



# ***Regulations governing the use of the description Chartered Accountants and ICAEW general affiliates***

EFFECTIVE FROM 19 JUNE 2017

1. These regulations were made by the Council under Clauses 12A and 16 of the Supplemental Charter and Bye-law 55 on the fifth day of April 2000 and came into effect on the first day of May 2000 (please refer to reference 2 below).

## Interpretation

2. The Interpretation Act 1978 applies to these regulations in the same way as it applies to an enactment.
3. In these regulations, unless the context otherwise requires:
  - a) words importing the masculine gender include the feminine and neuter; and
  - b) words importing the neuter gender include both the masculine and the feminine.

## Definitions of 'Chartered Accountant' and 'member firm'

4. In these regulations the term *Chartered Accountant* means a member of the Institute of Chartered Accountants in England and Wales (ICAEW) or a member of one of the following bodies:

The Institute of Chartered Accountants of Scotland;  
The Institute of Chartered Accountants in Ireland;  
The Institute of Chartered Accountants in Australia;  
The Canadian Institute of Chartered Accountants;  
The South African Institute of Chartered Accountants;  
The Institute of Chartered Accountants of Zimbabwe;  
The Institute of Chartered Accountants of New Zealand.

5. *Member Firm* shall mean:

- a. a member of ICAEW engaged in public practice as a sole practitioner; or
- b. a partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *Chartered Accountants* or by another *member firm(s)*; or
- c. a limited liability partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *Chartered Accountants* or by another *member firm(s)*; or
- d. any body corporate (other than a limited liability partnership) engaged in public practice of which:
  - (i) 50 per cent or more of the directors are *Chartered Accountants* or another *member firm(s)*; and
  - (ii) more than 50 per cent of the nominal value of the voting shares is held by *Chartered Accountants* or by another *member firm(s)*; and
  - (iii) more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by *Chartered Accountants* or by another *member firm(s)*; and

provided that in the case of a firm that is a parent entity, more than 50% of the income of the group is derived from public practice and, in the case of a firm that is a subsidiary entity, more than 50% of the income of the group is derived from public practice and the subsidiary entity is engaged in public practice.

6. Where a firm or *member firm* is a partner, member, director or shareholder of a firm using the description Chartered Accountants under these regulations, then its interests at meetings of partners, members, directors or shareholders must be represented by an individual who is a *Chartered Accountant*.

## Dispensations

7. In the case of a firm which does not satisfy the criteria set out in Regulation 5:
  - a. it shall be allowed to describe itself either wholly or in part as Chartered Accountants notwithstanding the provisions of these regulations should the ICAEW Regulatory Board, in its absolute discretion, so decide;
  - b. such allowance may be granted on such terms and conditions as the ICAEW Regulatory Board considers appropriate;
  - c. if a firm is allowed to describe itself as Chartered Accountants either wholly or in part by the operation of this regulation the ICAEW Regulatory Board may revoke for cause the allowance previously granted;
  - d. the ICAEW Regulatory Board may give guidance as to the circumstances when it is likely to grant or refuse a request under this regulation; and
  - e. the ICAEW Regulatory Board may delegate its discretion under this regulation.
8. A firm may apply for a review of a decision made in accordance with Regulation 7 within 14 days of being served with a copy of the decision. The firm shall set out in its application its reasons for requesting a review and may submit new evidence in support of the application.
9. Following receipt of an application in accordance with Regulation 8, *ICAEW* shall arrange for a review of the application by *ICAEW*'s chief operating officer as soon as reasonably practicable. The chief operating officer will consider the matter afresh having regard to any guidance that has been issued by the ICAEW Regulatory Board on the exercise of discretion in accordance with Regulation 7. The decision of the chief operating officer on the application will be final.
10. A firm applying for a dispensation in accordance with Regulation 7 shall pay such fees on application as may be determined from time to time by the ICAEW Regulatory Board. Such fees shall not be refunded if the application is declined.
11. A firm applying for a review of a decision made under Regulation 7 shall pay such fees on application as may be determined by the ICAEW Regulatory Board from time to time. Such fees shall be refunded if the application is successful.

- 12.** A *member firm* which engages in public practice is entitled to describe itself as Chartered Accountants provided that any partner, member (in the case of a limited liability partnership) or director (in the case of a company) who is not a *Chartered Accountant* or a *member firm* must:
- a. hold affiliate status with *ICAEW* under its Designated Professional Body (Investment Business) Handbook, Licensed Practice Handbook, Audit Regulations, Local Audit Regulations, Probate Regulations or Insolvency Licensing Regulations;
  - b. hold affiliate status with *ICAEW* under these regulations;
  - c. be registered for audit work by *ICAEW*;
  - d. be registered for local audit work by *ICAEW*;
  - e. be accredited for probate work by *ICAEW*;
  - f. be licensed by *ICAEW* under its Designated Professional Body arrangements; or
  - g. be licensed by *ICAEW* under its Licensed Practice Handbook.
- 13.** If the requirements of Regulation 12 are not met during a period of up to 3 months, a firm will be entitled to continue to use the description Chartered Accountants during that period if it can demonstrate its intentions to meet the requirements.
- 14.** If a firm has previously been entitled to describe itself as Chartered Accountants but it no longer meets the requirements of Regulation 5, it shall be entitled to continue to use the description for a maximum of 3 months provided that it applies, as soon as reasonably practicable and in any event within 14 days of the change to its circumstances, for a dispensation in accordance with Regulation 7.

### **General affiliate status**

- 15.** An applicant for recognition as a general affiliate under these regulations shall submit an application in the form required by *ICAEW*.
- 16.** A person recognised as a general affiliate shall not have any right or entitlement under *ICAEW*'s Royal Charter, bye-laws and regulations save as expressly conferred by these regulations and in particular, shall have no right to use the designatory letters ACA or FCA.
- 17.** A general affiliate who makes any representation that he has any right or entitlement other than as conferred on him by these regulations shall render himself liable to disciplinary action.
- 18.** The Disciplinary Bye-laws shall apply to a complaint against a general affiliate or a firm allowed to use either wholly or in part the description Chartered Accountants under Regulation 7 as they apply to complaints against members, or member firms and without prejudice to the generality of the foregoing the term defendant shall be read and construed as including a general affiliate or such a firm.
- 19.** Where a formal complaint against a general affiliate is found proved in whole or in part a tribunal may make against him such one or more of the following orders as it considers appropriate having regard to his past disciplinary record, its view as to the nature and

seriousness of the formal complaint (so far as proved); and any other circumstances which the tribunal considers relevant:

- a. that he cease to be a general affiliate;
- b. that he be reprimanded;
- c. that he be severely reprimanded;
- d. that he be fined a specified sum; or
- e. that he pay the whole or part of the costs incurred by ICAEW in investigating a complaint and bringing disciplinary proceedings in respect of any complaint found proved.

**20.** In addition to making an order against a general affiliate a tribunal shall be entitled to order that a *member firm* cease to be entitled to describe itself as Chartered Accountants for so long as the person concerned remains a partner in or a member, (in the case of a limited liability partnership) or director (in the case of a company) of the *member firm*.

**21.** The ICAEW Regulatory Board shall be responsible for determining applications for general affiliate status. Such status may be granted if it is satisfied that:

- a. the applicant is a partner, or has been offered a partnership, in a *member firm*;
- b. the applicant is a member, (in the case of a limited liability partnership) or director (in the case of a company) or has been offered the position of a member or director (as appropriate) in a *member firm*;
- c. the applicant is a fit and proper person to be granted general affiliate status and is certified to be such by at least two other members. Without prejudice to the generality of the foregoing the following shall be regarded as events giving rise to a presumption that an applicant is not fit and proper and therefore unsuitable to be granted general affiliate status:
  - i. that he is or has been bankrupt or entered into an individual voluntary arrangement or has been subject to a debt relief order;
  - ii. that he has, individually or as a partner, made an assignment by reason of insolvency of some or all of his assets for the benefit of his creditors;
  - iii. that he has made any arrangement or entered into a composition with his creditors to satisfy his debts, whether by resolution of his creditors or court order or under any deed or other document by reason of insolvency;
  - iv. that he is or was a partner in a firm which:
    - a. has had or had a winding-up order made against it on grounds of insolvency; or
    - b. has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or which entered into such a voluntary arrangement; or
    - c. is or was in administration or had an administration order made against it on grounds of insolvency; or
    - d. has had or had a receiver appointed by a creditor or by a court on the application of a creditor;
  - v. that he is or was a member of a limited liability partnership or director of a company which:
    - a. has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its

- members) for it to be wound up or which has had or had a winding-up order made against it on grounds of insolvency; or
- b. has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or which entered into such a voluntary arrangement; or
- c. is or was in administration or had an administration order made against it on grounds of insolvency; or
- d. has had or had a receiver appointed by a creditor or by a court on the application of a creditor;
- vi. that he has had an adverse finding of a disciplinary nature made against him by any professional or regulatory body;
- vii. that he has been removed on the ground of misconduct from the office of liquidator, trustee, receiver, receiver and manager, administrative receiver, administrator or supervisor of a voluntary arrangement;
- viii. that he has been the subject of a disqualification order or has given a disqualification undertaking under the Company Directors Disqualification Act 1986 or under the Insolvency Act 1985 or 1986;
- ix. that he has been found to have knowingly and wilfully in relation to the conduct of insolvency as an office holder or potential office holder infringed the requirements of the Companies Act 1985 or the Insolvency Act 1986, or the Bankruptcy (Scotland) Act 2016 or any equivalent predecessor legislation, and/or any subordinate legislation including any rules, regulations or orders, as from time-to-time re-enacted or amended and equivalent legislation in Northern Ireland (i.e. the Insolvency (Northern Ireland) Order 1989 and its subordinate legislation);
- x. that he has pleaded guilty to or been found guilty of any indictable offence in England and Wales or to any comparable offence elsewhere;
- d. the applicant has completed a form of undertaking in the form required by ICAEW;
- e. the applicant (except in the case of an applicant who is not an individual) is able to demonstrate appropriate and relevant experience of accountancy or of a related discipline or has one or more of the following qualifications:
  - i. membership of the Association of Chartered Certified Accountants;
  - ii. membership of the Chartered Institute of Management Accountants;
  - iii. membership of the Chartered Institute of Public Finance and Accountancy;
  - iv. membership of the Chartered Institute of Taxation;
  - v. membership of the Institute of Management Consultants; or
  - vi. membership of the Association of Accounting Technicians.

**22.** Sub-paragraph (e) of Regulation 21 shall not apply to an applicant for general affiliate status who is a director of a *member firm* engaged in public practice which has been incorporated in the Isle of Man or Singapore and which has only two directors, provided that one director is a *Chartered Accountant* and holds more than 50 per cent of the voting rights in the board of directors, committee or other management body. For the avoidance of doubt all other requirements of these regulations apply to Isle of Man and Singapore incorporated bodies in the same way as they apply to bodies incorporated elsewhere.

**23.** A general affiliate shall pay such annual subscription as the Council may determine from time-to-time.

24. The ICAEW Regulatory Board may impose restrictions or conditions at the time of the grant of general affiliate status, or at any time thereafter, if it considers it appropriate to do so.
25. The ICAEW Regulatory Board may at any time withdraw general affiliate status from an individual if:
- it considers that he is no longer a fit and proper person;
  - he has ceased to be engaged, or to be entitled to engage in accountancy or a discipline relevant to the profession of accountancy;
  - the *member firm* of which he is a partner, member or director (as appropriate) has ceased to be a *member firm*;
  - he has ceased to be a partner, member or director (as appropriate) in the *member firm* to which his affiliate status related;
  - he has failed to comply with any restriction or condition imposed on him with the authority of *ICAEW*;
  - he has failed to pay the annual subscription within 30 days of the due date;
  - he has breached or not complied with any applicable requirement of the Royal Charter, Supplemental Charter, bye-laws or regulations of *ICAEW*;
  - it is satisfied that any information provided in support of an application for general affiliate status was false or misleading whether or not knowingly so.
26. A general affiliate may tender his resignation by notice in writing to *ICAEW* and on its acceptance by the ICAEW Regulatory Board, but not until then, he shall cease to be a general affiliate.
27. A general affiliate or an applicant for general affiliate status must provide details in writing within 14 days of any change to information provided by him in an application for general affiliate status.
28. An applicant for general affiliate status or a general affiliate may apply for a review of the following decisions made under these regulations:
- a refusal to grant general affiliate status in accordance with Regulation 21;
  - the imposition of conditions or restrictions on the grant or holding of general affiliate status under Regulation 24; or
  - the withdrawal of general affiliate status under Regulation 25.
29. An applicant for general affiliate status or a general affiliate must apply for a review in writing within 14 days of being served with notice of the relevant decision. In such cases the decision to impose conditions or restrictions on the holding of general affiliate status, or to withdraw general affiliate status, will not take effect until such time as it has been confirmed following the review process set out in Regulation 30.
30. On receipt of the application *ICAEW* shall arrange for a review of the decision by *ICAEW*'s chief operating officer as soon as reasonably practicable. The chief operating officer will consider the matter afresh and may consider any new evidence put forward by the applicant. The decision of the chief operating officer will be final.

### **ICAEW Regulatory Board's powers**

31. These regulations may be amended from time to time or repealed by the ICAEW Regulatory Board.

- 32.** The ICAEW Regulatory Board may delegate to any member of *ICAEW's* staff, or to any *ICAEW* committee or sub-committee, its powers to take decisions under these regulations other than the power to amend or repeal them.

### **Notices and service**

- 33.** Any notice or other document required to be served under these regulations may be delivered by hand, or sent by email, fax or post:
- a if it is delivered by hand to the addressee, service will take effect immediately;
  - b if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
  - c if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
  - d if sent by post, it will be sent to the latest address given by the addressee and service will take effect two days after posting.
- 34.** Any notice or other document required to be served on *ICAEW* under these regulations shall be sent to the Head of the Regulatory Practice Group, ICAEW, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ.

### **Transitional provisions**

- 35.** The regulations made by the Council on 2 October 1991 and subsequently amended and entitled Regulations Governing the Use of the Description Chartered Accountants (the 1991 Regulations) shall cease to have effect save to the extent necessary for any disciplinary purpose from the date that these regulations take effect.
- 36.** These regulations shall not affect the validity of any dispensation previously granted to a *member firm* under the authority given by the Council on 3 December 1997 (allowing a lesser percentage than 50 per cent of *Chartered Accountant* directors), subject to such a firm otherwise complying fully with these regulations.
- 37.** These regulations shall apply to any person who immediately prior to these regulations taking effect was an affiliate by virtue of the 1991 regulations and who shall while he is subject to these regulations be referred to as a general affiliate.



## ANNEX – GUIDANCE ON THE EXERCISE OF DISCRETION IN GRANTING DISPENSATIONS

1. If a firm does not meet the definition of a 'member firm' as set out in Regulation 5, but wishes to use the description 'Chartered Accountants' it may apply for a dispensation in accordance with Regulation 7.
2. Dispensations will be granted at the sole discretion of the ICAEW Regulatory Board or at the discretion of persons to whom it has delegated authority to exercise its powers under these regulations. In deciding whether to grant a dispensation the ICAEW Regulatory Board will consider whether the 'accountancy or reserved services' provided by the firm are under the direction and control of 'Chartered Accountants' as defined in Regulation 4.
3. For guidance on services considered by ICAEW to be accountancy or reserved services see paragraph 14 and Annex 1 of the ICAEW Statement on engaging in public practice (1 January 2017).
4. The decision on whether to grant a dispensation will be based on the specific circumstances of the firm.
  - 4.1 The following is a list of factors which the ICAEW Regulatory Board, or persons acting on its behalf, **shall** consider in determining whether the accountancy or reserved services carried on by the firm are under the direction and control of Chartered Accountants:
    - a. the extent to which Chartered Accountants either conduct, or actively supervise the conduct of, accountancy or reserved services by the firm.

If Chartered Accountants do not have day-to-day conduct of accountancy or reserved services at the firm (due, for example, to the firm's departmental structure or the location of its offices) it is likely that the firm will need to demonstrate how those persons conducting accountancy or reserved services are supervised by Chartered Accountants and held accountable for their work.

In particular, if the firm provides high volume, standardised accountancy and/or reserved services to clients, it is likely that the firm will need to demonstrate the systems in place to ensure that Chartered Accountants control the quality of accountancy or reserved services conducted by the firm.
    - b. the extent to which non-Chartered Accountants may influence, or have the potential to influence, the conduct of accountancy or reserved services.
    - c. the extent to which Chartered Accountants control, in relation to the accountancy or reserved services carried out by the firm, the firm's:
      - i. risk management and compliance systems; and
      - ii. indemnification arrangements – e.g. claims management, levels of cover and any arrangements for self-insurance.
    - d. the proportion of principals at the firm who are Chartered Accountants.

- 4.2 The following is a non-exhaustive list of factors which the ICAEW Regulatory Board, or those acting on its behalf, **may** consider in determining whether the accountancy or reserved services carried on by the firm are under the direction and control of Chartered Accountants:
- a. the collective weight of the voting rights in the firm held by Chartered Accountants;
  - b. if the firm has a management board which directs its affairs, the proportion of members on that board who are Chartered Accountants;
  - c. if the firm has corporate principals, whether those principals are member firms or firms which are authorised by ICAEW to conduct regulated audit, local audit or probate work, or licensed under ICAEW's Designated Professional Body arrangements or the Licensed Practice Handbook;
  - d. if accountancy or reserved services are delivered through one or more separate business units, departments or divisions at the firm, whether and/or the extent to which Chartered Accountants are in control of those business units, departments or divisions;
  - e. the extent to which Chartered Accountants control the firm's business development strategy in relation to the accountancy or reserved services – i.e. the types of services that are provided and the types of clients that are accepted and retained;
  - f. the extent to which Chartered Accountants are involved in decisions concerning the firm's business systems relating to the delivery of accountancy or reserved services – e.g. its Finance, HR and IT functions;
  - g. whether the firm is authorised by ICAEW to conduct regulated audit, local audit or probate work, or licensed under ICAEW's Designated Professional Body arrangements or the Licensed Practice Handbook; and/or
  - h. whether the firm is an authorised training employer (ATE).
- 4.3 In the case of a group structure, the factors which the ICAEW Regulatory Board, or those acting on its behalf, **may** consider include:
- a. in the case of a parent entity, the proportion of principals who are Chartered Accountants, member firms or firms which are authorised by ICAEW to conduct regulated audit, local audit or probate work, or licensed under ICAEW's Designated Professional Body arrangements or the Licensed Practice Handbook.
  - b. if accountancy or reserved services are delivered through one or more subsidiary entities in the group, whether and/or the extent to which Chartered Accountants are in control of the accountancy or reserved services conducted by those subsidiaries.

### **The grant of a dispensation**

5. If a firm is permitted to use the description under these arrangements, that permission may be granted on such terms as the ICAEW Regulatory Board (or persons acting on its behalf) consider appropriate. These may include a requirement to notify ICAEW of any change in the principals or the shareholders of the firm, or in those directing or controlling the delivery of accountancy or reserved services. ICAEW may review the continued grant of the permission in the light of the new information.

6. If accountancy or reserved services at the firm or in entities of the group are under the direction or control of principals or persons who are not Chartered Accountants it is likely that the ICAEW Regulatory Board (or those exercising powers on its behalf) will require that such persons apply for affiliate status in accordance with these regulations unless they already hold affiliate status or are authorised by ICAEW to conduct reserved services under other ICAEW regulations. In such circumstances they will need to comply with the eligibility requirements for general affiliates set out in Regulation 21.
7. As a condition of the dispensation the firm may also be required to be bound by ICAEW's Practice Assurance scheme and be subject to periodic, whole-firm reviews by ICAEW's Quality Assurance Department (QAD). If a firm is already in the scheme it may be subject to more frequent monitoring by QAD.
8. If a firm does not meet the criteria for a 'member firm' set out in Regulation 5, it may be unable to use the unqualified description 'Chartered Accountants'. In such cases the title that the firm may use to describe itself will be specified as a condition on the grant of the dispensation. This should make clear to the public that Chartered Accountants do not have full or majority control of the firm or group.
9. Paragraphs 6 to 8 will not apply to firms which prior to 19 June 2017 received a dispensation from ICAEW to use the description 'Chartered Accountants' under these regulations. If, however, a dispensation granted prior to 19 June 2017 is subsequently reviewed by the ICAEW Regulatory Board (or those exercising powers on its behalf) due to a change in circumstances at the firm after 19 June 2017 that application will be considered on the basis of the regulations which are in force at that time.

## References

1. Different requirements apply to applications for affiliate status in the regulated areas. Such applicants should refer, as appropriate, to the Audit Regulations, the Local Audit Regulations, the Probate Regulations, the Insolvency Licensing Regulations, the Licensed Practice Handbook and the Designated Professional Body (Investment Business) Handbook.
2. The Regulations were amended on 1 September 2008, 1 July 2009, 1 March 2010, 3 February 2016, 26 May 2017 and 19 June 2017.
3. If members are in doubt whether their firm is entitled to use the description 'Chartered Accountants', they should contact the helpline on +44 (0)1908 248 025 and give all the facts of their circumstances.