible to carry on regulated activities where:

(a) at least one of the partners in the firm is a member and each partner who is not a member is:

(i) a member of another designated professional body and is entitled to practise accountancy and is subject to the regulations of the Association; or

(ii) entitled to practise accountancy and is subject to the regulations of the Association; and

(b) the partners who are members of the Association or of another designated professional body (if any) manage or control the firm; and

(c) the main business of the partnership is the provision of public practice accountancy services; and

(d) each partner who is a member holds a practising certificate.

Where this regulation is being applied in connection with a Limited Liability Partnership, the reference to partner or partners should be construed as referring to a member or members of the Limited Liability Partnership.

(3) Companies

A company will only be eligible to carry on regulated activities where:

(a) at least one director and controller is a member and each director who is not a member is:

(i) a member of another designated professional body and is entitled to practise accountancy and is subject to the regulations of the Association; or

(ii) entitled to practise accountancy and is subject to the regulations of the Association; and

(b) the directors who are members of the Association or of another designated professional body (if any) manage or control the firm; and

(c) its main business is the provision of public practice accountancy services; and

(d) each director who is a member holds a practising certificate.

Note on applicability of these regulations to members of the Association of Authorised Public Accountants

The Association of Authorised Public Accountants (AAPA) is not a designated professional body for the purposes of the Act, and AAPA members are therefore not eligible to carry on exempt regulated activities. Consequently, these regulations are not of application to AAPA members, save for any provisions concerning the handling of client monies linked to exempt regulated activities, or execution-only business which AAPA members are obliged to observe.

(4) Undertakings

Partners or directors who are not members of the Association shall be required to provide undertakings to be bound by the regulations of the Association, under regulations 3(2)(a) and 3(3)(a), in a manner prescribed by the Association and shall be accompanied by the appropriate administration fee.

(5) Incidental manner

In order for a firm to qualify as carrying on regulated activities in an incidental manner:

(a) the main activity of the firm must be the provision of public practice accountancy services other than regulated activities;

(b) the carrying on of the regulated activities must not be isolated from other activities of the firm so that it is in effect a separate business;

(c) the firm must not carry on, or hold itself out as carrying on, a regulated activity other than one which is allowed by these rules or one in relation to which the firm is an exempt person;

(d) regulated activities should arise out of or be complementary to the provision by the firm of a particular professional service to a particular client;

(e) a firm regulated by the Association for investment business activities should disclose to an existing client or a potential client that the firm is an accountancy firm which may only carry on a limited range of investment business activities;

(f) the firm must not receive from a person other than its client any pecuniary reward or other advantage, for which it does not account to its client (see 6 below), arising out of its carrying on of regulated activities;

(g) the carrying on of regulated activities is within the scope of the general ethical code and the rules governing the profession; and

(h) the firm must not hold out that the exempt regulated activities are carried out on a stand alone basis separate from the main activity of the firm.

(6) Receipt of any pecuniary reward or other advantage

(a) Regulation 3(5)(f) requires that any pecuniary reward or other advantage arising out of carrying on exempt regulated activities can only be retained where the member or firm accounts to the client for that pecuniary reward or other advantage. "Accounts to the client" means remitting any pecuniary reward or advantage to the client; or informing the client of the pecuniary reward or advantage and that he has the right to require the firm to pay the amount concerned to the client, thus allowing offsetting of the amount against any fees charged to the client; or obtaining the client's informed consent, in writing, that the firm may retain the particular reward or advantage in question.

(b) In securing the consent of the client, the client must be informed clearly of the nature of the pecuniary reward or advantage, including its amount and frequency, and that the client has the right to require the firm to pay the amount concerned to the client. Even if the client consents, the client must be informed each time a pecuniary reward or advantage is received.

(c) It is not considered sufficient for firms in, say, the letter of engagement to make a general disclosure regarding the receipt of any pecuniary reward or advantage, or to obtain a client's general consent to the firm's retention of such pecuniary reward or advantage.

(d) Firms should agree with clients the manner in which any fee or reward is going to be dealt with. Firms are also reminded of the requirements of disclosure of such fee or reward, under the Code of Ethics and Conduct.

(7) Other restrictions

(a) A firm with a branch (or branches) or office (or offices) outside the United Kingdom shall be eligible to undertake exempt regulated activities in the UK from its UK branch (or branches) or office (or offices) (subject to the requirements of other relevant regulations).

(b) A member or firm shall not be eligible to undertake any activity specified in any Order made under the Financial Services and Markets Act 2000 (Professions)(Non-Exempt Activities) Order 2001, as amended from time to time or any other Order made by the Treasury under section 327(6) of the Act.

(c) Where the FCA exercises its powers under sections 328 and 329 of the Act, members or firms cannot undertake the activity or activities specified in the direction or order.

The powers of the FCA

(1) Directions

Section 328 of the Act enables the FCA to issue a direction that the exemption from the general prohibition under section 327(1) of the Act does not apply either to a class of person or to a specific regulated activity. The direction must be in writing.

(2) Orders

Section 329 of the Act enables the FCA to make an order that the exemption from the general prohibition under section 327(1) does not apply if it appears to the FCA that the person to whom the order will apply is not a fit and proper person to carry on exempt regulated activities.

The powers of the FCA detailed above may be used separately, or in addition to, the Association's disciplinary procedures.

Chapter 4 Scope

4. Scope

(1) Exempt regulated activities

Subject to regulations 4(2) and 4(3), all firms that are eligible to conduct regulated activities under regulation 3 may carry on, or agree to carry on, any of the activities set out in this regulation (but no other activity constituting regulated activities).

In relation to designated investments, contracts of long-term insurance, contracts of long-term care insurance, regulated mortgage contracts, regulated home reversion plans and regulated home purchase plans, firms may carry on:

(a) dealing as agent in investments within article 21 to the Regulated Activities Order:

  (i) as disclosed agent for a named client where the transaction is carried out with or through a permitted third party; or

  (ii) where the client is an execution-only client except in respect of pension transfer or opt-out business and pension fund withdrawals; or

(b) making arrangements within articles 25 (investments deals), 25A (regulated mortgage contracts), 25B (regulated home reversion plans) and 25C (regulated home purchase plans) of the Regulated Activities Order where:

  (i) the firm acts as disclosed agent for a named client and the arrangements are carried out with or through a permitted third party; or

  (ii) the arrangements are made in consequence of advice given in relation thereto by a permitted third party which if obtained by the firm has been obtained by it acting as disclosed agent for a named client; or

  (iii) the client is an execution-only client except in respect of pension transfer or opt-out business and pension fund withdrawals; or

  (iv) the arrangements are for the disposal of a packaged product by or for a personal representative; or

  (v) the transaction involves the acquisition or disposal of an investment by accepting an offer or responding to an invitation made to the public or to the holders of securities of any body corporate or any class thereof or by exercising any right conferred by an investment to acquire, dispose of or convert an investment; or

(c) managing investments within article 37 of the Regulated Activities Order where:

  (i) that activity is performed on a non-discretionary basis;

  (ii) the firm or an officer or employee of the firm holds a trustee appointment and acts on a discretionary basis; and

    (aa) no remuneration is received for the discretionary management of the investments in addition to the remuneration which the firm or the officer or employee of it may receive in connection with their acting pursuant to the trustee appointment; or

    (bb) any decisions to buy, sell, subscribe for or underwrite a particular investment are taken in accordance with the advice of a permitted third party which, if obtained by the firm, has been obtained by him or it having disclosed the basis on which he or it is acting; or

(d) advising within article 53 (investments), article 53A (regulated mortgage contracts), article 53B (regulated home reversion plans) and article 53C (regulated home purchase plans) of the Regulated Activities Order where:

(i) such advice constitutes the advice of a permitted third party and, if obtained by the firm, has been obtained by it acting as disclosed agent for a named client; or

(ii) in the case of investments the advice does not relate to listed securities; or

(iii) such advice concerns the disposal of a packaged product for a personal representative; or

(iv) such advice constitutes a recommendation not to buy or subscribe for investments, or a recommendation to vary the terms of, not to buy or not to subscribe for regulated mortgage contracts, regulated home reversion plans and regulated home purchase plans, or relates to the disposal of investments other than rights under a personal pension scheme or relates to the acquisition of investments issued by an unquoted company; or

(v) such advice constitutes advice to clients to seek further information or clarification from the authorised person; or

(vi) such advice constitutes advice to clients on the merits of advice given by an appropriately authorised or exempt person provided no recommendation is made that the client purchases a particular investment or regulated mortgage contract, regulated home reversion plans and regulated home purchase plans, other than that recommended by the authorised or exempt person; or

(e) the provision of any designated investment business to:

(i) an issuer, holder or owner of investments with regard to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, the investments, or any related matter; or

(ii) any company or partnership which relates to the manner in which, or the terms on which, or the persons by whom, any business, activities or undertakings relating to it, or any associate, are to be financed, structured, managed, controlled, regulated or reported upon; or

(iii) any company in connection with a proposed or actual take-over by or on behalf of that company or its holding company or subsidiary or a merger, de-merger, re-organisation or reconstruction involving any investments issued by such a company; or

(iv) any shareholder or prospective shareholder of a company established or to be established for the purpose of effecting a take-over.

In relation to contracts of insurance other than contracts of long-term insurance and contracts of long-term care insurance, firms may carry on the following insurance mediation activities provided they have first complied with regulation 4(3):

(f) dealing as agent in the manner specified by article 21 of the Regulated Activities Order; or

(g) making arrangements in the manner specified by article 25 of the Regulated Activities Order; or

(h) assisting in the administration and performance of contracts of insurance within article 39A of the Regulated Activities Order; or

(i) advising in the manner specified by article 53 of the Regulated Activities Order.

In relation to credit-related regulated activities, firms may carry on the following activities:

(j) entering into a regulated credit agreement as lender

(k) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement

(l) credit broking

(m) debt adjusting

(n) debt counselling

(o) debt administration

(p) providing credit information services

(q) agreeing to carry on a regulated activity so far as relevant to any of the activities in (j) to (p).

(2) Prohibited activities

No firm may carry out any activity that relates to:

(a) accepting deposits of a kind specified by article 5 of the Regulated Activities Order;

(b) effecting and carrying out contracts of insurance as specified by article 10 of the Regulated Activities Order;

(c) dealing as principal in investments within the meaning of article 14 of the Regulated Activities Order;

(d) establishing, operating or winding up a collective investment scheme; acting as a trustee of an authorised unit trust scheme or acting as the depository or sole director of an open-ended investment company as specified within article 51 of the Regulated Activities Order;

(e) establishing, operating or winding up a personal pension scheme or stakeholder pension scheme within article 52 of the Regulated Activities Order;

(f) recommendations to buy or subscribe for securities or contractually based investments which are admitted to dealing on an exchange or other market within article 53 of the Regulated Activities Order;

(g) advising on the merits of entering into a regulated mortgage contract within article 53A, a regulated home reversion plan within article 53B and a regulated home purchase plan within article 53C of the Regulated Activities Order;

(h) advising on the merits of entering into or varying the terms of a contract of long-term insurance, a contract of long-term care insurance or other insurance-based investment in the manner specified by article 53 of the Regulated Activities Order;

(i) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified under article 57 of the Regulated Activities Order;

(j) entering as provider into a funeral plan contract within article 59 of the Regulated Activities Order;

(k) entering into or administering a regulated mortgage contract, regulated home reversion plans and regulated home purchase plans within articles 61, 63B and 63F of the Regulated Activities Order;

(l) advising a person to become a member of a particular Lloyd's syndicate;

(m) holding, or receiving, any money belonging to a client in the course of carrying on exempt regulated activities for a client which is not immediately due and payable on demand to the firm for its own account;

(n) acting as a personal pension scheme or stakeholder pension scheme manager;

(o) managing investments as a plan manager of a PEP or an ISA;

(p) carrying on the activity of safeguarding and administering assets within article 40 of the Regulated Activities Order;

(q) carrying on any investment activity relating to derivatives;

(r) promoting, issuing or approving any investment advertisements;

(s) undertaking any business involving pension transfers and pension fund withdrawals;

(t) entering into a broker funds arrangement;

(u) sponsoring or advising on issues of securities on the Stock Exchange, Alternative Investment Market (AIM) or Off Exchange (OFEX);

(v) issuing electronic money;

(w) providing basic advice on stakeholder products;

(x) debt collecting;

(y) entering into a regulated consumer hire agreement as owner;

(z) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;

(za) providing credit references;

(zb) operating an electronic system in relation to lending.

In addition to the prohibition on firms from carrying out any of the above activities, firms may not agree to carry on any activity contained in regulation 4(2).

This list will be reviewed from time to time and will be revised as necessary.

(3) Special requirements for firms intending to carry on, or agree to carry on, insurance mediation activity

A firm wishing to carry on insurance mediation activity (i.e. the activities set out in regulations 4(1)(a), (b) and (d) in relation to insurance-based investments and the activities set out in regulations 4(1)(f) to (i)) must:

(a) effect professional indemnity insurance with minimum limits of indemnity[1] equivalent (at the time the policy is effected or renewed) to 1,120,200 euros in relation to each and every claim and 1,680,300 euros in the aggregate per year for all claims, except where the activity comprises providing information to a policyholder or potential policyholder or a permitted third party in the context of making arrangements with a view to transactions in the manner specified by article 25(2) of the Regulated Activities Order;

(b) where the firm is not a sole practitioner, nominate an individual or individuals within the management of the firm who will be responsible for such activities;

(c) ensure that a reasonable proportion of the persons within the management structure of the firm who are responsible for insurance mediation activity and all other persons directly involved in insurance mediation activity demonstrate the knowledge and ability necessary for the performance of their duties;

(d) where the firm intends to establish a branch in, or provide cross border services to, another state of the European Economic Area (EEA), satisfy the conditions in paragraph 19 or 20 (as appropriate) of Part III of Schedule 3 to the Act;

(e) satisfy the conditions that no person within the management structure of the firm or within the staff directly involved in insurance mediation activity is an undischarged bankrupt or has a criminal conviction for any serious offences relating to financial activities or crimes against property;

(f) register with the Association for insurance mediation activity; and

(g) before carrying on such activities, ensure that the following details appear on the Financial Services Register and have been updated, as informed by the firm to the Association:

(i) the firm's name and address;

[1]Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

(ii) details of the individuals referred to within regulation 4(3)(b); and

(iii) where relevant, each EEA state in which the firm has established a branch or is providing cross border services under the Insurance Mediation Directive.

A firm which undertakes insurance mediation activity and whose details do not appear on the Financial Services Register will be committing a criminal offence. While the Association will pass a firm's details to the FCA as part of its regulatory obligations, it is the firm's responsibility to ensure that its details appear on the Financial Services Register and are correct and up to date.

(4) Activities which do not constitute insurance mediation activity

The following activities do not constitute insurance mediation activity and, as such, firms are free to carry on such activities as they do not fall within the Designated Professional Body Regulations:

(a) advising in general terms on the need for or level of insurance cover or providing information to the policyholder or potential policyholder of a general nature on insurance products, while making no recommendation of particular contracts of insurance;

(b) carrying on insurance mediation activity where all of the following conditions are met:

(i) the principal activity of the person is other than insurance mediation activity;

(ii) the contract of insurance is not a contract of long-term insurance;

(iii) the contract of insurance has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;

(iv) the contract of insurance has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euros or less, or the equivalent amount in other currency;

(v) the insurance covers non-motor goods or travel insurance;

(vi) the contract of insurance does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract);

(vii) the insurance is complementary to the non-motor goods or service supplied by any provider; and

(viii) the contract of insurance is of such a nature that the only information needed is the cover provided;

(c) carrying on insurance mediation activity not by way of business. The "by way of business" test comprises two elements:

(i) whether the person receives remuneration for the activity (whether monetary, non-monetary or in the form of an expectation of economic benefit);

(ii) whether the person pursues the activity with a degree of regularity or for commercial purposes.

Chapter 5 Conduct of business regulations

5. Independence

(1) Inducements

A firm must take reasonable steps to ensure that neither it nor any of its agents offers, gives, solicits or accepts any inducement which is likely significantly to conflict with any duties of the recipient or the recipient's employer owed to clients in connection with the firm's exempt regulated activities.

(2) Material interest

Where a firm has a material interest in a transaction to be entered into with or for a client or a relationship which gives rise to a conflict of interest in relation to such a transaction, the firm must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the client.

(3) Arrangements with third parties

(a) A firm must not enter into any soft commission agreement whereunder a firm which deals in securities on an advisory basis receives goods or services in return for an assurance that not less than a certain amount of such business will be put through or in the way of another person.

(b) A firm may only accept an appointment as another person's appointed representative where the appointing organisation is itself, and at all times continues to be, free from any restriction which may result in the firm being constrained or induced to recommend to a client transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others, unless constrained by law.

(c) A firm may only advise in relation to the disposal of packaged products as an independent intermediary and, for the avoidance of doubt, to the extent such activities constitute exempt regulated activities.

6. Relations with clients

(1) Fair and clear communications

(a) A firm must avoid any representation to a client that it is authorised under the Act or regulated by the FCA or that the regulatory protections provided by the Act are available. Where a firm is conducting insurance mediation activity, it is particularly important that the client understands that the firm's inclusion on the Financial Services Register is not the same as being authorised under the Act.

(b) A firm may make a communication with another person which is designed to promote the provision of exempt regulated activities only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(c) A firm must take reasonable steps to ensure that any agreement, written communication, notification or information which it gives or sends to a client to whom it provides exempt regulated activities is presented fairly and clearly.

(d) A firm must ensure that the client receives sufficient information about any recommended investment so that he has an adequate basis on which to accept or reject the recommendations. The firm must make clear that it will supply the client with more detailed information if he so requires.

(2) Clients' rights

(a) A firm must not, in any written communication or agreement, seek to exclude or restrict any duty or liability to a client which it has under the Act, or under the regulatory system.

(b) Similarly, unless it is reasonable to do so in the circumstances, a firm must not, in any written communication or agreement, seek to exclude or restrict:

(i) any other duty to act with the skill, care and diligence which is owed to a client in connection with the provision to him of exempt regulated activities; or

(ii) any liability owed to a client for failure to exercise the degree of skill, care and diligence which may reasonably be expected of it in the provision of exempt regulated activities.

(c) A firm must not seek unreasonably to rely on any provision seeking to exclude or restrict any such duty or liability.

(3) Charges

The amount a firm charges to a client for the provision of exempt regulated activities must not be unreasonable in the circumstances.

(4) Client agreements

(a) Where a firm provides exempt regulated activities to a client, the written agreement which must be entered into before any business is conducted must set out in adequate detail the basis on which those services are provided and must include, inter alia, a statement of the following:

(i) the firm's name and address; and

(ii) that the firm is regulated in the conduct of exempt regulated activities by the Association (if a firm makes a reference to the FCA any such statement should not lead the client to suppose that the FCA has direct regulatory responsibility for that firm); and

(iii) the nature of the regulated activities provided by the firm and the fact that these are limited in scope and, where appropriate, the fact that the firm is using the services of a permitted third party; and

(iv) where the firm provides exempt regulated activities other than insurance mediation activity, that the firm is not an authorised person; and

(v) that the client will not have access to any compensation scheme in respect of the firm's services; and

(vi) the client's investment objectives; and

(vii) any restrictions on the investments which may be acquired or that there are no restrictions; and

(viii) the nature of the complaints and redress procedures available to clients; and

(ix) the basis on which the firm is to charge for its services.

(b) Where a firm provides insurance mediation activity services, the written agreement must also provide the following information:

(i) the following statement in a way that is clear, fair and not misleading and no less prominent than any other information provided to the client at the same time:

"[This firm is/We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our

business, including arrangements for complaints or redress if something goes wrong, is regulated by the Association of Chartered Certified Accountants. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/register.";

(ii) whether the firm has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;

(iii) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the firm.

(c) Where a firm acts as a disclosed agent for a named client with or through a permitted third party or relies upon the advice of a permitted third party in acting for or advising a client, the firm must inform the permitted third party in writing of that fact and that accordingly the permitted third party will be responsible to the client in respect of its activities or advice.

(d) (i) Where a firm is treating a client as an execution-only client it must:

(aa) notify the client accordingly and must obtain a written acknowledgement from the client. In addition, written evidence of specific instructions from execution-only clients must be made, including written confirmation that the client did not seek or receive advice from the firm regarding a transaction. The transaction must have been entered into on the client's explicit instructions; and

(bb) have reasonably assessed and concluded that the client can be expected to understand the risks involved in the transaction.

(ii) Copies of the written notification and acknowledgement and evidence of instructions and assessment referred to in this regulation are required to be retained for six years.

(5) Cessation of business

Where a firm withdraws from providing any exempt regulated activities to clients, the firm must ensure that any such business which is outstanding is properly completed or is transferred to another firm. In addition, where the interests of clients would be significantly affected by the death or incapacity of an individual within the firm, the firm must make arrangements to protect the interests of those clients in that event.

(6) Information about the firm

A firm may, in all its business letters, notices and other publications which relate to its exempt regulated activities, state that it is regulated to conduct exempt regulated activities by the Association. Any such statement should also comply with the requirements set out in regulation 6(4) relating to client agreements.

Note on the use of statements on business letters, notices and other publications

Firms that are regulated by the Association for investment business activities may use the following statement on their professional stationery:

"Regulated for a range of investment business activities by the Association of Chartered Certified Accountants."

(7) Information about contracts of insurance

This regulation applies where a firm carries on insurance mediation activity.

Firms are reminded of the provisions of paragraph 10 of Code of Ethics and Conduct section B7, Activities through corporate or non-corporate organisations, which provides that firms are not permitted to enter into any association or arrangement which may adversely affect the firm's independence. As such, firms are not permitted to enter into contractual obligations to conduct insurance mediation activity exclusively with one or more insurance undertakings.

(a) The client must be informed of the following in relation to each contract of insurance:

(i) whether the advice is given based on the firm's obligation to provide a fair analysis (see regulation 6(7)(b) below); or

(ii) whether even though the firm is not under a contractual obligation to conduct insurance mediation activity exclusively with one or more insurance undertakings, the firm does not give advice based on the firm's obligation to provide a fair analysis. In that case, the firm shall, at the client's request, provide the names of the insurance undertakings with which the firm may and does conduct business.

Where information is to be provided solely at the client's request, a firm must inform the client that he has the right to request such information.

(b) Where a firm informs the client that the advice is given on the basis of a fair analysis, the firm is obliged to give that advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market, to enable the firm to make a recommendation, in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer's needs.

(c) Prior to the conclusion of a contract of insurance, a firm must specify, in particular on the basis of information provided by the client, the demands and needs of the client as well as the underlying reasons for any advice given to the client on a specific contract of insurance. These details must be modulated according to the complexity of the insurance contract being proposed.

(8) Method of communicating with client

This regulation applies where a firm carries on insurance mediation activity.

(a) All information to be provided to clients under this regulation 6 must be communicated:

(i) (aa) on paper or any other durable medium available and accessible to the client; or

(bb) orally, if the client requests it or where immediate cover is necessary, in which case the information shall be provided in accordance with regulation 6(8)(a)(i)(aa) immediately after the conclusion of the contract of insurance; and

(ii) in a clear and accurate manner, comprehensible to the client; and

(iii) in an official language of the Member State of the commitment or in any other language agreed with the client.

(b) Where a firm conducts insurance mediation activity over the telephone, the prior information given to the client must comply with Article 3 of the Distance Marketing Directive. Information must then be provided to the client in accordance with regulation 6(8)(a) immediately after the conclusion of the contract of insurance.

(9) Life policies

When advising on the disposal of a life policy in accordance with regulation 4(1)(d)(iv), a firm must advise its client on:

(a) the risks and costs of keeping the policy;

(b) the various means of disposal available to the client and the advantages and disadvantages of each.

Surrendering the policy is unlikely to realise its full value. Examples of other means of disposal are selling the policy on the second-hand market, converting a joint life policy to single life, assigning the policy or making the policy paid up. If a firm is unable to fully advise its client, it should obtain the advice of a permitted third party.

(10) Distance contracts

While firms are unlikely to be undertaking activities within the scope of regulation 4(1) by way of a distance contract, if they do so they must comply with the provisions of the Distance Marketing Directive.

7. Credit-related regulated activities

(1) Consumer Credit Act 1974

Members and firms shall make themselves aware of the provisions of the Consumer Credit Act 1974 and the provisions of secondary legislation made under that Act remaining in force, and shall ensure that the firm, its officers and its employees comply with all such legislation.

(2) Consumer Credit sourcebook

When carrying on a credit-related regulated activity or an activity connected to that regulated activity, members and firms are required to comply with the conduct provisions of the Consumer Credit sourcebook relevant to that activity and the FCA's Principles for Businesses referred to in 1.1.4G of that sourcebook as if they were authorised under the Act with a permission under Part 4A of the Act to carry on the relevant regulated activity.

8. Compliance procedures

(1) Compliance

A firm must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with all regulations and regulations applicable to the conduct by the firm of exempt regulated activities.

(2) Records

(a) A firm must ensure that sufficient information is recorded and retained about its exempt regulated activities as is necessary for the proper conduct of that business and to enable it to demonstrate compliance with the regulatory system, including but not limited to records:
   (i) of the receipt of income from the client in respect of exempt regulated activities;
   (ii) of the receipt of any pecuniary reward or advantage, from product providers or any third parties, which are adequate to demonstrate that the firm has accounted to the client for the pecuniary reward or advantage;
   (iii) which are adequate to demonstrate that the firm has carried on only exempt regulated activities; and
   (iv) of complaints received and action taken.

(b) Any record required to be produced by this regulation should be retained for a minimum of six years.

(3) Complaints

A firm must have procedures to ensure:

(a) the proper handling of complaints from clients and third parties relevant to its compliance with the regulatory system;

(b) that any appropriate remedial action on those complaints is promptly taken; and

(c) where the complaint is not promptly remedied, that the client is advised of any further avenue for complaint available to him under the regulatory system;

and those procedures must include provisions to ensure that:

(i) complaints are acknowledged within a reasonable time of their being received and in any event within 14 days;

(ii) where a complaint has been made orally, the letter of acknowledgement states the member's understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement;

(iii) complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint; and

(iv) the client is advised of the outcome of the complaint investigation.

(4) Continuity

Firms shall enter into a continuity agreement in accordance with regulation 11 of The Chartered Certified Accountants' Global Practising Regulations 2003.

(5) Notification

A firm that becomes an authorised person to conduct any regulated activities or becomes an appointed representative of another organisation should notify the Association immediately in writing of this change of status.

Chapter 6 Enforcement

9. Enforcement

(1) Monitoring

Members and firms entitled to carry out exempt regulated activities shall be subject to monitoring from the Association in accordance with regulation 14 of The Chartered Certified Accountants' Global Practising Regulations 2003.

(2) Intervention Orders

(a) If it appears to the Admissions and Licensing Committee that it is desirable to take measures for the protection of investors and/or for the protection of members of the public and/or for the protection of the Association, and that:

(i) it is desirable to prohibit a firm from disposing of or otherwise dealing with any of its assets, or any specified assets; or

(ii) a firm is not fit and proper to carry on exempt regulated activities either generally or of a particular kind or to the extent to which it is or is intending to carry on that business; or

(iii) a firm has committed, or intends, or is likely to commit a breach of these regulations or some other act of misconduct; or

(iv) for more than one of these reasons;

the Admissions and Licensing Committee may make and serve on the firm concerned a written Intervention Order (an "Order").

(b) An Order may operate for a specified period or until the occurrence of a specified event or until the firm complies with specified conditions and may, at the Admissions and Licensing Committee's discretion, come into effect either immediately on service or at such later time as the Admissions and Licensing Committee may determine.

(c) An Order served on a firm may require the firm to take specified steps and/or may forbid the firm:

(i) in whole or in part, to carry on exempt regulated activities;

(ii) to dispose of or otherwise deal with any assets or any specified assets (whether held in the United Kingdom or outside the United Kingdom) or to act otherwise than in the manner specified in the Order;

(iii) to enter into transactions of a specified kind or enter into them except in specified circumstances or to a specified extent;

(iv) to solicit business from persons of a specified kind or otherwise than from such persons or in a specified country or territory; and/or

(v) to carry on business in a specified manner or otherwise than in a specified manner.

(d) An Order shall specify:

(i) the reasons for its issue;

(ii) the date and time at which the Order shall come into effect;

(iii) the period for which the Order shall operate, which may be expressed to end with the occurrence of a specified event or when the firm has complied with the requirements of the Order;

(iv) where relevant, in regard to an Order to which regulation 9(2)(a)(iii) above applies, the act or omission which constituted or would constitute breach of the regulations and the regulation which has been or would be contravened; and

(v) the officer of the Admissions and Licensing Committee to whom a request can be made for a stay of execution of the Order.

(e) The Admissions and Licensing Committee, or the Chairman of the Admissions and Licensing Committee acting on its behalf, may, at any time before or after an Order comes into effect, revoke the Order or vary its terms, and where the terms of an Order are varied the variation shall be effected by a new Order being served on the firm concerned.

(f) Subject to regulation 9(3) the Association shall publish the Order at or after the time it comes into effect.

(3) Application for stay of execution

After service of the Order, its recipient may apply to the Association for a stay of execution of the Order or any part of it and/or of its publication. The application shall be considered by the officer specified pursuant to regulation 2(d)(v) above who in his discretion may grant or refuse the stay or grant it subject to conditions.

(4) Reference to the Appeal Committee

A firm served with an Order may appeal against the Order in the same way and subject to the same limitations as it may appeal against any other decision of the Admissions and Licensing Committee.

The Association may appeal against the Order in the same way and subject to the same limitations as it may appeal against any other decision of the Admissions and Licensing Committee.

10. Waivers and service

(1) Waivers and modifications

(a) A firm is entitled to apply in writing to the Admissions and Licensing Committee to waive, vary or suspend the requirements of any of these regulations in order to adapt it to the firm's circumstances or to any particular kind of business which the firm is carrying on or intends to carry on. The Admissions and Licensing Committee shall not grant the application unless it appears that compliance with it would be unduly burdensome having regard to the benefit which compliance would confer on investors and the exercise of the power would not result in any undue risk to investors.

(b) The Admissions and Licensing Committee may grant such an application on conditions. If it does so, the applicant firm must comply with any such conditions.

(c) Following an application under this regulation, or of its own volition, the Admissions and Licensing Committee may modify or waive any of these regulations. Where it does so, it may impose conditions and any firm which acts upon modification or waiver extended to it must comply with any such condition.

(d) Any waiver given under this regulation shall apply for such period as the Admissions and Licensing Committee shall specify.

(e) Any waiver or modification by the Admissions and Licensing Committee cannot vary the conditions contained in section 327(2)–(7) of the Act or the effect of a direction or Order made by the FCA under section 328 or section 329 of the Act.

(2) Consents

Where provided for in these regulations any consent to be given by the Admissions and Licensing Committee may be given or withheld in its absolute discretion, but if withheld the Admissions and Licensing Committee shall notify the firm of the reasons why it has been withheld.

(3) Service

Except as otherwise provided in these regulations, any notice or other document required or authorised by these regulations to be served on any firm may be served by leaving it at or sending it by post to the firm's address notified to the Association in accordance with these regulations.

11. Liability

Neither the Association nor any of its officers or servants or agents nor any members of any committee of Council shall be liable in damages or otherwise for anything done or omitted to be done in the discharge or purported discharge of any function under the Act set out below unless the act or omission is shown to have been in bad faith. The functions referred to above are the functions of the Association so far as relating to or to matters arising out of:

(a) the bye-laws, regulations and arrangements of the Association so far as they relate to or are applied in respect of the carrying on of exempt regulated activities or any other matters concerning the Act and/or to which the requirements in section 325(4) of the Act require the Association to comply;

(b) the obligations with which section 325(4) of the Act requires the Association to comply;

(c) any guidance issued by the Association in respect of any matter dealt with by such regulations as are mentioned in (a) above; or

(d) the obligations to which the Association is subject by virtue of the Act.

2.4

The Chartered Certified Accountants' Irish Investment Business Regulations 2013

Amended 1 January 2017

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

(Note: Words or phrases which are defined in regulation 2(1) are shown in italics in the text of the regulations throughout.)

1. Citation, commencement and application

(1) Citation

These regulations may be cited as The Chartered Certified Accountants' Irish Investment Business Regulations 2013.

(2) Commencement

These regulations as amended shall come into force on 1 January 2017.

(3) Application

(a) These regulations, in so far as they are relevant, shall apply to all *members*, and to *firms*, and to individuals who have agreed and undertaken to be bound by them. In addition, to the extent provided for in the regulations, these regulations shall continue to apply to *members* after they have ceased to be *members* and to *firms* and such other persons after the *investment business certificate (Ireland)* issued to the *firm*, or the *firm* in relation to which they are *specified persons*, has lapsed.

(b) Regulations 5 to 14 apply only to the provision of *investment business services* and *investment advice* by a *firm* which are either:

(i) carried on from the *firm's* place of business in the Republic of Ireland; or

(ii) carried on from the *firm's* place of business in the *United Kingdom* for *clients* in the Republic of Ireland.

In other words, where *firms* holding an *investment business certificate (Ireland)* have a branch in the UK, that branch will not be bound by regulations 5 to 14 unless it is providing *investment business services* or *investment advice* to *clients* based in the Republic of Ireland. Such branches may instead be subject to UK legislation and The Chartered Certified Accountants' Designated Professional Body Regulations 2001.

(c) *Members* and *firms* and all persons who have agreed and undertaken to be bound by these regulations shall be subject to any provisions of the *Act* not specifically set out in these regulations and shall comply with any such provisions, where necessary, as if these provisions were specifically set out in these regulations. Where there is a conflict between the provisions of these regulations and the provisions of the *Act*, the provisions of the *Act* shall take precedence.

2. Interpretation

(1) Definitions

In these regulations, unless the context otherwise requires:

Act means the Investment Intermediaries Act 1995, as amended;

Admissions and Licensing Committee means the committee of *Council* responsible, inter alia, for administering these regulations, or such other committee to whom *Council* may delegate such responsibilities, or *Council*;

advertise includes cause to be advertised;

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

Appeal Committee means the committee of *Council* responsible, inter alia, for hearing appeals from decisions of the *Admissions and Licensing Committee*, or such other committee to whom *Council* may delegate such responsibility, or *Council*;

applicant means a person who or which has applied or is in the course of applying to the *Association* for or to renew or to amend an *investment business certificate (Ireland)*;

approved professional body has the meaning given by section 55 of the *Act*;

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

(a) in relation to an individual, *associate* means:
  (i) that individual's spouse or minor child or step-child;
  (ii) any body corporate of which that individual is a director; and
  (iii) any *employee* or partner of that individual;

(b) in relation to a body corporate, *associate* means:
  (i) any body corporate of which that body is a director;
  (ii) any body corporate in the same *group* as that body; and
  (iii) any *employee* or partner of that body or of any body corporate in the same *group*;

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

BES investment means an investment which provides income tax relief as referred to in section 489 (Part 16) of The Taxes Consolidation Act 1997;

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

Central Bank of Ireland means the single unitary body in Ireland responsible for central banking and financial regulation, created by the Central Bank Reform Act 2010;

certified person has the meaning given by section 55 of the *Act*;

client means a person to whom a *firm* provides *investment business services* or *investment advice* and includes an *indirect client* but does not include a trust beneficiary;

collective investment scheme means any collective investment scheme subject to the regulation of the *Central Bank of Ireland*;

company includes any body corporate;

Compensation Act means the Investor Compensation Act, 1998;

Consumer Protection Code means the Consumer Protection Code 2012 introduced by the *Central Bank of Ireland*, as updated;

controller means, in relation to any *company*, a person who either alone or with any *associate or associates* is entitled to exercise or control the exercise of 15 per cent or more of the rights to vote on all, or substantially all, matters at general meetings of the *company* or another *company* of which it is a *subsidiary*;

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

deposit means a deposit with a credit institution and shall be construed as including a shareholding in as well as a deposit with a building society;

deposit agent means any person who holds an appointment in writing from a single credit institution enabling him to receive *deposits* on behalf of that institution and prohibiting him from acting in a similar capacity on behalf of another credit institution;

deposit broker means any person who brings together with credit institutions persons seeking to make *deposits* in return for a fee, commission or other reward;

derivatives means any investment falling within sub-paragraphs (d)–(h) of the definition of "investment instruments" within section 2 of the *Act* (which is wider than the definition at 4(2) of these regulations) and sub-paragraphs (k) and (1) to the extent the option or hybrid instrument relates to such an instrument within sub-paragraphs (d)–(h);

distance contract for the supply of a financial service has the same meaning as that set out in regulation 3 of European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853/2004);

Distance Marketing of Consumer Financial Services Regulations means the EU (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853/2004);

employee means an individual who is employed in connection with the *firm's* investment business under a contract of service or under a contract for services such that he is held out as an *employee* or consultant of the *firm*;

execution-only means the effecting or arranging of a transaction by a *firm* for a *client* in circumstances in which the *firm* can reasonably assume that the *client* is not relying upon the *firm* to advise him on or to exercise any judgement on his behalf as to the merits of or the suitability for him of the transaction and where the *client* has agreed in writing that the *firm* has not provided and is not responsible for providing him with *investment advice* or for exercising any judgement on his behalf as to the merits of or the suitability for him of the transaction and where the *client* has specified both the product and the *product producer* by name and has not received any assistance from the *firm* in the choice of that product and/or *product producer*; and *execution-only client* shall be construed accordingly;

film investment has the meaning given in section 481 of the Taxes Consolidation Act, 1997 (Relief for investment in films);

firm means an individual (including a sole trader), partnership or *company* holding a current, valid *investment business certificate (Ireland)* or, as the context requires, which has held such a certificate;

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

holding company has the meaning given by Section 8 of the Companies Act, 2014;

incidental manner has the meaning given by regulation 3(4) of these regulations;

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

inducement does not include disclosable commission;

insurance mediation means any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims under insurance contracts), but does not include such an activity that:

(a) is undertaken by an insurance undertaking or an employee of such an undertaking in the employee's capacity as such, or

(b) involves the provision of information on an incidental basis in conjunction with some other professional activity, so long as the purpose of the activity is not to assist a person to enter into or perform an insurance contract, or

(c) involves the management of claims of an insurance undertaking on a professional basis, or

(d) involves loss adjusting or expert appraisal of claims for reinsurance undertakings;

investment advice has the meaning given by regulation 4(2) of these regulations;

investment business certificate (Ireland) means a certificate issued by the *Association* pursuant to section 55 of the *Act*;

investment business services has the meaning given by regulation 4(2) of these regulations;

investment instrument has the meaning given in regulation 4(2) of these regulations;

investment instrument transaction means:

(a) the purchase or sale of an *investment instrument*; or

(b) the subscription for an *investment instrument*;

life assurance means assurance of a class specified in Part A of Annex 1 to the European Communities (Life Assurance) Framework Regulations 1994 (which, for the avoidance of doubt, includes pension policies);

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

Minimum Competency Code means the Minimum Competency Code 2011 introduced by the *Central Bank of Ireland*, as updated;

non-life insurance means insurance of a class specified in Part A of Annex 1 to the European Communities (Non-life Insurance) Framework Regulations 1994;

officer means, in relation to a *firm* which is a partnership, a partner, and in relation to a *firm* which is a *company*, a director or shadow director;

order means an intervention order made pursuant to regulation 12;

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

practising certificate (Ireland) means a *practising certificate* issued by the *Association* relating to the carrying on of *public practice* in the Republic of Ireland issued only to *members* who are eligible therefor;

product producer means a firm, institution, collective undertaking or investment company of the kind referred to in section 26 (1) (i) to (vii) of the *Act*;

PRSA means Personal Retirement Savings Account;

public practice has the meaning given by regulation 4 of The Chartered Certified Accountants' Global Practising Regulations 2003;

RAIPI means a restricted activity investment product intermediary, in accordance with Section 26 of the *Act*, as amended by Section 59 of the Investor Compensation Act 1998 and Section 23 of the Insurance Act 2000;

regulatory system means the arrangements for regulating a *firm* under the *Act* and these regulations;

specified person means, in relation to a *firm* which is a partnership any partner in that *firm* and in relation to any *firm* which is a body corporate any director of that *firm*;

subsidiary means a subsidiary undertaking within the meaning of section 7 of the Companies Act, 2014;

turnover means the total income of a *firm*;

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

(2) Interpretation

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

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

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

(d) All references to Acts are to Acts of the Republic of Ireland unless otherwise specified.

(e) These regulations shall be interpreted in accordance with Irish law.

3. Eligibility for an investment business certificate (Ireland)

(1) Eligibility – Sole practitioners

A sole practitioner will only be eligible for an *investment business certificate (Ireland)* where:

(a) he is a *member*; and

(b) he holds a *practising certificate (Ireland)*; and

(c) he provides *investment business services* or *investment advice* in an *incidental manner*; and

(d) he holds minimum net business assets (see regulation 3(5) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and

(e) he is practising otherwise than in partnership or in a *company*.

(2) Eligibility – Partnerships

A partnership will only be eligible for an *investment business certificate (Ireland)* where:

(a) each of the partners is

(i) *a member;* or

(ii) a member of another *approved professional body* and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; or

(iii) entitled to practise accountancy and is regulated by another professional body and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; and

(b) the partners who are neither *members* of the *Association* nor of another *approved professional body* (if any) do not form a majority of the partners of the *firm;* and

(c) at least one of the partners in the *firm* is a *member*; and

(d) the partnership provides *investment business services* or *investment advice* in an *incidental manner*; and

(e) the partnership holds minimum net business assets (see regulation 3(5) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and

(f) each partner who is a *member* holds a *practising certificate (Ireland)* and each partner who is not a *member* holds such other qualification as is deemed adequate by the *Admissions and Licensing Committee*.

(3) Eligibility – Companies

A *company* will only be eligible for an *investment business certificate (Ireland)* where:

(a) each director who is also a *controller*

(i) is a *member;* or

(ii) is a member of another *approved professional body* and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; or

(iii) is entitled to practise accountancy and is regulated by another professional body and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; and

(b) the directors who are neither *members* of the *Association* nor of another *approved professional body* (if any) do not form a majority of the board; and

(c) at least one of the directors in the *firm* is a *member;* and

(d) the *company* provides *investment business services* or *investment advice* in an *incidental manner;* and

(e) the *company* holds minimum net business assets (see regulation 3(5) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and

(f) each director who is a *member* holds a *practising certificate (Ireland)* and each director who is not a *member* holds such other qualification as is deemed adequate by the *Admissions and Licensing Committee*.

(4) Meaning of incidental manner

(a) In order for a *firm* to qualify as providing *investment business services* or *investment advice* in an *incidental manner,* the *Admissions and Licensing Committee* will need to be satisfied that:

(i) the main activity of the *firm* is *public practice*, other than the provision of *investment business services* or *investment advice;* and

(ii) the provision of the *investment business services* or *investment advice* is not isolated from the other activities of the *firm* so that it is in effect a separate business (this would, however, not exclude a *firm* operating specialist departments within it).

(b) In relation to the "main activity" test in (a)(i) above, if less than 20 per cent of the *firm's* total *turnover* on an annual basis derives from *investment business services* or *investment advice,* the test is satisfied.

(c) The test in (a)(ii) above can be assessed by reference to various indicators, such as:

(i) It should be clear to a potential *client* when advertising *investment business services* that the *firm* is an accountancy *firm* which also provides *investment business services* and *investment advice.*

(ii) The offices dealing with *investment business services* and *investment advice* should be in the same location as the offices from which the accountancy services are provided.

(iii) The *investment business services* and *investment advice* should normally be provided in conjunction with the accountancy services of the *firm.*

(iv) The *firm's* policy should be to endeavour to provide its full range of services to its *clients,* where these services are appropriate.

(v) The *firm* should fully accept that its provision of *investment business services* and *investment advice* is within the scope of the *Association's* Code of Ethics and Conduct.

(vi) It should be clear that in terms of the way the *investment business services* and *investment advice* are managed by the *firm,* that this activity does not act on a stand-alone basis separate from the main activities of the *firm.*

(vii) The provision of *investment business services* and *investment advice* should be managed on a day-to-day basis by persons who are members of an *approved professional body.*

(d) The question as to whether a *firm* complies with regulation 3(4)(a) will be determined by the *Admissions and Licensing Committee* on the particular circumstances of each case.

(5) Net business assets

The net business assets of a sole trader or partnership are defined as follows:

(a) Fixed assets plus current assets less "creditors" (including those due after more than one year).

(b) Fixed assets are defined as assets that have been specified as being business assets and are included on the balance sheet of the sole trader or partnership and are used on a regular basis in the conduct of the business. Assets used mainly for the purpose of entertainment and intangible assets are excluded from the definition of fixed assets for the purpose of determining whether the capital adequacy requirements have been satisfied.

(c) Current assets include those assets that would be included under this heading if the business were incorporated except that the following are excluded:

(i) unbilled partner time included in work in progress;

(ii) amounts due to the firm from any individual connected with a principal of the firm (a connected person is defined as a spouse, child or parent of the principal); and

(iii) any bank account not designated as a business account.

(d) "Creditors" includes all liabilities incurred in conjunction with the operation of the business, and for the purpose of establishing net business assets under this regulation includes personal liabilities of a sole trader or his spouse, or a partner or his spouse, incurred to enable funds to be introduced into the business.

The net business assets of a limited company are determined in accordance with generally accepted accounting practice for the preparation of company accounts. For the avoidance of doubt, "creditors" due after more than one year are to be deducted in the calculation of net business assets.

Every *firm* shall keep accounting records which are sufficient to show and explain the *firm's* transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the *firm* at that time, and its compliance with the requirements to have a minimum level of net business assets on an ongoing basis.

(6) Main activity

For the purposes of regulations 3(1) to 3(3), where more than 20 per cent of a *firm's* total *turnover* on an annual basis derives from *investment business services* or *investment advice,* this fact must be notified to the *Association* who will refer the matter to the *Admissions and Licensing Committee* and to the *Central Bank of Ireland* for its consideration.

(7) Other restrictions

(a) No *applicant* with a branch or office outside the Republic of Ireland and the *United Kingdom* shall be issued with an *investment business certificate (Ireland).*

(b) An *applicant* shall not be eligible for an *investment business certificate (Ireland)* if he or it is authorised to provide *investment business services* or *investment advice* other than pursuant to these regulations.

4. Scope

(1) Prohibition on carrying on investment business

No *member,* nor any partnership or company in relation to which he is a *specified person,* may act as an investment business firm otherwise than in compliance with the provisions of section 9(1) of the *Act.*

(2) Category A authorisation

A Category A *firm* may carry on any activity for the provision of *investment business services* or *investment advice* within the meaning of this regulation 4(2).

"Investment advice" means the giving, or offering or agreeing to give, to any person:

(a) advice on the purchasing, selling, or subscribing for an *investment instrument* or on the making of a *deposit* or on the exercising of any right conferred by an *investment instrument* to acquire, dispose of, or convert an *investment instrument* or *deposit;* or

(b) advice on choice of a person providing *investment business services* or *investment advice;*

and includes advice on *BES investments* and *film investments,* but does not include any of the following:

(a) advice given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services;*

(b) advice given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services* and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a person attending such event and arising out of such attendance, in relation to *investment instruments* or *deposits* or in relation to the choice of a person providing *investment business services;*

(c) advice given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services;*

(d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings.

"Investment business services" includes all or any of the following services:

(a) receiving and transmitting, on behalf of investors, of orders in relation to one or more *investment instruments;*

(b) execution of orders in relation to one or more *investment instruments,* other than for own account;

(c) acting as a *deposit broker* (but not a *deposit agent*);

(d) undertaking *insurance mediation* activities.

"Investment instruments" includes:

(a) transferable securities including shares, warrants, debentures including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness issued by or on behalf of any body corporate or mutual body; government and public securities, including loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority; bonds or other instruments creating or acknowledging indebtedness; certificates representing securities; or money market instruments;

(b) non-transferable securities creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority;

(c) units or shares in undertakings for collective investments in transferable securities within the meaning of European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any subsequent amendments thereto; units in a unit trust; shares in an investment company; capital contributions to an investment limited partnership;

(d) agreements for the borrowing and lending of transferable securities;

(e) certificates or other instruments which confer all or any of the following rights, namely:

(i) property rights in respect of any *investment instrument* referred to in paragraph (a) of this definition; or

(ii) any right to acquire, dispose of, underwrite or convert an *investment instrument,* being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or

(iii) a contractual right (other than an option) to acquire any such *investment instrument* otherwise than by subscription;

(f) tracker bonds or similar instruments;

(g) *life assurance* policies (for the avoidance of doubt, *life assurance* includes pensions);

(h) *non-life insurance* policies;

(i) *PRSAs*.

(3) Category B authorisation

(a) A Category B *firm* may carry out a limited number of Category A activities. Those activities are all or any of the following:

(i) receiving and transmitting orders on behalf of investors in the following instruments:

(aa) units or shares in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989, and any subsequent amendments thereto;

(bb) units in a unit trust;

(cc) other *collective investment scheme* instruments;

(dd) shares in a company which are listed on a stock exchange or bonds so listed;

(ee) prize bonds;

(ff) tracker bonds;

(gg) *life assurance* policies (for the avoidance of doubt, *life assurance* includes pensions);

(hh) *non-life insurance* policies;

(ii) *PRSAs;* or

(ii) acting as a *deposit broker* (but not a *deposit agent*); or

(iii) giving, or offering or agreeing to give, to any person, advice on the purchasing, selling, or subscribing for one of the instruments listed at regulation 4(3)(a)(i) above or on the making of a *deposit;* or

(iv) giving, or offering or agreeing to give, to any person, advice on choice of a person providing *investment business services.*

(b) In the course of engaging in any of the activities listed at regulation 4(3)(a) above, a category B *firm* may transmit orders only to all or any of the following *product producers*, namely:

(i) investment firms authorised in accordance with Directive 2004/39/EC of 21 April 2004 by a competent authority of another Member State, or to an authorised investment business firm authorised under the *Act*, not being a *RAIPI* or *certified person*, or to a firm authorised in accordance with the European Communities (Markets in Financial Instruments) Regulations 2007;

(ii) credit institutions authorised in accordance with Directive 2006/48/EC;

(iii) such other branches of investment business firms or credit institutions authorised in a third country as the *Central Bank of Ireland* may approve from time to time;

(iv) collective investment undertakings authorised under the law of a Member State of the European Union to market units in collective investments to the public and to the managers of such undertakings;

(v) investment companies with fixed capital as defined in Article 15(4) of Council Directive 77/91/EEC of 13 December 1976 the securities of which are listed or dealt in on a regulated market in a Member State;

(vi) the Prize Bond Company Ltd or any successor to it as operator of the Prize Bond scheme;

(vii) insurance undertakings.

(4) Excluded activities

(a) No *firm* may:

(i) deal in one or more *investment instruments* for own account as if it were a market maker. A *firm* shall not act collectively for a *client* or *clients* and on its own account. In no circumstances may the *firm* allocate to a *client* a transaction originally effected for the *firm's* own account or allocate for the *firm's* own account a bargain originally effected for a *client;*

(ii) manage portfolios of i*nvestment instruments* or *deposits* in accordance with mandates given by investors on a discretionary client-by-client basis where such portfolios include one or more *investment instrument* or one or more *deposit;*

(iii) underwrite in respect of issues of one or more *investment instruments* or the placing of such issues or both;

(iv) act as a *deposit agent;*

(v) administer *collective investment schemes,* including the performance of valuation services or fund accounting services or act as transfer agents or registration agents for such funds;

(vi) carry out custodial operations involving the safekeeping and administration of *investment instruments;*

(vii) act as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act, 1985;

(viii) carry out any activity, including for this purpose the issue of an advertisement, relating to *derivatives*;

(ix) carry on any other activity constituting the provision of investment business services or investment advice within the meaning of section 2 of the *Act* other than an activity falling within regulation 4(2);

(x) hold or receive any money belonging to a *client*, or any money received from a *client* which belongs to a *product producer,* in the course of carrying on *investment business services* for a *client* which is not immediately due and payable on demand to the *firm* for its own account.

(b) A *firm* may not hold *clients'* funds or securities nor funds received from a *client* which belong to a *product producer,* such as insurance premiums. This shall not prevent a *firm* from taking non-negotiable cheques or similar instruments made out to a *product producer* for the purposes of the receipt and transmission of orders.

(c) Regulation 4(4)(a)(i) is designed to ensure that *firms* do not, for own account in a personal capacity, buy *investment instruments* from, or sell *investment instruments* to, a *client* with a view to making a personal profit or to cause loss to the *client*. The rule prohibits personal own account trading with *clients*.

5. Consumer Protection

(1) Consumer Protection Code

(a) A *firm* must ensure that it complies with the *Consumer Protection Code* to the extent that the *Consumer Protection Code* is relevant to the activities that a *firm* is permitted to carry on under regulation 4. Where a requirement of the *Association's* Irish Investment Business Regulations 2013 or the *Association's* Code of Ethics and Conduct is more stringent than the *Consumer Protection Code* (or vice versa), the more stringent requirement applies.

(b) The following provisions of the *Consumer Protection Code* are to be interpreted as explained in this regulation 5(1)(b):

(i) A *firm* falls within the definition of a 'regulated entity' within the *Consumer Protection Code*.

(ii) Provisions that relate to *investment business services* and *investment advice* that a *firm* is not permitted to provide or offer shall be interpreted accordingly. For the avoidance of doubt:

(aa) provision 4.10 should be replaced by the requirements of regulation 7(2), and provision 9.1 should be interpreted accordingly;

(bb) provision 3.41 does not apply to *firms*, as a *firm* is not permitted to make telephone contact with a consumer who is not an existing customer.

(iii) Provision 4.13 (c) should be read so as to require the name of the *Association*, as *approved professional body*, to be stated, rather than the name of the competent authority.

(2) Minimum Competency Code

A *member* who is a *certified person* must ensure that he or she complies with the *Minimum Competency Code*. A *firm* must ensure that it complies with the *Minimum Competency Code*.

6. Independence

(1) Inducements

A *firm* must take reasonable steps to ensure that neither it nor any of its *agents* offers, gives, solicits or accepts any *inducement* which is likely to conflict significantly with any duties of the recipient or the recipient's employer owed to *clients* in connection with the provision by the *firm* of *investment business services* or *investment advice*.

(2) Material interest

Where a *firm* has a material interest in a transaction to be entered into with or for a *client* or a relationship which gives rise to a conflict of interest in relation to such a transaction, the *firm* must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the *client*.

(3) Arrangements with third parties

A *firm* shall not, unless constrained to do so by law, in connection with the provision by the *firm* of *investment business services* or *investment advice*, have any association or arrangement with any other person under which it will be constrained to recommend to its *clients* or to effect with or for them (or refrain from doing so) transactions in some *investment instruments* but not in others, with some persons but not with others, or through the agencies of some persons but not of others.

7. Relations with clients

(1) Fair and clear communications

A *firm* may make a communication with another person which is designed to promote the provision of *investment business services* or *investment advice* only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(2) Information about the firm

A *firm* must, in all its business letters, electronic communications, notices and other publications including advertisements, state that it is authorised as a *firm* by the *Association*. The required wording is as follows:

"Authorised to undertake investment business services in Ireland by the Association of Chartered Certified Accountants."

The authorisation statement must also be displayed in the public area of each office from which the *firm* operates.

(3) Charges

(a) The amount of a *firm's* charges to a *client* for the provision of *investment business services* or *investment advice* to him must not be unfair or unreasonable in the circumstances.

(b) *Firms* must comply with the requirements of paragraphs 220.18 to 220.20 of the Association's Code of Ethics and Conduct in respect of commission and other financial gains.

(c) If as a result of a subsequent variation of the proposed transaction, the amount of the commission receivable is increased, this fact must be communicated in writing to the *client*.

(4) Client agreements

(a) A *firm* shall not be entitled to recommend to or undertake for a *client* any transactions as the *Central Bank of Ireland* may stipulate from time to time, unless the *client* has previously signed a statement acknowledging the risks resulting from such transactions. The *Central Bank of Ireland* may from time to time issue guidance on the contents of such statements. Any statement issued by a *firm* in accordance with this paragraph shall explain the risks of the transaction at least as fully as any such guidance.

(b) Where a *firm* accepts an order subject to any condition it shall maintain a written note of the condition to which the instruction or order is subject.

8. Effecting transactions for clients

(1) Clients' best advantage

(a) A *firm* must take reasonable care in executing transactions for its *clients* to ensure that it deals to the best advantage of those *clients*. In deciding whether or not a *firm* has taken such reasonable care, regard will be had to all the relevant circumstances of the transaction including:

(i) the nature of the transaction;

(ii) the price and availability of the *investment instrument*, where appropriate, as well as the general condition of the market at the time;

(iii) the services which the *firm* holds itself out as providing;

(iv) all charges which will be levied on the investment concerned;

(v) the size of the order;

(vi) the nature and extent of enquiries made by the *firm* in the market place;

(vii) the terms of the order given by the *client*, including the date on which the order was placed.

(b) A *firm* may be required to justify its actions to the *Association* in order to show that it has dealt to the best advantage of its *client*.

(c) *Firms* should record the time and date of dealing for all transactions for their *clients* and, where appropriate, the time of receipt of order and should retain this information in a readily accessible form.

(d) *Firms* may aggregate a transaction for a *client* with transactions for other *clients* or with own account transactions where it is reasonably unlikely that the aggregation will operate to the disadvantage of any of the *clients* whose transactions have been aggregated and where the *firm* discloses to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order.

(2) Allocation of transactions between clients

A *firm* shall only act on behalf of a named or otherwise identifiable *client*. In any situation where the *firm* finds itself obliged to allocate an *investment instrument transaction* between different *clients*, and all cannot be satisfied, the *investment instrument transaction* shall as soon as reasonably practicable thereafter be allocated between the *clients*:

(a) in a manner which the *firm* in good faith believes does not unfairly benefit one *client* at the expense of another;

(b) so as to be reasonable in the interests of each *client*;

(c) so as not to conflict with any instructions a *client* may have given the *firm*;

(d) so as not to conflict with any limitations which may have been placed on the *firm's* discretion to act; and

(e) on a pro rata basis with a detailed explanation providing for any deviation from that basis.

(3) Timely execution

(a) Once a *firm* has agreed to effect a transaction for a *client*, it must do so as soon as reasonably practicable.

(b) A *firm* must ensure that, once it has transmitted an order to a *product producer*, it obtains confirmation from the *product producer* that the transaction has been processed properly and promptly.

(4) Notes containing the essential details of a transaction

A *firm* which effects a transaction for a *client* shall ensure that there is sent to the *client* as soon as possible either:

(a) such contract note or statement as is received by the *firm* from any firm or a firm regulated under the European Communities (Markets in Financial Instruments) Regulations 2007 involved in the transaction (or a copy or relevant part thereof); or

(b) a note containing the essential details of the transaction (as set out in Appendix 2 to these regulations), unless those details are already known to the *client*.

9. Advising clients

(1) Advice on choice of person providing investment business services or investment advice

(a) *Firms* may not refer a *client* to a person who will only advise on one particular product or group of products. For example, *firms* may not refer a *client* to an adviser who will advise only on the products of one *product producer.*

(b) *Firms* must take reasonable steps to ensure that they refer *clients* to an independent adviser. If a *firm* is unable to do so, it must be able to show that it took reasonable steps to establish that the person was suitable and had access to a suitable range of products.

(2) Understanding of risk

A *firm* shall not provide *investment business services* or *investment advice* for a *client* unless it has reasonably concluded that the *client* can be expected to understand the risks involved in a transaction or a particular type of transaction.

10. Additional requirements in certain circumstances

(1) Collective investment schemes

(a) Product particulars:

(i) Before or when a *firm* recommends to a *client* to acquire or vary a holding in a *collective investment scheme*, the *firm* must provide the *client* with a self-contained statement of the particulars of the product.

(ii) In the case of a variation from accumulation to income units or vice versa, there is no need to provide further product particulars if the *client* has already received them.

(iii) If the transaction is on an *execution-only* basis, the product particulars need only be provided within five business days after the transaction and in any event no later than the contract note relating to the transaction is issued.

(iv) In any event, if a *product producer* provides the *firm* with product particulars, the *firm* must provide them to the *client*.

(b) Confirmations:

(i) Where a *firm* arranges a transaction relating to a *collective investment scheme* where the *client* persists in wishing the transaction to be effected despite advice from the *firm*, the *firm* shall send the *client* written confirmation that:

(aa) the *client* was given advice from the *firm* in connection with the transaction but nevertheless persisted in wishing the transaction to be effected; and

(bb) the transaction was entered into on the *client's* explicit instructions;

and shall ensure that the confirmation is signed by a *certified person*. Details of individual transactions must be retained for six years after the date on which the particular transaction is discontinued or completed. All other records must be retained for six years from the date on which the *firm* ceased to provide any product or service to the *client* concerned. *Firms* should consider keeping the confirmation until the expiry of the term of the investment to which it relates.

(ii) *Firms'* attention is also drawn to the provisions of regulation 10(4) relating to the confirmations to be sent to *execution-only clients*, in particular regulations 10(4)(c)(iv) and 10(4)(e).

(2) Life assurance (for the avoidance of doubt, life assurance includes pensions)

(a) The schedules referred to in this regulation 10(2) are Schedules 1–6 of the Life Assurance (Provision of Information) Regulations 2001.

(b) Subject to regulation 10(2)(d) below, where *life assurance* policies are concerned a *firm* must comply with the following:

(i) Before the *client* signs a proposal or application form for a policy of *life assurance*, the *firm* must provide the *client* with information in the form specified in Schedule 1.

(ii) The *firm* must ensure that the illustrative tables contained in Schedule 1:

(aa) are prepared by the insurer in accordance with Schedule 2, the advice of the actuary and any guidance notes issued by the Society of Actuaries in Ireland; and

(bb) contain values specific to the *client* and to the premium proposed to be paid by the *client;* and

(cc) do not deviate from the specified form unless subject to the advice of the actuary.

(iii) If it is not practicable to use the specific values referred to in regulation 10(2)(b)(ii)(bb),

(aa) the values used must be those which apply to a standard policy of that type and to the premium payable in respect of such standard policy; and

(bb) except in the case of industrial assurance policies, when the policy is issued the insurer must provide illustrative tables which relate to the proposal submitted by the *client*.

(iv) The *firm* must ensure that before the contract is concluded and during the term of the policy the information specified in Schedule 3 is provided to the *client* and to the policyholder.

(v) When the information in Schedules 1 and 3 is provided by the *firm*, the *firm* must ensure that the *client* signs a declaration in the form specified in Schedule 4.

(c) The certificate at Schedule 5 and declaration at Schedule 6 are provided for information only, as it is the duty of the actuary and insurer respectively to sign them on an annual basis and submit them to the Minister for Enterprise, Trade and Employment.

(d) Regulation 10(2)(b) does not apply to a policy of *life assurance* where:

(i) none of the *clients* is an individual, unless it is a policy issued in connection with a housing loan where the *client* is the lender or a person other than the mortgagor; or

(ii) the policy is issued to the trustees of an occupational pension scheme within the meaning of section 2 of the Pensions Act 1990; or

(iii) the policy is effected for the purpose of insuring the repayment of a loan, where the lender is the policyholder or it is intended that the policy will be assigned to or deposited with the lender, unless it is a policy issued in connection with a housing loan.

(3) Guarantees

A *firm* shall not itself give a guarantee (in any form) to a *client* of investment performance in respect of any *investment instrument* or of any transaction relating to any *investment instruments*.

Before recommending or effecting for a *client* a transaction relating to *investment instruments* in respect of which a guarantee (in any form) of investment performance has been or will be given, a *firm* shall notify the *client* in writing of the following:

(a) the precise nature and extent of the guarantee, including any limit of whatsoever kind upon the guarantee and the name of the guarantor;

(b) that no guarantee (in any form) of investment performance can be given by a *firm* in respect of any *investment instrument* or any transaction relating to the *investment instrument;* and

(c) that the *client* will not be able to bring a claim for compensation in respect of any failure of investment performance to match a guarantee given or representation made (whether in writing or not) by the guarantee.

(4) Execution-only clients

Where a *firm* is treating a *client* as an *execution-only client* it must:

(a) make written evidence of specific instructions from the *client;* and

(b) have reasonably assessed and concluded that the *client* can be expected to understand the risks involved in the transaction; and

(c) send the *client* a written confirmation that:

(i) the *client* is being treated as an *execution-only client*;

(ii) the *client* did not seek or receive any advice from the *firm* regarding the transaction;

(iii) the transaction was entered into on the *client's* explicit instructions; and

(iv) in the case of an *investment instrument*, that the *client* was clearly warned that the value of such instruments can fall as well as rise, but the *client* nevertheless wished the transaction to be effected; and

(d) ensure that the written confirmation referred to in regulation 10(4)(c) above is signed by a *certified person* and retained for at least six years from the date on which the *firm* ceases to provide any product or service to the *client* concerned. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates; and

(e) in the case of an *investment instrument*, ensure that the *client* signs the written confirmation referred to in regulation 10(4)(c) above.

11. Compliance procedures

(1) Compliance

A *firm* must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its *officers* and *agents* act in conformity with all regulations applicable to the provision by the *firm* of *investment business services* or *investment advice*.

(2) Records

(a) A *firm* must ensure that sufficient information is recorded and retained about its *investment business services* or *investment advice* as is necessary for the proper conduct of that business and to enable it to demonstrate compliance with the *regulatory system*, including but not limited to records:

(i) of the receipt of commissions;

(ii) which are adequate to demonstrate the amount of its fees charged to *clients* which are attributable to *investment business services* and *investment advice* as permitted by regulation 4;

(iii) of complaints received and action taken;

(iv) of the names of *clients* to whom *investment business services* and *investment advice* is provided and the agreement setting out the *firm's* terms of business issued to each;

(v) of details of non-independent advisers and their product ranges to whom *clients* have been referred, which adequately demonstrate that reasonable steps have been taken regarding suitability in accordance with regulation 9(1)(b);

(vi) of the facts obtained about *clients* pursuant to chapter 5 of the *Consumer Protection Code*;

(vii) of written notification and acknowledgement and evidence of instructions relating to transactions;

(viii) of details of recommendations which adequately demonstrate that reasonable steps have been taken regarding suitability in accordance with chapter 5 of the *Consumer Protection Code*;

(ix) of the date and, where appropriate, the time of both receipt and transmission of all orders for *clients,* in a readily accessible form;

(x) of each receipt issued in accordance with section 30 of the *Act*, the provisions of which are set out at Appendix 1 for ease of reference;

(xi) of the information provided to the *client* in accordance with chapter 4 of the *Consumer Protection Code*;

(xii) of the *firm's* own position as follows:

(aa) income and expenditure;

(bb) assets and liabilities, including off-balance sheet items and any commitments including contingent liabilities;

(cc) correspondence with the *Association.*

(b) A *firm* must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. All other records must be retained for six years from the date on which the *firm* ceased to provide any product or service to the *client* concerned. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates.

(c) *Firms* should note that:

(i) failure to keep such records, or any other records prescribed under the *Act,* will constitute a criminal offence under the *Act;*

(ii) if a *firm* is wound up and is unable to pay its debts and it is found that the prescribed records have not been kept, any or all of the *officers* and/or beneficial owners of the *firm* may be personally liable for the *firm's* debts and liabilities.

(3) Compensation scheme

Firms shall not provide any *investment business services* unless they are either:

(a) contributors to the compensation scheme established by the Investor Compensation Company Limited under the *Compensation Act* providing for compensation to *clients* who have suffered losses; or

(b) members of a compensation scheme set up by an *approved professional body,* which scheme has been approved of by the *Central Bank of Ireland* and provides compensation to *clients* who have suffered losses.

(4) Companies Act 2014

Each *employee* of a *firm* shall, as part of their contract of employment, be required to sign an undertaking relating to the provisions of chapter 2 of Part 23 of the Companies Act, 2014 (Market abuse) declaring that the *employee* has read and understood them and shall as part of their contract comply with such procedures as may from time to time be introduced for the purpose of ensuring compliance therewith.

12. Enforcement

(1) Intervention Orders

(a) If it appears to the *Admissions and Licensing Committee* that for the protection of investors or for the protection of the *Association* or for both reasons, that:

(i) it is desirable to prohibit a *firm* from disposing of or otherwise dealing with any of its assets, or any specified assets; and/or

(ii) a *firm* is not fit and proper to provide *investment business services* or *investment advice* either generally or of a particular kind or to the extent to which it is or is intending to carry on that business; and/or

(iii) a *firm* has committed, or intends, or is likely to commit a breach of these regulations or some other act of misconduct; and

(iv) it is desirable to take protective measures,

the *Admissions and Licensing Committee* may make and serve on the *firm* concerned a written Intervention Order (an "*Order*").

(b) An *Order* may operate for a specified period or until the occurrence of a specified event or until the *firm* complies with specified conditions and may, at the *Admissions and Licensing Committee's* discretion, come into effect either immediately on service or at such later time as the *Admissions and Licensing Committee* may determine.

(c) An *Order* served on a *firm* may require the *firm* to take specified steps and/or may forbid the *firm:*

(i) in whole or in part, to provide *investment business services* or *investment advice;*

(ii) to dispose of or otherwise deal with any assets or any specified assets (whether held in the Republic of Ireland or outside the Republic of Ireland) or to act otherwise than in the manner specified in the *Order;*

(iii) to enter into transactions of a specified kind or enter into them except in specified circumstances or to a specified extent;

(iv) to solicit business from persons of a specified kind or otherwise than from such persons or in a specified country or territory; and/or

(v) to carry on business in a specified manner or otherwise than in a specified manner.

(d) An *Order* shall specify:

(i) the reasons for its issue;

(ii) the date and time at which the *Order* shall come into effect;

(iii) the period for which the *Order* shall operate, which may be expressed to end with the occurrence of a specified event or when the *firm* has complied with the requirements of the *Order;*

(iv) where relevant, in regard to an *Order* to which regulation 12(1)(a)(iii) applies, the act or omission which constituted or would constitute breach of the regulations and the regulation which has been or would be contravened; and

(v) the officer of the *Admissions and Licensing Committee* to whom a request can be made for a stay of execution of the *Order*.

(e) The *Admissions and Licensing Committee*, or the Chairman of the *Admissions and Licensing Committee* acting on its behalf, may, at any time before or after an *Order* comes into effect, revoke the *Order* or vary its terms; and where the terms of an *Order* are varied the variation shall be effected by a new *Order* being served on the *firm* concerned.

(f) Subject to regulation 12(2) the *Association* shall publish the *Order* at or after the time it comes into effect and shall notify the *Central Bank of Ireland* that an *Order* has been published.

(2) Application for stay

After service of the *Order,* its recipient may apply to the *Association* for a stay of execution of the *Order* or any part of it and/or of its publication. The application shall be considered by the officer specified pursuant to regulation 12(1)(d)(v) who in his discretion may grant or refuse the stay or grant it subject to conditions.

(3) Reference to the Appeal Committee

A *firm* served with an *Order* may appeal against the *Order* in the same way and subject to the same limitations as it may appeal against any other decision of the *Admissions and Licensing Committee.*

(4) Right of the Association to appeal against an Order

The *Association* may appeal against an *Order* in the same way and subject to the same limitations as it may appeal against any other decision of the *Admissions and Licensing Committee.*

(5) Offences

Firms should note that the *Act* prescribes penalties of varying severity for breaches of its provisions:

(a) Section 74 of the *Act* lists the provisions which, if breached, would not amount to a criminal offence but could attract a penalty of a reprimand, and/or a fine of up to 635,000 euro, and/or publicity, and/or payment of costs.

(b) Section 79 of the *Act* lists the provisions which, if breached, amount to a criminal offence and could attract a penalty of a fine of up to 1,270,000 euro maximum and/or imprisonment for up to 10 years. Some of those offences are referred to within these regulations.

13. Waivers and service

(1) Waivers and modifications

(a) A *firm* is entitled to apply in writing to the *Admissions and Licensing Committee* to waive, vary or suspend the requirements of any of these regulations in order to adapt them to the *firm's* circumstances or to any particular kind of business which the *firm* is carrying on or intends to carry on. The *Admissions and Licensing Committee* shall not grant the application unless it appears that compliance with the regulations would be unduly burdensome having regard to the benefit which compliance would confer on investors and the exercise of the power would not result in any undue risk to investors. Any waiver, variation or suspension given by the *Admissions and Licensing Committee* shall be granted subject to the prior approval of the *Central Bank of Ireland.*

(b) The *Admissions and Licensing Committee* may grant such an application on conditions. If it does so, the applicant *firm* must comply with any such conditions.

(c) Following an application under this regulation, or of its own volition, the *Admissions and Licensing Committee* may waive, vary or suspend any of these regulations. Where it does so, it may impose conditions and any *firm* which acts upon the waiver, variation or suspension extended to it must comply with any such condition. Any such conditions imposed by the *Admissions and Licensing Committee* shall be subject to the prior approval of the *Central Bank of Ireland.*

(d) Any waiver, variation or suspension given under this regulation shall apply for such period as the *Admissions and Licensing Committee* shall specify.

(2) Consents

Where provided for in these regulations any consent to be given by the *Admissions and Licensing Committee* may be given or withheld in its absolute discretion but if withheld the *Admissions and Licensing Committee* shall notify the *firm* of the reasons why it has been withheld.

(3) Service

Except as otherwise provided in these regulations, any notice or other document required or authorised by these regulations to be served on any *firm* may be served by leaving it at or sending it by post to the *firm's* address or faxing it to the number notified to the *Association* in accordance with these regulations.

14. Liability

Neither the *Association* nor any of its *officers* or servants or *agents* nor any members of any committee of *Council* shall be liable in damages or otherwise for anything done or omitted to be done in the discharge or purported discharge of any function under the *Act,* or these regulations, or any other rules or regulations referred to in these regulations unless the act or omission is shown to have been in bad faith.

Appendix 1 (Regulation 11(2)(a)(x))

Receipt in compliance with section 30 of the *Act*

(1) The receipt shall state succinctly the terms and conditions upon which the transaction was entered into.

(2) The receipt shall state that it is issued pursuant to section 30 of the *Act* and shall, subject to such alterations or additions as may be prescribed by the *Central Bank of Ireland,* specify the following:

(a) the name and address of the *firm;*

(b) the name and address of the *client* or other person furnishing the instrument or payment, or an alternative form of identification approved by the *Central Bank of Ireland* for the purpose;

(c) the value of the instrument or payment received and the date on which it was received;

(d) the purpose of the payment;

(e) the name of the *product producer* in whose favour the payment is made;

(f) where *life assurance* (for the avoidance of doubt, *life assurance* includes pensions) or *non-life insurance* is concerned, that the acceptance by the *firm* of a completed insurance proposal does not itself constitute the effecting of a policy of insurance.

Appendix 2 (Regulation 8(4)(b))

Essential details of a transaction

The essential details of a transaction effected by a *firm* to be sent to a *client* as referred to in regulation 8(4)(b) are as follows:

(a) the name of the *firm*;

(b) the date of the transaction;

(c) the time at which the transaction was entered into or a statement that this will be available on request;

(d) the *investment instrument* concerned, the size involved and whether the transaction was a purchase or sale;

(e) the price at which the transaction was executed or averaged and the total consideration due to or from the *client*;

(f) the settlement date;

(g) the amount of the *firm's* charges to the *client*, if any, in connection with the transaction except where the *firm* has been requested to issue the contract note on a net basis by a professional *client* and has maintained a written note of such request;

(h) a statement, if this is the case, that any dividend, bonus or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the relevant *investment instrument*, will not pass to the purchaser under the transaction;

(i) the amount or basis of any charges shared by the *firm* with another person (except *employees*) or the fact that this will be made available on request;

(j) the amount or basis of any remuneration which the *firm* has received or will receive from another person in connection with the transaction;

(k) if any interest which has accrued or will accrue on the relevant security is accounted for separately from the transaction price, the aggregate amount of the interest which the purchaser will receive or the number of days for which he or she will receive interest and the applicable rate of interest accruing;

(l) the amount of any costs, including transaction taxes, which are incidental to the transaction and which will not be paid by the *firm* out of the charges mentioned in (g) above;

(m) if the transaction involved a foreign currency, the rate of exchange involved and the date of calculation of such if other than the date of the transaction;

(n) a statement, if this is the case, that the *firm* has acted as principal.

In addition, where the *member* and/or the *firm* has entered into a *distance contract for the supply of a financial service* after 15 February 2005, the *member* or *firm* entering into such contract shall comply with the *Distance Marketing of Consumer Financial Services Regulations* 2004.

2.5

The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014

Amended 1 January 2017

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014. These regulations as amended shall come into force on 1 January 2017.

(2) These regulations specify the committees to which the Council delegates certain of its functions. Any meeting of a committee appointed or established pursuant to these regulations at which a quorum is present shall be competent to discharge all the functions and to exercise all the powers conferred on the committee by these regulations. Members and relevant persons will be bound by the requirements and actions of committees so acting as if they were requirements and actions of the Council and must comply with any act or request of a committee seeking to exercise any of its powers as specified or referred to in these regulations.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in these regulations;

Appeal Committee means a committee of individuals having the constitution, powers and responsibilities set out in these regulations;

Appointments Board means the board appointed by the Council and referred to in these regulations;

assessor means an independent person so appointed by the Appointments Board with responsibility, inter alia, for discharging the responsibilities and exercising the powers of the assessor in accordance with The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014;

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

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

chairman means an independent person so appointed by the Appointments Board with responsibility, inter alia, for carrying out the function of a chairman of the Disciplinary Committee, Admissions and Licensing Committee, Appeal Committee, Health Committee or Interim Orders Committee;

committee member means an independent person so appointed by the Appointments Board with responsibility, inter alia, for discharging the responsibilities and exercising the powers of a committee member of the Disciplinary Committee, Admissions and Licensing Committee, Appeal Committee, Health Committee or Interim Orders Committee, and includes a chairman;

Consent Orders Committee means a committee of individuals having the constitution, powers and responsibilities set out in these regulations;

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

Disciplinary Committee means a committee of individuals having the constitution, powers and responsibilities set out in these regulations;

Health Committee means a committee of individuals having the constitution, powers and responsibilities set out in these regulations;

Interim Orders Committee means a committee of individuals having the constitution, powers and responsibilities set out in these regulations;

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

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

legal adviser means an independent person, qualified in accordance with these regulations, so appointed by the Appointments Board with responsibility, inter alia, for discharging the responsibilities and exercising the powers of the legal adviser in accordance with The Chartered Certified Accountants' Authorisation Regulations 2014, The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, The Chartered Certified Accountants' Appeal Regulations 2014, The Chartered Certified Accountants' Health Regulations 2014, and The Chartered Certified Accountants' Interim Orders Regulations 2014;

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

Panel means the panel of committee members, assessors, regulatory assessors and legal advisers so appointed by the Appointments Board in accordance with these regulations;

Qualifications Board means the board appointed by the Council and referred to in these regulations;

regulated activity means an activity included in the Financial Services and Markets Act (Regulated Activities) Order 2001;

regulatory assessor means an independent person so appointed by the Appointments Board with responsibility, inter alia, for carrying out the responsibilities and exercising the powers of the Admissions and Licensing Committee in accordance with The Chartered Certified Accountants' Authorisation Regulations 2014;

Regulatory Board means the board appointed by the Council pursuant to regulations made under bye-laws 12 and 28;

relevant person means a member and other person (whether an individual or a firm and including a registered student) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them;

Standards Board means the board appointed by the Council and referred to in these regulations;

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

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

(3) Any reference to regulations and standing orders of the Association shall be to regulations and standing orders of the Association as amended from time to time.

(4) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the Regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act 2005 of the Republic of Ireland shall apply to these Regulations in the same way as it applies to an enactment.

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

3. Appointment and establishment of Regulatory Board, Appointments Board, Qualifications Board and Standards Board and appointment of members

(1) The Council hereby appoints a Regulatory Board , an Appointments Board, a Qualifications Board and a Standards Board and shall appoint (and may also remove) the individual members of the Regulatory Board, Appointments Board, Qualifications Board and Standards Board in accordance with procedures, and on terms and conditions, adopted by the Council from time to time, and subject to any restrictions set out in bye-law 12 and these regulations.

(2) The Regulatory Board

(a) The Regulatory Board shall consist of a lay chairman, five additional lay members and two members of the Council.

(b) The Regulatory Board shall have a quorum of three, with lay members being in a majority, and its terms of reference shall be determined by the Council.

(3) The Appointments Board

(a) The Appointments Board shall consist of a lay chairman, who shall be a lay member of the Regulatory Board, and three additional lay members.

(b) The Appointments Board shall have a quorum of three and its terms of reference shall be determined by the Council.

(4) The Qualifications Board

(a) The Qualifications Board shall consist of a chairman, who shall be a member of the Regulatory Board, three lay members and two members of the Council.

(b) The Qualifications Board shall have a quorum of three and its terms of reference shall be determined by the Council.

(5) The Standards Board

(a) The Standards Board shall consist of a chairman, who shall be a member of the Regulatory Board, two lay members and a member of the Council.

(b) The Standards Board shall have a quorum of three and its terms of reference shall be determined by the Council.

(6) The lay chairman of the Regulatory Board and each lay member of the Regulatory Board, the Appointments Board, the Qualifications Board and the Standards Board shall be appointed for an initial term of up to three years, which shall be renewed (if both the lay chairman/member and the Council so agree) for up to a further three years, subject to vacation of the appointment if the member is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction. No member of the Regulatory Board, the Appointments Board, the Qualifications Board or the Standards Board shall serve for more than a maximum of six years (the six-year limit applies to service across all the Boards) save that the Council may, in its sole discretion, appoint a lay chairman/ member for a further term of up to three years.

(7) The Council may provide for the payment of remuneration to any member of the Regulatory Board, the Appointments Board, the Qualifications Board or the Standards Board who is not a member of the Council, and the reasonable expenses of any member of the Regulatory Board, the Appointments Board, the Qualifications Board or the Standards Board, in each case in accordance with the principles laid down by the Council from time to time.

(8) The Council may, in its absolute discretion, discharge the Regulatory Board, the Appointments Board, the Qualifications Board or the Standards Board in circumstances where its actions may conflict with any of the Association's obligations in respect of its recognitions under statute and shall in such circumstances replace it with a differently constituted Regulatory Board, Appointments Board, Qualifications Board or Standards Board subject to any restrictions set out in bye-law 12 and these regulations.

(9) The Regulatory Board shall, inter alia:

(a) report to the Council not less than once a year on the operation of the Association's regulatory procedures adopted pursuant to or for the purposes of the Association's bye-laws and regulations and its recognition under statute;

(b) oversee the operation of the Appointments Board appointed by the Council and ensure that it discharges its responsibility to appoint a panel of committee members, assessors, regulatory assessors and legal advisers, and to appraise and remove committee members, assessors, regulatory assessors or legal advisers, if necessary, as set out in regulation 4 of these regulations;

(c) oversee the operation of the Qualifications Board appointed by the Council and ensure that it discharges its responsibilities as set out in its terms of reference;

(d) oversee the operation of the Standards Board appointed by the Council and ensure that it discharges its responsibilities as set out in its terms of reference.

(10) The Appointments Board, the Qualifications Board and the Standards Board shall each report to the Regulatory Board at such frequency as determined by the Regulatory Board.

4. Establishment of committees, and appointment of panel of committee members, assessors, regulatory assessors and legal advisers

(1) Establishment

The Council hereby establishes (or confirms the establishment of those committees already in being at the date these regulations become effective) the Disciplinary Committee, Admissions and Licensing Committee, Appeal Committee, Health Committee, Consent Orders Committee and Interim Orders Committee.

(2) Term of establishment

Each of the Disciplinary, Admissions and Licensing, Appeal, Health, Consent Orders and Interim Orders Committees shall remain in existence until such time as the Council determines to discharge it.

(3) The panel of committee members, assessors, regulatory assessors and legal advisers

The Appointments Board shall, inter alia, appoint individual members to a panel of committee members, assessors, regulatory assessors and legal advisers (hereafter referred to as "the Panel") in accordance with procedures determined by it from time to time and approved by the Council. The Appointments Board shall, inter alia, have the power to fill any vacancy on the Panel, to appoint additional persons to the Panel, to appraise the performance of Panel members and to remove any member of the Panel in the circumstances specified in regulation 4(4)(b) or 4(5)(c) of these regulations.

(4) Tenure and Code of Conduct of committee members, assessors and regulatory assessors

(a) Subject always to the operation of regulation 4(4)(b) of these regulations, each committee member, assessor and regulatory assessor shall be appointed for an initial term of up to five years, which may be renewed (if both the Appointments Board and the committee member, assessor or regulatory assessor so agree) for up to a further five years, subject to vacation of the appointment by the Appointments Board if the committee member, assessor or regulatory assessor:

  (i) is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction; or (in the case of a committee member only)

  (ii) fails on three occasions to comply with sitting requirements for any committee without leave of absence from the Appointments Board.

(b) Each committee member, assessor and regulatory assessor shall be bound by a Code of Conduct (hereafter referred to as "the Code"), which shall be in such form as approved by the Appointments Board from time to time. Alleged breaches of the Code shall be considered by the Appointments Board in accordance with the terms of the Code, and the Appointments Board shall, inter alia, have the power to remove any committee member, any assessor or any regulatory assessor if, in its sole discretion, it finds any alleged breach to be proven.

(c) The Appointments Board may, in its sole discretion, appoint for a further term of up to three years a committee member, assessor or regulatory assessor.

(5) Qualifications, tenure and Code of Conduct of legal advisers

(a) Legal advisers shall be barristers or solicitors of minimum ten years standing, with at least five years' recent experience of working with tribunals in the field of regulatory law as an advocate, legal adviser or decision-maker.

(b) Subject always to the operation of regulation 4(5)(c) of these regulations, each legal adviser shall be appointed for an initial term of up to five years, which may be renewed (if both the Appointments Board and the legal adviser so agree) for further terms that the Appointments Board, in its sole discretion, may deem to be appropriate up to a maximum of 15 years in total, subject to vacation of the appointment if the legal adviser:

(i) is by reason of mental disorder either detained in a hospital or made subject to guardianship pursuant to Part II or III of the Mental Health Act 1983 or placed under similar supervision in any other jurisdiction; or

(ii) fails on two occasions to comply with sitting requirements for any committee without leave of absence from the Appointments Board.

(c) Each legal adviser shall be bound by a Code of Conduct (hereafter referred to as "the Code"), which shall be in such form as approved by the Appointments Board from time to time. Alleged breaches of the Code shall be considered by the Appointments Board in accordance with the terms of the Code, and the Appointments Board shall, inter alia, have the power to remove any legal adviser if, in its sole discretion, it finds any alleged breach to be proven.

(6) Incompatibility

(a) No member of the Council shall be eligible for appointment to the Panel for the period of time during which he or she remains a member of the Council, and for three years thereafter.

(b) No individual who has:

(i) presented a case or cases for or against the Association;

(ii) been a committee member, assessor or regulatory assessor;

(iii) been an employee of the Association;

(iv) been a member of the Regulatory Board; or

(v) been a member of the Appointments Board

in the last three years shall be eligible for service as a legal adviser.

5. Constitution of Disciplinary, Admissions and Licensing, Appeal, Health, Consent Orders and Interim Orders Committees and eligibility

(1) The Disciplinary Committee, Admissions and Licensing Committee, Appeal Committee, Health Committee and Interim Orders Committee shall each consist of members of the Panel.

(2) The Disciplinary Committee shall have a quorum of three, including the chairman. Non-accountants shall be in the majority, but at least one member shall be an accountant.

(3) The Admissions and Licensing Committee shall have a quorum of three, including the chairman. Non-accountants shall be in the majority, but at least one member shall be an accountant.

(4) The Appeal Committee shall have a quorum of three, including the chairman. Non-accountants shall be in the majority, but at least one member shall be an accountant.

(5) The Health Committee shall have a quorum of three, including the chairman. Non-accountants shall be in the majority, but at least one member shall be an accountant.

(6) The Interim Orders Committee shall have a quorum of three, including the chairman. Non-accountants shall be in the majority, but at least one member shall be an accountant.

(7) The Consent Orders Committee shall consist of either a chairman and a legal adviser, or an assessor and a legal adviser.

(8) Each committee member appointed to the Panel shall be eligible to sit as a member of each of the Disciplinary, Admissions and Licensing, Appeal, Health and Interim Orders Committees, save that no committee member shall be eligible:

(a) to sit on the substantive hearing of a case if he was a member of a Consent Orders Committee or an Interim Orders Committee which considered the case at a prior stage; or

(b) to hear an appeal if he was a member of the committee which determined the case at first instance, or a member of a Consent Orders Committee or an Interim Orders Committee which considered the case at a prior stage; or

(c) to sit on a Health Committee considering the relevant person's fitness to participate in the appeal process if he was a member of the Committee that determined the case at first instance, or a member of a Consent Orders Committee or an Interim Orders Committee which considered the case at a prior stage.

6. Powers and responsibilities of Disciplinary, Admissions and Licensing, Appeal, Health, Consent Orders and Interim Orders Committees

Any Disciplinary Committee, Admissions and Licensing Committee, Appeal Committee, Health Committee, Consent Orders Committee or Interim Orders Committee exercising the delegated functions of the Council under bye-law 28 (and, to the extent appropriate, under bye-law 9) shall have the powers and responsibilities as set out in Appendix 1 to these regulations, the powers and responsibilities included in the terms of reference for each committee as specified in Council standing orders, and the powers and responsibilities as otherwise provided in the bye-laws or in regulation or standing order (including these regulations) as made or amended by the Council from time to time.

7. General

(1) Compliance with constitutional requirements

Each of the boards, committees and sub-committees appointed or established pursuant to these regulations may continue to act, provided its meeting is quorate, notwithstanding that its composition does not comply with the requirements of these regulations. In such a case, the Council shall, as soon as practicable, use its powers to ensure compliance with the requirements of these regulations.

(2) Remuneration for committee members, assessors, regulatory assessors and legal advisers

The Council may provide for the payment of remuneration to and the reasonable expenses of any member of the Panel, in each case in accordance with the principles laid down by the Council from time to time.

(3) Attendance by video or telephone link

Attendance at a hearing by a witness or relevant person may be secured by means of a video or telephone link.

(4) Telephone meetings

Meetings of any board, committee or sub-committee may be held by telephone conference, video conference or by other similar means provided all persons notionally attending the meeting are able to hear and be heard by all the other participants.

(5) Divisions

All committees established pursuant to regulation 4 of these regulations shall have power to meet as divisions. Any division shall, provided it is quorate, have full power to act as the committee in question. For the avoidance of doubt, more than one division of a single committee may meet at the same time.

(6) Majority decisions

Except as otherwise provided by these regulations, all decisions of boards, committees and sub-committees shall be determined by a majority of the votes of the members present, with each member having one vote. In the case of an equality of votes, the Chairman of the relevant board, committee or sub-committee shall have a second or casting vote.

(7) Duty to co-operate

Members and relevant persons shall promptly comply with any request made by, and co-operate with, any board, committee, sub-committee or person appointed or established pursuant to these regulations in the performance of any of its responsibilities and the exercise of any of its powers.

(8) Decisions between meetings

The Chairman of each of the boards, committees and sub-committees appointed or established pursuant to these regulations shall have the power to take decisions, relating to procedural matters, between meetings or hearings of his committee. Such decisions shall be reported to the next meeting of the relevant board, committee and sub-committee.

Appendix 1

1. Disciplinary Committee

The Disciplinary Committee shall have the powers and responsibilities set out in The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, The Chartered Certified Accountants' Interim Orders Regulations 2014, and all matters related or incidental thereto. Subject always to its duty to apply the requirements of those Regulations, whether express or implied, the Committee shall have the power to do anything which is calculated to facilitate, or be conducive to, the discharge of any of its functions.

2. Admissions and Licensing Committee

(1) Responsibilities

The Admissions and Licensing Committee shall be responsible for performing all the functions ascribed to it in The Chartered Certified Accountants' Membership Regulations 2014, The Chartered Certified Accountants' Authorisation Regulations 2014, The Chartered Certified Accountants' Global Practising Regulations 2003, The Chartered Certified Accountants' Irish Investment Business Regulations 2013, The Chartered Certified Accountants' Designated Professional Body Regulations 2001, The Chartered Certified Accountants' Interim Orders Regulations 2014, The Chartered Certified Accountants' Financial Services Compensation Regulations 1996, and all matters related or incidental thereto. Subject always to its duty to apply the requirements of those Regulations, whether express or implied, the Committee shall have the power to do anything which is calculated to facilitate, or be conducive to, the discharge of any of its functions.

(2) Further powers

(a) For the purposes of discharging its responsibilities, the Admissions and Licensing Committee shall have power to:

(i) require any relevant person to produce, at a time and place to be fixed by the Admissions and Licensing Committee, his accounting and other records, any other necessary documents, and to supply any other information and explanations relevant to the matter in question;

(ii) enter the business premises of any relevant person on such notice (if any) as the Admissions and Licensing Committee may think appropriate;

(iii) interview any employee or officer of a relevant person;

(iv) require the attendance at specified premises, upon reasonable notice, of any employee or officer of a relevant person;

(v) require any relevant person to attend before the Admissions and Licensing Committee on reasonable notice;

(vi) appoint any person as its agent or delegate for the purposes of carrying out any of the matters as referred to in paragraph 2(a)(i) or (ii) above;

(vii) appoint any one or more of its members or any officer of the Association or any regulatory assessor as its agent or delegate for the purpose of carrying out any of its responsibilities and exercising any of its powers.

(b) Every requirement made by the Admissions and Licensing Committee under this regulation shall be made in writing and given to him personally or served by email or sent by post or courier to the relevant person at his or its registered or last known place of address and, when so made and sent, shall be deemed to have been received by the relevant person within 72 hours (excluding Saturdays, Sundays, Bank and Public Holidays) after the time of despatch.

3. Appeal Committee

(1) Responsibilities

The Appeal Committee shall be responsible for hearing and determining appeals from the decisions of the Disciplinary Committee, the Admissions and Licensing Committee and the Health Committee in accordance with The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, The Chartered Certified Accountants' Membership Regulations 2014, or any other regulations and/or rules as may be relevant to the circumstances in question.

(2) Powers

The Appeal Committee shall have all the powers of the Disciplinary Committee, the Admissions and Licensing Committee and the Health Committee in discharging its responsibilities under these regulations, or any other regulations and/or rules as may be relevant to the circumstances in question.

4. Health Committee

The Health Committee shall have the powers and responsibilities set out in The Chartered Certified Accountants' Health Regulations 2014. Subject always to its duty to apply the requirements of those Regulations, whether express or implied, the Committee shall have the power to do anything which is calculated to facilitate, or be conducive to, the discharge of any of its functions.

5. Consent Orders Committee

The Consent Orders Committee shall have the powers and responsibilities set out in The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014. Subject always to its duty to apply the requirements of those Regulations, whether express or implied, the Committee shall have the power to do anything which is calculated to facilitate, or be conducive to, the discharge of any of its functions.

6. Interim Orders Committee

The Interim Orders Committee shall have the powers and responsibilities set out in The Chartered Certified Accountants' Interim Orders Regulations 2014. Subject always to its duty to apply the requirements of those Regulations, whether express or implied, the Committee shall have the power to do anything which is calculated to facilitate, or be conducive to, the discharge of any of its functions.

7. Sharing of information and co-operation

(1) Any board, committee and sub-committee appointed or established under these regulations may co-operate with other bodies in accordance with prevailing legislation, such co-operation to include, without limitation, the sharing of information and the observing of board, committee and sub-committee meetings and hearings, including those conducted in private and their deliberations. Such bodies include, without limitation:

(a) any bodies having statutory responsibility for the regulation of a relevant person;

(b) any bodies having statutory responsibility for the prevention or detection of crime, the apprehension or prosecution of offenders, or the assessment or collection of any tax or duty or of any imposition of a similar nature;

(c) any bodies having statutory responsibility for matters of public protection; and

(d) any other body exercising an oversight regulatory function in relation to the Association.

(2) Any board, committee and sub-committee appointed or established under these regulations may co-operate with the Council and with any responsible officer or other board, committee or sub-committee of the Association; such co-operation to include, without limitation, the sharing of information and the observing of board, committee and sub-committee meetings.

(3) Any board, committee and sub-committee appointed or established under these regulations may share information with the relevant person's professional indemnity and (if different) fidelity guarantee insurers and, in the case of insolvency practice, the relevant person's enabling bond insurer, on the basis that the recipient treats the information as confidential.

(4) Save as provided by paragraphs 7(1) to (3), all records and other documents produced to a board, committee and sub-committee in exercise by it of its powers hereunder shall be treated by the board, committee and sub-committee as confidential.

(5) For the avoidance of doubt, the functions and activities covered by this paragraph 7 may be carried out without the consent of the relevant person.

2.6

The Chartered Certified Accountants' Authorisation Regulations 2014

Amended 1 January 2017

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

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Authorisation Regulations 2014. These regulations as amended shall come into force on 1 January 2017.

(2) These regulations shall apply to all persons who are subject to bye-laws 8 to 11 or who otherwise agree to be bound by them.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

Appeal Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

Appeal Regulations means The Chartered Certified Accountants' Appeal Regulations 2014;

applicant means a person who or which has applied or is in the course of applying to the Association for or to renew a certificate;

application means an application for or to renew a certificate submitted by an applicant;

Appointments Board means the board appointed by the Council in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 and referred to in these regulations;

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

auditing certificate means a certificate issued by the Association and referred to in the Practising Regulations;

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

Central Bank means the Central Bank of Ireland;

certificate means all or any of a practising certificate, auditing certificate, insolvency licence, and investment business certificate (Ireland);

Chairman means any person carrying out the function of a Chairman of the Admissions and Licensing Committee, and the functions of the Chairman may, in respect of any application made prior to the final hearing of the case, be exercised by any appropriately appointed person notwithstanding that he or she is not scheduled to sit at the final hearing;

Complaints and Disciplinary Regulations means The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014;

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

Disciplinary Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

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

Health Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

Health Regulations means The Chartered Certified Accountants' Health Regulations 2014;

insolvency licence means the licence granted by the Association to one of its members to act as an insolvency practitioner;

insolvency practitioner means a person authorised to act as such in accordance with section 390(2) of the Insolvency Act 1986 of the United Kingdom;

Interim Orders Regulations means The Chartered Certified Accountants' Interim Orders Regulations 2014;

investment business certificate (Ireland) means the certificate issued in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 2013;

legal adviser means an independent person so appointed by the Appointments Board and qualified in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 and referred to in these regulations;

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

officer means, in relation to a firm which is a partnership, a partner, in relation to a body corporate which is a company, a director, and in relation to a body corporate which is a limited liability partnership, a member;

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

Practising Regulations means The Chartered Certified Accountants' Global Practising Regulations 2003;

registered student has the meaning ascribed to him in The Chartered Certified Accountants' Membership Regulations 2014;

regulatory assessor means an independent person so appointed by the Appointments Board in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 and referred to in these regulations;

relevant person means a member and other person (whether an individual or a firm and including a registered student) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them and includes the holder of any relevant certificate;

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

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

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

(3) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act 2005 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

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

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

3. Applications and re-applications for certificates etc.

(1) Form of application

(a) An applicant must apply in writing in such form and give such undertakings and pay such fees as may be prescribed from time to time by the Council.

(b) It shall be for an applicant to satisfy the Admissions and Licensing Committee that he or it is eligible for the certificate applied for in accordance with the Practising Regulations, or, in the case of an investment business certificate (Ireland), the Irish Investment Business Regulations 2013.

(c) The following provisions of this regulation 3 shall apply to applications made under regulation 3(1)(a) above.

(2) Procedure: general

(a) Save where it determines at any stage that a hearing is required in the interests of justice, the Admissions and Licensing Committee shall consider the matter in the absence of the parties and without a hearing, and the following procedure shall apply.

(b) The Admissions and Licensing Committee may require the applicant to provide any additional information required at any time after receipt of the application and before a decision is finally made in respect of the application.

(c) Any information provided by the applicant shall, if the Admissions and Licensing Committee so requires, be verified in such a manner as the Admissions and Licensing Committee may specify.

(d) The Admissions and Licensing Committee may additionally take into account any other information which it considers appropriate in relation to the applicant, provided such information is disclosed to the applicant not less than 28 days before the date it is due to make a decision on the application where such a disclosure does not constitute a breach by the Admissions and Licensing Committee or by the Association of any duty to any other person.

(e) The applicant may, not less than 14 days before the date the Admissions and Licensing Committee is due to make a decision on the application (or such shorter time as the Admissions and Licensing Committee may, in exceptional circumstances, accept), serve on the Admissions and Licensing Committee any additional information and/or written comments or submissions for the Admissions and Licensing Committee's consideration.

(f) For the purposes of this regulation (including, for the avoidance of doubt, regulation 3(3) below):

(i) the Admissions and Licensing Committee considering any allegation may admit oral or documentary evidence whether or not such evidence would be admissible in a court of law;

(ii) a copy of a certificate or memorandum of conviction or caution, and of any final judgment, ruling or determination given in any criminal proceedings before any court of competent jurisdiction in the United Kingdom or in any other country, shall be conclusive proof of the conviction or caution, or of any facts and matters found, as the case may be;

(iii) where the applicant was a party to the proceedings, a copy of a certified judgment of the civil proceedings before any court of competent jurisdiction in the United Kingdom or in any other country shall be conclusive proof of the facts and matters found;

(iv) where the applicant was a witness in civil proceedings before any court of competent jurisdiction in the United Kingdom or in any other country, a copy of a certified judgment of the civil proceedings shall be prima facie evidence of the facts and matters found;

(v) subject to regulation 3(2)(f)(iii) and (iv) above, any other finding of fact in any civil proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere shall be admissible as prima facie evidence in any disciplinary proceedings.

(g) After consideration of all of the information provided to it and/or the applicant's comments or submissions, the Admissions and Licensing Committee shall make a decision on the application.

(3) Hearings

(a) In the event that the Admissions and Licensing Committee decides that a hearing is required in the interests of justice, the following provisions shall apply.

(b) The Association shall determine the date of the hearing and shall give the applicant at least 28 days prior written notice of the date set.

(c) The Association shall give advance publicity of any hearing taking place in accordance with these regulations in such manner as it thinks fit, including publishing the name of the relevant person involved.

(d) The applicant and the Association may appear at the hearing in person and/or by solicitor, counsel or other representative, and may call witnesses who may give evidence and be cross-examined. The Admissions and Licensing Committee may, at any time, ask questions of the applicant, the Association or any witness.

(e) The applicant and the Association shall be entitled to make oral submissions with the applicant having the right to speak last.

(f) The Admissions and Licensing Committee may exclude from any hearing any person whose conduct, in the opinion of the Committee, is likely to disrupt the orderly conduct of the proceedings. For the avoidance of doubt, this includes the applicant.

(g) The Admissions and Licensing Committee shall announce its decision at the hearing.

(4) The Admissions and Licensing Committee's decision

(a) The Admissions and Licensing Committee may:

(i) grant the application;

(ii) refuse the application;

(iii) grant the application subject to such condition(s) as it considers appropriate; or

(iv) adjourn consideration of the application.

(b) The Admissions and Licensing Committee may accept undertakings from any person as a condition of issuing a certificate.

(5) Communication of the decision

The Admissions and Licensing Committee shall notify the applicant in writing within 14 days of its decision (whether made under regulation 3(2)(g) or 3(3)(g) above), and a written statement of the reasons for the decision shall be given to the applicant at the same time, or within such longer period as shall be necessary in the circumstances.

(6) Application granted

(a) When an application is granted, the applicant shall be issued with the certificate applied for. Where an application is granted subject to conditions, the applicant shall be issued with a certificate once any conditions attaching to its grant have been satisfied or issued with a certificate with the conditions noted on the certificate as appropriate, or issued with a certificate subject to conditions otherwise notified to the applicant in writing.

(b) A certificate issued to a sole practice shall be in the name in which he or it carries on his or its practice and shall authorise the carrying on by him or it of the activities to which the certificate relates. A certificate issued to a partnership shall be issued in the partnership name and shall authorise the carrying on of the activities to which the certificate relates in that name:

(i) by the partnership to which the certificate is issued;

(ii) by any partnership which succeeds to that business; and

(iii) by any person who succeeds to that business having previously carried it on in partnership.

(c) A certificate issued to a company, including a limited liability partnership, shall be issued in the name of the body corporate (or such other trading name as may be agreed by the Association) and shall authorise the carrying on of the activities to which the certificate relates in that name:

(i) by the company to which the certificate is issued;

(ii) by any company which succeeds to that business; and

(iii) by any person who succeeds to that business having previously carried it on in company.

(d) If there is a dissolution of a partnership or a winding up of a company to which a certificate has been issued, and more than one firm subsequently claims to be the successor to the business of the partnership or company as the case may be, the certificate shall be treated as having been withdrawn at the expiration of 28 days from the date of dissolution.

(e) The authority conferred by a certificate shall, subject to these regulations, extend to the activities to which the certificate relates which are conducted by any individual in his capacity as an officer, employee or appointed representative of the firm or company as the case may be.

(7) Certificates

(a) Certificates shall be in such form as the Council shall determine subject to compliance with any specific requirements of the Central Bank in respect of an investment business certificate (Ireland).

(b) Certificates shall not be invalidated solely by reason of a clerical error on behalf of the Association or by reason of any failure to follow any procedural requirements of these regulations.

(8) Administration charge

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

(9) Re-application for certificates

Any former certificate holder may re-apply for a certificate. Such application should be made in the same manner as the original application and will be considered by the Admissions and Licensing Committee in the ordinary way, and in accordance with regulations 3(1) to (8) above, save that:

(a) the Admissions and Licensing Committee shall have specific regard to the circumstances in which he previously failed to obtain a certificate or ceased to be a certificate holder;

(b) the Admissions and Licensing Committee may, in its absolute discretion, require him to pass further examinations and/or tests and/or satisfy other requirements before it considers his application for a new certificate; and

(c) no former certificate holder who has been the subject of a decision made pursuant to these regulations specifying that no future application for a certificate by the applicant will be entertained for a specified period, or until the occurrence of a specified event, may re-apply before the expiry of such period or the occurrence of such event.

4. Validity and renewal

(1) Validity

Certificates shall be valid only from the date of issue to the date specified on the certificate unless the Admissions and Licensing Committee otherwise directs or unless, in the case of an investment business certificate (Ireland), the Admissions and Licensing Committee otherwise directs with the agreement of the Central Bank.

(2) Renewal

(a) All certificates are renewable annually and any person wishing to renew a certificate held by him must make an application to do so in accordance with regulation 3.

(b) Any person who holds a certificate in relation to a particular territory and who wishes to apply for the same type of certificate in respect of another territory will be entitled to a certificate relating to the new territory provided that:

(i) the eligibility criteria, as referred to in the Practising Regulations, relating to the new territory are no more onerous than the eligibility criteria in the area that the person currently practises; and

(ii) the person notifies the Admissions and Licensing Committee at least 28 days in advance of his application for a certificate in the new territory.

If the eligibility criteria in the new territory are more onerous than the criteria in the area in which the person currently practises, the person will be required to apply for a certificate as if he were making a new application.

5. Withdrawal of, suspension of, or imposition of conditions on certificates: general

(1) Mandatory grounds for withdrawal

The Admissions and Licensing Committee shall withdraw a certificate if:

(a) it is notified or becomes aware that the holder of the certificate has ceased to be, or never was, eligible to be issued with the certificate and:

(i) if the Admissions and Licensing Committee considers, in its absolute discretion, that the situation is remediable and it is appropriate to do so, and the holder has been notified of this situation in writing and the situation has not been remedied within the period of time specified in the notice; and

(ii) for holders of auditing certificates only, if the holder is a firm which has ceased to be "controlled by qualified persons" within the meaning of the Practising Regulations, the period of three months has elapsed from the date it ceased to be so controlled;

(b) where the holder is a partnership, it has been dissolved without succession, and where it is a body corporate, it has been wound up without succession.

(2) Discretionary grounds for withdrawal

The Admissions and Licensing Committee may withdraw, suspend or impose conditions upon a certificate if:

(a) the holder of the certificate so requests;

(b) it appears that any false, inaccurate or misleading information concerning the holder of the certificate or any of his, or its partners, directors or controllers, as the case may be, has been supplied to the Association;

(c) the holder of the certificate has failed to submit a properly completed application for renewal as required by regulation 4(2) or fails to comply with a request for information or otherwise to co-operate with the Admissions and Licensing Committee in the exercise of its powers and responsibilities under these regulations;

(d) the holder of the certificate fails to comply with any condition imposed by the Association pursuant to these regulations;

(e) where the holder of the certificate is a partnership or company, following its dissolution or winding up there is any doubt in the opinion of the Admissions and Licensing Committee as to the identity or existence of a successor firm or company;

(f) it is notified or becomes aware that a holder of a certificate or any of its partners, members, directors or controllers has committed a material breach of any of these regulations or other rules and regulations or codes of practice to which he or they are subject (or were subject prior to 1 January 2014) in the carrying on of the activities to which the certificate relates or authorises; or

(g) the holder of the certificate is not a fit and proper person to hold the certificate in question within the meaning of the Practising Regulations.

(3) Regard to relevant matters

In determining whether to exercise its powers under regulation 5(1) or 5(2) above the Admissions and Licensing Committee shall have regard to such matters as it considers relevant. Without limitation, in determining whether the holder of a certificate is a fit and proper person, the Admissions and Licensing Committee shall have regard to all or any of the matters referred to in the Practising Regulations.

(4) Need for a hearing

Before making a decision to withdraw or suspend a certificate on the grounds specified under regulation 5(1) or 5(2), the Admissions and Licensing Committee shall consider the matter at a hearing, and the following provisions of regulation 6 below shall apply.

(5) Interim orders

At any time before a decision is made on the grounds specified under regulation 5(1) or 5(2), the Association may apply to the Interim Orders Committee for an interim order, in which circumstances the procedures laid down in the Interim Orders Regulations shall apply.

6. Withdrawal of, suspension of, or imposition of conditions on certificates: hearings

(1) Notice

(a) The Association shall determine the date of the hearing and, subject to regulation 6(2), shall give the holder of the certificate at least 28 days prior written notice of the date set, in a notice complying with regulation 6(1)(b) below.

(b) The said notice shall specify or include:

(i) the date, time and place fixed for the hearing of the case;

(ii) the matter(s) under consideration;

(iii) the evidence on which the Association intends to rely, including documentary evidence and/or witness statements or letters;

(iv) the relevant person's right to attend the hearing and be represented;

(v) the power of the Admissions and Licensing Committee to proceed in the absence of the relevant person at the hearing;

(vi) the relevant person's right to cross-examine any witnesses called by the Association and to call his own witnesses;

(vii) that not later than 14 days before the date set for the hearing the relevant person must notify the Association whether he intends to attend the hearing and call any witnesses, inviting him to indicate whether or not he accepts all or any of the matters raised and, if he accepts any of the matters, inviting him further to make such submissions as he may wish to be drawn to the Admissions and Licensing Committee's attention;

(viii) a list of witnesses whose evidence is relied upon by the Association, indicating those who have provided documentary evidence and those who have provided witness statements, whether in formal form or otherwise, or letters;

(ix) a summary of the powers of the Admissions and Licensing Committee.

(c) For the avoidance of doubt, the information and notifications specified in regulation 6(1)(b) above may be provided at different times and supplemented as necessary from time to time.

(2) Short notice

(a) The Association may provide all or any of the information referred to in regulation 6(1)(b) above to the relevant person less than 28 days before the date set for the hearing. At the hearing the Admissions and Licensing Committee shall consider at the outset the appropriateness of short notice and the degree of urgency and may, if it is of the view that it is necessary in the public interest as weighed against any prejudice to the relevant person, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.

(b) If the hearing proceeds at short notice, the Admissions and Licensing Committee may suspend or impose conditions upon the certificate. It may not withdraw a certificate until such time as a hearing on normal notice has taken place, which shall be no later than 30 days after the date of the short notice hearing unless a longer period is agreed between the holder of the certificate and the Association.

(3) Submission of documents and information by the relevant person

(a) No later than 14 days before the hearing of his case (or such shorter time as the Admissions and Licensing Committee may in exceptional circumstances accept, having regard to the public interest, any prejudice to the Association, and the overall interests of justice) the relevant person must submit:

(i) if the allegation(s) are denied, a statement of position;

(ii) such documentary evidence and witness statements, whether in formal form or otherwise, as he may wish to be drawn to the Admission and Licensing Committee's attention;

(iii) the names of any witnesses from the list provided by the Association that he requires to attend the hearing for cross-examination, explaining to what extent he disputes their evidence;

(iv) the names and addresses of any witnesses whom he wishes to call in support of his position and, if a witness statement is not being provided, an explanation of the nature of the evidence they will be giving. For the avoidance of doubt, the Association will require such witnesses to attend the hearing for cross-examination unless it indicates otherwise; and

(v) confirmation as to whether he wishes to attend the hearing of the case against him.

(b) If there is a dispute as to whether a witness is required to attend to give oral evidence, the parties shall make written submissions to the Chairman who shall have the power to order the attendance of a witness or to make such other order as in his discretion he thinks fit. The decision of the Chairman shall be final.

(c) If the relevant person fails to comply with the provisions of regulation 6(3)(a)(iv) above, he shall not be entitled to have witnesses attend the hearing save with the agreement of the case presenter or by order of the Chairman who shall give both parties an opportunity to make submissions on the point. The decision of the Chairman shall be final.

(d) If the relevant person indicates that he does not wish to attend, or fails to give an indication within the required deadline, the Association shall not be obliged to ensure the attendance of any witness at the hearing.

(4) Amendments to matters raised

Upon the application of either party or upon its own volition, at any stage in the proceedings the Admissions and Licensing Committee may order that:

(a) one or more allegations be amended; and/or

(b) one or more allegations be added;

provided that the relevant person is not prejudiced in the conduct of his defence.

(5) Representation

At the hearing of his case, the relevant person shall be entitled to be heard before the Admissions and Licensing Committee and/or to be represented by such person as he may wish, subject to the discretion of the Admissions and Licensing Committee to determine otherwise or to limit the participation of the relevant person's representative.

(6) Proceeding in the absence of the relevant person

Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Admissions and Licensing Committee is satisfied that he has been served with the documents referred to in regulation 6(1) in accordance with regulation 11 below.

(7) Adjournments

(a) The relevant person or the case presenter may make a written application to the Admissions and Licensing Committee that the hearing be adjourned to a future date. Subject to regulation 6(7)(b) below, such application shall be considered at the outset of the hearing and the Admissions and Licensing Committee may in its absolute discretion agree to the application if it is of the view that it is justified in all the circumstances.

(b) Any such application made in advance of the hearing shall if reasonably practicable be considered by the Chairman, who may in his absolute discretion accede to it if he is of the view that it is justified in all the circumstances. If such application is refused by the Chairman, it shall be reconsidered at the outset of the hearing by the

Admissions and Licensing Committee in accordance with regulation 6(7)(a) above. For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the application, and the Chairman's written reasons for denying the application shall be provided to the Admissions and Licensing Committee.

(c) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Chairman or the Admissions and Licensing Committee may direct that the case should be adjourned to an appropriate date.

(d) The Chairman or the Admissions and Licensing Committee may give such directions or impose such conditions as may be determined upon the grant of an adjournment, including one or more of the following:

(i) that the relevant person produce any necessary documents and supply any other information and explanations relevant to the matter in question, whether by attendance upon reasonable notice before the Admissions and Licensing Committee or otherwise;

(ii) that the relevant person allow any officer of the Association to enter his business premises on such notice (if any) as the Admissions and Licensing Committee may think appropriate and interview any employee of the relevant person;

(iii) that the relevant person procure the attendance of any of his employees at specific premises, upon reasonable notice;

(iv) that any additional evidence be served by the relevant person or the Association by a specified date.

(e) The Chairman or the Admissions and Licensing Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning the allegations to which the relevant person is a party are pending.

(f) Before making a decision, the Chairman or the Admissions and Licensing Committee as appropriate shall invite representations from the other party.

(g) The Chairman or the Admissions and Licensing Committee shall give written reasons for a decision to refuse or grant a request for an adjournment.

(h) Where the hearing of the case has been adjourned, the Admissions and Licensing Committee may reconstitute itself as an Interim Orders Committee, for the purpose of deciding whether to make one or more of the orders set out in The Chartered Certified Accountants' Interim Orders Regulations, or vary or revoke the terms of an existing order.

(i) For the avoidance of doubt, where the relevant person has already been served with the documents listed in regulation 6(1) and/or 6(2), an adjournment does not give rise to a requirement to re-serve them either 28 days before the date set or at all; but the relevant person shall be notified of the time and place fixed for the adjourned hearing as soon as practicable.

(8) Case presenter

The case against the relevant person shall be presented to the Admissions and Licensing Committee on behalf of the Association by the case presenter.

(9) Advisers to the Admissions and Licensing Committee

All hearings of the Admissions and Licensing Committee under this regulation 6 shall be attended by a legal adviser who shall:

(a) act as adviser to the Committee on all procedural and legal matters;

(b) retire with the Committee when it goes into private session;

(c) ensure that any advice given to the Committee in private is repeated in public and an opportunity given to the parties to make submissions on that advice;

(d) record the Committee's reasons for its decisions; and

(e) carry out any other activity commensurate with the role of legal adviser.

(10) Power to refer to a health hearing

At any time before or during the hearing, the Admissions and Licensing Committee may order that the hearing be adjourned and referred to a health hearing before a Health Committee in which circumstances the relevant provisions of the Health Regulations shall apply.

(11) Exclusion of persons from a hearing

The Admissions and Licensing Committee may exclude from any hearing any person whose conduct, in the opinion of the Committee, is likely to disrupt the orderly conduct of the proceedings. For the avoidance of doubt, this includes the relevant person.

(12) Pre- and post-hearing publicity

(a) The Association shall give advance publicity of any hearing taking place in accordance with these regulations in such manner as it thinks fit, including publishing the name of the relevant person involved.

(b) Any directions given in the case or any conditions imposed upon an adjournment shall not be published unless the Admissions and Licensing Committee otherwise directs, in which case the directions or conditions shall be published in accordance with regulation 6(12)(c)(i) as if they were orders.

(c) (i) In the event that an order, suspension or condition relating to the certificate of the relevant person is made under regulation 6(15)(a)(ii) to (iv), the Association shall publish the same, together with the reasons for the Admissions and Licensing Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(ii) In the event that an order, suspension or condition relating to the certificate of the relevant person is not made under regulation 6(15)(a)(ii) to (iv), the Association shall publish the reasons for the Admissions and Licensing Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(iii) In the event that the relevant person relinquishes his certificate before a hearing under this regulation takes place, details of that fact and of any consequential orders made by the Admissions and Licensing Committee shall be published, together with the reasons for the Admissions and Licensing Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(d) The Insolvency Service may publish the names of holders or former holders of the Association's insolvency licence who are subject to a decision of the regulatory assessor under regulation 7 below or the Admissions and Licensing Committee under this regulation, and details of the decision made, in such publications and in such a manner as it thinks fit.

(13) Open hearings

(a) Hearings of the Admissions and Licensing Committee shall be open to the public unless the Committee determines upon the application of either party or upon its own motion that the public shall be excluded from attending all or part of any hearing at any time, including during the hearing of any case by it, on the grounds that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public.

(b) The Admissions and Licensing Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its hearings and the procedure to be adopted in respect of any hearing shall, subject to the foregoing paragraphs of this regulation, be such as the Admissions and Licensing Committee in its absolute discretion shall determine.

(14) Procedure at hearings

(a) The procedure to be adopted in relation to any hearing shall, subject to the following paragraphs of this regulation 6(14), be such as the Admissions and Licensing Committee shall, in its absolute discretion, determine.

(b) The relevant person and the Association may appear at the hearing in person and/or by solicitor, counsel or other representative and may call witnesses who may give evidence and be cross-examined. The Admissions and Licensing Committee may, at any time, ask questions of the relevant person.

(c) The relevant person and the Association shall be entitled to make oral submissions with the applicant having the right to speak last.

(d) The Admissions and Licensing Committee shall announce its decision at the hearing.

(15) The Admissions and Licensing Committee's decision

(a) The Admissions and Licensing Committee may:

(i) dismiss or refuse the application;

(ii) order that the relevant person's certificate be withdrawn;

(iii) suspend the relevant person's certificate;

(iv) impose conditions on the relevant person's certificate;

(v) appoint a regulatory assessor as more fully set out under regulation 7 below.

(b) The suspension of a certificate pursuant to regulation 6(15)(a)(iii) shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with. While the certificate is suspended, it shall be deemed not to be held.

(c) Conditions may be imposed upon a certificate under regulation 6(15)(a)(iv) of a type and for as long as the Admissions and Licensing Committee considers appropriate.

(d) The Admissions and Licensing Committee may, in accordance with regulation 2(2)(a)(vii) of Appendix 1 to The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014, appoint any regulatory assessor as its agent or delegate for the purpose of carrying out any of its responsibilities and exercising any of its powers to impose conditions on certificates and/or conditions on a future re-application for a certificate.

(e) At the conclusion of the hearing of the Admissions and Licensing Committee, the Admissions and Licensing Committee shall rescind any interim order made by the Interim Orders Committee in relation to the matters under consideration.

(16) Written notice of the decision

Written notice of the decision made by the Admissions and Licensing Committee under regulation 6(15) shall be given to the relevant person within 14 days of the decision, and a written statement of the reasons for the decision of the Admissions and Licensing Committee shall accompany the notice unless a longer period for the provision of such reasons is necessary in the circumstances.

(17) Continuity

(a) Where a certificate has been suspended or withdrawn, the Admissions and Licensing Committee may order that the holder of the certificate request his continuity nominee to take responsibility for his practice.

(b) In addition, where an insolvency licence has been suspended or withdrawn, the Admissions and Licensing Committee may order that the Association procure that an application is made to the Court to transfer any appointments held by the practitioner to his continuity nominee or other individual.

(18) Consideration of future applications

The Admissions and Licensing Committee may specify that no future application for a certificate by the applicant will be entertained for a specified period or until the occurrence of a specified event.

(19) Guidance

The Admissions and Licensing Committee may take instructions from the Central Bank concerning any of the matters listed in Part VII of the Investment Intermediaries Act, 1995 of the Republic of Ireland in respect of its responsibility for the issue or withdrawal of an investment business certificate (Ireland).

7. Imposition of conditions on certificates by a regulatory assessor

(1) Referral to a regulatory assessor

The regulatory assessor may, under regulation 6(15)(a)(v) for the purpose of carrying out any of the Admissions and Licensing Committee's responsibilities and exercising any of its powers, impose conditions on certificates and/or on a future re-application for a certificate.

(2) Imposition of conditions on certificates by a regulatory assessor

The regulatory assessor may, if in his absolute discretion he thinks fit, impose conditions upon a certificate if:

(a) the holder of the certificate so requests;

(b) it appears that any false, inaccurate or misleading information concerning the holder of the certificate or any of his or its partners, directors, controllers or members, as the case may be, has been supplied to the Association;

(c) the holder of the certificate has failed to submit a properly completed application for renewal as required by regulation 4(2) or fails to comply with a request for information or otherwise to co-operate with the regulatory assessor in the exercise of its powers and responsibilities under these regulations;

(d) the holder of the certificate fails to comply with any condition imposed by the Association pursuant to these regulations;

(e) where the holder of the certificate is a partnership or company, following its dissolution or winding up there is any doubt in the opinion of the regulatory assessor as to the identity or existence of a successor firm or company;

(f) the Association is notified or becomes aware that a holder of a certificate or any of its partners, members, directors or controllers has committed a material breach of any of these regulations or other rules and regulations or codes of practice to which he or they are subject (or were subject prior to 1 January 2014) in the carrying on of the activities to which the certificate relates or authorises;

(g) the holder of the certificate is not a fit and proper person to hold the certificate in question within the meaning of the Practising Regulations; or

(h) for any other reason, it is in the public interest to do so.

In determining whether to exercise his powers under this regulation 7(2) the regulatory assessor shall have regard to such matters as he considers relevant. Without limitation, in determining whether the holder of a certificate is a fit and proper person, the regulatory assessor shall have regard to all or any of the matters referred to in the Practising Regulations.

(3) The regulatory assessor's decision

The regulatory assessor may:

(a) consider that no regulatory action is necessary;

(b) impose conditions on the holder of a certificate; or

(c) refer the case to the Admissions and Licensing Committee.

(4) Consideration of future applications

The regulatory assessor may specify that no future application for a certificate by the applicant will be entertained for a specified period or until the occurrence of a specified event.

(5) Communication of the decision

The regulatory assessor's decision shall be notified to the holder or former holder of a certificate as appropriate and shall include a written statement of the reasons for his decision.

(6) Post-decision publicity

(a) Save where the regulatory assessor determines upon the application of either party or upon his own motion that there are exceptional circumstances which outweigh the public interest in the decision being published, all decisions made by the regulatory assessor under regulation 7(3) shall be published, together with the reasons for the same in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(b) (i) Save where the circumstances in regulation 7(6)(b)(ii) exist, in the event that the relevant person relinquishes his certificate before a decision under this regulation 7 is made, details of that fact and of any consequential decisions taken by the regulatory assessor shall be published, together with the reasons for any such consequential decisions of the regulatory assessor in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(ii) The circumstances referred to in regulation 7(6)(b)(i) exist where the regulatory assessor determines upon the application of either party or upon his own motion that there are exceptional circumstances which outweigh the public interest in publishing details of the fact of the relevant person relinquishing his certificate before a decision under this regulation 7 is made and of any consequential decisions taken by the regulatory assessor.

(7) Right of referral to the Admissions and Licensing Committee

(a) The holder or former holder of a certificate shall have the right to have his case referred to the Admissions and Licensing Committee for its consideration at a hearing if he disagrees with the decision of the regulatory assessor to impose conditions on a certificate and/or on a future re-application for a certificate, or with a direction regarding publicity made under regulation 7(6) above.

(b) If the holder or former holder of a certificate wishes to exercise his rights under regulation 7(7)(a) above, he shall notify the Association in writing within 30 days of receiving the notification of the regulatory assessor's decision. Such notification shall include a description of the aspects of the decision the holder of a certificate disagrees with and why.

(c) The Association shall have the right to have the case referred to the Admissions and Licensing Committee for its consideration at a hearing if it disagrees with the decision of the regulatory assessor.

(d) If the Association wishes to exercise its rights under regulation 7(7)(c) above, the Association shall notify the holder of a certificate in writing within 30 days of receiving the notification of the regulatory assessor's decision. Such notification shall include which aspects of the decision the Association disagrees with and why.

(e) Regulation 6 shall apply to a hearing convened pursuant to regulations 7(7)(a) or 7(7)(c).

8. Correction of errors

(1) Slip rule

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

(b) The Chairman of the Admissions and Licensing Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(c) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(d) If the application is opposed, it should, if practicable, be heard by the same Admissions and Licensing Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.

(e) The Admissions and Licensing Committee may of its own motion vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

(2) New evidence

The Admissions and Licensing Committee may at any stage and in its absolute discretion amend, vary or rescind any of its orders or decisions where new evidence comes to light which fundamentally invalidates the same, but may only do so to the advantage of a relevant person.

9. Effective date and appeals

(1) Appeals procedure

(a) A person ("the appellant") aggrieved by any decision of the Admissions and Licensing Committee notified to him or it made pursuant to regulations 3(4) or 6(15) of these regulations may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in The Chartered Certified Accountants' Appeal Regulations 2014 (hereafter referred to as "the Appeal Regulations"). Any such appeal shall be dealt with in accordance with the Appeal Regulations.

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

(2) Effective date

Any decision made by the Admissions and Licensing Committee pursuant to regulations 3(4) or 6(15) shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations unless:

(a) the appellant shall duly give notice of appeal prior to the expiry of such period in which case it shall become effective (if at all) as specified in the Appeal Regulations; or

(b) the Admissions and Licensing Committee directs that, in the interests of the public, the order should have immediate effect, subject to its being varied or rescinded on appeal as specified in the Appeal Regulations.

10. Costs

Regardless of the outcome of the application, the Admissions and Licensing Committee shall not have power to order the payment of costs by either party.

11. Service of notices and documents

(1) General

(a) Any notice or other document required to be given to or served on a relevant person may be provided to him personally, sent by post or courier to his or its registered address or to any other address nominated in writing by the relevant person for service of notices and correspondence for the purpose of these regulations, or sent by email as provided for under regulation 11(2) below. If the relevant person has no registered address any notice or document should be sent by post or courier to his address last known to the Association.

(b) Any notice or document required to be given to or served on the Association may be provided by sending it by post or courier to the principal office of the Association or sending it by email as provided for under regulation 11(2) below.

Any such notice or document so sent pursuant shall be deemed to have been given or served within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(2) Service by email

(a) Subject to the following provisions of this regulation 11(2), where a notice or document is to be served by the Association on a relevant person it may be served by email provided that the relevant person has previously indicated in writing to the Association that he is willing to accept service by email, has provided his email address to the Association in whatever form the Association deems appropriate, and has stipulated whether there are any limitations on his agreement to accept service by electronic means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

(b) For the purposes of regulation 11(2)(a) above, notice of willingness to accept service by email may be sent by the relevant person to the email address specified in the Association's communication to the relevant person. Unless and until the relevant person sends a further notice stating that he is no longer willing to accept service by email, service by the Association of any notice or document to the email address stipulated by the relevant person shall be deemed to be valid service for the purposes of this regulation.

(c) The Association is willing to accept service of any notice or document by email to the email address specified in the Association's communication to the relevant person. Any email attachment must not exceed 20,000 KB in size.

(d) Where a document is served by electronic means, the party serving the document (be it the Association or the relevant person) need not in addition send or deliver a hard copy.

(e) The email address given by the relevant person and/or the Association for the purposes of this regulation shall be deemed to be at the address for service.

(f) Service by email is deemed to be effective within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(g) For the avoidance of doubt, service by email may only validly be effected under regulation 11(2) for the purposes of the current or concurrent proceedings under these regulations and any appeal.

12. Attendance

A relevant person may attend a hearing of the Admissions and Licensing Committee where he is the relevant person concerned notwithstanding that he may previously have indicated that he did not intend to attend.

13. Hearings

(1) Proceedings of the Committee shall take place in London unless a direction is made to the contrary.

(2) Where a case is of particular interest to a particular government or government agency, or primarily affects persons resident in a particular country, either the Admissions and Licensing Committee or the Secretary may direct that the hearing before the Admissions and Licensing Committee take place in that country.

14. Applications for waivers etc.

Pursuant to various regulations of the Association, the Admissions and Licensing Committee may consider applications for waivers, variations or suspensions of such regulations. For the avoidance of doubt, and save where the same conflict with any express provision of such regulations, the following provisions of these regulations shall apply to such applications: regulations 3 and 8 to 15.

15. Cross-applicability of these regulations to other regulations dealing with applications for certificates, approvals, membership etc.

Save where the same conflict with the express provisions of various regulations of the Association dealing with applications for certificates, approvals, membership etc., regulations 3 and 8 to15 of these regulations shall apply to such applications. For the avoidance of doubt, such applications include those arising under regulation 3 of The Chartered Certified Accountants' Irish Investment Business Regulations 2013 and under section B7 paragraph 15 of the Association's Code of Ethics and Conduct.

16. Waiver

The Admissions and Licensing Committee may dispense with any requirement of these regulations in respect of notices, service or time in any case where it appears to the Committee to be in the interests of justice, having regard to all the circumstances, provided it is satisfied that neither the relevant person nor the Association has been prejudiced in the conduct of his or its case.

2.7

The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014

Amended 1 January 2017

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014. These regulations as amended shall come into force on 1 January 2017.

(2) These regulations shall apply to all persons who are subject to bye-laws 8 to 11 or who otherwise agree to be bound by them.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

Appeal Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

Appeal Regulations means The Chartered Certified Accountants' Appeal Regulations 2014;

Appointments Board means the board appointed by the Council in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

assessor means an independent person so appointed by the Appointments Board in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

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

case presenter has the meaning ascribed to him in regulation 9(2);

certificate means all or any of a practising certificate, auditing certificate, insolvency licence, and investment business certificate (Ireland);

Chairman means any person carrying out the function of a Chairman of the Disciplinary Committee, and the functions of the Chairman may, in respect of any application made prior to the final hearing of the case, be exercised by any appropriately appointed person notwithstanding that he or she is not scheduled to sit at the final hearing;

complainant means any person or persons who bring a complaint to the attention of the Association, excluding any person or persons who have withdrawn a complaint or withheld their identity from the Association or from the relevant person;

complaint means any matters, acts or circumstances which appear to render a relevant person liable to disciplinary action;

consent order means an order of the Consent Orders Committee made under these regulations;

Consent Orders Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

Designated Professional Body Regulations means The Chartered Certified Accountants' Designated Professional Body Regulations 2001;

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

Disciplinary Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

disciplinary process means disciplinary proceedings brought under these regulations;

finding means, in the context of a decision of the Disciplinary Committee or the Consent Orders Committee, the decision as to whether an allegation made against the relevant person has been found proved or not proved;

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

FRC means the Financial Reporting Council;

Health Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

Health Regulations means The Chartered Certified Accountants' Health Regulations 2014;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

interim order means an interim order made by the Interim Orders Committee under The Chartered Certified Accountants' Interim Orders Regulations 2014;

investigating officer means the Secretary or other officer of the Association charged with the responsibility of considering, conciliating and investigating complaints and performing the other functions described in these regulations, and the Council hereby delegates to such officers of the Association the obligation of the Secretary in bye-law 10(b) to lay a complaint before the relevant committee of Council or individual if he or she is of the opinion that the complaint ought to be investigated by that committee or individual;

investment business certificate (Ireland) means the certificate issued in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 2013;

legal adviser means an independent person so appointed by the Appointments Board and qualified in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

Membership Regulations means The Chartered Certified Accountants' Membership Regulations 2014;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

order means any order of the Disciplinary Committee or the Consent Orders Committee made under these regulations, or any order of the Appeal Committee made under The Chartered Certified Accountants' Appeal Regulations 2014, and includes any direction as to the payment of a sum in respect of costs to or by the Association and as to the publicity to be given to any order and shall include where the context requires more than one such order;

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

privileged material means communications between a legal adviser, his client or any person representing his client and any other person together with any enclosure or attachment with such communication created either (a) in connection with the giving of legal advice to the client, or (b) in connection with or in contemplation of legal proceedings and for the purposes of those proceedings, save that a communication or item shall not be privileged material if it is created or held with the intention of furthering a criminal purpose;

registered student has the meaning ascribed to it in The Chartered Certified Accountants' Membership Regulations 2014;

relevant person means a member and other person (whether an individual or a firm and including a registered student) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them;

report means a statement of the allegations together with a summary of the relevant facts and provisions of the rules, together with such documentary evidence in the possession of the investigating officer as he may consider to be relevant to the allegations;

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

specified person means, in relation to a firm which is a partnership, any partner in that firm, in relation to a firm which is a limited liability partnership, any member in that firm, and in relation to a firm which is a body corporate, any director of that firm.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

(3) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act 2005 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

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

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

3. Rights and obligations of the relevant person in relation to complaints, investigations and proceedings under these regulations

(1) Duty to co-operate

(a) Every relevant person is under a duty to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint.

(b) The duty to co-operate includes providing promptly such information, books, papers or records as the investigating officer or assessor may from time to time require.

(c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

(d) A relevant person is not permitted to make a charge to the complainant for the cost of co-operating with the consideration or investigation of the complaint.

(2) Privileged material

Nothing in these regulations shall require the relevant person to produce, disclose or permit inspection of privileged material.

4. Consideration of complaint

(1) Initial review

(a) The investigating officer shall consider any complaint that may come to his attention and decide whether it is appropriate for the Association to refer the complaint for conciliation or investigation.

(b) When the decision has been made, the investigating officer shall either:

(i) refer the complaint for conciliation or investigation; or

(ii) procure that the complainant is notified of the reasons why the Association has decided not to refer the complaint for conciliation or investigation. The reasons may be notified orally only if the complaint was brought to the attention of the Association by telephone.

(c) Within 30 days of receiving any such notification, the complainant may notify the Association of any further representations he wishes to make in relation to the complaint. Such further representations must be notified to the Association in writing.

(d) The investigating officer shall reconsider his decision in light of any such further representations. The investigating officer's decision shall be final.

(e) If at any time during the initial review process the investigating officer considers that the complaint is suitable for disposal by way of consent order, the complaint will be dealt with in accordance with regulation 8 below.

(2) Conciliation

(a) The investigating officer may attempt to conciliate all or any parts of a complaint which has been referred for conciliation pursuant to regulation 4(1). The relevant person is not obliged to submit to the conciliation process.

(b) If at any time during the conciliation process the investigating officer considers that the complaint is suitable for disposal by way of consent order, the complaint will be dealt with in accordance with regulation 8 below.

(c) At the conclusion of the conciliation process, the investigating officer shall decide whether in all the circumstances:

(i) any parts of the complaint should be referred for investigation;

(ii) the allegations or some of them should rest on the relevant person's file; and/or

(iii) the case should be closed.

(d) Where the investigating officer decides that the allegations or some of them should rest on the relevant person's file or that the case should be closed, and in his opinion that conciliation was unsuccessful, he shall notify the relevant person and the complainant accordingly, giving reasons for his decision. Such notification may be provided orally only if the complaint was brought to the attention of the Association by telephone.

(e) Within 30 days of receiving any such notification, the complainant or the relevant person may request that the decision be reviewed by an assessor in accordance with regulation 5(1). For the avoidance of doubt, neither the complainant nor the relevant person is entitled to request a review by an assessor in circumstances where the investigating officer has decided that conciliation was successful.

(f) The power under regulation 4(2)(c)(ii) above may only be exercised if the investigating officer decides that there is a case to answer raised by the allegations or some of them but that it is not in the public interest at this stage for a report to be prepared under regulation 4(3)(d)(i) below. This regulation should be read in conjunction with regulation 7 below which sets out the nature and effect of rest on file decisions.

(3) Investigation

(a) The investigating officer shall investigate any complaint which is referred for investigation pursuant to regulation 4(1)(b)(i) or 4(2)(c)(i).

(b) The investigating officer shall notify the relevant person of the matters, acts or circumstances he is minded to investigate in light of the complaint and invite the relevant person to comment in writing upon them.

(c) If at any time during the investigation process the investigating officer considers that the complaint is suitable for disposal by way of consent order, the complaint will be dealt with in accordance with regulation 8 below.

(d) At the conclusion of the investigation, the investigating officer shall decide whether in all the circumstances:

(i) a report of disciplinary allegations should be made, in which case he shall cause a report to be prepared in draft and shall invite the relevant person to comment in writing upon it;

(ii) the allegations or some of them should rest on the relevant person's file, in which case the investigating officer shall notify the relevant person and the complainant accordingly, giving reasons for his decision; or

(iii) the case should be closed, in which case the investigating officer shall notify the relevant person and the complainant accordingly, giving reasons for his decision.

(e) The power under regulation 4(3)(d)(ii) above may only be exercised if the investigating officer decides that there is a case to answer raised by the allegations or some of them but that it is not in the public interest at this stage for a report to be prepared under regulation 4(3)(d)(i). This regulation should be read in conjunction with regulation 7 below which sets out the nature and effect of rest on file decisions.

(f) Where a report of disciplinary allegations has been made pursuant to regulation 4(3)(d)(i), the report shall be referred by the investigating officer to an assessor unless the investigating officer determines that it is in the public interest for the allegations to be adjudicated upon urgently, in which circumstances he shall refer the report direct to the Disciplinary Committee for consideration at the next available hearing for a substantive determination of the case, upon notice being given in accordance with regulation 9(1).

(g) Where the investigating officer decides that the case should be closed, either the complainant or the relevant person may request that the decision be reviewed by an assessor in accordance with regulation 5(1).

(h) Where the investigating officer decides that the allegations or some of them should rest on the relevant person's file, either the complainant or the relevant person may request that the decision may be reviewed by an assessor in accordance with regulation 5(1) below. For the avoidance of doubt, in such circumstances the assessor's powers are as set out in regulation 5(5) below.

(i) At any time during the investigation, the investigating officer may apply to the Interim Orders Committee for an interim order, in which circumstances the procedures laid down in The Chartered Certified Accountants' Interim Orders Regulations 2014 shall apply.

(4) Further enquiries

The investigating officer may seek such further information or legal, technical or other advice as may seem to him appropriate to assist him in the consideration, conciliation or investigation of the complaint. Any such information or advice may be included as evidence in the case.

(5) Deferral

The consideration, conciliation or investigation of the complaint may, if the investigating officer so decides, be deferred if the relevant person so requests or the investigating officer otherwise decides it is appropriate to do so in the interests of justice, such as where criminal or civil proceedings concerning a relevant matter are pending to which a relevant person is a party.

5. Assessor: review of decision that a case should be closed or that allegations should rest on the relevant person's file

(1) The complainant and the relevant person shall have the right to have the investigating officer's decision reviewed by an assessor in the circumstances described in regulations 4(2)(e), 4(3)(g) and 4(3)(h) above.

(2) If the complainant or the relevant person wishes to exercise the right specified under regulation 5(1) above, he shall notify the Association in writing within 30 days of receiving notification of the decision, providing detailed grounds for review setting out which aspects of the decision he disagrees with and why. For the avoidance of doubt, no request for a review shall be considered by the assessor unless in his opinion this notification complies with this regulation 5(2).

(3) The investigating officer shall procure that the relevant person is notified that a review of the decision has been requested by the complainant and that accordingly the decision will be reviewed in accordance with this regulation 5.

(4) Before concluding his review, the assessor may:

(a) invite the relevant person to comment on the complainant's grounds for review;

(b) direct the investigating officer to make further enquiries and/or carry out further investigation;

(c) seek further information or evidence; and/or

(d) seek such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his review, including advice from one or more other assessors;

and the assessor may adjourn his review for such purposes.

(5) At the conclusion of his review, the assessor shall decide either:

(a) that the case should be closed; or

(b) that the allegations or some of them should rest on the relevant person's file; or

(c) that a report of disciplinary allegations should be made, in which case he shall specify the allegations which should be the subject of the report, return the file to the investigating officer in order for him to prepare a report under regulation 4(3)(d)(i) above, and direct that the file be referred back to him as soon as regulation 4(3)(d)(i) has been complied with.

(6) The assessor shall give written reasons for his decision, which the investigating officer shall procure are provided to the relevant person and to the complainant.

(7) Where a decision has been made under regulation 5(5)(c):

(a) if the assessor considers it necessary to do so for the protection of the public, he shall direct the investigating officer to make an urgent application to the Interim Orders Committee for an interim order;

(b) the investigating officer shall cause a report of disciplinary allegations to be prepared which shall include the investigating officer's reasons for his decision that the case should be closed and the assessor's reasons for his decision; and

(c) the investigating officer shall invite the relevant person to comment in writing upon the draft report.

(8) During the course of the report of disciplinary allegations being prepared under regulation 5(5)(c), the case may be referred back to the assessor if new information has been received and if in the view of the case presenter it is appropriate in the interests of fairness for the assessor to be invited to reconsider his decision in light of it. In that event, the assessor shall have the same powers as he had in respect of his initial consideration of the case.

6. Assessor: decisions upon a report of disciplinary allegations

(1) Procedure

(a) These regulations apply where a report of disciplinary allegations has been referred to an assessor pursuant to regulations 4(3)(d)(i) and 4(3)(f), or 5(5)(b).

(b) The assessor shall consider the report, and may direct the investigating officer to make further enquiries and/or carry out further investigation, or may seek further information or evidence or such written legal, technical or other advice as may from time to time seem to him appropriate to assist him, including advice from one or more other assessors.

(c) Before making his determination, the assessor shall be satisfied that the relevant person has been given the opportunity to comment in writing upon the allegations against him and upon the report prepared by the investigating officer.

(d) The assessor shall then determine whether or not there is a case to answer against the relevant person.

(2) No case to answer

(a) If, pursuant to regulation 6(1), the assessor determines that there is no case to answer against a relevant person, he shall give reasons for his decision and the relevant person and the complainant shall be notified accordingly.

(b) In addition, the assessor may refer an issue to the practice monitoring department of the Association, in which case he shall give reasons for his decision.

(3) Case to answer

(a) If, pursuant to regulation 6(1), the assessor determines that there is a case to answer against a relevant person, the assessor shall decide whether:

(i) the case should be referred to the Disciplinary Committee and, if so, which of the allegations referred to in regulation 6(1) should be proceeded with; or

(ii) the allegations, or some of them, in relation to which he has determined there is a case to answer should rest on the relevant person's file;

and, in either case, he shall give reasons for his decision.

(b) In addition, the assessor may refer an issue to the practice monitoring department of the Association, in which case he shall give reasons for his decision.

(c) The assessor shall not refer a case to the Disciplinary Committee unless he has determined that there is a real prospect of a reasonable tribunal finding an allegation proved in light of the evidence, and that it is in the public interest for the case to be heard by the Disciplinary Committee.

(d) The assessor's decision shall be notified to the relevant person and to the complainant.

(e) In the event that the assessor determines that allegation(s) should rest on the file, the relevant person may request that such allegation(s) be referred to the Disciplinary Committee. Provided that the relevant person notifies the Association of this request within 30 days of receipt of the assessor's decision, the Association shall refer the allegation(s) to the Disciplinary Committee and regulation 9(1) below shall apply.

(f) Without prejudice to regulation 5(7)(a), if the assessor considers it necessary to do so for the protection of the public, he shall direct the investigating officer to make an urgent application to the Interim Orders Committee for an interim order.

(4) Complainant's right of review

(a) Where the assessor, pursuant to regulation 6(1)(d) or 6(3)(a)(ii), decides that either there is no case to answer or there is a case to answer but the allegations should rest on file, the complainant shall have the right to have the decision reviewed by a further assessor. If the complainant wishes to exercise the right, he shall notify the Association in writing within 30 days of receiving notification of the decision, providing detailed grounds for review setting out which aspects of the decision he disagrees with and why.

(b) The investigating officer shall procure that the relevant person is notified that a review of the decision has been requested by the complainant and that accordingly the decision will be reviewed in accordance with this regulation.

(c) The further assessor shall be provided with the report of disciplinary allegations which was provided to the first assessor, the first assessor's reasons for his decision, the complainant's grounds for review and any further documentary evidence that has been obtained. The further assessor shall consider the report in accordance with regulations 6(1) to 6(3) and his decision shall be final.

7. Rest on file

(1) A determination made under regulation 4(2)(c)(ii), 4(3)(d)(ii) or 6(3)(a)(ii) above entails a decision to the effect that there is a case to answer against the relevant person in relation to the allegation(s) specified, but that it is not in the public interest for a report of disciplinary allegations to be made or the case to be heard by the Disciplinary Committee, as the case may be.

(2) In the event that a determination is made under regulation 4(2)(c)(ii), 4(3)(d)(ii) or 6(3)(a)(ii) above, the matter shall rest on the relevant person's file for a period of five years from the date of such determination.

(3) In the event of a subsequent complaint against the relevant person being made to the Association within this period of five years, the matter which has been rested on file may:

(a) be taken into account by an investigating officer or an assessor in determining how to deal with the subsequent complaint, even if it has already been taken into account in determining how to deal with another complaint brought subsequent to it; and/or

(b) be the subject of subsequent disciplinary action.

(4) In relation to rest on file decisions made by an assessor on or before 31 December 2013, or similar decisions made on or before that date by an investigating officer where he has closed a case but advised the relevant person that he believes that a disciplinary breach has occurred, such decisions may be taken into account for the purposes of regulation 7(3)(a) above, but not regulation 7(3)(b), at any stage within the five year period.

8. Consent orders

(1) At any time during the consideration of a complaint, the investigating officer may propose that a complaint be disposed of by way of consent order, subject to the following:

(a) The investigating officer must have conducted the appropriate level of investigation and/or enquiry so that he is satisfied that there is a case to answer against the relevant person and that there is a real prospect of a reasonable tribunal finding an allegation proved.

(b) The investigating officer must be satisfied that any proposed allegation, if found proved, would be unlikely to result in exclusion from membership or removal from the student register or affiliate register as appropriate.

(2) Subject to the requirements of regulation 8(1) above being met, the investigating officer shall notify the relevant person that he considers that the complaint may be suitable for disposal by way of consent order, and will invite the relevant person to provide a written response to the proposed method of disposal by a specified date, which may be extended at the discretion of the investigating officer.

(3) If the relevant person fails to respond to the notice referred to in regulation 8(2) above by the specified date, and/or indicates that he would not be agreeable to seeking to dispose of the complaint by way of consent order, the conciliation or investigation of the complaint shall proceed in accordance with regulation 4(2) or 4(3) above, as applicable.

(4) Subject to the relevant person providing written confirmation by the specified date of his agreement to seeking to dispose of the complaint by way of consent order as set out in regulation 8(2) above, a draft written consent order setting out the proposed terms shall be served on the relevant person, which must at least contain the following:

(a) the relevant facts;

(b) the relevant failings and/or breaches;

(c) the proposed sanction;

(d) the proposed level of costs (if any);

(e) any other relevant matter.

(5) If the relevant person admits to all of the failings and/or breaches set out, and agrees to the sanction, and costs (if any), proposed within the draft consent order, he shall provide the Association with a signed copy of the draft consent order within 21 days of being served with the same.

(6) If the relevant person fails to provide the Association with a signed copy of the draft consent order within 21 days of being served with the same in accordance with regulation 8(5) above, the conciliation or investigation of the complaint will proceed in accordance with regulation 4(2) or 4(3) above, as applicable.

(7) If the relevant person provides a signed copy of the draft consent order after the expiry of the 21 day deadline referred to in regulation 8(5) above, and up until the disciplinary case arising from the complaint is opened before the Disciplinary Committee, the investigating officer may in his absolute discretion reconsider whether the matter should proceed under the consent order provisions set out within regulation 8, having regard to all of the circumstances.

(8) Upon receipt of the signed draft consent order within 21 days of being served with the same, the Association will, as soon as is practicable, refer the matter to a Consent Orders Committee which shall determine whether, on the basis of the evidence before it, it is appropriate:

(a) to deal with the complaint by way of consent order in accordance with regulation 8(1) above; or

(b) to approve or reject the draft consent order.

(9) At any stage prior to the Consent Orders Committee making its determination as set out in regulation 8(8) above, either party may withdraw their agreement to the signed draft consent order by confirming such withdrawal in writing.

(10) If any or both parties withdraw their consent to the signed draft consent order in accordance with regulation 8(9) above, or if it is rejected by the Consent Orders Committee in accordance with regulation 8(8) above, the conciliation or investigation of the complaint will proceed in accordance with regulation 4(2) or 4(3) above, as applicable. In such circumstances, any admission made by the relevant person during the course of discussions relating to consent orders will be regarded for the purpose of any subsequent disciplinary proceedings arising from the complaint as without prejudice.

(11) The Consent Orders Committee has the power to approve any signed draft consent order setting out terms as to sanction, and costs (as applicable), against the relevant person which a Disciplinary Committee would have the power to make in accordance with regulations 13 and 15 below, save for a sanction of exclusion from membership or removal from the student register or affiliate register as appropriate.

(12) The Consent Orders Committee shall only reject the signed draft consent order if it is of the view that the admitted breaches would more likely than not result in exclusion from membership or removal from the student register or affiliate register as appropriate.

(13) If the Consent Orders Committee is satisfied that it is appropriate to deal with the complaint by way of consent order, but wishes the terms of the draft consent order to be amended, subject always to its powers set out at regulation 8(11) above, the Consent Orders Committee has the power to recommend amendments to the signed draft consent order to the Association and the relevant person, and to subsequently approve any amended order agreed by those parties.

(14) If the signed draft consent order is approved by the Consent Orders Committee, it constitutes a formal finding and order. In the event of a subsequent complaint against the relevant person being made to the Association, the approved consent order may be taken into account by an investigating officer in determining how to deal with the subsequent complaint. The approved consent order can also be taken into consideration at the relevant stage of any future Disciplinary Committee.

(15) All findings and orders of the Consent Orders Committee shall be published, naming the relevant person, as soon as practicable and in such manner as the Association thinks fit.

(16) There is no right of appeal against a consent order.

9. Referral to Disciplinary Committee and nomination of case presenter

(1) Notification

If an assessor decides to refer a case to the Disciplinary Committee:

(a) the investigating officer shall procure that a notice of the allegations is sent to the relevant person; and

(b) at any time up until the notice of hearing is served under regulation 10, the allegations referred shall be regarded as being in draft form only and may be amended by the Association without permission, provided that:

(i) such changes can be made without unfairness or prejudice to the relevant person; and

(ii) any amendments made shall be served on the relevant person as soon as practicable.

(2) Nomination of case presenter

As soon as practicable after referral, the Association shall nominate an individual ("the case presenter") to present the case against the relevant person to the Disciplinary Committee.

(3) Further enquiries

After any case has been referred to the Disciplinary Committee, an investigating officer may make such further enquiries as he shall consider appropriate in order to assist in the preparation of the case to the Disciplinary Committee.

(4) Referral back to the assessor

A case referred to the Disciplinary Committee may be referred back to the assessor if in the view of the case presenter it is appropriate in the interests of fairness for the assessor to be invited to reconsider his decision. In that event, the assessor shall be provided with any new information that has been obtained and shall have the same powers as he had in respect of his initial consideration of the case.

(5) Application to defer allegations

If at any time the case presenter is of the opinion that the Association should defer the hearing of the allegations for a period of time, the following procedure shall apply:

(a) the case presenter shall make an application, on notice to the relevant person, to the Chairman for the hearing of the allegations to be deferred on the ground that it is in the public interest to do so;

(b) the Chairman shall decide whether to grant or refuse the application, giving reasons for his decision, and may take advice from the legal adviser before making his decision;

(c) the parties shall be notified of the Chairman's decision within seven days and the reasons for his decision within 21 days or as soon as practicable thereafter;

(d) if the Chairman refuses the application, his decision will be reconsidered by the Disciplinary Committee at a hearing;

(e) if the Disciplinary Committee refuses the application, it may proceed to hear the case immediately thereafter, provided that all parties give their express consent. Failure by a party to give such consent shall not in itself constitute the basis for making a costs order against that party pursuant to regulation 15;

(f) the parties shall be notified of the Disciplinary Committee's decision within seven days and the reasons for its decision within 21 days or as soon as practicable thereafter.

(6) Application to withdraw allegations

If at any time the case presenter is of the opinion that the Association should withdraw any or all of the allegations against a relevant person, the following procedure shall apply:

(a) the case presenter shall make an application to the Chairman for any or all of the allegations to be withdrawn;

(b) the application may not be granted unless there is no real prospect of a reasonable tribunal finding the allegation(s) proved in light of the evidence or it is no longer in the public interest for the case to be heard by a Disciplinary Committee;

(c) the Chairman shall decide whether to grant or refuse the application, giving reasons for his decision, and may take advice from the legal adviser before making his decision;

(d) the parties shall be notified of the Chairman's decision within seven days and the reasons for his decision within 21 days or as soon as practicable thereafter;

(e) if the Chairman grants the application in respect of any or all of the allegations and one or more of the parties wishes to make submissions on costs, the issue of costs shall be determined by the Disciplinary Committee at a hearing;

(f) if the Chairman refuses the application, his decision will be reconsidered by the Disciplinary Committee at a hearing;

(g) if the Disciplinary Committee grants the application in respect of any or all of the allegations, it shall have the power to make orders for costs in accordance with regulation 15;

(h) if the Disciplinary Committee refuses the application, it may proceed to hear the case immediately thereafter, provided that all parties give their express consent. Failure by a party to give such consent shall not in itself constitute the basis for making a costs order against that party pursuant to regulation 15;

(i) the parties shall be notified of the Disciplinary Committee's decision within 7 days and the reasons for its decision within 21 days or as soon as practicable thereafter.

10. Disciplinary Committee: notices, case management and ancillary provisions

(1) Provision of documents and information by the Association

(a) On a case being referred to the Disciplinary Committee, the Association shall determine the date the case is to be heard and, subject to regulation 10(2) below, no later than 28 days before the date set, the relevant person shall be provided with a notice which complies with regulation 10(1)(b) below and a paper summarising the procedure before the Disciplinary Committee and the Association's disciplinary process.

(b) The said notice shall specify:

(i) the date, time and place fixed for the hearing of the case;

(ii) the allegation(s) under consideration;

(iii) the relevant person's right to attend the hearing and be represented;

(iv) the power of the Disciplinary Committee to proceed in the absence of the relevant person at the hearing;

(v) the relevant person's right to cross-examine any witnesses called by the Association and to call his own witnesses;

(vi) to the extent that the same has not already been provided under regulation 9(1) above, a summary of the case setting out the facts and matters relied on in support of the case and a copy of the evidence to be relied on in presentation of the case;

(vii) to the extent that the same has not already been provided under regulation 9(1) above, a list of witnesses whose evidence is relied upon by the Association, indicating those who have provided documentary evidence and those who have provided witness statements, whether in formal form or otherwise, or letters;

(viii) the names of any witnesses for the relevant person whose details have already been disclosed to the Association by the relevant person whom the Association requires to attend the hearing for cross-examination, identifying to what extent the Association disputes their evidence; and

(ix) that no later than 14 days before the hearing of his case the relevant person must notify the Association whether he intends to attend the hearing and call any witnesses, inviting him to indicate whether or not he accepts all or any of the allegations made and, if he accepts any of the allegations, inviting him further to make such statements in mitigation as he may wish to be drawn to the Disciplinary Committee's attention.

(c) For the avoidance of doubt, the information and notifications specified in regulations 9(1) and 10(1)(a) above may be provided at different times and supplemented as necessary from time to time.

(2) Short notice

In exceptional circumstances the Association may provide all or any of the documents referred to in regulations 9(1) and 10(1)(a) above to the relevant person less than 28 days before the date set for the hearing. The Disciplinary Committee shall consider at the outset the appropriateness of short notice and the degree of urgency and may, if it is of the view that it is necessary in the public interest as weighed against any prejudice to the relevant person, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.

(3) Case management powers

(a) A case management meeting may be convened at the request in writing of either party to the disciplinary proceedings provided that at least 14 days' notice is given to the other party (or such lesser period as the parties may agree).

(b) Case management meetings are private meetings called for the purpose of addressing procedural matters and attended by the Chairman, the legal adviser and the parties. The parties may attend in person or accompanied by their legal representatives, or by their legal representatives alone.

(c) The powers of the Chairman at a case management meeting shall include the power to order or direct:

(i) the filing and service of further evidence by either party, including expert evidence;

(ii) the provision of time estimates by each party and any dates witnesses would not be able to attend a hearing;

(iii) the lodging of a statement of agreed facts if any matters are not in dispute;

(iv) that each party is to state whether they wish to call any witnesses or cross-examine the other party's witnesses, including the author of any expert report that has been served;

(v) that a party call the author of any expert report that has been served;

(vi) that either party do state whether they intend to raise issues concerning the health of the relevant person and whether medical reports need to be obtained;

(vii) any other act or matter which will facilitate the fair and expeditious progress of the disciplinary proceedings, including the hearing itself.

(d) Upon the conclusion of the case management meeting the Association shall ensure that written confirmation of the directions and orders made shall be sent to the parties as soon as possible.

(4) Submission of documents and information by the relevant person

(a) Subject to any order or direction made at a case management meeting, no later than 14 days before the hearing of his case the relevant person must submit:

(i) if the allegation(s) are denied, a statement of defence;

(ii) such additional documentary evidence and witness statements, whether in formal form or otherwise, as he may wish to be drawn to the Disciplinary Committee's attention;

(iii) the names of any witnesses from the list provided by the Association that he requires to attend the hearing for cross-examination, explaining to what extent he disputes their evidence;

(iv) the names and addresses of any other witnesses whom he wishes to call in his defence and, if a witness statement has not already been provided, an explanation of the nature of the evidence they will be giving. For the avoidance of doubt, if any of the information provided pursuant to this regulation relates to a new witness, or new evidence of an existing witness, the Association will require such witnesses to attend the hearing for cross-examination unless it indicates otherwise; and

(v) confirmation as to whether he wishes to attend the hearing of the case against him.

(b) If there is a dispute as to whether a witness is required to attend to give oral evidence, the parties shall make written submissions to the Chairman who shall have the power to order the attendance of a witness or to make such other order as in his discretion he thinks fit. The decision of the Chairman shall be final.

(c) Evidence submitted less than 14 days prior to the hearing will only be considered by the Disciplinary Committee in exceptional circumstances having regard to the public interest, any prejudice to the Association, and the overall interests of justice.

(d) If the relevant person fails to comply with regulation 10(4)(a)(iv) above, he shall not be entitled to have witnesses attend the hearing save with the agreement of the case presenter or by order of the Chairman who shall give both parties an opportunity to make submissions on the point. The decision of the Chairman shall be final.

(e) If the relevant person indicates that he does not wish to attend, or fails to give an indication within the required deadline, the Association shall not be obliged to ensure the attendance of any witness at the hearing.

(5) Amendments to allegations

(a) Upon the application of either party or upon its own motion, at any stage in the proceedings the Disciplinary Committee or the Chairman may order that:

(i) one or more allegations be amended; and/or

(ii) one or more allegations be added;

provided that the relevant person is not prejudiced in the conduct of his defence.

(b) Any such application made in advance of the hearing shall, if reasonably practicable, be considered by the Chairman in accordance with this regulation. If such application is refused by the Chairman, it shall be reconsidered at the outset of the hearing by the Disciplinary Committee in accordance with regulation 10(5)(a) above. For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the application, and the Chairman's written reasons for refusing the application shall be provided to the Disciplinary Committee.

(c) Before making a decision, the Chairman or the Disciplinary Committee as appropriate shall invite representations from the parties.

(d) The Chairman or the Disciplinary Committee shall give written reasons for a decision to refuse or grant an application to amend the allegations.

(6) Representation

At the hearing of his case, the relevant person shall be entitled to be heard before the Disciplinary Committee and/or to be represented by such person as he may wish.

(7) Proceeding in the absence of the relevant person

Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Disciplinary Committee is satisfied that he has been served with the documents referred to in regulation 9(1) and/or 10(1) in accordance with regulation 22.

(8) Adjournments

(a) The relevant person or the case presenter may make a written application to the Disciplinary Committee that the hearing be adjourned to a future date. Such application shall be considered at the outset of the hearing and the Disciplinary Committee may in its absolute discretion agree to the application if it is of the view that it is justified in all the circumstances.

(b) Any such application made in advance of the hearing shall be considered as follows:

(i) If the application is made by the relevant person before the provision of documents in accordance with regulation 9(1) and/or 10(1), the Association may agree to it. If the Association opposes the application, it shall be considered by the Chairman in accordance with this regulation. If such application is refused by the Chairman, it shall be reconsidered at the outset of the hearing by the Disciplinary Committee in accordance with regulation 10(8)(a) above. For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the application, and the Chairman's written reasons for refusing the application shall be provided to the Disciplinary Committee.

(ii) If the application is made after the provision of documents in accordance with regulation 9(1) and/or 10(1), it shall if reasonably practicable be considered by the Chairman, who may in his absolute discretion accede to it if he is of the view that it is justified in all the circumstances. If such application is refused by the Chairman, it shall be reconsidered at the outset of the hearing by the Disciplinary Committee in accordance with regulation 10(8)(a) above. For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the application, and the Chairman's written reasons for refusing the application shall be provided to the Disciplinary Committee.

(c) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Chairman or the Disciplinary Committee may direct that the case should be adjourned to an appropriate date.

(d) For the avoidance of doubt, where the relevant person has already been served with the documents listed in regulation 9(1) and/or 10(1), an adjournment does not give rise to a requirement to re-serve them either 28 days before the date set or at all, save that the relevant person shall be notified of the time and place fixed for the adjourned hearing as soon as practicable..

(e) The Chairman or the Disciplinary Committee may give such directions or impose such conditions as may be determined upon the grant of an adjournment, including one or more of the following:

(i) that the relevant person produce any necessary documents and supply any other information and explanations relevant to the matter in question, whether by attendance upon reasonable notice before the Disciplinary Committee or otherwise;

(ii) that the relevant person allow any officer of the Association to enter his business premises on such notice (if any) as the Disciplinary Committee may think appropriate and interview any employee of the relevant person;

(iii) that the relevant person procure the attendance of any of his employees at specific premises, upon reasonable notice;

(iv) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the date of the order;

(v) that any additional evidence be served by the relevant person or the Association by a specified date.

(f) The Chairman or the Disciplinary Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning the allegations to which the relevant person is a party are pending.

(g) Before making a decision, the Chairman or the Disciplinary Committee as appropriate shall invite representations from the other party.

(h) The Chairman or the Disciplinary Committee shall give written reasons for a decision to refuse or grant a request for an adjournment.

(9) Case presenter

The case against the relevant person shall be presented to the Disciplinary Committee on behalf of the Association by the case presenter.

(10) Advisers to the Disciplinary Committee

All hearings of the Disciplinary Committee shall be attended by a legal adviser who shall:

(a) act as adviser to the Committee on all procedural and legal matters;

(b) retire with the Committee when it goes into private session;

(c) ensure that any advice given to the Committee in private is repeated in public and an opportunity given to the parties to make submissions on that advice;

(d) record the Committee's reasons for its decisions; and

(e) carry out any other activity commensurate with the role of legal adviser.

(11) Interim orders

Where the hearing of the case has been adjourned, the Disciplinary Committee may reconstitute itself as an Interim Orders Committee for the purpose of deciding whether to make one or more of the interim orders set out in The Chartered Certified Accountants' Interim Orders Regulations 2014, or vary or revoke the terms of an existing interim order.

(12) Power to refer to a health hearing

At any time before or during the hearing, the Disciplinary Committee may order that the hearing be adjourned and referred to a health hearing before a differently constituted Health Committee.

11. Disciplinary Committee: publicity and open hearings

(1) Open hearings

(a) Hearings of the Disciplinary Committee shall be open to the public unless the Committee determines upon the application of either party or upon its own motion that the public shall be excluded from attending all or part of any hearing at any time, including during the hearing of any case by it, on the grounds that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public.

(b) The Disciplinary Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its hearings and the procedure to be adopted in respect of any hearing shall, subject to the foregoing paragraph of this regulation, be such as the Disciplinary Committee in its absolute discretion shall determine.

(2) Exclusion of persons from a hearing

The Disciplinary Committee may exclude from any hearing, or limit the participation of, any person whose conduct, in the opinion of the Committee, is likely to disrupt the orderly conduct of the proceedings. For the avoidance of doubt, this includes the relevant person or his representative.

(3) Pre- and post-hearing publicity

(a) The Association shall give advance publicity of the proceedings of the Disciplinary Committee, including the hearing of any case by it and the name of the relevant person involved, in such manner as the Association thinks fit.

(b) Following a hearing the Association shall publish all findings and orders (as applicable) of the Disciplinary Committee, together with the reasons for the Disciplinary Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(c) The Insolvency Service may publish the names of holders or former holders of the Association's insolvency licence who are subject to an order made by the Disciplinary Committee, and details of the findings and/or orders made, in such publications and in such manner as it thinks fit. For the avoidance of doubt, the details contained in such publicity are not limited to those published by the Association pursuant to regulation 11(3)(b).

12. Disciplinary Committee: procedure and evidence at hearings

(1) General

Subject to this regulation 12 and to these regulations generally, the Disciplinary Committee shall conduct the hearing in its discretion having regard to the interests of justice, the public, of the relevant person, and of the profession as a whole.

(2) Evidence

(a) Subject to the requirements of justice and of fairness to the relevant person, a Disciplinary Committee considering any allegation may admit oral or documentary evidence whether or not such evidence would be admissible in a court of law. As a general principle, the Disciplinary Committee shall take into account the fact that any disputed oral evidence of a witness has not been tested in cross-examination when considering what weight, if any, should be attached to it.

(b) Where any witness who has been required to attend for cross-examination is not in attendance, the Disciplinary Committee shall continue to hear the case on the available evidence but may admit the written evidence of the witness if it is satisfied that it is in the interests of justice to do so, and if admitted shall attach such weight to the written evidence of the witness as it considers appropriate, taking into account the lack of opportunity given to challenge the contested evidence of the witness.

(c) The status of any criminal conviction, court judgment or finding of fact in any court proceedings is as set out in the bye-law 8 which was in force at the time the matters complained of took place, and the Disciplinary Committee shall apply the provisions of that bye-law to its proceedings.

(d) Subject to the requirements of the applicable bye-law 8, any other finding of fact in any civil proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere shall be admissible as prima facie evidence in the proceedings.

(3) Admissions

(a) At the hearing of his case, if the relevant person is in attendance he shall be invited to state whether or not he wishes to make any admissions.

(b) If the relevant person is not in attendance, the Disciplinary Committee shall consider any written response to the notice referred to in regulation 10(1) or any correspondence or note of conversation and determine whether it establishes the relevant person's wish to make any admissions.

(c) Where the facts of any allegation (or any part of an allegation) have been admitted by the member, the Chairman shall announce that such facts have been found proved.

(4) Procedure

(a) The case presenter shall open the Association's case and may present evidence in support of any of the facts and matters set out in the allegations, whether admitted or not admitted by the member. The case presenter shall be entitled to call witnesses in support.

(b) The relevant person may ask questions of the case presenter in order to clarify the case against him.

(c) The relevant person shall then be invited to respond by presenting his defence and may also call witnesses in support.

(d) Witnesses may be cross-examined by the relevant person and the case presenter. The case presenter may cross-examine the relevant person.

(e) The case presenter and the relevant person may present closing submissions with the relevant person speaking last.

(f) The Disciplinary Committee may at any time ask any question of the case presenter, the relevant person or any witness.

(g) At the conclusion of the evidence and submissions, the Disciplinary Committee will retire to consider its verdict. In deciding whether any of the disputed allegations have been proved, the standard of proof to be applied by the Disciplinary Committee shall be the balance of probabilities.

(h) The Disciplinary Committee will then return to announce its finding(s) in respect of each allegation giving brief reasons for those findings. Individual members of the Disciplinary Committee are not permitted to give a dissenting finding.

(i) If the Disciplinary Committee has found that any of the allegations has been proved, the relevant person will be invited if he is in attendance to make any statement in mitigation. If he is not in attendance, reference will be made to any statement in mitigation previously provided by the relevant person.

(5) Consideration of orders

(a) Before considering what orders to make, the Disciplinary Committee shall be informed of any other matter in respect of which the relevant person has been disciplined by the Association, and shall also take account of the arguments presented to it by the parties and the circumstances surrounding the misconduct or breach.

(b) At the conclusion of the hearing the Disciplinary Committee shall rescind any interim order made by the Interim Orders Committee in relation to the allegations under consideration.

13. Orders and sanction

Subject to its obligation to consider the least serious disposal first (including the taking of no further action), the Disciplinary Committee may make any one or more of the following orders against the relevant person or may order that no further action be taken where it determines that none of the following orders is appropriate in the circumstances.

(1) If the relevant person is a member:

(a) that he be excluded from membership, which may be combined with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may not be longer than five years;

(b) that he be severely reprimanded, reprimanded or admonished;

(c) that he be fined a sum not exceeding £50,000;

(d) that he pay compensation to the complainant of a sum not exceeding £1,000, such sum to reflect any inconvenience suffered by the complainant as a result of the relevant person's failure to observe proper standards rather than any claim for damages recoverable in legal proceedings;

(e) that he waive or reduce his fees to the complainant relating directly to the proven allegation by such sum as shall be specified in the order;

(f) any of the orders set out in regulation 13(8) below where applicable.

(2) If the relevant person is a firm:

(a) that it be severely reprimanded, reprimanded or admonished;

(b) that it be fined a sum not exceeding £50,000;

(c) that it pay compensation to the complainant of a sum not exceeding £1,000, such sum to reflect any inconvenience suffered by the complainant as a result of the relevant person's failure to observe proper standards rather than any claim for damages recoverable in legal proceedings;

(d) that it waive or reduce its fees to the complainant relating directly to the proven allegation by such sum as shall be specified in the order;

(e) any of the orders set out in regulation 13(8) below where applicable.

(3) If the relevant person is a registered student:

(a) that he be removed from the student register, which may be combined with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may not be longer than five years;

(b) that the period as shall be specified in the order shall not be reckoned as part of the student's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;

(c) that he be declared ineligible for such period as shall respectively be specified in the order to sit for such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order;

(d) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;

(e) that he be severely reprimanded, reprimanded or admonished;

(f) any of the orders set out in regulation 13(8) below where applicable.

(4) If the relevant person is an affiliate:

(a) that he be removed from the affiliate register, which may be combined with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may not be longer than five years;

(b) that the period as shall be specified in the order shall not be reckoned as part of the affiliate's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;

(c) that he be declared ineligible to be admitted to membership for such period as shall be specified in the order;

(d) that he be severely reprimanded, reprimanded or admonished;

(e) any of the orders set out in regulation 13(8) below where applicable.

(5) If the relevant person is a former member or former firm or non-member who has undertaken to be bound by these regulations:

(a) that he be severely reprimanded, reprimanded or admonished;

(b) that he be fined a sum not exceeding £50,000;

(c) that he pay compensation to the complainant of a sum not exceeding £1,000, such sum to reflect any inconvenience suffered by the complainant as a result of the relevant person's failure to observe proper standards rather than any claim for damages recoverable in legal proceedings;

(d) that he waive or reduce his fees to the complainant relating directly to the proven allegation by such sum as shall be specified in the order;

(e) any of the orders set out in regulation 13(8) below where applicable.

(6) If the relevant person is a former registered student:

(a) that he be severely reprimanded, reprimanded or admonished;

(b) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;

(c) any of the orders set out in regulation 13(8) below where applicable.

(7) If the relevant person is a former affiliate:

(a) that he be severely reprimanded, reprimanded or admonished;

(b) any of the orders set out in regulation 13(8) below where applicable.

(8) In all cases:

(a) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be considered by the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the effective date of the order;

(b) only in conjunction with an order under regulation 13(8)(a) above, that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions as are specified in the order, until an order of the Admissions and Licensing Committee has been made;

(c) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee.

(9) In the case of a relevant person who is an affiliate or registered student, that any future application for membership be referred to the Admissions and Licensing Committee.

(10) In the case of former members, former affiliates and former registered students, that any application for readmission to membership or to the affiliate register or the student register be referred to the Admissions and Licensing Committee.

(11) In the case of former members, former affiliates and former registered students, that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may be no longer than 5 years.

14. Consequential orders

The Committee shall invite the relevant person and the Association to address it upon consequential issues, including: (a) costs; (b) publicity, having regard to the provisions of regulations 11 and 17; and (c) the effective date of its orders.

15. Costs

(1) Costs to be paid by the relevant person to the Association

The Disciplinary Committee may direct that the relevant person pay such sum by way of costs to the Association as the Disciplinary Committee considers appropriate. In considering what sum shall be paid, if any, the Disciplinary Committee shall take into account any effect the relevant person's actions in relation to the conduct of the case have had upon the costs of dealing with the case, whether beneficial or otherwise.

(2) Costs to be paid by the Association to the relevant person

Where none of the allegations against a relevant person has been found proved, the Disciplinary Committee may direct that the Association pay a sum to the relevant person by way of contribution to his costs incurred in connection with the case, in such amount as the Disciplinary Committee shall in its discretion think fit.

(3) Costs to be paid by the Association to the complainant

In exceptional circumstances, the Disciplinary Committee may direct that the Association pay a sum to the complainant by way of contribution to his costs incurred in relation to the case, in such amount as the Disciplinary Committee shall in its discretion think fit.

16. Compensation

Any compensation ordered to be paid by the relevant person to the complainant under regulation 13(1)(d), 13(2)(c) or 13(5)(c) above shall be remitted to the Association, for onward transmission to the complainant. For the avoidance of doubt, the relevant person's obligation to pay compensation is actionable at the suit of the Association.

17. Notice

(1) The Disciplinary Committee shall announce its finding(s) and/or order at the hearing.

(2) Written notice of the finding(s) and of the terms of the order shall be given to the relevant person within 14 days of the hearing. Such notice will be accompanied by a written statement of the reasons for the decision of the Disciplinary Committee, unless, in the circumstances, a longer period for the delivery of such reasons is necessary.

18. Appeal

(1) Subject to regulations 18(2) and (3) below, a relevant person against whom any finding or order has been made by the Disciplinary Committee may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in the Appeal Regulations.

(2) No appeal shall lie solely on the question of costs save as provided by the Appeal Regulations.

(3) No appeal shall lie against any conditions imposed upon the grant of an adjournment.

(4) The Association may appeal against a finding or order made by the Disciplinary Committee, subject to the conditions and procedures set out in the Appeal Regulations.

19. Correction of errors

(1) Slip rule

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

(b) The investigating officer, the assessor or the Chairman may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(c) If notice of the application is given to the other party, the application may be considered by the investigating officer, the assessor or the Chairman without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(d) If the application is opposed, it should, if practicable, be heard by the same investigating officer, assessor or Disciplinary Committee which made the decision, order and/or written statement of reasons for the decision which is or are the subject of the application. The Appeal Committee may not conduct a re-hearing of the case or a reconsideration of the orders made.

(e) The investigating officer, the assessor or the Disciplinary Committee may of his or its own motion amend the wording of his or its own decision, order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

(2) New evidence

The Disciplinary Committee may at any stage and in its absolute discretion amend, vary or rescind any of its orders or decisions where new evidence comes to light which fundamentally invalidates the same, but may only do so to the advantage of a relevant person.

20. Effective date

(1) An order made by the Disciplinary Committee under regulation 13 shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations unless:

(a) the relevant person duly gives notice of appeal prior to the expiry of such period in which case it shall become effective (if at all) as described in the Appeal Regulations; or

(b) the order is made under regulation 13(1)(a), 13(3)(a), 13(4)(a) or 13(8)(b) and the Disciplinary Committee directs that in the interests of the public the order should have immediate effect, in which case it shall have immediate effect subject to the order being varied or rescinded on appeal as described in the Appeal Regulations.

(2) All orders or directions made by the Disciplinary Committee or its Chairman that are not governed by the provisions of regulation 20(1) above, including orders to publicity made under regulation 11, shall have immediate effect.

21. Ill health

Where at any stage it appears to the Association, the investigating officer, the assessor, the Disciplinary Committee or the Interim Orders Committee that a relevant person, either during the course of an investigation or after a case has been referred to the Disciplinary Committee, may be too ill to participate in the disciplinary process, the provisions of the Health Regulations shall apply.

22. Service of notices and documents

(1) General

(a) Any notice or other document required to be given to or served on a relevant person may be provided to him personally, sent by post or courier to his or its registered address or to any other address nominated in writing by the relevant person for service of notices and correspondence for the purpose of these regulations, or sent by email as provided for under regulation 22(2) below. If the relevant person has no registered address any notice or document should be sent by post or courier his address last known to the Association.

(b) Any notice or document required to be given to or served on the complainant may be provided to him personally, sent by post or courier to the address nominated in writing by the complainant for service of notices and correspondence for the purpose of these regulations, or sent by email as provided for under regulation 22(2) below.

(c) Any notice or document required to be given to or served on the Association may be provided by sending it by post or courier to the investigating officer at the principal office of the Association or sending it by email as provided for under regulation 22(2) below.

Any such notice or document so sent pursuant shall be deemed to have been given or served within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(2) Service by email

(a) Subject to the following provisions of this regulation 22(2), where a notice or document is to be served by the Association on a relevant person or complainant it may be served by email provided that the relevant person or complainant has previously indicated in writing to the Association that he is willing to accept service by email, has provided his email address to the Association in whatever form the Association deems appropriate, and has stipulated whether there are any limitations on his agreement to accept service by electronic means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

(b) For the purposes of regulation 22(2)(a) above, notice of willingness to accept service by email may be sent by the relevant person or complainant to the email address specified in the Association's communication to the relevant person or complainant. Unless and until the relevant person or complainant sends a further notice stating that he is no longer willing to accept service by email, service by the Association of any notice or document to the email address stipulated by the relevant person or complainant shall be deemed to be valid service for the purposes of this regulation.

(c) The Association is willing to accept service of any notice or document by email to the email address specified in the Association's communication to the relevant person or complainant. Any email attachment must not exceed 20,000 KB in size.

(d) Where a document is served by electronic means, the party serving the document (be it the Association, the relevant person or the complainant) need not in addition send or deliver a hard copy.

(e) The email address given by the relevant person and/or the complainant and/or the Association for the purposes of this regulation shall be deemed to be at the address for service.

(f) Service by email is deemed to be effective within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(g) For the avoidance of doubt, service by email may only validly be effected under this regulation 22(2) for the purposes of the current or concurrent disciplinary proceedings and any appeal.

23. Payment

Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless the Council otherwise agrees) and, where the relevant person the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

24. Attendance

A relevant person may attend a hearing of the Disciplinary Committee where he is the relevant person concerned notwithstanding that he may previously have indicated that he did not intend to attend.

25. Hearings

(1) Proceedings of the Committee shall take place in London unless a direction is made to the contrary.

(2) Where a case is of particular interest to a particular government or government agency, or primarily affects persons resident in a particular country, either the Disciplinary Committee or the Secretary may direct that the hearing before the Disciplinary Committee take place in that country.

26. Public interest cases

(1) The Association shall refer a case to FRC where:

(a) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and

(b) it considers that a relevant person may have committed an act of misconduct in relation to the case; and

(c) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other FRC participant in relation to the conduct in question.

(2) Where the Association receives notice that FRC has decided to deal with a case relating to a relevant person, either in response to a referral under regulation 26(1) or of its own motion, the Association shall suspend any investigation relating to the case and, upon FRC's request, provide to FRC any such documentary information in its possession or control which it can lawfully provide.

(3) IAASA may undertake its own investigation into a case relating to a relevant person, if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.

(4) It is the duty of all relevant persons to co-operate with FRC and IAASA during the course of any investigations they may undertake, and abide by and satisfy any disciplinary sanction imposed by FRC. A failure to co-operate fully with FRC or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

(5) Regulation 11(4) of the Membership Regulations shall apply to disciplinary orders made by FRC save that the reference therein to any amount 'payable to the Association' shall for these purposes read 'payable to FRC'. For the avoidance of doubt, the failure to satisfy in full any amount imposed by way of fine or costs payable to FRC shall result in removal from the register of members, affiliates or registered students of the Association.

27. Waiver

The Disciplinary Committee may dispense with any requirement of these regulations in respect of notices, service or time in any case where it appears to the Committee to be in the interests of justice, having regard to all the circumstances, provided it is satisfied that neither the relevant person nor the Association has been prejudiced in the conduct of his or its case.

28. Extension of time

The time limits set out in regulations 4(1)(c), 4(2)(e) and 5(2) may not be extended unless required in order to comply with legislation.

2.8

The Chartered Certified Accountants' Appeal Regulations 2014

Amended 1 January 2017

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Appeal Regulations 2014. These regulations as amended shall come into force on 1 January 2017.

(2) These regulations shall apply to all persons who are subject to bye-laws 8 to 11 or otherwise agree to be bound by them.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

Admissions and Licensing Committee, Disciplinary Committee, Appeal Committee, Health Committee and *Interim Orders Committee* mean committees of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

appellant means a party applying for or having been granted permission to appeal against a finding or order of the Disciplinary Committee or the Health Committee, or an order of the Admissions and Licensing Committee;

assessor means an independent person so appointed by the Appointments Board in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 and referred to in these regulations;

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

Authorisation Regulations means The Chartered Certified Accountants' Authorisation Regulations 2014;

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

case presenter has the meaning ascribed to it in regulation 9(3);

Chairman means any person carrying out the function of a Chairman of the Appeal Committee, and the functions of the Chairman may, in respect of any application made prior to the final hearing of the case, be exercised by any appropriately appointed person notwithstanding that he or she is not scheduled to sit at the final hearing;

complainant means any person or persons who bring to the attention of the Association any matters, acts or circumstances which appear to render a relevant person liable to disciplinary action;

Complaints and Disciplinary Regulations means The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014;

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

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

finding means, in the context of a decision of the Disciplinary Committee, the decision as to whether an allegation made against the relevant person has been found proved or not proved;

FRC means the Financial Reporting Council;

Health Regulations means The Chartered Certified Accountants' Health Regulations 2014;

hearings officer means any officer of the Association with responsibility for the administration of the Disciplinary Committee, Interim Orders Committee, Health Committee, Admissions and Licensing Committee or Appeal Committee;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

investigating officer has the meaning set out in the Complaints and Disciplinary Regulations;

legal adviser means an independent person so appointed by the Appointments Board and qualified in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 and referred to in these regulations;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

Membership Regulations means The Chartered Certified Accountants' Membership Regulations 2014;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

order means any order of the Admissions and Licensing Committee made under the Authorisation Regulations or the Membership Regulations, any order of the Disciplinary Committee made under the Complaints and Disciplinary Regulations, any order of the Health Committee made under the Health Regulations, and any order of the Appeal Committee made under these regulations, and includes any direction as to the payment of a sum in respect of costs to or by the Association and as to the publicity to be given to any order and shall include where the context requires more than one such order;

relevant person means a member and other person (whether an individual or a firm and including a registered student) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them;

respondent means the person who is the opposite party in the appeal brought by the appellant;

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

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

(3) The Interpretation Act 1978 of the United Kingdom shall apply to these regulations in the same way as it applies to an enactment, and, where the regulations relate to a matter which is derived from or related to the law of the Republic of Ireland, the Interpretation Act 2005 of the Republic of Ireland shall apply to these regulations in the same way as it applies to an enactment.

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

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

3. Appeal

(1) Any relevant person who is the subject of a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee may apply for permission to appeal within 21 days after service of the written statement of the reasons for the decision of such Committee (or such longer period as the Chairman of the Appeal Committee may allow where there is good reason for the appellant having failed to meet the time limit).

(2) In exceptional circumstances, where there is a clear public interest in the matter being reviewed, the Association may apply for permission to appeal against a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee within 14 days after service of the written statement of the reasons for the decision of such Committee.

(3) No appeal shall lie solely on the question of costs unless the order was perverse or unreasonable, or compliance with it would result in severe financial hardship to the relevant person.

(4) No appeal shall lie against any conditions imposed upon the grant of an adjournment.

4. Applying for permission to appeal

(1) An application for permission to appeal shall be made by filing with the hearings officer an application notice in the form specified in regulation 5(1).

(2) Where an application notice is filed by the Association, the hearings officer shall notify the respondent and supply a copy to him within 14 days. The respondent may submit grounds of opposition within 21 days thereafter.

5. Form of application notice and grounds of appeal

(1) The application notice:

(a) shall be in writing addressed to the hearings officer;

(b) shall state the appellant's name and address;

(c) shall state whether the appellant has authorised a representative to act for him in the appeal and, if so, state the representative's name and address;

(d) shall state whether the appellant intends to appear at the hearing of the appeal if permission is granted;

(e) in the case of an appeal from a finding or order made by the Disciplinary Committee, shall state whether the appellant appeals against one or more of its findings and orders or one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Disciplinary Committee failing;

(f) in the case of an appeal from an order made by the Admissions and Licensing Committee, shall state which of the orders is appealed and shall state the orders which the appellant wishes the Appeal Committee to make;

(g) in the case of an appeal from a finding or order made by the Health Committee, shall state whether the appellant appeals against one or more of its findings and orders or one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Health Committee failing;

(h) shall state which of the grounds of appeal set out in this regulation 5 the appellant is putting forward in support of his application (and the grounds so stated shall not thereafter be amended except with the leave of the Appeal Committee);

(i) shall state the reasons in support of each ground of appeal; and

(j) may include any documents which the appellant wishes the Appeal Committee to take into account.

(2) An appeal by a person who is the subject of a finding or order made by the Disciplinary Committee may be upheld only upon one or more of the following grounds:

(a) the Committee made an error of fact or law, which would have altered one or more of the Committee's findings or orders;

(b) the Committee misinterpreted any of the Association's bye-laws or regulations or any relevant guidance or technical standards, which would have altered one or more of the Committee's findings or orders;

(c) the Committee failed to take into account certain relevant evidence, which would have altered one or more of the Committee's findings or orders;

(d) there is new evidence not previously available, which would have altered one or more of the Committee's findings or orders;

(e) one or more of the Committee's orders is disproportionate and/or unreasonable in light of its findings;

(f) one or more of the Committee's findings and/or orders are unjust because of a serious procedural irregularity in the proceedings.

(3) An appeal by a person who is the subject of an order made by the Admissions and Licensing Committee may be upheld only upon one or more of the following grounds:

(a) the Committee made an error of fact or law, which would have altered one or more of the Committee's orders;

(b) the Committee misinterpreted any of the Association's bye-laws or regulations or any relevant guidance or technical standards, which would have altered one or more of the Committee's orders;

(c) the Committee failed to take into account certain relevant evidence, which would have altered one or more of the Committee's orders;

(d) there is new evidence not previously available, which would have altered one or more of the Committee's orders;

(e) one or more of the Committee's orders is disproportionate and/or unreasonable;

(f) one or more of the Committee's orders is unjust because of a serious procedural irregularity in the proceedings.

(4) An appeal by a person who is the subject of a finding or order made by the Health Committee may be upheld only upon one or more of the following grounds:

(a) the Committee made an error of fact or law, which would have altered one or more of the Committee's orders;

(b) the Committee failed to take into account certain relevant evidence, which would have altered one or more of the Committee's orders;

(c) there is new evidence not previously available, which would have altered one or more of the Committee's orders;

(d) one or more of the Committee's orders is disproportionate and/or unreasonable;

(e) one or more of the Committee's orders is unjust because of a serious procedural irregularity in the proceedings.

(5) An appeal by the Association against a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee may be upheld only upon the ground that the decision was one that no Committee acting reasonably would have made.

6. Permission to appeal

(1) Decision where the appellant is a person who is the subject of a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee

(a) Where the application notice has been filed by a person who is the subject of a finding or order made by the Disciplinary Committee, permission to appeal may be granted only if the appeal would have a real prospect of success on one or more of the grounds under regulation 5(2) that are set out in the appellant's application notice.

(b) Where the application notice has been filed by a person who is the subject of an order made by the Admissions and Licensing Committee, permission to appeal may be granted only if the appeal would have a real prospect of success on one or more of the grounds under regulation 5(3) that are set out in the appellant's application notice.

(c) Where the application notice has been filed by a person who is the subject of a finding or order made by the Health Committee, permission to appeal may be granted only if the appeal would have a real prospect of success on one or more of the grounds under regulation 5(4) that are set out in the appellant's application notice.

(2) Decision where the appellant is the Association

Where the application notice has been filed by the Association, permission to appeal may be granted only if:

(a) there is a clear public interest in the finding and/or order being reviewed; and

(b) the appeal would have a real prospect of success on the ground set out in regulation 5(5).

(3) Initial consideration of the application notice

(a) An application notice, whether filed by the Association or by any other party, shall be considered by the Chairman.

(b) The Chairman may grant or refuse permission to appeal. If permission is granted, the Chairman must specify the grounds upon which permission has been granted.

(c) Before making a decision under this regulation 6(3), or in conjunction with such a decision, the Chairman may make such directions as he deems to be necessary or desirable. Failure by a party to comply with one or more of the Chairman's directions may result in a costs order against that party pursuant to regulation 12.

(d) The Chairman may not grant permission to appeal solely on the question of costs unless regulation 3(3) and regulation 6(1) or (2) (as the case may be) are satisfied.

(e) The Chairman may of his own motion amend the application notice to add one or more of the grounds of appeal set out in regulation 5(2), 5(3) or 5(4) as applicable.

(f) The Chairman must give written reasons at the time his decision is made, which shall address each of the grounds of appeal set out in the application notice. The written reasons shall be provided to the parties by the hearings officer within 21 days thereafter.

(g) If the Chairman refuses permission to appeal:

(i) where the application notice filed pursuant to regulation 4(1) related solely to the question of costs, the Chairman's decision is final;

(ii) in all other cases, the appellant may request that his application notice be reconsidered by the Appeal Committee in accordance with regulation 6(4). Such request:

(aa) must be filed with the hearings officer within 28 days after service of the Chairman's written reasons for refusing permission (or such longer period as the Chairman of the Appeal Committee which would reconsider the application notice may allow where there is good reason for the appellant having failed to meet the time limit); and

(bb) must be supported by written grounds setting out which aspects of the Chairman's decision he disagrees with and why.

(iii) The Chairman who refused permission shall not sit on any Appeal Committee convened in relation to the case.

For the avoidance of doubt, this regulation does not apply if permission has been granted in relation to any of the grounds of appeal set out in regulation 5(2), 5(3) or 5(4).

(h) If the Chairman grants permission to appeal:

(i) where permission is granted solely on the question of costs, and there is no reconsideration of the application notice by the Appeal Committee pursuant to regulation 6(3)(g)(ii), the Chairman shall proceed to make a decision on the appeal and his decision shall be final;

(ii) in all other cases, the appeal shall be heard by the Appeal Committee in accordance with regulation 7 and the Chairman may sit on that Appeal Committee. If permission has been granted on some grounds but not others, the appellant may request that the latter be reconsidered by the Appeal Committee at the hearing of his appeal. Such request must be filed with the hearings officer within 28 days after service of the Chairman's written reasons for granting permission and must be supported by written grounds setting out which aspects of the Chairman's decision he disagrees with and why.

(i) If the Chairman grants permission to appeal an order which was made with immediate effect, he may also grant a stay of the order if it is justified in all the circumstances.

(4) Reconsideration of the application notice by the Appeal Committee

(a) In the event that a request complying with regulations 6(3)(g)(ii) above is filed, the application notice shall be reconsidered by the Appeal Committee on the papers in private without a hearing; or, if the appellant or respondent requests to be heard, at a hearing. If the application notice is being reconsidered on the papers, the Appeal Committee may at any time direct that the matter should be adjourned for reconsideration at a hearing in order to give the parties an opportunity to make oral submissions.

(b) For the avoidance of doubt, no application notice shall be reconsidered by the Appeal Committee unless, in the opinion of the Chairman, the request complies with regulation 6(3)(g)(ii)(bb).

(c) The Appeal Committee shall be supplied with:

(i) all the documents which had been placed before the Committee whose finding and/or order is the subject of the application notice;

(ii) the notice of the Committee's finding and/or order;

(iii) the statement of the Committee's reasons for its decision;

(iv) the application notice and any documents submitted with it;

(v) the Chairman's reasons for refusing permission;

(vi) the applicant's grounds for asking the Appeal Committee to reconsider the application notice;

(vii) any written submissions that may have been made by the respondent at this time;

(viii) any other documents or information which the Appeal Committee may request.

(d) The Appeal Committee may grant or refuse permission to appeal. If permission is granted, the Appeal Committee must specify the grounds upon which permission has been granted.

(e) Before making a decision under this regulation 6(4), or in conjunction with such a decision, the Appeal Committee may make such directions as it deems to be necessary or desirable. Failure by a party to comply with one or more of the Appeal Committee's directions may result in a costs order against that party pursuant to regulation 12.

(f) The Appeal Committee may not grant permission to appeal solely on the question of costs unless regulation 3(3) and regulation 6(1) or 6(2) are satisfied.

(g) If the appellant so requests, the Appeal Committee may grant permission to substitute one or more of the grounds of appeal set out in regulation 5(2), 5(3) or 5(4) as applicable for any ground of appeal submitted by the appellant.

(h) The Appeal Committee may of its own motion amend the application notice to add one or more of the grounds of appeal set out in regulation 5(2), 5(3) or 5(4) as applicable.

(i) If the Appeal Committee refuses permission to appeal, the Committee's decision is final.

(j) If the Appeal Committee grants permission to appeal, that same Committee may proceed to hear the appeal immediately thereafter, or at such convenient time as the Committee may direct, provided that all parties to the appeal give their express consent. Failure by a party to give such consent shall not in itself result in a costs order against that party pursuant to regulation 12.

(5) Notice of the decision

(a) Within 14 days after the Appeal Committee's decision to grant or refuse permission, written notice of the decision shall be given to the parties. Where permission to appeal has been granted, the notice shall state upon which of the grounds within regulation 5(2), 5(3) or 5(4) as applicable permission has been granted.

(b) Within 14 days after the Appeal Committee's decision, the parties shall be given copies of the documents supplied to the Appeal Committee under regulation 6(4)(c) if they have not already been supplied.

(c) A statement of the reasons for the Appeal Committee's decision, which shall address each of the grounds of appeal set out in the application notice, shall be given to the parties within 21 days after the decision, or such longer period as may be necessary in the circumstances.

7. The appeal

The grounds of appeal upon which permission to appeal has been granted, and the reasons for granting permission, shall be considered by the Appeal Committee at a hearing except where the appeal is withdrawn by the appellant.

8. Preparation for the appeal hearing

(1) Further enquiries

Where the appeal is from a finding and/or order of the Disciplinary Committee or the Health Committee, an investigating officer may make such further enquiries as he shall consider appropriate in order to assist in the preparation of the case to the Appeal Committee. It shall be the duty of the person who is the subject of the decision under appeal to co-operate fully with such enquiries and a failure by him to do so shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

(2) Submissions, documents and evidence

(a) The appellant and respondent may submit such written submissions and additional documentary evidence as they may wish to be drawn to the Appeal Committee's attention, provided that any such written submissions and documentary evidence must be submitted not less than 14 days before the hearing of the appeal.

(b) Written submissions and documents submitted less than 14 days before the hearing will only be considered by the Appeal Committee in exceptional circumstances.

(c) No later than 14 days prior to the hearing of his case the appellant must confirm whether he wishes to attend the appeal hearing.

(3) Witnesses

(a) Where permission to appeal has been granted upon the ground set out in regulation 5(2)(d), 5(3)(d) or 5(4)(c), no later than 14 days prior to the hearing of his case the appellant must submit:

(i) the names of any witnesses on behalf of the Association that he requires to attend for cross-examination, explaining to what extent he disputes their evidence in light of the new evidence; and

(ii) the names of any witnesses on his behalf that he wishes to call, explaining the nature of the new evidence they will be giving. For the avoidance of doubt, the Association will require such witnesses to attend the hearing for cross-examination unless it indicates otherwise.

(b) If there is a dispute as to whether a witness is required to attend, the parties shall make written submissions to the Chairman who shall have the power to order the attendance of a witness or to make such other order as in his discretion he thinks fit. The decision of the Chairman shall be final.

(c) If the appellant fails to comply with regulation 8(3)(a)(i) and/or (ii), he shall forego the right to have witnesses attend the hearing save at the discretion of the parties or by order of the Chairman who shall give both parties an opportunity to make submissions on the point. The decision of the Chairman shall be final.

(d) If the appellant indicates that he does not wish to attend, or fails to give an indication within the required deadline, the Association shall not be obliged to ensure the attendance of any witness at the hearing.

9. Notice, representation and adjournments

(1) Notice

(a) Subject to regulation 9(1)(b) below, the Association shall provide the parties with no less than 28 days prior written notice of the time and place of the hearing of the appeal.

(b) The parties may be provided with less than 28 days prior written notice of the hearing. The Appeal Committee shall consider at the outset the appropriateness of short notice including the degree of urgency and may, in its absolute discretion, if it is of the view that it is necessary in the public interest as weighed against any prejudice to the relevant person, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.

(2) Proceeding in the absence of a party

The appeal may be heard in the absence of a party provided that the Appeal Committee is satisfied that he has been served with no less than 28 days prior written notice of the date set for the hearing or, in the case of an urgent hearing, that proceeding with the hearing is in the public interest.

(3) Representation

(a) At the hearing of the appeal, the person who is the subject of the finding or order under appeal shall be entitled to be heard before the Appeal Committee and/or to be represented by such person as he may wish.

(b) The Association shall be represented by such person as it may nominate (the "case presenter").

(4) Advisers to the Appeal Committee

(a) All hearings of the Appeal Committee shall be attended by a legal adviser. The legal adviser shall:

(i) act as adviser to the Committee on all procedural and legal matters;

(ii) retire with the Committee when it goes into private session;

(iii) ensure that any advice given to the Committee in private is repeated in public and an opportunity given to the parties to make submissions on that advice;

(iv) record the Committee's reasons for its decisions; and

(v) carry out any other activity commensurate with the role of legal adviser.

(b) At a hearing concerning a party's state of health, the Appeal Committee may instruct a medical expert to act as its medical adviser.

(5) Adjournments

(a) A party may make a written request to the Appeal Committee that the hearing be adjourned to a future hearing. Such request will be considered at the outset of the hearing and the Appeal Committee may, in its absolute discretion, agree to the request.

(b) Any such request made in advance of the hearing shall be considered as follows.

(i) If the request is made after the provision of notice in accordance with regulation 9(1), it shall be considered by the Chairman, who may in his absolute discretion agree to the request. If such request is refused by the Chairman, it shall be considered at the outset of the hearing by the Appeal Committee in accordance with regulation 9(5)(a). For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the request, and the Chairman's written reasons for refusing the request shall be provided to the Appeal Committee.

(ii) If the request is made by the person who is the subject of the finding or order under appeal before the provision of notice in accordance with regulation 9(1), the Association may agree to the request. If the Association opposes the request, it shall be considered by the Chairman in accordance with this regulation. If such request is refused by the Chairman, it shall be considered at the outset of the hearing by the Appeal Committee in accordance with regulation 9(5)(a). For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the request, and the Chairman's written reasons for refusing the request shall be provided to the Appeal Committee.

(c) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Appeal Committee may itself direct that the case should be adjourned.

(d) The Chairman or Appeal Committee may give such directions or impose such conditions as he or it may determine upon the grant of an adjournment.

(e) The Appeal Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning a relevant matter are pending to which the person who is the subject of the finding or order under appeal is a party.

(f) Before making a decision, the Chairman or Appeal Committee as appropriate shall invite representations from the other party.

(g) The Chairman and the Appeal Committee shall give written reasons for a decision to refuse or grant a request for an adjournment.

10. The hearing

(1) Constitution of Appeal Committee

The Chairman who considered the application notice in accordance with regulation 6(3) may hear the appeal if he had granted permission to appeal. He shall not be permitted to hear the appeal if he had refused permission to appeal.

(2) Burden and standard of proof

On the hearing of any appeal it shall be for the appellant to satisfy the Appeal Committee that the grounds of the appeal are made out. To the extent that the appeal turns on matters of fact, the standard of proof to be applied by the Appeal Committee shall be the balance of probabilities.

(3) Amendment of grounds of appeal

If the appellant so requests, or of its own motion, at any time during the hearing the Appeal Committee may amend the grounds of appeal which it is considering to:

(a) replace any ground of appeal upon which permission to appeal had been granted with one or more of the grounds of appeal set out in regulation 5(2), 5(3) or 5(4) as applicable;

(b) add one or more of the grounds of appeal set out in regulation 5(2), 5(3) or 5(4) as applicable, including any ground upon which permission to appeal had not been granted.

(4) Presentations

The appellant shall present his case first, followed by the respondent. The appellant then has a right of reply.

(5) Witnesses

Pursuant to regulation 8(3), witnesses may only be called if permission to appeal has been granted upon the ground set out in regulation 5(2)(d), 5(3)(d) or 5(4)(c). Any such witnesses shall be liable to cross-examination by the other party. The Appeal Committee may ask questions of either party and their witnesses (if any) at any time.

11. Orders of Appeal Committee

(1) On the conclusion of the hearing of the appeal, the Appeal Committee shall consider its decision on the appeal.

(2) In the case of an appeal against both one or more of the findings and one or more orders of the Disciplinary Committee, the Appeal Committee may do any one or more of the following:

(a) affirm, vary or rescind any findings of the Disciplinary Committee;

(b) affirm, vary or rescind any order of the Disciplinary Committee;

(c) substitute any other order which the Disciplinary Committee could have made;

(d) in relation to any findings and/or orders that have been rescinded, order that the matters be heard afresh by the Disciplinary Committee.

(3) In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Appeal Committee may do one or more of the following:

(a) affirm, vary or rescind any order of the Disciplinary Committee;

(b) substitute any other order which the Disciplinary Committee could have made;

(c) in relation to any orders that have been rescinded, order that the matters be heard afresh by the Disciplinary Committee.

(4) In the case of an appeal against an order of the Admissions and Licensing Committee, the Appeal Committee may make such order as it sees fit in respect of the appeal.

(5) In the case of an appeal against both one or more of the findings and one or more orders of the Health Committee, the Appeal Committee may do any one or more of the following:

(a) affirm, vary or rescind any findings of the Health Committee;

(b) affirm, vary or rescind any order of the Health Committee;

(c) substitute any other order which the Health Committee could have made;

(d) in relation to any findings and/or orders that have been rescinded, order that the matters be heard afresh by the Health Committee.

(6) In the case of an appeal against an order of the Health Committee, the Appeal Committee may do one of the following:

(a) affirm, vary or rescind the order of the Health Committee;

(b) substitute any other order which the Health Committee could have made;

(c) in relation to any orders that have been rescinded, order that the matters be heard afresh by the Health Committee.

12. Costs

In this regulation 12, reference to "the appeal" includes reconsideration of the application notice by the Appeal Committee in accordance with regulation 6(4).

(1) Costs to be paid by the appellant to the Association

Where the appellant is a person who is the subject of a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee, the Appeal Committee may direct the appellant to pay to the Association by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Appeal Committee shall take into account (and without limiting its discretion in any way) any effect the appellant's actions in relation to the conduct of the appeal have had upon the costs of dealing with the appeal, whether beneficial or otherwise.

(2) Costs to be paid by the Association to the appellant

Where the appellant is a person who is the subject of a finding or order made by the Disciplinary Committee, the Admissions and Licensing Committee or the Health Committee as the case may be, and the Appeal Committee has wholly rescinded a finding or order of such Committees, the Appeal Committee may direct the Association to pay a sum to the appellant by way of contribution to his costs incurred in connection with the case and the appeal in such amount as the Appeal Committee shall in its discretion decide.

(3) Costs to be paid by the Association to the complainant

Where the appeal is against a finding or order of the Disciplinary Committee or of the Health Committee, the Appeal Committee may in exceptional circumstances direct the Association to pay a sum to a complainant by way of contribution to his costs incurred with the case in such amount as the Appeal Committee shall in its discretion think fit.

(4) Costs to be paid by the Association to the respondent

Where the Association is the appellant and has not been successful on all the grounds of its appeal, the Appeal Committee may direct that the Association pay to the respondent by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate.

13. Effect on costs of withdrawal of appeal

(1) Costs of the complainant

Where the appeal is against a finding or order of the Disciplinary Committee or of the Health Committee and is withdrawn by the appellant, the Appeal Committee may in exceptional circumstances direct the Association to pay a sum to the complainant by way of contribution to his costs incurred in the case in such amount as the Appeal Committee shall in its discretion think fit.

(2) Costs of the respondent to be covered by the appellant

(a) If at any time prior to the conclusion of the hearing of the appeal the appellant makes a request to withdraw the appeal, and the respondent makes an application for costs, the Appeal Committee shall make such order as it sees fit in respect of costs. In particular, the Appeal Committee may order the appellant to pay to the respondent by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Appeal Committee shall take into account (but without limiting its discretion in any way) any effect that the appellant's actions in relation to the conduct of the appeal and its withdrawal have had upon the costs of dealing with the appeal, whether beneficial or otherwise.

(b) Applications for costs under this regulation 13(2) may be considered without a hearing, if the parties agree, or by such mode of hearing (including a telephone hearing) as the Appeal Committee may direct.

14. Notice

(1) The Appeal Committee shall announce its decision at the hearing.

(2) Written notice of the orders made shall be given to the relevant person within 14 days after the hearing. Such notice will be accompanied by a written statement of the reasons for the decision of the Appeal Committee, unless, in the circumstances, a longer period for the delivery of such reasons is necessary.

15. Correction of errors

(1) Slip rule

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

(b) The Chairman may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(c) If notice of the application is given to the other party, the application may be considered by the Chairman without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(d) If the application is opposed, it should if practicable be heard by the same Appeal Committee which made the orders and/or written statement of reasons for the decision which are the subject of the application. The Appeal Committee may not conduct a re-hearing of the case or a reconsideration of the orders made.

(e) The Appeal Committee may of its own motion amend the wording of its own orders and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

(2) New evidence

The Appeal Committee may at any stage and in its absolute discretion amend, vary or rescind any of its orders or decisions where new evidence comes to light which fundamentally invalidates the same, but may only do so to the advantage of a relevant person.

16. Effective date

(1) An order of the Admissions and Licensing Committee, Disciplinary Committee or Health Committee in respect of which the Chairman has refused permission to appeal shall take effect as follows:

(a) where the order was made with immediate effect, on the date the relevant Committee made the order;

(b) where the Chairman's decision is final pursuant to regulation 6(3)(g)(i), on the date of the Chairman's decision;

(c) in all other cases, 28 days after service of the Chairman's written reasons for refusing permission, unless pursuant to regulation 6(3)(g)(ii) the appellant has by that date filed a request that his application notice be reconsidered by the Appeal Committee.

(2) In all other cases in which an appeal, or application for permission to appeal, against an order of the Admissions and Licensing Committee, Disciplinary Committee or Health Committee is determined or dismissed otherwise than by an order made by the Appeal Committee, the order of the Admissions and Licensing Committee, Disciplinary Committee or Health Committee shall take effect as follows:

(a) where the order was made with immediate effect, on the date the relevant Committee made the order;

(b) in all other cases, 28 days after the appeal or application for permission to appeal was determined or dismissed.

(3) Any order made by the Appeal Committee shall take effect from the date it is made (that is, for the avoidance of doubt, the date its decision is announced and not the date it is formally notified to the appellant) unless the Appeal Committee, in its absolute discretion, directs that it shall take effect as from some other date (not being earlier than the date of the finding or order under appeal) as shall be specified in the order of the Appeal Committee.

17. Publicity

(1) The Association shall give advance publicity of the proceedings of the Appeal Committee, including the hearing of any case by it and the name of the relevant person involved, in such manner as the Association thinks fit.

(2) In the case of an appeal against findings or orders made by the Disciplinary Committee, all orders and any findings made by the Appeal Committee shall be published, together with the reasons for the Appeal Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(3) In the case of an appeal against an order of the Admissions and Licensing Committee:

(a) all orders and any findings made by the Appeal Committee shall be published, together with the reasons for the Appeal Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit;

(b) in the event that the relevant person relinquishes his certificate before a hearing under this regulation takes place, details of that fact and of any consequential orders made by the Appeal Committee shall be published, together with the reasons for the Appeal Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(4) In the case of an appeal against findings or orders of the Health Committee:

(a) all orders and any findings made by the Appeal Committee shall be published, together with the reasons for the Appeal Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit;

(b) any matters against the relevant person which had been referred to the Admissions and Licensing Committee, Disciplinary Committee or Appeal Committee prior to the health hearing shall be set out in the publicity.

(5) The Insolvency Service may publish the names of holders or former holders of the Association's insolvency licence who are subject to an order made by the Appeal Committee, and details of the order made, in such publications and in such a manner as it thinks fit. For the avoidance of doubt, the details contained in such publicity are not limited to those published by the Association pursuant to regulation 17(2) to (4).

18. Open hearings

(1) Save where otherwise specified in these regulations, hearings of the Appeal Committee shall be open to the public unless the Appeal Committee determines upon the application of either party or upon its own motion that the public shall be excluded from attending all or part of any hearing at any time, including during the hearing of any case by it, on the grounds that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public.

(2) Appeals from orders or findings of the Health Committee shall be heard in private, but the Appeal Committee's order shall be subject to publicity in accordance with regulation 17(4) above.

(3) The Appeal Committee may establish such procedures as it deems necessary or desirable in connection with attendance by the public at its hearings and the procedure to be adopted in respect of any hearing shall, subject to the foregoing paragraphs of this regulation, be such as the Appeal Committee in its absolute discretion so determines.

19. Service of notices and documents

(1) General

(a) Any notice or other document required to be given to or served on a relevant person may be provided to him personally, sent by post or courier to his or its registered address or to any other address nominated in writing by the relevant person for service of notices and correspondence for the purpose of these regulations, or sent

by email as provided for under regulation 19(2) below. If the relevant person has no registered address any notice or document should be sent by post or courier to his address last known to the Association.

(b) Any notice or document required to be given to or served on the complainant may be provided to him personally, sent by post or courier to the address nominated in writing by the complainant for service of notices and correspondence for the purpose of these regulations, or sent by email as provided for under regulation 19(2) below.

(c) Any notice or document required to be given to or served on the Association may be provided by sending it by post or courier to the principal office of the Association addressed to the hearings officer or sending it by email as provided for under regulation 19(2) below.

Any such notice or document so sent pursuant shall be deemed to have been given or served within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(2) Service by email

(a) Subject to the following provisions of this regulation 19(2), where a notice or document is to be served by the Association on a relevant person or complainant it may be served by email provided that the relevant person or complainant has previously indicated in writing to the Association that he is willing to accept service by email, has provided his email address to the Association in whatever form the Association deems appropriate, and has stipulated whether there are any limitations on his agreement to accept service by electronic means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

(b) For the purposes of regulation 19(2)(a) above, notice of willingness to accept service by email may be sent by the relevant person or complainant to the email address specified in the Association's communication to the relevant person or complainant. Unless and until the relevant person or complainant sends a further notice stating that he is no longer willing to accept service by email, service by the Association of any notice or document to the email address stipulated by the relevant person or complainant shall be deemed to be valid service for the purposes of this regulation.

(c) The Association is willing to accept service of any notice or document by email to the email address specified in the Association's communication to the relevant person or complainant. Any email attachment must not exceed 20,000 KB in size.

(d) Where a document is served by electronic means, the party serving the document (be it the Association, the relevant person or the complainant) need not in addition send or deliver a hard copy.

(e) The email address given by the relevant person and/or the complainant and/or the Association for the purposes of this regulation shall be deemed to be at the address for service.

(f) Service by email is deemed to be effective within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.

(g) For the avoidance of doubt, service by email may only validly be effected under this regulation 19(2) for the purposes of the current or concurrent appeal proceedings. For the avoidance of doubt, this regulation is to be read in conjunction with regulation 22(2)(g) of the Complaints and Disciplinary Regulations.

20. Payment

Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless the Council otherwise agrees) and, where the appellant who is the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

21. Attendance

A party may attend a hearing of the Appeal Committee where he is a party concerned notwithstanding that he may previously have indicated that he did not intend to attend.

22. Hearings

Where a case is of particular interest to a particular government or government agency, or primarily affects persons resident in a particular country, either the Appeal Committee or the Secretary may direct that the hearing before the Appeal Committee take place in that country. In the absence of any such direction, hearings before the Appeal Committee shall take place in London.

23. Public interest cases

(1) The Association shall refer a case to FRC where:

(a) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and

(b) it considers that a relevant person may have committed an act of misconduct in relation to the case; and

(c) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other FRC participant in relation to the conduct in question. This regulation 23(1)(c) is unlikely to be satisfied in the case of an appeal unless evidence of the conduct in question was not available prior to the hearing of the Disciplinary Committee.

(2) Where the Association receives notice that FRC has decided to deal with a case relating to a relevant person, either in response to a referral under regulation 23(1)(a) or of its own motion, the Association shall suspend any investigation relating to the case and, upon FRC's request, provide to FRC any such documentary information in its possession or control which it can lawfully provide.

(3) IAASA may undertake its own investigation into a case relating to a relevant person if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.

(4) It is the duty of all relevant persons to co-operate with FRC and IAASA during the course of any investigations they may undertake, and abide by and satisfy any disciplinary sanction imposed by FRC. A failure to co-operate fully with FRC or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

(5) Regulation 11(4) of the Membership Regulations shall apply to disciplinary orders made by FRC save that the reference therein to any amount 'payable to the Association' shall for these purposes read 'payable to FRC'. For the avoidance of doubt, the failure to satisfy in full any amount imposed by way of fine or costs payable to FRC shall result in removal from the register of members, affiliates or registered students of the Association.

(6) For the avoidance of doubt, the provisions of this regulation 23 apply notwithstanding that the Association did not exercise its powers under regulation 25 of the Complaints and Disciplinary Regulations.

24. Transitional provisions

(1) The grounds of appeal available to the appellant shall be those in force at the date of the finding or order which is the subject of the application notice.

(2) The test to be applied when considering whether permission to appeal should be granted shall be the test in force at the date of the application notice.

25. General

The procedures to be adopted in relation to any hearing of the Appeal Committee shall, subject to the foregoing regulations, be such as the Appeal Committee shall, in its absolute discretion, determine. In particular, the Appeal Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its hearings.

26. Waiver

The Appeal Committee may dispense with any requirement of these regulations in respect of notices, service or time in any case where it appears to the Committee to be in the interests of justice, having regard to all the circumstances, provided it is satisfied that neither the relevant person nor the Association has been prejudiced in the conduct of his or its case.

2.9

The Chartered Certified Accountants' Interim Orders Regulations 2014

Amended 1 January 2017

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Interim Orders Regulations 2014. These regulations as amended shall come into force on 1 January 2017.

(2) These regulations shall apply to all persons subject to bye-laws 8 to 11 or who otherwise agree to be bound by them.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

Admissions and Licensing Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

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

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

case presenter has the meaning ascribed to it in the Complaints and Disciplinary Regulations;

Chairman means any person carrying out the function of a Chairman of the Interim Orders Committee, and the functions of the Chairman may, in respect of any application made prior to the final hearing of an application for an interim order or a review of such order, be exercised by any appropriately appointed person notwithstanding that he or she is not scheduled to sit at the final hearing;

Complaints and Disciplinary Regulations means The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014;

Council means the Council of the Association from time to time and includes any committee to which the Council has delegated any of its functions, responsibilities and powers;

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

Disciplinary Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

interim order means any interim order of the Interim Orders Committee made under these regulations;

Interim Orders Committee means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

investigating officer has the meaning ascribed to it in the Complaints and Disciplinary Regulations;

legal adviser means an independent person so appointed by the Appointments Board and qualified in accordance with The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

registered student has the meaning ascribed to it in The Chartered Certified Accountants' Membership Regulations 2014;

relevant person means a member and other person (whether an individual or a firm and including a registered student) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them;

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

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

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

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

3. Interim orders

(1) At any time when it considers that it has grounds to do so, the Association may apply to the Interim Orders Committee for an interim order against a relevant person.

(2) An application for an interim order made by the Association shall be in writing, shall set out the basis on which the application is made and shall provide supporting evidence.

(3) In the event that a hearing before the Disciplinary Committee or Admissions and Licensing Committee is adjourned, then upon the application of the Association or upon its own motion the Disciplinary Committee or Admissions and Licensing Committee, as the case may be, may reconstitute itself as an Interim Orders Committee for the purpose of deciding whether or not to make an interim order, or vary or revoke the terms of an existing interim order; and the provisions of regulation 5(5) shall operate so as to govern the extent to which written notice of any such application may be dispensed with.

4. Basis of application

An Interim Orders Committee is empowered to make an interim order only if satisfied that it is necessary to do so in order to protect the public.

5. Notice of hearings

(1) Save in very urgent cases, at least 14 days' notice of the hearing before the Interim Orders Committee shall be given by the Association to the parties.

(2) The notice shall specify:

(a) the date, time and place fixed for the hearing of the application for an interim order;

(b) the basis on which the application is made, and (to the extent to which it has not already been provided) the evidence in support;

(c) the relevant person's right to attend the hearing and be represented;

(d) the power of the Interim Orders Committee to proceed in the absence of the relevant person; and

(e) a summary of the powers of the Interim Orders Committee.

(3) For the avoidance of doubt, the information and notifications specified in regulation 5(2) above may be provided at different times and supplemented as necessary from time to time.

(4) Save in very urgent cases, the relevant person shall give the Association and the Interim Orders Committee at least 7 days' advance notice of whether he intends to attend the hearing, of any statement of defence to the application, and of any evidence on which he wishes to rely.

(5) The Interim Orders Committee may proceed to hear the application for an interim order on whatever terms as to notice that it considers appropriate in all the circumstances. In the event that, for reasons of urgency, notice of the hearing under regulation 5(1) or documents under regulations 5(2) or 5(4) have been provided to the relevant person or to the Association at short notice or there has been whole or partial non-compliance with the provisions of these regulations, the Interim Orders Committee shall consider at the outset the appropriateness of short notice, the degree of urgency and whether prejudice has been caused to any party. If satisfied that it is necessary in the public interest to do so, it may order that the hearing proceed, or that it be adjourned for such period and subject to such directions as it sees fit.

(6) Where the relevant person fails to attend a hearing, the application may be heard in his absence provided the Interim Orders Committee is satisfied that appropriate notice of the hearing has been given in accordance with regulation 5(1) or 5(5) above.

6. Publicity and open hearings

(1) Exclusion of persons from a hearing

The Interim Orders Committee may exclude from any hearing any person whose conduct, in the opinion of the Committee, is likely to disrupt the orderly conduct of the proceedings. For the avoidance of doubt, this includes the relevant person.

(2) Attendance of the public

(a) Subject to regulation 6(2)(b), the Interim Orders Committee shall sit in private.

(b) The Interim Orders Committee may hold a hearing in public where it considers that to do so would be appropriate, having regard to all the circumstances, including the public interest.

(3) Pre- and post-hearing publicity

(a) The Association shall give advance publicity of the proceedings of the Interim Orders Committee, including the hearing of any case by it and the name of the relevant person involved, in such manner as the Association thinks fit.

(b) In the event that an order is made by the Interim Orders Committee, the Association shall publish:

(i) the order, and

(ii) the reasons for the Interim Orders Committee's decision in whole or in summary form,

naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

(c) In the event that an order is not made by the Interim Orders Committee, the Association shall publish the reasons for the Interim Orders Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as the Association thinks fit.

7. Procedure at hearings

(1) Upon the hearing of the application for an interim order, the case presenter shall open the case for the Association, explaining the basis on which the application for an interim order is being made and referring the Interim Orders Committee to such documents and other evidence as are relevant to the issue of whether it is necessary to make an interim order to protect the public.

(2) No person shall give oral evidence at the hearing unless the Interim Orders Committee considers that such evidence is necessary in order to enable them fairly and properly to discharge their functions in light of regulation 4 above.

(3) At the hearing the case presenter and the relevant person may, subject to regulation 7(2) above, call witnesses and put any questions to any person so called.

(4) Both the case presenter and the relevant person, or his representative, may make closing addresses to the Interim Orders Committee with the relevant person speaking last.

(5) Upon the hearing of the application the Interim Orders Committee may not make any findings in relation to the allegations but may make an interim order under regulation 8 below if satisfied that the test set out under regulation 4 above is fulfilled.

(6) Upon the hearing of the application the Interim Orders Committee:

(a) may give such directions as it deems to be necessary or desirable in addition to or instead of an interim order; and

(b) at any time during the hearing, may direct that the hearing should be adjourned for such period and subject to such conditions as it sees fit.

(7) The Interim Orders Committee shall announce its decision at the conclusion of the hearing including details of any order it sees fit to make.

(8) The Interim Orders Committee shall give reasons for its decision.

(9) Notice of the decision of the Interim Orders Committee and of the reasons for it shall be sent to the parties on the day of the decision, or as soon as reasonably practicable thereafter.

8. Orders of the Interim Orders Committee

(1) Subject to regulations 4 and 7(5) above, the Interim Orders Committee may make one or more of the following interim orders against the relevant person:

(a) in the case of a relevant person who is an individual, that the relevant person's membership, registered student or affiliate status be suspended until further order of the Interim Orders Committee or of the Disciplinary Committee;

(b) that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions as are specified in the order, until further order of the Interim Orders Committee or the Disciplinary Committee or the Admissions and Licensing Committee;

and shall have power to make orders for costs in accordance with regulation 10 below.

(2) An order of the Interim Orders Committee shall have immediate effect.

9. Review

(1) An interim order shall:

(a) be subject to review by the Interim Orders Committee at intervals of no longer than six months after the date of the order or such shorter period as the Interim Orders Committee may order;

(b) automatically expire 18 months after the date of the order unless the Interim Orders Committee makes a further order.

(2) The relevant person or the Association may request that an interim order be reviewed before the scheduled date of the next review on the grounds that there is information which indicates that the order should be varied or revoked. Any such request shall be considered by the Chairman of the Interim Orders Committee who shall determine whether the Interim Orders Committee should review the order before the scheduled date of the next review. For the avoidance of doubt, the Chairman's decision shall be final.

(3) If both parties agree, the Interim Orders Committee may conduct reviews in private and without a hearing attended by the parties.

(4) Subject to regulation 9(3) above, reviews shall be conducted at a hearing and regulations 6 and 7 above shall apply.

(5) Upon review of the interim order, the Interim Orders Committee may:

(a) confirm the order;

(b) revoke the order or any conditions imposed by it;

(c) vary the order or any conditions imposed by it;

(d) replace the order with one or more other interim orders set out in regulation 8 above for the remainder of the duration of the order.

10. Costs

(1) Costs to be paid by the relevant person to the Association

The Interim Orders Committee may direct that the relevant person pay such sum by way of costs to the Association as the Interim Orders Committee considers appropriate. In considering what sum shall be paid by way of costs, if any, the Interim Orders Committee shall take into account any effect the relevant person's actions in relation to the conduct of the case have had upon the costs of dealing with the case, whether beneficial or otherwise.

(2) Costs to be paid by the Association to the relevant person

Where no order is made under regulation 8(1) above, the Interim Orders Committee may direct that the Association pay a sum to the relevant person by way of contribution to his costs incurred in connection with the interim order application in such amount as the Interim Orders Committee shall in its discretion think fit.

11. Correction of errors

Slip rule

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

(2) The Chairman may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(3) If notice of the application is given to the other party, the application may be considered by the Chairman without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(4) If the application is opposed, it should, if practicable, be heard by the same Interim Orders Committee which made the decision, order and/or written statement of reasons for the decision which is or are the subject of the application. The Appeal Committee may not conduct a re-hearing of the case or a reconsideration of the orders made.

(5) The Interim Orders Committee may of its own motion amend the wording of its own decision, order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

2.10

The Chartered Certified Accountants' Health Regulations 2014

Amended 1 January 2016

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Health Regulations 2014. These regulations as amended shall come into force on 1 January 2016.

(2) These regulations shall apply to all persons subject to bye-laws 8 to 11 or who otherwise agree to be bound by them.

(3) These regulations may be amended by resolution of the Council.

2. Interpretation

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

Admissions and Licensing Committee, Disciplinary Committee, Appeal Committee, Health Committee and *Interim Orders Committee* mean committees of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

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

Authorisation Regulations means The Chartered Certified Accountants' Authorisation Regulations 2014;

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

case presenter has the meaning ascribed to him in the Complaints and Disciplinary Regulations;

Complaints and Disciplinary Regulations means The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014;

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

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

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

member means an individual admitted to membership of the Association pursuant to the bye-laws and includes, where applicable, those entitled to be designated as Fellows of the Association;

registered student has the meaning ascribed to it in The Chartered Certified Accountants' Membership Regulations 2014;

relevant person means a member and other person (whether an individual or a firm and including a registered student) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them;

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

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to "he" or "his" shall include "it" or "its" where the context requires.

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

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

3. Applicability

These regulations apply where it appears that a relevant person:

(a) during the course of an investigation into any complaint or after a case has been referred to the Disciplinary Committee, may be too ill to participate in the disciplinary process;

(b) at any time before or during a hearing before the Admissions and Licensing Committee under regulation 6 of the Authorisation Regulations, may be too ill to participate in the proceedings; or

(c) after a case has been referred to the Appeal Committee, may be too ill to participate in the appeal process but does not wish to withdraw his appeal.

4. Ill health

(1) Assertion by relevant person

Where it is asserted on behalf of a relevant person that he is too ill to participate in the process or proceedings, the relevant person shall submit within seven days:

(a) medical evidence to support the assertion, including a prognosis and indication as to when, if at all, the relevant person would be well enough to participate in the process or proceedings;

(b) if he has been or is a principal of a firm, details of any arrangements he has made for the continuity of his practice during the period of his ill health; and

(c) if he holds a certificate or licence from the Association, medical evidence addressing the extent to which his asserted ill health impacts upon his fitness to carry out the activities authorised by that certificate or licence and his ability to conduct his practice with reasonable care and skill.

(2) Examination of the relevant person

(a) If at any time it appears to the Association that the circumstances set out in regulation 3 may have arisen, the Association may:

(i) invite the relevant person to be examined by a doctor or other medical professional of the Association's choice;

(ii) invite the relevant person to sign a form of consent, granting the doctor or other medical professional of the Association's choice access to his clinical records for the purpose of the examination and report.

(b) The Association shall disclose to the relevant person any written opinion or information received by it pursuant to its invitation, and shall give him a reasonable opportunity to respond.

(c) Any failure on the part of the relevant person to co-operate with the process set out at (a) above shall be taken into account in the assessment of that person's ill health, and in assessing the weight to be given to the evidence filed on his behalf.

(3) Deferral or withdrawal of the disciplinary process

If it appears to the Association that the circumstances set out in regulation 3 may have arisen:

(a) the investigating officer shall have discretion to defer the investigation, in accordance with regulation 4(5) of the Complaints and Disciplinary Regulations;

(b) the case presenter may apply to the Health Committee to withdraw the allegations against the relevant person completely or defer proceeding with the allegations for a period of time up to 12 months or rest the allegations on file.

(4) Referral to health hearing

Without prejudice to the foregoing provisions of this regulation, at any time at the request of the Association, the investigating officer or the assessor, or by order of the Disciplinary Committee, Admissions and Licensing Committee, Interim Orders Committee or Appeal Committee, the question of the relevant person's fitness to participate in the process or proceedings shall be considered by the Health Committee at a health hearing.

5. Health hearing: procedure and evidence

(1) Burden of proof

It shall be for the person or body making the application, or, if the issue is referred by the Disciplinary Committee, the Interim Orders Committee or the Appeal Committee upon its own motion, the Association, to satisfy the Health Committee that the relevant person is unfit to participate in the process or proceedings.

(2) Attendance

If the relevant person is too ill to be present at the hearing, he may attend by way of telephone or video link.

(3) Proceeding in the absence of the relevant person

Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Health Committee is satisfied that he has been provided with any documentary evidence submitted by the Association pursuant to regulation 5(4).

(4) Documentary evidence

The Association and the relevant person may submit documentary evidence (medical or otherwise) not less than seven days prior to the health hearing. Evidence submitted less than seven days prior to the hearing will only be considered by the Health Committee in exceptional circumstances, having regard to the public interest, any prejudice to the Association, and the overall interests of justice.

(5) The Health Committee may hear oral evidence at the hearing from witnesses whose written evidence has been submitted under regulation 5(4) above, if the evidence is not agreed by the parties, or if it considers that supplementary oral evidence or the questioning of a witness will assist it in discharging its functions fairly and properly.

(6) Expert evidence

The Health Committee may at any stage instruct an expert to act as its medical adviser.

6. Health hearing: determinations

(1) Fitness to participate

During the health hearing, the Health Committee shall first determine whether it is satisfied that the relevant person is unfit to participate in the process or proceedings, and:

(a) in the event that he is found to be fit to participate, the Health Committee shall make a finding to that effect, and shall make any directions required to enable the process or proceedings to continue as soon as reasonably practicable;

(b) in the event that he is found to be unfit, the Health Committee shall further consider the matters set out below.

(2) Withdrawal, rest on file, deferral

(a) The Health Committee shall determine, having regard to the nature of the allegations against the relevant person and the supporting evidence, whether the process or proceedings shall be withdrawn, rest on file or be deferred for such period as it sees fit (but for no longer than 12 months).

(b) Where an application for permission to appeal or an appeal is pending before the Appeal Committee or its Chairman, the Health Committee may determine that the proceedings shall be withdrawn, rest on file or be deferred in accordance with (a) above; or it may determine that the appeal process shall continue, where it appears to the Health Committee to be in the interests of justice, having regard to all the circumstances.

(3) Consequential orders

(a) In the event that the proceedings are deferred under regulation 6(2), the Health Committee shall further consider whether to make one or more of the following orders:

(i) that any certificate and/or licence issued to the relevant person by the Association and/or the relevant person's eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations be suspended or made subject to conditions for a specified period or until further order of the Health Committee;

(ii) in the case of a relevant person who is an individual, that the relevant person's membership, registered student or affiliate status be suspended or made subject to conditions for a specified period or until further order of the Health Committee;

(iii) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be considered by the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the effective date of the order;

(iv) only in conjunction with an order under (iii) above, that the relevant person's certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions as are specified in the order, until an order of the Admissions and Licensing Committee has been made;

(v) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee;

(vi) in the case of a relevant person who is an affiliate or registered student, that any future application for membership be referred to the Admissions and Licensing Committee.

(b) In the event that the proceedings are withdrawn or rested on file under regulation 6(2), the Health Committee shall further consider whether to make one or more of the following orders:

(i) that any certificate and/or licence issued to the relevant person by the Association and/or the relevant person's eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations be withdrawn or made subject to conditions;

(ii) in the case of a relevant person who is an individual, that the relevant person's membership, registered student or affiliate status be made subject to conditions;

(iii) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee;

(iv) in the case of a relevant person who is an affiliate or registered student, that any future application for membership be referred to the Admissions and Licensing Committee.

(c) In considering whether or not to make any order under regulation 6(3)(a) or (b) above, the Health Committee may consider both the seriousness of the case in relation to the relevant person and the extent to which it appears that his ill health impairs his ability to carry out the activities authorised by any certificate or licence held by the relevant person and conduct his practice with reasonable care and skill. It shall make such orders as it is satisfied are necessary to protect the public.

(4) Orders made with immediate effect

The Health Committee shall specify whether any elements of any orders made under regulation 6(3) above are to have immediate effect regardless of any appeal that may be made by the relevant person.

7. Rest on file

(1) A determination made under regulation 6(2) that proceedings should rest on file entails a decision to the effect that there is a case to answer against the relevant person in relation to the matters specified but that it is not in the public interest for the case to be heard by the Admissions and Licensing Committee, Disciplinary Committee or Appeal Committee, as the case may be.

(2) The matter shall rest on the relevant person's file for a period of five years from the date of such determination.

(3) In the event of a subsequent matter against the relevant person coming to the attention of the Association within this period of five years, any matter which has been rested on file may:

(a) be taken into account by the Association or assessor or regulatory assessor in determining how to deal with the subsequent matter, even if it has already been taken into account in determining how to deal with another complaint brought subsequent to it; and/or

(b) be the subject of subsequent disciplinary or regulatory action.

8. Notice

(1) The Health Committee shall announce its findings and orders at the hearing.

(2) Written notice of the findings and of the terms of the orders shall be given to the relevant person within 14 days of the hearing. Such notice will be accompanied by a written statement of the reasons for the decision of the Health Committee, unless, in the circumstances, a longer period for the delivery of such reasons is necessary.

9. Reviews

(1) Orders to defer the proceedings made under regulation 6(2) and orders made under regulation 6(3) shall be reviewed by the Health Committee not more than 12 months after the date when the order was imposed or last reviewed, or at an earlier date if the Association or relevant person requests an earlier review.

(2) In the event that the Association and the relevant person have reached agreement upon the future conduct of the proceedings, a review may be carried out by the Chairman of the Committee.

(3) If at the end of a three year period, or at any time thereafter, the relevant person is still unfit to participate in the proceedings, the Health Committee may order his exclusion from membership or removal from the relevant students' or affiliates' register.

10. Publicity

(1) Health hearings shall be heard in private unless the Health Committee determines upon the application of either party or upon its own motion that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the relevant person, and require all or part of the hearing to be held in public.

(2) Irrespective of regulation 10(1) all findings and orders (as applicable) of the Health Committee shall be published by the Association, together with the reasons for the Health Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable and in such manner as the Association thinks fit.

(3) Any matters against the relevant person which had been referred to the Admissions and Licensing Committee, Disciplinary Committee or Appeal Committee prior to the health hearing shall be set out in the publicity.

11. Right of appeal

There shall be a right of appeal from an order made by the Health Committee at a health hearing, in accordance with regulation 18 of the Complaints and Disciplinary Regulations and the provisions of the Appeal Regulations.

12. Costs

(1) Costs to be paid by the relevant person to the Association

Subject to regulation 12(2) below, the Health Committee may direct that the relevant person pay such sum by way of costs to the Association as the Health Committee considers appropriate. In considering what sum shall be paid by way of costs, if any, the Health Committee shall take into account any effect the relevant person's actions in relation to the conduct of the case have had upon the costs of dealing with the case, whether beneficial or otherwise.

(2) Costs to be paid by the Association to the relevant person

Where the issue of ill health has been raised by the Association or by a Committee upon its own motion, and the relevant person has been found fit to participate in the proceedings under regulation 6(1)(a), the Health Committee may direct that the Association pay a sum to the relevant person by way of contribution to his costs incurred in connection with the proceedings in the Health Committee, in such amount as the Health Committee shall in its discretion think fit.

13. Correction of errors

Slip rule

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

(2) The Chairman may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(3) If notice of the application is given to the other party, the application may be considered by the Chairman without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(4) If the application is opposed, it should, if practicable, be heard by the same Health Committee which made the decision, order and/or written statement of reasons for the decision which is or are the subject of the application. The Appeal Committee may not conduct a re-hearing of the case or a reconsideration of the orders made.

(5) The Health Committee may of its own motion amend the wording of its own decision, order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

Section 3

Code of Ethics and Conduct

Contents

Page

PREFACE TO THE ACCA CODE OF ETHICS AND CONDUCT 275

PART A: GENERAL APPLICATION OF THE CODE 277

100 Introduction and fundamental principles 278
110 Integrity 283
120 Objectivity 284
130 Professional competence and due care 285
140 Confidentiality 286
150 Professional behavior 288

PART B: PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE 289

200 Introduction 290
210 Professional appointment 295
220 Conflicts of interest 302
225 Responding to non-compliance with laws and regulations 310
230 Second opinions 322
240 Fees and other types of remuneration 323
250 Marketing professional services 328
260 Gifts and hospitality 331
270 Custody of client assets 332
280 Objectivity – All services 337
290 Independence – Audit and review engagements 338
291 Independence – Other assurance engagements 387
Interpretation 2005-01 411

Supplementary requirements and guidance:

B1 Professional duty of confidence in relation to defaults and unlawful acts of clients and others 415
B2 Anti-money laundering 433
B3 Whistleblowing responsibilities placed on auditors 437
B4 Descriptions of professional accountants and firms and the names of practising firms 440
B5 Legal ownership of, and rights of access to, books, files, working papers and other documents 448
B6 Retention periods for books, files, working papers and other documents 453
B7 Activities through corporate or non-corporate organisations 455
B8 The obligations of consultants 457
B9 Professional liability of accountants and auditors 458
B10 The incapacity or death of a practitioner 463
B11 Estates of deceased persons 468
B12 Corporate finance advice including take-overs 469

PART C: PROFESSIONAL ACCOUNTANTS IN BUSINESS 473
300 Introduction 474
310 Potential conflicts 478
320 Preparation and reporting of information 481
330 Acting with sufficient expertise 483
340 Financial interests, compensation and incentives linked to financial reporting and decision making 484
350 Inducements 486
360 Responding to non-compliance with laws and regulations 488

Supplementary requirements and guidance:
C1 Disclosing confidential information 496
C2 Whistleblowing 497

PART D: INSOLVENCY CODE OF ETHICS *498*
Code of Ethics for Insolvency Practitioners 499
Part 1 General application of the Code 500
Part 2 Specific application of the Code 505
The application of the framework to specific situations 514

DEFINITIONS 518

Preface to the ACCA Code of Ethics and Conduct

1. Throughout this Code of Ethics and Conduct, use of the word "Code" refers to the ACCA Code of Ethics and Conduct, unless there is an explicit indication to the contrary. In creating this Code, ACCA has adopted the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA). The IESBA code was previously issued by the IFAC Ethics Committee, and so was commonly referred to as "the IFAC code".

2. Where necessary, ACCA has augmented the IESBA code with additional requirements and guidance that are appropriate to ACCA and its members. This additional material is clearly differentiated from the original text of the IESBA code by the use of italics. In adopting the IESBA code, ACCA has not changed any of the IESBA text, and has reproduced it in exactly the form issued by the IESBA.

Scope and authority of the Code

3. The IESBA code establishes ethical requirements for members of IFAC member bodies, and requires ACCA to apply ethical standards that are no less stringent than those stated in the IESBA code. Therefore, in adopting the IESBA code, it has been necessary to amend the wording to ensure that it remains relevant to members, students, affiliates and member firms of ACCA. Accordingly, several references in the IESBA code to "a member body", "a professional body" or "the relevant professional body" have been changed to "ACCA".

4. Where there may be perceived to be any conflict between the requirements of the IESBA code and the ACCA augmentations in italics (including this preface), the more stringent requirements shall apply.

5. Where statutory and regulatory requirements are concerned, ACCA registered students, affiliates and members are reminded that they must also refer to, and comply with, the legislation and regulatory requirements of the countries in which they work.

6. In some specialist areas of work, such as audit, insolvency and financial services, professional accountants are subject to a variety of statutory and regulatory requirements. Where this Code imposes a more stringent requirement than statutory and regulatory requirements, or vice versa, the more stringent requirement will apply, unless prohibited by law or regulation.

How to use the Code

7. This Code is set out in four parts - Part A being applicable to all professional accountants, Part B to professional accountants working in public practice, Part C to professional accountants in business, and Part D to professional accountants in the United Kingdom who are insolvency practitioners. However, professional accountants may find the guidance in any Part of the Code applicable to their specific circumstances.

8. Throughout this Code, specific requirements are indicated by the use of the word "shall"; alternative appropriate wording is used to indicate guidance material.

9. Throughout this Code, examples are included that are intended to illustrate how the conceptual framework is to be applied. The examples are not intended to be, nor shall they be interpreted as, an exhaustive list of all circumstances experienced by professional accountants that may create threats to compliance with the fundamental principles.

Consequently, it is not sufficient for professional accountants to merely comply with the examples presented; rather, the framework shall be applied to the particular circumstances encountered.

10. ACCA registered students, affiliates and members who are in doubt as to their correct course of action in particular cases may obtain further guidance from ACCA. It is advisable to seek guidance prior to embarking on a course of action.

To whom does the Code apply?

11. Reference throughout this Code will be made to "professional accountants", which is interpreted in the context of the ACCA Code of Ethics and Conduct as members or, where appropriate, students, affiliates or member firms of ACCA.

12. ACCA registered students, affiliates and members are required to observe proper standards of conduct. The Code applies to all ACCA registered students, affiliates and members in relation to all matters connected to their professional lives. This means that in matters connected to their professional lives, they must refrain from taking any action which amounts to a departure from the standards set out in this Code. In both their professional and personal lives, they must also refrain from what is described in ACCA's bye-law 8 as misconduct.

13. Registered students and affiliates are bound by the ethical requirements of ACCA, as affirmed by their signature on the application forms to be enrolled as registered students.

14. Registered students remain bound by ACCA's ethical requirements during the period between successful completion of the examinations and their admission to membership (i.e. those having affiliate status). On admission to membership they become subject to the same requirements in their new capacity.

Non-compliance with the Code

15. An ACCA registered student, affiliate or member who fails to comply with this Code will be liable to disciplinary action. Two committees have been appointed by Council to enforce ACCA's ethical standards: Disciplinary Committee and Appeal Committee. The committees derive their powers from the bye-laws. Those failing to observe the standards expected of them may be required to answer a complaint before ACCA's Disciplinary Committee.

16. It is not possible to specify all those combinations of circumstances in which a professional accountant may be held by Disciplinary Committee to have fallen below the standard expected. However, this section of the Rulebook (which may be added to or varied from time to time) sets out ACCA's ethical requirements in relation to those professional situations that most commonly arise.

The ACCA Code of Ethics and Conduct

Part A – General Application of the Code

		Page
Section 100	Introduction and fundamental principles	278
Section 110	Integrity	283
Section 120	Objectivity	284
Section 130	Professional competence and due care	285
Section 140	Confidentiality	286
Section 150	Professional behavior	288

SECTION 100
Introduction and fundamental principles

100.1 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest, a professional accountant shall observe and comply with this Code. If a professional accountant is prohibited from complying with certain parts of this Code by law or regulation, the professional accountant shall comply with all other parts of this Code.

100.2 This Code contains three parts. Part A establishes the fundamental principles of professional ethics for professional accountants and provides a conceptual framework that professional accountants shall apply to:

(a) Identify threats to compliance with the fundamental principles;

(b) Evaluate the significance of the threats identified; and

(c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level. Safeguards are necessary when the professional accountant determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.

A professional accountant shall use professional judgment in applying this conceptual framework.

100.3 Parts B and C describe how the conceptual framework applies in certain situations. They provide examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles. They also describe situations where safeguards are not available to address the threats, and consequently, the circumstance or relationship creating the threats shall be avoided. Part B applies to professional accountants in public practice. Part C applies to professional accountants in business. Professional accountants in public practice may also find Part C relevant to their particular circumstances.

100.4 The use of the word "shall" in this Code imposes a requirement on the professional accountant or firm to comply with the specific provision in which "shall" has been used. Compliance is required unless an exception is permitted by this Code.

Fundamental principles

100.5 A professional accountant shall comply with the following fundamental principles:

(a) Integrity – to be straightforward and honest in all professional and business relationships.

(b) Objectivity – to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

(c) Professional Competence and Due Care – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

(d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant or third parties.

(e) Professional Behavior – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

Each of these fundamental principles is discussed in more detail in Sections 110–150.

Conceptual framework approach

100.6 The circumstances in which professional accountants operate may create specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates threats to compliance with the fundamental principles and specify the appropriate action. In addition, the nature of engagements and work assignments may differ and, consequently, different threats may be created, requiring the application of different safeguards. Therefore, this Code establishes a conceptual framework that requires a professional accountant to identify, evaluate, and address threats to compliance with the fundamental principles. The conceptual framework approach assists professional accountants in complying with the ethical requirements of this Code and meeting their responsibility to act in the public interest. It accommodates many variations in circumstances that create threats to compliance with the fundamental principles and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.

100.7 When a professional accountant identifies threats to compliance with the fundamental principles and, based on an evaluation of those threats, determines that they are not at an acceptable level, the professional accountant shall determine whether appropriate safeguards are available and can be applied to eliminate the threats or reduce them to an acceptable level. In making that determination, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of the safeguards, such that compliance with the fundamental principles is not compromised.

100.8 A professional accountant shall evaluate any threats to compliance with the fundamental principles when the professional accountant knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.

100.9 A professional accountant shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat. When applying the conceptual framework, a professional accountant may encounter situations in which threats cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate safeguards are not available or cannot be applied. In such situations, the professional accountant shall decline or discontinue the specific professional service involved or, when necessary, resign from the engagement (in the case of a professional accountant in public practice) or the employing organization (in the case of a professional accountant in business).

100.10 Sections 290 and 291 contain provisions with which a professional accountant shall comply if the professional accountant identifies a breach of an independence provision of the Code. If a professional accountant identifies a breach of any other

provision of this Code, the professional accountant shall evaluate the significance of the breach and its impact on the accountant's ability to comply with the fundamental principles. The accountant shall take whatever actions that may be available, as soon as possible, to satisfactorily address the consequences of the breach. The accountant shall determine whether to report the breach, for example, to those who may have been affected by the breach, a member body, relevant regulator or oversight authority.

100.11 When a professional accountant encounters unusual circumstances in which the application of a specific requirement of the Code would result in a disproportionate outcome or an outcome that may not be in the public interest, it is recommended that the professional accountant consult with ACCA or the relevant regulator.

Threats and safeguards

100.12 Threats may be created by a broad range of relationships and circumstances. When a relationship or circumstance creates a threat, such a threat could compromise, or could be perceived to compromise, a professional accountant's compliance with the fundamental principles. A circumstance or relationship may create more than one threat, and a threat may affect compliance with more than one fundamental principle. Threats fall into one or more of the following categories:

(a) Self-interest threat – the threat that a financial or other interest will inappropriately influence the professional accountant's judgment or behavior;

(b) Self-review threat – the threat that a professional accountant will not appropriately evaluate the results of a previous judgment made or service performed by the professional accountant, or by another individual within the professional accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of providing a current service;

(c) Advocacy threat – the threat that a professional accountant will promote a client's or employer's position to the point that the professional accountant's objectivity is compromised;

(d) Familiarity threat – the threat that due to a long or close relationship with a client or employer, a professional accountant will be too sympathetic to their interests or too accepting of their work; and

(e) Intimidation threat – the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the professional accountant.

Parts B and C of this Code explain how these categories of threats may be created for professional accountants in public practice and professional accountants in business, respectively. Professional accountants in public practice may also find Part C relevant to their particular circumstances.

100.13 Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. They fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

100.14 Safeguards created by the profession, legislation or regulation include:

- Educational, training and experience requirements for entry into the profession.
- Continuing professional development requirements.
- Corporate governance regulations.
- Professional standards.

- Professional or regulatory monitoring and disciplinary procedures.
- External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant.

100.15 Parts B and C of this Code discuss safeguards in the work environment for professional accountants in public practice and professional accountants in business, respectively.

100.16 Certain safeguards may increase the likelihood of identifying or deterring unethical behavior. Such safeguards, which may be created by the accounting profession, legislation, regulation, or an employing organization, include:

- Effective, well-publicized complaint systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior.
- An explicitly stated duty to report breaches of ethical requirements.

Conflicts of interest

100.17 A professional accountant may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
- The interests of the professional accountant with respect to a particular matter and the interests of a party for whom the professional accountant undertakes a professional activity related to that matter are in conflict.

100.18 Parts B and C of this Code discuss conflicts of interest for professional accountants in public practice and professional accountants in business, respectively.

Ethical conflict resolution

100.19 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.

100.20 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:

(a) Relevant facts;
(b) Ethical issues involved;
(c) Fundamental principles related to the matter in question;
(d) Established internal procedures; and
(e) Alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

100.21 Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.

100.22 It may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

100.23 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from ACCA or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with ACCA on an anonymous basis or with a legal advisor under the protection of legal privilege.

100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, unless prohibited by law, refuse to remain associated with the matter creating the conflict. The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

Communicating with those charged with governance

100.25 When communicating with those charged with governance in accordance with the provisions of this Code, the professional accountant or firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the professional accountant or firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the professional accountant or firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.

100.26 In some cases, all of those charged with governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matters need not be communicated again with those same person(s) in their governance role. The professional accountant or firm shall nonetheless be satisfied that communication with person(s) with management responsibilities adequately informs all of those with whom the professional accountant or firm would otherwise communicate in their governance capacity.

SECTION 110
Integrity

110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

110.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:

(a) Contains a materially false or misleading statement;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

110.3 A professional accountant will be deemed not to be in breach of paragraph 110.2 if the professional accountant provides a modified report in respect of a matter contained in paragraph 110.2.

SECTION 120
Objectivity

120.1 The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.

120.2 A professional accountant may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. A professional accountant shall not perform a professional service if a circumstance or relationship biases or unduly influences the accountant's professional judgment with respect to that service.

SECTION 130
Professional competence and due care

130.1 The principle of professional competence and due care imposes the following obligations on all professional accountants:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

(b) To act diligently in accordance with applicable technical and professional standards when providing professional services.

130.2 Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

(a) Attainment of professional competence; and

(b) Maintenance of professional competence.

130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment.

130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

130.5 A professional accountant shall take reasonable steps to ensure that those working under the professional accountant's authority in a professional capacity have appropriate training and supervision.

130.6 Where appropriate, a professional accountant shall make clients, employers or other users of the accountant's professional services aware of the limitations inherent in the services.

SECTION 140
Confidentiality

140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

(a) Disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and

(b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

140.2 A professional accountant shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.

140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.

140.4 A professional accountant shall maintain confidentiality of information within the firm or employing organization.

140.5 A professional accountant shall take reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.

140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

140.7 As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information from the professional accountant's client or employing organization to the professional accountant. Nevertheless, the following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:

(a) Disclosure is permitted by law and is authorized by the client or the employer;

(b) Disclosure is required by law, for example:

(i) Production of documents or other provision of evidence in the course of legal proceedings; or

(ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and

(c) There is a professional duty or right to disclose, when not prohibited by law:

(i) To comply with the quality review of ACCA or another professional body;

(ii) To respond to an inquiry or investigation by ACCA or a regulatory body;

(iii) To protect the professional interests of a professional accountant in legal proceedings; or

(iv) To comply with technical and professional standards, including ethical requirements.

140.8 In deciding whether to disclose confidential information, relevant factors to consider include:

(a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;

(b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any;

(c) The type of communication that is expected and to whom it is addressed; and

(d) Whether the parties to whom the communication is addressed are appropriate recipients.

SECTION 150
Professional behavior

150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know may discredit the profession. This includes conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.

150.2 In marketing and promoting themselves and their work, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:

(a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or

(b) Make disparaging references or unsubstantiated comparisons to the work of others.

150.3 A professional accountant shall behave with courtesy and consideration towards all with whom the professional accountant comes into contact in a professional capacity.

Part B – Professional Accountants in Public Practice

Page

Section 200 Introduction 290
Section 210 Professional appointment 295
Section 220 Conflicts of interest 302
Section 225 Responding to non-compliance with laws and regulations 310
Section 230 Second opinions 322
Section 240 Fees and other types of remuneration 323
Section 250 Marketing professional services 328
Section 260 Gifts and hospitality 331
Section 270 Custody of client assets 332
Section 280 Objectivity – All services 337
Section 290 Independence – Audit and review engagements 338
Section 291 Independence – Other assurance engagements 387
Interpretation 2005-01 411

Supplementary requirements and guidance:

Section B1 Professional duty of confidence in relation to defaults and unlawful acts of clients and others 415
Section B2 Anti-money laundering 433
Section B3 Whistleblowing responsibilities placed on auditors 437
Section B4 Descriptions of professional accountants and firms and the names of practising firms 440
Section B5 Legal ownership of, and rights of access to, books, files, working papers and other documents 448
Section B6 Retention periods for books, files, working papers and other documents 453
Section B7 Activities through corporate or non-corporate organisations 455
Section B8 The obligations of consultants 457
Section B9 Professional liability of accountants and auditors 458
Section B10 The incapacity or death of a practitioner 463
Section B11 Estates of deceased persons 468
Section B12 Corporate finance advice including take-overs 469

SECTION 200
Introduction

200.1 This Part of the Code describes how the conceptual framework contained in Part A applies in certain situations to professional accountants in public practice. This Part does not describe all of the circumstances and relationships that could be encountered by a professional accountant in public practice that create or may create threats to compliance with the fundamental principles. Therefore, the professional accountant in public practice is encouraged to be alert for such circumstances and relationships.

200.2 A professional accountant in public practice shall not knowingly engage in any business, occupation, or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

Threats and safeguards

200.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an audit client and whether the audit client is a public interest entity, to an assurance client that is not an audit client, or to a non-assurance client.

Threats fall into one or more of the following categories:

(a) Self-interest;

(b) Self-review;

(c) Advocacy;

(d) Familiarity; and

(e) Intimidation.

These threats are discussed further in Part A of this Code.

200.4 Examples of circumstances that create self-interest threats for a professional accountant in public practice include:

- A member of the assurance team having a direct financial interest in the assurance client.
- A firm having undue dependence on total fees from a client.
- A member of the assurance team having a significant close business relationship with an assurance client.
- A firm being concerned about the possibility of losing a significant client.
- A member of the audit team entering into employment negotiations with the audit client.

- A firm entering into a contingent fee arrangement relating to an assurance engagement.

- A professional accountant discovering a significant error when evaluating the results of a previous professional service performed by a member of the professional accountant's firm.

200.5 Examples of circumstances that create self-review threats for a professional accountant in public practice include:

- A firm issuing an assurance report on the effectiveness of the operation of financial systems after designing or implementing the systems.

- A firm having prepared the original data used to generate records that are the subject matter of the assurance engagement.

- A member of the assurance team being, or having recently been, a director or officer of the client.

- A member of the assurance team being, or having recently been, employed by the client in a position to exert significant influence over the subject matter of the engagement.

- The firm performing a service for an assurance client that directly affects the subject matter information of the assurance engagement.

200.6 Examples of circumstances that create advocacy threats for a professional accountant in public practice include:

- The firm promoting shares in an audit client.

- A professional accountant acting as an advocate on behalf of an audit client in litigation or disputes with third parties.

200.7 Examples of circumstances that create familiarity threats for a professional accountant in public practice include:

- A member of the engagement team having a close or immediate family member who is a director or officer of the client.

- A member of the engagement team having a close or immediate family member who is an employee of the client who is in a position to exert significant influence over the subject matter of the engagement.

- A director or officer of the client or an employee in a position to exert significant influence over the subject matter of the engagement having recently served as the engagement partner.

- A professional accountant accepting gifts or preferential treatment from a client, unless the value is trivial or inconsequential.

- Senior personnel having a long association with the assurance client.

200.8 Examples of circumstances that create intimidation threats for a professional accountant in public practice include:

- A firm being threatened with dismissal from a client engagement.
- An audit client indicating that it will not award a planned non-assurance contract to the firm if the firm continues to disagree with the client's accounting treatment for a particular transaction.
- A firm being threatened with litigation by the client.
- A firm being pressured to reduce inappropriately the extent of work performed in order to reduce fees.
- A professional accountant feeling pressured to agree with the judgment of a client employee because the employee has more expertise on the matter in question.
- A professional accountant being informed by a partner of the firm that a planned promotion will not occur unless the accountant agrees with an audit client's inappropriate accounting treatment.

200.9 Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are described in paragraph 100.14 of Part A of this Code.

200.10 A professional accountant in public practice shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or by terminating or declining the relevant engagement. In exercising this judgment, a professional accountant in public practice shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards, such that compliance with the fundamental principles is not compromised. This consideration will be affected by matters such as the significance of the threat, the nature of the engagement and the structure of the firm.

200.11 In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise firm-wide safeguards and engagement-specific safeguards.

200.12 Examples of firm-wide safeguards in the work environment include:

- Leadership of the firm that stresses the importance of compliance with the fundamental principles.

- Leadership of the firm that establishes the expectation that members of an assurance team will act in the public interest.
- Policies and procedures to implement and monitor quality control of engagements.
- Documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level or, when appropriate safeguards are not available or cannot be applied, terminate or decline the relevant engagement.
- Documented internal policies and procedures requiring compliance with the fundamental principles.
- Policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients.
- Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.
- Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client.
- Policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement.
- Timely communication of a firm's policies and procedures, including any changes to them, to all partners and professional staff, and appropriate training and education on such policies and procedures.
- Designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system.
- Advising partners and professional staff of assurance clients and related entities from which independence is required.
- A disciplinary mechanism to promote compliance with policies and procedures.
- Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

200.13 Examples of engagement-specific safeguards in the work environment include:

- Having a professional accountant who was not involved with the non-assurance service review the non-assurance work performed or otherwise advise as necessary.
- Having a professional accountant who was not a member of the assurance team review the assurance work performed or otherwise advise as necessary.

- Consulting an independent third party, such as a committee of independent directors, a professional regulatory body or another professional accountant.
- Discussing ethical issues with those charged with governance of the client.
- Disclosing to those charged with governance of the client the nature of services provided and extent of fees charged.
- Involving another firm to perform or re-perform part of the engagement.
- Rotating senior assurance team personnel.

200.14 Depending on the nature of the engagement, a professional accountant in public practice may also be able to rely on safeguards that the client has implemented. However it is not possible to rely solely on such safeguards to reduce threats to an acceptable level.

200.15 Examples of safeguards within the client's systems and procedures include:

- The client requires persons other than management to ratify or approve the appointment of a firm to perform an engagement.
- The client has competent employees with experience and seniority to make managerial decisions.
- The client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements.
- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

SECTION 210
Professional appointment

210A Clients are free to choose their accountants/auditors, or other advisers, and to change them as they wish.

210B References in subsequent paragraphs to an "accountant" shall be taken to apply equally when the appointment under consideration is that of an auditor, reporting accountant or accountant.

Client acceptance and continuance

210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behavior.

210.2 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or

- Securing the client's commitment to address the questionable issues, for example, through improving corporate governance practices or internal controls.

210.3 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.

210.4 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behavior such as improper earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the professional accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall consider terminating the client relationship where termination is not prohibited by law or regulation.

Engagement acceptance[1]

210.5 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

210.6 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
- Acquiring knowledge of relevant industries or subject matters.
- Possessing or obtaining experience with relevant regulatory or reporting requirements.
- Assigning sufficient staff with the necessary competencies.
- Using experts where necessary.
- Agreeing on a realistic time frame for the performance of the engagement.
- Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

210.7 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in a professional appointment

210.8 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the

[1] *A professional accountant contemplating accepting a specific client engagement is also referred to the paragraphs under the heading 'Changes in a professional appointment'.*

fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.

210.9 A professional accountant in public practice shall evaluate the significance of any threats. Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing or predecessor accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;

- Asking the predecessor accountant to provide known information on any facts or circumstances that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the predecessor accountant that may influence the decision to accept the appointment; or

- Obtaining necessary information from other sources.

210.9A Communication with the existing accountant is not just a matter of professional courtesy. Its main purpose is to enable a professional accountant to ensure that there has been no action by the client which would on ethical grounds preclude the professional accountant from accepting the appointment and that, after considering all the facts, the client is someone for whom the professional accountant would wish to act. Thus, a professional accountant shall communicate with the existing accountant on being asked to accept appointment for any recurring work, except where the client has not previously had an accountant acting for them.

210.10 When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.11 A professional accountant in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

210.11A Before accepting such work, a professional accountant in public practice shall determine whether to communicate with the existing accountant to inform them of the general nature of the complementary or additional work.

210.11B It is in the client's interest that the existing accountant is aware of the additional work being undertaken. This will facilitate the transfer of information between the advisers and aid them in carrying out their respective appointments.

210.11C In very exceptional circumstances a professional accountant may not be required to communicate with the existing accountant. A professional accountant is responsible for checking with the Advisory Services Section whether, in his/her particular circumstances, he/she may dispense with the usual procedure of communicating with the existing accountant.

210.12 *A professional accountant in public practice may be an existing accountant in receipt of a communication from a proposed accountant.* An existing or predecessor accountant is bound by confidentiality. Whether that professional accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

(a) Whether the client's permission to do so has been obtained; or

(b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the professional accountant is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this Code.

210.13 A professional accountant in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing or predecessor accountant. Once that permission is obtained, the existing or predecessor accountant shall comply with relevant laws and regulations governing such requests. *The proposed accountant shall write to the existing or predecessor accountant requesting all the information which ought to be made available to enable the proposed accountant to decide whether or not to accept the appointment.* Where the existing or predecessor accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing or predecessor accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance of the client.

210.13A If the existing accountant continues to fail to reply, or fails to supply satisfactory replies, the proposed accountant shall generally send a further letter by a recorded delivery service. The letter shall state that unless a reply is received within a stated period, say seven days, the proposed accountant will assume there are no matters of which he/she should be aware and, at the end of the stated period, will proceed to accept the appointment.

210.13B If a client refuses permission to the existing accountant to discuss their affairs, the existing accountant shall inform the proposed accountant of this fact. The proposed accountant shall inform the client that he/she is not prepared to accept the appointment.

210.13C Where the existing accountant receives permission, as set out in paragraph 210.15(b) below, he/she shall provide all reasonable information (in addition to transfer information) in response to a request from the proposed accountant. It is for the existing accountant to decide what information is reasonable and what he/she considers may be relevant to the proposed accountant's decision on whether or not to accept the appointment. (The issue of transfer information is considered separately at paragraph 210.28.)

210.13D The existing accountant may not prevent the proposed accountant from acting on behalf of the client.

210.13E Any information supplied by the existing accountant shall be considered carefully by the proposed accountant before deciding to accept or reject the appointment.

210.13F The proposed accountant shall try to find out the reason for the change of accountant. The proposed accountant shall be careful that, by accepting an appointment, he/she is not assisting the client to act improperly or unlawfully.

210.13G For example, the proposed accountant may find that the existing accountant has been conscientious in his/her duty as an independent professional, but has encountered client opposition. The existing accountant may have declined to give way on what he/she considers to be a matter of principle. In such circumstances the proposed accountant shall generally decline the appointment.

210.13H The proposed accountant shall treat any information given by the existing accountant in the strictest confidence.

210.14 In the case of an audit of financial statements, a professional accountant shall request the predecessor accountant to provide known information regarding any facts or other information that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. Except for the circumstances involving identified or suspected non-compliance with laws and regulations set out in paragraph 225.31:

(a) If the client consents to the predecessor accountant disclosing any such facts or other information, the predecessor accountant shall provide the information honestly and unambiguously; and

(b) If the client fails or refuses to grant the predecessor accountant permission to discuss the client's affairs with the proposed successor accountant, the predecessor accountant shall disclose this fact to the proposed successor accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.

Matters to be communicated to proposed clients

210.15 The proposed accountant shall ask the proposed client to write to their existing accountant to:

(a) notify them of the proposed change, and

(b) give permission for the existing accountant to discuss the client's affairs with the proposed accountant.

210.16 If a professional accountant in public practice receives a communication from a proposed accountant but has not received permission to discuss the client's affairs with the proposed accountant, the professional accountant shall notify the client of the contact. Additionally, the professional accountant shall write to the proposed accountant declining to give information and stating his/her reasons.

Matters to be communicated to proposed accountants

210.17 If the existing accountant considers there are matters to be brought to the attention of the proposed accountant, the existing accountant shall be prepared to specify the nature and details of such matters.

210.18 If the existing accountant considers there are no matters to be brought to the attention of the proposed accountant, the existing accountant shall write to state this fact.

210.19 It is recommended that the existing and proposed accountants communicate in writing. If oral discussions take place, each party shall make and retain their own contemporaneous record of matters discussed and decisions and agreements made.

210.20 Where the existing accountant has suspicions of some guilty or unlawful act, e.g. defrauding the tax authorities, but has no proof, it is for the existing accountant to determine whether, and to what extent, his/her suspicions shall be conveyed to the proposed accountant.

Unpaid fees of previous accountant

210.21 The proposed accountant is not expected to refuse to act where there are unpaid fees owed to the existing accountant.

210.22 It is a matter for the proposed accountant's own judgement to decide how far he/she may properly go in assisting the existing accountant to recover fees.

210.23 The proposed accountant would generally be expected to draw the attention of the client to the fact that fees are due and unpaid and to suggest that they be paid.

Transfer of books and papers

210.24 Once a new accountant has been appointed, or on otherwise ceasing to hold office, the former accountant shall ensure that all books and papers belonging to his/her former client which are in the former accountant's possession are promptly transferred, whether the new accountant or the client has requested them or not, except where the former accountant claims to exercise a lien or other security over them in respect of unpaid fees.

210.25 Professional accountants in public practice are advised to refer to Section B5, Legal ownership of, and rights of access to, books, files, working papers and other documents.

Transfer of information

210.26 In order to ensure continuity of treatment of a client's affairs, the former accountant shall promptly provide the new accountant with all reasonable transfer information that the new accountant requests, free of charge.

210.27 All reasonable transfer information shall be provided even where there are unpaid fees.

210.28 "Reasonable transfer information" is defined as:

(a) a copy of the last set of accounts formally approved by the client; and

(b) a detailed trial balance that is in agreement with the accounts referred to in (a) above.

210.29 Any information in addition to the reasonable transfer information, as defined in paragraph 210.28 above, is provided purely at the discretion of the former accountant, who may render a charge to the person requesting the information.

SECTION 220
Conflicts of interest

220.1 A professional accountant in public practice may be faced with a conflict of interest when performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The professional accountant provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or
- The interests of the professional accountant with respect to a particular matter and the interests of the client for whom the professional accountant provides a professional service related to that matter are in conflict.

A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

When the professional service is an assurance service, compliance with the fundamental principle of objectivity also requires being independent of assurance clients in accordance with Sections 290 or 291 as appropriate.

220.2 Examples of situations in which conflicts of interest may arise include:

- Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction.
- Advising two clients at the same time who are competing to acquire the same company where the advice might be relevant to the parties' competitive positions.
- Providing services to both a vendor and a purchaser in relation to the same transaction.
- Preparing valuations of assets for two parties who are in an adversarial position with respect to the assets.
- Representing two clients regarding the same matter who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership.
- Providing an assurance report for a licensor on royalties due under a license agreement when at the same time advising the licensee of the correctness of the amounts payable.
- Advising a client to invest in a business in which, for example, the spouse of the professional accountant in public practice has a financial interest.
- Providing strategic advice to a client on its competitive position while having a joint venture or similar interest with a major competitor of the client.

- Advising a client on the acquisition of a business which the firm is also interested in acquiring.

- Advising a client on the purchase of a product or service while having a royalty or commission agreement with one of the potential vendors of that product or service.

220.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a professional accountant in public practice shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that compliance with the fundamental principles is not compromised.

220.4 When addressing conflicts of interest, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the professional accountant in public practice shall remain alert to the fundamental principle of confidentiality.

220.5 If the threat created by a conflict of interest is not at an acceptable level, the professional accountant in public practice shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the professional accountant shall decline to perform or shall discontinue professional services that would result in the conflict of interest; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

220.6 Before accepting a new client relationship, engagement, or business relationship, a professional accountant in public practice shall take reasonable steps to identify circumstances that might create a conflict of interest, including identification of:

- The nature of the relevant interests and relationships between the parties involved; and

- The nature of the service and its implication for relevant parties.

The nature of the services and the relevant interests and relationships may change during the course of the engagement. This is particularly true when a professional accountant is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the professional accountant may not initially be involved in a dispute. The professional accountant shall remain alert to such changes for the purpose of identifying circumstances that might create a conflict of interest.

220.7 For the purpose of identifying interests and relationships that might create a conflict of interest, having an effective conflict identification process assists a professional accountant in public practice to identify actual or potential conflicts of interest prior to determining whether to accept an engagement and throughout an engagement. This includes matters identified by external parties, for example clients or potential clients. The earlier an actual or potential conflict of interest is

identified, the greater the likelihood of the professional accountant being able to apply safeguards, when necessary, to eliminate the threat to objectivity and any threat to compliance with other fundamental principles or reduce it to an acceptable level. The process to identify actual or potential conflicts of interest will depend on such factors as:

- The nature of the professional services provided.
- The size of the firm.
- The size and nature of the client base.
- The structure of the firm, for example, the number and geographic location of offices.

220.8 If the firm is a member of a network, conflict identification shall include any conflicts of interest that the professional accountant in public practice has reason to believe may exist or might arise due to interests and relationships of a network firm. Reasonable steps to identify such interests and relationships involving a network firm will depend on factors such as the nature of the professional services provided, the clients served by the network and the geographic locations of all relevant parties.

220.9 If a conflict of interest is identified, the professional accountant in public practice shall evaluate:

- The significance of relevant interests or relationships; and
- The significance of the threats created by performing the professional service or services. In general, the more direct the connection between the professional service and the matter on which the parties' interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

220.10 The professional accountant in public practice shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Examples of safeguards include:

- Implementing mechanisms to prevent unauthorized disclosure of confidential information when performing professional services related to a particular matter for two or more clients whose interests with respect to that matter are in conflict. This could include:
  - Using separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.
  - Creating separate areas of practice for specialty functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm.
  - Establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information.

- Regular review of the application of safeguards by a senior individual not involved with the client engagement or engagements.
- Having a professional accountant who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgments and conclusions are appropriate.
- Consulting with third parties, such as a professional body, legal counsel or another professional accountant.

220.11 In addition, it is generally necessary to disclose the nature of the conflict of interest and the related safeguards, if any, to clients affected by the conflict and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the professional accountant in public practice performing the professional services.

Disclosure and consent may take different forms, for example:

- General disclosure to clients of circumstances where the professional accountant, in keeping with common commercial practice, does not provide services exclusively for any one client (for example, in a particular service in a particular market sector) in order for the client to provide general consent accordingly. Such disclosure might, for example, be made in the professional accountant's standard terms and conditions for the engagement.
- Specific disclosure to affected clients of the circumstances of the particular conflict, including a detailed presentation of the situation and a comprehensive explanation of any planned safeguards and the risks involved, sufficient to enable the client to make an informed decision with respect to the matter and to provide explicit consent accordingly.
- In certain circumstances, consent may be implied by the client's conduct where the professional accountant has sufficient evidence to conclude that clients know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.

The professional accountant shall determine whether the nature and significance of the conflict of interest is such that specific disclosure and explicit consent is necessary. For this purpose, the professional accountant shall exercise professional judgment in weighing the outcome of the evaluation of the circumstances that create a conflict of interest, including the parties that might be affected, the nature of the issues that might arise and the potential for the particular matter to develop in an unexpected manner.

220.12 Where a professional accountant in public practice has requested explicit consent from a client and that consent has been refused by the client, the professional accountant shall decline to perform or shall discontinue professional services that would result in the conflict of interest; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level, such that consent can be obtained, after applying any additional safeguards if necessary.

220.13 When disclosure is verbal, or consent is verbal or implied, the professional accountant in public practice is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.

220.14 In certain circumstances, making specific disclosure for the purpose of obtaining explicit consent would result in a breach of confidentiality. Examples of such circumstances may include:

- Performing a transaction-related service for a client in connection with a hostile takeover of another client of the firm.
- Performing a forensic investigation for a client in connection with a suspected fraudulent act where the firm has confidential information obtained through having performed a professional service for another client who might be involved in the fraud.

The firm shall not accept or continue an engagement under such circumstances unless the following conditions are met:

- The firm does not act in an advocacy role for one client where this requires the firm to assume an adversarial position against the other client with respect to the same matter;
- Specific mechanisms are in place to prevent disclosure of confidential information between the engagement teams serving the two clients; and
- The firm is satisfied that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant in public practice at the time, would be likely to conclude that it is appropriate for the firm to accept or continue the engagement because a restriction on the firm's ability to provide the service would produce a disproportionate adverse outcome for the clients or other relevant third parties.

The professional accountant shall document the nature of the circumstances, including the role that the professional accountant is to undertake, the specific mechanisms in place to prevent disclosure of information between the engagement teams serving the two clients and the rationale for the conclusion that it is appropriate to accept the engagement.

Conflicts between professional accountants' and clients' interests

220.15 A professional accountant in public practice shall not accept or continue an engagement in which there is, or is likely to be, a significant conflict of interest between the professional accountant and the client.

220.16 Any form of financial gain which accrues or is likely to accrue to a professional accountant in public practice as a result of an engagement, or as a result of using information known to him/her about a client, will always amount to a significant conflict of interest between the professional accountant and the client unless the financial gain is declared under the provisions of paragraph 220.18 below.

220.17 Whether any other form of interest is such as to amount to significant conflict will depend on all the circumstances of the case.

Commission and other financial gains

220.18 Where any commission, fee, reward or other financial gain is received by a firm or anyone in the firm, in return for the introduction of clients, as a result of advice or other services given to clients, or as a result of using information known about clients, the professional accountant in public practice shall, when necessary, establish safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards shall generally include:

(a) disclosing to the client in writing any arrangement to receive a referral fee, both of the fact that such commission, fee, reward or other financial gain will be or has been received and, as soon as practicable, of its amount and terms; and

(b) obtaining advance agreement from the client for any referral arrangement in connection with the sale by a third party of goods or services to the client.

220.19 The provisions in paragraph 220.18 apply to any commission, fee, reward or other financial gain received, whether it relates to a single transaction concerning a client or more than one client, or a series or group of transactions concerning a client or more than one client. For the avoidance of doubt, this includes "override" commission, whereby in some jurisdictions commission may be earned if the number of financial products of a particular type sold by a professional accountant in public practice reaches a certain level.

220.20 Where the commission, fee, reward or other financial gain results from advice given to a client, special care shall be taken that the advice is in fact in the best interests of the client.

Agency work

220.21 The acceptance by a professional accountant in public practice of an agency for the supply of services or products may present a conflict of interest which threatens compliance with the fundamental principles.

220.22 Before accepting or continuing an agency, a professional accountant shall satisfy himself/herself that:

(a) his/her compliance with the fundamental principles would not be compromised; and

(b) such acceptance or continuance would not be rendered inappropriate by the nature of the services he/she is to provide under the agency, or the manner in which those services may be brought to the attention of the public.

220.23 In this section, references to "clients" are references to clients of the firm. A person does not become a client of the firm merely by virtue of being a customer or member of the organisation for which the firm is an agent. However, where the firm provides advice to such a person (whether gratuitously or for a fee) that person may become a client of the firm.

Conflicts between the interests of different clients

220.24 There is, on the face of it, nothing improper in a firm having two or more clients whose interests may be in conflict, provided the work that the firm undertakes is not, itself, likely to be the subject of dispute between those clients.

220.25 In such cases, however, the firm's work shall be so managed as to avoid the interests of one client adversely affecting those of another.

220.26 Where the acceptance or continuance of an engagement would, even with safeguards, materially prejudice the interests of any client, the appointment shall not be accepted or continued.

220.27 Such prejudice might arise in a variety of ways, including the leakage of information from one client to another and the firm being forced into a position where it has to choose between the interests of different clients.

Managing conflicts between clients' interests

220.28 All reasonable steps shall be taken to ascertain whether any conflict of interest exists, or is likely to arise in the future, both in regard to new engagements and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.

220.29 Relationships with clients and former clients need to be reviewed before accepting a new appointment and regularly thereafter.

220.30 Where a professional accountant in public practice becomes aware of possible conflict between the interests of two or more clients, all reasonable steps shall be taken to manage the conflict and thereby avoid any adverse consequences.

220.31 Relationships which ended over two years before are unlikely to constitute conflict. The nature of the engagement is relevant in this connection. (Professional accountants in public practice are referred to Section B12, Corporate finance advice including take-overs.)

Conflicts between the interests of professional accountants and firms

220.32 A professional accountant in public practice obtaining confidential information as a result of his/her role as principal or employee of a firm shall not use, or appear to use, that information for his/her personal advantage or the advantage of a third party.

220.33 Such a requirement shall generally be incorporated in the partnership agreement or contract of employment. However, before incorporating such a requirement into the partnership agreement or contract of employment, professional accountants are strongly recommended to seek legal advice.

Disengagement

220.34 Wherever a professional accountant in public practice is required to disengage from an existing engagement, he/she shall do so as speedily as is compatible with the interests of the clients concerned.

SECTION 225

Responding to non-compliance with laws and regulations

Purpose

225.1 A professional accountant in public practice may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. The purpose of this section is to set out the professional accountant's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the professional accountant in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client, including whether or not it is a public interest entity.

225.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction of a client which are contrary to the prevailing laws or regulations.

225.3 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the professional accountant has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

225.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the professional accountant are:

(a) To comply with the fundamental principles of integrity and professional behavior;

(b) By alerting management or, where appropriate, those charged with governance of the client, to seek to:

(i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or

(ii) Deter the commission of the non-compliance where it has not yet occurred; and

(c) To take such further action as appropriate in the public interest.

Scope

225.5 This section sets out the approach to be taken by a professional accountant who encounters or is made aware of non-compliance or suspected non-compliance with:

(a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and

(b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

225.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

225.7 Non-compliance may result in fines, litigation or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

225.8 A professional accountant who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

225.9 This section does not address:

(a) Personal misconduct unrelated to the business activities of the client; and

(b) Non-compliance other than by the client or those charged with governance, management or other individuals working for or under the direction of the client. This includes, for example, circumstances where a professional accountant has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the client's management and those charged with governance

225.10 It is the responsibility of the client's management, with the oversight of those charged with governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the client, by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the client.

Responsibilities of professional accountants in public practice

225.11 Where a professional accountant becomes aware of a matter to which this section applies, the steps that the professional accountant takes to comply with this section shall be taken on a timely basis, having regard to the professional accountant's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

Audits of financial statements

Obtaining an understanding of the matter

225.12 If a professional accountant engaged to perform an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the professional accountant shall obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

225.13 The professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of knowledge of laws and regulations that is greater than that which is required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

225.14 If the professional accountant identifies or suspects that non-compliance has occurred or may occur, the professional accountant shall discuss the matter with the appropriate level of management and, where appropriate, those charged with governance.

225.15 Such discussion serves to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.

225.16 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.
- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

225.17 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If the professional accountant believes that management is involved in the non-compliance or suspected non-compliance, the professional accountant shall discuss the matter with those charged with governance. The professional accountant may also consider discussing the matter with internal auditors, where applicable. In the context of a group, the appropriate level may be management at an entity that controls the client.

Addressing the matter

225.18 In discussing the non-compliance or suspected non-compliance with management and, where appropriate, those charged with governance, the professional accountant shall advise them to take appropriate and timely actions, if they have not already done so, to:

(a) Rectify, remediate or mitigate the consequences of the non-compliance;

(b) Deter the commission of the non-compliance where it has not yet occurred; or

(c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.

225.19 The professional accountant shall consider whether the client's management and those charged with governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance. If not, the professional accountant may suggest appropriate sources of information or recommend that they obtain legal advice.

225.20 The professional accountant shall comply with applicable:

(a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made; and

(b) Requirements under auditing standards, including those relating to:

- Identifying and responding to non-compliance, including fraud.
- Communicating with those charged with governance.
- Considering the implications of the non-compliance or suspected non-compliance for the auditor's report.

Communication with respect to groups

225.21 A professional accountant may:

(a) For purposes of an audit of group financial statements, be requested by the group engagement team to perform work on financial information related to a component of the group; or

(b) Be engaged to perform an audit of a component's financial statements for purposes other than the group audit, for example, a statutory audit.

Where the professional accountant becomes aware of non-compliance or suspected non-compliance in relation to the component in either situation, the professional accountant shall, in addition to responding to the matter in accordance with the provisions of this section, communicate it to the group engagement partner unless prohibited from doing so by law or regulation. This is to enable the group engagement partner to be informed about the matter and to determine, in the context of the group audit, whether and, if so, how it should be addressed in accordance with the provisions in this section.

225.22 Where the group engagement partner becomes aware of non-compliance or suspected non-compliance in the course of an audit of group financial statements, including as a result of being informed of such a matter in accordance with paragraph 225.21, the group engagement partner shall, in addition to responding to the matter in the context of the group audit in accordance with the provisions of this section, consider whether the matter may be relevant to one or more components:

(a) Whose financial information is subject to work for purposes of the audit of the group financial statements; or

(b) Whose financial statements are subject to audit for purposes other than the group audit, for example, a statutory audit.

If so, the group engagement partner shall take steps to have the non-compliance or suspected non-compliance communicated to those performing work at components where the matter may be relevant, unless prohibited from doing so by law or regulation. If necessary in relation to subparagraph (b), appropriate inquiries shall be made (either of management or from publicly available information) as to whether the relevant component(s) is subject to audit and, if so, to ascertain to the extent practicable the identity of the auditor. The communication is to enable those responsible for work at such components to be informed about the matter and to determine whether and, if so, how it should be addressed in accordance with the provisions in this section.

Determining whether further action is needed

225.23 The professional accountant shall assess the appropriateness of the response of management and, where applicable, those charged with governance.

225.24 Relevant factors to consider in assessing the appropriateness of the response of management and, where applicable, those charged with governance include whether:

- The response is timely.
- The non-compliance or suspected non-compliance has been adequately investigated.
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of any non-compliance.
- Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.
- Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.
- The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

225.25 In light of the response of management and, where applicable, those charged with governance, the professional accountant shall determine if further action is needed in the public interest.

225.26 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the matter.
- The pervasiveness of the matter throughout the client.
- Whether the professional accountant continues to have confidence in the integrity of management and, where applicable, those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public.

225.27 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of management and, where applicable, those charged with governance include situations where:

- The professional accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
- The professional accountant is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

225.28 In determining the need for, and nature and extent of, further action, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.

225.29 Further action by the professional accountant may include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

225.30 Where the professional accountant determines that withdrawing from the engagement and the professional relationship would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and withdrawal may be the only available course of action.

225.31 Where the professional accountant has withdrawn from the professional relationship pursuant to paragraphs 225.25 and 225.29, the professional accountant shall, on request by the proposed successor accountant, provide all such facts and other information concerning the identified or suspected non-compliance that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment. The predecessor accountant shall do so despite paragraph 210.14, unless prohibited by law or regulation. If the proposed successor accountant is unable to communicate with the predecessor accountant, the proposed successor accountant shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means, such as through inquiries of third parties or background investigations of management or those charged with governance.

225.32 As consideration of the matter may involve complex analysis and judgments, the professional accountant may consider consulting internally, obtaining legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Determining whether to disclose the matter to an appropriate authority

225.33 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

225.34 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the professional accountant may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).

- The entity is regulated and the matter is of such significance as to threaten its license to operate.
- The entity is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the entity.
- The entity is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals.

225.35 If the professional accountant determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.

225.36 In exceptional circumstances, the professional accountant may become aware of actual or intended conduct that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

Documentation

225.37 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant shall, in addition to complying with the documentation requirements under applicable auditing standards, document:

- How management and, where applicable, those charged with governance have responded to the matter.

- The courses of action the professional accountant considered, the judgements made and the decisions that were taken, having regard to the reasonable and informed third party perspective.

- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph 225.25.

225.38 *International Standards on Auditing* (ISAs), for example, require a professional accountant performing an audit of financial statements to:

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions;

- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and

- Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

Professional services other than audits of financial statements

Obtaining an understanding of the matter and addressing it with management and those charged with governance

225.39 If a professional accountant engaged to provide a professional service other than an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the professional accountant shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may be about to occur.

225.40 The professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

225.41 If the professional accountant identifies or suspects that non-compliance has occurred or may occur, the professional accountant shall discuss the matter with the appropriate level of management and, if the professional accountant has access to them and where appropriate, those charged with governance.

225.42 Such discussion serves to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.

225.43 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.
- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

Communicating the matter to the entity's external auditor

225.44 If the professional accountant is performing a non-audit service for an audit client of the firm, or a component of an audit client of the firm, the professional accountant shall communicate the non-compliance or suspected non-compliance within the firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.

225.45 If the professional accountant is performing a non-audit service for an audit client of a network firm, or a component of an audit client of a network firm, the professional accountant shall consider whether to communicate the non-compliance or suspected non-compliance to the network firm. Where the communication is made, it shall be made in accordance with the network's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.

225.46 If the professional accountant is performing a non-audit service for a client that is not:

(a) An audit client of the firm or a network firm; or

(b) A component of an audit client of the firm or a network firm,

the professional accountant shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.

225.47 Factors relevant to considering the communication in accordance with paragraphs 225.45 and 225.46 include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.
- Whether management or those charged with governance have already informed the entity's external auditor about the matter.

- The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.

225.48 In all cases, the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how it should be addressed in accordance with the provisions of this section.

Considering whether further action is needed

225.49 The professional accountant shall also consider whether further action is needed in the public interest.

225.50 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- The legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
- The urgency of the matter.
- The involvement of management or those charged with governance in the matter.
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

225.51 Further action by the professional accountant may include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

225.52 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

225.53 If the professional accountant determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.

225.54 In exceptional circumstances, the professional accountant may become aware of actual or intended conduct that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

225.55 The professional accountant may consider consulting internally, obtaining legal advice to understand the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

225.56 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant is encouraged to document:

- The matter.
- The results of discussion with management and, where applicable, those charged with governance and other parties.
- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken.
- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph 225.49.

SECTION 230
Second opinions

230.1 Situations where a professional accountant in public practice is asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may create threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant or is based on inadequate evidence. The existence and significance of any threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.

230.2 When asked to provide such an opinion, a professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards include seeking client permission to contact the existing accountant, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant with a copy of the opinion.

230.3 If the company or entity seeking the opinion will not permit communication with the existing accountant, a professional accountant in public practice shall determine whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

230.4 Not at issue are opinions provided pursuant to litigation, expert testimony and assistance provided to other firms and their clients jointly.

230.5 A professional accountant in public practice giving an opinion on the application of accounting standards or other standards or principles, relating to a hypothetical situation and not based on the specific facts or circumstances of a particular organisation, shall ensure that the nature of the opinion is made clear.

SECTION 240
Fees and other types of remuneration

240.1 When entering into negotiations regarding professional services, a professional accountant in public practice may quote whatever fee is deemed appropriate. The fact that one professional accountant in public practice may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price.

240.2 The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.

- Assigning appropriate time and qualified staff to the task.

240.2A If, in the course of an investigation into allegations of unsatisfactory work, there is evidence of the work having been obtained or retained through quoting a fee that is not economic in terms of the factors mentioned in paragraph 240.2 above, that fact may be taken into account in considering the conduct of a professional accountant in public practice having regard to the fundamental principles.

Basis of fees

240.2B Letters of engagement shall state the fees to be charged or the basis upon which the fees are calculated.

240.2C Where the letter of engagement is not explicit with regard to the basis on which fees are calculated, the professional accountant in public practice shall charge a fee which is fair and reasonable. This may have regard to any or all of the following to the extent that they are not referred to in the letter of engagement:

(a) the seniority and professional expertise of the persons necessarily engaged on the work;

(b) the time expended by each;

(c) the degree of risk and responsibility which the work entails;

(d) the urgency of the work to the client; and

(e) the importance of the work to the client.

240.2D ACCA does not prescribe the basis for calculating fees nor does it set charge-out rates.

240.2E Professional accountants are, however, reminded that they have certain professional responsibilities in relation to fees, and these aspects are discussed further in the following paragraphs.

240.3 Contingent fees are widely used for certain types of non-assurance assignments.[2] They may, however, create threats to compliance with the fundamental principles in certain circumstances. They may create a self-interest threat to objectivity. The existence and significance of such threats will depend on factors including:

- The nature of the engagement.
- The range of possible fee amounts.
- The basis for determining the fee.
- Whether the outcome or result of the transaction is to be reviewed by an independent third party.

240.4 The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an acceptable level. Examples of such safeguards include:

- An advance written agreement with the client as to the basis of remuneration.
- Disclosure to intended users of the work performed by the professional accountant in public practice and the basis of remuneration.
- Quality control policies and procedures.
- Review by an independent third party of the work performed by the professional accountant in public practice.

240.4A In order to preserve professional accountants' objectivity, fees shall not be charged on a percentage, contingency or similar basis, save where that course of action is generally accepted practice for certain specialised work or as provided for in the succeeding paragraphs. Particularly, professional accountants in public practice are reminded that fees charged in respect of expert or insolvency work may be subject to the requirements of local law.

Referral fees and commission

240.5 In certain circumstances, a professional accountant in public practice may receive a referral fee or commission relating to a client. For example, where the professional accountant in public practice does not provide the specific service required, a fee may be received for referring a continuing client to another professional accountant in public practice or other expert. A professional accountant in public practice may receive a commission from a third party (e.g., a software vendor) in connection with

[2] Contingent fees for non-assurance services provided to audit clients and other assurance clients are discussed in sections 290 and 291 of this Part of the Code.

the sale of goods or services to a client. Accepting such a referral fee or commission creates a self-interest threat to objectivity and professional competence and due care.

240.6 A professional accountant in public practice may also pay a referral fee to obtain a client, for example, where the client continues as a client of an existing accountant but requires specialist services not offered by the existing accountant. The payment of such a referral fee also creates a self-interest threat to objectivity and professional competence and due care.

240.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Disclosing to the client any arrangements to pay a referral fee to another professional accountant[3] for the work referred.
- Disclosing to the client any arrangements to receive a referral fee for referring the client to another professional accountant in public practice.
- Obtaining advance agreement from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.

240.8 A professional accountant in public practice may purchase all or part of another firm on the basis that payments will be made to individuals formerly owning the firm or to their heirs or estates. Such payments are not regarded as commissions or referral fees for the purpose of paragraphs 240.5–240.7 above.

Commission on indemnity terms

240.9 A professional accountant in public practice may receive commission in respect of transactions effected for clients on the basis that this must be repaid in certain circumstances. In these circumstances, the professional accountant in public practice may agree with clients any one of the following options:

(a) to delay refunding the clients' commission until the expiry of the term; or

(b) to place the commission into a designated deposit account until the expiry of the term and then to refund the commission to clients with interest; or

(c) to rebate the clients' commission annually over the term; or

(d) to request persons paying commission to pay only the commission due each year, retaining the balance; or

(e) to forgo all commission; or

(f) to instruct the persons offering commission to retain the commission for the benefit of clients' pension or other policies.

[3] Examples here relating to "another professional accountant" would also apply to accountants who are members of other IFAC member bodies and other accountants, including unqualified accountants.

240.10 Nothing in this Code prohibits a professional accountant in public practice from refunding the commission to clients either with or without clients' confirmation that they would reimburse the professional accountant in the event that the commission became repayable.

Insolvency work in the UK

240.11 In appointments under the Insolvency Act of the United Kingdom, receiverships, and similar work, the remuneration is dependent upon the manner of appointment and the relevant statutes.

240.12 Professional accountants are referred to Statement of Insolvency Practice 9 for guidance in respect of remuneration of insolvency office holders contained in the separate ACCA publication setting out the Statements of Insolvency Practice.

240.13 A professional accountant in public practice concerned with the special situation of introducing insolvency business in the United Kingdom are advised to refer to Part D, Insolvency Code of Ethics.

Management buy-out and raising venture capital

240.14 There are circumstances, such as advising on a management buy-out or the raising of venture capital, where in some instances fees cannot realistically be charged save on a contingency basis, for example, where the ability of clients to pay is dependent upon the success or failure of the venture.

240.15 Where work is subject to a contingency or percentage fee, the capacity in which the professional accountant has worked and the basis of his/her remuneration shall be made clear in any document upon which a third party may rely.

Fee disputes

240.16 When a professional accountant in public practice is about to render a fee note which is substantially different from fees rendered to the same client on earlier occasions for which the work would appear to be comparable, it is good practice to explain to the client the reason for the variation.

240.17 To the extent that the increased fee reflects a charge for extra work, the reason for the extra work shall be explained in writing to the client. To the extent that the increased fee reflects an increase in disbursements or costs, this shall also be explained in writing to the client.

240.18 In cases where the fee note rendered is in excess of a quotation or estimate or indication of fees, the client may consider it to be excessive. The client may be prepared to pay a smaller amount and may tender such a sum. If the professional accountant in public practice does not wish to waive the balance of his/her fees, it is recommended that the professional accountant accept the sum but, at the same time, notify the client in writing that the sum is accepted in part payment of the fees.

240.19 When a client behaves in such a manner, it is possible that the client has genuine doubts as to the propriety of the fee, and is not actuated by malice or lack of means. In such circumstances, the professional accountant in public practice is reminded that, on written application by both the parties to the dispute, ACCA can arrange for an arbitrator to be appointed to determine any dispute over fees charged.

240.20 A professional accountant in public practice whose fees have not been paid may in certain circumstances exercise a lien over certain books and papers of the client upon which the professional accountant has been working. Professional accountants in public practice are referred to Section B5, Legal ownership of, and rights of access to, books, files, working papers and other documents.

240.21 A professional accountant in public practice shall be prepared to provide the client with reasonable explanation of the fees charged. The explanation shall be provided without charge and shall be sufficient to enable the client to understand the nature of the work carried out. A professional accountant in public practice shall also take all reasonable steps to resolve speedily any dispute which arises.

Investment business in the UK and Ireland

240.22 Firms that carry on exempt regulated activities in the United Kingdom and firms that carry on investment business in the Republic of Ireland are referred to regulation 6(3) of the Designated Professional Body Regulations 2001 and regulation 7(3) of the Irish Investment Business Regulations 2013 respectively.

240.23 Professional accountants in public practice carrying on exempt regulated activities in the United Kingdom or carrying on investment business in the Republic of Ireland are advised to refer to regulation 5 of the Designated Professional Body Regulations 2001 or regulation 6 of the Irish Investment Business Regulations 2013 respectively.

Advertisements

240.24 The attention of professional accountants in public practice is drawn to the guidance contained in Section 250, Marketing professional services, relative to the mention of fees in advertisements.

SECTION 250
Marketing professional services

250A A professional accountant in public practice may inform the public of the services he/she is capable of providing by means of advertising or other forms of promotion subject to the general requirement that the medium shall not reflect adversely on the professional accountant, ACCA or the accountancy profession.

250.1 When a professional accountant in public practice solicits new work through advertising or other forms of marketing, there may be a threat to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behavior is created if services, achievements, or products are marketed in a way that is inconsistent with that principle.

250.2 A professional accountant in public practice shall not bring the profession into disrepute when marketing professional services. The professional accountant in public practice shall be honest and truthful and not:

(a) Make exaggerated claims for services offered, qualifications possessed, or experience gained; or

(b) Make disparaging references or unsubstantiated comparisons to the work of another.

If the professional accountant in public practice is in doubt about whether a proposed form of advertising or marketing is appropriate, the professional accountant in public practice shall consider consulting with ACCA.

250.2A Advertisements and promotional material prepared or produced by a professional accountant shall not (either in content or presentation):

(a) bring ACCA into disrepute or bring discredit to the professional accountant, firm or the accountancy profession;

(b) discredit the services offered by others whether by claiming superiority for the professional accountant's own services or otherwise;

(c) be misleading, either directly or by implication;

(d) fall short of any local regulatory or legislative requirements, such as the requirements of the United Kingdom Advertising Standards Authority's Code of Advertising and Sales Promotion, notably as to legality, decency, clarity, honesty, and truthfulness.

250.3 An advertisement shall be clearly distinguishable as such.

Reference to fees in promotional material

250.4 Where reference is made in promotional material to fees, the basis on which those fees are calculated, hourly or other charging rates, etc. shall be clearly stated.

250.5 The greatest care shall be taken to ensure that any reference to fees does not mislead the reader as to the precise range of services and time commitment that the reference is intended to cover.

250.6 A professional accountant in public practice may make comparisons in promotional material between the professional accountant's fees and the fees of other accounting practices, whether professional accountants or not, providing that any such comparison shall not give a misleading impression.

250.7 When making comparisons, a professional accountant shall ensure that he/she pays appropriate attention to relevant local codes or legislation, such as the United Kingdom Advertising Standards Authority's Code of Advertising and Sales Promotion and the EC Directive on Comparative Advertising (97/55/EC). The following conditions, which are extracted from the aforementioned sources but should be followed by all professional accountants as best practice, shall generally be met:

(a) it compares the services meeting the same needs or intended for the same purpose;

(b) it objectively compares one or more material, relevant, verifiable and representative features of those services, which may include fees;

(c) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;

(d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;

(e) for products with designation of origin, it relates in each case to products with the same designation;

(f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products; and

(g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

250.8 The danger of giving a misleading impression is particularly pronounced when constraints of space limit the amount of information which can be given.

250.9 Promotional material which is based on the offer of percentage discounts on existing fees is permitted.

250.10 A professional accountant may offer a free consultation at which levels of fees will be discussed.

Promotional material and promotional activities

250.11 Promotional material may contain any factual statement, the truth of which the professional accountant in public practice is able to justify, but it shall not make unflattering references to, or unflattering comparisons with, the services of others.

250.12 Professional accountants in public practice are reminded that any promotional activity shall be carried out in accordance with any relevant legislation. For example, a professional accountant in public practice shall comply with legislation relating to the making of unsolicited telephone calls, facsimile transmissions or other electronic communication to a non-client with a view to obtaining professional work.

250.13 Any promotional activity undertaken by a professional accountant in public practice, or his/her agent, shall not amount to harassment of the non-client.

Investment business

250.14 Rules for professional accountants in public practice in the United Kingdom on advertising of exempt regulated activities are set out in regulation 4(2)(r) of the Designated Professional Body Regulations 2001.

SECTION 260
Gifts and hospitality

260.1 A professional accountant in public practice, or an immediate or close family member, may be offered gifts and hospitality from a client. Such an offer may create threats to compliance with the fundamental principles. For example, a self- interest or familiarity threat to objectivity may be created if a gift from a client is accepted; an intimidation threat to objectivity may result from the possibility of such offers being made public.

260.2 The existence and significance of any threat will depend on the nature, value, and intent of the offer. Where gifts or hospitality are offered that a reasonable and informed third party, weighing all the specific facts and circumstances, would consider trivial and inconsequential, a professional accountant in public practice may conclude that the offer is made in the normal course of business without the specific intent to influence decision-making or to obtain information. In such cases, the professional accountant in public practice may generally conclude that any threat to compliance with the fundamental principles is at an acceptable level.

260.3 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall not accept such an offer.

SECTION 270
Custody of client assets

270.1 A professional accountant in public practice shall not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a professional accountant in public practice holding such assets.

270.2 The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behavior and may be a self-interest threat to objectivity arising from holding client assets. A professional accountant in public practice entrusted with money (or other assets) belonging to others shall therefore:

(a) Keep such assets separately from personal or firm assets;

(b) Use such assets only for the purpose for which they are intended;

(c) At all times be ready to account for those assets and any income, dividends, or gains generated, to any persons entitled to such accounting; and

(d) Comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.

270.3 As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a professional accountant in public practice shall make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant shall comply with the provisions of Section 225.

Clients' monies

270.4 A professional accountant in public practice is strictly accountable for all clients' monies that the professional accountant receives.

270.5 In this section, the term "clients' monies" includes all monies received by a professional accountant in public practice to be held or disbursed by the professional accountant on the instructions of the persons from whom or on whose behalf they are received and includes insolvency monies.

270.6 Firms in the UK which carry on exempt regulated activities and are not authorised by the Financial Conduct Authority to carry on regulated activities, and firms which carry on investment business in the Republic of Ireland and are not authorised by the Central Bank of Ireland to carry on such business, are referred to regulation 4(2) of the Designated Professional Body Regulations 2001 and regulation 4(4)(a)(x) of the Irish Investment Business Regulations 2013 respectively, which prohibit the holding of investment business client money.

270.7 The remaining paragraphs of this section are concerned only with clients' monies that are not governed by regulation 4(2) of the Designated Professional Body Regulations 2001 or regulation 4(4)(a)(x) of the Irish Investment Business Regulations 2013.

Clients' accounts

270.8 Clients' monies shall be paid without delay into a bank account, separate from other accounts of the firm.

270.9 Such accounts may be either general accounts or accounts in the name of the specific client. All such accounts shall in all cases include in their title the word "client". Any such bank accounts are referred to herein as "a client account".

270.10 Where it is anticipated that the monies of individual clients in excess of £10,000 or its equivalent will be held by the firm for more than 30 days, the money shall be paid into a separate bank account designated by the name of the client or number allocated to the client account.

270.11 The term "bank" is defined in paragraph 270.31 below.

Opening a client bank account

270.12 Whenever a firm opens a client account, it shall give written notice in clear terms to the bank concerned as to the nature of the account.

270.13 The notice shall require the bank to acknowledge in writing that it accepts the terms of the notice.

Payments into a client bank account

270.14 Where a firm receives cheques or drafts that include both clients' monies and other monies, it shall pay them into a client account.

270.15 Once the monies have been received into such a client account, the firm shall withdraw from that account such part of the sum received as can properly be transferred to an office account in accordance with the guidance set out in paragraphs 270.17 to 270.18 below.

270.16 Save as referred to in paragraph 270.15 above, no monies other than clients' monies shall be paid into a client account.

Withdrawals from a client bank account

270.17 The following may be withdrawn from a client bank account, provided that the sums withdrawn shall not exceed the total of the monies held for the time being in the account of the client concerned:

(a) monies properly required for a payment to or on behalf of a client;

(b) monies properly required for or towards payment of debts due to the firm from a client, otherwise than in respect of fees or commissions earned by the firm;

(c) monies properly required for or towards payment of fees or commissions payable to the firm by a client for work properly carried out by the firm;

(d) monies drawn on a client's authority or in conformity with any contract between the firm and a client.

270.18 Monies shall not be withdrawn from a client bank account for or towards payment of fees or commissions payable under paragraph 270.17 above unless:

(a) the client has been notified in writing that monies held or received on the client's behalf will be applied against those fees or commissions, and the client has not disagreed; and

(b) a principal of the firm has expressly authorised the withdrawal; and

(c) either:

(i) 30 days have elapsed since the date of delivery to the client of the notification; or

(ii) the precise amount to be withdrawn has been agreed with the client in writing or has been finally determined by a court or arbitrator.

270.19 A firm shall be careful to differentiate, both in its records and, where appropriate, in its use of client accounts, between monies held on behalf of clients in their personal capacity and those, with the knowledge of the firm, held on behalf of those same clients as trustees for others. A separate client account shall be opened to receive the trust monies of each separate trust.

270.20 Bank charges for maintaining client accounts shall be paid out of the firm's own account and not from any client account.

Fees paid in advance

270.21 Fees paid by clients in advance for professional work agreed to be performed and clearly identifiable as such shall not be regarded as clients' monies for the purposes of this Code.

270.22 Professional accountants in public practice are reminded that, where professional work paid for in advance is not carried out, fees advanced by the client shall be returned to him/her. A professional accountant in public practice shall ensure that sufficient financial resources to meet any such repayment are available.

Interest payable on client account monies

270.23 Subject to paragraph 270.24 below, in respect of all monies held by a firm on behalf of clients, the firm shall pay clients interest of not less than the amount that would have been earned by way of gross interest if all clients' monies held by the firm for clients had been kept in separate interest-bearing accounts at the small deposit rate with the bank concerned.

270.24 The obligation in paragraph 270.23 above may be over-ridden by express written agreement between the firm and a client. For instance, clients could agree to forgo sums of interest of less than, say, UK £10, or in respect of bank credits until they have been cleared.

270.25 Interest on trust accounts shall be paid and the requirements of paragraphs 270.23 and 270.24 above are not applicable to trust monies.

Monies held by the firm as stakeholder

270.26 Monies held by a professional accountant as stakeholder shall be regarded as clients' monies and shall be paid into a separate bank account maintained for the purpose or into a client bank account.

Maintaining records

270.27 A firm shall at all times maintain accurate records and controls (e.g. by way of reconciliations) so as to show clearly the monies it has received, held, and paid on account of their clients, and the details of any other monies dealt with by them through a client account, clearly distinguishing the monies of each client from the monies of other clients and from the firm's monies.

270.28 A professional accountant shall maintain such records for a period of not less than six years from the date of the last transaction recorded.

Fees and fee disputes

270.29 The attention of professional accountants is drawn to the guidance on fees contained in Section 240, Fees and other types of remuneration.

270.30 A professional accountant shall not withhold due payment out of monies to clients for the sole reason that a dispute exists in relation to fees.

Bank

270.31 The term "bank" comprises an institution authorised within the meaning of the Banking Act 1987 of the United Kingdom, the Bank of England, the central bank of another member state of the European Community, a building society within the meaning of the Building Societies Act 1986 of the United Kingdom (which has adopted the power to provide unrestricted money transaction services) and equivalent institutions around the world.

Insolvency work: UK

270.32 Professional accountants are referred to Statement of Insolvency Practice 11, Handling of funds in formal insolvency appointments, for guidance in respect of clients' monies. The Statement is contained in the separate ACCA publication setting out the Statements of Insolvency Practice.

270.33 A professional accountant shall not retain insolvency monies in a general client account; such funds shall be retained in a designated client account and any interest earned accounted to the insolvent estate. It is nevertheless acceptable for a professional accountant to use a general client account to clear funds received by cheque which cannot be endorsed to the insolvent estate. Such funds paid into a general client account shall be transferred to the insolvent estate to which they relate as soon as possible.

Untraceable funds

270.34 In exceptional circumstances client money may be withdrawn from a client account on the written authorisation of ACCA, which may impose the condition that the money be paid by the professional accountant to a charity which gives an indemnity against any legitimate claim subsequently made for the money in question.

SECTION 280
Objectivity – All services

280.1 A professional accountant in public practice shall determine when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or its directors, officers or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.

280.2 A professional accountant in public practice who provides an assurance service shall be independent of the assurance client. Independence of mind and in appearance is necessary to enable the professional accountant in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest, or undue influence of others. Sections 290 and 291 provide specific guidance on independence requirements for professional accountants in public practice when performing assurance engagements.

280.3 The existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that the professional accountant in public practice is performing.

280.4 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Withdrawing from the engagement team.
- Supervisory procedures.
- Terminating the financial or business relationship giving rise to the threat.
- Discussing the issue with higher levels of management within the firm.
- Discussing the issue with those charged with governance of the client.

If safeguards cannot eliminate or reduce the threat to an acceptable level, the professional accountant shall decline or terminate the relevant engagement.

Note: The Financial Reporting Council (FRC) has issued Ethical Standards to be applied in the audit of historical financial information in the United Kingdom and the Republic of Ireland. Any audit firm, any person in an audit firm who is directly involved in an audit and any person in an audit firm who is part of the chain of command for an audit to which FRC Ethical Standards apply shall comply with their requirements. Where relevant, a professional accountant in public practice shall therefore comply with both FRC's 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.

SECTION 290
Independence – Audit and review engagements

Paragraph

Structure of section 290.1
A conceptual framework approach to independence 290.4
Networks and network firms 290.13
Public interest entities 290.25
Related entities 290.27
Those charged with governance 290.28
Documentation 290.29
Engagement period 290.30
Mergers and acquisitions 290.33
Breach of a provision of this section 290.39
Application of the conceptual framework approach to independence 290.100
Financial interests 290.102
Loans and guarantees 290.117
Business relationships 290.123
Family and personal relationships 290.126
Employment with an audit client 290.132
Temporary staff assignments 290.140
Recent service with an audit client 290.141
Serving as a director or officer of an audit client 290.144
Long association of senior personnel (including partner rotation) with an audit client 290.148
Provision of non-assurance services to an audit client 290.154
- Management responsibilities 290.159
- Administrative services 290.163
- Preparing accounting records and financial statements 290.164
- Valuation services 290.171
- Taxation services 290.177
- Internal audit services 290.190
- IT systems services 290.196
- Litigation support services 290.202
- Legal services 290.204
- Recruiting services 290.209
- Corporate finance services 290.211

Fees 290.215
- Fees – Relative size 290.215
- Fees – Overdue 290.218
- Contingent fees 290.219

Compensation and evaluation policies 290.223
Gifts and hospitality 290.225
Actual or threatened litigation 290.226
Reports that include a restriction on use and distribution 290.500

Structure of section

290.1 This section addresses the independence requirements for audit engagements and review engagements, which are assurance engagements in which a professional accountant in public practice expresses a conclusion on financial statements. Such engagements comprise audit and review engagements to report on a complete set of financial statements and a single financial statement. Independence requirements for assurance engagements that are not audit or review engagements are addressed in Section 291.

290.2 In certain circumstances involving audit engagements where the audit report includes a restriction on use and distribution and provided certain conditions are met, the independence requirements in this section may be modified as provided in paragraphs 290.500 to 290.514. The modifications are not permitted in the case of an audit of financial statements required by law or regulation.

290.3 In this section, the term(s):

(a) "Audit," "audit team," "audit engagement," "audit client" and "audit report" include(s) review, review team, review engagement, review client and review report; and

(b) "Firm" includes network firm, except where otherwise stated.

A conceptual framework approach to independence

290.4 In the case of audit engagements, it is in the public interest and, therefore, required by this Code of Ethics, that members of audit teams, firms and network firms shall be independent of audit clients.

290.5 The objective of this section is to assist firms and members of audit teams in applying the conceptual framework approach described below to achieving and maintaining independence.

290.6 Independence comprises:

(a) Independence of mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism.

(b) Independence in appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the audit team's, integrity, objectivity or professional skepticism has been compromised.

290.7 The conceptual framework approach shall be applied by professional accountants to:

(a) Identify threats to independence;

(b) Evaluate the significance of the threats identified; and

(c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level.

When the professional accountant determines that appropriate safeguards are not available or cannot be applied to eliminate the threats or reduce them to an acceptable level, the professional accountant shall eliminate the circumstance or relationship creating the threats or decline or terminate the audit engagement.

A professional accountant shall use professional judgement in applying this conceptual framework.

290.8 Many different circumstances, or combinations of circumstances, may be relevant in assessing threats to independence. It is impossible to define every situation that creates threats to independence and to specify the appropriate action. Therefore, this Code establishes a conceptual framework that requires firms and members of audit teams to identify, evaluate, and address threats to independence. The conceptual framework approach assists professional accountants in practice in complying with the ethical requirements in this Code. It accommodates many variations in circumstances that create threats to independence and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.

290.9 Paragraphs 290.100 and onwards describe how the conceptual framework approach to independence is to be applied. These paragraphs do not address all the circumstances and relationships that create or may create threats to independence.

290.10 In deciding whether to accept or continue an engagement, or whether a particular individual may be a member of the audit team, a firm shall identify and evaluate threats to independence. If the threats are not at an acceptable level, and the decision is whether to accept an engagement or include a particular individual on the audit team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat to independence comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the conceptual framework approach.

290.11 Throughout this section, reference is made to the significance of threats to independence. In evaluating the significance of a threat, qualitative as well as quantitative factors shall be taken into account.

290.12 This section does not, in most cases, prescribe the specific responsibility of individuals within the firm for actions related to independence because responsibility may differ depending on the size, structure and organisation of a firm. The firm is required by International Standards on Quality Control (ISQCs) to establish policies and procedures designed to provide it with reasonable assurance that independence is maintained when required by relevant ethical requirements. In addition, International Standards on Auditing (ISAs) require the engagement partner to form a conclusion on compliance with the independence requirements that apply to the engagement.

Networks and network firms

290.13 If a firm is deemed to be a network firm, the firm shall be independent of the audit clients of the other firms within the network (unless otherwise stated in this Code). The independence requirements in this section that apply to a network firm apply to any entity, such as a consulting practice or professional law practice, that meets the definition of a network firm irrespective of whether the entity itself meets the definition of a firm.

290.14 To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.

290.15 The judgement as to whether the larger structure is a network shall be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgement shall be applied consistently throughout the network.

290.16 Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is deemed to be a network. However, the sharing of immaterial costs does not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network. Further, an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product does not in itself create a network.

290.17 Where the larger structure is aimed at co-operation and the entities within the structure share common ownership, control or management, it is deemed to be a network. This could be achieved by contract or other means.

290.18 Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is deemed to be a network. For this purpose, common quality control policies and procedures are those designed, implemented and monitored across the larger structure.

290.19 Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is deemed to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not deemed to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision of a professional service.

290.20 Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is deemed to be a network. A common brand name includes common initials or a common name. A firm is deemed to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an audit report.

290.21 Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms. Accordingly, if care is not taken in how a firm describes such memberships, a perception may be created that the firm belongs to a network.

290.22 If a firm sells a component of its practice, the sales agreement sometimes provides that, for a limited period of time, the component may continue to use the name of the firm, or an element of the name, even though it is no longer connected to the firm. In such circumstances, while the two entities may be practising under a common name, the facts are such that they do not belong to a larger structure aimed at co-operation and are, therefore, not network firms. Those entities shall determine how to disclose that they are not network firms when presenting themselves to outside parties.

290.23 Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is deemed to be a network. Professional resources include:

- Common systems that enable firms to exchange information such as client data, billing and time records;
- Partners and staff;
- Technical departments that consult on technical or industry specific issues, transactions or events for assurance engagements;
- Audit methodology or audit manuals; and
- Training courses and facilities.

290.24 The determination of whether the professional resources shared are significant, and therefore the firms are network firms, shall be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

Public interest entities

290.25 Section 290 contains additional provisions that reflect the extent of public interest in certain entities. For the purpose of this section, public interest entities are:

(a) All listed entities; and

(b) Any entity:

(i) Defined by regulation or legislation as a public interest entity; or

(ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator; *and*

(c) Entities that are of significant public interest because of their business, their size or their number of employees or their corporate status is such that they have a wide range of stakeholders. Examples of such entities may include credit institutions (for example, banks), insurance companies, investment firms and pension firms.

290.26 Firms and member bodies are encouraged to determine whether to treat additional entities, or certain categories of entities, as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered include:

- The nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders. Examples may include financial institutions, such as banks and insurance companies, and pension funds;
- Size; and
- Number of employees.

In considering the above, ACCA has included category (c) within the definition in paragraph 290.25, and augmented the definition of "public interest entity" accordingly.

Related entities

290.27 In the case of an audit client that is a listed entity, references to an audit client in this section include related entities of the client (unless otherwise stated). For all other audit clients, references to an audit client in this section include related entities over which the client has direct or indirect control. When the audit team knows or has reason to believe that a relationship or circumstance involving another related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards.

Those charged with governance

290.28 Even when not required by the Code, applicable auditing standards, law or regulation, regular communication is encouraged between the firm and those charged with governance of the audit client regarding relationships and other matters that might, in the firm's opinion, reasonably bear on independence. Such communication enables those charged with governance to:

(a) Consider the firm's judgements in identifying and evaluating threats to independence;

(b) Consider the appropriateness of safeguards applied to eliminate them or reduce them to an acceptable level; and

(c) Take appropriate action.

Such an approach can be particularly helpful with respect to intimidation and familiarity threats.

In complying with requirements in this section to communicate with those charged with governance, the firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.

Documentation

290.29 Documentation provides evidence of the professional accountant's judgements in forming conclusions regarding compliance with independence requirements. The absence of documentation is not a determinant of whether a firm considered a particular matter or whether it is independent.

The professional accountant shall document conclusions regarding compliance with independence requirements, and the substance of any relevant discussions that support those conclusions. Accordingly:

(a) When safeguards are required to reduce a threat to an acceptable level, the professional accountant shall document the nature of the threat and the safeguards in place or applied that reduce the threat to an acceptable level; and

(b) When a threat required significant analysis to determine whether safeguards were necessary and the professional accountant concluded that they were not because the threat was already at an acceptable level, the professional accountant shall document the nature of the threat and the rationale for the conclusion.

Engagement period

290.30 Independence from the audit client is required both during the engagement period and the period covered by the financial statements. The engagement period starts when the audit team begins to perform audit services. The engagement period ends when the audit report is issued. When the engagement is of a recurring nature, it ends at the later of the notification by either party that the professional relationship has terminated or the issuance of the final audit report.

290.31 When an entity becomes an audit client during or after the period covered by the financial statements on which the firm will express an opinion, the firm shall determine whether any threats to independence are created by:

- Financial or business relationships with the audit client during or after the period covered by the financial statements but before accepting the audit engagement; or
- Previous services provided to the audit client.

290.32 If a non-assurance service was provided to the audit client during or after the period covered by the financial statements but before the audit team begins to perform audit services and the service would not be permitted during the period of the audit engagement, the firm shall evaluate any threat to independence created by the

service. If a threat is not at an acceptable level, the audit engagement shall only be accepted if safeguards are applied to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- Not including personnel who provided the non-assurance service as members of the audit team;
- Having a professional accountant review the audit and non-assurance work as appropriate; or
- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

Mergers and acquisitions

290.33 When, as a result of a merger or acquisition, an entity becomes a related entity of an audit client, the firm shall identify and evaluate previous and current interests and relationships with the related entity that, taking into account available safeguards, could affect its independence and therefore its ability to continue the audit engagement after the effective date of the merger or acquisition.

290.34 The firm shall take steps necessary to terminate, by the effective date of the merger or acquisition, any current interests or relationships that are not permitted under this Code. However, if such a current interest or relationship cannot reasonably be terminated by the effective date of the merger or acquisition, for example, because the related entity is unable by the effective date to effect an orderly transition to another service provider of a non-assurance service provided by the firm, the firm shall evaluate the threat that is created by such interest or relationship. The more significant the threat, the more likely the firm's objectivity will be compromised and it will be unable to continue as auditor. The significance of the threat will depend upon factors such as:

- The nature and significance of the interest or relationship;
- The nature and significance of the related entity relationship (for example, whether the related entity is a subsidiary or parent); and
- The length of time until the interest or relationship can reasonably be terminated.

The firm shall discuss with those charged with governance the reasons why the interest or relationship cannot reasonably be terminated by the effective date of the merger or acquisition and the evaluation of the significance of the threat.

290.35 If those charged with governance request the firm to continue as auditor, the firm shall do so only if:

(a) The interest or relationship will be terminated as soon as reasonably possible and in all cases within six months of the effective date of the merger or acquisition;

(b) Any individual who has such an interest or relationship, including one that has arisen through performing a non-assurance service that would not be permitted under this section, will not be a member of the engagement team for the audit or the individual responsible for the engagement quality control review; and

(c) Appropriate transitional measures will be applied, as necessary, and discussed with those charged with governance. Examples of transitional measures include:

- Having a professional accountant review the audit or non-assurance work as appropriate;
- Having a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, perform a review that is equivalent to an engagement quality control review; or
- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

290.36 The firm may have completed a significant amount of work on the audit prior to the effective date of the merger or acquisition and may be able to complete the remaining audit procedures within a short period of time. In such circumstances, if those charged with governance request the firm to complete the audit while continuing with an interest or relationship identified in 290.33, the firm shall do so only if it:

(a) Has evaluated the significance of the threat created by such interest or relationship and discussed the evaluation with those charged with governance;

(b) Complies with the requirements of paragraph 290.35(b)–(c); and

(c) Ceases to be the auditor no later than the issuance of the audit report.

290.37 When addressing previous and current interests and relationships covered by paragraphs 290.33 to 290.36, the firm shall determine whether, even if all the requirements could be met, the interests and relationships create threats that would remain so significant that objectivity would be compromised and, if so, the firm shall cease to be the auditor.

290.38 The professional accountant shall document any interests or relationships covered by paragraphs 290.34 and 290.36 that will not be terminated by the effective date of the merger or acquisition and the reasons why they will not be terminated, the transitional measures applied, the results of the discussion with those charged with governance, and the rationale as to why the previous and current interests and relationships do not create threats that would remain so significant that objectivity would be compromised.

Breach of a provision of this section

290.39 A breach of a provision of this section may occur despite the firm having policies and procedures designed to provide it with reasonable assurance that independence is maintained. A consequence of a breach may be that termination of the audit engagement is necessary.

290.40 When the firm concludes that a breach has occurred, the firm shall terminate, suspend or eliminate the interest or relationship that caused the breach and address the consequences of the breach.

290.41 When a breach is identified, the firm shall consider whether there are any legal or regulatory requirements that apply with respect to the breach and, if so, shall comply with those requirements. The firm shall consider reporting the breach to a member body, relevant regulator or oversight authority if such reporting is common practice or is expected in the particular jurisdiction.

290.42 When a breach is identified, the firm shall, in accordance with its policies and procedures, promptly communicate the breach to the engagement partner, those with responsibility for the policies and procedures relating to independence, other relevant personnel in the firm, and, where appropriate, the network, and those subject to the independence requirements who need to take appropriate action. The firm shall evaluate the significance of that breach and its impact on the firm's objectivity and ability to issue an audit report. The significance of the breach will depend on factors such as:

- The nature and duration of the breach;
- The number and nature of any previous breaches with respect to the current audit engagement;
- Whether a member of the audit team had knowledge of the interest or relationship that caused the breach;
- Whether the individual who caused the breach is a member of the audit team or another individual for whom there are independence requirements;
- If the breach relates to a member of the audit team, the role of that individual;
- If the breach was caused by the provision of a professional service, the impact of that service, if any, on the accounting records or the amounts recorded in the financial statements on which the firm will express an opinion; and
- The extent of the self-interest, advocacy, intimidation or other threats created by the breach.

290.43 Depending upon the significance of the breach, it may be necessary to terminate the audit engagement or it may be possible to take action that satisfactorily addresses the consequences of the breach. The firm shall determine whether such action can be taken and is appropriate in the circumstances. In making this determination, the firm shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing the significance of the breach, the action to be taken and all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the firm's objectivity would be compromised and therefore the firm is unable to issue an audit report.

290.44 Examples of actions that the firm may consider include:

- Removing the relevant individual from the audit team;
- Conducting an additional review of the affected audit work or re-performing that work to the extent necessary, in either case using different personnel;
- Recommending that the audit client engage another firm to review or re-perform the affected audit work to the extent necessary; and

- Where the breach relates to a non-assurance service that affects the accounting records or an amount that is recorded in the financial statements, engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

290.45 If the firm determines that action cannot be taken to satisfactorily address the consequences of the breach, the firm shall inform those charged with governance as soon as possible and take the steps necessary to terminate the audit engagement in compliance with any applicable legal or regulatory requirements relevant to terminating the audit engagement. Where termination is not permitted by law or regulation, the firm shall comply with any reporting or disclosure requirements.

290.46 If the firm determines that action can be taken to satisfactorily address the consequences of the breach, the firm shall discuss the breach and the action it has taken or proposes to take with those charged with governance. The firm shall discuss the breach and the action as soon as possible, unless those charged with governance have specified an alternative timing for reporting less significant breaches. The matters to be discussed shall include:

- The significance of the breach, including its nature and duration;
- How the breach occurred and how it was identified;
- The action taken or proposed to be taken and the firm's rationale for why the action will satisfactorily address the consequences of the breach and enable it to issue an audit report;
- The conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for that conclusion; and
- Any steps that the firm has taken or proposes to take to reduce or avoid the risk of further breaches occurring.

290.47 The firm shall communicate in writing with those charged with governance all matters discussed in accordance with paragraph 290.46 and obtain the concurrence of those charged with governance that action can be, or has been, taken to satisfactorily address the consequences of the breach. The communication shall include a description of the firm's policies and procedures relevant to the breach designed to provide it with reasonable assurance that independence is maintained and any steps that the firm has taken, or proposes to take, to reduce or avoid the risk of further breaches occurring. If those charged with governance do not concur that the action satisfactorily addresses the consequences of the breach, the firm shall take the steps necessary to terminate the audit engagement, where permitted by law or regulation, in compliance with any applicable legal or regulatory requirements relevant to terminating the audit engagement. Where termination is not permitted by law or regulation, the firm shall comply with any reporting or disclosure requirements.

290.48 If the breach occurred prior to the issuance of the previous audit report, the firm shall comply with this section in evaluating the significance of the breach and its impact on the firm's objectivity and its ability to issue an audit report in the current period. The firm shall also consider the impact of the breach, if any, on the firm's objectivity in relation to any previously issued audit reports, and the possibility of withdrawing such audit reports, and discuss the matter with those charged with governance.

290.49 The firm shall document the breach, the action taken, key decisions made and all the matters discussed with those charged with governance and any discussions with a member body, relevant regulator or oversight authority. When the firm continues with the audit engagement, the matters to be documented shall also include the conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for why the action taken satisfactorily addressed the consequences of the breach such that the firm could issue an audit report.

Paragraphs 290.50 to 290.99 are intentionally left blank.

Application of the conceptual framework approach to independence

290.100 Paragraphs 290.102 to 290.226 describe specific circumstances and relationships that create or may create threats to independence. The paragraphs describe the potential threats and the types of safeguard that may be appropriate to eliminate the threats or reduce them to an acceptable level and identify certain situations where no safeguards could reduce the threats to an acceptable level. The paragraphs do not describe all of the circumstances and relationships that create or may create a threat to independence. The firm and the members of the audit team shall evaluate the implications of similar, but different, circumstances and relationships and determine whether safeguards, including the safeguards in paragraphs 200.12 to 200.15, can be applied when necessary to eliminate the threats to independence or reduce them to an acceptable level.

290.101 Paragraphs 290.102 to 290.125 contain references to the materiality of a financial interest, loan, or guarantee, or the significance of a business relationship. For the purpose of determining whether such an interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

Financial interests

290.102 Holding a financial interest in an audit client may create a self-interest threat. The existence and significance of any threat created depends on:

(a) The role of the person holding the financial interest;

(b) Whether the financial interest is direct or indirect; and

(c) The materiality of the financial interest.

290.103 Financial interests may be held through an intermediary (e.g. a collective investment vehicle, estate or trust). The determination of whether such financial interests are direct or indirect will depend upon whether the beneficial owner has control over the investment vehicle or the ability to influence its investment decisions. When control over the investment vehicle or the ability to influence investment decisions exists, this Code defines that financial interest to be a direct financial interest. Conversely, when the beneficial owner of the financial interest has no control over the investment

vehicle or ability to influence its investment decisions, this Code defines that financial interest to be an indirect financial interest.

290.104 If a member of the audit team, a member of that individual's immediate family, or a firm has a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have a direct financial interest or a material indirect financial interest in the client: a member of the audit team; a member of that individual's immediate family; or the firm.

290.105 When a member of the audit team has a close family member who the audit team member knows has a direct financial interest or a material indirect financial interest in the audit client, a self-interest threat is created. The significance of the threat will depend on factors such as:

- The nature of the relationship between the member of the audit team and the close family member; and
- The materiality of the financial interest to the close family member.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- The close family member disposing, as soon as practicable, of all of the financial interest or disposing of a sufficient portion of an indirect financial interest so that the remaining interest is no longer material;
- Having a professional accountant review the work of the member of the audit team; or
- Removing the individual from the audit team.

290.106 If a member of the audit team, a member of that individual's immediate family, or a firm has a direct or material indirect financial interest in an entity that has a controlling interest in the audit client, and the client is material to the entity, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have such a financial interest: a member of the audit team; a member of that individual's immediate family; or the firm.

290.107 The holding by a firm's retirement benefit plan of a direct or material indirect financial interest in an audit client creates a self-interest threat. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

290.108 If other partners in the office in which the engagement partner practises in connection with the audit engagement, or their immediate family members, hold a direct financial interest or a material indirect financial interest in that audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, neither such partners nor their immediate family members shall hold any such financial interests in such an audit client.

290.109 The office in which the engagement partner practises in connection with the audit engagement is not necessarily the office to which that partner is assigned. Accordingly, when the engagement partner is located in a different office from that of the other members of the audit team, professional judgement shall be used to determine in which office the partner practises in connection with that engagement.

290.110 If other partners and managerial employees who provide non-audit services to the audit client, except those whose involvement is minimal, or their immediate family members, hold a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, neither such personnel nor their immediate family members shall hold any such financial interests in such an audit client.

290.111 Despite paragraphs 290.108 and 290.110, the holding of a financial interest in an audit client by an immediate family member of:

(a) A partner located in the office in which the engagement partner practises in connection with the audit engagement, or

(b) A partner or managerial employee who provides non-audit services to the audit client,

is deemed not to compromise independence if the financial interest is received as a result of the immediate family member's employment rights (e.g., through pension or share option plans) and, when necessary, safeguards are applied to eliminate any threat to independence or reduce it to an acceptable level.

However, when the immediate family member has or obtains the right to dispose of the financial interest or, in the case of a stock option, the right to exercise the option, the financial interest shall be disposed of or forfeited as soon as practicable.

290.112 A self-interest threat may be created if the firm or a member of the audit team, or a member of that individual's immediate family, has a financial interest in an entity and an audit client also has a financial interest in that entity. However, independence is deemed not to be compromised if these interests are immaterial and the audit client cannot exercise significant influence over the entity. If such interest is material to any party, and the audit client can exercise significant influence over the other entity, no safeguards could reduce the threat to an acceptable level. Accordingly, the firm shall not have such an interest and any individual with such an interest shall, before becoming a member of the audit team, either:

(a) Dispose of the interest; or

(b) Dispose of a sufficient amount of the interest so that the remaining interest is no longer material.

290.113 A self-interest, familiarity or intimidation threat may be created if a member of the audit team, or a member of that individual's immediate family, or the firm, has a financial interest in an entity when a director, officer or controlling owner of the audit client is also known to have a financial interest in that entity. The existence and significance of any threat will depend upon factors such as:

- The role of the professional on the audit team;
- Whether ownership of the entity is closely or widely held;
- Whether the interest gives the investor the ability to control or significantly influence the entity; and
- The materiality of the financial interest.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the member of the audit team with the financial interest from the audit team; or
- Having a professional accountant review the work of the member of the audit team.

290.114 The holding by a firm, or a member of the audit team, or a member of that individual's immediate family, of a direct financial interest or a material indirect financial interest in the audit client as a trustee creates a self-interest threat. Similarly, a self-interest threat is created when:

(a) A partner in the office in which the engagement partner practises in connection with the audit;

(b) Other partners and managerial employees who provide non-assurance services to the audit client, except those whose involvement is minimal; or

(c) Their immediate family members hold a direct financial interest or a material indirect financial interest in the audit client as trustee.

Such an interest shall not be held unless:

(a) Neither the trustee, nor an immediate family member of the trustee, nor the firm are beneficiaries of the trust;

(b) The interest in the audit client held by the trust is not material to the trust;

(c) The trust is not able to exercise significant influence over the audit client; and

(d) The trustee, an immediate family member of the trustee, or the firm cannot significantly influence any investment decision involving a financial interest in the audit client.

290.115 Members of the audit team shall determine whether a self-interest threat is created by any known financial interests in the audit client held by other individuals including:

(a) Partners and professional employees of the firm, other than those referred to above, or their immediate family members; and

(b) Individuals with a close personal relationship with a member of the audit team.

Whether these interests create a self-interest threat will depend on factors such as:

- The firm's organizational, operating and reporting structure; and
- The nature of the relationship between the individual and the member of the audit team.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the member of the audit team with the personal relationship from the audit team;
- Excluding the member of the audit team from any significant decision-making concerning the audit engagement; or
- Having a professional accountant review the work of the member of the audit team.

290.116 If a firm or a partner or employee of the firm, or a member of that individual's immediate family, receives a direct financial interest or a material indirect financial interest in an audit client, for example, by way of an inheritance, gift or as a result of a merger and such interest would not be permitted to be held under this section, then:

(a) If the interest is received by the firm, the financial interest shall be disposed of immediately, or a sufficient amount of an indirect financial interest shall be disposed of so that the remaining interest is no longer material;

(b) If the interest is received by a member of the audit team, or a member of that individual's immediate family, the individual who received the financial interest shall immediately dispose of the financial interest, or dispose of a sufficient amount of an indirect financial interest so that the remaining interest is no longer material; or

(c) If the interest is received by an individual who is not a member of the audit team, or by an immediate family member of the individual, the financial interest shall be disposed of as soon as possible, or a sufficient amount of an indirect financial interest shall be disposed of so that the remaining interest is no longer material. Pending the disposal of the financial interest, a determination shall be made as to whether any safeguards are necessary.

Loans and guarantees

290.117 A loan, or a guarantee of a loan, to a member of the audit team, or a member of that individual's immediate family, or the firm from an audit client that is a bank or a similar institution may create a threat to independence. If the loan or guarantee is not made under normal lending procedures, terms and conditions, a self-interest threat would be created that would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, neither a member of the audit team, a member of that individual's immediate family, nor a firm shall accept such a loan or guarantee.

290.118 If a loan to a firm from an audit client that is a bank or similar institution is made under normal lending procedures, terms and conditions and it is material to the audit client or firm receiving the loan, it may be possible to apply safeguards to reduce the self-interest threat to an acceptable level. An example of such a safeguard is having the work reviewed by a professional accountant from a network firm that is neither involved with the audit nor received the loan.

290.119 A loan, or a guarantee of a loan, from an audit client that is a bank or a similar institution to a member of the audit team, or a member of that individual's immediate family, does not create a threat to independence if the loan or guarantee is made under normal lending procedures, terms and conditions. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

290.120 If the firm or a member of the audit team, or a member of that individual's immediate family, accepts a loan from, or has a borrowing guaranteed by, an audit client that is not a bank or similar institution, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both (a) the firm or the member of the audit team and the immediate family member, and (b) the client.

290.121 Similarly, if the firm or a member of the audit team, or a member of that individual's immediate family, makes or guarantees a loan to an audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both (a) the firm or the member of the audit team and the immediate family member, and (b) the client.

290.122 If a firm or a member of the audit team, or a member of that individual's immediate family, has deposits or a brokerage account with an audit client that is a bank, broker or similar institution, a threat to independence is not created if the deposit or account is held under normal commercial terms.

Business relationships

290.123 A close business relationship between a firm, or a member of the audit team, or a member of that individual's immediate family, and the audit client or its management, arises from a commercial relationship or common financial interest and may create self-interest or intimidation threats. Examples of such relationships include:

- Having a financial interest in a joint venture with either the client or a controlling owner, director, officer or other individual who performs senior managerial activities for that client.

- Arrangements to combine one or more services or products of the firm with one or more services or products of the client and to market the package with reference to both parties.

- Distribution or marketing arrangements under which the firm distributes or markets the client's products or services, or the client distributes or markets the firm's products or services.

Unless any financial interest is immaterial and the business relationship is insignificant to the firm and the client or its management, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, unless the financial interest is immaterial and the business relationship is insignificant, the business relationship shall not be entered into, or it shall be reduced to an insignificant level or terminated.

In the case of a member of the audit team, unless any such financial interest is immaterial and the relationship is insignificant to that member, the individual shall be removed from the audit team.

If the business relationship is between an immediate family member of a member of the audit team and the audit client or its management, the significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

290.124 A business relationship involving the holding of an interest by the firm, or a member of the audit team, or a member of that individual's immediate family, in a closely-held entity when the audit client or a director or officer of the client, or any group thereof, also holds an interest in that entity does not create threats to independence if:

(a) The business relationship is insignificant to the firm, the member of the audit team and the immediate family member, and the client;

(b) The financial interest is immaterial to the investor or group of investors; and

(c) The financial interest does not give the investor, or group of investors, the ability to control the closely-held entity.

290.125 The purchase of goods and services from an audit client by the firm, or a member of the audit team, or a member of that individual's immediate family, does not generally create a threat to independence if the transaction is in the normal course of business and at arm's length. However, such transactions may be of such a nature or magnitude that they create a self-interest threat. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Eliminating or reducing the magnitude of the transaction; or
- Removing the individual from the audit team.

Family and personal relationships

290.126 Family and personal relationships between a member of the audit team and a director or officer or certain employees (depending on their role) of the audit client may create self-interest, familiarity or intimidation threats. The existence and significance of any threats will depend on a number of factors, including the individual's responsibilities on the audit team, the role of the family member or other individual within the client and the closeness of the relationship.

290.127 When an immediate family member of a member of the audit team is:

(a) a director or officer of the audit client; or

(b) an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion,

or was in such a position during any period covered by the engagement or the financial statements, the threats to independence can only be reduced to an acceptable level by removing the individual from the audit team. The closeness of the relationship is such that no other safeguards could reduce the threat to an acceptable level. Accordingly, no individual who has such a relationship shall be a member of the audit team.

290.128 Threats to independence are created when an immediate family member of a member of the audit team is an employee in a position to exert significant influence over the client's financial position, financial performance or cash flows. The significance of the threats will depend on factors such as:

- The position held by the immediate family member; and
- The role of the professional on the audit team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the audit team; or
- Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the immediate family member.

290.129 Threats to independence are created when a close family member of a member of the audit team is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

The significance of the threats will depend on factors such as:

- The nature of the relationship between the member of the audit team and the close family member;
- The position held by the close family member; and
- The role of the professional on the audit team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the audit team; or
- Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the close family member.

290.130 Threats to independence are created when a member of the audit team has a close relationship with a person who is not an immediate or close family member, but who is a director or officer or an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion. A member of the audit team who has such a relationship shall consult in accordance with firm policies and procedures. The significance of the threats will depend on factors such as:

- The nature of the relationship between the individual and the member of the audit team;
- The position the individual holds with the client; and
- The role of the professional on the audit team.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Removing the professional from the audit team; or
- Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the individual with whom the professional has a close relationship.

290.131 Self-interest, familiarity or intimidation threats may be created by a personal or family relationship between (a) a partner or employee of the firm who is not a member of the audit team and (b) a director or officer of the audit client or an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion. Partners and employees of the firm who are aware of such relationships shall consult in accordance with firm policies and procedures. The existence and significance of any threat will depend on factors such as:

- The nature of the relationship between the partner or employee of the firm and the director or officer or employee of the client;
- The interaction of the partner or employee of the firm with the audit team;
- The position of the partner or employee within the firm; and
- The position the individual holds with the client.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the audit engagement; or

- Having a professional accountant review the relevant audit work performed.

Employment with an audit client

290.132 Familiarity or intimidation threats may be created if a director or officer of the audit client, or an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, has been a member of the audit team or partner of the firm.

290.133 If a former member of the audit team or partner of the firm has joined the audit client in such a position and a significant connection remains between the firm and the individual, the threat would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, independence would be deemed to be compromised if a former member of the audit team or partner joins the audit client as a director or officer, or as an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, unless:

(a) The individual is not entitled to any benefits or payments from the firm, unless made in accordance with fixed predetermined arrangements, and any amount owed to the individual is not material to the firm; and

(b) The individual does not continue to participate or appear to participate in the firm's business or professional activities.

290.134 If a former member of the audit team or partner of the firm has joined the audit client in such a position, and no significant connection remains between the firm and the individual, the existence and significance of any familiarity or intimidation threats will depend on factors such as:

- The position the individual has taken at the client;

- Any involvement the individual will have with the audit team;

- The length of time since the individual was a member of the audit team or partner of the firm; and

- The former position of the individual within the audit team or firm, for example, whether the individual was responsible for maintaining regular contact with the client's management or those charged with governance.

The significance of any threats created shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Modifying the audit plan;

- Assigning individuals to the audit team who have sufficient experience in relation to the individual who has joined the client; or

- Having a professional accountant review the work of the former member of the audit team.

290.135 If a former partner of the firm has previously joined an entity in such a position and the entity subsequently becomes an audit client of the firm, the significance of any threat to independence shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

290.136 A self-interest threat is created when a member of the audit team participates in the audit engagement while knowing that the member of the audit team will, or may, join the client some time in the future. Firm policies and procedures shall require members of an audit team to notify the firm when entering employment negotiations with the client. On receiving such notification, the significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the audit team; or

- A review of any significant judgments made by that individual while on the team.

Audit clients that are public interest entities

290.137 Familiarity or intimidation threats are created when a key audit partner joins an audit client that is a public interest entity as:

(a) A director or officer of the entity; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

Independence would be deemed to be compromised unless, subsequent to the partner ceasing to be a key audit partner, the public interest entity had issued audited financial statements covering a period of not less than twelve months and the partner was not a member of the audit team with respect to the audit of those financial statements.

290.138 An intimidation threat is created when an individual who was the firm's Senior or Managing Partner (Chief Executive or equivalent) joins an audit client that is a public interest entity as:

(a) An employee in a position to exert significant influence over the preparation of the entity's accounting records or its financial statements; or

(b) A director or officer of the entity. Independence would be deemed to be compromised unless twelve months have passed since the individual was the Senior or Managing Partner (Chief Executive or equivalent) of the firm.

290.139 Independence is deemed not to be compromised if, as a result of a business combination, a former key audit partner or the individual who was the firm's former Senior or Managing Partner is in a position as described in paragraphs 290.137 and 290.138, and:

(a) The position was not taken in contemplation of the business combination;

(b) Any benefits or payments due to the former partner from the firm have been settled in full, unless made in accordance with fixed predetermined arrangements, and any amount owed to the partner is not material to the firm;

(c) The former partner does not continue to participate or appear to participate in the firm's business or professional activities; and

(d) The position held by the former partner with the audit client is discussed with those charged with governance.

Temporary staff assignments

290.140 The lending of staff by a firm to an audit client may create a self-review threat. Such assistance may be given, but only for a short period of time and the firm's personnel shall not be involved in:

(a) Providing non-assurance services that would not be permitted under this section; or

(b) Assuming management responsibilities.

In all circumstances, the audit client shall be responsible for directing and supervising the activities of the loaned staff.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Conducting an additional review of the work performed by the loaned staff;
- Not giving the loaned staff audit responsibility for any function or activity that the staff performed during the temporary staff assignment; or
- Not including the loaned staff as a member of the audit team.

Recent service with an audit client

290.141 Self-interest, self-review or familiarity threats may be created if a member of the audit team has recently served as a director, officer, or employee of the audit client. This would be the case when, for example, a member of the audit team has to evaluate elements of the financial statements for which the member of the audit team had prepared the accounting records while with the client.

290.142 If, during the period covered by the audit report, a member of the audit team had served as a director or officer of the audit client, or was an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Consequently, such individuals shall not be assigned to the audit team.

290.143 Self-interest, self-review or familiarity threats may be created if, before the period covered by the audit report, a member of the audit team had served as a director or officer of the audit client, or was an employee in a position to exert significant influence over the preparation of the client's accounting records or financial statements on which the firm will express an opinion. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the client, is to be evaluated in the current period as part of the current audit engagement. The existence and significance of any threats will depend on factors such as:

- The position the individual held with the client;
- The length of time since the individual left the client; and
- The role of the professional on the audit team.

The significance of any threat shall be evaluated and safeguards applied when necessary to reduce the threat to an acceptable level. An example of such a safeguard is conducting a review of the work performed by the individual as a member of the audit team.

Serving as a director or officer of an audit client

290.144 If a partner or employee of the firm serves as a director or officer of an audit client, the self-review and self-interest threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, no partner or employee shall serve as a director or officer of an audit client.

290.145 The position of Company Secretary has different implications in different jurisdictions. Duties may range from administrative duties, such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulations or providing advice on corporate governance matters. Generally, this position is seen to imply a close association with the entity.

290.146 If a partner or employee of the firm serves as Company Secretary for an audit client, self-review and advocacy threats are created that would generally be so significant that no safeguards could reduce the threats to an acceptable level. Despite paragraph 290.144, when this practice is specifically permitted under local law, professional rules or practice, and provided management makes all relevant decisions, the duties and activities shall be limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns. In those circumstances, the significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level.

290.147 Performing routine administrative services to support a company secretarial function or providing advice in relation to company secretarial administration matters does not generally create threats to independence, as long as client management makes all relevant decisions.

Long association of senior personnel (including partner rotation) with an audit client

General provisions

290.148 Familiarity and self-interest threats are created by using the same senior personnel on an audit engagement over a long period of time. The significance of the threats will depend on factors such as:

- How long the individual has been a member of the audit team;
- The role of the individual on the audit team;
- The structure of the firm;
- The nature of the audit engagement;
- Whether the client's management team has changed; and
- Whether the nature or complexity of the client's accounting and reporting issues has changed.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Rotating the senior personnel off the audit team;
- Having a professional accountant who was not a member of the audit team review the work of the senior personnel; or
- Regular independent internal or external quality reviews of the engagement.

Audit clients that are public interest entities

290.149 In respect of an audit of a public interest entity, an individual shall not be a key audit partner for more than seven years. After such time, the individual shall not be a member of the engagement team or be a key audit partner for the client for two years. During that period, the individual shall not participate in the audit of the entity, provide quality control for the engagement, consult with the engagement team or the client regarding technical or industry specific issues, transactions or events or otherwise directly influence the outcome of the engagement.

290.150 Despite paragraph 290.149, key audit partners whose continuity is especially important to audit quality may, in rare cases due to unforeseen circumstances outside the firm's control, be permitted an additional year on the audit team as long as the threat to independence can be eliminated or reduced to an acceptable level by applying safeguards. For example, a key audit partner may remain on the audit team for up to one additional year in circumstances where, due to unforeseen events, a required rotation was not possible, as might be the case due to serious illness of the intended engagement partner.

290.151 The long association of other partners with an audit client that is a public interest entity creates familiarity and self-interest threats. The significance of the threats will depend on factors such as:

- How long any such partner has been associated with the audit client;
- The role, if any, of the individual on the audit team; and
- The nature, frequency and extent of the individual's interactions with the client's management or those charged with governance.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Rotating the partner off the audit team or otherwise ending the partner's association with the audit client; or
- Regular independent internal or external quality reviews of the engagement.

290.152 When an audit client becomes a public interest entity, the length of time the individual has served the audit client as a key audit partner before the client becomes a public interest entity shall be taken into account in determining the timing of the rotation. If the individual has served the audit client as a key audit partner for five years or less when the client becomes a public interest entity, the number of years the individual may continue to serve the client in that capacity before rotating off the engagement is seven years less the number of years already served. If the individual has served the audit client as a key audit partner for six or more years when the client becomes a public interest entity, the partner may continue to serve in that capacity for a maximum of two additional years before rotating off the engagement.

290.153 When a firm has only a few people with the necessary knowledge and experience to serve as a key audit partner on the audit of a public interest entity, rotation of key audit partners may not be an available safeguard. If an independent regulator in the relevant jurisdiction has provided an exemption from partner rotation in such circumstances, an individual may remain a key audit partner for more than seven years, in accordance with such regulation, provided that the independent regulator has specified alternative safeguards which are applied, such as a regular independent external review.

Provision of non-assurance services to an audit client

290.154 Firms have traditionally provided to their audit clients a range of non-assurance services that are consistent with their skills and expertise. Providing non-assurance services may, however, create threats to the independence of the firm or members of the audit team. The threats created are most often self-review, self-interest and advocacy threats.

290.155 New developments in business, the evolution of financial markets and changes in information technology make it impossible to draw up an all-inclusive list of non-assurance services that might be provided to an audit client. When specific guidance on a particular non-assurance service is not included in this section, the conceptual framework shall be applied when evaluating the particular circumstances.

290.156 Before the firm accepts an engagement to provide a non-assurance service to an audit client, a determination shall be made as to whether providing such a service

would create a threat to independence. In evaluating the significance of any threat created by a particular non-assurance service, consideration shall be given to any threat that the audit team has reason to believe is created by providing other related non-assurance services. If a threat is created that cannot be reduced to an acceptable level by the application of safeguards, the non-assurance service shall not be provided.

290.157 A firm may provide non-assurance services that would otherwise be restricted under this section to the following related entities of the audit client:

(a) An entity, which is not an audit client, that has direct or indirect control over the audit client;

(b) An entity, which is not an audit client, with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity; or

(c) An entity, which is not an audit client, that is under common control with the audit client,

if it is reasonable to conclude that (a) the services do not create a self-review threat because the results of the services will not be subject to audit procedures and (b) any threats that are created by the provision of such services are eliminated or reduced to an acceptable level by the application of safeguards.

290.158 A non-assurance service provided to an audit client does not compromise the firm's independence when the client becomes a public interest entity if:

(a) The previous non-assurance service complies with the provisions of this section that relate to audit clients that are not public interest entities;

(b) Services that are not permitted under this section for audit clients that are public interest entities are terminated before or as soon as practicable after the client becomes a public interest entity; and

(c) The firm applies safeguards when necessary to eliminate or reduce to an acceptable level any threats to independence arising from the service.

Management responsibilities

290.159 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

290.160 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgment. Examples of activities that would be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.

- Authorizing transactions.
- Controlling or managing of bank accounts or investments.
- Deciding which recommendations of the firm or other third parties to implement.
- Reporting to those charged with governance on behalf of management.
- Taking responsibility for the preparation and fair presentation of financial statements in accordance with the applicable financial reporting framework.
- Taking responsibility for designing, implementing, monitoring or maintaining internal controls.

290.161 A firm shall not assume a management responsibility for an audit client. The threats created would be so significant that no safeguards could reduce the threats to an acceptable level. For example, deciding which recommendations of the firm to implement will create self-review and self-interest threats. Further, assuming a management responsibility creates a familiarity threat because the firm becomes too closely aligned with the views and interests of management. Subject to compliance with paragraph 290.162, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.

290.162 To avoid the risk of assuming a management responsibility when providing non-assurance services to an audit client, the firm shall be satisfied that client management makes all judgments and decisions that are the responsibility of management. This includes ensuring that the client's management:

- Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the services. Such an individual, preferably within senior management, would understand the objectives, nature and results of the services and the respective client and firm responsibilities. However, the individual is not required to possess the expertise to perform or re-perform the services;
- Provides oversight of the services and evaluates the adequacy of the results of the services performed for the client's purpose; and
- Accepts responsibility for the actions, if any, to be taken arising from the results of the services.

Administrative services

290.163 Administrative services involve assisting clients with their routine or mechanical tasks within the normal course of operations. Such services require little to no professional judgment and are clerical in nature. Examples of administrative services include word processing services, preparing administrative or statutory forms for client approval, submitting such forms as instructed by the client, monitoring statutory filing dates, and advising an audit client of those dates. Providing such services does not generally create a threat to independence. However, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Preparing accounting records and financial statements

General provisions

290.164 Management is responsible for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework. These responsibilities include:

- Determining accounting policies and the accounting treatment within those policies.
- Preparing or changing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).
- Originating or changing journal entries, or determining or approving the account classifications of transactions.

290.165 Providing an audit client with accounting and bookkeeping services, such as preparing accounting records or financial statements, creates a self-review threat when the firm subsequently audits the financial statements.

290.166 The audit process, however, necessitates dialogue between the firm and management of the audit client, which may involve:

- The application of accounting standards or policies and financial statement disclosure requirements;
- The appropriateness of financial and accounting control and the methods used in determining the stated amounts of assets and liabilities; or
- Proposing adjusting journal entries.

These activities are considered to be a normal part of the audit process and do not, generally, create threats to independence so long as the client is responsible for making decisions in the preparation of the accounting records and financial statements.

290.167 Similarly, the client may request technical assistance from the firm on matters such as resolving account reconciliation problems or analysing and accumulating information for regulatory reporting. In addition, the client may request technical advice on accounting issues such as the conversion of existing financial statements from one financial reporting framework to another (for example, to comply with group accounting policies or to transition to a different financial reporting framework such as International Financial Reporting Standards). Such services do not, generally, create threats to independence provided the firm does not assume a management responsibility for the client.

Audit clients that are not public interest entities

290.168 The firm may provide services related to the preparation of accounting records and financial statements to an audit client that is not a public interest entity where the services are of a routine or mechanical nature, so long as any self-review threat created is reduced to an acceptable level. Services that are routine or mechanical in nature require little to no professional judgment from the professional accountant. Some examples of such services are:

- Preparing payroll calculations or reports based on client-originated data for approval and payment by the client.
- Recording recurring transactions for which amounts are easily determinable from source documents or originating data, such as a utility bill where the client has determined or approved the appropriate account classification.
- Recording a transaction for which the client has already determined the amount to be recorded, even though the transaction involves a significant degree of subjectivity.
- Calculating depreciation on fixed assets when the client determines the accounting policy and estimates of useful life and residual values.
- Posting client-approved entries to the trial balance.
- Preparing financial statements based on information in the client-approved trial balance and preparing the related notes based on client-approved records.

In all cases, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Arranging for such services to be performed by an individual who is not a member of the audit team; or
- If such services are performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the work performed.

Audit clients that are public interest entities

290.169 A firm shall not provide to an audit client that is a public interest entity accounting and bookkeeping services, including payroll services, or prepare financial statements on which the firm will express an opinion or financial information which forms the basis of the financial statements.

290.170 Despite paragraph 290.169, a firm may provide accounting and bookkeeping services, including payroll services and the preparation of financial statements or other financial information, of a routine or mechanical nature for divisions or related entities of an audit client that is a public interest entity if the personnel providing the services are not members of the audit team and:

(a) The divisions or related entities for which the service is provided are collectively immaterial to the financial statements on which the firm will express an opinion; or

(b) The services relate to matters that are collectively immaterial to the financial statements of the division or related entity.

Valuation services

General provisions

290.171 A valuation comprises the making of assumptions with regard to future developments, the application of appropriate methodologies and techniques, and the combination of both to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.

290.172 Performing valuation services for an audit client may create a self-review threat. The existence and significance of any threat will depend on factors such as:

- Whether the valuation will have a material effect on the financial statements.
- The extent of the client's involvement in determining and approving the valuation methodology and other significant matters of judgement.
- The availability of established methodologies and professional guidelines.
- For valuations involving standard or established methodologies, the degree of subjectivity inherent in the item.
- The reliability and extent of the underlying data.
- The degree of dependence on future events of a nature that could create significant volatility inherent in the amounts involved.
- The extent and clarity of the disclosures in the financial statements.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Having a professional who was not involved in providing the valuation service review the audit or valuation work performed; or
- Making arrangements so that personnel providing such services do not participate in the audit engagement.

290.173 Certain valuations do not involve a significant degree of subjectivity. This is likely the case where the underlying assumptions are either established by law or regulation, or are widely accepted and when the techniques and methodologies to be used are based on generally accepted standards or prescribed by law or regulation. In such circumstances, the results of a valuation performed by two or more parties are not likely to be materially different.

290.174 If a firm is requested to perform a valuation to assist an audit client with its tax reporting obligations or for tax planning purposes and the results of the valuation will not have a direct effect on the financial statements, the provisions included in paragraph 290.186 apply.

Audit clients that are not public interest entities

290.175 In the case of an audit client that is not a public interest entity, if the valuation service has a material effect on the financial statements on which the firm will express an opinion and the valuation involves a significant degree of subjectivity, no safeguards could reduce the self-review threat to an acceptable level. Accordingly a firm shall not provide such a valuation service to an audit client.

Audit clients that are public interest entities

290.176 A firm shall not provide valuation services to an audit client that is a public interest entity if the valuations would have a material effect, separately or in the aggregate, on the financial statements on which the firm will express an opinion.

Taxation services

290.177 Taxation services comprise a broad range of services, including:

- Tax return preparation;
- Tax calculations for the purpose of preparing the accounting entries;
- Tax planning and other tax advisory services; and
- Assistance in the resolution of tax disputes.

While taxation services provided by a firm to an audit client are addressed separately under each of these broad headings; in practice, these activities are often interrelated.

290.178 Performing certain tax services creates self-review and advocacy threats. The existence and significance of any threats will depend on factors such as:

- The system by which the tax authorities assess and administer the tax in question and the role of the firm in that process;
- The complexity of the relevant tax regime and the degree of judgment necessary in applying it;
- The particular characteristics of the engagement; and
- The level of tax expertise of the client's employees.

Tax return preparation

290.179 Tax return preparation services involve assisting clients with their tax reporting obligations by drafting and completing information, including the amount of tax due (usually on standardised forms) required to be submitted to the applicable tax authorities. Such services also include advising on the tax return treatment of past transactions and responding on behalf of the audit client to the tax authorities' requests for additional information and analysis (including providing explanations of and technical support for the approach being taken). Tax return preparation services are generally based on historical information and principally involve analysis and presentation of such historical information under existing tax law, including precedents and established practice. Further, the tax returns are subject to whatever review or approval process the tax authority deems appropriate. Accordingly, providing such services does not generally create a threat to independence if management takes responsibility for the returns including any significant judgements made.

Tax calculations for the purpose of preparing accounting entries

Audit clients that are not public interest entities

290.180 Preparing calculations of current and deferred tax liabilities (or assets) for an audit client for the purpose of preparing accounting entries that will be subsequently audited by the firm creates a self-review threat. The significance of the threat will depend on:

(a) The complexity of the relevant tax law and regulation and the degree of judgement necessary in applying them;

(b) The level of tax expertise of the client's personnel; and

(c) The materiality of the amounts to the financial statements.

Safeguards shall be applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;
- If the service is performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the tax calculations; or
- Obtaining advice on the service from an external tax professional.

Audit clients that are public interest entities

290.181 In the case of an audit client that is a public interest entity, a firm shall not prepare tax calculations of current and deferred tax liabilities (or assets) for the purpose of preparing accounting entries that are material to the financial statements on which the firm will express an opinion.

Tax planning and other tax advisory services

290.182 Tax planning or other tax advisory services comprise a broad range of services, such as advising the client how to structure its affairs in a tax efficient manner or advising on the application of a new tax law or regulation.

290.183 A self-review threat may be created where the advice will affect matters to be reflected in the financial statements. The existence and significance of any threat will depend on factors such as:

- The degree of subjectivity involved in determining the appropriate treatment for the tax advice in the financial statements;
- The extent to which the outcome of the tax advice will have a material effect on the financial statements;
- Whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the accounting treatment or presentation under the relevant financial reporting framework;
- The level of tax expertise of the client's employees;
- The extent to which the advice is supported by tax law or regulation, other precedent or established practice; and
- Whether the tax treatment is supported by a private ruling or has otherwise been cleared by the tax authority before the preparation of the financial statements.

For example, providing tax planning and other tax advisory services where the advice is clearly supported by tax authority or other precedent, by established practice or has a basis in tax law that is likely to prevail does not generally create a threat to independence.

290.184 The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;
- Having a tax professional, who was not involved in providing the tax service, advise the audit team on the service and review the financial statement treatment;
- Obtaining advice on the service from an external tax professional; or
- Obtaining pre-clearance or advice from the tax authorities.

290.185 Where the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements and:

(a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and

(b) The outcome or consequences of the tax advice will have a material effect on the financial statements on which the firm will express an opinion;

the self-review threat would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not provide such tax advice to an audit client.

290.186 In providing tax services to an audit client, a firm may be requested to perform a valuation to assist the client with its tax reporting obligations or for tax planning purposes. Where the result of the valuation will have a direct effect on the financial statements, the provisions included in paragraphs 290.171 to 290.176 relating to valuation services are applicable. Where the valuation is performed for tax purposes only and the result of the valuation will not have a direct effect on the financial statements (i.e. the financial statements are only affected through accounting entries related to tax), this would not generally create threats to independence if such effect on the financial statements is immaterial or if the valuation is subject to external review by a tax authority or similar regulatory authority. If the valuation is not subject to such an external review and the effect is material to the financial statements, the existence and significance of any threat created will depend upon factors such as:

- The extent to which the valuation methodology is supported by tax law or regulation, other precedent or established practice and the degree of subjectivity inherent in the valuation.
- The reliability and extent of the underlying data.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;
- Having a professional review the audit work or the result of the tax service; or
- Obtaining pre-clearance or advice from the tax authorities.

Assistance in the resolution of tax disputes

290.187 An advocacy or self-review threat may be created when the firm represents an audit client in the resolution of a tax dispute once the tax authorities have notified the client that they have rejected the client's arguments on a particular issue and either the tax authority or the client is referring the matter for determination in a formal proceeding, for example before a tribunal or court. The existence and significance of any threat will depend on factors such as:

- Whether the firm has provided the advice which is the subject of the tax dispute;
- The extent to which the outcome of the dispute will have a material effect on the financial statements on which the firm will express an opinion;
- The extent to which the matter is supported by tax law or regulation, other precedent, or established practice;
- Whether the proceedings are conducted in public; and
- The role management plays in the resolution of the dispute.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;
- Having a tax professional, who was not involved in providing the tax service, advise the audit team on the services and review the financial statement treatment; or
- Obtaining advice on the service from an external tax professional.

290.188 Where the taxation services involve acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter and the amounts involved are material to the financial statements on which the firm will express an opinion, the advocacy threat created would be so significant that no safeguards could eliminate or reduce the threat to an acceptable level. Therefore, the firm shall not perform this type of service for an audit client. What constitutes a "public tribunal or court" shall be determined according to how tax proceedings are heard in the particular jurisdiction.

290.189 The firm is not, however, precluded from having a continuing advisory role (for example, responding to specific requests for information, providing factual accounts or testimony about the work performed or assisting the client in analysing the tax issues) for the audit client in relation to the matter that is being heard before a public tribunal or court.

Internal audit services

General provisions

290.190 The scope and objectives of internal audit activities vary widely and depend on the size and structure of the entity and the requirements of management and those charged with governance. Internal audit activities may include:

- Monitoring of internal control – reviewing controls, monitoring their operation and recommending improvements thereto;
- Examination of financial and operating information – reviewing the means used to identify, measure, classify and report financial and operating information, and specific inquiry into individual items including detailed testing of transactions, balances and procedures;
- Review of the economy, efficiency and effectiveness of operating activities including non-financial activities of an entity; and
- Review of compliance with laws, regulations and other external requirements, and with management policies and directives and other internal requirements.

290.191 Internal audit services involve assisting the audit client in the performance of its internal audit activities. The provision of internal audit services to an audit client creates a self-review threat to independence if the firm uses the internal audit work in the course of a subsequent external audit. Performing a significant part of the client's internal audit activities increases the possibility that firm personnel providing internal audit services will assume a management responsibility. If the firm's personnel assume a management responsibility when providing internal audit services to an audit client, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm's personnel shall not assume a management responsibility when providing internal audit services to an audit client.

290.192 Examples of internal audit services that involve assuming management responsibilities include:

(a) Setting internal audit policies or the strategic direction of internal audit activities;

(b) Directing and taking responsibility for the actions of the entity's internal audit employees;

(c) Deciding which recommendations resulting from internal audit activities shall be implemented;

(d) Reporting the results of the internal audit activities to those charged with governance on behalf of management;

(e) Performing procedures that form part of the internal control, such as reviewing and approving changes to employee data access privileges;

(f) Taking responsibility for designing, implementing and maintaining internal control; and

(g) Performing outsourced internal audit services, comprising all or a substantial portion of the internal audit function, where the firm is responsible for determining the scope of the internal audit work and may have responsibility for one or more of the matters noted in (a)–(f).

290.193 To avoid assuming a management responsibility, the firm shall only provide internal audit services to an audit client if it is satisfied that:

(a) The client designates an appropriate and competent resource, preferably within senior management, to be responsible at all times for internal audit activities and to acknowledge responsibility for designing, implementing, and maintaining internal control;

(b) The client's management or those charged with governance reviews, assesses and approves the scope, risk and frequency of the internal audit services;

(c) The client's management evaluates the adequacy of the internal audit services and the findings resulting from their performance;

(d) The client's management evaluates and determines which recommendations resulting from internal audit services to implement and manages the implementation process; and

(e) The client's management reports to those charged with governance the significant findings and recommendations resulting from the internal audit services.

290.194 When a firm uses the work of an internal audit function, International Standards on Auditing require the performance of procedures to evaluate the adequacy of that work. When a firm accepts an engagement to provide internal audit services to an audit client, and the results of those services will be used in conducting the external audit, a self-review threat is created because of the possibility that the audit team will use the results of the internal audit service without appropriately evaluating those results or exercising the same level of professional scepticism as would be exercised when the internal audit work is performed by individuals who are not members of the firm. The significance of the threat will depend on factors such as:

- The materiality of the related financial statement amounts;
- The risk of misstatement of the assertions related to those financial statement amounts; and
- The degree of reliance that will be placed on the internal audit service.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is using professionals who are not members of the audit team to perform the internal audit service.

Audit clients that are public interest entities

290.195 In the case of an audit client that is a public interest entity, a firm shall not provide internal audit services that relate to:

(a) A significant part of the internal controls over financial reporting;

(b) Financial accounting systems that generate information that is, separately or in the aggregate, significant to the client's accounting records or financial statements on which the firm will express an opinion; or

(c) Amounts or disclosures that are, separately or in the aggregate, material to the financial statements on which the firm will express an opinion.

IT systems services

General provisions

290.196 Services related to information technology ("IT") systems include the design or implementation of hardware or software systems. The systems may aggregate source data, form part of the internal control over financial reporting or generate information that affects the accounting records or financial statements, or the systems may be unrelated to the audit client's accounting records, the internal control over financial reporting or financial statements. Providing systems services may create a self-review threat depending on the nature of the services and the IT systems.

290.197 The following IT systems services are deemed not to create a threat to independence as long as the firm's personnel do not assume a management responsibility:

(a) Design or implementation of IT systems that are unrelated to internal control over financial reporting;

(b) Design or implementation of IT systems that do not generate information forming a significant part of the accounting records or financial statements;

(c) Implementation of "off-the-shelf" accounting or financial information reporting software that was not developed by the firm if the customisation required to meet the client's needs is not significant; and

(d) Evaluating and making recommendations with respect to a system designed, implemented or operated by another service provider or the client.

Audit clients that are not public interest entities

290.198 Providing services to an audit client that is not a public interest entity involving the design or implementation of IT systems that (a) form a significant part of the internal control over financial reporting or (b) generate information that is significant to the client's accounting records or financial statements on which the firm will express an opinion creates a self-review threat.

290.199 The self-review threat is too significant to permit such services unless appropriate safeguards are put in place ensuring that:

(a) The client acknowledges its responsibility for establishing and monitoring a system of internal controls;

(b) The client assigns the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system to a competent employee, preferably within senior management;

(c) The client makes all management decisions with respect to the design and implementation process;

(d) The client evaluates the adequacy and results of the design and implementation of the system; and

(e) The client is responsible for operating the system (hardware or software) and for the data it uses or generates.

290.200 Depending on the degree of reliance that will be placed on the particular IT systems as part of the audit, a determination shall be made as to whether to provide such non-assurance services only with personnel who are not members of the audit team and who have different reporting lines within the firm. The significance of any remaining threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having a professional accountant review the audit or non-assurance work.

Audit clients that are public interest entities

290.201 In the case of an audit client that is a public interest entity, a firm shall not provide services involving the design or implementation of IT systems that (a) form a significant part of the internal control over financial reporting or (b) generate information that is significant to the client's accounting records or financial statements on which the firm will express an opinion.

Litigation support services

290.202 Litigation support services may include activities such as acting as an expert witness, calculating estimated damages or other amounts that might become receivable or payable as the result of litigation or other legal dispute, and assistance with document management and retrieval. These services may create a self-review or advocacy threat.

290.203 If the firm provides a litigation support service to an audit client and the service involves estimating damages or other amounts that affect the financial statements on which the firm will express an opinion, the valuation service provisions included in paragraphs 290.171 to 290.176 shall be followed. In the case of other litigation support services, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Legal services

290.204 For the purpose of this section, legal services are defined as any services for which the person providing the services must either be admitted to practise law before the courts of the jurisdiction in which such services are to be provided or have the required legal training to practise law. Such legal services may include, depending

on the jurisdiction, a wide and diversified range of areas including both corporate and commercial services to clients, such as contract support, litigation, mergers and acquisition legal advice and support and assistance to clients' internal legal departments. Providing legal services to an entity that is an audit client may create both self-review and advocacy threats.

290.205 Legal services that support an audit client in executing a transaction (e.g., contract support, legal advice, legal due diligence and restructuring) may create self-review threats. The existence and significance of any threat will depend on factors such as:

- The nature of the service;
- Whether the service is provided by a member of the audit team; and
- The materiality of any matter in relation to the client's financial statements.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service; or
- Having a professional who was not involved in providing the legal services provide advice to the audit team on the service and review any financial statement treatment.

290.206 Acting in an advocacy role for an audit client in resolving a dispute or litigation when the amounts involved are material to the financial statements on which the firm will express an opinion would create advocacy and self-review threats so significant that no safeguards could reduce the threat to an acceptable level. Therefore, the firm shall not perform this type of service for an audit client.

290.207 When a firm is asked to act in an advocacy role for an audit client in resolving a dispute or litigation when the amounts involved are not material to the financial statements on which the firm will express an opinion, the firm shall evaluate the significance of any advocacy and self-review threats created and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service; or
- Having a professional who was not involved in providing the legal services advise the audit team on the service and review any financial statement treatment.

290.208 The appointment of a partner or an employee of the firm as General Counsel for legal affairs of an audit client would create self-review and advocacy threats that are so significant that no safeguards could reduce the threats to an acceptable level. The position of General Counsel is generally a senior management position with broad responsibility for the legal affairs of a company, and consequently, no member of the firm shall accept such an appointment for an audit client.

Recruiting services

General provisions

290.209 Providing recruiting services to an audit client may create self-interest, familiarity or intimidation threats. The existence and significance of any threat will depend on factors such as:

- The nature of the requested assistance; and
- The role of the person to be recruited.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. In all cases, the firm shall not assume management responsibilities, including acting as a negotiator on the client's behalf, and the hiring decision shall be left to the client. The firm may generally provide such services as reviewing the professional qualifications of a number of applicants and providing advice on their suitability for the post. In addition, the firm may interview candidates and advise on a candidate's competence for financial accounting, administrative or control positions.

Audit clients that are public interest entities

290.210 A firm shall not provide the following recruiting services to an audit client that is a public interest entity with respect to a director or officer of the entity or senior management in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion:

- Searching for or seeking out candidates for such positions; and
- Undertaking reference checks of prospective candidates for such positions.

Corporate finance services

290.211 Providing corporate finance services such as:

- assisting an audit client in developing corporate strategies;
- identifying possible targets for the audit client to acquire;
- advising on disposal transactions;
- assisting finance raising transactions; and
- providing structuring advice,

may create advocacy and self-review threats. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to provide the services; or
- Having a professional who was not involved in providing the corporate finance service advise the audit team on the service and review the accounting treatment and any financial statement treatment.

290.212 Providing a corporate finance service, for example advice on the structuring of a corporate finance transaction or on financing arrangements that will directly affect amounts that will be reported in the financial statements on which the firm will provide an opinion may create a self-review threat. The existence and significance of any threat will depend on factors such as:

- The degree of subjectivity involved in determining the appropriate treatment for the outcome or consequences of the corporate finance advice in the financial statements;
- The extent to which the outcome of the corporate finance advice will directly affect amounts recorded in the financial statements and the extent to which the amounts are material to the financial statements; and
- Whether the effectiveness of the corporate finance advice depends on a particular accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service; or
- Having a professional who was not involved in providing the corporate finance service to the client advise the audit team on the service and review the accounting treatment and any financial statement treatment.

290.213 Where the effectiveness of corporate finance advice depends on a particular accounting treatment or presentation in the financial statements and:

(a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and

(b) The outcome or consequences of the corporate finance advice will have a material effect on the financial statements on which the firm will express an opinion;

the self-review threat would be so significant that no safeguards could reduce the threat to an acceptable level, in which case the corporate finance advice shall not be provided.

290.214 Providing corporate finance services involving promoting, dealing in, or underwriting an audit client's shares would create an advocacy or self-review threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not provide such services to an audit client.

Fees

Fees – Relative size

290.215 When the total fees from an audit client represent a large proportion of the total fees of the firm expressing the audit opinion, the dependence on that client and concern about losing the client creates a self-interest or intimidation threat. The significance of the threat will depend on factors such as:

- The operating structure of the firm;
- Whether the firm is well established or new; and
- The significance of the client qualitatively and/or quantitatively to the firm.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Reducing the dependency on the client;
- External quality control reviews; or
- Consulting a third party, such as a professional regulatory body or a professional accountant, on key audit judgements.

290.216 A self-interest or intimidation threat is also created when the fees generated from an audit client represent a large proportion of the revenue from an individual partner's clients or a large proportion of the revenue of an individual office of the firm. The significance of the threat will depend upon factors such as:

- The significance of the client qualitatively and/or quantitatively to the partner or office; and
- The extent to which the remuneration of the partner, or the partners in the office, is dependent upon the fees generated from the client.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Reducing the dependency on the audit client;
- Having a professional accountant review the work or otherwise advise as necessary; or
- Regular independent internal or external quality reviews of the engagement.

Audit clients that are public interest entities

290.217 Where an audit client is a public interest entity and, for two consecutive years, the total fees from the client and its related entities (subject to the considerations in paragraph 290.27) represent more than 15% of the total fees received by the firm expressing the opinion on the financial statements of the client, the firm shall disclose to those charged with governance of the audit client the fact that the total of such fees represents more than 15% of the total fees received by the firm, and discuss which of the safeguards below it will apply to reduce the threat to an acceptable level, and apply the selected safeguard:

- Prior to the issuance of the audit opinion on the second year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, performs an engagement quality control review of that engagement or a professional regulatory body performs a review of that engagement that is equivalent to an engagement quality control review ("a pre-issuance review"); or
- After the audit opinion on the second year's financial statements has been issued, and before the issuance of the audit opinion on the third year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, or a professional regulatory body performs a review of the second year's audit that is equivalent to an engagement quality control review ("a post-issuance review").

When the total fees significantly exceed 15%, the firm shall determine whether the significance of the threat is such that a post-issuance review would not reduce the threat to an acceptable level and, therefore, a pre-issuance review is required. In such circumstances a pre-issuance review shall be performed.

Thereafter, when the fees continue to exceed 15% each year, the disclosure to and discussion with those charged with governance shall occur and one of the above safeguards shall be applied. If the fees significantly exceed 15%, the firm shall determine whether the significance of the threat is such that a post-issuance review would not reduce the threat to an acceptable level and, therefore, a pre- issuance review is required. In such circumstances a pre-issuance review shall be performed.

Fees – Overdue

290.218 A self-interest threat may be created if fees due from an audit client remain unpaid for a long time, especially if a significant part is not paid before the issue of the audit report for the following year. Generally the firm is expected to require payment of such fees before such audit report is issued. If fees remain unpaid after the report has been issued, the existence and significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having an additional professional accountant who did not take part in the audit engagement provide advice or review the work performed. The firm shall determine whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed or continue the audit engagement.

Contingent fees

290.219 Contingent fees are fees calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. For the purposes of this section, a fee is not regarded as being contingent if established by a court or other public authority.

290.220 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of an audit engagement creates a self-interest threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not enter into any such fee arrangement.

290.221 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of a non-assurance service provided to an audit client may also create a self-interest threat. The threat created would be so significant that no safeguards could reduce the threat to an acceptable level if:

(a) The fee is charged by the firm expressing the opinion on the financial statements and the fee is material or expected to be material to that firm;

(b) The fee is charged by a network firm that participates in a significant part of the audit and the fee is material or expected to be material to that firm; or

(c) The outcome of the non-assurance service, and therefore the amount of the fee, is dependent on a future or contemporary judgement related to the audit of a material amount in the financial statements.

Accordingly, such arrangements shall not be accepted.

290.222 For other contingent fee arrangements charged by a firm for a non-assurance service to an audit client, the existence and significance of any threats will depend on factors such as:

- The range of possible fee amounts;
- Whether an appropriate authority determines the outcome of the matter upon which the contingent fee will be determined;
- The nature of the service; and
- The effect of the event or transaction on the financial statements.

The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Having a professional accountant review the relevant audit work or otherwise advise as necessary; or
- Using professionals who are not members of the audit team to perform the non-assurance service.

Compensation and evaluation policies

290.223 A self-interest threat is created when a member of the audit team is evaluated on or compensated for selling non-assurance services to that audit client. The significance of the threat will depend on:

- The proportion of the individual's compensation or performance evaluation that is based on the sale of such services;
- The role of the individual on the audit team; and
- Whether promotion decisions are influenced by the sale of such services.

The significance of the threat shall be evaluated and, if the threat is not at an acceptable level, the firm shall either revise the compensation plan or evaluation process for that individual or apply safeguards to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing such members from the audit team; or
- Having a professional accountant review the work of the member of the audit team.

290.224 A key audit partner shall not be evaluated on or compensated based on that partner's success in selling non-assurance services to the partner's audit client. This is not intended to prohibit normal profit-sharing arrangements between partners of a firm.

Gifts and hospitality

290.225 Accepting gifts or hospitality from an audit client may create self-interest and familiarity threats. If a firm or a member of the audit team accepts gifts or hospitality, unless the value is trivial and inconsequential, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Consequently, a firm or a member of the audit team shall not accept such gifts or hospitality.

Actual or threatened litigation

290.226 When litigation takes place, or appears likely, between the firm or a member of the audit team and the audit client, self-interest and intimidation threats are created. The relationship between client management and the members of the audit team must be characterised by complete candor and full disclosure regarding all aspects of a client's business operations. When the firm and the client's management are placed in adversarial positions by actual or threatened litigation, affecting management's willingness to make complete disclosures, self-interest and intimidation threats are created. The significance of the threats created will depend on such factors as:

- The materiality of the litigation; and
- Whether the litigation relates to a prior audit engagement.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- If the litigation involves a member of the audit team, removing that individual from the audit team; or
- Having a professional review the work performed.

If such safeguards do not reduce the threats to an acceptable level, the only appropriate action is to withdraw from, or decline, the audit engagement.

Paragraphs 290.227 to 290.499 are intentionally left blank.

Reports that include a restriction on use and distribution

Introduction

290.500 The independence requirements in Section 290 apply to all audit engagements. However, in certain circumstances involving audit engagements where the report includes a restriction on use and distribution, and provided the conditions described in 290.501 to 290.502 are met, the independence requirements in this section may be modified as provided in paragraphs 290.505 to 290.514. These paragraphs are only applicable to an audit engagement on special purpose financial statements (a) that is intended to provide a conclusion in positive or negative form that the financial statements are prepared in all material respects, in accordance with the applicable financial reporting framework, including, in the case of a fair presentation framework, that the financial statements give a true and fair view or are presented fairly, in all material respects, in accordance with the applicable financial reporting framework, and (b) where the audit report includes a restriction on use and distribution. The modifications are not permitted in the case of an audit of financial statements required by law or regulation.

290.501 The modifications to the requirements of Section 290 are permitted if the intended users of the report (a) are knowledgeable as to the purpose and limitations of the report, and (b) explicitly agree to the application of the modified independence requirements. Knowledge as to the purpose and limitations of the report may be obtained by the intended users through their participation, either directly or indirectly through their representative who has the authority to act for the intended users, in establishing the nature and scope of the engagement. Such participation enhances the ability of the firm to communicate with intended users about independence matters, including the circumstances that are relevant to the evaluation of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level, and to obtain their agreement to the modified independence requirements that are to be applied.

290.502 The firm shall communicate (for example, in an engagement letter) with the intended users regarding the independence requirements that are to be applied with respect to the provision of the audit engagement. Where the intended users are a class of users (for example, lenders in a syndicated loan arrangement) who are not specifically identifiable by name at the time the engagement terms are established, such users shall subsequently be made aware of the independence requirements agreed to by the representative (for example, by the representative making the firm's engagement letter available to all users).

290.503 If the firm also issues an audit report that does not include a restriction on use and distribution for the same client, the provisions of paragraphs 290.500 to 290.514 do not change the requirement to apply the provisions of paragraphs 290.1 to 290.226 to that audit engagement.

290.504 The modifications to the requirements of Section 290 that are permitted in the circumstances set out above are described in paragraphs 290.505 to 290.514. Compliance in all other respects with the provisions of Section 290 is required.

Public interest entities

290.505 When the conditions set out in paragraphs 290.500 to 290.502 are met, it is not necessary to apply the additional requirements in paragraphs 290.100 to 290.226 that apply to audit engagements for public interest entities.

Related entities

290.506 When the conditions set out in paragraphs 290.500 to 290.502 are met, references to audit client do not include its related entities. However, when the audit team knows or has reason to believe that a relationship or circumstance involving a related entity of the client is relevant to the evaluation of the firm's independence of the client, the audit team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards.

Networks and network firms

290.507 When the conditions set out in paragraphs 290.500 to 290.502 are met, reference to the firm does not include network firms. However, when the firm knows or has reason to believe that threats are created by any interests and relationships of a network firm, they shall be included in the evaluation of threats to independence.

Financial interests, loans and guarantees, close business relationships and family and personal relationships

290.508 When the conditions set out in paragraphs 290.500 to 290.502 are met, the relevant provisions set out in paragraphs 290.102 to 290.143 apply only to the members of the engagement team, their immediate family members and close family members.

290.509 In addition, a determination shall be made as to whether threats to independence are created by interests and relationships, as described in paragraphs 290.102 to 290.143, between the audit client and the following members of the audit team:

(a) Those who provide consultation regarding technical or industry specific issues, transactions or events; and

(b) Those who provide quality control for the engagement, including those who perform the engagement quality control review.

An evaluation shall be made of the significance of any threats that the engagement team has reason to believe are created by interests and relationships between the audit client and others within the firm who can directly influence the outcome of the audit engagement, including those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the audit engagement partner in connection with the performance of the audit engagement (including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent)).

290.510 An evaluation shall also be made of the significance of any threats that the engagement team has reason to believe are created by financial interests in the audit client held by individuals, as described in paragraphs 290.108 to 290.111 and paragraphs 290.113 to 290.115.

290.511 Where a threat to independence is not at an acceptable level, safeguards shall be applied to eliminate the threat or reduce it to an acceptable level.

290.512 In applying the provisions set out in paragraphs 290.106 and 290.115 to interests of the firm, if the firm has a material financial interest, whether direct or indirect, in the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, the firm shall not have such a financial interest.

Employment with an audit client

290.513 An evaluation shall be made of the significance of any threats from any employment relationships as described in paragraphs 290.132 to 290.136. Where a threat exists that is not at an acceptable level, safeguards shall be applied to eliminate the threat or reduce it to an acceptable level. Examples of safeguards that might be appropriate include those set out in paragraph 290.134.

Provision of non-assurance services

290.514 If the firm conducts an engagement to issue a restricted use and distribution report for an audit client and provides a non-assurance service to the audit client, the provisions of paragraphs 290.154 to 290.226 shall be complied with, subject to paragraphs 290.504 to 290.507.

SECTION 291
Independence – Other assurance engagements

	Paragraph
Structure of section	291.1
A conceptual framework approach to independence	291.4
Assurance engagements	291.12
Assertion-based assurance engagements	291.17
Direct reporting assurance engagements	291.20
Reports that include a restriction on use and distribution	291.21
Multiple responsible parties	291.28
Documentation	291.29
Engagement period	291.30
Breach of a provision of this section	291.33
Application of the conceptual framework approach to independence	291.100
Financial interests	291.104
Loans and guarantees	291.112
Business relationships	291.118
Family and personal relationships	291.120
Employment with assurance clients	291.126
Recent service with an assurance client	291.130
Serving as a director or officer of an assurance client	291.133
Long association of senior personnel with assurance clients	291.137
Provision of non-assurance services to an assurance client	291.138
Management responsibilities	291.141
Other considerations	291.145
Fees	291.148
Fees – Relative size	291.148
Fees – Overdue	291.150
Contingent fees	291.151
Gifts and hospitality	291.155
Actual or threatened litigation	291.156

Structure of section

291.1 This section addresses independence requirements for assurance engagements that are not audit or review engagements. Independence requirements for audit and review engagements are addressed in Section 290. If the assurance client is also an audit or review client, the requirements in Section 290 also apply to the firm, network firms and members of the audit or review team. In certain circumstances involving assurance engagements where the assurance report includes a restriction on use and distribution and provided certain conditions are met, the independence requirements in this section may be modified as provided in 291.21 to 291.27.

291.2 Assurance engagements are designed to enhance intended users' degree of confidence about the outcome of the evaluation or measurement of a subject matter against criteria. The International Framework for Assurance Engagements (the Assurance Framework) issued by the International Auditing and Assurance Standards Board describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Assurance Engagements (ISAEs) apply. For a description of the elements and objectives of an assurance engagement, refer to the Assurance Framework.

291.3 Compliance with the fundamental principle of objectivity requires being independent of assurance clients. In the case of assurance engagements, it is in the public interest and, therefore, required by this Code of Ethics, that members of assurance teams and firms be independent of assurance clients and that any threats that the firm has reason to believe are created by a network firm's interests and relationships be evaluated. In addition, when the assurance team knows or has reason to believe that a relationship or circumstance involving a related entity of the assurance client is relevant to the evaluation of the firm's independence from the client, the assurance team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards.

A conceptual framework approach to independence

291.4 The objective of this section is to assist firms and members of assurance teams in applying the conceptual framework approach described below to achieving and maintaining independence.

291.5 Independence comprises:

(a) Independence of mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism.

(b) Independence in appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism has been compromised.

291.6 The conceptual framework approach shall be applied by professional accountants to:

(a) Identify threats to independence;

(b) Evaluate the significance of the threats identified; and

(c) Apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level.

When the professional accountant determines that appropriate safeguards are not available or cannot be applied to eliminate the threats or reduce them to an acceptable level, the professional accountant shall eliminate the circumstance or relationship creating the threats or decline or terminate the assurance engagement.

A professional accountant shall use professional judgement in applying this conceptual framework.

291.7 Many different circumstances, or combinations of circumstances, may be relevant in assessing threats to independence. It is impossible to define every situation that creates threats to independence and to specify the appropriate action. Therefore, this Code establishes a conceptual framework that requires firms and members of assurance teams to identify, evaluate, and address threats to independence. The conceptual framework approach assists professional accountants in public practice in complying with the ethical requirements in this Code. It accommodates many variations in circumstances that create threats to independence and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.

291.8 Paragraphs 291.100 and onwards describe how the conceptual framework approach to independence is to be applied. These paragraphs do not address all the circumstances and relationships that create or may create threats to independence.

291.9 In deciding whether to accept or continue an engagement, or whether a particular individual may be a member of the assurance team, a firm shall identify and evaluate any threats to independence. If the threats are not at an acceptable level, and the decision is whether to accept an engagement or include a particular individual on the assurance team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the conceptual framework approach.

291.10 Throughout this section, reference is made to the significance of threats to idependence. In evaluating the significance of a threat, qualitative as well as quantitative factors shall be taken into account.

291.11 This section does not, in most cases, prescribe the specific responsibility of individuals within the firm for actions related to independence because responsibility may differ depending on the size, structure and organisation of a firm. The firm is required by ISQCs to establish policies and procedures designed to provide it with reasonable assurance that independence is maintained when required by relevant ethical standards.

Assurance engagements

291.12 As further explained in the Assurance Framework, in an assurance engagement the professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users (other than the responsible party) about the outcome of the evaluation or measurement of a subject matter against criteria.

291.13 The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term "subject matter information" is used to mean the outcome of the evaluation or measurement of a subject matter. For example, the Framework states that an assertion about the effectiveness of internal control (subject matter information) results from applying a framework for evaluating the effectiveness of internal control, such as COSO[4] or CoCo[5] (criteria), to internal control, a process (subject matter).

291.14 Assurance engagements may be assertion-based or direct reporting. In either case, they involve three separate parties: a professional accountant in public practice, a responsible party and intended users.

291.15 In an assertion-based assurance engagement, the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

291.16 In a direct reporting assurance engagement, the professional accountant in public practice either directly performs the evaluation or measurement of the subject matter, or obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

Assertion-based assurance engagements

291.17 In an assertion-based assurance engagement, the members of the assurance team and the firm shall be independent of the assurance client (the party responsible for the subject matter information, and which may be responsible for the subject matter). Such independence requirements prohibit certain relationships between members of the assurance team and (a) directors or officers, and (b) individuals at the client in a position to exert significant influence over the subject matter information. Also, a determination shall be made as to whether threats to independence are created by relationships with individuals at the client in a position to exert significant influence over the subject matter of the engagement. An evaluation shall be made of the significance of any threats that the firm has reason to believe are created by network firm[6] interests and relationships.

[4] "Internal Control – Integrated Framework" The Committee of Sponsoring Organizations of the Treadway Commission.
[5] "Guidance on Assessing Control – The CoCo Principles" Criteria of Control Board, The Canadian Institute of Chartered Accountants.
[6] See paragraphs 290.13 to 290.24 for guidance on what constitutes a network firm.

291.18 In the majority of assertion-based assurance engagements, the responsible party is responsible for both the subject matter information and the subject matter. However, in some engagements, the responsible party may not be responsible for the subject matter. For example, when a professional accountant in public practice is engaged to perform an assurance engagement regarding a report that an environmental consultant has prepared about a company's sustainability practices for distribution to intended users, the environmental consultant is the responsible party for the subject matter information but the company is responsible for the subject matter (the sustainability practices).

291.19 In assertion-based assurance engagements where the responsible party is responsible for the subject matter information but not the subject matter, the members of the assurance team and the firm shall be independent of the party responsible for the subject matter information (the assurance client). In addition, an evaluation shall be made of any threats the firm has reason to believe are created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Direct reporting assurance engagements

291.20 In a direct reporting assurance engagement, the members of the assurance team and the firm shall be independent of the assurance client (the party responsible for the subject matter). An evaluation shall also be made of any threats the firm has reason to believe are created by network firm interests and relationships.

Reports that include a restriction on use and distribution

291.21 In certain circumstances where the assurance report includes a restriction on use and distribution, and provided the conditions in this paragraph and in 291.22 are met, the independence requirements in this section may be modified. The modifications to the requirements of Section 291 are permitted if the intended users of the report (a) are knowledgeable as to the purpose, subject matter information and limitations of the report and (b) explicitly agree to the application of the modified independence requirements. Knowledge as to the purpose, subject matter information, and limitations of the report may be obtained by the intended users through their participation, either directly or indirectly through their representative who has the authority to act for the intended users, in establishing the nature and scope of the engagement. Such participation enhances the ability of the firm to communicate with intended users about independence matters, including the circumstances that are relevant to the evaluation of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level, and to obtain their agreement to the modified independence requirements that are to be applied.

291.22 The firm shall communicate (for example, in an engagement letter) with the intended users regarding the independence requirements that are to be applied with respect to the provision of the assurance engagement. Where the intended users are a class of users (for example, lenders in a syndicated loan arrangement) who are not specifically identifiable by name at the time the engagement terms are established, such users shall subsequently be made aware of the independence requirements agreed to by the representative (for example, by the representative making the firm's engagement letter available to all users).

291.23 If the firm also issues an assurance report that does not include a restriction on use and distribution for the same client, the provisions of paragraphs 291.25 to 291.27 do not change the requirement to apply the provisions of paragraphs 291.1 to 291.156 to that assurance engagement. If the firm also issues an audit report, whether or not it includes a restriction on use and distribution, for the same client, the provisions of Section 290 shall apply to that audit engagement.

291.24 The modifications to the requirements of Section 291 that are permitted in the circumstances set out above are described in paragraphs 291.25 to 291.27. Compliance in all other respects with the provisions of Section 291 is required.

291.25 When the conditions set out in paragraphs 291.21 and 291.22 are met, the relevant provisions set out in paragraphs 291.104 to 291.132 apply to all members of the engagement team, and their immediate and close family members. In addition, a determination shall be made as to whether threats to independence are created by interests and relationships between the assurance client and the following other members of the assurance team:

(a) Those who provide consultation regarding technical or industry specific issues, transactions or events; and

(b) Those who provide quality control for the engagement, including those who perform the engagement quality control review.

An evaluation shall also be made, by reference to the provisions set out in paragraphs 291.104 to 291.132, of any threats that the engagement team has reason to believe are created by interests and relationships between the assurance client and others within the firm who can directly influence the outcome of the assurance engagement, including those who recommend the compensation, or who provide direct supervisory, management or other oversight, of the assurance engagement partner in connection with the performance of the assurance engagement.

291.26 Even though the conditions set out in paragraphs 291.21 to 291.22 are met, if the firm had a material financial interest, whether direct or indirect, in the assurance client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, the firm shall not have such a financial interest. In addition, the firm shall comply with the other applicable provisions of this section described in paragraphs 291.112 to 291.156.

291.27 An evaluation shall also be made of any threats that the firm has reason to believe are created by network firm interests and relationships.

Multiple responsible parties

291.28 In some assurance engagements, whether assertion-based or direct reporting, there might be several responsible parties. In determining whether it is necessary to apply the provisions in this section to each responsible party in such engagements, the firm may take into account whether an interest or relationship between the firm, or a member of the assurance team, and a particular responsible party would create a threat to independence that is not trivial and inconsequential in the context of the subject matter information. This will take into account factors such as:

- The materiality of the subject matter information (or of the subject matter) for which the particular responsible party is responsible; and

- The degree of public interest associated with the engagement.

If the firm determines that the threat to independence created by any such interest or relationship with a particular responsible party would be trivial and inconsequential, it may not be necessary to apply all of the provisions of this section to that responsible party.

Documentation

291.29 Documentation provides evidence of the professional accountant's judgements in forming conclusions regarding compliance with independence requirements. The absence of documentation is not a determinant of whether a firm considered a particular matter nor whether it is independent.

The professional accountant shall document conclusions regarding compliance with independence requirements, and the substance of any relevant discussions that support those conclusions. Accordingly:

(a) When safeguards are required to reduce a threat to an acceptable level, the professional accountant shall document the nature of the threat and the safeguards in place or applied that reduce the threat to an acceptable level; and

(b) When a threat required significant analysis to determine whether safeguards were necessary and the professional accountant concluded that they were not because the threat was already at an acceptable level, the professional accountant shall document the nature of the threat and the rationale for the conclusion.

Engagement period

291.30 Independence from the assurance client is required both during the engagement period and the period covered by the subject matter information. The engagement period starts when the assurance team begins to perform assurance services with respect to the particular engagement. The engagement period ends when the assurance report is issued. When the engagement is of a recurring nature, it ends at the later of the notification by either party that the professional relationship has terminated or the issuance of the final assurance report.

291.31 When an entity becomes an assurance client during or after the period covered by the subject matter information on which the firm will express a conclusion, the firm shall determine whether any threats to independence are created by:

(a) Financial or business relationships with the assurance client during or after the period covered by the subject matter information but before accepting the assurance engagement; or

(b) Previous services provided to the assurance client.

291.32 If a non-assurance service was provided to the assurance client during or after the period covered by the subject matter information but before the assurance team begins to perform assurance services and the service would not be permitted during the period of the assurance engagement, the firm shall evaluate any threat to independence created by the service. If any threat is not at an acceptable level, the assurance engagement shall only be accepted if safeguards are applied to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- Not including personnel who provided the non-assurance service as members of the assurance team;
- Having a professional accountant review the assurance and non-assurance work as appropriate; or
- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

However, if the non-assurance service has not been completed and it is not practical to complete or terminate the service before the commencement of professional services in connection with the assurance engagement, the firm shall only accept the assurance engagement if it is satisfied:

(a) The non-assurance service will be completed within a short period of time; or

(b) The client has arrangements in place to transition the service to another provider within a short period of time.

During the service period, safeguards shall be applied when necessary. In addition, the matter shall be discussed with those charged with governance.

Breach of a provision of this section

291.33 When a breach of a provision of this section is identified, the firm shall terminate, suspend or eliminate the interest or relationship that caused the breach, and shall evaluate the significance of that breach and its impact on the firm's objectivity and ability to issue an assurance report. The firm shall determine whether action can be taken that satisfactorily addresses the consequences of the breach. In making this determination, the firm shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing the significance of the breach, the action to be taken and all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the firm's objectivity would be compromised such that the firm is unable to issue an assurance report.

291.34 If the firm determines that action cannot be taken to satisfactorily address the consequences of the breach, the firm shall, as soon as possible, inform the party that engaged the firm or those charged with governance, as appropriate, and take the steps necessary to terminate the assurance engagement in compliance with any applicable legal or regulatory requirements relevant to terminating the assurance engagement.

291.35 If the firm determines that action can be taken to satisfactorily address the consequences of the breach, the firm shall discuss the breach and the action it has taken or proposes to take with the party that engaged the firm or those charged with governance, as appropriate. The firm shall discuss the breach and the proposed action on a timely basis, taking into account the circumstances of the engagement and the breach.

291.36 If the party that engaged the firm or those charged with governance, as appropriate, do not concur that the action satisfactorily addresses the consequences of the breach, the firm shall take the steps necessary to terminate the assurance engagement in compliance with any applicable legal or regulatory requirements relevant to terminating the assurance engagement.

291.37 The firm shall document the breach, the actions taken, key decisions made and all the matters discussed with the party that engaged the firm or those charged with governance. When the firm continues with the assurance engagement, the matters to be documented shall also include the conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for why the action taken satisfactorily addressed the consequences of the breach such that the firm could issue an assurance report.

Paragraphs 291.38 to 291.99 are intentionally left blank.

Application of the conceptual framework approach to independence

291.100 Paragraphs 291.104 to 291.156 describe specific circumstances and relationships that create or may create threats to independence. The paragraphs describe the potential threats and the types of safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level and identify certain situations where no safeguards could reduce the threats to an acceptable level. The paragraphs do not describe all of the circumstances and relationships that create or may create a threat to independence. The firm and the members of the assurance team shall evaluate the implications of similar, but different, circumstances and relationships and determine whether safeguards, including the safeguards in paragraphs 200.12 to 200.15, can be applied when necessary to eliminate the threats to independence or reduce them to an acceptable level.

291.101 The paragraphs demonstrate how the conceptual framework approach applies to assurance engagements and are to be read in conjunction with paragraph 291.28 which explains that, in the majority of assurance engagements, there is one responsible party and that responsible party is the assurance client. However, in some assurance engagements there are two or more responsible parties. In such circumstances, an evaluation shall be made of any threats the firm has reason

to believe are created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter. For assurance reports that include a restriction on use and distribution, the paragraphs are to be read in the context of paragraphs 291.21 to 291.27.

291.102 Interpretation 2005-01 provides further guidance on applying the independence requirements contained in this section to assurance engagements.

291.103 Paragraphs 291.104 to 291.119 contain references to the materiality of a financial interest, loan, or guarantee, or the significance of a business relationship. For the purpose of determining whether such an interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

Financial interests

291.104 Holding a financial interest in an assurance client may create a self-interest threat. The existence and significance of any threat created depends on:

(a) The role of the person holding the financial interest;

(b) Whether the financial interest is direct or indirect; and

(c) The materiality of the financial interest.

291.105 Financial interests may be held through an intermediary (e.g. a collective investment vehicle, estate or trust). The determination of whether such financial interests are direct or indirect will depend upon whether the beneficial owner has control over the investment vehicle or the ability to influence its investment decisions. When control over the investment vehicle or the ability to influence investment decisions exists, this Code defines that financial interest to be a direct financial interest. Conversely, when the beneficial owner of the financial interest has no control over the investment vehicle or ability to influence its investment decisions, this Code defines that financial interest to be an indirect financial interest.

291.106 If a member of the assurance team, a member of that individual's immediate family, or a firm has a direct financial interest or a material indirect financial interest in the assurance client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have a direct financial interest or a material indirect financial interest in the client: a member of the assurance team; a member of that individual's immediate family member; or the firm.

291.107 When a member of the assurance team has a close family member who the assurance team member knows has a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat is created. The significance of the threat will depend on factors such as

- The nature of the relationship between the member of the assurance team and the close family member; and

- The materiality of the financial interest to the close family member.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- The close family member disposing, as soon as practicable, of all of the financial interest or disposing of a sufficient portion of an indirect financial interest so that the remaining interest is no longer material;

- Having a professional accountant review the work of the member of the assurance team; or

- Removing the individual from the assurance team.

291.108 If a member of the assurance team, a member of that individual's immediate family, or a firm has a direct or material indirect financial interest in an entity that has a controlling interest in the assurance client, and the client is material to the entity, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have such a financial interest: a member of the assurance team; a member of that individual's immediate family; and the firm.

291.109 The holding by a firm or a member of the assurance team, or a member of that individual's immediate family, of a direct financial interest or a material indirect financial interest in the assurance client as a trustee creates a self-interest threat. Such an interest shall not be held unless:

(a) Neither the trustee, nor an immediate family member of the trustee, nor the firm are beneficiaries of the trust;

(b) The interest in the assurance client held by the trust is not material to the trust;

(c) The trust is not able to exercise significant influence over the assurance client; and

(d) The trustee, an immediate family member of the trustee, or the firm cannot significantly influence any investment decision involving a financial interest in the assurance client.

291.110 Members of the assurance team shall determine whether a self-interest threat is created by any known financial interests in the assurance client held by other individuals including:

- Partners and professional employees of the firm, other than those referred to above, or their immediate family members; and

- Individuals with a close personal relationship with a member of the assurance team.

Whether these interests create a self-interest threat will depend on factors such as:

- The firm's organizational, operating and reporting structure; and
- The nature of the relationship between the individual and the member of the assurance team.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the member of the assurance team with the personal relationship from the assurance team;
- Excluding the member of the assurance team from any significant decision-making concerning the assurance engagement; or
- Having a professional accountant review the work of the member of the assurance team.

291.111 If a firm, a member of the assurance team, or an immediate family member of the individual, receives a direct financial interest or a material indirect financial interest in an assurance client, for example, by way of an inheritance, gift or as a result of a merger, and such interest would not be permitted to be held under this section, then:

(a) If the interest is received by the firm, the financial interest shall be disposed of immediately, or a sufficient amount of an indirect financial interest shall be disposed of so that the remaining interest is no longer material, or

(b) If the interest is received by a member of the assurance team, or a member of that individual's immediate family, the individual who received the financial interest shall immediately dispose of the financial interest, or dispose of a sufficient amount of an indirect financial interest so that the remaining interest is no longer material.

Loans and guarantees

291.112 A loan, or a guarantee of a loan, to a member of the assurance team, or a member of that individual's immediate family, or the firm from an assurance client that is a bank or a similar institution, may create a threat to independence. If the loan or guarantee is not made under normal lending procedures, terms and conditions, a self-interest threat would be created that would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, neither a member of the assurance team, a member of that individual's immediate family, nor a firm shall accept such a loan or guarantee.

291.113 If a loan to a firm from an assurance client that is a bank or similar institution is made under normal lending procedures, terms and conditions and it is material to the assurance client or firm receiving the loan, it may be possible to apply safeguards to reduce the self-interest threat to an acceptable level. An example of such a safeguard is having the work reviewed by a professional accountant from a network firm that is neither involved with the assurance engagement nor received the loan.

291.114 A loan, or a guarantee of a loan, from an assurance client that is a bank or a similar institution to a member of the assurance team, or a member of that individual's immediate family, does not create a threat to independence if the loan or guarantee is made under normal lending procedures, terms and conditions. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

291.115 If the firm or a member of the assurance team, or a member of that individual's immediate family, accepts a loan from, or has a borrowing guaranteed by, an assurance client that is not a bank or similar institution, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm, or the member of the assurance team and the immediate family member, and the client.

291.116 Similarly, if the firm, or a member of the assurance team, or a member of that individual's immediate family, makes or guarantees a loan to an assurance client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm, or the member of the assurance team and the immediate family member, and the client.

291.117 If a firm or a member of the assurance team, or a member of that individual's immediate family, has deposits or a brokerage account with an assurance client that is a bank, broker, or similar institution, a threat to independence is not created if the deposit or account is held under normal commercial terms.

Business relationships

291.118 A close business relationship between a firm, or a member of the assurance team, or a member of that individual's immediate family, and the assurance client or its management arises from a commercial relationship or common financial interest and may create self-interest or intimidation threats. Examples of such relationships include:

- Having a financial interest in a joint venture with either the client or a controlling owner, director or officer or other individual who performs senior managerial activities for that client.
- Arrangements to combine one or more services or products of the firm with one or more services or products of the client and to market the package with reference to both parties.
- Distribution or marketing arrangements under which the firm distributes or markets the client's products or services, or the client distributes or markets the firm's products or services.

Unless any financial interest is immaterial and the business relationship is insignificant to the firm and the client or its management, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level.

Therefore, unless the financial interest is immaterial and the business relationship is insignificant, the business relationship shall not be entered into, or shall be reduced to an insignificant level or terminated.

In the case of a member of the assurance team, unless any such financial interest is immaterial and the relationship is insignificant to that member, the individual shall be removed from the assurance team.

If the business relationship is between an immediate family member of a member of the assurance team and the assurance client or its management, the significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

291.119 The purchase of goods and services from an assurance client by the firm, or a member of the assurance team, or a member of that individual's immediate family, does not generally create a threat to independence if the transaction is in the normal course of business and at arm's length. However, such transactions may be of such a nature or magnitude that they create a self-interest threat. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Eliminating or reducing the magnitude of the transaction; or
- Removing the individual from the assurance team.

Family and personal relationships

291.120 Family and personal relationships between a member of the assurance team and a director or officer or certain employees (depending on their role) of the assurance client, may create self-interest, familiarity or intimidation threats. The existence and significance of any threats will depend on a number of factors, including the individual's responsibilities on the assurance team, the role of the family member or other individual within the client, and the closeness of the relationship.

291.121 When an immediate family member of a member of the assurance team is:

(a) A director or officer of the assurance client; or

(b) An employee in a position to exert significant influence over the subject matter information of the assurance engagement,

or was in such a position during any period covered by the engagement or the subject matter information, the threats to independence can only be reduced to an acceptable level by removing the individual from the assurance team. The closeness of the relationship is such that no other safeguards could reduce the threat to an acceptable level. Accordingly, no individual who has such a relationship shall be a member of the assurance team.

291.122 Threats to independence are created when an immediate family member of a member of the assurance team is an employee in a position to exert significant influence over the subject matter of the engagement. The significance of the threats will depend on factors such as:

- The position held by the immediate family member; and
- The role of the professional on the assurance team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the assurance team; or
- Structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the immediate family member.

291.123 Threats to independence are created when a close family member of a member of the assurance team is:

- A director or officer of the assurance client; or
- An employee in a position to exert significant influence over the subject matter information of the assurance engagement.

The significance of the threats will depend on factors such as:

- The nature of the relationship between the member of the assurance team and the close family member;
- The position held by the close family member; and
- The role of the professional on the assurance team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the assurance team; or
- Structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the close family member.

291.124 Threats to independence are created when a member of the assurance team has a close relationship with a person who is not an immediate or close family member, but who is a director or officer or an employee in a position to exert significant influence over the subject matter information of the assurance engagement. A member of the assurance team who has such a relationship shall consult in accordance with firm policies and procedures. The significance of the threats will depend on factors such as:

- The nature of the relationship between the individual and the member of the assurance team;
- The position the individual holds with the client; and

- The role of the professional on the assurance team.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Removing the professional from the assurance team; or

- Structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the individual with whom the professional has a close relationship.

291.125 Self-interest, familiarity or intimidation threats may be created by a personal or family relationship between (a) a partner or employee of the firm who is not a member of the assurance team and (b) a director or officer of the assurance client or an employee in a position to exert significant influence over the subject matter information of the assurance engagement. The existence and significance of any threat will depend on factors such as:

- The nature of the relationship between the partner or employee of the firm and the director or officer or employee of the client;

- The interaction of the partner or employee of the firm with the assurance team;

- The position of the partner or employee within the firm; and

- The role of the individual within the client.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the assurance engagement; or

- Having a professional accountant review the relevant assurance work performed.

Employment with assurance clients

291.126 Familiarity or intimidation threats may be created if a director or officer of the assurance client, or an employee who is in a position to exert significant influence over the subject matter information of the assurance engagement, has been a member of the assurance team or partner of the firm.

291.127 If a former member of the assurance team or partner of the firm has joined the assurance client in such a position, the existence and significance of any familiarity or intimidation threats will depend on factors such as:

- The position the individual has taken at the client;

- Any involvement the individual will have with the assurance team;
- The length of time since the individual was a member of the assurance team or partner of the firm; and
- The former position of the individual within the assurance team or firm, for example, whether the individual was responsible for maintaining regular contact with the client's management or those charged with governance.

In all cases the individual shall not continue to participate in the firm's business or professional activities.

The significance of any threats created shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Making arrangements such that the individual is not entitled to any benefits or payments from the firm, unless made in accordance with fixed predetermined arrangements;
- Making arrangements such that any amount owed to the individual is not material to the firm;
- Modifying the plan for the assurance engagement;
- Assigning individuals to the assurance team who have sufficient experience in relation to the individual who has joined the client; or
- Having a professional accountant review the work of the former member of the assurance team.

291.128 If a former partner of the firm has previously joined an entity in such a position and the entity subsequently becomes an assurance client of the firm, the significance of any threats to independence shall be evaluated and safeguards applied when necessary, to eliminate the threat or reduce it to an acceptable level.

291.129 A self-interest threat is created when a member of the assurance team participates in the assurance engagement while knowing that the member of the assurance team will, or may, join the client some time in the future. Firm policies and procedures shall require members of an assurance team to notify the firm when entering employment negotiations with the client. On receiving such notification, the significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the assurance team; or
- A review of any significant judgments made by that individual while on the team.

Recent service with an assurance client

291.130 Self-interest, self-review or familiarity threats may be created if a member of the assurance team has recently served as a director, officer, or employee of the assurance client. This would be the case when, for example, a member of the assurance team has to evaluate elements of the subject matter information the member of the assurance team had prepared while with the client.

291.131 If, during the period covered by the assurance report, a member of the assurance team had served as director or officer of the assurance client, or was an employee in a position to exert significant influence over the subject matter information of the assurance engagement, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Consequently, such individuals shall not be assigned to the assurance team.

291.132 Self-interest, self-review or familiarity threats may be created if, before the period covered by the assurance report, a member of the assurance team had served as director or officer of the assurance client, or was an employee in a position to exert significant influence over the subject matter information of the assurance engagement. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the client, is to be evaluated in the current period as part of the current assurance engagement. The existence and significance of any threats will depend on factors such as:

- The position the individual held with the client;
- The length of time since the individual left the client; and
- The role of the professional on the assurance team.

The significance of any threat shall be evaluated and safeguards applied when necessary to reduce the threat to an acceptable level. An example of such a safeguard is conducting a review of the work performed by the individual as part of the assurance team.

Serving as a director or officer of an assurance client

291.133 If a partner or employee of the firm serves as a director or officer of an assurance client, the self-review and self-interest threats would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, no partner or employee shall serve as a director or officer of an assurance client.

291.134 The position of Company Secretary has different implications in different jurisdictions. Duties may range from administrative duties, such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulation or providing advice on corporate governance matters. Generally, this position is seen to imply a close association with the entity.

291.135 If a partner or employee of the firm serves as Company Secretary for an assurance client, self-review and advocacy threats are created that would generally be so significant that no safeguards could reduce the threats to an acceptable level. Despite paragraph 291.133, when this practice is specifically permitted under local law, professional rules or practice, and provided management makes all relevant decisions, the duties and activities shall be limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns. In those circumstances, the significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level.

291.136 Performing routine administrative services to support a company secretarial function or providing advice in relation to company secretarial administration matters does not generally create threats to independence, as long as client management makes all relevant decisions.

Long association of senior personnel with assurance clients

291.137 Familiarity and self-interest threats are created by using the same senior personnel on an assurance engagement over a long period of time. The significance of the threats will depend on factors such as:

- How long the individual has been a member of the assurance team;
- The role of the individual on the assurance team;
- The structure of the firm;
- The nature of the assurance engagement;
- Whether the client's management team has changed; and
- Whether the nature or complexity of the subject matter information has changed.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Rotating the senior personnel off the assurance team;
- Having a professional accountant who was not a member of the assurance team review the work of the senior personnel; or
- Regular independent internal or external quality reviews of the engagement.

Provision of non-assurance services to an assurance client

291.138 Firms have traditionally provided to their assurance clients a range of non-assurance services that are consistent with their skills and expertise. Providing non-assurance services may, however, create threats to the independence of the firm or members of the assurance team. The threats created are most often self-review, self-interest and advocacy threats.

291.139 When specific guidance on a particular non-assurance service is not included in this section, the conceptual framework shall be applied when evaluating the particular circumstances.

291.140 Before the firm accepts an engagement to provide a non-assurance service to an assurance client, a determination shall be made as to whether providing such a service would create a threat to independence. In evaluating the significance of any threat created by a particular non-assurance service, consideration shall be given to any threat that the assurance team has reason to believe is created by providing other related non-assurance services. If a threat is created that cannot be reduced to an acceptable level by the application of safeguards the non-assurance service shall not be provided.

Management responsibilities

291.141 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

291.142 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgment. Examples of activities that would generally be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.
- Authorizing transactions.
- Control or management of bank accounts or investments.
- Deciding which recommendations of the firm or other third parties to implement.
- Reporting to those charged with governance on behalf of management.
- Taking responsibility for designing, implementing, monitoring or maintaining internal controls.

291.143 In providing assurance services to an assurance client, a firm shall not assume a management responsibility as part of the assurance service. If the firm were to assume a management responsibility as part of the assurance service, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. If the firm assumes a management responsibility as part of any other services provided to the assurance client, the firm shall ensure that the responsibility is not related to the subject matter or subject matter information of the assurance engagement provided by the firm.

291.144 When providing services that are related to the subject matter or subject matter information of an assurance engagement provided by the firm, the firm shall be satisfied that client management makes all judgments and decisions relating to the subject matter or subject matter information of the assurance engagement that are the responsibility of management. This includes ensuring that the client's management:

- Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the services. Such an individual, preferably within senior management, would understand the objectives, nature and results of the services and the respective client and firm responsibilities. However, the individual is not required to possess the expertise to perform or re-perform the services;
- Provides oversight of the services and evaluates the adequacy of the results of the services performed for the client's purpose; and
- Accepts responsibility for the actions, if any, to be taken arising from the results of the services.

Other considerations

291.145 Threats to independence may be created when a firm provides a non-assurance service related to the subject matter information of an assurance engagement. In such cases, an evaluation of the significance of the firm's involvement with the subject matter information of the engagement shall be made, and a determination shall be made of whether any self-review threats that are not at an acceptable level can be reduced to an acceptable level by the application of safeguards.

291.146 A self-review threat may be created if the firm is involved in the preparation of subject matter information which is subsequently the subject matter information of an assurance engagement. For example, a self-review threat would be created if the firm developed and prepared prospective financial information and subsequently provided assurance on this information. Consequently, the firm shall evaluate the significance of any self-review threat created by the provision of such services and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level.

291.147 When a firm performs a valuation that forms part of the subject matter information of an assurance engagement, the firm shall evaluate the significance of any self-review threat and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level.

Fees

Fees – Relative size

291.148 When the total fees from an assurance client represent a large proportion of the total fees of the firm expressing the conclusion, the dependence on that client and concern about losing the client creates a self-interest or intimidation threat. The significance of the threat will depend on factors such as:

- The operating structure of the firm;
- Whether the firm is well established or new; and
- The significance of the client qualitatively and/or quantitatively to the firm.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Reducing the dependency on the client;
- External quality control reviews; or
- Consulting a third party, such as a professional regulatory body or a professional accountant, on key assurance judgements.

291.149 A self-interest or intimidation threat is also created when the fees generated from an assurance client represent a large proportion of the revenue from an individual partner's clients. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having an additional professional accountant who was not a member of the assurance team review the work or otherwise advise as necessary.

Fees – Overdue

291.150 A self-interest threat may be created if fees due from an assurance client remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report, if any, for the following period. Generally the firm is expected to require payment of such fees before any such report is issued. If fees remain unpaid after the report has been issued, the existence and significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having another professional accountant who did not take part in the assurance engagement provide advice or review the work performed. The firm shall determine whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed or continue the assurance engagement.

Contingent fees

291.151 Contingent fees are fees calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. For the purposes of this section, fees are not regarded as being contingent if established by a court or other public authority.

291.152 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of an assurance engagement creates a self-interest threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not enter into any such fee arrangement.

291.153 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of a non-assurance service provided to an assurance client may also create a self-interest threat. If the outcome of the non-assurance service, and therefore, the amount of the fee, is dependent on a future or contemporary judgement related to a matter that is material to the subject matter information of the assurance engagement, no safeguards could reduce the threat to an acceptable level. Accordingly, such arrangements shall not be accepted.

291.154 For other contingent fee arrangements charged by a firm for a non-assurance service to an assurance client, the existence and significance of any threats will depend on factors such as:

- The range of possible fee amounts;
- Whether an appropriate authority determines the outcome of the matter upon which the contingent fee will be determined;
- The nature of the service; and
- The effect of the event or transaction on the subject matter information.

The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Having a professional accountant review the relevant assurance work or otherwise advise as necessary; or
- Using professionals who are not members of the assurance team to perform the non-assurance service.

Gifts and hospitality

291.155 Accepting gifts or hospitality from an assurance client may create self-interest and familiarity threats. If a firm or a member of the assurance team accepts gifts or hospitality, unless the value is trivial and inconsequential, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Consequently, a firm or a member of the assurance team shall not accept such gifts or hospitality.

Actual or threatened litigation

291.156 When litigation takes place, or appears likely, between the firm or a member of the assurance team and the assurance client, self-interest and intimidation threats are created. The relationship between client management and the members of the assurance team must be characterised by complete candor and full disclosure regarding all aspects of a client's business operations. When the firm and the client's management are placed in adversarial positions by actual or threatened litigation, affecting management's willingness to make complete disclosures self- interest and intimidation threats are created. The significance of the threats created will depend on such factors as:

- The materiality of the litigation; and
- Whether the litigation relates to a prior assurance engagement.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- If the litigation involves a member of the assurance team, removing that individual from the assurance team; or
- Having a professional review the work performed.

If such safeguards do not reduce the threats to an acceptable level, the only appropriate action is to withdraw from, or decline, the assurance engagement.

Interpretation 2005-01 (Revised July 2009 to conform to changes resulting from the IESBA's project to improve the clarity of the Code)

Application of Section 291 to assurance engagements that are not financial statement audit engagements

This interpretation provides guidance on the application of the independence requirements contained in Section 291 to assurance engagements that are not financial statement audit engagements.

This interpretation focuses on the application issues that are particular to assurance engagements that are not financial statement audit engagements. There are other matters noted in Section 291 that are relevant in the consideration of independence requirements for all assurance engagements. For example, paragraph 291.3 states that an evaluation shall be made of any threats the firm has reason to believe are created by a network firm's interests and relationships. It also states that when the assurance team has reason to believe that a related entity of such an assurance client is relevant to the evaluation of the firm's independence of the client, the assurance team shall include the related entity when evaluating threats to independence and when necessary applying safeguards. These matters are not specifically addressed in this interpretation.

As explained in the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board, in an assurance engagement, the professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

Assertion-based assurance engagements

In an assertion-based assurance engagement, the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

In an assertion-based assurance engagement independence is required from the responsible party, which is responsible for the subject matter information and may be responsible for the subject matter.

In those assertion-based assurance engagements where the responsible party is responsible for the subject matter information but not the subject matter, independence is required from the responsible party. In addition, an evaluation shall be made of any threats the firm has reason to believe are created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Direct reporting assurance engagements

In a direct reporting assurance engagement, the professional accountant in public practice either directly performs the evaluation or measurement of the subject matter, or obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

In a direct reporting assurance engagement independence is required from the responsible party, which is responsible for the subject matter.

Multiple responsible parties

In both assertion-based assurance engagements and direct reporting assurance engagements there may be several responsible parties. For example, a public accountant in public practice may be asked to provide assurance on the monthly circulation statistics of a number of independently owned newspapers. The assignment could be an assertion-based assurance engagement where each newspaper measures its circulation and the statistics are presented in an assertion that is available to the intended users. Alternatively, the assignment could be a direct reporting assurance engagement, where there is no assertion and there may or may not be a written representation from the newspapers.

In such engagements, when determining whether it is necessary to apply the provisions in Section 291 to each responsible party, the firm may take into account whether an interest or relationship between the firm, or a member of the assurance team, and a particular responsible party would create a threat to independence that is not trivial and inconsequential in the context of the subject matter information. This will take into account:

- The materiality of the subject matter information (or the subject matter) for which the particular responsible party is responsible; and
- The degree of public interest that is associated with the engagement.

If the firm determines that the threat to independence created by any such relationships with a particular responsible party would be trivial and inconsequential it may not be necessary to apply all of the provisions of this section to that responsible party.

Example

The following example has been developed to demonstrate the application of Section 291. It is assumed that the client is not also a financial statement audit client of the firm, or a network firm.

A firm is engaged to provide assurance on the total proven oil reserves of 10 independent companies. Each company has conducted geographical and engineering surveys to determine their reserves (subject matter). There are established criteria to determine when a reserve may be considered to be proven which the professional accountant in public practice determines to be suitable criteria for the engagement.

The proven reserves for each company as at December 31 20X0 were as follows:

	Proven oil reserves thousands of barrels
Company 1	5,200
Company 2	725
Company 3	3,260
Company 4	15,000
Company 5	6,700
Company 6	39,126
Company 7	345
Company 8	175
Company 9	24,135
Company 10	9,635
Total	**104,301**

The engagement could be structured in differing ways:

Assertion-Based Engagements

A1 Each company measures its reserves and provides an assertion to the firm and to intended users.

A2 An entity other than the companies measures the reserves and provides an assertion to the firm and to intended users.

Direct Reporting Engagements

D1 Each company measures the reserves and provides the firm with a written representation that measures its reserves against the established criteria for measuring proven reserves. The representation is not available to the intended users.

D2 The firm directly measures the reserves of some of the companies.

Application of Approach

A1 Each company measures its reserves and provides an assertion to the firm and to intended users.

There are several responsible parties in this engagement (companies 1-10). When determining whether it is necessary to apply the independence provisions to all of the companies, the firm may take into account whether an interest or relationship with a particular company would create a threat to independence that is not at an acceptable level. This will take into account factors such as:

- The materiality of the company's proven reserves in relation to the total reserves to be reported on; and

- The degree of public interest associated with the engagement (paragraph 291.28).

For example Company 8 accounts for 0.17% of the total reserves, therefore a business relationship or interest with Company 8 would create less of a threat than a similar relationship with Company 6, which accounts for approximately 37.5% of the reserves.

Having determined those companies to which the independence requirements apply, the assurance team and the firm are required to be independent of those responsible parties that would be considered to be the assurance client (paragraph 291.28).

A2 An entity other than the companies measures the reserves and provides an assertion to the firm and to intended users.

The firm shall be independent of the entity that measures the reserves and provides an assertion to the firm and to intended users (paragraph 291.19). That entity is not responsible for the subject matter and so an evaluation shall be made of any threats the firm has reason to believe are created by interests/relationships with the party responsible for the subject matter (paragraph 291.19). There are several parties responsible for the subject matter in this engagement (Companies 1-10). As discussed in example A1 above, the firm may take into account whether an interest or relationship with a particular company would create a threat to independence that is not at an acceptable level.

D1 Each company provides the firm with a representation that measures its reserves against the established criteria for measuring proven reserves. The representation is not available to the intended users.

There are several responsible parties in this engagement (Companies 1-10). When determining whether it is necessary to apply the independence provisions to all of the companies, the firm may take into account whether an interest or relationship with a particular company would create a threat to independence that is not at an acceptable level. This will take into account factors such as:

- The materiality of the company's proven reserves in relation to the total reserves to be reported on; and

- The degree of public interest associated with the engagement (paragraph 291.28).

For example, Company 8 accounts for 0.17% of the reserves, therefore a business relationship or interest with Company 8 would create less of a threat than a similar relationship with Company 6 that accounts for approximately 37.5% of the reserves.

Having determined those companies to which the independence requirements apply, the assurance team and the firm shall be independent of those responsible parties that would be considered to be the assurance client (paragraph 291.28).

D2 The firm directly measures the reserves of some of the companies.

The application is the same as in example D1.

Supplementary requirements and guidance

SECTION B1

Professional duty of confidence in relation to defaults and unlawful acts of clients and others

Introduction

1. *A professional accountant acquiring information in the course of professional work shall not disclose any such information to third parties without first obtaining permission from the client. Likewise, students and affiliates shall treat any information given by a professional accountant in the strictest confidence. To a professional accountant in business, the "client" for the purpose of this section is their employer. Professional accountants' attention is drawn to the discussion of the fundamental principles in Sections 110 to 150 of this Code, and the conceptual framework in Section 100.*

2. *There are, however, circumstances where a professional accountant may disclose information to a third party without first obtaining permission. This would be where, for example, there is a statutory right or duty to disclose, or where a professional accountant is served with a court order or some other form of witness summons, under which the professional accountant is obliged to disclose information.*

3. *This section looks at situations where a professional accountant may be required to disclose information about their clients without first obtaining permission to do so.*

4. *A professional accountant may suspect or encounter a number of criminal offences during the course of the professional accountant's work. Most commonly occurring are:*

   (a) money laundering;

   (b) drug trafficking or terrorism;

   (c) theft, obtaining by deception, false accounting, and suppression of documents;

   (d) fraud and forgery;

   (e) offences under company law;

   (f) perjury and offences under legislation for the prevention of corruption;

   (g) bankruptcy or insolvency offences, frauds on creditors, false trade descriptions, and offences arising out of relations between employers and employees;

   (h) conspiracy, soliciting or inciting to commit crime and attempting to commit crime;

(i) tax evasion;

(j) insider dealing.

In some jurisdictions money laundering will be a crime not only in relation to serious offences but in relation to all offences.

5. *A professional accountant who suspects or acquires knowledge indicating that a client (incorporated or un-incorporated) or an officer or employee of a client may have been guilty of some default or unlawful act shall normally notify the client's management as soon as practicable and at an appropriate level. In the case of unlawful acts that may amount to money laundering, a professional accountant may be required, depending on local legislation, to report the suspicion or knowledge internally or to the appropriate external authority (see Section B2, Anti-money laundering, for further details). In such circumstances, a professional accountant shall avoid doing anything that might tip off the client that a report has been made.*

6. *If a professional accountant's concerns are not satisfactorily resolved, they shall consider reporting the matter to non-executive directors or to the client's audit committee where these exist. Where this is not possible or fails to resolve the matter, the professional accountant shall consider making a report to a third party.*

7. *Guidance is provided below on reporting suspected defaults or unlawful acts to third parties.*

8. *References within this section to "client" include former clients.*

9. *A professional accountant acquiring information in the course of their professional work in respect of non-clients (for example, potential clients) shall not disclose any such information to a third party without first obtaining permission from the individual or entity concerned.*

10. *A professional accountant shall consider seeking legal advice before making any disclosure, particularly when contemplating disclosing information to a third party.*

Relationship between professional accountants and their clients

11. *A professional accountant shall explain to clients that they may only act for those clients who agree to disclose in full all information relevant to an engagement.*

12. *A professional accountant shall not agree to act for clients who will not consent to make full disclosure of relevant information.*

13. *If, during the course of an engagement, a professional accountant is unable to obtain from the client the information that they consider necessary, the professional accountant has a duty to indicate this fact in any report that they may make. In the case of an audit report, an auditor may have a statutory obligation to do so (as an auditor in the United Kingdom does by virtue of section 498(3) of the Companies Act 2006). In either case, a professional accountant may consider that they can no longer act.*

14. *It is likely to be an offence (as it is in the United Kingdom under section 501(2) of the Companies Act 2006) for an officer of a company knowingly or recklessly to make misleading, false or deceptive statements to the company's auditor. This applies to all information, explanations and statements provided by the company's officers to the auditors whether in written or oral form.*

15. *In many jurisdictions (including the United Kingdom and the Republic of Ireland) an auditor is an officer of a company.*

Verification of information by reference to the records of a third party who is also a client

16. *Sometimes in the course of their work a professional accountant may obtain information from a client (client A) bearing on information supplied to them by another client (client B). In such circumstances it would be a breach of confidence to reveal the information to the second client (client B) without the permission of the first client (client A). In all probability, any attempt to obtain that permission from client A would result in a breach of the duty of confidence owed to the second client (client B).*

17. *A professional accountant shall instead endeavour to substantiate the information with evidence obtained from the books and records of the second client (client B). If this proves impossible, the professional accountant shall seek the consent of the second client (client B) to obtain direct confirmation of the information concerned from the first client (client A).*

18. *If the second client (client B) refuses permission to contact the first client (client A), a professional accountant shall, where undertaking an audit assignment, consider qualifying the report and/or resigning. Where relevant, a professional accountant shall consider making an appropriate statement of any circumstances connected with the resignation which the professional accountant believes should be brought to the notice of the members or creditors of the company, without revealing the name of the first client (client A). In the United Kingdom, an auditor who resigns is required under section 519 of the Companies Act 2006 to either make such a statement or confirm that no such circumstances exist. In the case of non-audit engagements where consent is refused the professional accountant shall consider ceasing to act.*

Disclosure of defaults or unlawful acts

19. *Confidentiality is an implied term of a professional accountant's contract with their client. For this reason a professional accountant shall not, as a general rule, disclose to other persons, against their client's wishes, information about a client's affairs acquired during and as a result of their professional relationship. The obligation of confidentiality continues even though a professional relationship has ended.*

20. *It is in the public interest that this confidential relationship is maintained. Without the benefit of confidentiality a client might be reluctant to seek advice from a professional accountant. Unintended defaults or unlawful acts may be averted as a result of the client acting on the professional accountant's advice, because the client is able to discuss their plans in confidence.*

21. *A professional accountant who becomes aware that a client has, or may have, committed a default or unlawful act is normally under no legal obligation to disclose what they know to any persons other than the directors of the client or some person having their authority. However, in certain circumstances, whilst there may be no obligation in law to make a disclosure, professional accountants may consider it to be in the "public interest" that a disclosure is made. A professional accountant who considers making a disclosure in the "public interest" is advised to seek legal advice before making such a disclosure.*

Obligatory disclosure

22. *A professional accountant based in the United Kingdom who believes that a client has committed terrorist offences, or has reasonable cause to believe that a client has committed treason, is bound to disclose that knowledge to the proper authorities immediately. A professional accountant in another jurisdiction shall also take appropriate steps to report such offences to an appropriate authority whilst having regard to the requirements of local laws and regulations.*

23. *A professional accountant is likely to commit an offence if the professional accountant assists anyone whom they know or suspect to be laundering money generated by a crime. This is certainly the case in the United Kingdom. If a professional accountant forms a suspicion of money laundering in the course of their professional activities, they shall report it to a proper authority. A professional accountant is likely to commit an offence if they fail to make a report. This is the case in the United Kingdom, where the Proceeds of Crime Act 2002 provides a specific exemption from all confidentiality requirements (including those imposed by ACCA's Code of Ethics and Conduct) when reporting knowledge or suspicions relating to funds derived from criminal conduct; the report must be made in good faith. Professional accountants are referred to Section B2, Anti-money laundering, for further guidance.*

24. *A professional accountant shall disclose information if compelled by the process of law, for example under a court order.*

25. *A professional accountant, in certain circumstances, may be obliged to disclose certain information to the liquidator, administrative receiver or administrator of a client (e.g. section 235 of the Insolvency Act 1986 of the United Kingdom – corporate or section 366 of the Insolvency Act 1986 of the United Kingdom – bankruptcy).*

26. *In most circumstances, lawyers and their intermediate agents are not required to disclose oral or documentary communication passing between them and their clients in professional confidence without the express consent of the client. However, this legal privilege does not extend to the relationship between accountants and their clients.*

27. *A firm that carries on financial services work, such as investment business, and acts in connection with a take-over, merger or acquisition, shall co-operate with the relevant regulator for such take-overs and mergers. For example, auditors of clients within the financial services sector in the United Kingdom are advised to refer to the Financial Reporting Council International Standard on Auditing (UK and Ireland) 250 Section B: The auditor's right and duty to report to regulators in the financial sector.*

28. *For auditors, the whistleblowing requirements of auditing standards mean that there is the potential to fall foul of regulations, for example, for auditors of entities registered in the United Kingdom and the Republic of Ireland, International Standard on Auditing (UK and Ireland) 250 Section A: Consideration of law and regulations in an audit of financial statements, and International Standard on Auditing (UK and Ireland) 250 Section B: The auditor's right and duty to report to regulators in the financial sector. Failure to report is likely to be an offence, as it is in the United Kingdom and the Republic of Ireland, and may, in certain specified circumstances, leave a professional accountant facing fines or even imprisonment. Professional accountants are referred to Section B3, Whistleblowing responsibilities placed on auditors, for further guidance.*

29. *Professional accountants may be entitled, as they are in the United Kingdom and the Republic of Ireland, to the benefit of the ordinary privilege that they need not disclose any information which would incriminate them.*

Voluntary disclosure

30. *In certain cases a professional accountant is free to disclose information, whatever its nature. These circumstances fall into four categories of disclosure:*

    (a) in the public interest;

    (b) to protect a professional accountant's interests;

    (c) authorised by statute;

    (d) to non-governmental bodies.

Disclosure in the public interest

31. *A professional accountant may disclose information which would otherwise be confidential if disclosure can be justified in the "public interest". Whilst it is a concept recognised by the courts, there is no definition of "public interest" which places professional accountants in a difficult position as to whether or not disclosure is justified. However, it is likely that these exceptions to the duty of confidentiality are permitted only where the disclosure is made to "one who has a proper interest to receive that information" (as set out in the United Kingdom case of **Initial Services v Putteril (1967) All ER145)**. The proper authorities may, for example, be the police, the government department responsible for trade and industry, or a recognised stock exchange, and will depend upon the particular circumstances. Professional accountants are referred to Section B3, Whistleblowing responsibilities placed on auditors, for further guidance.*

32. *When considering whether or not disclosure is justified, a professional accountant shall take the following into account:*

    (a) the relative size of the amounts involved and the extent of the likely financial damage;

    (b) whether members of the public are likely to be affected;

    (c) the possibility or likelihood of repetition;

(d) the reasons for the client's unwillingness to disclose the matters to the proper authority;

(e) the gravity of the matter;

(f) relevant legislation, accounting standards and auditing standards, etc.;

(g) any legal advice obtained.

33. Determination of where the balance of public interest lies will require very careful consideration and it will often be appropriate to take legal advice before making a decision. The reasons underlying any decision whether or not to disclose shall be fully documented.

Disclosure to protect a professional accountant's interests

34. A professional accountant may disclose to the proper authorities information concerning their clients where their own interests require disclosure of that information to:

(a) enable the professional accountant to defend himself/herself against a criminal charge or to clear himself/herself of suspicion;

(b) resist proceedings for a penalty in respect of a taxation offence, for example, in a case where it is suggested that the professional accountant assisted or induced their client to make or deliver incorrect returns or accounts;

(c) resist a legal action brought against them by a client or some third person;

(d) enable the professional accountant to defend himself/herself against disciplinary proceedings or criticism which is the subject of enquiry by ACCA, or another regulatory body;

(e) enable the professional accountant to sue for their fees.

Disclosure authorised by statute

35. There are cases of express statutory provision where disclosure of information to a proper authority overrides the duty of confidentiality. Professional accountants are advised to refer to the legislation relevant to the economic sector in which their client operates. Professional accountants are advised to consider each statute carefully to determine the protection offered to the person making a disclosure since this varies from statute to statute. Professional accountants are referred to Section B3, Whistleblowing responsibilities placed on auditors, and Section B2, Anti-money laundering, for further guidance.

Disclosure to non-governmental bodies

36. A professional accountant may be approached by a recognised but non-governmental body seeking information concerning suspected acts of misconduct not amounting to a crime or civil wrong. Some of these bodies have statutory powers to require persons to supply information, in which case the professional accountant shall comply. Where there is no such statutory power, the professional accountant shall not supply information without consent from the relevant client.

Prosecution of a client or former client

37. Where a professional accountant is approached by the police, the tax authorities or other public authority making enquiries which may lead to the prosecution of a client or former client for an offence (other than treason, certain terrorist offences or money laundering), the professional accountant shall act with caution.

38. The professional accountant shall ascertain whether or not the person requesting information has a statutory right to demand it and seek legal advice before giving any information. A professional accountant shall consider the nature of the alleged offence and whether if they were to give the information they would be justified because of an overriding public interest in disclosure or would be acting contrary to professional ethics.

39. Unless ordered by the court or acting under a statutory authority a professional accountant shall refuse to give the information until they have obtained their client's authority, or received independent legal or other professional advice, that they must or may give the information whether or not they have obtained their client's consent. The professional accountant shall state that in the meantime they are not in a position to discuss their client's affairs. The professional accountant shall, however, keep in close touch with their legal or other professional adviser(s) on the legal aspects of their position.

Appearance as a witness

40. A professional accountant invited to appear in court as a witness against a client or former client, whether in civil or criminal proceedings, shall normally refuse until served with a subpoena or other form of witness summons. However, where criminal proceedings are concerned, the professional accountant shall carefully consider agreeing to appear as a witness and shall seek legal advice before making a decision.

41. A professional accountant shall answer any questions that are put to them, even though they may thus disclose information obtained in a confidential capacity. A professional accountant may ask the court for confirmation that they are obliged to answer particular questions.

42. A professional accountant shall produce any documents in their ownership or possession if directed to do so by the courts. Advance warning will normally be given of the intention to call for such documents.

Professional accountants' relations with the authorities on clients' behalf

43. A professional accountant in public practice, acting in any professional capacity, has access to much information of a confidential nature. It is essential that they shall normally treat such information as available to them for the purpose only of carrying out the professional duties for which they have been engaged. To divulge information about a client's affairs would normally be a breach of professional confidence, which might have the most serious legal and professional consequences.

Professional accountants' own relations with authorities

44. A professional accountant commits a criminal offence if he/she:

(a) incites a client to commit a criminal offence, whether or not the client accepts their advice; or

(b) helps or encourages a client in the planning or execution of a criminal offence which is committed; or

(c) agrees with a client or anyone else to pervert or obstruct the course of justice by concealing, destroying or fabricating evidence or by misleading the police by statements which they know to be untrue.

45. A professional accountant who knows that a client has committed money laundering, treason or certain terrorist offences, but who fails to disclose what they know to the proper authorities, is likely to commit a criminal offence by failing to do so, as is the case in the United Kingdom.

46. A professional accountant who knows or believes that a client has committed an arrestable offence would commit a criminal offence if the professional accountant were to act with the intention of impeding the arrest or prosecution of the client. (Under the law of the United Kingdom, an arrestable offence is one "for which the sentence is fixed by the law or for which a person not previously convicted may under or by virtue of any enactment be sentenced to imprisonment for a term of five years" – section 2(1) Criminal Law Act 1967.)

47. To be convicted of the offence of impeding the arrest or prosecution of a client a professional accountant would have to do some positive act to assist a client to escape arrest or prosecution for an arrestable offence. A professional accountant's refusal to answer questions by the police about a client's affairs or to produce documents relating to a client's affairs without that client's consent, would not constitute an act to impede the arrest or prosecution of a client.

48. Where a professional accountant knows or believes that a client has committed an arrestable offence, and the professional accountant has information which may be of material assistance in the prosecution of the client for the offence, they would be committing a criminal offence if they were to accept, or agree to accept, any consideration in return for not disclosing that information. In these circumstances, the acceptance of a reasonable fee for professional services rendered would not be an offence.

Company investigation

49. When a professional accountant acts as auditor of a limited company it is the company which is the client, not the directors.

50. If it is necessary for an auditor to qualify an audit report, the qualifications shall indicate clearly the offences that have been committed and have given rise to the qualification. Professional accountants are referred to Section B3, Whistleblowing responsibilities placed on auditors, for further guidance.

51. An auditor cannot avoid bringing to the attention of shareholders circumstances which may indicate that offences have been committed by resigning from office without making a report. On resignation, an auditor shall include in the notice of resignation either a statement of any circumstances connected with the resignation which the outgoing auditor believes should be brought to the notice of the members or creditors of the company or a statement to the effect that there are no such circumstances to be brought to the attention of the members and creditors. Such statements are mandatory for auditors of entities registered in the United Kingdom (section 519 of the Companies Act 2006), where an auditor's resignation will be treated as ineffective unless a statement has been made.

52. In many cases, the interests of the members and creditors will best be served if the auditor completes the audit and reports to shareholders on the accounts (for example, in accordance with section 495 of the Companies Act 2006 of the United Kingdom). The auditors may then indicate that they do not wish to be considered for re-appointment at the next annual general meeting of the company.

53. Where the auditors believe that they may need to refer to the commission of offences, either in the audit report or in the notice of resignation, they should be aware of the danger of an action for defamation. The auditors shall therefore seek legal advice as to the terms in which they should either report or make a statement in their notice of resignation.

Transmission of report to shareholders

54. In normal circumstances an auditor's duty is fulfilled when the audit report is sent to the secretary or directors of the company for onward transmission to the company's shareholders. However, if the auditor knows, or has good reason to believe that, for example, the audit report:

(a) has not been sent to shareholders; or

(b) has been sent to shareholders in an altered form; or

(c) has been sent to shareholders unaltered, but in a misleading context;

it will be necessary for the auditor to consider what steps must be taken to rectify the situation.

55. The steps available to the auditor in these circumstances may include communicating directly with the shareholders. Often the mere threat of direct communication with the shareholders will result in the desired action.

56. If it is decided that direct communication with the shareholders should take place, the auditor should be aware of the danger of an action for defamation being brought against the auditor. Special care is required in the event of those exceptional cases where the difficulty of communication or the urgency of the situation necessitates a public announcement being made. Where this need arises, the auditor should take special care to guard against the possibility of defamation.

57. *As soon as the possibility of making a communication to shareholders arises, the auditor shall seek legal advice on an auditor's duty to the shareholders in the particular circumstances of the case. Additionally, the auditor shall seek legal advice as to the method of any communication the auditor is required to make and the terms in which the communication should be made.*

58. *If the auditor is aware of third parties who may be affected by the situation the auditor shall also consider taking the steps outlined in paragraphs 63 to 67 or paragraphs 68 to 70 below, as appropriate.*

Urgent cases

59. *An auditor may sometimes become aware of information which suggests that offences or other unlawful acts or defaults have been committed by a director(s) or an employee(s) of the company. The facts may be of such a nature that, even though they may ultimately give rise to a qualification of the auditor's report, it would be contrary to the interests of the company for their disclosure to await the transmission of the audit report.*

60. *On the occasions when this arises, it is likely to be because the conduct is both serious and liable to be repeated. In such a case it will be necessary for an auditor to report at once to the directors.*

61. *There may also be cases in which the involvement of the directors themselves will make it necessary for the auditor to consider taking further steps to ensure that the matter is brought promptly to the attention of shareholders. These steps may include resignation by a notice stating the circumstances or even direct communication with shareholders.*

62. *Occasions which call for such steps will be rare, and an auditor who is considering taking them shall seek legal advice.*

Past accounts and reports

63. *Where an auditor discovers that past accounts on which they reported are defective, the auditor shall consider the position in relation to the shareholders, regulatory bodies, the tax authorities and third parties.*

Shareholders

64. *Reference shall be made to the relevant auditing standards applicable in the jurisdiction under which the professional accountant has carried out the audit, for example International Standards on Auditing 560 – Subsequent Events.*

Tax authorities

65. *The auditor shall follow the same procedure as in the case of an individual client.*

Other third parties

66. An auditor may be liable if having prepared a report which the auditor later discovers to be false in some material respect, he/she subsequently fails to take appropriate action to correct that report. In such circumstances the auditor shall ordinarily take legal advice as to the steps which are appropriate. These might include the following:

(a) Where the report was prepared for the company alone or for statutory purposes, the auditor's appropriate course will generally be to disclose the relevant facts to the directors and ascertain what steps they intend to take to bring it to the attention of third parties who are affected.

(b) If the directors fail to take such steps, the proper course for the auditor to adopt will depend on the gravity of the error and the nature of the reliance which has been or is likely to be placed upon it by the third party.

(c) The courses open to the auditors include resignation by a notice which contains a statement of the relevant facts and of the directors' failure to bring those facts to the attention of those affected. In the United Kingdom, if a notice containing such a statement is deposited at the company's registered office, the company is required by section 519 of the Companies Act 2006 to send a copy within 14 days to the Registrar of Companies and to every person having a statutory right to receive the accounts. The auditor may also require the directors of the company to convene (at the company's expense) an extraordinary general meeting of the company to receive, and consider such explanation of the circumstances connected with the auditor's resignation as the auditor may wish to place before the meeting. Where the auditor has resigned and deposited a statement of the relevant facts, it will often be unnecessary to take any further steps to bring the facts to the attention of the third parties.

(d) There may, however, be cases in which reliance has been placed or may be placed upon the auditor's report by a third party who is not likely to receive a copy of the auditor's notice of resignation and statement of reasons, either because the third party is not one of those entitled to receive copies of the accounts or because the company does not propose to send the notice and statement to such persons or does not intend to do so sufficiently quickly. In these cases it may be appropriate for the auditor to communicate directly with those third parties known to be affected, stating that they have resigned as auditor, that a statement of reasons for the auditor's resignation has been deposited with the company to be forwarded to, inter alia, the regulator responsible for company registration, and that those reasons may affect the interests of persons who have read the company's accounts and the auditor's report upon those accounts.

(e) An auditor who believes that a company may fail to forward a copy of the notice of resignation and statement of reasons to the regulator responsible for company registration may, and in some cases must, notify the regulator that they have deposited such a notice and statement with the company and enquire whether it has been received. The auditor shall also inform the company that they have notified the regulator of the resignation.

Save in exceptionally urgent cases it will usually be appropriate to notify the company in advance of what the auditor intends to do, so that the company may have an opportunity itself to bring the relevant facts to the attention of those affected.

67. *An auditor may sometimes be instructed to prepare a report (other than a statutory report) for the purpose of being submitted to a third party. Such a report will usually amount in law to a representation made by the auditor to that third party. Where this is the case and the auditor subsequently discovers that it is false in a material respect, the auditor is entitled to communicate a correction directly to the third party, and shall normally do so.*

Removal of the auditor

68. *The distinction between the directors and the shareholders will sometimes have little or no relevance, either because the directors hold a controlling interest or because all the shareholders are directors. When in these circumstances the directors fail to comply with the auditor's advice they may wish to prevent the auditor from completing the audit and making a report containing qualifications. They could achieve this by calling a general meeting at which the sole business would be the removal of the auditor (for example, in the United Kingdom under section 510 of the Companies Act 2006).*

69. *If this procedure is followed the auditor may wish to take one of three courses:*

(a) make written representation to the company (which, for example, an auditor is authorised to make under section 513 of the Companies Act 2006 of the United Kingdom), or

(b) attend the general meeting and be heard (which, for example, an auditor has a right to do under section 510 of the Companies Act 2006 of the United Kingdom), or

(c) resign before the general meeting, and include a statement of circumstance in the notice of resignation (which, for example, is required by section 519 of the Companies Act 2006 of the United Kingdom).

70. *Where there are persons who would be affected by a qualification to the report and who would not be entitled to receive representations (for example, under section 513 of the Companies Act 2006 of the United Kingdom) or to attend the meeting, resignation with a statement of the circumstances will often be the more appropriate course.*

Disclosure of information to office holders under insolvency legislation

71. *Liquidators, administrators and administrative receivers may have a statutory right to call for "such information concerning the company and its promotion, formation, business, dealings, affairs or property as the (liquidator, administrator or administrative receiver) may … reasonably require", from any person who is or was at any time an officer of the company. In the United Kingdom, such statutory right exists under sections 235 and 236 of the Insolvency Act 1986 and the courts have held that an auditor is an "officer" of a company.*

72. A professional accountant who is required by a liquidator, administrative receiver or administrator to supply information in these cases shall normally do so unless the liquidator, administrator or administrative receiver is acting beyond their respective powers, or for a purpose unrelated to their official functions or in breach of their duties. A professional accountant dealing with a liquidator, administrative receiver or administrator in good faith is entitled to assume that they are acting within their powers. In this respect, professional accountants in the United Kingdom shall bear in mind that the courts have held that the Official Receiver, whether acting as a liquidator or not, has the right to invoke sections 235 and 236 of the Insolvency Act 1986 to require a former auditor to provide information solely in connection with his/ her preparation of a case against an individual director under the Company Directors Disqualification Act 1986 ***(Re Pantmaenog Timber Co Ltd, [2003] UKHL 49)***.

73. Receivers, as opposed to administrative receivers or administrators, are unlikely to have a general statutory power to obtain information. They do not have such power in the United Kingdom. Moreover, although the extent of their powers will depend on the terms of the deed or court order pursuant to which they were appointed, it is unlikely that their powers will extend to requiring information from a professional accountant without the specific consent of the company or an order of the court.

74. In the case of a client's bankruptcy, there is unlikely to be an express obligation for a professional accountant to co-operate with, or pass information to, the trustee. However, a bankrupt may be obliged to deliver to the trustee all property, books, papers or other records that relate to the bankrupt's estate or affairs and of which the bankrupt has possession or control (for example, under section 312 of the Insolvency Act 1986 of the United Kingdom). A professional accountant with a client subject to a bankruptcy order can, therefore, expect the client to direct the professional accountant to transfer to the trustee such of the client's books, papers and records as are in the professional accountant's possession. A professional accountant should also be aware that he/she may be liable to be summoned to produce to the court any documents in the professional accountant's possession or control relating to the bankrupt or the bankrupt's dealings, affairs or property or to answer questions or provide information relating to such matters (for example, under section 366 of the Insolvency Act 1986 of the United Kingdom).

75 In the case of an individual's voluntary arrangement with creditors (known in the United Kingdom as an Individual Voluntary Arrangement (IVA)), a nominee, in preparing the report for the court on the debtor's proposal, will wish to have access to the debtor's accounts and records. In view of the nature of the voluntary arrangement, it is possible that the debtor will choose to authorise additional co-operation during the course of the arrangement. Accordingly, professional accountants can expect clients to authorise them to disclose this information to the nominee. In the United Kingdom, there is no general provision in the Insolvency Act or Rules for an accountant to pass information to a nominee or supervisor.

76. Similar rules to those set out in paragraph 75 above will apply in a company voluntary arrangement with creditors (known in the United Kingdom as a Company Voluntary Arrangement (CVA)). In the case of such an arrangement, it is the directors who will wish to allow access by the nominee to their company's accounts and records.

Auditors of companies in liquidation

77. Although the appointment of an auditor of a company is made by the shareholders in general meeting (or in the case of a newly formed company by the directors) the auditor's appointment is by the company as a legal entity and the auditor's duty of confidence is to the company as distinct from the individual shareholders.

78. If the company goes into liquidation the company's rights remain vested in the company as an entity and it is therefore still the company to which the auditor has a duty of confidence. The liquidator will, however, normally be the proper agent of the company for the purpose of enforcing any rights which the company could have enforced, including the company's right to permit its auditors to provide information to others. Moreover, a liquidator may be able to exercise a statutory power to call for information, such as that conferred by section 235 of the Insolvency Act 1986 of the United Kingdom, referred to at paragraph 71 above.

79. The auditor of a company which is in liquidation may be approached by the police for assistance in enquiries which may lead to a director or other individual being prosecuted. The auditor is under no legal obligation to give to the police any information obtained in the course of the professional relationship with the client. In normal circumstances, the auditor shall not assist the police by the disclosure of information, etc. unless the liquidator has given permission for this action (the liquidator being the person who could exercise the right of the company to release the auditor from the duty of confidence). If the liquidator does not give permission to the auditor, unless there are considerations of public interest (as noted in paragraphs 31 to 33 of this section), the auditor shall explain to the police that the information is confidential and may not be disclosed without permission.

Defamation

80. If an auditor forms the view that unlawful acts or defaults have occurred and communicates the relevant facts to persons who have a legitimate interest in receiving them, the auditor may enjoy qualified privilege from liability for defamation, as is the case in the United Kingdom. Unless malice is proved against the auditor, that privilege will amount to complete defence, even if the facts should prove to be wrong. This statement gives only general guidance on the circumstances in which an auditor may have a duty to communicate such facts; each case must be considered in the light of its own particular circumstances. An auditor who is in any doubt as to the available options shall take legal advice about the auditor's rights and duties in such situations.

81. In particular, an auditor who is contemplating making a public announcement or communicating directly with shareholders shall bear in mind that such an announcement, even if justified by the particular circumstances of the case, may cause serious damage to the company or to individuals, and such a step shall not normally be taken without taking legal advice.

Professional accountants' working papers

82. In most, but not all, circumstances, a professional accountant's working papers are the professional accountant's own property and any request for their production shall normally be refused. All documents relating to a client are confidential. They shall not be disclosed to third parties unless:

(i) the client agrees to the disclosure before it is made; or

(ii) disclosure is authorised by statute or court order; or

(iii) disclosure is otherwise in accordance with this Code of Ethics and Conduct of ACCA.

A professional accountant is advised to refer to Section B5, Legal ownership of, and rights of access to, books, files, working papers and other documents, in order to determine whether the papers in question are the property of the professional accountant or the client.

83. However, if a tax authority requests the production of the working papers relating to a particular client whose affairs are under investigation, the professional accountant shall bear in mind that he/she has a duty to act in the best possible interests of his/her client.

84. The professional accountant shall check the powers under which the request for the production of records and information is made. If persons requesting the records and information are utilising statutory powers available to them which compel the production of records and information then the professional accountant shall comply. In other cases, where mandatory powers are not being utilised, the professional accountant shall consider the circumstances on a case by case basis.

85. If a professional accountant is of the opinion that his/her client would best be served by producing the documents then, provided that the client does not object, the professional accountant may deliver the required items and information. In some instances schedules, notes, etc., may well be helpful in supporting a professional accountant's reports and contentions. Correspondence and notes of interviews with clients and/or professional accountants' legal advisers will frequently be of an extremely confidential nature and shall only be produced in exceptional circumstances – and even then only with the client's authority. In all such cases a professional accountant shall consider obtaining legal advice and, where appropriate, recommend the client to obtain their own legal advice.

86. The decision whether or not to produce working papers is entirely one for the professional accountant, even if the client concerned has no objection to the disclosure of information contained therein.

Taxation offences and the proceeds of crime

87. Of the wrongful acts of clients discovered by professional accountants, taxation offences of various kinds are likely to be amongst the more frequent. Tax legislation prescribes a number of offences for which monetary penalties are recoverable. The recovery of penalties against taxpayers does not rule out the possibility of criminal proceedings against them.

88. Any act or omission directed to or resulting in the evasion or attempted evasion of tax may be the subject of criminal charges under both tax law and anti-money laundering legislation. Tax evasion may relate to direct tax such as income tax or corporation tax, or indirect tax such as a tax on goods and services (VAT in the United Kingdom). The proceeds of such offences, like any other crime, will be subject to the anti-money laundering legislation. Professional accountants who suspect or are aware of tax evasion activities by a client may themselves commit an offence if they do not report their suspicions to the appropriate anti-money laundering authority (in addition to any notification to the tax authorities). Professional accountants are advised to refer to Section B2, Anti-money laundering, for further guidance.

89. When a professional accountant finds that a client has misinformed or misled them as to their affairs in order to obtain a tax advantage, the professional accountant shall consider carefully not only the client's position but also their own position vis-à-vis the tax authorities. A professional accountant shall, in particular, consider the matters set out in paragraphs 90 to 105 below.

Past accounts

90. A professional accountant may discover that accounts already prepared and/or reported on by him/her and/or computations and returns based thereon are no longer accurate. If these have already been submitted to the tax authorities, the professional accountant cannot allow the tax authorities to continue to rely on them. The professional accountant shall advise the client to make full disclosure, or to authorise the professional accountant to do so, without delay.

91. A professional accountant shall dissociate himself/herself from any returns or accounts that may be affected by a client's concealment. If the client refuses to make or authorise disclosure, the professional accountant shall inform the client that they can no longer act for them. The professional accountant shall also inform the client that it will be necessary to inform the tax authorities in the terms set out in paragraph 92 below.

92. In these circumstances, a professional accountant shall inform the tax authorities that, since the documents concerned were submitted, they have become aware of information which has led them to conclude that they would no longer be prepared to report on the documents in the same terms as previously and that they have ceased to act for the client. In so informing the tax authorities, a professional accountant is under no duty to indicate in what way the accounts are defective and shall not normally do so unless the client has consented to such disclosure.

Current accounts

93. Where the information obtained affects accounts or statements that the professional accountant is currently preparing or auditing, the professional accountant is in a position to deal with the matter himself/herself. If the client fails to provide such information as the professional accountant may require, or objects to the manner in which the professional accountant considers that the accounts should be presented, it is the professional accountant's professional duty to qualify his/her reports on the accounts in such a way that the respects in which they are defective are made clear. The professional accountant shall also consider whether he/she ought to continue to act for that client.

New clients

94. A professional accountant preparing or auditing accounts for a new client may become aware that accounts previously submitted to the tax authorities are defective. If so, the professional accountant shall advise the client to make full and prompt disclosure. A professional accountant has no responsibility for past accounts except in so far that errors in them affect the accuracy of accounts that the professional accountant is currently preparing or auditing. If the errors do have that effect, the professional accountant shall inform the client that an appropriate adjustment must be made in the current accounts. If the client is unwilling to agree to such adjustment, the professional accountant shall qualify their report on the accounts accordingly, and consider whether they should continue to act for that client.

Private returns

95. Where a professional accountant has acted or is acting on personal tax matters and acquires information indicating that returns or accounts prepared and/or reported on by them and/or computations based thereon are no longer accurate, the professional accountant shall follow the procedure set out in paragraphs 90 to 92 above.

Professional responsibility towards clients

96. Whatever line of conduct may be appropriate for a professional accountant to protect his/her own position, they are still under a professional duty to ensure, so far as they can, that the client understands the seriousness of offences against the tax authorities. The professional accountant shall also ensure that the client is aware of the probable consequences of a notification from the professional accountant to the tax authorities that the professional accountant is no longer acting for the client. In other words, the professional accountant shall always urge on their client the desirability of authorising the professional accountant to make full disclosure, subject to any legal advice obtained. Any accounts, returns, computations or reports submitted on behalf of a taxpayer are deemed to be submitted by them and/or with their consent unless they prove otherwise.

97. This emphasises the need for a professional accountant to obtain appropriate instructions from clients and to ensure that clients have signed or otherwise approved accounts. Where a professional accountant has not been instructed to deal with taxation work for a client, the professional accountant has no authority to deal with the tax authorities.

Tax authority powers

98. A professional accountant shall ensure that he/she familiarises himself/herself with the statutory powers that the tax authorities have to compel disclosure in particular instances. In dealing with disclosures sought under such powers, a professional accountant shall ensure that the statutory power being invoked actually covers the information sought and, if in any doubt, shall take legal advice.

99. Tax authorities sometimes ask for information to be provided on a voluntary basis, notwithstanding that they might be able to obtain disclosure under statute. Although clients are not obliged to provide the information voluntarily, a professional accountant may in some cases think that it is advisable for them to do so. In other cases the professional accountant may believe that it is advisable for the client to decline to provide the information and await the exercise of statutory powers.

Errors in the taxpayer's favour

100. The tax authorities may mistakenly make an excessive repayment of tax to a taxpayer, even though full disclosure of the facts has been made to the tax authorities. Where an excessive repayment is paid directly to a client, the professional accountant shall urge the client to refund the excess sum to the tax authorities as soon as the professional accountant becomes aware of the error. A client could be committing a civil and/or criminal offence if they have knowledge of the error and fail to correct it. Should a client refuse to refund the payment to the tax authorities, the professional accountant shall consider whether, in all the circumstances, they should continue to act for the client. Where a professional accountant ceases to act, they shall notify the tax authorities that they no longer act for the client but are under no duty to give the tax authorities any further details.

101. Where the excessive repayment is made to the professional accountant on the client's behalf, the professional accountant shall notify the tax authorities. Failure to do so could involve both the professional accountant and the client in a civil and/or criminal offence.

Knowledge of offences relating to VAT or its equivalent

102. A professional accountant who suspects that a client has committed an offence relating to VAT or its equivalent shall ensure that they in no way facilitate or assist the client to commit any potential or actual criminal offence. The professional accountant shall advise the client to seek legal advice, particularly if criminal charges are likely to be made against the client. Where it seems likely that the tax authorities will settle without proceedings, the professional accountant shall, subject to legal advice, advise the client to make a full disclosure to the tax authorities and provide full facilities for investigation, so that a private settlement may be obtained, and having proceedings brought against the client with the accompanying publicity may be avoided.

103. If the client refuses to make or authorise disclosure, the professional accountant shall inform them that they can no longer act for them. The professional accountant shall also inform the client that it will be necessary to inform the tax authorities in similar terms to those set out in paragraph 92 above.

104. For their own protection, in the event that the matter comes to the notice of the tax authorities before the client has disclosed it, a professional accountant shall ensure that their records of their advice to their client are such as to rebut any allegation that the professional accountant himself/herself was knowingly involved in the commission of any offence.

VAT or its equivalent and accounts

105. If a professional accountant acquires information indicating that accounts they have prepared or audited, which have been submitted to the tax authorities, are defective, they shall proceed in accordance with the guidance contained in paragraphs 90 to 92 above.

SECTION B2
Anti-money laundering

Introduction

1. *Money laundering is a global phenomenon that affects all countries to varying degrees. It is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activity, often with the unwitting assistance of professionals such as accountants and lawyers. If undertaken successfully, it allows them to maintain control over the proceeds and, ultimately, to provide a legitimate cover for their sources of income. Money laundering also encompasses the process by which terrorists attempt to conceal the destination and ultimate purpose of funds (legitimate or otherwise) which are likely to be used for the purposes of terrorism.*

2. *The overarching principles set out in this section are intended to be consistent with the Recommendations issued by the Financial Action Task Force on Money Laundering (FATF), which today constitute the international benchmark for good practice in combating money laundering and the financing of terrorism. Most countries around the world now have legislation in place which is based on the Recommendations, although the way that different countries translate the Recommendations into local law often differs in material respects.*

3. *The guidance contained in this section sets out the type of preventative measures that a professional accountant shall adopt and the circumstances in which they shall consider reporting any knowledge or suspicions of money laundering activity to the authorities in the country in which they operate. A professional accountant shall ensure that they and their staff are fully aware of their obligations under local legislation, and is reminded that those obligations may be more stringent than the requirements of this section. In particular, a professional accountant shall be aware that failure to follow legislative requirements will be a criminal offence in many jurisdictions, leading to fines and/or imprisonment.*

4. *Guidance as to the principles of law that govern these issues is found elsewhere. Given the serious consequences of prosecution for money laundering offences, professional accountants are advised to take legal advice whenever they are uncertain as to their conduct. The legal position and its application to any given set of facts may not be straightforward.*

Relationship with the local law

5. *A professional accountant shall obey the law. It is the responsibility of the professional accountant to familiarise himself/herself with the law that applies to them and ensure that they work within the law. In particular, the professional accountant is expected to familiarise himself/herself with any particular definition of the term "money laundering" which is used in local legislation and interpret this section by reference to that definition.*

6. *So far as this section may be inconsistent with any local statutory provision, rule of law or any direction or order of a court of competent jurisdiction that may from time to time be applicable to a professional accountant, compulsion of law shall be a defence to a breach of any provision of this section, and this section shall be read as being subject to the applicable provision of the law.*

Internal controls and policies

7. *A professional accountant shall ensure that relevant staff in his/her firm receive regular training to ensure that client identification procedures are carried out in respect of new clients and that the staff are competent to identify money laundering or terrorist financing activity where they come across it.*

8. *A professional accountant shall ensure that his/her firm identifies for the benefit of relevant staff a clear procedure for the in-house reporting of suspected money laundering and terrorist financing activity which the staff come across in the course of their work in the firm. This procedure could involve the appointment of a suitable senior member of the firm as the person to whom queries are directed and suspicions reported. Where there is a local legal requirement for firms to report knowledge or suspicions to the authorities, the person performing this role could make the final judgement on, and take the final responsibility for, deciding on behalf of the firm whether a matter should be reported.*

Client identification

9. *Before any work is undertaken, the professional accountant shall verify the identity of the potential client by reliable and independent means. The professional accountant shall retain on their own files copies of such evidence, as set out in paragraph 17. This will involve the following:*

   (a) where the client is an individual: by obtaining independent evidence of the client's identity, such as a passport and proof of address;

   (b) where the client is a company or other legal entity: by obtaining proof of incorporation; by establishing the primary business address and, where applicable, registered address; by establishing the structure, management and ownership of the company; and by establishing the identities of those persons instructing the professional accountant on behalf of the company and verifying that those persons are authorised to do so;

   (c) in either case: by establishing the identity and address of any other individuals exercising ultimate control over the client and/or who will be the ultimate beneficiaries of the work or transactions to be carried out; and

   (d) by establishing precisely what work or transaction is desired to be carried out and to what purpose.

10. *If the professional accountant is unable to satisfy himself/herself as to the potential client's identity, no work shall be undertaken.*

11. *Save where paragraph 12 applies, where a professional accountant is instructed by another person on behalf of their principal, the professional accountant shall satisfy himself/herself of both the identity of the person instructing the professional accountant and their principal as if both were clients under paragraph 9. The professional accountant shall retain these copies on their files in line with the requirement in paragraph 17 below.*

12. *Where a professional accountant is instructed by another Regulated Professional on behalf of their client, the professional accountant shall satisfy himself/herself that the identity of the common client has been sufficiently established by asking to see copies of the evidence obtained by the Regulated Professional. The professional accountant shall retain these copies on his/her files in line with the requirement in paragraph 17 below. "Regulated Professional" means for the purposes of this section a professional who is subject to equivalent anti-money laundering legislation which complies with the FATF Recommendations.*

13. *Once a professional accountant has established on reasonable evidence that they are instructed by another Regulated Professional, it is generally not necessary for the professional accountant to obtain and evidence further proof of the identity and structure of the instructing Regulated Professional.*

14. *Subject to any local legal requirement to the contrary, a professional accountant is not required to verify the identity of existing clients, provided they are known personally to the professional accountant and the professional accountant has acted for them on a regular basis in the past three years. Where there has been little or no contact with clients in the preceding three year period, the identity of such clients shall be established as if they were new clients prior to any work being undertaken by the professional accountant.*

15. *If at any time during the course of a client relationship a professional accountant begins to have doubts about the client's identity, further evidence shall be obtained. If a professional accountant is unable to satisfy himself/herself, the client relationship shall be terminated.*

16. *During the course of a client relationship, a professional accountant shall regularly review the history of the relationship to satisfy himself/herself that the work or transactions being carried out is/are consistent with the client's usual activities. Anything that appears to be out of the ordinary for that particular client, such as an unusual pattern of transactions or an unusually large transaction, shall be closely examined and a written record made of the professional accountant's conclusions. If a professional accountant's suspicions are aroused, a report shall be made in accordance with paragraph 20 below.*

Record keeping

17. *Subject to any local legal requirement for a longer period of record retention, a professional accountant shall retain all client identification records for at least five years after the end of the client relationship. Records of all transactions and other work carried out, in a full audit trail form, shall be retained for at least five years after the conclusion of the transaction.*

Recognition of suspicion

18. Suspicion can be described as being more than speculation but falling short of proof based on firm evidence. A particular set of circumstances which may be suspicious in relation to one client may not be suspicious in relation to another client. Therefore, the key to recognising a suspicious transaction or situation is for a professional accountant to have sufficient understanding of his/her clients and their activities.

19. A professional accountant shall pay special attention to transactions in which clients are involved that appear to have no apparent economic or visible lawful purpose. Whenever such transactions occur, their background and purpose shall, as far as possible, be examined and any findings recorded in writing. If no purpose for the transaction can be established, this may be a ground for suspicion.

Reporting suspicious transactions

20. In most countries, accountants in practice will be subject to a legal requirement to report knowledge or suspicions of money laundering or terrorist financing to an appropriate national authority. All countries which follow the FATF Recommendations are expected to impose such a requirement. The requirement to report may be broadly based, and apply in respect of information that accountants come across in any part of their professional work, or it may be more focused, and apply only to information they acquire while carrying out specified activities, such as dealing with client funds. A professional accountant shall familiarise himself/herself with the exact nature of any local reporting obligation. Where a requirement to report applies, a professional accountant shall comply promptly with his/her obligation to do so. In this context, professional accountants are reminded that tax evasion will usually be deemed a crime and that they may be required to make an additional report to the tax authorities.

21. Some countries may require a report to be made only where the suspicion relates to the proceeds of specified serious crimes, or to proceeds of crimes which exceed a set monetary threshold. By contrast, in other countries (the United Kingdom, for example) suspicions relating to the proceeds of any crime must be reported.

22. Subject to any local legal requirement to the contrary, where the work done by a professional accountant for clients is covered by legal professional privilege, the professional accountant is not required to report his/her suspicions. Whether or not legal professional privilege applies to a professional accountant and in what circumstances will depend on local law and professional accountants are strongly advised to seek legal advice as and when the issue arises.

Tipping off

23. A professional accountant shall not "tip off" a client that a report has been made. If a suspicion has arisen during the course of client identification procedures, the professional accountant shall take extra care that carrying out those procedures will not tip off the client. In particular, ceasing to act for a client without giving any plausible explanation might tip off the client that a report has been made. However, any attempts to persuade a client not to proceed with an intended crime will not constitute tipping off.

Advisory Services

24. A professional accountant faced with money laundering issues may call upon the Advisory Services Section within ACCA for confidential advice.

SECTION B3
Whistleblowing responsibilities placed on auditors

Introduction

1. *In certain circumstances, an auditor may be required to report to the appropriate regulator if a client has not complied with any law or regulation or if any other matters occur which give rise to a reporting obligation. For example, an auditor of financial institutions which are subject to statutory regulation in the United Kingdom is required to report to the regulator any information which may be of material significance to that regulator, such as the client's breach of a regulation or a serious downward turn in the client's financial position.*

2. *An auditor shall ensure that he/she is aware of the requirements identified in the relevant local legislation and regulatory framework that assist the auditor in identifying matters that must be reported.*

3. *Failure to report may constitute an offence and could render an auditor liable to fines or even imprisonment.*

4. *Professional accountants are referred to the International Standards on Auditing or the equivalent standards of the country in which the professional accountant practises for further detail as to the types of non-compliance that must be reported and the appropriate authorities to whom reports must be made.*

Whistleblowing duty: non-compliance with law or regulation

5. *Where an auditor becomes aware of a suspected or actual non-compliance with law or regulation, which gives rise to a statutory right or duty to report, he/she shall report this to the proper authority immediately.*

6. *Save where paragraph 7 applies, where an auditor becomes aware of a suspected or actual non-compliance with law or regulation and he/she concludes that it is a matter that must be disclosed in the public interest, the auditor shall notify the directors, trustees, etc. in writing of their view. If the entity does not voluntarily make a disclosure of the default, or is unable to provide evidence that the matter has been reported, the auditor shall report it himself/herself to the proper authority.*

7. *Where there is a real risk that disclosure to the directors or trustees might prejudice any investigation or court proceedings or is proscribed by law (for example, in the UK where it might constitute the offence of "tipping off") and the auditor becomes aware of a suspected or actual non-compliance with law or regulation, the auditor shall make his/her report to the proper authority without delay and without first informing the directors, trustees, etc. Occasions when disclosure may give rise to prejudice include where the disclosure is of a matter which casts doubt on the integrity of the directors, trustees, etc., or their competence to conduct the business of the regulated entity and which gives rise to a statutory duty to report.*

Circumstances indicating non-compliance with law or regulation

8. An auditor shall have a general understanding of the laws and regulations that are central to an entity's ability to carry out its business.

9. The laws and regulations affecting companies may vary from country to country. The following examples (a) to (d), whilst not exhaustive, highlight some circumstances where an entity may be in breach of a law or regulation under UK law:

(a) an entity whose main activity is the development of a single property should be complying with the appropriate planning regulations (including planning permission);

(b) an entity whose main activity is waste disposal should hold the relevant licences to allow it to dispose of hazardous waste;

(c) an entity whose main activity is financial services work, such as investment business, should hold appropriate authorisation to undertake this type of activity;

(d) when undertaking the audit of a pension scheme, an auditor shall ensure that he/she understands concepts such as the minimum funding requirement, the contributions schedule etc., since the auditor will be required to report any breach of the scheme's rules, that is material to the regulator, to the proper authority.

Professional duty of confidence

10. Disclosure by an auditor shall not constitute a breach of any obligation of confidence imposed by the fundamental principle of confidentiality provided that:

(a) disclosure is made in the public interest;

(b) disclosure is made to a proper authority; and

(c) there is no malice motivating the disclosure; or

(d) disclosure is made under compulsion of law.

11. Auditors are reminded that the duties of confidence owed to clients are also questions of law and that the law may vary from country to country. An auditor shall take legal advice before making a decision on whether a disclosure of a suspected or actual non-compliance with law or regulation shall be made to a proper authority in the public interest.

Method of reporting

12. An auditor making a disclosure of a suspected or actual non-compliance with law or regulation directly to a proper authority shall ensure that their report includes:

(a) the name of the entity;

(b) the statutory authority under which the report is made;

(c) the auditing standard under which the report has been prepared;

(d) the context in which the report is made;

(e) the matters giving rise to the report;

(f) a request that the recipient acknowledge that the report has been received; and

(g) their name and the date on which the report was written.

Whistleblowing duty: other matters of material significance

13. A professional accountant shall familiarise himself/herself with and comply with the law. An auditor not only has a professional duty but may also have a statutory duty to report directly to a regulator where, in the course of their work, the auditor becomes aware of a matter that is, or is likely to be, of material significance in determining either, by way of illustration, in the UK:

(a) whether a person is a fit and proper person to carry on the regulated work; or

(b) whether disciplinary action should be taken, or powers of intervention exercised, in order to protect clients against significant risk of loss.

14. The following circumstances may require an auditor to make a report:

(a) when there has been an adverse change in the circumstances of the business;

(b) where an event has resulted in a material loss or loss of control over the assets or records which would impact on the entity's ability to adhere to the rules and regulations for the conduct of the regulated business; and

(c) where the financial position of the entity is such that clients' interests might be better safeguarded if the matter were reported to the regulator.

15. Auditors of certain entities may be required to report directly to regulators where they discover non-compliance with law or regulation.

Non-audit assignments

16. Whilst the whistleblowing responsibilities outlined above apply to auditors, professional accountants shall bear in mind the foregoing guidance for non-audit situations.

17. Where a professional accountant becomes aware of a suspected or actual non-compliance with law or regulation, the professional accountant shall consider its impact on the reporting entity. A professional accountant has a professional duty to ensure that all accounts/returns that they are party to are not in any way incorrect or misleading.

18. Where a professional accountant becomes aware of irregularity and the client does not take steps to correct it and notify the proper authority, the professional accountant shall not only consider their position but whether they must make voluntary disclosure to a third party. Before making any disclosure, a professional accountant shall consider taking legal advice and is referred to Section B1, Professional duty of confidence in relation to defaults and unlawful acts of clients and others, for further guidance.

SECTION B4
Descriptions of professional accountants and firms and the names of practising firms

General

1. *This section is split into two parts: Part I deals primarily with descriptions of professional accountants and firms and Part II deals with the names of practising firms. The annexes deal with specific requirements for professional accountants based in the UK and in Ireland.*

2. *For the purpose of this section, a firm is one whose main business is that of the provision of services customarily provided by Chartered Certified Accountants.*

3. *The terms "firm" and "practice" include partnerships, corporations (including limited liability partnerships) and sole practitioners.*

4. *The term "professional stationery" includes websites and other electronic materials by which a firm communicates or markets itself.*

Part I – Descriptions of professional accountants and firms

Professional accountants' descriptions

5. *A member of ACCA may be either a Member or a Fellow and is entitled to use the professional designation "Chartered Certified Accountant" or "Certified Accountant".*

6. *A professional accountant may use the designatory letters "ACCA" (for a Member) or "FCCA" (for a Fellow).*

7. *A professional accountant is not permitted to add Honours or Hons after a designation noted in paragraph 5 above, nor is a professional accountant permitted to add Honours or Hons after the designatory letters noted in paragraph 6 above, even though the professional accountant may have earned a place of merit in the final examination and have been so shown in the pass list. No honours are awarded in ACCA's examinations.*

Membership of other accountancy bodies

8. *A professional accountant may use on professional stationery words showing membership of other accountancy bodies or of organisations in any field related to accountancy.*

9. *Where a professional accountant belongs to two or more accountancy bodies they shall either use all their designatory letters on their professional stationery or none at all.*

Other designatory letters

10. A professional accountant who holds a civil or service honour (such as CBE, DSO, DFC, etc.) or a civil office (such as MP, etc.) is entitled to use the appropriate designatory letters on their professional stationery if they so wish. The designatory letters for a Justice of the Peace (JP) or its equivalent outside the United Kingdom shall not be included on professional stationery.

11. Before including designatory letters a professional accountant shall consider carefully how far (if at all) a statement of such honours or offices is relevant to the professional services they offer.

12. Any reference to honours or appointments would be entirely inappropriate in signing any audit report or other expression of professional opinion.

Compliance with ACCA Charter, bye-laws, regulations and Code of Ethics and Conduct

13. A firm which uses any of the descriptions, statements or logos set out in paragraphs 14 to 20 below is deemed to have undertaken to comply with the ACCA Charter, bye-laws, regulations and Code of Ethics and Conduct.

Practice descriptions

14. The descriptions "Chartered Certified Accountant(s)", "Certified Accountant(s)", "Statutory Auditor(s)" or "Registered Auditor(s)" shall not form part of the name of a firm, company or limited liability partnership. (For example, a limited liability company shall not include the description in the name which is registered with Companies House in the United Kingdom or its equivalent elsewhere.) Similarly, the designatory letters "ACCA" or "FCCA" shall not form part of the name of a firm, company or limited liability partnership.

15. A firm (containing holders of practising certificates of whatever category or insolvency licences) may describe itself as a firm of "Chartered Certified Accountants", "Certified Accountants" or "an ACCA practice" only where:

(a) at least half of the partners (or directors in the case of a company, or members in the case of a limited liability partnership) are ACCA members; and

(b) the principals noted in 15(a) above control at least 51 per cent of the voting rights under the firm's partnership agreements (or constitution).

Statements on professional stationery

16. A firm in which all the partners are Chartered Certified Accountants may use the description "Members of the Association of Chartered Certified Accountants".

17. A mixed firm may wish to make it clear that some partners (or directors) are Chartered Certified Accountants and some are (to give a United Kingdom example) Chartered Accountants. Such a firm may not use the description "Chartered Certified Accountants and Chartered Accountants" or "Chartered and Certified Accountants", but may use the following statement on its stationery (providing the Chartered Accountants within the firm have permission from their own Institute(s) to use the statement):

"The partners (or directors) of this firm are members of either the Association of Chartered Certified Accountants or the Institute of Chartered Accountants in England and Wales (of Scotland / in Ireland)".

18. *Generally, the designation of any overseas body shall not be used in combination with "Chartered Certified Accountant(s)" or "Certified Accountant(s)", other than in the style of the statement set out in paragraph 17 above, unless the legislation of the country in which the practitioner is based overrides this requirement.*

Use of the ACCA name and logo

19. *Notwithstanding paragraphs 5 and 6 above, a professional accountant is not permitted to do the following:*

    (a) form or incorporate a firm, partnership, company or limited liability partnership incorporating or consisting of any of the terms in paragraphs 5 and 6 above or any confusingly similar term; and/or

    (b) register a domain name or trade mark incorporating or consisting of any of the terms in paragraphs 5 and 6 above or any confusingly similar term.

20. *A firm that has at least one ACCA member as a partner or director may use the ACCA logo on letterheads, other stationery and on an Internet site, subject to the restriction that it may not be used unless a firm is controlled overall by holders of recognised accountancy qualifications. The logo shall be used in an appropriate manner, so that it cannot be confused with the logo of the firm, for example, in conjunction with the regulation statement in respect of audit or financial services, such as exempt regulated activities in the United Kingdom.*

21. *The overriding design consideration is that the positioning, size and colour of the ACCA logo shall not compromise its recognition. The ACCA logo is square and shall not be cropped or altered in any way. The logo must appear in black or red (Pantone 485). A member in an eligible firm wishing to use the ACCA logo shall request the logo artwork and guidelines from ACCA by telephoning +44 (0)141 534 4237 or emailing logo@accaglobal.com and providing the member's practising certificate number and membership number.*

Sole practitioners

22. *A sole practitioner may use the plural form of Chartered Certified Accountants or Certified Accountants and/or Registered Auditors and/or Licensed Insolvency Practitioners to describe their firm providing they hold the appropriate certificate, and either:*

    (a) they apply the suffix "& Co." after their name; or

    (b) otherwise trade under a business name which is not the same as their personal name.

23. *A professional accountant who is a sole practitioner may describe himself/herself as a "Member of the Association of Chartered Certified Accountants".*

Specialisms

24. A firm may include a list of the services it provides on its professional stationery.

25. A firm may use a description indicating a specialism in any area of work, for example, "Tax advisers", provided that:

(a) it is competent to provide the specialisms shown, and

(b) the content and presentation of the descriptions do not bring ACCA into disrepute or bring discredit to the firm or the accountancy profession.

Persons named on professional stationery

26. It shall be clear from reading a firm's professional stationery whether any person named on it is a principal in that firm (i.e. a partner, sole practitioner or director).

27. A firm may include the name of any person who is not a principal of the practice on the professional stationery of the practice. Where such a person is named on the stationery a description about this person, e.g. "Manager", "Tax Consultant", etc. shall also be included by their name.

28. The names and descriptions of principals shall be clearly separated from those of non-principals so that they cannot be mistaken for each other.

29. Any person named on professional stationery shall be competent and have the necessary eligibility and qualifications to provide any specialism shown. They shall be described only by the titles, descriptions and designatory letters to which they are properly entitled.

30. Any description used on a firm's professional stationery shall not bring ACCA into disrepute or bring discredit to the practice or the accountancy profession.

Part II – The names of practising firms

General

31. Subject to the bye-laws and the following rules, a professional accountant may practise under whatever name or title they see fit.

32. A practice name shall be consistent with the dignity of the profession in the sense that it shall not project an image inconsistent with that of a professional bound by high ethical and technical standards.

33. A practice name shall not be misleading.

34. A practice name would be objectionable if in all the circumstances there was a real risk that it could be confused with the name of another firm, even if the member(s) of the practice could lay justifiable claim to the name.

35. A practice name may indicate the range or type of services offered by the firm.

36. It has been the custom of the profession for professional accountants to practise under a firm's name based on the names of past or present members of the firm itself or of a firm with which it has merged or amalgamated. A practice name so derived will usually be in conformity with this guidance.

Discussion

37. It would be misleading for a firm with a limited number of offices to describe itself as "international" even if one of them was overseas.

38. A firm may trade under different names from different offices providing that this does not mislead.

39. *A firm may be a member of a trading association and may indicate this on the firm's note paper or elsewhere in proximity to the practice name. However, the practice name of such a firm shall be clearly distinguishable from the name of the associated firm or group. Thus, it would be misleading for a member of a trading group to bear the same name as the group. There would be no objection to a firm practising under its own name and including a statement on its professional stationery to the effect that it is "a member of (a named) accountancy group".*

40. *It would be misleading for a sole practitioner to add the suffix "and partners" to their firm's name.*

41. *Similarly, it would be misleading for a firm to add the suffix "and Associates" to its business name unless it has two or more formal associations/consultancies in existence which can be demonstrated to exist.*

Legal requirements

42. *A practice name shall comply with partnership, limited liability partnership and company law as appropriate, and with any other local legislation, such as the Companies Act 2006 in the United Kingdom. A practising firm may describe itself in any manner conformable to the practice of the profession locally provided that the principles set out in paragraphs 31 to 33 of this section are observed.*

New and changed names

43. *When choosing a firm's name or considering changing a firm's name, professional accountants are recommended, as a means of ensuring compliance with this guidance, to consult with the Advisory Services Section as to the propriety of the proposed name. This is particularly so where the new name will not be based on the name of past or present members of the firm itself or of a firm with which it has merged or amalgamated.*

Use of firm's name and premises

44. *A professional accountant shall not give permission to a third party to use their name, premises, professional stationery, etc. There is a real danger that the public could mistake the third party for the professional accountant if such permission were to be given.*

Advisory Services

45. *A professional accountant with a query regarding description of professional accountants and firms may call upon the Advisory Services Section within ACCA for advice.*

46. *Professional accountants are also referred to guidance ACCA has issued for professional accountants on description of professional accountants and firms. This can be viewed at* http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html

Additional requirements for descriptions of professional accountants and firms and the names of practising firms for the UK

The requirements set out below shall apply to professional accountants in the UK.

Registered Auditors

1. *A firm holding a firm's auditing certificate issued by ACCA may describe itself as "Registered Auditors".*

2. *A firm meeting the conditions set out in paragraph 1 above should add the following statement to its business stationery:*

   "Registered as auditors in the United Kingdom by the Association of Chartered Certified Accountants".

3. *Where appropriate, the statement set out in paragraph 2 may be combined with the exempt regulated activities statement (paragraph 10 below) as follows:*

   "Registered as auditors and regulated for a range of investment business activities in the United Kingdom by the Association of Chartered Certified Accountants".

4. *In the conduct of audit work, a holder of an audit qualification or a firm holding an auditing certificate shall use the designation "Registered Auditor" or "Registered Auditors" when signing audit reports for accounting periods commencing on or before 5 April 2008.*

5. *For accounting periods commencing on or after 6 April 2008, the audit report shall:*

   (i) state the name of the auditor and be signed and dated;

   (ii) where the auditor is an individual, be signed by him/her;

   (iii) where the auditor is a firm, be signed by the senior statutory auditor in his/her own name, for and on behalf of the auditor, and use the designation "Senior Statutory Auditor" after his/her name;

   (iv) state the name of the firm as it appears on the register; and

   (v) use the designation "Statutory Auditor" or "Statutory Auditors" after the name of the firm.

6. *The auditor's name and, where the auditor is a firm, the name of the person who signed the report as senior statutory auditor may be omitted from published copies of the report and the copy of the report to be delivered to the registrar of companies if the conditions set out in section 506 of the Companies Act 2006 are met.*

Insolvency practitioners

7. *A professional accountant who holds a current insolvency licence may describe himself/herself as a "Licensed Insolvency Practitioner". Professional accountants who hold a current insolvency licence issued by ACCA shall add either one of the following statements to their business stationery:*

    "Licensed in the United Kingdom to act as an insolvency practitioner by the Association of Chartered Certified Accountants" or

    "Insolvency Practitioner licensed in the United Kingdom by the Association of Chartered Certified Accountants".

8. *A firm composed wholly of insolvency licence holding partners/directors (whether issued by ACCA or other Recognised Professional Bodies or the Competent Authority under the Insolvency Act 1986 or Insolvency (Northern Ireland) Order 1989) may describe itself as a firm of "Licensed Insolvency Practitioners".*

Investment business

9. *ACCA, as a designated professional body, regulates firms in carrying out a limited range of investment business activities, which are incidental to the provision of professional services in that name only.*

10. *Firms that carry on exempt regulated activities are referred also to regulation 6(6) of the Designated Professional Body Regulations 2001. The approved wording for the purpose of regulation 6(6) is as follows:*

    "Regulated for a range of investment business activities by the Association of Chartered Certified Accountants".

11. *A firm that conducts exempt regulated activities may, without undue prominence, use the logos of investment business organisations of which they are a member on their professional stationery. (Professional accountants are also advised to refer to the Designated Professional Body Regulations 2001.)*

Additional requirements for descriptions of professional accountants and firms and the names of practising firms for Ireland

The requirements set out below shall apply to professional accountants in Ireland.

Registered Auditors

1. *A firm holding a firm's auditing certificate issued by ACCA may describe itself as "Registered Auditors".*

2. *A firm meeting the conditions set out in paragraph 1 above should add the following statement to its business stationery:*

   "Registered as auditors in Ireland by the Association of Chartered Certified Accountants".

3. *Professional accountants are reminded that, under the terms of the Association's recognition under the Companies Act 1990, the term "Registered Auditor(s)" shall be used when signing any company audit report for accounting periods commencing before 20 May 2010. This includes limited company audits, audits of other bodies specified under the Companies Act 1990 or other entities required by their constitutions to be audited by a Registered Auditor.*

4. *Following the introduction of the European Communities (Statutory Audits) (Directive 2006/43/EC), for accounting periods commencing on or after 20 May 2010, the audit report shall:*

   (i) state the name of the auditor and be signed and dated;

   (ii) where the auditor is an individual, be signed by him/her;

   (iii) where the auditor is a firm, be signed by the statutory auditor in his/her own name, for and on behalf of the firm; and

   (iv) state the name of the firm as it appears on the public register of the Registrar of Companies.

5. *In addition, in the event that an audit report is signed by a firm with a firm's auditing certificate, the audit report shall additionally identify the professional accountant(s) and/or other specified person(s) in relation to that firm responsible for the conduct of that audit.*

Investment business

6. *An investment business certificate (Ireland) issued by ACCA authorises the firm named in the certificate to carry on investment business in that name only. Accordingly, if a firm wishes to conduct investment business under another practice name, it must apply for a separate investment business certificate (Ireland) and pay the appropriate fee.*

7. *Firms that carry on investment business in the Republic of Ireland are referred to regulation 7(2) of the Irish Investment Business Regulations 2013. The approved wording for the purpose of regulation 7(2) is as follows:*

   "Authorised to undertake investment business services in Ireland by the Association of Chartered Certified Accountants".

SECTION B5

Legal ownership of, and rights of access to, books, files, working papers and other documents

Introduction

1. *This section sets out the requirements governing the ownership of records, documents and papers. In the course of practice, a professional accountant will either create or come into possession of records, documents and papers which may belong to the professional accountant or may belong to the professional accountant's clients. In certain circumstances a professional accountant may be able to retain records, documents and papers belonging to clients pending payment of outstanding fees. Note that such rights to a lien may be subject to important qualifications which enable clients and third parties to have access to any records, documents and papers in the professional accountant's possession.*

2. *The term "documents and papers" does not just mean documents stored on paper. The term extends to information stored on microfilm, and also to information stored electronically.*

3. *The underlying principles of ownership and liens over records, documents and papers are governed by law and the contract that the professional accountant enters into with their client. A professional accountant shall comply with the requirements of the local law that applies to their dealings with their client.*

4. *Guidance as to the principles of law that govern these issues is found elsewhere. Professional accountants are advised to take legal advice wherever an issue as to ownership or possession of records, documents and papers may arise. The legal position and its application to any given set of facts may not be straightforward. Under English law, by way of illustration, the position may be summarised as follows:*

   (a) Documents belonging to clients must be given to clients, or their agents, on request, except for those cases where the professional accountant is able to exercise a right of lien.

   (b) For documents belonging to the professional accountant, the decision whether to allow the client (or their agents) to inspect them rests with the professional accountant. The client has no right to demand access.

   (c) Where a client asks the professional accountant to disclose documents to a third party and those documents belong to the client, the professional accountant shall disclose the documents unless the professional accountant is exercising their rights of lien. Where documents belong to the professional accountant, they are not obliged to comply with the request.

5. *Professional accountants are reminded that they may act for their clients in different capacities and this may affect their rights to ownership and possession of records, documents and papers. Thus, by way of illustration, under English law an accountant may find himself/herself acting for clients either as principal or as an agent, depending on the nature of the work covered by the engagement.*

Relationship with the local law

6. *A professional accountant shall obey the law. It is the responsibility of professional accountants to familiarise themselves with the law that applies to them and ensure that they work within the law.*

7. *So far as the requirements of this section may be inconsistent with any local statutory provision, rule of law or any direction or order of a court of competent jurisdiction that may from time to time be applicable to a professional accountant, compulsion of law shall be a defence to a breach of any provision of the requirements and these requirements shall be read as being subject to the applicable provision of the law.*

The contract

8. *It is permissible for a professional accountant (to the extent they are permitted by law) to record and regulate any rights to ownership over any or any identified classes of records, documents and papers created by the professional accountant in the contract between the professional accountant and their client.*

9. *It is permissible for a professional accountant (to the extent they are permitted by law) to record and regulate any right to assert a lien or other security and the rights attaching to the same for their unpaid fees over records, documents and papers owned by the professional accountant in the contract between the professional accountant and their client.*

Preservation of documents

10. *Where a professional accountant retains possession over documents that belong to a client whether to undertake work or to assert any lien or security over them, it is the duty of the professional accountant to make effective and appropriate arrangements to ensure that such records, documents and papers are at all times preserved safely, orderly and securely.*

11. *Where a professional accountant ceases to be entitled to retain possession over a client's records, documents and papers and their return has been demanded by a client, he/she shall deliver up all such records, documents and papers to his/her client or to his/her client's lawyer or accountant promptly and safely. Nothing herein shall prevent a professional accountant from retaining (to the extent permitted or required by law) a copy of a client's file.*

Liens

12. *Nothing in this section shall prevent a professional accountant from asserting (to the extent permitted by law) a lien or other security for unpaid fees to retain possession of property owned by a professional accountant's client until the client pays what he/she owes the professional accountant.*

13. *The exercise of a right of lien does not absolve the professional accountant from the requirement to supply the transfer of information required by Section 210, Professional appointment, paragraphs 210.26 to 210.28.*

14. *Professional accountants are recommended to obtain legal advice before seeking to exercise a lien in any but the most straightforward of cases. A professional accountant shall advise a client disputing a right of lien of the professional accountant to consult their own solicitors. By way of illustration, under English law no lien can exist:*

    (a) over books or documents of a registered company that, either by statute or by the articles of association of the company, have to be available for public inspection or to be kept at the registered office or some other specified place or be dealt with in any special way;

    (b) over accounting records within section 386 of the Companies Act 2006;

    (c) over VAT returns.

Duty of confidentiality

15. *The duty of confidentiality owed by a professional accountant to his/her client is not affected by whether the professional accountant owns the record, document or paper or not.*

16. *The duty of confidentiality owed by a professional accountant to his/her client is not affected by whether the professional accountant asserts a lien or other security over the client's record, document or paper or not.*

17. *Professional accountants are reminded that voluntary access to information or documents may be given only where one of the following applies:*

    (a) the client has given his/her consent before disclosure; or

    (b) the professional accountant's duty of confidentiality is overridden by the powers of a third party to require access; or

    (c) the professional accountant considers himself/herself to be obliged to volunteer information in the circumstances set out in the fundamental principle of confidentiality and Section B1, Professional duty of confidence in relation to defaults and unlawful acts of clients and others.

Access to client papers

18. Subject to any lawful assertion of a lien or other security, a professional accountant shall permit his/her client access to such records, documents and papers as belong to his/her client.

19. Where a request for access to records, documents or papers is made by a person other than the client or on behalf of a client (for example, by a director seeking access to the papers of a company), it is permissible for a professional accountant, given his/her duty to maintain client confidentiality, to withhold or defer access to a client's records, documents and papers until the professional accountant is satisfied that he/she has seen appropriate and adequate authorisation to make such disclosure.

20. A professional accountant shall obtain written authority from his/her client before the professional accountant permits access by any third party to a client's books, records or papers whether such records, documents or papers are owned by the client or the professional accountant. Professional accountants are recommended that such written authority include an indemnity from any claims arising out of the disclosure and that the letter identify the proposed transaction in connection with which access has been requested, and record the fact that the working papers were not prepared or obtained with that transaction in mind. It is appropriate to reflect in the letter the parties' agreement that:

(a) the papers and any information provided by the professional accountant will not be used for any purpose other than the proposed transaction;

(b) access to the papers and information will be restricted to the purchasers, the investigating accountants and the purchasers' other professional advisers;

(c) any reliance that the purchasers or their investigating accountants may wish to place on the papers is entirely at their risk;

(d) the professional accountant disclosing the papers accepts no duty or liability resulting from any decisions made or action taken consequent upon access to the working papers or the provision of information, explanations or representations by the professional accountant; and that

(e) the purchasers will indemnify and hold harmless the professional accountant disclosing the papers against any claims from third parties arising out of permitting access or providing information, explanations or representations.

21. A professional accountant shall not disclose information about a client's affairs to a third party unless the client consents to disclosure or unless required by law or by a provision of the rules. By way of illustration, a non-exhaustive list under English law of occasions on which this principle may be overridden by third party rights of access might include:

(a) where the professional accountant is compelled by a witness summons in litigation;

(b) where a request is made of a professional accountant as secondary auditor in a group for access to papers by its primary auditor: see International Auditing Standard, Using the work of another auditor, ISA 600;

(c) to prevent a crime;

(d) where the professional accountant is required by a liquidator, administrator or administrative receivers to make delivery to them of any documents belonging to the company;

(e) where required by ACCA, as a statutory regulator in respect of auditors, insolvency practitioners, those who undertake investment business or exempt regulated activities and in relation to its disciplinary functions;

(f) where access is being sought by HM Revenue and Customs under the Taxes Management Act 1970 and the Value Added Tax Act 1994;

(g) where required by an Inspector appointed by the Department for Business Innovation and Skills to report on the affairs of a company under section 434, Companies Act 1985;

(h) where required by the Secretary of State for Business Innovation and Skills (and any officer or other competent person authorised by him/her) under section 447 of the Companies Act 1985;

(i) where required under the Financial Services and Markets Act 2000 or the Banking Act 1987;

(j) where required by an authorised officer of the European Commission under Article 11 of Council Regulation 17.

Advisory Services

22. Professional accountants with queries regarding ownership and access to books and records may call upon the Advisory Services Section within ACCA for advice.

23. Professional accountants are also referred to guidance ACCA has issued for professional accountants on ownership and access to books and papers. This can be viewed at http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html

SECTION B6
Retention periods for books, files, working papers and other documents

Introduction

1. *In determining the period for which audit, tax and other working papers and general client information shall be retained, consideration needs to be given to the following:*

   (a) legal requirements that specify the period of retention;

   (b) the period of time during which actions may be brought in the courts for which the working papers may need to be available as evidence;

   (c) the period of time for which information in the working papers may be required for use in compiling tax returns;

   (d) the possibility that a company may seek a quotation on a recognised stock exchange;

   (e) whether the papers in question form part of the books and records of a company.

2. *Professional accountants are reminded that the period over which documents are retained may be influenced by questions of law. Those issues include but are not limited to, for the client, duties on the client to retain and make available records (for example, to the tax authorities) and, for the professional accountant, considerations like preserving their records for at least the limitation period so that they are available to meet any allegation of breach of contract or professional negligence. The law may differ from country to country. Professional accountants are advised to obtain their own legal advice on the law applicable in their countries.*

Trusteeships

3. *A professional accountant who acts as trustee has a continuing responsibility to the beneficiaries. All records shall be retained at least until all transactions have been independently audited and a discharge received from all interested persons.*

General considerations

4. *The retention of working papers involves expenditure on storage space and staff costs. It is permissible for a professional accountant, subject to statutory requirements to retain and preserve accounting records, to adopt a policy of retaining working papers relating to current clients for a longer period than for those clients for whom the professional accountant no longer acts.*

Minimum periods for retention

5. *A professional accountant shall use his/her own judgement in determining the period for which working papers should be retained. The minimum periods for which a professional accountant shall retain working papers are as follows:*

Audit working papers	*7 years*
Files on clients' or former clients' chargeable assets and gifts	*8 years (then return them to the client or former client or obtain authority from the client or former client for their destruction)*
Files of professional accountant as trustee (other than trustee in bankruptcy)	*For the period of trusteeship and 7 years thereafter*
Investment business advice	*For the life of the policy and 3 years thereafter*

6. *Tax files and other papers that are legally the property of the client or former client shall be returned to the client (or former client) after 7 years or his/her specific authority obtained for their destruction.*

7. *Where it is possible that a defect in advice rendered to clients or former clients may not become apparent for a longer period than those set out above, the professional accountant may consider it prudent to retain working papers for at least this period of time. For example, the professional accountant shall consider retaining advice given on the creation of a trust for the period until the trust comes to an end.*

SECTION B7
Activities through corporate or non-corporate organisations

Introduction

1. *Subject to the provisions of this section, professional accountants may carry on activities through any convenient vehicle, provided that in doing so they do not contravene local law or regulation.*

Provision of accountancy services through companies

2. *A professional accountant may participate, whether as director and/or member and/or employee, in limited or unlimited companies and limited liability partnerships, which offer auditing and/or accountancy services to the public, provided that in doing so, they do not contravene the law of the country in which they practise.*

3. *Under English law, office holders under the Insolvency Act 1986, receivers, and trustees under deeds of arrangement must be individuals.*

4. *Where a professional accountant becomes a director of a limited or unlimited company or a member of a limited liability partnership which offers auditing services to the public, the professional accountant shall hold a practising certificate from ACCA. For the purposes of this paragraph, "auditing services" shall include the provision of reports and/or certificates relating to the financial statements.*

5. *Limited and unlimited companies and limited liability partnerships referred to in paragraph 2 above are permitted to advertise in accordance with Section 250, Marketing professional services.*

Non-accountancy services

6. *A professional accountant may participate in any capacity, in organisations, whether corporate or non-corporate, which offer services other than accountancy services to the public ("non-accountancy organisations"). In this context, "accountancy services" means services of a kind usually offered by firms of accountants.*

7. *Where a professional accountant participates in non-accountancy organisations and, in addition, participates in organisations offering services to the public:*

   (a) these organisations may operate from the same address; and

   (b) the non-accountancy organisations may, if linked with other organisations, indicate the connection in their name, but that name must differ distinctively from that of the other organisations. Non-accountancy organisations shall not, in any other way, be used to attract audit or accountancy work to the other organisations.

8. *Non-accountancy organisations may:*

   (a) advertise their services in accordance with Section 250, Marketing professional services; and

   (b) use any appropriate description, but may not describe themselves as "Chartered Certified Accountants" or "Certified Accountants".

Organisations offering accountancy and non-accountancy services

9. *There is nothing to prevent a professional accountant from participating in any capacity in corporate or non-corporate organisations which offer both accountancy and non-accountancy services to the public but, in such cases, the professional accountant shall comply with the rules contained in Section 250, Marketing professional services, which relate to accountancy organisations.*

Appointed representatives under the Financial Services and Markets Act 2000 in the United Kingdom

10. *In order that a firm at all times be free in the actions it undertakes of any interest which might detract from its objectivity it shall not enter into any association or arrangement with any person which may result in the practice being constrained or induced to recommend to a client transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others, unless so constrained by law.*

11. *Paragraph 10 does not apply to an appointment as an appointed representative within the meaning of section 39 of the Financial Services and Markets Act 2000 where the appointing organisation is itself, and at all times continues to be, free from any such interests or restrictions.*

12. *Insofar as appointments as a person's representative in accordance with section 39 of the Financial Services and Markets Act 2000 are concerned, firms may accept such appointments within the scope of regulation 5(3)(b) of the Designated Professional Body Regulations.*

13. *A professional accountant in public practice who does not conduct exempt regulated activities (for example, a firm authorised by the Financial Conduct Authority) shall nevertheless safeguard their independence by regarding the provision contained in paragraph 10 above as applying to them.*

General

14. *A professional accountant who engages in activities under this section is subject to the same ethical requirements as other professional accountants.*

15. *Professional accountants in doubt about the application of these provisions to their own circumstances are advised to consult the Advisory Services Section and, if necessary, obtain the approval of the Admissions and Licensing Committee before undertaking any activities hereunder.*

SECTION B8
The obligations of consultants

1. *A consultant professional accountant shall refrain from any action tending to change the relationship between other practitioners and their clients.*

2. *Any consultant professional accountant retained by another practitioner on a consultancy basis on behalf of a client shall not accept any work from the client which, at the time of consultation, was being carried out by the instructing practitioner unless:*

   (a) the instructing practitioner consents (such consent should not unreasonably be withheld); or

   (b) a period of at least one year has elapsed since completion of the consultancy assignment; or

   (c) exceptionally, where the interests of clients would otherwise be prejudiced.

3. *A professional accountant shall consult the Advisory Services Section prior to accepting work on the basis of paragraph 2(c) above.*

4. *To the extent that there is any discrepancy between this section and the requirements of local legislation or regulation, a professional accountant shall follow whichever imposes upon them the more stringent requirement.*

SECTION B9
Professional liability of accountants and auditors

Introduction

1. *This section is concerned only with the liability for professional negligence which a professional accountant may incur because of an act or default by him/her or by one of his/her employees or associates which results in financial loss to a client or third party to whom a duty of care is owed. It does not deal with liability arising from other causes (for example, criminal acts, breaches of trust, or breaches of contract other than the negligent performance of its terms, and certain heads of liability arising by statute independently of contract).*

2. *In recent years there have been a number of cases where substantial sums have been claimed as damages for negligence against accountants and auditors. In a number of cases it appears that the claims may have arisen as a result of some misunderstanding as to the degree of responsibility which the accountant was expected to assume in giving advice or expressing an opinion. It is therefore important to distinguish between:*

   (a) disputes arising from misunderstandings regarding the duties assumed; and

   (b) negligence in carrying out agreed terms.

3. *This section sets out the global rules governing professional accountants and how they contract with clients or deal with third parties. The underlying principles are governed by law and the contract that a professional accountant enters into with their client. A professional accountant shall comply with the requirements of the local law that applies to their dealings with their client.*

4. *Guidance as to the principles of law that govern these issues is found elsewhere. Professional accountants are advised to take legal advice wherever an issue may arise. The legal position and its application to any given set of facts may not be straightforward.*

Engagement letters

5. *A professional accountant shall record in writing and send to their client a letter of engagement which sets out the terms under which they are agreeing to be engaged by their client before any work is undertaken or, if this is not possible, as soon as practicable after the engagement commences. The professional accountant shall ensure that at the time he/she agrees to perform certain work for the client a letter of engagement is prepared which clearly defines the scope of his/her responsibilities and the terms of his/her contract with his/her client. The letter of engagement shall set out in detail the actual services to be performed, the fees to be charged, or the basis upon which fees are calculated, and the terms of the engagement should be accepted by the client so as to minimise the risk of disputes regarding the duties assumed. Accordingly, the professional accountant shall ensure they retain a copy of the engagement letter which*

has been signed by the client. Where new work is to be undertaken or any terms have changed, the professional accountant shall send a new letter of engagement. It may also be helpful for the avoidance of misunderstandings to indicate any significant matters which are not included in the scope of responsibilities undertaken, although it will rarely be possible to provide a comprehensive list of matters excluded. Again, the professional accountant shall retain a copy of the new engagement letter which has been signed by the client.

Excluding or restricting liability to a client

6. *It is permissible for a professional accountant to include in the letter of engagement terms limiting or restricting a professional accountant's liability for negligence or breach of contract to a client. Professional accountants are reminded that an agreement with a client designed to exclude or restrict a professional accountant's liability will not always be effective in law. By way of illustration under English, Welsh and Northern Ireland law:*

   (a) Section 2 of the Unfair Contract Terms Act 1977 renders void any contractual exclusion or restriction of liability for negligence, even in a case where the client has agreed to it and where legal consideration exists, unless the person seeking to rely on that exclusion or restriction can show that it was reasonable.

   (b) The Unfair Terms in Consumer Contracts Regulations 1999 make unenforceable any "unfair term" in a contract between a supplier and a "consumer"; but if a term limiting liability has been found to be "reasonable" for the purposes of the 1977 Act, it is thought unlikely that it would be held to be "unfair" for the purposes of the 1999 Regulations.

   While a professional accountant may wish to make specific disclaimers of responsibility in appropriate, defined circumstances, ACCA does not encourage the use of standard disclaimer clauses in audit reports. Such clauses could have the effect of devaluing the report in the eyes of many and are not necessary in order to protect auditors' interests if the audit has been properly carried out.

7. *In England and Wales, where a professional accountant acts as a paid trustee, or assists in drafting, preparing, or instructing a third party to draft a trust document that includes a clause that has the effect of limiting or excluding liability (known as a "trustee exemption clause"), the professional accountant has a duty to take reasonable steps to ensure that the person creating the trust is aware of the meaning and effect of the clause before the trust is created. Such practice is also recommended in other jurisdictions.*

Advice on limited information

8. *Accountants may be called upon to give opinions and advice, including financial advice, in connection with many matters, for example investigations or management consultancy assignments, the preparation or audit of the accounts of sole traders, partnerships and charities, and in the field of taxation. While it is permissible for a professional accountant to give such advice either within or outside the scope of a letter of engagement, professional accountants are recommended to make clear to the beneficiary of that advice the extent of the responsibility they agree to undertake and whom that advice is intended for and restricted to, making particular reference to*

the information supplied to them as a basis for their work and to those areas (if any) to be excluded from their examination. In particular, if clients require "snap" answers to complicated problems, it is recommended that professional accountants record such advice in writing (or alternatively to state orally and forthwith confirm in writing) that the problems are complicated, that they have been given a very limited time in which to study them, that further time is required in order to consider them in depth and that the opinion or advice tendered might well be revised if further time were available to them. It is also recommended that professional accountants state that the client is responsible for the accuracy of the information supplied to the accountant, and except in the case of a genuine emergency the client be warned against acting on the "snap" advice tendered before further investigation has been carried out.

Avoiding liability to third parties

9. *It is permissible for a professional accountant to take appropriate steps to reduce their exposure to the claims of third parties. By way of illustration, in England and Wales such steps might include:*

   (a) identifying the purpose for which the advice is given or document is prepared;

   (b) identifying and limiting the audience of the advice or document, for example including the notice "CONFIDENTIAL. This report (statement) has been prepared for the private use of X (the client) only and on condition that it must not be disclosed to any other person without the written consent of Y (the accountant).";

   (c) including a disclaimer, for example: "Whilst every care has been taken in the preparation of this document, it may contain errors for which we cannot be responsible" or "This report is prepared for the use of X (the client) only. No responsibility is assumed to any other person.";

   (d) where a document is prepared in the first instance for discussion with or approval by the client or others, and is liable to be altered before it appears in its final form, over-stamping the document on each page: "Unrevised draft";

   (e) where accounts are prepared on behalf of a client, identifying that the source of the information set out in the accounts is the client and not the accountant and that the client has checked the document. It is a sensible precaution in such a case for the accountant expressly to draw the attention of the client to the need to check the document before submitting it.

10. *A professional accountant shall, however, be aware that a disclaimer may be inappropriate or ineffective. Disclaimers will be inappropriate in circumstances where their use will tend to impair the status of practising accountants by indicating a lack of confidence in their professional work. By way of illustration, under English law it would not, for example, be proper to endorse copies of accounts filed in accordance with sections 394 and 437 of the Companies Act 2006 with a disclaimer by the auditor of liability to persons other than shareholders.*

Inclusion of the accountant's name on a document issued by a client

11. Professional accountants are recommended to endeavour to ensure that no statement or document issued by their client (other than unabridged accounts which have been reported on by them as auditors) will bear their name unless their prior consent has been obtained. It is often desirable for a suitable paragraph to be included in the engagement letter. If a professional accountant learns that a client proposes to cite his/her name, he/she shall inform the client that his/her permission must first be obtained and in appropriate cases he/she shall withhold his/her permission.

Specialist advice

12. Professional accountants are reminded that, from time to time, circumstances may warrant (whether because of the complexity of an assignment or otherwise) that a professional accountant advise his/her client that he/she considers it desirable to take specialist advice. In certain circumstances it may be appropriate for a professional accountant either to consult another accountant or to instruct or to suggest to his/her client to instruct a member of another profession to advise.

Internal complaints-handling procedures

13. In accordance with lead regulator recommendations, a professional accountant in the UK and Ireland shall implement adequate procedures to handle client complaints in respect of fee, service and contractual disputes. Professional accountants elsewhere are highly recommended to implement such procedures.

14. Many complaints can be resolved without recourse to litigation where adequate internal complaints procedures exist within firms. In this way, not only would the level of client care improve, but issues of poor service might be resolved without the need for investigation by ACCA. A guidance note to assist professional accountants, which includes suggested procedures, can be found on ACCA's website at http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html

15. It is recommended that any complaints procedures adopted by a firm ensure:

(a) the proper handling of complaints from clients relevant to its compliance with the regulatory system;

(b) that complaints are acknowledged promptly;

(c) where a complaint has been made orally, that the letter of acknowledgement states the professional accountant's understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement;

(d) that complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint;

(e) that any appropriate remedial action on those complaints is promptly taken; and

(f) where the complaint is not promptly remedied, that the client is advised of any further avenue for complaint available to him/her under the regulatory system (e.g. taking the matter up with ACCA).

16. *Members in the UK are required to inform the client of the following, once the firm's internal complaints-handling procedures have been exhausted:*

    (a) that the practice has been unable to resolve the complaint;

    (b) that ACCA is competent to deal with the complaint, should the consumer wish to further the complaint;

    (c) ACCA's website address;

    (d) that the practice is not obliged to submit to ACCA's conciliation process should ACCA consider that the complaint is suitable for conciliation; and

    (e) whether the practice would be prepared to submit to ACCA's conciliation process should ACCA consider that the complaint is suitable for conciliation.

17. *Professional accountants are recommended to include details of the firm's internal complaints-handling procedures in the letter of engagement.*

18. *Professional accountants are reminded that on written application by both the parties to the dispute, ACCA can arrange for an arbitrator to be appointed.*

Advisory Services

19. *Professional accountants with queries regarding professional liability of accountants and auditors may call upon the Advisory Services Section within ACCA for advice.*

20. *Professional accountants are also referred to guidance ACCA has issued for professional accountants on liability for professional negligence. This can be viewed at http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html*

SECTION B10
The incapacity or death of a practitioner

General

1. *Practising certificates are granted to professional accountants on the condition that they have made arrangements for continuity in the management of their practice, in the event of their death or incapacity. Professional accountants are referred to the detailed provisions in regulation 11 of the Global Practising Regulations 2003.*

2. *Principals in the same practice (partnership or corporation) may arrange continuity through their fellow partners, or directors, providing these persons are suitably qualified to carry out work which they will be called on to undertake in the role of continuity nominees.*

3. *When entering into an agreement with another firm (a sole practitioner, a partnership or a corporation) for the provision of continuity, a professional accountant shall try to find a compatible practice where procedures, fee structure and the work in general are of a similar kind. Practical considerations, such as geographic location, staff availability and skills, client characteristics, etc., shall be taken into consideration.*

4. *Continuity nominees shall be suitably qualified at the time they agree to be nominated as such and at all times thereafter. In the event that a nominee fails to retain his/her qualification he/she will no longer be a valid continuity nominee and the practitioner will have to find a replacement.*

5. *A professional accountant shall ensure that their executors and family will be aware, in the event of the professional accountant's death or incapacity, of the arrangements made for the management of the practice.*

Insolvency practitioners: UK

6. *As a condition of obtaining a licence to practise insolvency under United Kingdom legislation, professional accountants are obliged to enter into a continuity of practice agreement with another firm or individual for the purpose of transferring their insolvency appointments in the event of their incapacity or death.*

Content of continuity agreement

7. *A continuity agreement shall be evidenced in writing.*

8. *A continuity agreement shall include clauses within it which set out:*

   (a) the precise nature of the legal relationship between the principal and the continuity nominee;

   (b) the circumstances which will cause the management arrangement under the continuity agreement to commence operating;

(c) *a statement of the maximum duration of the management of the practice under the continuity agreement;*

(d) *provisions for the review of the arrangements should circumstances warrant an extension of time;*

(e) *the continuity nominee's obligations;*

(f) *the continuity nominee's powers relating to such matters as the administration of the practice, engagement and dismissal of staff and operating bank accounts;*

(g) *the basis on which the continuity nominee will be remunerated;*

(h) *the letter to be sent to clients in the event of the principal's death or incapacity.*

9. *A professional accountant may include additional clauses in their continuity agreement which deal with matters other than those included in paragraph 8 above.*

10. *A professional accountant may include clauses in their continuity agreement which deal with the sale of the practice. (Parties to such transactions shall normally be independently advised.)*

11. *Professional accountants are strongly advised to seek legal advice when drawing up a continuity agreement.*

12. *Copies of model continuity agreements are available from ACCA at* http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html

Descriptions

13. *The name of the continuity nominee who is managing the practice under the continuity agreement shall be disclosed on the letterhead of the incapacitated/deceased practitioner as soon as possible, e.g.*

David J Smith
Chartered Certified Accountant (or Certified Accountant)
Manager: Henry R Jones FCCA
or
Manager: Davies and Jones
Chartered Certified Accountants
(or Certified Accountants).

Records

14. *Practitioners are recommended to maintain adequate records in relation to practice matters, and to inform the continuity nominee of the firm's practices and procedures. Such information will assist the continuity nominee to undertake his/her duties when called upon to act.*

Incapacity of a practitioner

15. A principal, in spite of his/her incapacity continues to be the owner of the practice and also will be responsible for the actions of the continuity nominee appointed to manage the practice during the period of his/her incapacity.

16. Where a practitioner is incapacitated, it is important that professional indemnity insurers and other insurers are informed of the new circumstances; this includes notifying insurers of the appointment of a continuity nominee to manage the practice in accordance with the continuity agreement.

17. Where the incapacity of the principal is likely to be prolonged, clients shall be informed of the arrangements in place for the continuance of service to them.

Death of a practitioner

18. It is recommended that all practitioners make a will and appoint executors who will be able to administer their estate. It may be advantageous if one of the executors is professionally qualified. Executors can act at once to protect a practice. By way of illustration, under English law, if practitioners die intestate, their administrators will have no authority to act until they have obtained a grant of administration. The resulting delay in obtaining a grant of administration may result in the late practitioner's affairs, and those of his/her clients, not being properly controlled and managed.

19. Whether the professional accountant dies intestate, or having made a will, certain matters shall be addressed without delay:

(a) the fact that personal representatives of the deceased have taken over conduct of the practice means that it cannot strictly be described as a firm of Chartered Certified Accountants; nevertheless, for a temporary period the old name and description of the practice may normally be retained for the purpose of realisation, provided the fact that the practice is under management is indicated;

(b) insurers shall be advised of the changed circumstances, especially those concerned with indemnity insurance;

(c) as in the case of incapacity, the continuity agreement shall note the scope of the continuity nominee's authority for administration of the practice including control of staff, operation of bank accounts, etc.

Statutory audits

20. In some countries, an incapacitated professional accountant will retain his/her appointment as a statutory auditor and can be removed only in accordance with the appropriate statutory procedures.

21. There may be exceptions to paragraph 20: in the United Kingdom, for example, if an individual is appointed as auditor to a Friendly/Industrial and Provident Society, the individual will cease to be eligible for re-appointment if incapacitated.

22. Some kinds of incapacity are more permanent than others and considerations of practical common sense will indicate the course to be followed.

23. *Where the incapacity of the practitioner is likely to be of considerable duration or affect normal audit procedures, the directors or other persons responsible for the appointment of the auditor shall be fully informed of the circumstances and the arrangements made for the continuation of the practice.*

24. *If the directors wish to appoint the continuity nominee as auditor, the continuity nominee may quite properly accept, emphasising that they do so on a temporary basis. Sometimes, however, the continuity nominee may subsequently find himself/ herself in an embarrassing situation if the client then wishes to invite the continuity nominee to accept the appointment permanently. The continuity nominee may accept the appointment, but in that event ACCA would expect the continuity nominee to be ready to negotiate with the incapacitated professional accountant, or his/her agent, as to the financial terms on which the continuity nominee does so, otherwise the value of the practice would be diminished.*

25. *Where a practitioner dies during the course of an audit, it may leave the firm not under the control of qualified persons within the meaning of Annexes 1 and 2 to the Global Practising Regulations 2003. The firm would be ineligible to retain its auditing certificate for a period of more than three months. In such circumstances, the client will usually need to appoint new auditors, but in the meantime the continuity provider shall step in and fill the vacancy to complete the audit and sign the audit report.*

Ethical considerations

26. *In the event that a professional accountant is called upon to act under a continuity agreement they shall not seek any personal gain from the arrangement apart from reasonable remuneration for the work they undertake.*

27. *A continuity nominee shall not accept clients from the practice they are assisting without the express agreement of the principal or the principal's representatives. This prohibition shall be applied from the date on which the continuity nominee commences to act under the continuity agreement, to two years after the arrangement is terminated. The exception to this is where the continuity nominee purchases the practice. The continuity nominee may be subjected to disciplinary action if he/she fails to comply with this rule.*

28. *The continuity nominee shall, whenever possible, interview clients and staff of the incapacitated professional accountant at the principal's office.*

29. *The continuity nominee may wish to acquire the practice from the incapacitated professional accountant or from his/her personal representatives and this is in no way unethical, and may be a very satisfactory solution. The continuity nominee shall negotiate with the personal representatives of a deceased professional accountant (who shall normally be independently advised), or in the case of incapacity with the professional accountant or his/her representatives. As noted at paragraph 14, the continuity agreement may include clauses which deal with arrangements for the sale of the practice.*

ACCA approved employer

30. In the event of a principal or director of an ACCA approved employer dying, or being incapacitated, the remaining principals or directors (in the case of a sole practitioner his/her continuity nominee or personal representatives) shall contact ACCA to inform them of this fact.

31. It is important that the arrangements for the training and supervision of students and professional accountants arising as a result of the death or incapacity of a principal are reviewed by ACCA to establish whether or not the arrangements for students and professional accountants continue to be satisfactory.

Advisory Services

32. Professional accountants with queries regarding the continuity of the practice in the event of incapacity or death of a practitioner may call upon the Advisory Services Section within ACCA for advice.

33. Professional accountants are also referred to guidance ACCA has issued for professional accountants on continuity of practice. This can be viewed at http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html

SECTION B11
Estates of deceased persons

1. *The administration of the estates of deceased persons is a matter of law and of the terms of the wills or relevant intestacy rules. Professional accountants are reminded that they must comply with the requirements of the applicable law that governs the deceased person's estates and the administration of his/her affairs. Professional accountants are recommended to seek legal advice when acting as the personal representatives of clients.*

2. *It is perfectly acceptable for a professional accountant to be named as a personal representative (executor) in the will of a client. Similarly, it is perfectly acceptable for a professional accountant to be appointed as a personal representative (administrator) where an individual has died intestate. Professional accountants are, however, reminded that acting as such for directors or shareholders of a company and also acting for the company itself may appear to compromise their independence and it may be appropriate to make disclosure in the accounts and establish review procedures to safeguard their independence.*

3. *As with all appointments, a professional accountant shall carry out their work with a proper regard for the technical and professional standards expected of them. To this end, a professional accountant shall not undertake any work which they are not competent to perform, whether because of the lack of experience or the necessary technical or other skills to ensure that the work is properly completed.*

SECTION B12
Corporate finance advice including take-overs

Introduction

1. *Corporate finance activities are wide-ranging in their nature.*

2. *In many cases, auditors will give corporate finance advice which is incidental to the audit relationship.*

3. *The role and nature of advice expected of professional accountants may change in character when the clients become involved in, or anticipate particular transactions, such as take-over bids or issues of securities.*

4. *It is at this point that problems of independence and conflicts of interest can arise.*

5. *The guidance which follows is designed to assist professional accountants who find themselves advising in these and related circumstances.*

The regulator for take-overs and mergers

6. *Attention is drawn to the need to comply with any local regulations, for example, in the United Kingdom the City Code on Take-overs and Mergers and the Rules Governing Substantial Acquisition of Shares, which are expressly applied to professional advisers as well as to those engaged in the securities markets.*

Objectivity and integrity

7. *Provided that a professional accountant maintains and can demonstrate objectivity and integrity throughout, both in regard to their client and to other interested parties, there can be no objection to their accepting an engagement which is designed primarily with a view to advancing their client's case.*

8. *The concept of impartiality has no application in these circumstances.*

Conflicts of interest

9. *It may be in the best interests of client companies for financial advice to be provided by their auditors, and there is nothing improper in auditors supporting clients in this way.*

10. *There is, however, a variety of situations in which conflicts can arise.*

11. *It is not, on the face of it, improper for firms to continue to act as auditors to both parties in take-over situations, even if the take-overs are contested.*

12. *Firms may find themselves acting as auditors or advisers for two or more parties involved in take-overs subject to local regulations on take-overs and mergers. For a firm to cease to act for a client within the limited period of the take-over on the basis that a conflict might arise, could damage the client's interests.*

13. *Accordingly, in such circumstances, a firm may continue to act for more than one party as auditor, as reporting accountant, on any profit forecast, and in the provision of incidental advice consistent with these roles. However, a firm shall not act as lead advisers for any of the parties involved, or issue a critique of a client's accounts, and shall implement proper safeguards. Professional accountants are referred to paragraph 28 below.*

14. *The attention of firms is also directed to regulations dealing with conflicts of interest that may apply to them. By way of illustration, in the UK this would include the possession of "material confidential information" in the United Kingdom City Code on Take-overs and Mergers. Professional accountants in doubt as to their position are advised to consult the regulator for take-overs and mergers.*

15. *Where a take-over is not subject to regulations, and there is no substantial public interest involved, a firm may, subject to the implementation of appropriate safeguards (see paragraph 28 below), continue to advise both sides. However, the firm shall ensure that the interests of minority shareholders are protected, and shall consider the desirability of one company having wholly independent advisers.*

16. *A firm shall not underwrite or sponsor issues to the public of the shares or securities of clients which they audit, or on which they have reported or will report, or undertake to accept nomination as auditors of the company being sponsored. Financial involvement of this kind would endanger the independence of the firm in the audit and/or reporting function. Auditors may, however, assist clients in raising capital by approaching institutional investors.*

17. *It is not inappropriate for a professional accountant to conduct acquisition searches, which could identify other clients as targets, provided the searches are based solely on the information which is not confidential to those clients.*

Avoiding conflicts of interest

18. *All reasonable steps shall be taken to ascertain whether conflicts of interest exist or are likely to arise in the future between firms and their clients, both in regard to new engagements and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.*

19. *Relationships with clients and former clients need to be reviewed before accepting new appointments, and regularly thereafter.*

20. *Relationships which ended over two years ago are unlikely to give rise to a conflict.*

21. *Where it is clear that a material conflict of interest exists, a firm shall decline to act as financial adviser.*

22. *It would be neither reasonable nor necessary to discontinue acting in any capacity in anticipation of every potential conflict. It could in some instances give rise to harmful rumour or speculation for a firm to disengage from a situation before a bid had become public knowledge.*

23. *Where there appear to be conflicts of interest between clients, but after careful consideration, the firm considers that these conflicts of interest are not material and unlikely to prejudice seriously the interests of any of those clients, the firm may accept or continue the engagements, but not without first informing the clients concerned. The firm shall consider seeking independent advice in such a case.*

24. *A firm shall not act, or continue to act, for two or more clients if the disclosure called for in paragraph 23 could seriously prejudice the interests of clients.*

25. *Where conflicts of interest are likely to seriously prejudice the interests of clients, engagements shall not be accepted or continued, even at the informed request of the clients concerned.*

26. *Where a firm is required for any reason to disengage from existing clients, it shall do so as speedily as practicable, having regard to the interests of the clients.*

Safeguards

27. *Where a firm acts or continues to act for two or more clients following disclosures in accordance with the previous paragraphs, all reasonable steps shall be taken to manage the conflicts which arise and thereby avoid adverse consequences.*

28. *These steps will include some or all of the following safeguards:*

    (a) the use of different partners and teams for different engagements;

    (b all necessary steps to prevent the leakage of confidential information between different teams and sections within the firm;

    (c) regular review of the situation by a senior partner or compliance officer not personally involved with either client; and

    (d) advising the clients to seek additional independent advice.

29. *Any decision on the part of sole practitioners shall take account of the fact that the safeguards at (a) to (c) of paragraph 28 will not be available to them. Similar considerations apply to small practices.*

Documents for public use

30. *Where, in the course of corporate finance advice, a firm prepares information for a client, for example, a critique of the accounts of another company, it may be called upon to do so:*

(a) in a document which is for the consumption of the client only;

(b) in order to assist the client to produce a document which will go out solely under the client's name and authority, whether including quotations from the original document or not; or

(c) as part of a document which is published under the name of the professional accountant.

31. Any statements or observations in a document prepared for a client must be such as, taken individually and as a whole, are justifiable on an objective examination of the available facts.

32. A firm is, in the absence of any indication to the contrary, entitled to assume that the published accounts of the company on which they are commenting have been properly prepared and are in accordance with all relevant International Financial Reporting Standards. Where scope for alternative accounting treatment exists and the accuracy of the comment or observation is dependent on an assumption as to the actual accounting treatment chosen, that assumption shall be stated, together with any other assumptions material to the commentary. Where a firm is not in possession of sufficient information to warrant a clear opinion this shall be declared in the document.

33. In the case of a document prepared solely for clients and their professional advisers, it shall be a condition of the engagement that the document must not be disclosed to any third party without the firm's express permission.

34. A firm shall take responsibility for anything published under its name and the published document shall make clear the client for whom it is acting. To prevent misleading or out-of-context quotations, it shall be a condition of the engagement that, if anything less than the full document is to be published, the form of the text and its content would have to be agreed with the firm.

35. Any document whether for private or public use shall be prepared in accordance with normal professional standards of integrity and objectivity and with a proper degree of care.

Fees

36. Where a professional accountant undertakes an engagement for a fee which is contingent upon the successful outcome of a transaction such as a bid, offer, purchase, sale or raising finance, the professional accountant shall take particular care to ensure that the arrangements do not prejudice their independence and objectivity with regard to any other role which they may have, such as auditor or reporting accountant of either the bidder or the target.

Part C – Professional Accountants in Business

		Page
Section 300	Introduction	474
Section 310	Potential conflicts	478
Section 320	Preparation and reporting of information	481
Section 330	Acting with sufficient expertise	483
Section 340	Financial interests, compensation and incentives linked to financial reporting and decision making	484
Section 350	Inducements	486
Section 360	Responding to non-compliance with laws and regulations	488

Supplementary requirements and guidance:

Section C1	*Disclosing confidential information*	*496*
Section C2	*Whistleblowing*	*497*

SECTION 300
Introduction

300A A professional accountant in business is bound by the same fundamental principles and the same standards of behaviour and competence as apply to all other professional accountants. A professional accountant in business shall, therefore, comply with the appropriate technical and professional standards relevant to the professional accountant's work. Professional accountants in business may, therefore, find the guidance in Part B of this Code applicable to their specific circumstances.

300.1 This Part of the Code describes how the conceptual framework contained in Part A applies in certain situations to professional accountants in business. This Part does not describe all of the circumstances and relationships that could be encounteredby a professional accountant in business that create or may create threats to compliance with the fundamental principles. Therefore, the professional accountant in business is encouraged to be alert for such circumstances and relationships.

300.1A In circumstances where a professional accountant in business believes that, after exhausting all relevant possibilities, the matter remains unresolved, the professional accountant shall, where possible, disassociate himself/herself from the matter. The professional accountant may also consider whether, in the circumstances, it is appropriate to withdraw from the specific project or in extreme circumstances resign from the organisation in which the professional accountant is engaged.

300.2 Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, all may rely on the work of professional accountants in business. Professional accountants in business may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organisations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters.

300.3 A professional accountant in business may be a salaried employee, a partner, director (whether executive or non-executive), an owner manager, a volunteer or another working for one or more employing organisation. The legal form of the relationship with the employing organisation, if any, has no bearing on the ethical responsibilities incumbent on the professional accountant in business.

300.4 A professional accountant in business has a responsibility to further the legitimate aims of the accountant's employing organisation. This Code does not seek to hinder a professional accountant in business from properly fulfilling that responsibility, but addresses circumstances in which compliance with the fundamental principles may be compromised.

300.4A In some cases, a professional accountant working in the public sector may, by law or public expectation, need to maintain a degree of independence greater than that normally expected of an employee, and where this applies the guidelines shall be interpreted accordingly.

300.5 A professional accountant in business may hold a senior position within an organisation. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is expected, therefore, to encourage an ethics-based culture in an employing organisation that emphasises the importance that senior management places on ethical behaviour.

300.6 A professional accountant in business shall not knowingly engage in any business, occupation, or activity that impairs or might impair integrity, objectivity or thegood reputation of the profession and as a result would be incompatible with the fundamental principles.

300.7 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. Threats fall into one or more of the following categories:

(a) Self-interest;

(b) Self-review;

(c) Advocacy;

(d) Familiarity; and

(e) Intimidation.

These threats are discussed further in Part A of this Code.

300.8 Examples of circumstances that may create self-interest threats for a professional accountant in business include:

- Holding a financial interest in, or receiving a loan or guarantee from the employing organisation.
- Participating in incentive compensation arrangements offered by the employing organisation.
- Inappropriate personal use of corporate assets.
- Concern over employment security.
- Commercial pressure from outside the employing organisation.

300.9 An example of a circumstance that creates a self-review threat for a professional accountant in business is determining the appropriate accounting treatment for a business combination after performing the feasibility study that supported the acquisition decision.

300.10 When furthering the legitimate goals and objectives of their employing organisations, professional accountants in business may promote the organisation's position, provided any statements made are neither false nor misleading. Such actions generally would not create an advocacy threat.

300.11 Examples of circumstances that may create familiarity threats for a professional accountant in business include:

- Being responsible for the employing organization's financial reporting when an immediate or close family member employed by the entity makes decisions that affect the entity's financial reporting.
- Long association with business contacts influencing business decisions.
- Accepting a gift or preferential treatment, unless the value is trivial and inconsequential.

300.12 Examples of circumstances that may create intimidation threats for a professional accountant in business include:

- Threat of dismissal or replacement of the professional accountant in business or a close or immediate family member over a disagreement about the application of an accounting principle or the way in which financial information is to be reported.
- A dominant personality attempting to influence the decision-making process, for example with regard to the awarding of contracts or the application of an accounting principle.

300.13 Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 100.14 of Part A of this Code.

300.14 Safeguards in the work environment include:

- The employing organisation's systems of corporate oversight or other oversight structures.
- The employing organisation's ethics and conduct programmes.
- Recruitment procedures in the employing organisation emphasising the importance of employing high calibre competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.
- Leadership that stresses the importance of ethical behavior and the expectation that employees will act in an ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.

- Timely communication of the employing organisation's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures.

- Policies and procedures to empower and encourage employees to communicate to senior levels within the employing organisation any ethical issues that concern them without fear of retribution.

- Consultation with another appropriate professional accountant.

300.15 In circumstances where a professional accountant in business believes that unethical behaviour or actions by others will continue to occur within the employing organisation, the professional accountant in business may consider obtaining legal advice. In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant in business may conclude that it is appropriate to resign from the employing organisation.

Advisory Services

300.16 Professional accountants in business faced with an ethical problem may call upon the Advisory Services Section within ACCA for confidential advice.

300.17 Professional accountants are also referred to guidance ACCA has issued for professional accountants in business to assist them in discharging their professional obligations. This can be viewed at http://www.accaglobal.com/gb/en/member/standards/rules-and-standards.html

300.18 There are also independent organisations which have been established to provide support for employees troubled by ethical dilemmas at work, such as Public Concern at Work (www.pcaw.co.uk) in the United Kingdom, which can provide more detailed guidance on the requirements of the whistleblowing legislation.

SECTION 310
Potential conflicts

310.1 A professional accountant in business may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
- The interests of the professional accountant with respect to a particular matter and the interests of a party for whom the professional accountant undertakes a professional activity related to that matter are in conflict.

A party may include an employing organization, a vendor, a customer, a lender, a shareholder, or another party.

A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

310.2 Examples of situations in which conflicts of interest may arise include:

- Serving in a management or governance position for two employing organizations and acquiring confidential information from one employing organization that could be used by the professional accountant to the advantage or disadvantage of the other employing organization.
- Undertaking a professional activity for each of two parties in a partnership employing the professional accountant to assist them to dissolve their partnership.
- Preparing financial information for certain members of management of the entity employing the professional accountant who are seeking to undertake a management buy-out.
- Being responsible for selecting a vendor for the accountant's employing organization when an immediate family member of the professional accountant could benefit financially from the transaction.
- Serving in a governance capacity in an employing organization that is approving certain investments for the company where one of those specific investments will increase the value of the personal investment portfolio of the professional accountant or an immediate family member.

310.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a professional accountant in business shall exercise professional judgment and be alert to all interests and relationships that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude might compromise compliance with the fundamental principles.

310.4 When addressing a conflict of interest, a professional accountant in business is encouraged to seek guidance from within the employing organization or from others, such as a professional body, legal counsel or another professional accountant. When making disclosures or sharing information within the employing organization and seeking guidance of third parties, the professional accountant shall remain alert to the fundamental principle of confidentiality.

310.5 If the threat created by a conflict of interest is not at an acceptable level, the professional accountant in business shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the professional accountant shall decline to undertake or discontinue the professional activity that would result in the conflict of interest; or shall terminate the relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

310.6 In identifying whether a conflict of interest exists or may be created, a professional accountant in business shall take reasonable steps to determine:

- The nature of the relevant interests and relationships between the parties involved; and
- The nature of the activity and its implication for relevant parties.

The nature of the activities and the relevant interests and relationships may change over time. The professional accountant shall remain alert to such changes for the purposes of identifying circumstances that might create a conflict of interest.

310.7 If a conflict of interest is identified, the professional accountant in business shall evaluate:

- The significance of relevant interests or relationships; and
- The significance of the threats created by undertaking the professional activity or activities. In general, the more direct the connection between the professional activity and the matter on which the parties' interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

310.8 The professional accountant in business shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Depending on the circumstances giving rise to the conflict of interest, application of one or more of the following safeguards may be appropriate:

- Restructuring or segregating certain responsibilities and duties.
- Obtaining appropriate oversight, for example, acting under the supervision of an executive or non-executive director.
- Withdrawing from the decision-making process related to the matter giving rise to the conflict of interest.
- Consulting with third parties, such as a professional body, legal counsel or another professional accountant.

310.9 In addition, it is generally necessary to disclose the nature of the conflict to the relevant parties, including to the appropriate levels within the employing organization and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the professional accountant in business undertaking the professional activity. In certain circumstances, consent may be implied by a party's conduct where the professional accountant has sufficient evidence to conclude that parties know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.

310.10 When disclosure is verbal, or consent is verbal or implied, the professional accountant in business is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.

310.11 A professional accountant in business may encounter other threats to compliance with the fundamental principles. This may occur, for example, when preparing or reporting financial information as a result of undue pressure from others within the employing organization or financial, business or personal relationships that close or immediate family members of the professional accountant have with the employing organization. Guidance on managing such threats is covered by Sections 320 and 340 of the Code.

SECTION 320
Preparation and reporting of information

320.1 Professional accountants in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management's discussion and analysis, and the management letter of representation provided to the auditors during the audit of the entity's financial statements. A professional accountant in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.

320.2 A professional accountant in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organisation shall be satisfied that those financial statements are presented in accordance with the applicable financial reporting standards.

320.3 A professional accountant in business shall take reasonable steps to maintain information for which the professional accountant in business is responsible in a manner that:

(a) Describes clearly the true nature of business transactions, assets, or liabilities;

(b) Classifies and records information in a timely and proper manner; and

(c) Represents the facts accurately and completely in all material respects.

320.4 Threats to compliance with the fundamental principles, for example, self-interest or intimidation threats to integrity, objectivity or professional competence and due care, are created where a professional accountant in business is pressured (either externally or by the possibility of personal gain) to prepare or report information in a misleading way or to become associated with misleading information through the actions of others.

320.4A Accordingly, a professional accountant in business shall not be associated with reports, returns, communications or other information where the professional accountant in business believes that the information:

(a) contains a materially false or misleading statement;

(b) contains statements or information furnished recklessly;

(c) has been prepared with bias; or

(d) omits or obscures information required to be included where such omission or obscurity would be misleading.

320.5 The significance of such threats will depend on factors such as the source of the pressure and the corporate culture within the employing organization. The professional accountant in business shall be alert to the principle of integrity, which imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Where the threats arise from compensation and incentive arrangements, the guidance in Section 340 is relevant.

320.6 The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards include consultation with superiors within the employing organization, the audit committee or those charged with governance of the organization, or with a relevant professional body.

320.7 Where it is not possible to reduce the threat to an acceptable level, a professional accountant in business shall refuse to be or remain associated with information the professional accountant determines is misleading. A professional accountant in business may have been unknowingly associated with misleading information. Upon becoming aware of this, the professional accountant in business shall take steps to be disassociated from that information. In determining whether there is a requirement to report the circumstances outside the organization, the professional accountant in business may consider obtaining legal advice. In addition, the professional accountant may consider whether to resign.

320.8 Should the professional accountant in business be aware that the issuance of misleading information is either significant or persistent, the professional accountant shall consider informing appropriate authorities in line with the guidance in Section 140, Confidentiality, and Section B1, Professional duty of confidence in relation to defaults and unlawful acts of clients and others.

SECTION 330
Acting with sufficient expertise

330.1 The fundamental principle of professional competence and due care requires that a professional accountant in business only undertake significant tasks for which the professional accountant in business has, or can obtain, sufficient specific training or experience. A professional accountant in business shall not intentionally mislead an employer as to the level of expertise or experience possessed, nor shall a professional accountant in business fail to seek appropriate expert advice and assistance when required.

330.2 Circumstances that create a threat to a professional accountant in business performing duties with the appropriate degree of professional competence and due care include having:

- Insufficient time for properly performing or completing the relevant duties;
- Incomplete, restricted or otherwise inadequate information for performing the duties properly;
- Insufficient experience, training and/or education;
- Inadequate resources for the proper performance of the duties.

330.3 The significance of the threat will depend on factors such as the extent to which the professional accountant in business is working with others, relative seniority in the business, and the level of supervision and review applied to the work. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Obtaining additional advice or training;
- Ensuring that there is adequate time available for performing the relevant duties;
- Obtaining assistance from someone with the necessary expertise;
- Consulting, where appropriate, with:
  - Superiors within the employing organisation;
  - Independent experts; or
  - A relevant professional body.

330.4 When threats cannot be eliminated or reduced to an acceptable level, professional accountants in business shall determine whether to refuse to perform the duties in question. If the professional accountant in business determines that refusal is appropriate, the reasons for doing so shall be clearly communicated.

SECTION 340
Financial interests, compensation and incentives linked to financial reporting and decision making

340.1 Professional accountants in business may have financial interests, including those arising from compensation or incentive arrangements, or may know of financial interests of immediate or close family members, that, in certain circumstances, may create threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or confidentiality may be created through the existence of the motive and opportunity to manipulate price-sensitive information in order to gain financially. Examples of circumstances that may create self-interest threats include situations where the professional accountant in business or an immediate or close family member:

- Holds a direct or indirect financial interest in the employing organization and the value of that financial interest could be directly affected by decisions made by the professional accountant in business.
- Is eligible for a profit-related bonus and the value of that bonus could be directly affected by decisions made by the professional accountant in business.
- Holds, directly or indirectly, deferred bonus share entitlements or share options in the employing organization, the value of which could be directly affected by decisions made by the professional accountant in business.
- Otherwise participates in compensation arrangements which provide incentives to achieve performance targets or to support efforts to maximize the value of the employing organization's shares, for example, through participation in long-term incentive plans which are linked to certain performance conditions being met.

340.2 Self-interest threats arising from compensation or incentive arrangements may be further compounded by pressure from superiors or peers in the employing organization who participate in the same arrangements. For example, such arrangements often entitle participants to be awarded shares in the employing organization at little or no cost to the employee provided certain performance criteria are met. In some cases, the value of the shares awarded may be significantly greater than the base salary of the professional accountant in business.

340.3 A professional accountant in business shall not manipulate information or use confidential information for personal gain or for the financial gain of others. The more senior the position that the professional accountant in business holds, the greater the ability and opportunity to influence financial reporting and decision making and the greater the pressure there might be from superiors and peers to manipulate information. In such situations, the professional accountant in business shall be particularly alert to the principle of integrity, which imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships.

340.4 The significance of any threat created by financial interests, shall be evaluated and safeguards applied, when necessary, to eliminate the threat or reduce it to an acceptable level. In evaluating the significance of any threat, and, when necessary, determining the appropriate safeguards to be applied, a professional accountant in business shall evaluate the nature of the interest. This includes evaluating the significance of the interest. What constitutes a significant interest will depend on personal circumstances. Examples of such safeguards include:

- Policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management.
- Disclosure of all relevant interests, and of any plans to exercise entitlements or trade in relevant shares, to those charged with the governance of the employing organization, in accordance with any internal policies.
- Consultation, where appropriate, with superiors within the employing organization.
- Consultation, where appropriate, with those charged with the governance of the employing organization or relevant professional bodies.
- Internal and external audit procedures.
- Up-to-date education on ethical issues and on the legal restrictions and other regulations around potential insider trading.

SECTION 350
Inducements

Receiving offers

350.1 A professional accountant in business or an immediate or close family member may be offered an inducement. Inducements may take various forms, including gifts, hospitality, preferential treatment, and inappropriate appeals to friendship or loyalty.

350.2 Offers of inducements may create threats to compliance with the fundamental principles. When a professional accountant in business or an immediate or close family member is offered an inducement, the situation shall be evaluated. Self-interest threats to objectivity or confidentiality are created when an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour, or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the professional accountant in business or an immediate or close family member.

350.3 The existence and significance of any threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, weighing all the specific facts and circumstances, would consider the inducement insignificant and not intended to encourage unethical behaviour, then a professional accountant in business may conclude that the offer is made in the normal course of business and may generally conclude that there is no significant threat to compliance with the fundamental principles.

350.4 The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in business shall not accept the inducement. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of an inducement but, sometimes, merely from the fact of the offer having been made, additional safeguards shall be adopted. A professional accountant in business shall evaluate any threats created by such offers and determine whether to take one or more of the following actions:

(a) Informing higher levels of management or those charged with governance of the employing organisation immediately when such offers have been made;

(b) Informing third parties of the offer – for example, ACCA or the employer of the individual who made the offer; a professional accountant in business may however, consider seeking legal advice before taking such a step; and

(c) Advising immediate or close family members of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example, as a result of their employment situation; and

(d) Informing higher levels of management or those charged with governance of the employing organisation where immediate or close family members are employed by competitors or potential suppliers of that organisation.

Making offers

350.5 A professional accountant in business may be in a situation where the professional accountant in business is expected, or is under other pressure, to offer inducements to influence the judgement or decision-making process of an individual or organisation, or obtain confidential information.

350.6 Such pressure may come from within the employing organisation, for example, from a colleague or superior. It may also come from an external individual or organisation suggesting actions or business decisions that would be advantageous to the employing organisation, possibly influencing the professional accountant in business improperly.

350.7 A professional accountant in business shall not offer an inducement to improperly influence the professional judgement of a third party.

350.8 Where the pressure to offer an unethical inducement comes from within the employing organisation, the professional accountant shall follow the principles and guidance regarding ethical conflict resolution set out in Part A of this Code.

SECTION 360
Responding to non-compliance with laws and regulations

Purpose

360.1 A professional accountant in business may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out professional activities. The purpose of this section is to set out the professional accountant's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the professional accountant in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the employing organization, including whether or not it is a public interest entity.

360.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by the professional accountant's employing organization or by those charged with governance, by management, or by other individuals working for or under the direction of the employing organization which are contrary to the prevailing laws or regulations.

360.3 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the professional accountant has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

360.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the professional accountant are:

(a) To comply with the fundamental principles of integrity and professional behavior;

(b) By alerting management or, where appropriate, those charged with governance of the employing organization, to seek to:

(i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or

(ii) Deter the commission of the non-compliance where it has not yet occurred; and

(c) To take such further action as appropriate in the public interest.

Scope

360.5 This section sets out the approach to be taken by a professional accountant who encounters or is made aware of non-compliance or suspected non-compliance with:

(a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and

(b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but compliance with which may be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.

360.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

360.7 Non-compliance may result in fines, litigation or other consequences for the employing organization that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

360.8 A professional accountant who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the employing organization, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

360.9 This section does not address:

(a) Personal misconduct unrelated to the business activities of the employing organization; and

(b) Non-compliance other than by the employing organization or those charged with governance, management, or other individuals working for or under the direction of the employing organization.

The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the employing organization's management and those charged with governance

360.10 It is the responsibility of the employing organization's management, with the oversight of those charged with governance, to ensure that the employing organization's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the employing organization or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the employing organization.

Responsibilities of professional accountants in business

360.11 Many employing organizations have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance by the employing organization should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the professional accountant's employing organization, the professional accountant shall consider them in determining how to respond to such non-compliance.

360.12 Where a professional accountant becomes aware of a matter to which this section applies, the steps that the professional accountant takes to comply with this section shall be taken on a timely basis, having regard to the professional accountant's understanding of the nature of the matter and the potential harm to the interests of the employing organization, investors, creditors, employees or the general public.

Responsibilities of senior professional accountants in business

360.13 Senior professional accountants in business ("senior professional accountants") are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources. Because of their roles, positions and spheres of influence within the employing organization, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other professional accountants within the employing organization.

Obtaining an understanding of the matter

360.14 If, in the course of carrying out professional activities, a senior professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the professional accountant shall obtain an understanding of the matter, including:

(a) The nature of the act and the circumstances in which it has occurred or may occur;

(b) The application of the relevant laws and regulations to the circumstances; and

(c) The potential consequences to the employing organization, investors, creditors, employees or the wider public.

360.15 A senior professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional accountant's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the professional accountant may cause, or take appropriate steps to cause, the matter to be investigated internally. The professional accountant may also consult on a confidential basis with others within the employing organization or a professional body, or with legal counsel.

Addressing the matter

360.16 If the senior professional accountant identifies or suspects that non-compliance has occurred or may occur, the professional accountant shall, subject to paragraph 360.11, discuss the matter with the professional accountant's immediate superior, if any, to enable a determination to be made as to how the matter should be addressed. If the professional accountant's immediate superior appears to be involved in the matter, the professional accountant shall discuss the matter with the next higher level of authority within the employing organization.

360.17 The senior professional accountant shall also take appropriate steps to:

(a) Have the matter communicated to those charged with governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities;

(b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;

(c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;

(d) Reduce the risk of re-occurrence; and

(e) Seek to deter the commission of the non-compliance if it has not yet occurred.

360.18 In addition to responding to the matter in accordance with the provisions of this section, the senior professional accountant shall determine whether disclosure of the matter to the employing organization's external auditor, if any, is needed pursuant to the professional accountant's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Determining whether further action is needed

360.19 The senior professional accountant shall assess the appropriateness of the response of the professional accountant's superiors, if any, and those charged with governance.

360.20 Relevant factors to consider in assessing the appropriateness of the response of the senior professional accountant's superiors, if any, and those charged with governance include whether:

- The response is timely.

- They have taken or authorized appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
- The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

360.21 In light of the response of the senior professional accountant's superiors, if any, and those charged with governance, the professional accountant shall determine if further action is needed in the public interest.

360.22 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the matter.
- The pervasiveness of the matter throughout the employing organization.
- Whether the senior professional accountant continues to have confidence in the integrity of the professional accountant's superiors and those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public.

360.23 Examples of circumstances that may cause the senior professional accountant no longer to have confidence in the integrity of the professional accountant's superiors and those charged with governance include situations where:

- The professional accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
- Contrary to legal or regulatory requirements, they have not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.

360.24 In determining the need for, and nature and extent of any further action needed, the senior professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.

360.25 Further action by the professional accountant may include:

- Informing the management of the parent entity of the matter if the employing organization is a member of a group.
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the employing organization.

360.26 Where the senior professional accountant determines that resigning from the employing organization would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and resignation may be the only available course of action.

360.27 As consideration of the matter may involve complex analysis and judgments, the senior professional accountant may consider consulting internally, obtaining legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Determining whether to disclose the matter to an appropriate authority

360.28 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

360.29 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the senior professional accountant may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organization is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The employing organization is a regulated entity and the matter is of such significance as to threaten its license to operate.
- The employing organization is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the employing organization's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the employing organization.
- The employing organization is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals.

360.30 If the senior professional accountant determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

360.31 In exceptional circumstances, the senior professional accountant may become aware of actual or intended conduct that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.

Documentation

360.32 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior professional accountant is encouraged to have the following matters documented:

- The matter.
- The results of discussions with the professional accountant's superiors, if any, and those charged with governance and other parties.
- How the professional accountant's superiors, if any, and those charged with governance have responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken.
- How the professional accountant is satisfied that the professional accountant has fulfilled the responsibility set out in paragraph 360.21.

Responsibilities of professional accountants other than senior professional accountants in business

360.33 If, in the course of carrying out professional activities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the professional accountant shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

360.34 The professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional accountant's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the employing organization or a professional body, or with legal counsel.

360.35 If the professional accountant identifies or suspects that non-compliance has occurred or may occur, the professional accountant shall, subject to paragraph 360.11, inform an immediate superior to enable the superior to take appropriate action. If the professional accountant's immediate superior appears to be involved in the matter, the professional accountant shall inform the next higher level of authority within the employing organization.

360.36 In exceptional circumstances, the professional accountant may decide that disclosure of the matter to an appropriate authority is an appropriate course of action. If the professional accountant does so pursuant to paragraph 360.29, this will not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

Documentation

360.37 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant is encouraged to have the following matters documented:

- The matter.
- The results of discussions with the professional accountant's superior, management and, where applicable, those charged with governance and other parties.
- How the professional accountant's superior has responded to the matter.
- The courses of action the professional accountant considered, the judgments made and the decisions that were taken.

Supplementary requirements and guidance

SECTION C1
Disclosing confidential information

1. *A professional accountant in business shall observe the principle of confidentiality. Confidentiality is the duty to keep private another person's information given or obtained in confidence. The duty of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. A professional accountant in business shall not disclose confidential information acquired or received in the course of their work unless they have a right or obligation to do so or they have received informed consent from their employer to whom the duty of confidentiality is owed.*

2. *The possession of confidential information may give rise to specific threats to confidentiality in certain circumstances. For example, the non-disclosure of confidential information in a professional accountant's possession may threaten compliance with the fundamental principles when a professional accountant in business:*

   (a) is required by law to disclose information to the appropriate public authority or suspected infringements of the law that come to light, for example in connection with anti-money laundering or anti-terrorist legislation;

   (b) is required to produce documents or other provision of evidence in the course of legal proceedings;

   (c) is permitted by law to disclose and is authorised by the organisation in which they are engaged;

   (d) believes that confidential information must be disclosed in the public interest, for example where the employing organisation has committed, or proposes to commit, a crime or fraudulent act; or

   (e) has a professional duty or right to disclose, when not prohibited by law:

      (i) to comply with technical standards and ethics requirements;

      (ii) to protect the professional interests of a professional accountant in legal proceedings;

      (iii) to comply with the quality review of a professional body such as ACCA; or

      (iv) to respond to an inquiry or investigation by ACCA or a regulatory body.

SECTION C2
Whistleblowing

1. *Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either the professional accountant or the professional accountant's employing organisation, a professional accountant in business shall always disclose that information in compliance with relevant legal requirements.*

2. *In some circumstances, a professional accountant in business may consider disclosing information outside the employing organisation, when not obligated to do so by law or regulation, because the professional accountant believes it would be in the public interest. When considering such disclosure, a professional accountant in business shall, where appropriate, follow the internal procedures of the employing organisation in an attempt to rectify the situation. If the matter cannot be resolved within the employing organisation, a professional accountant in business shall determine the following:*

   (a) legal constraints and obligations;

   (b) whether members of the public are likely to be adversely affected;

   (c) the gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage;

   (d) the possibility or likelihood of repetition;

   (e) the reliability and quality of the information available; and

   (f) the reasons for the employing organisation's unwillingness to disclose matters to the relevant authority.

3. *In deciding whether to disclose confidential information, the professional accountant in business shall also consider the following points:*

   (a) when the employer gives authorisation to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;

   (b) whether or not all the relevant information is known and substantiated, to the extent this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement shall be used in determining the type of disclosure to be made, if any;

   (c) the type of communication that is expected and to whom it is addressed; in particular, a professional accountant in business shall be satisfied that the parties to whom the communication is addressed are appropriate recipients; and

   (d) the legal or regulatory obligations and the possible implications of disclosure for the professional accountant in business.

Part D – Insolvency Code of Ethics

Page

Code of Ethics for Insolvency Practitioners *499*
Part 1 General application of the Code *500*
Part 2 Specific application of the Code *505*
The application of the framework to specific situations *514*

Insolvency Code of Ethics

Professional accountants shall comply with any conduct and ethical requirements applicable to insolvency work in the country in which they carry out such work. The following Code of Ethics for Insolvency Practitioners applies to professional accountants who administer insolvency procedures under the Insolvency Act 1986 of the United Kingdom ("the Act"), including insolvency licence holders and, where applicable, their employees. Nevertheless, professional accountants carrying out insolvency work under non-United Kingdom legislation may find its principles helpful.

The Code of Ethics for Insolvency Practitioners is common to all bodies that license insolvency practitioners under the Act. In applying this Code of Ethics for Insolvency Practitioners, professional accountants shall also have regard to the other provisions of the Code of Ethics and Conduct, in particular in relation to conflicts of interest (Section 220) and marketing professional services (Section 250) to the extent that those matters are not addressed in this Code of Ethics for Insolvency Practitioners.

Code of Ethics for Insolvency Practitioners

Preface

1. *This Code of Ethics for Insolvency Practitioners comprises two parts. Part 1 sets out the general application of the Code. Part 2 deals with the specific application of the Code to common situations in which practitioners may face ethical dilemmas, analysed by reference to a framework.*

Definitions

2. *In this Code, the following expressions are defined as follows:*

   ***authorising body** means a body declared to be a recognised professional body or a competent authority under any legislation governing the administration of insolvency in the United Kingdom;*

   ***close or immediate family** means a spouse (or equivalent), dependant, parent, child or sibling;*

   ***entity** means any natural or legal person or any group of such persons, including a partnership;*

   ***he/she** means, in this Code, he is to be read as including she;*

   ***individual within the practice** means the insolvency practitioner, any principals in the practice and any employees within the practice;*

   ***insolvency appointment** means a formal appointment:*

   (a) which, under the terms of legislation, must be undertaken by an insolvency practitioner; or

   (b) as a nominee or supervisor of a voluntary arrangement;

insolvency practitioner *means an individual who is authorised or recognised to act as an insolvency practitioner in the United Kingdom by an authorising body. For the purpose of the application of this Code only, the term insolvency practitioner also includes an individual who acts as a nominee or supervisor of a voluntary arrangement;*

insolvency team *means any person under the control or direction of an insolvency practitioner;*

practice *means the organisation in which the insolvency practitioner practises;*

principal *means in respect of a practice which is:*

(a) a company: a director;

(b) a partnership: a partner;

(c) a limited liability partnership: a member;

(d) comprised of a sole practitioner: that person;

alternatively, any person within the practice who is held out as being a director, partner or member.

Part 1 General application of the Code

The practice of insolvency

Introduction

3. *This Code is intended to assist insolvency practitioners meet the obligations expected of them by providing professional and ethical guidance.*

4. *This Code applies to all insolvency practitioners. Insolvency practitioners should take steps to ensure that the Code is applied in all professional work relating to an insolvency appointment, and to any professional work that may lead to such an insolvency appointment. Although an insolvency appointment will be of the insolvency practitioner personally, rather than his practice, he should ensure that the standards set out in this Code are applied to all members of the insolvency team.*

5. *It is this Code, and the spirit that underlies it, that governs the conduct of insolvency practitioners.*

Fundamental principles

6. *An insolvency practitioner is required to comply with the following fundamental principles:*

(a) Integrity

An insolvency practitioner should be straightforward and honest in all professional and business relationships.

(b) Objectivity

An insolvency practitioner should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

(c) Professional competence and due care

An insolvency practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. An insolvency practitioner should act diligently and in accordance with applicable technical and professional standards when providing professional services.

(d) Confidentiality

An insolvency practitioner should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the insolvency practitioner or third parties.

(e) Professional behaviour

An insolvency practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession. Insolvency practitioners should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

Framework approach

7. The framework approach is a method which insolvency practitioners can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an insolvency practitioner to:

(a) take reasonable steps to identify any threats to compliance with the fundamental principles;

(b) evaluate any such threats; and

(c) respond in an appropriate manner to those threats.

8. Throughout this Code there are examples of threats and possible safeguards. These examples are illustrative and should not be considered as exhaustive lists of all relevant threats or safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles or to specify the safeguards that may be available.

Identification of threats to the fundamental principles

9. An insolvency practitioner should take reasonable steps to identify the existence of any threats to compliance with the fundamental principles which arise during the course of his professional work.

10. *An insolvency practitioner should take particular care to identify the existence of threats which exist prior to or at the time of taking an insolvency appointment or which, at that stage, it may reasonably be expected might arise during the course of such an insolvency appointment. Paragraphs 22 to 50 below contain particular factors an insolvency practitioner should take into account when deciding whether to accept an insolvency appointment.*

11. *In identifying the existence of any threats, an insolvency practitioner should have regard to relationships whereby the practice is held out as being part of a national or an international association.*

12. *Many threats fall into one or more of five categories:*

    (a) ***self-interest threats:*** *which may occur as a result of the financial or other interests of a practice or an insolvency practitioner or of a close or immediate family member of an individual within the practice;*

    (b) ***self-review threats:*** *which may occur when a previous judgement made by an individual within the practice needs to be re-evaluated by the insolvency practitioner;*

    (c) ***advocacy threats:*** *which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;*

    (d) ***familiarity threats:*** *which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and*

    (e) ***intimidation threats:*** *which may occur when an insolvency practitioner may be deterred from acting objectively by threats, actual or perceived.*

13. *The following paragraphs give examples of the possible threats that an insolvency practitioner may face.*

14. *Examples of circumstances that may create self-interest threats for an insolvency practitioner include:*

    (a) *an individual within the practice having an interest in a creditor or potential creditor with a claim which requires subjective adjudication;*

    (b) *concern about the possibility of damaging a business relationship;*

    (c) *concerns about potential future employment.*

15. *Examples of circumstances that may create self-review threats include:*

    (a) *the acceptance of an insolvency appointment in respect of an entity where an individual within the practice has recently been employed by or seconded to that entity;*

    (b) *an insolvency practitioner or the practice has carried out professional work of any description, including sequential insolvency appointments, for that entity.*

    Such self-review threats may diminish over the passage of time.

16. *Examples of circumstances that may create advocacy threats include:*

    (a) acting in an advisory capacity for a creditor of an entity;

    (b) acting as an advocate for a client in litigation or dispute with an entity.

17. *Examples of circumstances that may create familiarity threats include:*

    (a) an individual within the practice having a close relationship with any individual having a financial interest in the insolvent entity;

    (b) an individual within the practice having a close relationship with a potential purchaser of an insolvent's assets and/or business.

    In this regard a close relationship includes both a close professional relationship and a close personal relationship.

18. *Examples of circumstances that may create intimidation threats include:*

    (a) the threat of dismissal or replacement being used to:

        (i) apply pressure not to follow regulations, this Code, any other applicable code, technical or professional standards;

        (ii) exert influence over an insolvency appointment where the insolvency practitioner is an employee rather than a principal of the practice;

    (b) being threatened with litigation;

    (c) the threat of a complaint being made to the insolvency practitioner's authorising body.

Evaluation of threats

19. *An insolvency practitioner should take reasonable steps to evaluate any threats to compliance with the fundamental principles that he has identified.*

20. *In particular, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.*

Possible safeguards

21. *Having identified and evaluated a threat to the fundamental principles, an insolvency practitioner should consider whether there any safeguards that may be available to reduce the threat to an acceptable level. The relevant safeguards will vary depending on the circumstances. Generally safeguards fall into two broad categories. Firstly, safeguards created by the profession, legislation or regulation. Secondly, safeguards in the work environment. In the insolvency context safeguards in the work environment can include safeguards specific to an insolvency appointment. These are considered in paragraphs 22 to 41 below. In addition, safeguards can be introduced across the practice. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged. Some examples include:*

(a) leadership that stresses the importance of compliance with the fundamental principles;

(b) policies and procedures to implement and monitor quality control of engagements;

(c) documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level;

(d) documented internal policies and procedures requiring compliance with the fundamental principles;

(e) policies and procedures to consider the fundamental principles of this Code before the acceptance of an insolvency appointment;

(f) policies and procedures regarding the identification of interests or relationships between individuals within the practice and third parties;

(g) policies and procedures to prohibit individuals who are not members of the insolvency team from inappropriately influencing the outcome of an insolvency appointment;

(h) timely communication of a practice's policies and procedures, including any changes to them, to all individuals within the practice, and appropriate training and education on such policies and procedures;

(i) designating a member of senior management to be responsible for overseeing the adequate functioning of the safeguarding system;

(j) a disciplinary mechanism to promote compliance with policies and procedures;

(k) published policies and procedures to encourage and empower individuals within the practice to communicate to senior levels within the practice and/or the insolvency practitioner any issue relating to compliance with the fundamental principles that concerns them.

Part 2 Specific application of the Code

Insolvency appointments

22. *The practice of insolvency is principally governed by statute and secondary legislation and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by statute or secondary legislation, an insolvency practitioner must comply with such provisions. An insolvency practitioner must also comply with any relevant judicial authority relating to his conduct and any directions given by the Court.*

23. *An insolvency practitioner should act in a manner appropriate to his position as an officer of the Court (where applicable) and in accordance with any quasi-judicial, fiduciary or other duties that he may be under.*

24. *Before agreeing to accept any insolvency appointment (including a joint appointment), an insolvency practitioner should consider whether acceptance would create any threats to compliance with the fundamental principles. Of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest or by any significant professional or personal relationships. These are considered in more detail below.*

25. *In considering whether objectivity or integrity may be threatened, an insolvency practitioner should identify and evaluate any professional or personal relationship (see paragraphs 42 to 50 below) which may affect compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships should then be considered, together with the introduction of any possible safeguards.*

26. *Generally, it will be inappropriate for an insolvency practitioner to accept an insolvency appointment where a threat to the fundamental principles exists or may reasonably be expected might arise during the course of the insolvency appointment unless:*

    (a) disclosure is made, prior to the insolvency appointment, of the existence of such a threat to the Court or to the creditors on whose behalf the insolvency practitioner would be appointed to act and no objection is made to the insolvency practitioner being appointed; and

    (b) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. If the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.

27. *The following safeguards may be considered:*

    (a) involving and/or consulting another insolvency practitioner from within the practice to review the work done;

    (b) consulting an independent third party, such as a committee of creditors, an authorising body or another insolvency practitioner;

    (c) involving another insolvency practitioner to perform part of the work, which may include another insolvency practitioner taking a joint appointment where the conflict arises during the course of the insolvency appointment;

(d) obtaining legal advice from a solicitor or barrister with appropriate experience and expertise;

(e) changing the members of the insolvency team;

(f) the use of separate insolvency practitioners and/or staff;

(g) procedures to prevent access to information by the use of information barriers (e.g. strict physical separation of such teams, confidential and secure data filing);

(h) clear guidelines for individuals within the practice on issues of security and confidentiality;

(i) the use of confidentiality agreements signed by individuals within the practice;

(j) regular review of the application of safeguards by a senior individual within the practice not involved with the insolvency appointment;

(k) terminating the financial or business relationship that gives rise to the threat;

(l) seeking directions from the Court.

28. As regards joint appointments, where an insolvency practitioner is specifically precluded by this Code from accepting an insolvency appointment as an individual, a joint appointment will not be an appropriate safeguard and will not make accepting the insolvency appointment appropriate.

29. In deciding whether to take an insolvency appointment in circumstances where a threat to the fundamental principles has been identified, the insolvency practitioner should consider whether the interests of those on whose behalf he would be appointed to act would best be served by the appointment of another insolvency practitioner who did not face the same threat and, if so, whether any such appropriately qualified and experienced other insolvency practitioner is likely to be available to be appointed.

30. An insolvency practitioner will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an insolvency practitioner should conclude that it is not appropriate to accept an insolvency appointment.

31. Following acceptance, any threats should continue to be kept under appropriate review and an insolvency practitioner should be mindful that other threats may come to light or arise. There may be occasions when the insolvency practitioner is no longer in compliance with this Code because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the insolvency practitioner has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In deciding whether to continue an insolvency appointment, the insolvency practitioner may take into account the wishes of the creditors, who after full disclosure has been made have the right to retain or replace the insolvency practitioner.

32. *In all cases an insolvency practitioner will need to exercise his judgement to determine how best to deal with an identified threat. In exercising his judgement, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be acceptable. This consideration will be affected by matters such as the significance of the threat, the nature of the work and the structure of the practice.*

Conflicts of interest

33. *An insolvency practitioner should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. Examples of where a conflict of interest may arise are where:*

    (a) an insolvency practitioner has to deal with claims between the separate and conflicting interests of entities over whom he is appointed;

    (b) there are a succession of or sequential insolvency appointments (see paragraphs 78 to 90);

    (c) a significant relationship has existed with the entity or someone connected with the entity (see also paragraphs 42 to 50).

34. *Some of the safeguards listed at paragraph 27 may be applied to reduce the threats created by a conflict of interest to an acceptable level. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance; therefore, the safeguards used should generally include the use of effective information barriers.*

Practice mergers

35. *Where practices merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles. At the time of the merger, existing insolvency appointments should be reviewed and any threats identified. Principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new insolvency appointments to clients of either of the former practices. However, existing insolvency appointments which are rendered in apparent breach of the Code by such a merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate ethical conflict.*

36. *Where an individual within the practice has, in any former practice, undertaken work upon the affairs of an entity in a capacity that is incompatible with an insolvency appointment of the new practice, the individual should not work or be employed on that assignment.*

Transparency

37. *Both before and during an insolvency appointment an insolvency practitioner may acquire personal information that is not directly relevant to the insolvency or confidential commercial information relating to the affairs of third parties. The information may be such that others might expect that confidentiality would be maintained.*

38. Nevertheless an insolvency practitioner in the role as office holder has a professional duty to report openly to those with an interest in the outcome of the insolvency. An insolvency practitioner should always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. An insolvency practitioner should bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

Professional competence and due care

39. Prior to accepting an insolvency appointment the insolvency practitioner should ensure that he is satisfied that the following matters have been considered:

(a) obtaining knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;

(b) acquiring an appropriate understanding of the nature of the entity's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;

(c) acquiring knowledge of relevant industries or subject matters;

(d) possessing or obtaining experience with relevant regulatory or reporting requirements;

(e) assigning sufficient staff with the necessary competencies;

(f) using experts where necessary;

(g) complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

40. The fundamental principle of professional competence and due care requires that an insolvency practitioner should only accept an insolvency appointment when the insolvency practitioner has sufficient expertise. For example, a self-interest threat to the fundamental principle of professional competence and due care is created if the insolvency practitioner or the insolvency team does not possess or cannot acquire the competencies necessary to carry out the insolvency appointment. Expertise will include appropriate training, technical knowledge, knowledge of the entity and the business with which the entity is concerned.

41. Maintaining and acquiring professional competence requires on the part of insolvency practitioners a continuing awareness and understanding of relevant technical and professional developments, including:

(a) developments in insolvency legislation;

(b) statements of insolvency practice;

(c) the regulations of their authorising body, including any continuing professional development requirements;

(d) guidance issued by their authorising body or the Insolvency Service;

(e) technical issues being discussed within the profession.

Professional and personal relationships

42. The environment in which insolvency practitioners work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.

Identifying relationships

43. In particular, the principle of objectivity may be threatened if any individual within the practice, the close or immediate family of an individual within the practice, or the practice itself, has or has had a professional or personal relationship which relates to the insolvency appointment being considered.

44. Professional or personal relationships may include (but are not restricted to) relationships with:

(a) the entity;

(b) any director or shadow director or former director or shadow director of the entity;

(c) shareholders of the entity;

(d) any principal or employee of the entity;

(e) business partners of the entity;

(f) companies or entities controlled by the entity;

(g) companies which are under common control;

(h) creditors (including debenture holders) of the entity;

(i) debtors of the entity;

(j) close or immediate family of the entity (if an individual) or its officers (if a corporate body);

(k) others with commercial relationships with the practice.

45. Safeguards within the practice should include policies and procedures to identify relationships between individuals within the practice and third parties in a way that is proportionate and reasonable in relation to the insolvency appointment being considered.

Is the relationship significant to the conduct of the insolvency appointment?

46. Where a professional or personal relationship of the type described in paragraph 43 has been identified, the insolvency practitioner should evaluate the impact of the relationship in the context of the insolvency appointment being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following:

(a) *the nature of the previous duties undertaken by a practice during an earlier relationship with the entity;*

(b) *the impact of the work conducted by the practice on the financial state and/or the financial stability of the entity in respect of which the insolvency appointment is being considered;*

(c) *whether the fee received for the work by the practice is or was significant to the practice itself or is or was substantial;*

(d) *how recently any professional work was carried out. It is likely that greater threats will arise (or may be seen to arise) where work has been carried out within the previous three years. However, there may still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there may be situations whereby the nature of the work carried out was such that a considerably longer period should elapse before any threat can be reduced to an acceptable level.*

(e) *whether the insolvency appointment being considered involves consideration of any work previously undertaken by the practice for that entity;*

(f) *the nature of any personal relationship and the proximity of the insolvency practitioner to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the entity in relation to which the insolvency appointment relates;*

(g) *whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists (e.g. an obligation to report on the conduct of directors and shadow directors of a company to which the insolvency appointment relates);*

(h) *the nature of any previous duties undertaken by an individual within the practice during any earlier relationship with the entity;*

(i) *the extent of the insolvency team's familiarity with the individuals connected with the entity.*

47. *Having identified and evaluated a relationship that may create a threat to the fundamental principles, the insolvency practitioner should consider his response including the introduction of any possible safeguards to reduce the threat to an acceptable level.*

48. *Some of the safeguards which may be considered to reduce the threat created by a professional or personal relationship to an acceptable level are considered in paragraph 27. Other safeguards may include:*

(a) *withdrawing from the insolvency team;*

(b) *terminating (where possible) the financial or business relationship giving rise to the threat;*

(c) *disclosure of the relationship and any financial benefit received by the practice (whether directly or indirectly) to the entity or to those on whose behalf the insolvency practitioner would be appointed to act.*

49. An insolvency practitioner may encounter situations in which no or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a significant professional relationship ("Significant Professional Relationship") or a significant personal relationship ("Significant Personal Relationship"). Where this is the case, the insolvency practitioner should conclude that it is not appropriate to take the insolvency appointment.

50. Consideration should always be given to the perception of others when deciding whether to accept an insolvency appointment. Whilst an insolvency practitioner may regard a relationship as not being significant to the insolvency appointment, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

Dealing with the assets of an entity

51. Actual or perceived threats (for example, self-interest threats) to the fundamental principles may arise when, during an insolvency appointment, an insolvency practitioner realises assets.

52. Save in circumstances which clearly do not impair the insolvency practitioner's objectivity, insolvency practitioners appointed to any insolvency appointment in relation to an entity should not themselves acquire, directly or indirectly, any of the assets of an entity, nor knowingly permit any individual within the practice, or any close or immediate family member of the insolvency practitioner or of an individual within the practice, directly or indirectly, to do so.

53. Where the assets and business of an insolvent company are sold by an insolvency practitioner shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. The sale may also be seen as a threat to objectivity by creditors or others not involved in the prior agreement. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.

54. It is also particularly important for an insolvency practitioner to take care to ensure (where to do so does not conflict with any legal or professional obligation) that his decision-making processes are transparent, understandable and readily identifiable to all third parties who may be affected by the sale or proposed sale.

Obtaining specialist advice and services

55. When an insolvency practitioner intends to rely on the advice or work of another, the insolvency practitioner should evaluate whether such reliance is warranted. The insolvency practitioner should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.

56. Threats to the fundamental principles (for example, familiarity threats and self-interest threats) can arise if services are provided by a regular source independent of the practice.

57. *Safeguards should be introduced to reduce such threats to an acceptable level. These safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service are being obtained in relation to each insolvency appointment. Additional safeguards may include clear guidelines and policies within the practice on such relationships. An insolvency practitioner should also consider disclosure of the existence of such business relationships to the general body of creditors or the creditors' committee if one exists.*

58. *Threats to the fundamental principles can also arise where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship. An insolvency practitioner should take particular care in such circumstances to ensure that the best value and service are being provided.*

Fees and other types of remuneration

Prior to accepting an insolvency appointment

59. *Where an engagement may lead to an insolvency appointment, an insolvency practitioner should make any party to the work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees.*

60. *Where an engagement may lead to an insolvency appointment, insolvency practitioners should not accept referral fees or commissions unless they have established safeguards to reduce the threats created by such fees or commissions to an acceptable level.*

61. *Safeguards may include disclosure in advance of any arrangements. If after receiving any such payments, an insolvency practitioner accepts an insolvency appointment, the amount and source of any fees or commissions received should be disclosed to creditors.*

After accepting an insolvency appointment

62. *During an insolvency appointment, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate.*

63. *If such fees or commissions are accepted, they should only be accepted for the benefit of the estate, not for the benefit of the insolvency practitioner or the practice.*

64. *Further, where such fees or commissions are accepted, an insolvency practitioner should consider making disclosure to creditors.*

Obtaining insolvency appointments

65. *The special nature of insolvency appointments makes the payment or offer of any commission for, or the furnishing of any valuable consideration towards, the introduction of insolvency appointments inappropriate. This does not, however, preclude an arrangement between an insolvency practitioner and an employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the insolvency practitioner through the efforts of the employee.*

66. *When an insolvency practitioner seeks an insolvency appointment or work that may lead to an insolvency appointment through advertising or other forms of marketing, there may be threats to compliance with the fundamental principles.*

67. *When considering whether to accept an insolvency appointment, an insolvency practitioner should satisfy himself that any advertising or other form of marketing pursuant to which the insolvency appointment may have been obtained:*

    (a) is or has been fair and not misleading;

    (b) avoids unsubstantiated or disparaging statements;

    (c) complies with relevant codes of practice and guidance in relation to advertising.

68. *Advertisements and other forms of marketing should be clearly distinguishable as such and be legal, decent, honest and truthful.*

69. *If reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the basis of calculation and the range of services that the reference is intended to cover should be provided. Care should be taken to ensure that such references do not mislead as to the precise range of services and the time commitment that the reference is intended to cover.*

70. *An insolvency practitioner should never promote or seek to promote his services, or the services of another insolvency practitioner, in such a way, or to such an extent, as to amount to harassment.*

71. *Where an insolvency practitioner or the practice advertises for work via a third party, the insolvency practitioner is responsible for ensuring that the third party follows the above guidance.*

Gifts and hospitality

72. *An insolvency practitioner, or a close or immediate family member, may be offered gifts and hospitality. In relation to an insolvency appointment, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and intimidation threats may arise from the possibility of such offers being made public.*

73. *The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality, the insolvency practitioner should have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision-making or obtain information, the insolvency practitioner may generally conclude that there is no significant threat to compliance with the fundamental principles.*

74. *Where appropriate, safeguards should be considered and applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. If an insolvency practitioner encounters a situation in which no or no reasonable safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level, he should conclude that it is not appropriate to accept the offer.*

75. An insolvency practitioner should also not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Record keeping

76. It will always be for the insolvency practitioner to justify his actions. An insolvency practitioner will be expected to be able to demonstrate the steps that he took and the conclusions that he reached in identifying, evaluating and responding to any threats, both leading up to and during an insolvency appointment, by reference to written contemporaneous records.

77. The records an insolvency practitioner maintains, in relation to the steps that he took and the conclusions that he reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.

The application of the framework to specific situations

Introduction to specific situations

78. The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples may assist an insolvency practitioner and the members of the insolvency team to assess the implications of similar, but different, circumstances and relationships.

79. The examples are divided into three parts. Part 1 contains examples which do not relate to a previous or existing insolvency appointment. Part 2 contains examples that do relate to a previous or existing insolvency appointment. Part 3 contains some examples under Scottish law. The examples are not intended to be exhaustive.

Part 1 – Examples that do not relate to a previous or existing insolvency appointment

*80. The following situations involve a professional relationship which does **not** consist of a previous insolvency appointment:*

81. Insolvency appointment following audit-related work

Relationship: The practice or an individual within the practice has previously carried out audit-related work within the previous three years.

Response: A Significant Professional Relationship will arise: an insolvency practitioner should conclude that it is not appropriate to take the insolvency appointment.

Where audit-related work was carried out more than three years before the proposed date of the appointment of the insolvency practitioner, a threat to compliance with the fundamental principles may still arise. The insolvency practitioner should evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the existence or introduction of safeguards.

This restriction does not apply where the insolvency appointment is in a members' voluntary liquidation; an insolvency practitioner may normally take an appointment as liquidator. However, the insolvency practitioner should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles. Further, the insolvency practitioner should satisfy himself that the directors' declaration of solvency is likely to be substantiated by events.

82. Appointment as investigating accountant at the instigation of a creditor

Previous relationship: The practice or an individual within the practice was instructed by, or at the instigation of, a creditor, or other party having a financial interest in an entity, to investigate, monitor or advise on its affairs.

*Response: A Significant Professional Relationship would **not** normally arise in these circumstances provided that:*

(a) there has not been a direct involvement by an individual within the practice in the management of the entity; and

(b) the practice had its principal client relationship with the creditor or other party, rather than with the company or proprietor of the business; and

(c) the entity was aware of this.

An insolvency practitioner should, however, consider all the circumstances before accepting an insolvency appointment, including the effect of any discussions or lack of discussions about the financial affairs of the company with its directors, and whether such circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Where such an investigation was conducted at the request of, or at the instigation of, a secured creditor who then requests an insolvency practitioner to accept an insolvency appointment as an administrator or administrative receiver, the insolvency practitioner should satisfy himself that the company, acting by its board of directors, does not object to him taking such an insolvency appointment. If the secured creditor does not give prior warning of the insolvency appointment to the company or if such warning is given and the company objects but the secured creditor still wishes to appoint the insolvency practitioner, he should consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Part 2 – Examples relating to previous or existing insolvency appointments

83. The following situations involve a prior professional relationship that involves a previous or existing insolvency appointment:

84. Insolvency appointment following an appointment as administrative or other receiver

Previous appointment: An individual within the practice has been administrative or other receiver.

Proposed appointment: Any insolvency appointment.

Response: An insolvency practitioner should not accept any insolvency appointment.

This restriction does not, however, apply where the individual within the practice was appointed a receiver by the Court. In such circumstances, the insolvency practitioner should, however, consider whether there are any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

85. Administration or liquidation following appointment as supervisor of a voluntary arrangement

Previous appointment: An individual within the practice has been supervisor of a company voluntary arrangement.

Proposed appointment: Administrator or liquidator.

Response: An insolvency practitioner may normally accept an appointment as administrator or liquidator. However, the insolvency practitioner should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

86. Liquidation following appointment as administrator

Previous appointment: An individual within the practice has been administrator.

Proposed appointment: Liquidator.

Response: An insolvency practitioner may normally accept an appointment as liquidator provided he has complied with the relevant legislative requirements. However, the insolvency practitioner should also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

87. *Conversion of members' voluntary liquidation into creditors' voluntary liquidation*

Previous appointment: An individual within the practice has been the liquidator of a company in a members' voluntary liquidation.

Proposed appointment: Liquidator in a creditors' voluntary liquidation, where it has been necessary to convene a creditors' meeting.

Response: Where there has been a Significant Professional Relationship, an insolvency practitioner may continue or accept an appointment (subject to creditors' approval) only if he concludes that the company will eventually be able to pay its debts in full, together with interest.

However, the insolvency practitioner should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

88. *Bankruptcy following appointment as supervisor of an individual voluntary arrangement*

Previous appointment: An individual within the practice has been supervisor of an individual voluntary arrangement.

Proposed appointment: Trustee in bankruptcy.

Response: An insolvency practitioner may normally accept an appointment as trustee in bankruptcy. However, the insolvency practitioner should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

Part 3 – Examples in respect of cases conducted under Scottish law

89. *Sequestration following appointment as trustee under a trust deed for creditors*

Previous appointment: An individual within the practice has been trustee under a trust deed for creditors.

Proposed appointment: Interim trustee or trustee in sequestration.

Response: An insolvency practitioner may normally accept an appointment as an interim trustee or trustee in sequestration. However, the insolvency practitioner should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

90. *Sequestration where the accountant in bankruptcy is trustee following appointment as trustee under a trust deed for creditors*

Previous appointment: An individual within the practice has been trustee under a trust deed for creditors.

Proposed appointment: Agent for the accountant in bankruptcy in sequestration.

Response: An insolvency practitioner may normally accept an appointment as agent for the accountant in bankruptcy. However, the insolvency practitioner should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

Definitions

In this Code, the following expressions have the following meanings assigned to them:

Acceptable level

A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.

Advertising

The communication to the public of information as to the services or skills provided by professional accountants in public practice with a view to procuring professional business.

Assurance client

The responsible party that is the person (or persons) who:

(a) In a direct reporting engagement, is responsible for the subject matter; or

(b) In an assertion-based engagement, is responsible for the subject matter information and may be responsible for the subject matter.

Assurance engagement

An engagement in which a professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

(For guidance on assurance engagements see the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board which describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply.)

Assurance team

(a) All members of the engagement team for the assurance engagement;

(b) All others within a firm who can directly influence the outcome of the assurance engagement, including:

(i) those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagement;

(ii) those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and

(iii) those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement.

Audit client

An entity in respect of which a firm conducts an audit engagement. When the client is a listed entity, audit client will always include its related entities. When the audit client is not a listed entity, audit client includes those related entities over which the client has direct or indirect control.

Audit engagement

A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation.

Audit team

(a) All members of the engagement team for the audit engagement;

(b) All others within a firm who can directly influence the outcome of the audit engagement, including:

(i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the audit engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);

(ii) Those who provide consultation regarding technical or industry specific issues, transactions or events for the engagement; and

(iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and

(c) All those within a network firm who can directly influence the outcome of the audit engagement.

Close family

A parent, child or sibling who is not an immediate family member.

Contingent fee

A fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. A fee that is established by a court or other public authority is not a contingent fee.

Direct financial interest

A financial interest:

- Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or

- Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.

Director or officer

Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title, which may vary from jurisdiction to jurisdiction.

Engagement partner

The partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.

Engagement quality control review

A process designed to provide an objective evaluation, on or before the report is issued, of the significant judgements the engagement team made and the conclusions it reached in formulating the report.

Engagement team

All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or by a network firm.

The term "engagement team" also excludes individuals within the client's internal audit function who provide direct assistance on an audit engagement when the external auditor complies with the requirements of ISA 610 (Revised 2013), *Using the Work of Internal Auditors*.

Existing accountant

A professional accountant *or other provider of accountancy services* in public practice currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services for a client.

External expert

An individual (who is not a partner or a member of the professional staff, including temporary staff, of the firm or a network firm) or organisation possessing skills, knowledge and experience in a field other than accounting or auditing, whose work in that field is used to assist the professional accountant in obtaining sufficient appropriate evidence.

Financial interest

An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

Financial statements

A structured representation of historical financial information, including related notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The related notes ordinarily comprise a summary of significant accounting policies and other explanatory information. The term can relate to a complete set of financial statements, but it can also refer to a single financial statement, for example, a balance sheet, or a statement of revenues and expenses, and related explanatory notes.

Financial statements on which the firm will express an opinion

In the case of a single entity, the financial statements of that entity. In the case of consolidated financial statements, also referred to as group financial statements, the consolidated financial statements.

Firm

(a) A sole practitioner, partnership or corporation of professional accountants;

(b) An entity that controls such parties, through ownership, management or other means; and

(c) An entity controlled by such parties, through ownership, management or other means.

Historical financial information

Information expressed in financial terms in relation to a particular entity, derived primarily from that entity's accounting system, about economic events occurring in past time periods or about economic conditions or circumstances at points in time in the past.

Immediate family

A spouse (or equivalent) or dependent.

Independence

Independence is:

(a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism.

(b) Independence in appearance – the avoidance of facts and circumstances that are so significnt that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the audit or assurance team's, integrity, objectivity or professional skepticism has been compromised.

Indirect financial interest

A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.

Key audit partner

The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgements on significant matters with respect to the audit of the financial statements on which the firm will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, "other audit partners" may include, for example, audit partners responsible for significant subsidiaries or divisions.

Listed entity

An entity whose shares, stock or debt are quoted or listed on a recognised stock exchange, or are marketed under the regulations of a recognised stock exchange or other equivalent body.

Network

A larger structure:

(a) That is aimed at co-operation; and

(b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.

Network firm

A firm or entity that belongs to a network.

Office

A distinct sub-group, whether organised on geographical or practice lines.

Professional accountant

An individual who is a member of an IFAC member body.[7]

Professional accountant in business

A professional accountant employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a professional accountant contracted by such entities.

Professional accountant in public practice

A professional accountant, irrespective of functional classification (e.g., audit, tax or consulting) in a firm that provides professional services. This term is also used to refer to a firm of professional accountants in public practice.

7 In the context of the ACCA Code of Ethics and Conduct, a professional accountant is to be interpreted as a member or, where appropriate, student, affiliate or member firm of ACCA.

Professional activity

An activity requiring accountancy or related skills undertaken by a professional accountant, including accounting, auditing, taxation, management consulting, and financial management.

Professional services

Professional activities performed for clients.

Public interest entity

(a) A listed entity; and

(b) An entity:

(i) Defined by regulation or legislation as a public interest entity; or

(ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator; and

(c) An entity that is of significant public interest because of its business, its size or its number of employees or its corporate status is such that it has a wide range of stakeholders. Examples of such entities may include credit institutions (for example, banks), insurance companies, investment firms and pension firms.

Related entity

An entity that has any of the following relationships with the client:

(a) An entity that has direct or indirect control over the client if the client is material to such entity;

(b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity;

(c) An entity over which the client has direct or indirect control;

(d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and

(e) An entity which is under common control with the client (a "sister entity") if the sister entity and the client are both material to the entity that controls both the client and sister entity.

Review client

An entity in respect of which a firm conducts a review engagement.

Review engagement

An assurance engagement, conducted in accordance with International Standards on Review Engagements or equivalent, in which a professional accountant in public practice expresses a conclusion on whether, on the basis of the procedures which do not provide all the evidence that would be required in an audit, anything has come to the accountant's attention that causes the accountant to believe that the financial statements are not prepared, in all material respects, in accordance with an applicable financial reporting framework.

Review team

(a) All members of the engagement team for the review engagement; and

(b) All others within a firm who can directly influence the outcome of the review engagement, including:

(i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the review engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);

(ii) Those who provide consultation regarding technical or industry specific issues, transactions or events for the engagement; and

(iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and

(c) All those within a network firm who can directly influence the outcome of the review engagement.

Special purpose financial statements

Financial statements prepared in accordance with a financial reporting framework designed to meet the financial information needs of specified users.

Those charged with governance

The person(s) or organization(s) (for example a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For some entities in some jurisdictions, those charged with governance may include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.