MEMBERS' HANDBOOK

2007

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ISBN 1 84140 846 8

This edition, unless otherwise indicated, was current at 1 September 2006

Typeset by RefineCatch Limited, Bungay, Suffolk
Printed and bound in Italy by Legoprint – Lavis (TN).

MEMBERS' HANDBOOK

2007

The Institute of
Chartered Accountants
in England & Wales

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London
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FOREWORD

We are pleased to publish your Institute's Members' Handbook in hard copy.

For ease of reference, we have improved the sequence of sections in this edition by grouping them together by theme – constitutional matters, discipline, ethics, membership, practice, learning and professional development, and guidance.

In 2004, the membership approved a number of new initiatives such as Continuing Professional Development, the Corporate Finance Qualification and Practice Assurance. The regulations which underpin these activities are now included in this volume. On 3 May 2006, the Council approved a new Code of Ethics which replaces the 'Guide to professional ethics' and applies to all members from 1 September 2006. This appears as Section 3.

The Members' Handbook contains matters relevant to members. Firms may also need to refer to the 'Audit Regulations and Guidance' or the 'Designated Professional Body Handbook'. Regulations relevant to insolvency practitioners licensed by the ICAEW are set out in separate 'Insolvency Licensing Regulations'.

We hope that you will continue to find the handbook to be a valuable reference work. The text in this edition was, unless otherwise indicated, current at 1 September 2006. Where we are revising individual sections within this edition, an advisory note appears at the start of the section. However, please remember that you should always refer to the website www.icaew.co.uk/membershandbook for the most up to date version of any section.

The table below outlines the main changes since the last hard copy edition.

2004–5	**2007**	
Section 1.2	Section 3	Code of Ethics replaces Guide to Professional Ethics – effective 1 September 2006
Section 1.312		Equal opportunities
Section 1.313		Professional conduct of members employed in public practice – deleted
Section 1.314		Accounting for commission – deleted
Section 1.402		Professional conduct in relation to defaults or unlawful acts by or on behalf of a members' employer – deleted
Section 1.303	Section 7.4	Accountants and legal services (previously Solicitors and accountants)
	Section 5.2	Continuous Professional Development Regulations – effective from 1 July 2005
	Section 5.3	Corporate Finance Qualification Regulations – effective from 1 July 2005
	Section 6.5	Practice Assurance Regulations – made 6 October 2004, amended 1 September 2005

GROUP CONSUMER CREDIT LICENCE

A group licence (No. G900009) valid until 1 August 2009 has been issued to the Institute under the Consumer Credit Act 1974. The licence is in respect of all Members and Affiliates of the Institute of Chartered Accountants in England and Wales and other persons, who, under regulations made by the Institute, are subject to the obligations and liabilities of a Member of the Institute, to carry on the business of:

a. consumer credit;

b. credit brokerage;

c. debt-adjusting and debt-counselling;

limited to activities arising in the course of the practice of accountancy or acting as an insolvency practitioner carried on within the United Kingdom by such Member, Affiliate or other person:

a. as a sole practitioner;

b. in partnership or a corporate practice with others who:

   i. hold the like qualification, or

   ii. hold a qualification authorising such activities under any other group licence issued by the Director, or

   iii. together compromise a practice which, under regulations made by the Institute, is registered to carry on audit work, licensed for a range of investment business activities or permitted to describe itself as 'Chartered Accountants'.

Group licences in corresponding terms have been issued to the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland and the Chartered Association of Certified Accountants.

Keeping you up to date

The Institute aims to assist members to succeed in their chosen field. We promote trust in the 'chartered accountant' brand in order to build on a collective reputation at home and abroad as the world's leading body of business advisers and finance professions.

Offering world class qualifications, thought leadership and clear insight into professional and technical issues, we continually develop our portfolio of products and services to ensure members have access to the most useful and relevant support available.

The Institute uses a variety of media to provide information and help keep you up to date. You can also stay informed by joining any of our faculties or subscribing to any of our special interest groups.

From October 2006, all members and students will be sent a monthly copy of our profession's most respected magazine – *Accountancy* – as part of their subscription. *Accountancy* publishes information on changes to accounting standards, law, taxation and regulation as well as providing updates and commentary on a variety of topical issues. It also publishes a cumulative index covering the entire contents every six months.

From October 2006, the Institute has some 16 pages each month in *Accountancy* for news, articles and features on what the institute is doing about the issues that we understand matter to you. We encourage you to let us have your personal feedback and insight to help shape that content.

Members are expected to be familiar with any essential and official material which is published in *Accountancy*.

The Institute's Library and Information Service (LIS) offers all members the facilities of a world class business library. It includes a dedicated enquiry service, web resources, key online databases and more than 40,000 books and journals on the huge range of issues relevant to the profession and business.

What's available?

Electronic newsletters
- Practice Society Alert
- Business Alert
- International Alert
- Young Professionals Alert

Publications
- Audit and Beyond
- Corporate Financier
- Finance and Management
- Chartech News (IT)
- Taxline
- Accountancy
  www.accountancymagazine.com

The Faculties
www.icaew.co.uk/faculties
- Audit and Assurance
- Corporate Finance
- Finance and Management
- Information Technology
- Tax

Special interest groups
www.icaew.co.uk/members
- Charity & voluntary sector
- Entertainment & media
- Farming & rural business
- Forensic
- Healthcare
- Interim management
- Solicitors
- Tourism & hospitality

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MEMBERS' HANDBOOK

Section 1

Constitutional Documents

Explanatory Notes

1 The Institute of Chartered Accountants in England and Wales was incorporated by Royal Charter granted by Her Majesty Queen Victoria on 11th May 1880. The Royal Charter remained unaltered for sixty-eight years until 21st December 1948 when the Institute was granted a Supplemental Charter by His Majesty King George VI, following the presentation of a petition in terms approved by a special meeting of members on 21st April 1948. A new set of bye-laws (as appended to the draft charter annexed to the petition) came into operation with the grant of the 1948 Supplemental Charter, the bye-laws previously in force then ceasing to operate.

2 Prior to the special meeting on 21st April 1948 a draft of the petition, Supplemental Charter and bye-laws was sent to every member together with an explanatory memorandum containing brief observations on those changes to which it was considered that the attention of members should be drawn. Copies of the drafts and the explanatory memorandum in their original form and as amended at the special meeting are on record in the Institute library.

3 No fundamental change, either in the nature and objects of the Institute or in the method of attaining membership, was involved in the 1948 petition. The general purpose was to redraft the clauses of the Original Charter and the bye-laws in such a way as to give the members greater control of the affairs of the Institute and so facilitate administration and management, whilst furthering the objects of the Institute and preserving its historic continuity. It was decided that this could best be achieved by transferring to the bye-laws many of the administrative provisions of the Original Charter, so giving the Institute greater powers of regulating its affairs by bye-law. At the same time, it was considered necessary to amend other clauses of the Original Charter, to redraft the bye-laws as a whole so as to bring them up-to-date, to remove difficulties and obscurities present in the existing clauses and bye-laws and to put them in a form, which experience had indicated would best suit the needs of the Institute and its members.

4 The foregoing aims were achieved in 1948 by the granting of the Supplemental Charter and the allowance of the new bye-laws. All the operative clauses of the Original Charter were repealed and replaced by the clauses of the Supplemental Charter, but the historical preamble of the Original Charter and the all-important incorporation clause, with its date 11th May 1880, were preserved. Moreover, the Supplemental Charter (clause 19) provides that it shall be read as one with the Original Charter and shall operate as though it had been granted with the Original Charter. There has thus been no break in the continuity of the Institute's history. It remains a body incorporated by Royal Charter on 11th May 1880.

5 In this booklet, the sections of the Royal Charter of 1880 which remain unaltered appear in 1.2. The Supplemental Charter of 1948 then follows in 1.3.

6 Clause 17 of the Supplemental Charter gives the Institute power to alter, amend or add to the Supplemental Charter, subject to allowance by Her Majesty in Council. In 1957, this power was used to implement a Scheme of Integration to integrate The Society of Incorporated Accountants with the Institute. Copies of that Scheme are on record in the Institute library.

7 Substantial amendments to the Supplemental Charter have been made since 1957, with a major revision in 1972 and 1973 to give the Council power to deal with largely administrative matters by regulation. The Supplemental Charter has since been amended as and when required.

8 For the furtherance of the objects of the Institute and the better execution of the Royal Charters the Institute has power under clause 15 of the Supplemental Charter to make new bye-laws and to rescind or vary existing bye-laws but the bye-laws for the time being must not be inconsistent with the express provisions of the Supplemental Charter. This power is exercised by members in special meeting but new bye-laws do not have effect until allowed by the Privy Council.

9 As stated in paragraph 1 above a new set of bye-laws was appended to the Supplemental Charter of 1948. A complete revision of the bye-laws was approved at a Special Meeting of the Institute on 8 June 1993 and received Privy Council allowance on 8 February 1994. Subsequent amendments agreed at Special Meetings and receiving Privy Council Allowance have been incorporated into Section 1.4.

Royal Charter of the 11th May 1880

Victoria by the Grace of God

of the United Kingdom of Great Britain and Ireland Queen
Defender of the Faith

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING!

Whereas an Humble Petition has been presented to Us by the following Public Accountants namely William Turquand of Coleman Street in the City of London John Unwin Wing of Prideaux Chambers Sheffield Anthony Wigham Chalmers of 5 Fenwick Street Liverpool Henry Grosvenor Nicholson of 100 King Street Manchester Jarvis William Barber of Alliance Chambers George Street Sheffield and Charles Henry Wade and Edwin Guthrie both of Marsden Street Manchester setting forth (among other things) to the effect following:

That the Petitioner William Turquand is the President of a Society established in 1870 in London called the Institute of Accountants that the Petitioner John Unwin Wing is the President of a Society established in 1872 in London called the Society of Accountants in England that the Petitioner Anthony Wigham Chalmers is the President of a Society of Accountants established in 1870 at Liverpool that the Petitioner Henry Grosvenor Nicholson is the President of a Society of Accountants established in 1871 at Manchester that the Petitioner Jarvis William Barber is the President of a Society of Accountants established in 1877 at Sheffield and that the Petitioners Charles Henry Wade and Edwin Guthrie are Public Accountants at Manchester.

That the Profession of Public Accountants in England and Wales is a numerous one and their functions are of great and increasing importance in respect of their employment in the capacities of Liquidators acting in the winding-up of companies and of Receivers under decrees and of Trustees in bankruptcies or arrangements with creditors and in various positions of trust under Courts of Justice as also in the auditing of the accounts of public companies and of partnerships and otherwise.

That the aggregate number of members of the said societies exceeds 500 and in that number are comprised nearly all the leading Public Accountants of England and Wales.

That the said societies were not established for the purposes of gain nor do the members thereof derive or seek any pecuniary profit from their membership but the societies aim at the elevation of the profession of public accountants as a whole and the promotion of their efficiency and usefulness by compelling the observance of strict rules of conduct as a condition of membership and by

setting up a high standard of professional and general education and knowledge and otherwise.

That in the judgement of the Petitioners it would greatly promote the objects for which the said societies have been instituted and would also be for the public benefit if the members thereof were incorporated as one body as besides other advantages such incorporation would be a public recognition of the importance of the profession and would tend to gradually raise its character and thus to secure for the community the existence of a class of persons well qualified to be employed in the responsible and difficult duties often devolving on Public Accountants.

That the Petitioners desire and propose that if incorporation by Charter is granted to them such conditions should be laid down as would require for the admission to membership of persons now already following the profession either long actual experience in the profession or service for a long time in the capacity of a Public Accountant's Clerk or else the passing of appropriate examinations under the supervision of the Corporation.

That with respect to the admission to membership of persons hereafter desirous of entering into the profession the Petitioners contemplate that subject to future determination by the Council or Governing Body of the Corporation a strict system of examination should be established including a preliminary examination to be held before the candidate for membership enters on service under articles an intermediate examination to be held in the course of his service and a final examination and that no person be allowed to present himself for the final examination unless he has served for five years at least or if he has graduated in any of the Universities of the United Kingdom then for three years at least under articles as a Public Accountant's Clerk.

That the examinations would (subject to future determination by the Governing Body of the Corporation) be of such a character as to test the knowledge of the candidates not only in bookkeeping and accounts but also in the principles of mercantile law and in the law and practice of bankruptcy and the winding-up of companies.

That the Petitioners believe that such a system would have an educational effect of a highly beneficial kind.

That the Petitioners further desire and propose that the Corporation should lay down such rules respecting admission to membership and exclusion therefrom as would prevent Public Accountants from mixing the pursuit of any other business with the discharge of the higher duties devolving on them as Public Accountants and as would put an end to the practice which has been much objected to of the division of profits with persons in other professions or callings in the form of commission or the like.

That the Petitioners further desire that the members of the Corporation

should be authorised to annex to their names distinctive letters indicative of their membership.

And whereas by the said Petition, the Petitioners on behalf of themselves and the other members of the said societies and of the profession generally most humbly prayed that We would be graciously pleased to grant our Royal Charter for incorporating under the title of the Incorporated Institute of Accountants in England and Wales or under such other title as to Us might seem fit and with all such powers and privileges as are mentioned in the Petition or such others as to Us might seem fit the Petitioners and the several persons who were then members of the said societies or of any of them and other Public Accountants who might thereafter become members of the Corporation in pursuance of the regulations thereof.

Now therefore we having taken the said Petition into Our Royal consideration and being satisfied that the intentions of the Petitioners are laudable and deserving of encouragement have constituted erected and incorporated and We by Our Prerogative Royal and of Our especial Grace certain knowledge and mere motion by these Presents for Us and Our Royal Successors do constitute erect and incorporate into one body politic and corporate by the name of THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES the said William Turquand John Unwin Wing Anthony Wigham Chalmers Henry Grosvenor Nicholson Jarvis William Barber Charles Henry Wade and Edwin Guthrie and such other persons as are by this Our Charter made or declared to be members or as shall hereafter be admitted as members of the said body corporate with perpetual succession and a Common Seal and with power to alter and renew the same at discretion Willing and ordaining that the said body corporate (hereinafter referred to as the Institute) shall be capable in law to take and hold any personal property and also to take purchase and hold lands buildings and hereditaments for the purposes of the Institute with power to dispose thereof but so that the Institute shall apply its profits (if any) or other income in promoting its objects and shall not at any time pay any dividend to its Members.

And we do also will ordain and declare as follows (that is to say): (*Clauses* 1 *to* 28 *inclusive were revoked by clause* 32 (*now clause* 18) *of the Supplemental Charter of* 21*st December* 1948.)

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

Witness Ourself at our Palace of Westminster, the Eleventh day of May in the Forty third Year of Our Reign.

By Her Majesty's Command,

CARDEW.

Supplemental Charter of the 21st December 1948

George the Sixth

by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING!

Whereas Our Royal Predecessor Queen Victoria in the year of Our Lord 1880 by Royal Charter dated 11th day of May in the forty-third year of Her Reign constituted the seven persons named therein a Body Politic and Corporate by the name of The Institute of Chartered Accountants in England and Wales with perpetual succession and a Common Seal.

And Whereas the said Institute of Chartered Accountants in England and Wales (hereafter referred to as 'the Institute') has presented a Humble Petition to Us setting forth to the effect following:

That the Institute since the grant of the said Royal Charter (hereinafter referred to as 'the Original Charter') has pursued the objects of the Original Charter and has aimed at the elevation of the accountancy profession as a whole and the promotion of its efficiency and usefulness by compelling the observance of strict rules of conduct as a condition of membership and by setting up a high standard of professional and general education and knowledge and has thereby secured for the community the existence of a class of persons well qualified to be employed in the responsible and difficult duties devolving on professional accountants.

That since the grant of the Original Charter the number of members of the Institute has greatly increased and is now about 14,000.

That since the grant of the Original Charter the duties and responsibilities of members of the Institute have been extended and widened as a result of the growth and development of industry and commerce and the increasing diversity and complexity of all forms of social and economic activity.

That it is the belief of the Institute that by reason of the foregoing the furtherance of the objects for which the Institute was originally constituted and incorporated has become increasingly desirable in the public interest and the responsibilities of the Institute have become of greater importance than at the date of the grant of the Original Charter.

That it is the belief of the Institute that the furtherance of the aforesaid objects would be facilitated and the public interest served if certain limits

upon the operations of the Institute were extended and further powers and privileges granted to the Institute and if certain other variations were made in the Original Charter and if certain ordinances of the Original Charter with the aforesaid further powers and privileges and variations were restated in terms which would facilitate the management of the affairs of the Institute.

That the Institute being desirous of furthering the aforesaid objects and of serving the public interest desires that We should be graciously pleased to command that as from a date to be fixed by Us a new Royal Charter should be granted to the Institute supplemental to the Original Charter granting to the Institute certain additional powers and privileges and restating certain of the ordinances of the Original Charter with certain variations in the form and manner expressed in a document appended to the Petition but subject to any amendments and alterations which to Us may seem desirable.

That the Institute desires that it should be empowered to frame new bye-laws subject to confirmation by the Lords of Our Most Honourable Privy Council to give effect to the powers to be granted by such new Royal Charter but in the hope and humble expectation that We will be pleased to grant a new Royal Charter as aforesaid the members of the Institute at meetings held on the 21st April 1948 and the 5th May 1948 have approved the bye-laws appended to this Our Charter and signed by the President of the Institute and the Institute desires that We may be pleased to ordain that the said bye-laws shall become and be valid as the bye-laws of the Institute from the date fixed by Us as the date of the aforesaid new Royal Charter.

The Institute has by the said Petition most humbly prayed that We may be graciously pleased to grant to the Institute as from a date to be fixed by Us a new Royal Charter supplemental to the Original Charter granting to the Institute certain additional powers and privileges and restating with certain variations certain of the ordinances of the Original Charter in the manner hereinbefore expressed and empowering the Institute to frame new bye-laws subject to confirmation by the Lords of Our Most Honourable Privy Council to give effect to the powers to be granted by the said new Royal Charter and ordaining that the bye-laws appended to the Petition become and be valid from the said date as the bye-laws of the Institute.

Now therefore we having taken the said Petition into Our Royal consideration by virtue of Our Prerogative Royal and moved thereto by Our desire to further the objects of the Institute for Ourselves Our Heirs and Successors in addition to and notwithstanding anything to the contrary contained in the said Original Charter granted by Our Royal Predecessor Queen Victoria are graciously pleased to grant ordain and declare as follows namely:

Objects and powers

1 (a) The principal objects of the Institute are:

(i) to advance the theory and practice of accountancy, finance, business

and commerce in all their aspects, including in particular auditing, financial management and taxation;

(ii) to recruit, educate and train a body of members skilled in these arts;

(iii) to preserve at all times the professional independence of accountants in whatever capacities they may be serving;

(iv) to maintain high standards of practice and professional conduct by all its members; and

(v) to do all such things as may advance the profession of accountancy in relation to public practice, industry, commerce and the public service.

(b) In furtherance of its principal objects the Institute shall have the following ancillary objects and powers, namely:

(i) to borrow with or without security, to purchase, take on lease of hire or in any other way acquire any real or personal property and to sell, lease, mortgage or otherwise deal in any way with any such real or personal property;

(ii) to construct, alter and maintain any buildings considered necessary for the use of members and others or for any purposes of the Institute and to provide the same and any buildings and rooms in the occupation of the Institute with all proper and necessary fixtures, fittings, furniture and other equipment;

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

(iv) to publish or distribute books pamphlets and journals relating to the affairs of the Institute or promoting and furthering the interests, usefulness and efficiency of members and others or of the accountancy profession generally;

(v) to make gifts or contributions for national, public, educational or charitable purposes;

(vi) to make grants to universities or other educational establishments, to provide finance and make grants for courses, lectures, classes or other tuition or for research and to establish scholarships or exhibitions and give prizes with a view to promoting or furthering the interests of members and prospective members of the Institute;

(vii) to organise, finance and maintain schemes for the granting of diplomas, certificates and other awards (with or without prior examination) with a view to promoting the principal objects of the Institute and to provide, if it thinks fit (whether in such scheme or otherwise) and subject to payment of such fee, subscription or other sums as may be prescribed by or pursuant to the bye-laws of the Institute, for the use of designatory letters by persons granted such diplomas, certificates and awards; provided always that no such scheme shall become operative unless and until it shall have been approved by the Council of the Institute (in this Our Supplemental Charter referred to as 'the Council') and so that no designatory letters shall be used in connection with any such scheme unless such use shall have been expressly approved by the Lords of Our Most Honourable Privy Council; and provided also that no member shall in any circumstances be obliged to participate in any such scheme;

(viiA) to organise and establish finance (directly or indirectly), maintain and participate in, and agree to be subject to, alone or in conjunction with

one or more other bodies, a body or bodies, independent of the Institute, having responsibility for providing independent oversight of the accountancy profession and any related matter, including (but without limitation): considering and reviewing the standard setting activities of the Institute and its systems of discipline, professional conduct and regulation; adopting and publishing professional and ethical standards relevant to the profession; and adopting a scheme or schemes providing for the investigation and discipline of persons and bodies subject to it which shall, if the Institute so agrees, include persons and bodies subject to discipline by the Institute;

(viii) to make grants or other contributions to local or other societies having as their object the furtherance of the objects of the Institute;

(viiiA) without prejudice to the generality of sub-clause (a)(iv) and sub-clause (b)(viiA) of this clause, the Institute shall have power to organise, finance and maintain alone or in conjunction with one or more other professional accountancy bodies (together in this sub-clause called 'the participants') a scheme for investigating and making findings as to the professional or business conduct, efficiency and competence of any member of any of the participants or of any firm which is or at any time has been composed in whole or in part of members of any of the participants who are in public practice in Our United Kingdom, where (in any such case) in the opinion of the participants (or as laid down in the scheme) the circumstances to be investigated give rise to or include questions of public concern; and if any such finding be adverse to any member or firm as aforesaid the scheme may provide for the making of an appropriate order or orders against such member or firm. Any such scheme shall be binding upon the Institute, its members and firms as aforesaid. If any such scheme contains any provision which enables the Council (alone or in conjunction with others) to alter or amend the scheme, the Council shall not permit any alteration or amendment to be made which in the opinion of the Council would fundamentally alter the scheme as then in force, except with the further approval of the Institute in general meeting and of the Lords of Our Most Honourable Privy Council;

(viiiB) to organise, establish, finance and maintain a scheme, system or arrangements for Practice Assurance, consisting of the inspection, monitoring and review of the professional and business efficiency and competence of:

(a) any body corporate or partnership including a limited liability partnership which is wholly or partly composed of member engaged in public practice; or

(b) any member who holds a current practising certificate; or

(c) by agreement, any body corporate or partnership including a limited liability partnership or sole practitioner engaged in public practice as accountants;

and to levy such fee as is prescribed by or pursuant to the bye-laws from such body corporate, partnership, sole practitioner or member;

(viiiC) to perform any function which by virtue of, or for the purposes of,

any statute or agreement may be performed by the Institute in relation to members, non-members or persons comprised wholly or partly of members or non-members;

(ix) to pay remuneration to and the reasonable expenses of officers and servants of the Institute and to pay pensions and gratuities to, or to make other provision for, former officers and servants of the Institute and their dependants;

(x) to pay such sums for the reasonable expenses of members of the Council as may be permitted by the bye-laws and to pay remuneration to and the reasonable expenses of any other persons (whether members of the Institute or not) who render services to the Institute;

(xi) to organise, finance and maintain alone or in conjunction with one or more other professional accountancy bodies (and to delegate to any other person or body the operation and performance of) any schemes or arrangements for the compensation of loss, the monitoring of compliance, the investigation of complaints and discipline;

(xii) 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 Supplemental Charter and the bye-laws of the Institute as from time-to-time in force (in this Our Supplemental Charter referred to as 'the bye-laws'), as may be incidental or conducive to promoting, furthering or protecting the interests, usefulness and efficiency of the Institute and its members and of the accountancy profession.

The Council

2 (a) There shall be a Council of the Institute and subject to the provisions of this Our Supplemental Charter and of the bye-laws, the management of the affairs and business of the Institute shall be vested in the Council which, in addition to the powers and authorities by this Our Supplemental Charter or otherwise expressly conferred on it, may exercise all such powers and do all such acts and things as may be exercised or done by the Institute as are not hereby or by the bye-laws required to be exercised or done by the Institute in general meeting but so that no addition to or rescission or variation of the bye-laws shall invalidate any prior act of the Council which would have been valid if the same had not been made.

(b) Subject to the provisions of this our Supplemental Charter the Council may delegate any of its powers, authorities or discretions in accordance with the bye-laws.

(c) The Council shall consist of such members and provisional members, with such qualifications and appointed or elected in such manner and holding office for such periods or on such terms as to re-appointment or re-election and otherwise, as may be prescribed by or pursuant to the bye-laws. The President, Deputy-President and Vice-President of the Institute shall also be the President, Deputy-President and Vice-President of the Council.

Classes of members

3 The members of the Institute shall be divided into two classes to be styled respectively fellows and associates of the Institute with such practising rights as may be prescribed by the bye-laws. There shall in addition be a class to be styled honorary members of the Institute for whom the bye-laws and regulations shall make express provision, and who may use after their name the designation 'FCA (Honorary)' (or such other letters as may be approved by the Privy Council). Save as so provided, the provisions of this Our Supplemental Charter and the bye-laws and regulations shall not apply to an honorary member of the Institute (but they shall apply to an honorary member who is or has been a member or an affiliate of the Institute to the same extent as to any other person who is or has been a member or an affiliate of the Institute). Provided always that honorary members shall not be members of the Institute and (save as aforesaid) may not use the designatory letters applicable to members for which clause 9 of this Our Supplemental Charter provides.

Continuance of existing members

4 The persons who at the date of the grant of this Our Supplemental Charter are fellows or associates of the Institute shall continue to be fellows or associates of the Institute subject to the provisions of this Our Supplemental Charter and of the bye-laws of the Institute.

Admission as associate

5 Any person who has satisfied such requirements as may from time-to-time be prescribed by or pursuant to the bye-laws in respect of training, examinations, fitness for membership or otherwise shall be entitled to be admitted an associate of the Institute.

Associate becoming a fellow

6 On and after the first day of January 1960 an associate of the Institute shall become a fellow of the Institute on the first day of January next following the completion by him of ten years of membership of the Institute: save that an associate may become a fellow before that date on establishing to the satisfaction of the Council and in such manner as the Council may require that he has been continuously for at least five years a member of the Institute in practice as a public accountant as his main occupation on which the decision of the Council shall be final. For the purposes of this Clause membership of the Society of Incorporated Accountants prior to becoming a member of the Institute shall be counted as membership of the Institute.

Associate becoming a fellow revised provisions

7 (a) The provisions of clause 6 of this Our Supplemental Charter shall cease to apply on the first day of January 1979. But until that date an associate shall become a fellow prior to the expiration of the qualifying period laid down in the said Clause 6 if he satisfies the Council in the prescribed manner as to his fitness to become a fellow.

(b) As from and including the first day of January 1979:

(i) an associate admitted to membership of the Institute prior to the first day of July 1978 shall automatically become a fellow on the first day of January next following the completion by him of five years of membership or on such earlier date on which he satisfies the Council in the prescribed manner as to his fitness to become a fellow;

(ii) an associate admitted to membership of the Institute on or after the first day of July 1978 shall become a fellow if but only if he satisfies the Council in the prescribed manner as to his fitness to become a fellow.

(c) A person shall satisfy the Council in the prescribed manner as aforesaid if he complies with such requirements (which may include but need not be limited to the passing of oral or written tests or both and evidence of practical accountancy experience) as shall be prescribed in regulations made from time-to-time by the Council in its absolute discretion.

Fees and subscriptions

8 Every person on his admission to be a member of the Institute shall pay such fee and every member shall pay such subscription or other sums as may be prescribed by or pursuant to the bye-laws of the Institute.

Description of members and distinctive letters

9 A member of the Institute may describe himself as a Chartered Accountant and may use after his name in the case of a fellow the initials F.C.A. (representing the words 'Fellow of the Institute of Chartered Accountants in England and Wales') and in the case of an associate the initials A.C.A. (representing the words 'Associate of the Institute of Chartered Accountants in England and Wales').

Power to organise, finance and maintain a scheme for 'Accounting Technicians'

10 Without prejudice to the generality of the powers conferred upon the Institute by this Our Supplemental Charter, the Institute shall have power to organise, finance and maintain a scheme for the training and qualification of a body of persons to be known as 'accounting technicians'. The powers conferred upon the Institute by this clause shall be exercisable by the Council and any such scheme shall be in such form as the Council may from time-to-time consider appropriate and in particular may include provision for adding to, rescinding or varying the scheme and any regulations made thereunder for the purpose of implementing the same.

Provided always that accounting technicians shall not be members of the Institute and that the Institute shall not be entitled to authorise the use of any designatory letters in connection with any such scheme.

Power to admit members of Scottish and Irish Institutes of Chartered Accountants

11 Notwithstanding anything in this Our Supplemental Charter or the bye-laws contained, the Council shall have power in its absolute discretion to

admit to membership of the Institute any qualified member of The Institute of Chartered Accountants of Scotland or of The Institute of Chartered Accountants in Ireland upon such terms and conditions as the Council from time-to-time considers appropriate provided that such terms and conditions are also approved by the Council of the other Institute in question.

Power to admit members of overseas accountancy bodies

12 (a) Notwithstanding anything in this our Supplemental Charter or the bye-laws contained, the Council shall have power in its absolute discretion to admit to membership of the Institute any qualified member of any accountancy body or any individual authorised as an accountant by an appropriate authority outside the United Kingdom and the Republic of Ireland upon such terms and conditions as the Council from time-to-time considers appropriate provided that such accountancy body or, in the case of an authorising authority, the criteria upon which such individuals may be admitted to membership of the Institute, shall first have been approved by the Lords of Our Most Honourable Privy Council, but subject to paragraph (b) below.

(b) Notwithstanding anything in this Our Supplemental Charter, the Council shall treat an application for membership of the Institute from a national of a member state of the European Union, or of a state in which the European Economic Area Agreement is in force, who holds a diploma in accountancy to which any Directive in force in the European Union (as adapted by the said Agreement) applies, in accordance with the said Directive, regulations made in pursuance thereof and, where appropriate, the said Agreement and the European Economic Area Act 1993.

Affiliate status

12A (a) The Council shall have the power in its absolute discretion to grant affiliate status to persons not being members of the Institute upon such terms and conditions as the Council from time-to-time considers appropriate.

(b) Every person on being granted affiliate status shall pay such fee and every affiliate shall pay such subscription or other sums as may be prescribed by or pursuant to the bye-laws of the Institute.

(c) An affiliate shall be subject to the provisions as to discipline set out in this Our Supplemental Charter and of the bye-laws of the Institute, including any scheme maintained under sub-paragraphs (viiA) or (viiiA) of Clause 1(b) hereof, and references to members in such provisions shall be taken to include references to affiliates.

(d) Provided always that affiliates shall not be members of the Institute and shall not be entitled to any of the rights of members (other than the rights of a member in disciplinary proceedings) and that the Institute shall not be entitled to authorise their use of any designatory letters.

Examinations

13 The Council shall from time-to-time cause examinations to be held of all persons seeking to become members of the Institute (or assessment to take

place of such persons on such terms and conditions as the Council from time to time considers appropriate).

Persons ceasing to be members to have no claim on funds or property

14 If any person ceases for any cause whatever to be a member of the Institute he shall not nor shall his representatives have any interest in or claim against the funds or property of the Institute.

Power to make bye-laws

15 (a) The Institute may from time-to-time, by resolution passed by a majority of not less than two-thirds of the members present and voting (in person or by proxy) at a meeting specially convened for the purpose with at least twenty-one days' notice in writing (which expression shall be taken to mean written or produced by any substitute for writing or partly one and partly another, including in electronic form), make such bye-laws for regulating the affairs of the Institute as to the Institute seem fit and from time-to-time rescind or vary any of the bye-laws and make others in their stead, but so that the bye-laws shall not be in any respect inconsistent with the express provisions of this Our Supplemental Charter.

(b) No new bye-law and no rescission or variation of any bye-law shall have effect unless and until the same has been submitted to and allowed by the Lords of Our Most Honourable Privy Council, of which allowance a Certificate under the hand of the Clerk of Our said Council shall be conclusive.

(c) Unless and until added to rescinded or varied, the bye-laws in force immediately upon the allowance of this clause by Us in Council shall constitute the bye-laws.

Power to make regulations

16 The Council may from time-to-time make such regulations as it thinks fit for any of the following purposes:

(a) carrying into effect any provision of this Our Supplemental Charter or of the bye-laws or otherwise for regulating the affairs of the Institute; or

(b) the Institute carrying out the functions of a designated professional body or a recognised professional body or a recognised supervisory body or a recognised qualifying body, under applicable legislation whether within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland, or under equivalent legislation in other jurisdictions, or for the purpose of carrying out any other functions thereunder; or

(c) without prejudice to the generality of the foregoing, the Institute carrying out any function which by virtue of, or for the purposes of, any statute or agreement may be performed by the Institute;

and may rescind, vary or add to any such regulations provided always that no such regulations shall be in any way inconsistent with the express provisions of this Our Supplemental Charter or of the bye-laws.

Power to amend Supplemental Charter

17 The Institute may from time-to-time by resolution passed by a majority

of not less than two-thirds of the members present and voting (in person or by proxy) at a meeting specially convened for the purpose with at least twenty-one days' notice in writing (which expression shall be taken to mean written or produced by any substitute for writing or partly one and partly another, including in electronic form) alter amend or add to this Our Supplemental Charter and such alteration amendment or addition shall when allowed by Us in Council become effectual so that the said Original Charter and this Our Supplemental Charter shall thenceforth continue to operate as if they had originally been granted and made accordingly.

Revocation of Clauses 1–28 of the Original Charter
18 Clauses numbered 1–28 inclusive of the said Original Charter shall be revoked and be of no effect but all admissions elections appointments acts and things lawfully effected made or done under and in accordance with powers granted under any of the aforesaid clauses of the said Original Charter shall be deemed to have been effected made or done under powers granted by this Our Supplemental Charter and shall operate and take effect from the date of such admission election appointment or act.

Supplemental Charter and Original Charter to be read as one
19 As far as is consistent with the terms hereof this Our Supplemental Charter shall be read as one with the said Original Charter and henceforward shall operate as though it had been granted with the said Original Charter.

Scheme of Integration
20 Notwithstanding anything hereinbefore in this Our Supplemental Charter contained, the Institute shall have power to carry into effect the Scheme of Integration dated the 5th day of December 1956 for the integration of the Society of Incorporated Accountants with the Institute (a copy of which Scheme is appended to this Our Supplemental Charter) and the provisions of such Scheme shall be binding upon the Institute and its members. Subject to clause 15 of this Our Supplemental Charter the Institute may make such bye-laws for the purpose of carrying the said Scheme into effect as to the Institute seem fit and may from time-to-time rescind or vary any such bye-laws and make others in their stead; and any such bye-law may empower the Council to issue regulations for the purpose aforesaid. The above mentioned Scheme of Integration shall be alterable in like manner and upon the like conditions as the bye-laws of the Institute and references in this Our Supplemental Charter and the bye-laws to the said Scheme shall be construed as references to such Scheme as from time-to-time in force.

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

Witness Ourselves at Westminster this twenty-first day of December in the thirteenth year of Our Reign.

By Warrant under the King's Sign Manual.

NAPIER.

Principal Bye-Laws

Made under article 15 of the Supplemental Charter dated 21st December 1948

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Principal Bye-Laws made under clause 15 of the Supplemental Charter dated 21st December 1948

Chapter I. Interpretation of Terms and Citation

Interpretation of terms

1 (a) In *these bye-laws*, unless inconsistent with the subject or context:

(i) the following expressions shall have the following meanings:

Appeal Committee means the Appeal Committee appointed by the *Council* under the Schedule to the Disciplinary Bye-laws (appointment of Investigation, Disciplinary and Appeal Committees);

approved training means practical training and experience approved by the *Council* and obtained at or from a *training office*;

Committee means a committee appointed by the *Council* pursuant to bye-law 49(a) (concerning delegation of powers to committees) and any of the *Appeal Committee*, the *Disciplinary Committee* and the *Investigation Committee*;

Council means the Council of the Institute;

Disciplinary Bye-laws means the Disciplinary Bye-laws of the Institute;

Disciplinary Committee means the Disciplinary Committee appointed by the *Council* under the Schedule to the Disciplinary Bye-laws (appointment of Investigation, Disciplinary and Appeal Committees);

electronic mail includes electronic transmission in any form through any medium (including, without limitation, telephonic, facsimile and email transmission, and publication on the Internet);

European Community includes the European Economic Area where any provision relates to a matter to which the European Economic Area Agreement relates;

head of staff means the person appointed by the *Council* pursuant to bye-law 50 (power to appoint head of staff);

Investigation and Discipline Scheme means the Scheme made and adopted on behalf of the Accountancy Investigation and Discipline Board Limited by its managing body, the Accountancy Investigation and Discipline Board, in which the Institute participates pursuant to sub-clause 1(b)(viiA) of the Supplemental Charter, and in these bye-laws any reference to the *Investigation and Discipline Scheme* shall be deemed also to include the *Joint Disciplinary Scheme*;

Investigation Committee means the Investigation Committee appointed by the *Council* under the Schedule to the Disciplinary Bye-laws (appointment of Investigation, Disciplinary and Appeal Committees);

in writing means written or produced by any substitute for writing or partly one and partly another, including in electronic form;

Joint Disciplinary Scheme means the Scheme established with other accountancy bodies pursuant to sub-clause 1(b)(viiiA) of the *Supplemental Charter* (power to establish a disciplinary scheme);

member means a member of the Institute and *membership* shall be construed accordingly;

member firm means

(a) a *member* 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 *members*; 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 *members*; 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 *members*; and
    (ii) more than 50 per cent of the nominal value of the voting shares is held by *members*; and
    (iii) more than 50 per cent of the of the aggregate in nominal value of the voting and non-voting shares is held by members;

order includes any finding, term or condition in consequence of or upon which the *order* is made;

practice and *public practice* mean practice as a public accountant in any part of the world otherwise (subject to bye-law 51(b) (concerning directors of a body corporate and members of limited liability partnerships)) than as an employee;

practising certificate means a certificate issued to a *member* by the Institute authorising him to engage in *public practice*;

provisional member (formerly known as *student*) means a person:
(a) who is training under a *training contract*; or
(b) who has trained under such contract and is eligible either to sit for the professional examinations of the Institute or, having successfully sat those examinations, to apply for *membership*,
and for the purposes only of this definition an order under bye-law 22(7)(d) of the Disciplinary Bye-laws (concerning eligibility to sit examinations) shall be disregarded;

registered address means:
(a) in the case of a *member* in *practice*, the place of business registered by him with the Institute or, where more than one such place of business is registered by him, such place of business indicated by him as being his principal place of business; and
(b) in the case of a *member* not in *practice*, the address registered by him with the Institute;

regulations or *regulation* means regulations made by the *Council* or any *Committee* or *Sub-committee* pursuant to clause 16 of the *Supplemental Charter* (power to make regulations) and for the time being in force;

Royal Charters means the Royal Charter dated 11th May 1880 and the *Supplemental Charter* dated 21st December 1948;

Sub-committee means a sub-committee appointed by a *Committee* pursuant to bye-law 49(b) (power to delegate to sub-committees);

Supplemental Charter means the Supplemental Royal Charter dated 21st December 1948;

training contract means a contract of *approved training* registered with the Institute and in such form and containing such provisions as may be prescribed in *regulations*, made between a candidate for *membership* and the person or firm at or from whose office the *approved training* is to be given;

training office means an office which for the time being is authorised pursuant to *regulations* to train *provisional members*; and

United Kingdom includes the Channel Islands and the Isle of Man;

(iii) the expression '*these bye-laws*' includes the Schedules which shall have the same status and effect as if they were set out herein as part hereof; and

(iii) references to Schedules are to the Schedules to *these bye-laws*.

(b) The Interpretation Act 1978 applies to *these bye-laws* in the same way as it applies to an enactment.
(c) The headings are inserted for convenience only and shall not affect the construction of *these bye-laws*.
(d) *These bye-laws* may be cited as the Principal Bye-laws of the Institute of Chartered Accountants in England and Wales.

Chapter II. Admission to membership

Admission to and refusal of membership

2 (a) All admissions to and refusals of *membership* shall be by the *Council* or as it may by *regulation* prescribe.
(b) An applicant for admission to *membership* must satisfy such requirements as to education, *approved training*, examinations, fitness for *membership* or otherwise as shall be prescribed in *regulations*.

Admission notwithstanding informality in training

3 The *Council* may, in any particular case in which it considers it desirable to do so, admit a person to *membership* notwithstanding any deficiency in his *training contract* or his *approved training* thereunder.

Applications for admission to membership

4 (a) An application for admission to *membership* shall be in writing and shall be signed by the applicant who shall thereby undertake, if admitted, to be bound by the *Royal Charters*, bye-laws of the Institute and *regulations* for the time being in force.
(b) Every such application shall comply with such other requirements (not being inconsistent with *these bye-laws*) as shall be prescribed in regulations.

Honorary members

4A (a) The Council may, by a resolution passed by a majority of not less than three-fourths of the members present and voting at a meeting, admit a person to be an honorary member of the Institute.
(b) An honorary member (in his capacity as an honorary member):
(i) shall not be bound by the Supplemental Charter and the bye-laws and regulations except where these make express provision relating to honorary members;
(ii) shall not be liable to pay any fee or subscription to the Institute;
(iii) is not entitled to receive notice of or attend or vote at any meetings of the Institute; and
(iv) for the avoidance of doubt, shall not be subject to the provisions as to discipline set out in the Supplemental Charter and in the bye-laws.
(c) The Council may by a resolution passed by a majority of not less than three-fourths of the members present and voting at a meeting, remove a person from honorary membership for good cause.

Chapter III. Members

Certificate of membership
5 A *member* shall be entitled on being admitted to *membership* to a certificate and on changing his class of *membership* to a certificate stating his new class of *membership*.

Resignation of membership
6 A *member* may tender his resignation by notice to the Institute and on its acceptance by the *Council*, but not until then, he shall cease to be a *member*. Provided that any *member* whose notice of resignation has not been received before 1st February in any year shall remain liable for any fees or subscriptions in respect of that year.

Cessation of membership
7 A *member* shall thereupon cease to be a *member*:

(a) if he has a bankruptcy order made against him;
(b) if he fails to pay his annual subscription by 31st March in the year in which it becomes due or any increase in such subscription before the expiration of three months after the increase becomes due unless the *Council* otherwise decides; or
(c) if he fails to comply with any *order* as to fines and/or costs made by the *Investigation Committee*, the *Disciplinary Committee* or the *Appeal Committee* or any Tribunal appointed under the *Investigation and Discipline Scheme* by the date or dates upon which the same are due. Provided that in respect of a *member* whose *registered address* is outside the *United Kingdom*, the *Council* may, if it is satisfied that for legal reasons beyond the *member's* control he is unable to remit the amount due, extend the period within which the amount must be paid.

Return of certificates
8 (a) If a person ceases for any reason to be a *member* he shall thereupon forthwith return to the Institute all certificates issued to him by the Institute, including his certificate of *membership, practising certificate* and examination certificates (if any), unless the *Council* otherwise decides.
(b) On the coming into force of any order made against a person, or body under *the Disciplinary Bye-laws*, that person or body shall forthwith return to the Institute all certificates issued to him or it by the Institute which are affected by the order.

Re-admission of former members
9 Any person who has ceased for any reason to be a *member* may be re-admitted to *membership* on such terms and conditions as the *Council* may consider appropriate.

Chapter IV. Meetings of the Institute

Annual meeting

10 (a) The annual meeting shall be held in London on the first Tuesday in June in every year or at such other place in England or Wales or on such other day (being not earlier than the first Tuesday in May and not later than the second Tuesday in June) as the *Council* may decide.

(b) The ordinary annual business of the Institute shall be the appointment or re-appointment of auditors and the reception and consideration of the annual report of the *Council* and the accounts of the Institute with the auditors' report thereon.

Special meeting

11 (a) The *Council* may whenever it thinks fit convene a special meeting and shall do so:

(i) on receipt by the Institute of a requisition in writing, signed by not less than two hundred and fifty *members* and stating the object of the proposed meeting, provided both that the said requisition requires the special meeting to be held on the same day as the annual meeting of the Institute and that the Institute has received the said requisition not later than 21st February in the relevant year; or

(ii) within 56 days from the receipt by the Institute of a requisition in writing signed by not less than one per cent of the *members* as at the end of the calendar year prior to the date of the said requisition and stating the object of the proposed meeting.

(b) A requisition may consist of several documents in like form each signed by one or more *members*.

Meeting at more than one place

11A (a) The *Council* may resolve to enable *members* to attend an annual or special meeting by simultaneous attendance and participation at more than one place. The *members* present in person or by proxy at each meeting place shall be counted in the quorum for, and entitled to vote at, the meeting in question. That meeting shall be duly constituted and its proceedings valid if the chairman of the meeting is satisfied that *members* attending at all the meeting places are able to:

(i) participate in the business for which the meeting has been convened;

(ii) hear and see all persons who speak (whether by the use of microphones, loudspeakers, audio-visual communications equipment or otherwise) in the principal meeting place (as defined in paragraph (b) of this bye-law) and any other meeting place; and

(iii) be heard and seen by all other persons so present in the same way.

(b) The meeting shall be deemed to take place at the place at which the chairman of the meeting is present (the 'principal meeting place').

Notice of meetings

12 (a) An annual or special meeting shall be called by at least twenty-one

days' notice, exclusive of the day on which it is served or deemed to be served and of the day on which the meeting is to be held. The notice shall specify the date, time and place of the meeting and, in the case of a meeting at which business other than the ordinary annual business of the Institute is to be transacted, the general nature of that business and shall be given in manner hereinafter mentioned to all *members* other than any as are not entitled to receive notices from the Institute. In the case of an annual meeting, the notice shall also specify the meeting as such and shall be accompanied by a copy of the annual report of the *Council*, subject to paragraph (c) of this bye-law a summary financial statement which complies with paragraph (d) of this bye-law, a list of the persons nominated or deemed to be nominated as auditors and particulars of any motions to be brought before the meeting under bye-law 13 (notice of motions).

(b) Every notice calling a meeting of the Institute shall be accompanied by a form of proxy complying with the provisions of bye-law 23 (form of proxy). Except that the Institute shall not be obliged to send out forms of proxy to the members for use at any adjourned meeting.

(c) The Institute shall send a copy of its accounts with the auditors' report thereon, instead of a summary financial statement, to any *member* who has given written notification to that effect to the Institute in such form as the *Council* may determine or accept and who has not revoked it.

(d) Every summary financial statement shall be derived from the accounts of the Institute, shall include the auditors' statement thereon and shall have been approved by the *Council*.

Notice of motions

13 A *member* wishing to bring before the annual meeting any motion not relating to the ordinary annual business of the Institute may do so provided that:

(a) the Institute has received notice of the proposed motion not later than 21st February in the relevant year;

(b) the Institute has received notice from not less than ten *members* entitled to vote at the annual meeting not later than 21st February in the relevant year expressing their desire that the proposed motion should be brought before the annual meeting; and

(c) the proposed motion relates to matters affecting the Institute or the accountancy profession.

13A The Institute shall circulate with the notice calling the annual meeting before which any such motion as is referred to in bye-law 13 (notice of motions) is to be brought a statement not exceeding 1,000 words explaining the grounds on which the said motion is to be proposed. Provided that:

(a) the Institute shall have received notice to that effect and a copy of the said statement not later than 21st February in the relevant year; and

(b) the Institute shall not be bound to circulate a statement if it is reasonably satisfied that the rights conferred by this bye-law are being abused to secure needless publicity for a defamatory matter.

Transmission of accompanying documents
13B The documents required by bye-laws 12 and 13A to accompany or be circulated with the notice of meeting may be sent by electronic mail.

Chairman of meeting
14 At all meetings of the Institute the President or in his absence the Deputy-President or in his absence the Vice-President shall be chairman. If at any meeting the President, Deputy-President and Vice-President are not present within fifteen minutes after the time appointed for the meeting and willing to act, the members of the *Council* present shall choose one of their number to be chairman of the meeting. If no member of the *Council* is present or if all the members of the *Council* present decline to take the chair, the *members* present shall choose one of their number to be chairman of the meeting.

Quorum at meetings
15 Subject as hereinafter provided with regard to adjourned meetings, the quorum at any annual meeting shall be twenty *members* present in person and the quorum at any special meeting shall be thirty *members* present in person. No business other than the appointment of a chairman shall be transacted at any annual or special meeting unless the requisite quorum is present at the time when the meeting proceeds to business.

Lack of quorum
16 (a) If within fifteen minutes after the time appointed for an annual meeting (or such longer interval as the chairman of the meeting may determine) a quorum is not present, or if during the meeting a quorum ceases to be present, the meeting shall stand adjourned to such other date (being not less than fourteen nor more than twenty-eight days thereafter) and such time and place as the chairman of the meeting may determine. At such adjourned meeting any *members* present in person shall be a quorum and shall have power to pass any resolution and to transact all business which could lawfully have been transacted at the meeting from which the adjournment took place. At least seven days' notice of any meeting adjourned through want of a quorum shall be given in the same manner as for the original meeting.

(b) If within fifteen minutes after the time appointed for a special meeting (or such longer interval as the chairman of the meeting may determine) a quorum is not present, or if during the meeting a quorum ceases to be present, the meeting shall be dissolved.

Adjournment of meetings
17 Subject to *these bye-laws*, the chairman of any meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time-to-time (or sine die) and from place-to-place. No business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. Where a meeting is adjourned sine die, the date, time and place for the

adjourned meeting shall be fixed by the Council and not less than seven days' notice of the adjourned meeting shall be given in the same manner as for the original meeting. Subject thereto and as provided in bye-law 16 (lack of quorum), no notice need be given of an adjourned meeting unless it be so directed in the resolution for adjournment.

Amendment to resolutions

18 (a) No amendment shall be permitted to any resolution to alter, amend or add to the *Supplemental Charter* or *these bye-laws* or *the Disciplinary Bye-laws* except with the consent of the chairman of the meeting and then only if in the opinion of the chairman (whose decision shall be final) the amendment is one of form and not of substance.

(b) If an amendment is proposed to any resolution under consideration but is in good faith ruled out of order by the chairman of the meeting the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.

Polls

19 (a) At any annual or special meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless:

(i) before or on the declaration of the result of the show of hands a poll is demanded by the chairman of the meeting or by at least twenty-five *members* present in person or by proxy; or

(ii) the resolution is to alter, amend or add to the *Supplemental Charter* or *these bye-laws* or *the Disciplinary Bye-laws*, in which event a poll shall be taken without any show of hands or demand as aforesaid.

(b) A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

(c) If a poll is duly demanded or is required to be taken, it shall be taken in such manner as the chairman of the meeting may direct. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded or required to be taken. The chairman of the meeting may appoint scrutineers (who need not be *members*) and may adjourn the meeting to a date, time and place fixed by him for the purpose of declaring the result of the poll.

(d) A poll demanded on the choice of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded or required to be taken on any other question shall be taken either immediately or at such subsequent date (being not more than twenty-eight days after the date of the meeting), time and place as the chairman of the meeting may direct. Any business other than that upon which a poll has been demanded or is required may be proceeded with pending the taking of the poll. No notice need be given of a poll not taken immediately.

(e) On a poll, votes may be given personally or by proxy.

Each member to have one vote

20 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.

Chairman's casting vote

21 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded or is required to be taken shall be entitled to a second or casting vote.

Validity and result of vote

22 (a) No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered. Every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the meeting whose decision shall be final.

(b) Unless a poll is taken a declaration by the chairman of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded for or against the resolution.

Form of proxy

23 (a) The instrument appointing a proxy shall be in writing in such form as the *Council* may determine or accept and shall be signed by the appointor or his attorney duly authorised in writing. The signature on such instrument need not be witnessed.

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

Proxy must be a member

24 A proxy must be a *member*.

Deposit of proxy

25 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, must be deposited at such place or one of such places (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting or, if no place is so specified, with the *head of staff* at such place within the *United Kingdom* as the *Council* may from time-to-time prescribe not less than 48 hours before the time for holding the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used. In default it shall not be treated as valid. The instrument shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates.

25A (a) The *Council* may allow a proxy to be appointed, and the instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, to be sent, by electronic mail, on such terms and conditions as it

thinks fit. Provided that such instrument and other documents must be deposited by the time specified in bye-law 25.

(b) If and to the extent that the *Council* allows appointments to be made and documents to be sent in this way, any provisions of these bye-laws which are inconsistent therewith shall be of no effect in relation thereto. The *Council* may require such evidence it thinks fit to satisfy itself that any such appointment or document is genuine.

Validity of vote by proxy

26 A vote given or demand for a poll made in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointor or the revocation of the appointment of the proxy or of the authority under which the appointment was made: Provided that no notice of such death, insanity or revocation was received at the address for the time being applicable for the purposes of bye-law 25 (deposit of proxy) before the commencement of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the proxy is used.

Minutes of meetings of the Institute

27 Proper minutes shall be recorded of all resolutions and proceedings of meetings of the Institute. Every minute signed by the chairman of the meeting to which it relates or by the chairman of a subsequent meeting shall be sufficient evidence of the facts therein stated.

Chapter V. Fees and Subscriptions

Fees and subscriptions

28 The fees and subscriptions payable by *members* shall be those in force immediately before this bye-law came into effect or as from time-to-time approved by *members* at a meeting in accordance with bye-law 31.

Annual subscriptions: When Payable

29 All annual subscriptions payable under *these bye-laws* shall be due and payable on 1st January in each year or, in the case of *members* admitted after that date, as shall be prescribed in *regulations*.

Power to waive, reduce, remit or refund fees and subscriptions

30 Notwithstanding anything contained in *these bye-laws*, the whole or any part of any fees or subscriptions payable by a *member* may be waived, reduced, remitted or refunded and the period within which payment must be made may be extended in such manner as may be prescribed in *regulations*.

Power to vary fees and subscriptions

31 The Institute may from time-to-time by resolution passed by a majority of the *members* present and voting (in person or by proxy) on a poll at a

meeting change the then prevailing rates or types of fees and subscriptions payable by any or all *members*.

Practice assurance fees
31A For the purposes of bye-laws 28, 30 and 31 the term 'fees' does not include the fees payable under bye-law 54.

NOTE (This note does not form part of the bye-laws.)
Rates at 1 January 2004 are:

Annual subscriptions

The annual subscription for retired members is £21. Life Membership is available in certain circumstances at the same rate as a UK/EU member with five or more years of membership, ie £215.00.

Subscription Category	Rate
Members residing and/or practising in the *United Kingdom* or other member-state of the European Community):	
with five or more years of *membership*	£215.00
admitted on or after 1 January 2000	£215.00
admitted before 1 January 2000 and with less than five years of membership	£180.00
Members not residing and not practising in the *United Kingdom* or other member-state of the European Community:	
with five or more years of *membership*	£130.00
admitted on or after 1 January 2000	£130.00
admitted before 1 January 2000 and with less than five years of membership	£90.00

Practising certificate fee
Members in practice in the *United Kingdom* or other member-state of the European:.....£110.00

Members in practice elsewhere than in the *United Kingdom* or other member-state of the European Community:.....£50.00

Admission fee
£430.00

Chapter VI. The Council

Composition of Council

32 The *Council* shall consist of not more than 85 elected members, not more than 20 co-opted members appointed under bye-law 36 (co-opted members of Council), not more than five ex officio members appointed under bye-law 36A and not more than 10 ex officio members appointed under bye-law 36B (ex officio members of Council) and may act notwithstanding any vacancy in its body.

Election by constituencies

33 Election to the *Council* shall be on the basis of constituencies. The number and areas and/or type of such constituencies and the number of *members* which each constituency is to be entitled to elect to the *Council* shall be such as may be prescribed in *regulations*: and such *regulations* shall also, subject to any express provisions of *these bye-laws*, prescribe:

(i) the manner and conduct of *Council* elections including but not limited to the timing of such elections, the notices to be issued, the procedure for nominating candidates, the procedure for holding, voting at, determining and announcing the results of elections and the procedure for filling any casual vacancies among the elected members of the *Council*; and

(ii) eligibility to stand for election, to join in nominating a *member* for election, and to vote on any election to the Council in respect of any particular constituency.

[34 – Deleted]

Term of office of elected members

35 (a) An elected member's term of office is in *these bye-laws* referred to as his '*elected term of office*'.

(b) An elected member of the *Council* shall assume office at the conclusion of the annual meeting of the Institute next following his election. Provided that, if a vacancy occurs among the elected members of the *Council* otherwise than because an elected member of the *Council* has come to the end of his *elected term of office* and otherwise than at the conclusion of an annual meeting, the person who is elected to fill such vacancy shall assume office fourteen clear days after election.

(c) An elected member of the *Council* shall, subject to *these bye-laws* and *the Disciplinary Bye-laws*, be entitled to hold office until the conclusion of the fourth annual meeting after that at which he assumed office. Provided (subject to the *Council* no later than 31 December 1999 making new *regulations* pursuant to bye-law 33 to replace those in force at the date of the passing of this Resolution)

(i) that the *elected term of office* of those of the elected members of the *Council* who have assumed office prior to the annual meeting held in 2000 shall expire at the conclusion of the said annual meeting; and

(ii) that those of the elected members of the *Council* assuming office at the conclusion of the annual meeting held in 2000 who are specified

in *regulations* shall be entitled to hold office only until the conclusion of the second annual meeting thereafter.

And provided further that, notwithstanding the proviso to bye-law 35(d), none of the elected members of the *Council* so specified shall be eligible for re-election if at the date on which the same would take effect they shall have completed four consecutive *elected terms of office* ending on that date.

(d) At the expiration of his *elected term of office* an elected member of the *Council* shall retire but shall be eligible for re-election. But no person shall be eligible for election or re-election if at the date on which the same would take effect he would have attained the age of sixty-six years. And provided

(i) that no person shall be eligible for re-election if at the date on which the same would take effect he shall have completed three consecutive *elected terms of office* ending on that date;

(ii) that such person shall not again become eligible to assume office as an elected member until the conclusion of the fourth annual meeting after that at which he becomes ineligible for re-election under this proviso; and

(iii) that this proviso shall operate with effect from the conclusion of the annual meeting held in 2000 and shall not take account of any *elected terms of office* prior to that date.

(e) If a vacancy occurs among the elected members of the *Council* otherwise than because an elected member of the *Council* has come to the end of his *elected term of office*, the person who is elected to fill such vacancy shall hold office only for the remainder of the *elected term of office* of the elected member of the *Council* whose vacancy he fills; and in relation to any such person the expression '*elected term of office*' shall be construed accordingly.

Co-opted members of Council

36 (a) The *Council* may appoint any *member* or *provisional member* to be a co-opted member of the *Council* provided that there shall not be more than twenty co-opted *members* in office at any one time.

(b) A co-opted member of the *Council* shall not be appointed for a term exceeding four years at any one time nor shall he be entitled to remain a member of the *Council* after he has attained the age of seventy years. Subject as aforesaid, a co-opted member of the *Council* whose term of appointment has expired shall be eligible for further co-option.

(c) Every appointment of a co-opted member of the *Council* shall be reported to the next succeeding annual meeting.

Ex officio members of Council

36A A member of the *Council* chosen as President, Deputy-President or Vice-President in accordance with bye-law 43 (election of President, Deputy-President and Vice-President) shall thereupon become an ex officio member of the *Council* (in substitution for any other membership of the *Council* which shall be deemed to have been vacated) and shall remain an ex officio member

of the *Council* until he ceases to hold the office of President, Deputy-President or Vice-President as the case may be. Provided that, except where he is, as President, removed from office pursuant to bye-law 43A, a Past-President shall retain ex officio membership of the *Council* until the conclusion of the second annual meeting after the annual meeting held in the year in which he ceases to hold the office of President.

36B Such other holders of offices within the Institute who are not already members of the *Council* as the *Council* may determine shall become ex officio members of the *Council* until they cease to hold the office concerned provided that there shall not be more than 10 members in office at any one time by virtue of this bye-law.

Vacation of office of Council members

37 The office of a member of the *Council* shall be vacated:

(a) if he ceases to be a *member* or *provisional member* of the Institute;
(b) if an adverse finding, other than a finding of a prima facie case with an *order* that no further action be taken, is made against him under the *Investigation and Discipline Scheme* or the Disciplinary Bye-laws; or
(c) if he has been absent from six or more consecutive meetings of the *Council* without the consent of the *Council*.

Election to Council – disciplinary orders against candidates

37A A *member* or *provisional member* shall not be eligible for election or appointment to *Council* if within the period of 10 years prior to such proposed election or appointment an adverse finding other than a finding of a prima facie case with an order that no further action be taken has been made against him under the *Investigation and Discipline Scheme* or the Disciplinary Bye-laws or any equivalent provision previously in force.

Resignation of Council members

38 A member of the *Council* may tender his resignation of office by notice to the *Council*. On its acceptance by the *Council*, but not until then, he shall cease to be a member of the *Council*.

Removal of Council members

39 The Institute may by resolution passed by a majority of the *members* present and voting (in person or by proxy) at a special meeting convened for the purpose remove any member of the *Council* from his office before the expiration of his period of office. No resolution to remove a member of the *Council* under this bye-law shall be effective unless notice of the intention to propose it has been given to the Institute not less than twenty-eight days before the meeting at which it is to be proposed. The Institute shall give *members* notice of any such resolution at the same time and in the same manner as it gives notice of the meeting. A copy of any such notice to propose such a resolution shall be sent to the member of the *Council* concerned forthwith upon receipt by the Institute.

Chapter VII. Proceedings of the Council

Meetings of Council

40 (a) Subject to *these bye-laws*, the *Council* shall meet for the despatch of business, adjourn and otherwise regulate its proceedings as it may think fit. The *Council* shall be deemed to meet if, notwithstanding that the members of *Council* are in separate locations, they are nonetheless linked by conference telephone, conference video link or other communication equipment which allows those participating to hear and speak to each other. A quorum in that event shall be the number of persons required for a quorum in accordance with bye-law 42 who are so linked. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

(b) A meeting of the *Council* may at any time be called by order of the President, Deputy-President or Vice-President, or at the request in writing, addressed to the *head of staff*, of five members of the *Council*.

(c) At least three days' notice of a meeting of the *Council* shall be delivered or sent to each member of the *Council*: Provided that if the President, Deputy-President or Vice-President when ordering a meeting certifies in writing that an emergency exists, only one day's notice as aforesaid need be delivered or sent. The period of notice shall in each case be exclusive of the day on which the notice is delivered or sent and of the day on which the meeting is to be held. Any such notice shall contain as far as is practicable a statement of the business to be transacted at such meeting. Any such notice shall be taken as duly delivered or sent unless the contrary be shown. The accidental failure to send or the non-receipt by any member of the *Council* of any notice or the non-existence in fact of the certified emergency shall not invalidate the relevant meeting.

Adjournment of meetings

41 Subject to *these bye-laws* the chairman of any meeting of the *Council* may, with the consent of the meeting, adjourn the meeting from time-to-time and from place-to-place. 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 need be given of an adjourned meeting unless it be so directed in the resolution for adjournment.

Quorum of Council

42 Twelve members of the *Council* shall form a quorum at all meetings of the *Council*.

Election of President, Deputy-President and Vice-President

43 At the first meeting of the *Council* after every annual meeting the members of the *Council* present shall choose one of the members of the *Council* as President, another as Deputy-President and another as Vice-President. Subject to bye-law 43A (removal of President, Deputy-President and Vice-President), the members so chosen shall hold the office of President,

Deputy-President and Vice-President respectively until the first meeting of the *Council* held after the next succeeding annual meeting. A member of Council who has previously been chosen as President, Deputy-President or Vice-President shall be eligible to be chosen as President, Deputy-President or Vice-President for a second or subsequent period of office. Any vacancy in any of the offices of President, Deputy-President and Vice-President shall be filled at one or the other of the two meetings of the *Council* next following the occurrence of such vacancy or as the *Council* may otherwise determine.

Removal of President, Deputy-President and/or Vice-President
43A The Council may, by a resolution passed by a majority of not less than three-fourths of the members present and voting at a meeting, remove from office the President, Deputy-President and/or Vice-President before the expiration of his period of office.

Ex officio membership of Committees
44 The President, the Deputy-President and the Vice-President shall by virtue of their offices be members of all *Committees* other than the *Investigation Committee*, the *Disciplinary Committee* and the *Appeal Committee* and any Committee carrying out the Institute's functions as a regulator under statute.

Chairman of Council
45 At the first meeting of the *Council* after every annual meeting the members of the *Council* present shall appoint one of the members of the *Council* as the chairman of *Council*. The person so appointed shall preside as chairman at all meetings of the *Council*, provided that in his absence at any meeting of the *Council* the members of the *Council* present shall choose one of their number to be chairman of that meeting.

Voting at meetings of Council
46 Subject to Bye-law 4A, at all meetings of the *Council* the vote of a majority of those present and voting shall prevail. In the case of an equality of votes the chairman of the meeting shall have a second or casting vote in addition to his original vote.

Minutes of meetings of Council and Committees
47 Proper minutes shall be recorded of all resolutions and proceedings of meetings of the *Council* and of *Committees* and *Sub-committees*. Every minute signed by the chairman of the meeting to which it relates or by the chairman of a subsequent meeting shall be sufficient evidence of the facts therein stated.

Validity of proceedings
48 All acts done by any meeting of the *Council*, or of any *Committee* or *Sub-committee*, or by any person acting as a member of the *Council* or as a member of the *Committee* or *Sub-committee*, shall as regards all persons dealing in good faith with the Institute, notwithstanding that there was some defect in the appointment of any of the persons acting as aforesaid, or that

any such persons had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a member of the *Council* or a member of the *Committee* or *Sub-committee* and had been entitled to vote.

Chapter VIII. Delegation

Committees, Sub-committees or other person or persons

49 (a) Subject to the *Supplemental Charter* and *these bye-laws*, the *Council* may delegate any of its powers, authorities or discretions to committees consisting of such person or persons (whether members of the *Council* or not) or to such person or persons (whether members of the *Council* or not) and on such terms and conditions as it thinks fit and may from time-to-time revoke or alter any of such powers, authorities or discretions so delegated.

(b) Any *Committee* may, subject to any such terms and conditions as aforesaid, delegate any of its powers, authorities or discretions to a sub-committee consisting of such person or persons (whether members of the *Council* or of such *Committee* or not) or to such person or persons (whether members of the *Council* or of such *Committee* or not) and on such terms and conditions as it thinks fit and may from time-to-time revoke or alter any such powers, authorities or discretions so delegated.

(c) Subject to *these bye-laws* and to any terms and conditions imposed by the *Council* or, in the case of a *Sub-committee*, the *Committee* by which it was formed, any *Committee* or *Sub-committee* may meet for the despatch of business, adjourn and otherwise regulate its proceedings as it thinks fit. A *Committee* or *Sub-committee* shall be deemed to meet if, notwithstanding that the members of the *Committee* or *Sub-committee* are in separate locations, they are nonetheless linked by conference telephone, conference video link or other communication equipment which allows those participating to hear and speak to each other. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chairman of the meeting then is.

(d) Insofar as any power, authority or discretion is delegated to a *Committee*, *Sub-committee* or any other person pursuant to *these bye-laws*, any reference in *these bye-laws* to the exercise by the *Council* or *Committee* of the power, authority or discretion so delegated shall be construed as if it were a reference to the exercise thereof by such *Committee*, *Sub-committee* or person, as the case may be.

(e) Bye-law 36 of the Disciplinary Bye-laws (publicity for the disciplinary process) shall apply to chairmen of any *Committees* appointed for the purposes of paragraph (b) of Article 16 of the *Supplemental Charter* in the same way (after making any necessary changes) as it applies to the Chairman of the *Investigation Committee*.

Head of staff

50 (a) The *head of staff* of the Institute, being the most senior member of the paid staff of the Institute, shall be appointed by the *Council* on such terms and for such period as it thinks fit. The formal title of the *head of staff* shall be as *Council* may from time-to-time determine.

(b) The *head of staff* may, subject to any such terms and conditions as the *Council* thinks fit, delegate any of his powers, authorities and discretions (including, without limitation, any powers, authorities and discretions delegated to him pursuant to bye-law 49 (concerning delegation to person or persons)) to such person or persons and on such terms and conditions as he thinks fit and may from time-to-time revoke or alter any of such powers, authorities or discretions so delegated.

(c) Insofar as any power, authority or discretion is delegated by the *head of staff* to any other person pursuant to this bye-law, any reference in *these bye-laws* or *the Disciplinary Bye-laws* to the exercise by the *head of staff* of the power, authority or discretion so delegated shall be construed as if it were a reference to the exercise thereof by such person.

[Note (this note does not form part of the Principal bye-laws):

The Council has determined that the head of staff shall be called the Chief Executive.]

Chapter IX. Public Practice

Conditions for engaging in public practice

51 (a) A *member* shall be entitled to engage in *public practice* in the *United Kingdom* or any other member-state of the European Community only if he holds a current *practising certificate*.

(b) The circumstances in which a *member* is, by virtue of being a director of a body corporate or a member of a limited liability partnership, to be regarded as engaging in *public practice* and any other requirements governing such *practice* shall be those prescribed in *regulations*. A *member* shall not engage in *public practice* otherwise than in accordance with such *regulations* or as a sole practitioner or as a partner in a firm.

Eligibility to hold practising certificate

52 (a) Subject to paragraph (b) of this bye-law and to bye-laws 22 (powers of tribunal) and 30 (intervention orders) of the *Disciplinary Bye-laws*, a *member* shall be eligible to hold a *practising certificate* if he satisfies such requirements as shall be prescribed in *regulations*.

(b) A *member* who fails to pay his *practising certificate* fee by 31st March in the year in which it becomes due or before the expiration of three months after it has become due shall thereupon cease to be eligible for such a certificate unless the Council otherwise decides.

Issue of practising certificates

53 (a) *Practising certificates* shall normally be issued for a period not

exceeding twelve months and ending on 31st December and shall, subject to bye-law 52(b) (failure to pay practising certificate fee), be renewed automatically for a period of twelve months on 1st January next following when the appropriate renewal fee shall become due and payable.

(b) *Practising certificates* shall be in such form or forms as may be prescribed in *regulations*.

(c) A *member* who ceases to be eligible for a *practising certificate* shall forthwith return his certificate to the Institute but shall be granted a further certificate if and when he again becomes so eligible.

54 (a) *Members* and *member firms* shall co-operate with any scheme, system, or arrangements for inspection, monitoring and review of their professional and business efficiency and competence established by the Institute and shall comply with any regulations made in respect thereof.

(b) A *member* holding a practising certificate shall pay such fee or fees in respect of such scheme, system or arrangement as may from time-to-time be determined by the Council in its absolute discretion.

(c) If a *member* fails to pay any fee or fees due under paragraph (b) he shall cease to be eligible for a practising certificate.

(d) For the purposes of this bye-law a firm which describes itself as 'Chartered Accountants' shall be presumed to be a *member firm* unless it proves it is not.

Use of designations

55 (a) Save as permitted by *regulation* a *member practising* under the title of a firm in partnership with any person not a *member* nor a member of one or other of such institutes, societies or bodies of accountants as may be approved by the *Council* shall not use after or in conjunction with the title of the firm the initials FCA or ACA or describe the firm in any way whatever as chartered accountants.

(b) Save as permitted by *regulation* a *member practising* as a director of a body corporate or as a member of a limited liability partnership shall not use after or in conjunction with the title of that body the initials F.C.A. or A.C.A. or describe the body in any way whatever as chartered accountants.

Chapter X. Continuing Professional Development

Continuing Professional Development

56 Except as may be provided in regulations a member shall:

(a) keep under review his needs for training and development having regard to the professional and other work he undertakes;

(b) where such a review identifies a specific need for training or development act promptly to meet such need; and

(c) certify annually to the Institute compliance with these provisions and, if requested by the Institute, provide such evidence of compliance as may be required.

Chapter XI, comprising bye-law 57, Deleted

Chapter XII. Appeals

Appeals

58 (a) Except as provided in *these bye-laws* or in *regulations*, an applicant for *membership*, a *provisional member*, a former *provisional member* and a *member* shall each have the right to appeal against any decision made concerning him under or pursuant to *these bye-laws* or *regulations* (including decisions concerning admission to *membership*, eligibility for *practising certificates* and entitlement to fellowship).

(b) The provisions governing the hearing of any such appeal shall be prescribed in *regulations*.

Chapter XIII. Common Seal

Custody of Common Seal

59 The Common Seal shall be kept in such custody as the *Council* may determine.

Use of Common Seal

60 The Common Seal shall not be affixed to any instrument except by order of the *Council* or of a *Committee* or *Sub-committee* or of any person authorised by the *Council* in that behalf and in the presence of two members of the *Council*. Every such instrument shall be signed by the two members of the *Council* in whose presence the Seal is affixed and by the *head of staff*. Provided that it shall not be necessary for any member of the *Council* to be present when the Seal is affixed to any such certificate as is referred to in bye-law 5 (certificate of membership). It shall be sufficient for the signatures of the two members of the *Council* and the *head of staff* upon any such certificate to be facsimile signatures.

Chapter XIV. Authentication of Documents

Authentication of documents

61 Any member of the *Council* or the *head of staff* or any person appointed by the *Council* for the purpose shall have power to authenticate any document affecting the constitution of the Institute and any resolution passed at an annual meeting or a special meeting or at a meeting of the *Council* or of any *Committee* or *Sub-committee*, and any book, record, document or account relating to the business of the Institute, and to certify copies thereof or extracts therefrom as true copies or extracts. A document purporting to be a copy of any such resolution, or an extract from the minutes of any such meeting, which is certified as aforesaid shall be conclusive evidence in favour of all persons dealing with the Institute upon the faith thereof that such resolution has been duly passed or, as the case may be, that any minute so

extracted is a true and accurate record of proceedings at a duly constituted meeting.

Chapter XV. Audit

Appointment of auditors

62 (a) The *members* shall at each annual meeting appoint at least one but not more than two *members* in *practice* or at least one but not more than two *firms* to be the auditor or auditors of the Institute.

(b) No member of the *Council* shall be eligible for appointment as auditor in a personal capacity. No *firm* in which a member of the *Council* is a director, partner, member (if the firm is a limited liability partnership), or employee shall be eligible for appointment as auditor.

(c) In the event of any vacancy occurring in the office of auditor between annual meetings or in the event of a vacancy not being filled at an annual meeting, the said vacancy may be filled by the *Council* at a meeting summoned with notice of the object provided that during such vacancy a continuing auditor may act alone.

(d) The remuneration, if any, of the auditor or auditors so appointed shall be determined either by the meeting or in such manner as the meeting may resolve.

(e) In this bye-law, the expression 'firm' means a partnership or body corporate (including a limited liability partnership) engaged in *public practice*.

Retirement of auditors

63 The auditor or auditors shall retire at the next annual meeting after his or their appointment, but shall be eligible for re-appointment.

Nomination of auditors

64 Each retiring auditor shall, unless he has notified the *Council* not later than 24th March preceding the date of the annual meeting that he does not wish to offer himself for re-appointment, be deemed to be nominated for re-appointment at such meeting. Every other candidate for appointment as an auditor shall be nominated in writing by the *Council*. Notice of the names of all candidates nominated for appointment or deemed to be nominated for re-appointment shall be sent to all *members* with the notice calling the annual meeting.

Removal of auditors

65 The Institute may, by a resolution passed by a majority of not less than three-fourths of the *members* present and voting (in person or by proxy) at a special meeting convened for the purpose, remove any auditor from his office before the expiration of his period of office. The Institute may also by a resolution passed by a majority of the *members* present and voting (in person or by proxy), at such a meeting appoint in place of any auditor so removed another *member* in *practice*. In default of such an appointment, the *Council*

may at a meeting summoned with notice of the object appoint an auditor in the place of the auditor so removed.

Auditor's right to attend meetings

66 An auditor shall be entitled to attend any annual meeting or special meeting and to receive all notices of and other communications relating to any such meeting which any *member* is entitled to receive and to be heard at any such meeting on any part of the business of the meeting which concerns him as auditor.

Chapter XVI. Notices

Notices

67 (a) Any notice required to be given for the purposes of *these bye-laws* shall be in writing.

(b) Any notice or other document required to be given, delivered or sent to *members* under or in connection with *these bye-laws* may be given or sent by pre-paid post addressed to them at their *registered address*.

(c) Any notice, requisition, certificate or other document (other than a form of proxy) required to be given, delivered or sent to the Institute under or in connection with *these bye-laws* shall, subject to paragraph (e) of this bye-law, be given or sent by pre-paid post addressed to the Institute at its principal London address for the time being and marked for the attention of the *head of staff*.

(d) Where any such notice or other document is given, delivered or sent by post, service shall be deemed to have been effected at the expiration of 48 hours after the time when such notice or other document is posted and in proving such service it shall be sufficient to prove that the cover containing such notice or other document was properly addressed, stamped and posted.

(e) (i) Any member may notify the Institute in writing of a number or address (in this bye-law 67(e) referred to as an 'address') for the purpose of his receiving electronic mail from the Institute and having done so shall be deemed to have agreed to receive any notice, requisition, certificate or other document required to be given, delivered or sent to him under or in connection with *these bye-laws* (in this bye-law 67(e) referred to as a 'notice or other document') by electronic mail. If a member so notifies the Institute of his address the Institute may satisfy its obligation to give, deliver or send to him any notice or other document by:

(1) sending it to him at that address by such form of electronic mail as the Council may from time-to-time determine; or

(2) (a) publishing such notice or other document on a web site; and

(b) notifying him by email to that address that such notice or other document has been so published, specifying the address on the website on which it has been published, the place on the website where the notice or other document may be accessed, how it may be accessed and (if any such notice relates to a

meeting of the Institute) stating (i) that the notice concerns a notice of a meeting of the Institute, (ii) the date, time and place of the meeting and (iii) whether the meeting is an annual or special meeting.

(ii) The Institute may notify members in writing of an address for the purpose of its receiving from members such form of electronic mail as the Council may determine and may specify what notice or other document may be sent to it by electronic mail and having done so shall be deemed to have agreed to receive any such notice or other document from members by such form of electronic mail.

(iii) Subject to paragraph (e) (v) of this bye-law, any notice or other document sent in accordance with this bye-law 67 (e) shall be deemed to be received at 9.00am on the day following that on which it was transmitted. Proof (in accordance with the formal recommendations of best practice contained in the guidance issued by the Institute of Chartered Secretaries and Administrators for the time being in force) that a notice or other document was sent by electronic mail shall be conclusive evidence of such sending.

(iv) Any amendment or revocation of a notice given to the Institute or a member under this bye-law 67(e) shall only take effect in writing, signed by the member or the Institute as the case may be, and on actual receipt by the Institute or the member, as the case may be, thereof.

(v) Electronic mail shall not be treated as received by the Institute or member, as the case may be, if it is rejected by computer virus protection arrangements.

(f) The accidental failure to send, or the non-receipt by any person entitled to, any notice of or other document relating to any meeting, poll, ballot or other proceeding under *these bye-laws* shall not invalidate the relevant meeting, poll, ballot or other proceeding.

Suspension of postal services

68 If at any time by reason of the suspension or curtailment of postal services within the *United Kingdom* the Institute is unable effectively to convene a meeting of *members* by notices sent through the post, such meeting may be convened by a notice advertised on the same date in at least four national daily newspapers with appropriate circulation and such notice shall be deemed to have been duly served on all *members* entitled thereto on the day when the advertisement appears. In any such case the Institute may still, where applicable, serve notice by electronic mail and shall send confirmatory copies of the notice by post to members to whom it was not sent by electronic mail if at least seven days prior to the meeting the posting of notices to addresses throughout the *United Kingdom* again becomes practicable.

Chapter XVII. Indemnity and Expenses

Indemnification of Council members and others
69 Every member of the *Council*, the *head of staff* and every auditor of the Institute shall be indemnified by the Institute against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own respective wilful default or, in the case of an auditor, his own negligence or wilful default or that of any partner or employee of such auditor.

Council members and others not to be liable for losses
70 Neither any member of the *Council* nor the *head of staff* nor any auditor of the Institute shall be liable for any other member of the *Council* or the *head of staff* or any auditor of the Institute, or for joining in any receipt or document, or for any act of conformity, or for any loss or expense happening to the Institute, unless the same happen from his own wilful default, or in the case of an auditor from his own negligence or wilful default or that of any partner or employee of such auditor.

Expenses of members of Council
71 The *Council* may pay to any *member* who is required to attend a meeting of the *Council* or of any *Committee* or *Sub-committee* and to any member of the *Council* who is required to attend a meeting of the *Council* or of any *Committee* or *Sub-committee* or of the Institute and to any *member* or member of the *Council* who is required to attend any other meeting for the purposes of the Institute a reasonable subsistence allowance on each occasion of attending such a meeting and reasonable travel costs to and from the place of the meeting. The *Council* may also pay the expenses reasonably and properly incurred by the President, Deputy-President, Vice-President or any member of the *Council* when acting in an official capacity on behalf of the Institute.

MEMBERS' HANDBOOK

Section 2

Bye-laws, Regulations and Guidance relating to Discipline

DISCIPLINARY BYE-LAWS

of the

Institute of Chartered Accountants

in England and Wales

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37. Commencement and transitional provisions.

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DISCIPLINARY BYE-LAWS

of the Institute of Chartered Accountants

in England and Wales

Preliminary

Citation, interpretation and service of documents

1(1) These bye-laws may be cited as the Disciplinary Bye-laws of the Institute of Chartered Accountants in England and Wales.

(2) In these bye-laws, unless the context otherwise requires –

"the Appeal Committee" means the Appeal Committee appointed under the Schedule to these bye-laws;

"approved training" means practical training and experience approved by the Council and obtained at or from an office which is for the time being authorised under regulations to train provisional members;

"authorised firm" means a firm regulated by the Institute in its capacity as –

(a) a recognised professional body under the Financial Services Act 1986, or
(b) as a designated professional body under the Financial Services and Markets Act 2000, or
(c) in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations;

"the bye-laws" means all the bye-laws of the Institute for the time being in force;

"complainant", except in bye-laws 24A and 34B, in relation to a complaint or formal complaint, means any of the following persons –

(a) the person who under bye-law 9(1) brought to the attention of, or reported to, the head of staff any of the facts and matters which constitute the complaint;
(b) any person, who, before the Investigation Committee has under bye-law 15 decided whether in its opinion the complaint discloses a prima facie case, has made written representations to the head of staff on any of those facts and matters; and
(c) if the person mentioned in paragraph (a) of this definition, being an individual, dies before the complaint has been finally disposed of under these bye-laws, his personal representative.

"complaint", except in bye-law 11 or where the reference is to a previously mentioned formal complaint, has the meaning given by bye-law 9(3);

"Council" means the Council of the Institute;

"defendant" means a member, firm or provisional member against whom a formal complaint has been preferred to the Disciplinary Committee;

"director" (save in paragraph (a) of the definition of "member firm" below) includes a member of a limited liability partnership;

"Disciplinary Committee" means the Disciplinary Committee appointed under the Schedule to these bye-laws;

"disciplinary record", in relation to any person or body, comprises all orders, findings, fines and penalties to which he has at any time been subject, being orders, findings, fines or penalties of any description prescribed for the purposes of this definition by regulations;

"Executive Committee" means the Executive Committee appointed under the Joint Disciplinary Scheme;

"firm" means –

(a) a body corporate or partnership including a limited liability partnership which is wholly or partly composed of members engaged in public practice or was so composed at, or at any time since, the relevant time;
(b) a member who is engaged in public practice as a sole practitioner or was so engaged at, or at any time since, the relevant time; or
(c) a person or body who was a regulated firm at the relevant time;

and in this definition, "the relevant time" means the time relevant to any facts or matters which under bye-law 9 have been reported to the head of staff, or have been brought or come to his attention, as indicating a possible liability to disciplinary action;

"formal complaint" means a complaint preferred by the Investigation Committee to the Disciplinary Committee under bye-law 15, and in relation to a tribunal means the formal complaint which the tribunal was appointed to hear;

"head of staff" means the person appointed under Principal Bye-law 50;

"hearing", in relation to a formal complaint or an appeal, includes the making of any finding or order on or in connection with the complaint or appeal, and also includes a re-hearing;

"Insolvency Licence" means an authorisation issued by the Institute to a member pursuant to the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (as from time to time amended) as a precondition to the member acting as an insolvency practitioner;

"Investigation and Discipline Board" means The Accountancy Investigation and Discipline Board Limited, being the company which has the responsibility for operating the Investigation and Discipline Scheme and references to the Investigation and Discipline Board shall, unless inconsistent with the subject or context, be deemed to include references to the managing body of the Accountancy Investigation and Discipline Board;

"Investigation and Discipline Scheme" means the Scheme made and adopted on behalf of The Accountancy Investigation and Discipline Board Limited by its managing body, the Accountancy Investigation and Discipline Board, in which the Institute participates pursuant to Article 1(b)(viiA) of the Supplemental Charter;

"Investigation Committee" means the Investigation Committee appointed under the Schedule to these bye-laws;

"Joint Disciplinary Scheme" means the Scheme established with other accountancy bodies pursuant to sub-clause 1(b)(viiiA) of the Supplemental Charter (power to establish a disciplinary scheme);

"member" means a member of the Institute, and "membership" shall be construed accordingly;

"member firm" means –

(a) a member 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 members; 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 members; 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 members; and
    (ii) more than 50 per cent of the nominal value of the voting shares is held by members; and
    (iii) more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by members;

"notice" means notice in writing;

"order" includes a finding;

"panel" (except in bye-law 26) means a panel appointed under bye-law 27(1) to hear an appeal;

"practice" and "public practice" mean practice as a public accountant in any part of the world otherwise than as an employee, subject however to any regulations made pursuant to bye-law 51(b) of the Principal Bye-laws and to any other guidance issued by the Council;

"practising certificate" means a certificate issued to a member authorising him to engage in public practice;

"prima facie case" means a prima facie case for disciplinary action under these bye-laws;

"the Principal Bye-laws" means the Principal Bye-laws of the Institute;

"principal" means a sole practitioner, a partner in a partnership or a director of a body corporate;

"provisional member" means a person –

(a) who is serving under a training contract; or
(b) who has trained under such contract and is eligible either to sit for the professional examinations of the Institute or, having successfully sat those examinations, to apply for membership,

and for the purposes only of this definition an order under bye-law 22(7)(d) shall be disregarded;

"registered address" means –

(a) in the case of a member in practice or a firm, the place of business registered by the member or firm with the Institute or, if more than one place of business is so registered, the one registered as the principal place of business;
(b) in the case of a member not in practice or a provisional member, the address registered by him with the Institute;
(c) in the case of a former member, former member firm, former regulated firm or former firm the latest address registered with or notified to the Institute by the person or body in question.

"registered auditor" means a firm registered as a registered auditor at the instance of the Institute (in its capacity as a recognised supervisory body under the Companies Act 1989 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations);

"regulated firm" means an authorised firm or a registered auditor;

"regulations" means regulations made by the Council or any committee or sub-committee under clause 16 of the Supplemental Charter (power to make regulations) and for the time being in force;

"representative", in relation to the defendant in any proceedings under these bye-laws, means –

(a) a barrister, solicitor or member appointed by him to represent him in those proceedings; or
(b) any person permitted under regulations to represent him in those proceedings,

and "represented" shall be construed accordingly;

"Reviewer of Complaints" means a person appointed as a Reviewer of Complaints under paragraph 5 of the Schedule to these bye-laws;

"training contract" means a contract of approved training registered with the Institute and in such form and containing such provisions as may be prescribed in regulations, made between a candidate for membership and the person or firm at or from whose office the approved training is to be given;

"tribunal" means a tribunal appointed under bye-law 19(1) to hear a formal complaint;

"United Kingdom" includes the Channel Islands and the Isle of Man.

(3) The Interpretation Act 1978 applies to these bye-laws in the same way as it applies to an enactment.

(4) In these bye-laws, unless the context otherwise requires –

(a) words importing the masculine gender include the neuter (as well as, by virtue of the Interpretation Act 1978 as applied by paragraph (3), the feminine);
(b) words importing the neuter gender include both the masculine and the feminine;
(c) any reference to a numbered bye-law is a reference to the bye-law so numbered among these bye-laws;
(d) any reference within any of these bye-laws to a numbered paragraph is a reference to the paragraph so numbered of that bye-law.

(5) In these bye-laws –

(a) references to the date of an order made by the Investigation Committee under bye-law 16 (consent orders) or bye-law 16A (cautions) refer to the date on which the order was signed on behalf of the Committee;

(b) references to the date of an order made by a tribunal or panel refer to the date on which the order was announced at the hearing of the formal complaint or appeal in question;
(c) references to the date of an order made by the Investigation Committee under bye-law 30 (intervention orders) refer to the date on which the Committee decided to make the order.

(6) Any notice or other document required to be served for the purposes of these bye-laws on a member, a firm, a provisional member or a defendant may be sent by pre-paid post addressed to him at his registered address or, if none, at his last known or usual place of residence or business.

(7) Any notice or other document required to be served on the head of staff for the purposes of these bye-laws may be sent by pre-paid post addressed to the head of staff at the Institute's principal London address for the time being or such other address of the Institute as may be prescribed by regulations.

(8) Service of a document sent as mentioned in paragraphs (6) or (7) shall be deemed to have been effected at the end of 48 hours from the time of posting; and in proving that a document was so sent it shall be sufficient to prove that the cover containing it was properly addressed, stamped and posted.

Constitution of Investigation, Disciplinary and Appeal Committees, and appointment of Reviewers of Complaints

2 The Schedule to these bye-laws shall have effect with respect to the constitution of the Investigation, Disciplinary and Appeal Committees and the appointment of Reviewers of Complaints.

Liability to disciplinary action

Application of Investigation and Discipline Scheme and the Joint Disciplinary Scheme

3 The Investigation and Discipline Scheme and the Joint Disciplinary Scheme shall apply to all members and firms.

Liability of members and provisional members to disciplinary action

4(1) A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability –

(a) if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy;

(b) if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy;
(c) if he has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them;
(d) if he has failed to comply with any order of the Investigation, Disciplinary or Appeal Committee, or of any tribunal or panel, otherwise than by failing to pay any fine or costs;
(e) if any of the circumstances set out in paragraph (2) exist with respect to him.

(2) Those circumstances are –

(a) that he has failed to satisfy a judgement debt;
(b) 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;
(c) 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;
(d) that an interim order has been made in respect of him under section 252 of the Insolvency Act 1986, or that he has entered into an individual voluntary arrangement under that Act;
(e) that he is a partner in a firm which –
  (i) has had a winding-up order made against it on grounds of insolvency; or
  (ii) has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
  (iii) has had an administration order made against it on grounds of insolvency; or
  (iv) has had a receiver appointed by a creditor or by a court on the application of a creditor;
(f) that he is a director of a body corporate engaged in public practice which –
  (i) 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 has had a winding-up order made against it on grounds of insolvency; or
  (ii) has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
  (iii) has had an administration order made against it on grounds of insolvency; or

(iv) has had a receiver appointed by a creditor or by a court on the application of a creditor.

Liability of member firms to disciplinary action

5(1) A member firm shall be liable to disciplinary action under these bye-laws in any of the following cases –

(a) if in the course of carrying out professional work or otherwise it has committed any act or default likely to bring discredit on itself, the Institute or the profession of accountancy;
(b) if it has performed its professional work, or conducted its practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on itself, the Institute or the profession of accountancy;
(c) if it has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them;
(d) if it has failed to comply with any order of the Investigation, Disciplinary or Appeal Committee, or of any tribunal or panel, otherwise than by failing to pay any fine or costs;
(e) if it is a partnership to which any of heads (i) to (iv) of bye-law 4(2)(e) applies;
(f) if it is a body corporate to which any of heads (i) to (iv) of bye-law 4(2)(f) applies.

In this paragraph "regulations" does not include any such regulations as are mentioned in bye-law 6(1)(a) or 6(2)(a).

(2) It shall be a defence to a complaint arising by virtue of this bye-law for a member firm to prove that it had taken all such steps as it could reasonably have been expected to take (including the making of appropriate rules and arrangements) to prevent acts or defaults of the kind which are the subject of the complaint.

(3) The fact that one or more partners have joined or left a member firm since the time of the acts or defaults which are the subject of disciplinary action shall not affect the firm's liability to such action unless the Investigation Committee is satisfied that, as currently constituted, the firm has substantially lost its identity with the firm as constituted at that time; but if the member firm continues to have the same or substantially the same name, that fact shall be evidence that such identity has not been lost.

(4) For the purposes of this bye-law a firm which describes itself as "Chartered Accountants" shall be presumed to be a member firm unless it proves that it is not.

Liability of regulated firms to disciplinary action

6(1) An authorised firm shall be liable to disciplinary action under these bye-laws in any of the following cases –

(a) if it has committed a breach of any regulations issued by the Institute in its capacity as a recognised professional body under the Financial Services Act 1986 or in its capacity as a designated professional body under the Financial Services and Markets Act 2000 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations;
(b) if it has failed to comply with a statement of principle issued by the Financial Services Authority under section 47A of the Financial Services Act 1986;
(c) if it has failed to comply with a notice served by the Investigation Committee under bye-law 13 within the time allowed by or under that bye-law;
(d) if it has failed to comply with any order of the Investigation, Disciplinary or Appeal Committee, or of any tribunal or panel, otherwise than by failing to pay any fine or costs.

(2) A registered auditor shall be liable to disciplinary action under these bye-laws in any of the following cases –

(a) if it has committed a breach of any regulations issued by the Institute in its capacity as a recognised supervisory body under the Companies Act 1989 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations;
(b) if it has failed to comply with a notice served by the Investigation Committee under bye-law 13 within the time allowed by or under that bye-law;
(c) if it has failed to comply with any order of the Investigation, Disciplinary or Appeal Committee, or of any tribunal or panel, otherwise than by failing to pay any fine or costs.

Liability of former members, member firms, regulated firms and firms to disciplinary action

6A(1) A person or body who, while he was a member, member firm, regulated firm or firm, became liable to disciplinary action under these bye-laws, the Investigation and Discipline Scheme or the Joint Disciplinary Scheme shall continue to be subject to these bye-laws after he has ceased to be a member, member firm, regulated firm or firm, as the case may be, as if he had not so ceased; and references in these bye-laws to members, member firms, regulated firms and firms shall be construed accordingly so far as may be necessary to give effect to this paragraph.

(2) Without prejudice to the generality of paragraph (1) above, the reference in paragraph (1) of bye-law 9 (complaints) to facts or matters indicating

that a member or a firm may have become liable to disciplinary action under these bye-laws, the Investigation and Discipline Scheme or the Joint Disciplinary Scheme includes facts or matters indicating that a former member or former firm may have become so liable.

(3) Bye-law 13 (power of Investigation Committee to call for information etc) shall extend to any former member, former member firm or former regulated firm, and a breach of bye-law 13 shall render the former member, former member firm or former regulated firm liable to disciplinary action by virtue of this bye-law.

(4) Liability to disciplinary action or other action by virtue of this bye-law –

(a) subject to paragraph (3), extends only to facts and matters which occurred while the person or body concerned was actually a member, member firm, regulated firm or firm, as the case may be; and

(b) does not extend to any facts or matters which occurred before 7 October 1999 unless (for the avoidance of doubt) such facts or matters, at the time when they occurred, rendered the person or body concerned liable to disciplinary action under bye-law 6(1)(a), or bye-law 6(2)(a) (or earlier regulations covering the same subject matter as those bye-laws, in conjunction with any bye-laws) or under any regulations issued by the Institute in its capacity as a recognised professional body under the Insolvency Act 1986.

Proof of certain matters

7(1) The fact that a member, member firm or provisional member has, before a court of competent jurisdiction, pleaded guilty to or been found guilty of an indictable offence (or has, before such a court, outside England and Wales, pleaded guilty to or been found guilty of an offence corresponding to one which is indictable in England and Wales) shall for the purposes of these bye-laws be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4(1)(a) or 5(1)(a), as the case may be.

(2) The fact that a member, member firm or provisional member –

(a) has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct, being a finding in proceedings before a body which is for the time being listed in paragraph (5) or before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986 or the Companies Act 1989; or

(b) has had a disqualification order made against him or has given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986,

shall, for the purposes of these bye-laws, be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4(1)(a) or 5(1)(a), as the case may be.

(3) A finding of fact –

(a) in any report of an inspector appointed under the Companies Act 1985;
(b) in any civil or criminal proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere;
(c) in any proceedings before, or report by, any of the bodies mentioned in paragraph (4); or
(d) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of section 34 (accountants' reports), of the Solicitors Act 1974,

shall for the purposes of these bye-laws be prima facie evidence of the facts found.

(4) The bodies referred to in paragraph (3)(c) are –

(a) The Financial Services Authority;
(b) The Financial Services Tribunal or the Financial Services and Markets Tribunal;
(c) any recognised self-regulating organisation or recognised professional body within the meaning of the Financial Services Act 1986 or any designated professional body within the meaning of the Financial Services and Markets Act 2000;
(d) The Insolvency Practitioners Board;
(e) any recognised professional body or competent authority within the meaning of the Insolvency Act 1986;
(f) any recognised supervisory body within the meaning of the Companies Act 1989;
(g) any body which is for the time being listed in paragraph (5).

(5) The bodies referred to in paragraph (2)(a) and (4)(g) are –

(a) The Institute of Chartered Accountants of Scotland;
(b) The Institute of Chartered Accountants in Ireland;
(c) The Association of Chartered Certified Accountants;
(d) The Chartered Institute of Management Accountants;
(e) The Chartered Institute of Public Finance and Accountancy.

(6) The Council may at any time by regulations add any accountancy body (other than the Institute) to, or remove any body from, the list in paragraph (5).

(7) Nothing in paragraphs (3) to (6) shall affect the evidential status of any report or other document not falling within paragraph (3).

Relevance of codes of practice, regulations etc.

8(1) In discharging his or its functions under these bye-laws a person or body mentioned in paragraph (2) may have regard to all relevant matters, including any code of practice (whether relating to the ethical, the technical or any other aspect of practice), and any regulations or guidance, affecting (as the case may be) the firm, member or provisional member concerned.

(2) Those persons and bodies are –

(a) the head of staff;
(b) a Reviewer of Complaints;
(c) the Investigation Committee;
(d) a tribunal;
(e) a panel.

Complaints

Complaints

9(1) Any person may bring to the attention of the head of staff any facts or matters indicating that a member, a firm or a provisional member may have become liable to disciplinary action under these bye-laws or the Investigation and Disciplinary Scheme or the Joint Disciplinary Scheme; and it is the duty of every member, where it is in the public interest for him to do so, to report to the head of staff any such facts or matters of which he is aware.

(2) In determining whether it is in the public interest for a member to report any such facts or matters under paragraph (1) regard shall be had to such guidance as may from time to time be issued by the Council.

(3) In these bye-laws any facts or matters which –

(a) have come to the attention of the head of staff under paragraph (1) or otherwise; and
(b) indicate that a member, a firm or a provisional member may have become liable to disciplinary action under these bye-laws or the Investigation and Discipline Scheme or the Joint Disciplinary Scheme,

are referred to as a "complaint".

(4) Any dispute relating to –

(a) a decision of the head of staff as to whether any facts or matters fall within paragraph (3)(b); or
(b) an opinion formed by him as mentioned in paragraph (1), (2), (3)(a) or 3(b) of bye-law 10,

shall be referred to and determined by the Investigation Committee.

Processing of complaints by head of staff

10(1) If, as regards any complaint, the head of staff is of the opinion that it is appropriate for it to be dealt with by the Investigation and Discipline Board, he shall lay it before the Investigation Committee.

(2) If, in the case of any complaint not laid before the Investigation Committee under paragraph (1), the head of staff is of the opinion that it is appropriate to do so, he shall attempt to resolve the complaint by conciliation or in some other way not involving disciplinary action under these bye-laws; and if the attempt is successful, he shall take no further action with respect to the complaint.

(3) Where an attempt under paragraph (2) is made but fails, the head of staff shall review the complaint in the light of any further relevant facts or matters which have come to his attention since he initiated the attempt; and –

(a) if as a result of that review he remains of the opinion that the member, the firm, or the provisional member concerned may have become liable to disciplinary action under these bye-laws, he shall proceed to investigate the complaint;
(b) if as a result of that review he is no longer of that opinion, he shall take no further action with respect to the complaint.

(4) If, as regards any complaint not laid before the Investigation Committee under paragraph (1), the head of staff does not think it appropriate to make an attempt under paragraph (2), he shall proceed to investigate the complaint.

(5) If, having investigated a complaint under paragraph (3) or (4), the head of staff is no longer of the opinion that the member, the firm or the provisional member concerned may have become liable to disciplinary action under these bye-laws, he shall take no further action with respect to the complaint unless the complainant insists on its being laid before the Investigation Committee; but if the head of staff remains of that opinion or the complainant so insists, the head of staff shall lay the complaint before the Investigation Committee.

Investigation of complaints by firms themselves

11(1) Every firm shall ensure that all new clients are informed in writing of the name of the principal to be contacted in the event of their wishing to complain about the firm's services, and of their right to complain to the Institute.

(2) If a firm receives a complaint concerning any services it has provided or

failed to provide to a client or former client, it shall forthwith cause the complaint to be investigated by a principal.

(3) If, as a result of an investigation under paragraph (2), the firm is of the opinion that the complaint is wholly or partly justified, it shall take whatever steps are appropriate to resolve the complaint, whether by way of remedial work, apology, the provision of information, the return of books or documents, the reduction or repayment of fees, or otherwise.

(4) If the head of staff receives a complaint against a firm, not being a complaint to which paragraph (1) of bye-law 10 applies, he may, if it appears to him appropriate to do so, refer it to the firm for investigation under paragraph (2) of this bye-law instead of dealing with it as provided in paragraphs (2) to (5) of bye-law 10.

(5) The fact that a complaint is being investigated under this bye-law shall not affect the duty of members under bye-law 9(1) to report to the head of staff, where it is in the public interest for them to do so, any facts or matters indicating that a member, a firm or a provisional member may have become liable to disciplinary action.

(6) The definition of "complaint" in bye-law 9(3) does not apply for the purposes of this bye-law.

Complaints laid before Investigation Committee

Initial consideration of complaints so laid

12(1) This bye-law applies where a complaint is laid before the Investigation Committee under bye-law 10.

(2) The Investigation Committee shall first of all decide whether it considers that, having regard to all the circumstances of the matter, it is appropriate that the complaint is referred to the Investigation and Discipline Board to be dealt with under the Investigation and Discipline Scheme.

(3) If the Investigation Committee does not refer a complaint to the Investigation and Discipline Board under bye-law 12A(1), it shall either –

(a) refer the complaint back to the head of staff to be processed by him under paragraphs (2) to (5) of bye-law 10 as if he had not laid it before the Investigation Committee under paragraph (1) of that bye-law; or
(b) proceed to deal with it under bye-law 15.

Referral of complaints to or from the Investigation and Discipline Board

12A(1) If the Investigation and Committee decides, in accordance with bye-law 12(2), that it is appropriate for a complaint to be referred to the

Investigation and Discipline Board, it shall make a written referral of the complaint to the Investigation and Discipline Board.

(2) If the Investigation and Discipline Board declines a referral of a fact or matter to it under the Investigation and Discipline Scheme, the Investigation Committee shall either –

(a) refer the fact or matter back to the head of staff to be processed by him under paragraphs (2) to (5) of bye-law 10; or
(b) proceed to deal with the fact or matter under bye-law 15.

(3) If following an enquiry under the Investigation and Discipline Scheme, the Investigation and Discipline Board refers the fact or matter back to the Institute, the Investigation Committee shall either –

(a) refer the fact or matter back to the head of staff to be processed by him under paragraphs (2) to (5) of bye-law 10; or
(b) proceed to deal with the fact or matter under bye-law 15.

Assumption of matters by the Investigation and Discipline Board

12B If the head of staff receives notice in writing from the Investigation and Discipline Board requiring that a fact or matter be dealt with under the Investigation and Discipline Scheme, then with immediate effect –

(a) the Investigation and Discipline Board shall become responsible for the investigation of the fact or matter as if it had been referred under bye-law 12A(1); and
(b) the head of staff and the Investigation Committee (or if, at the relevant time, a formal complaint has been preferred under bye-law 15(2)(a), the Disciplinary Committee) shall cease to have any responsibility for it.

Power of Investigation Committee to call for information, etc.

13(1) The Investigation Committee shall have power by notice served on any member, member firm, regulated firm or provisional member to call for such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the head of staff to perform its or his functions under these bye-laws.

(2) It shall be the duty of any person or body on whom a notice is served under paragraph (1) to comply with it within the period of fourteen days beginning with the date of service or such longer period as the Investigation Committee may allow.

Power of Investigation Committee to require advice to be obtained and followed

14(1) If the Investigation Committee is of the opinion that a complaint laid before it indicates that the practice of any firm may have been conducted inefficiently, it may require any member or member firm concerned (at

his own expense) to obtain advice from such source as the Committee may specify and to implement the advice obtained.

(2) In any disciplinary proceedings for an alleged failure to comply with a requirement imposed under paragraph (1), it shall be a defence for the member or member firm concerned to prove that he had good and sufficient reasons for not complying with the requirement.

(3) The power conferred on the Investigation Committee by this bye-law is without prejudice to any power exercisable by it apart from this bye-law.

Complaints not referred to or referred back from Investigation and Discipline Scheme

15(1) Where a complaint laid before the Investigation Committee is –

(a) not referred to the Investigation and Discipline Board under bye-law 12(A)(1) and not referred back to the head of staff under bye-law 12(3)(a); or
(b) declined by the Investigation and Discipline Board under bye-law 12A(2) and not referred back to the head of staff under bye-law 12A(2)(a); or
(c) referred back by the Investigation and Discipline Board to the Institute under bye-law 12A(3) and not referred back to the head of staff under bye-law 12A(3)(a),

the Investigation Committee shall consider whether or not the complaint discloses a prima facie case and, if it finds that it does not, shall dismiss the complaint.

(2) If the Investigation Committee finds that the complaint discloses a prima facie case it may –

(a) prefer the whole or part of the complaint to the Disciplinary Committee as a formal complaint; or
(b) deal with the whole or part of it under bye-law 16 (consent orders); or
(bb) deal with the whole or part of it under bye-law 16A (cautions); or
(c) order that further consideration of the whole or part of the complaint be deferred, on such terms and conditions as it considers appropriate, for either or both of the following purposes, namely –
(i) to enable the Investigation Committee to obtain such information, such explanations and such books, records and documents as it considers necessary to perform its functions under this bye-law; or
(ii) if the subject of the complaint is the existence of any of the circumstances set out in sub-paragraphs (b) to (f) of bye-law 4(2), to enable the Committee to monitor developments arising out of those circumstances; or

(d) order that no further action be taken on the complaint or on any specified part of it.

(3) The conditions on which an order under paragraph (2)(c) may be made include the giving of written undertakings for the protection of client interests.

(4) Before taking any decision under the preceding provisions of this bye-law the Investigation Committee –

(a) unless satisfied that the member, member firm, regulated firm or provisional member concerned has been given an opportunity to make written representations to the Committee, shall give him such an opportunity; and
(b) may, if it thinks fit, give him or his representative an opportunity of being heard before the Committee (but shall not be under a duty to do so).

(5) In deciding whether to prefer a complaint ("the current complaint") to the Disciplinary Committee, the Investigation Committee may take into account any facts or matters –

(a) which were the subject matter of any complaint considered by the Investigation Committee on any previous occasion in relation to the member, member firm, regulated firm or provisional member concerned;
(b) in respect of which the Committee on that occasion found that a prima facie case was disclosed; but
(c) in respect of which no formal complaint was preferred to the Disciplinary Committee and no order was made under bye-law 16(2) (consent orders) or bye-law 16A (cautions);

and if the Investigation Committee decides to prefer the whole or part of the current complaint to the Disciplinary Committee as a formal complaint, it may also prefer to that Committee any formal complaint which it could have preferred to it on that previous occasion against the member, member firm, regulated firm or provisional member in question and, if there were two or more such previous occasions, may prefer a separate formal complaint against him in respect of each of some or all of them.

(6) If the Investigation Committee prefers a formal complaint to the Disciplinary Committee, it shall send to the Disciplinary Committee and to the defendant a summary of the material facts and matters which were considered by the Investigation Committee together with –

(a) a summary or copy of any written representations made to it by the defendant, and
(b) if the defendant has appeared before it in person or by a representative, a summary of any oral representations made to it.

(7) If the Investigation Committee finds that a complaint discloses a prima facie case but orders that no further action be taken on it, it shall serve a notice to that effect on the member, member firm, regulated firm or provisional member concerned; and if within the period of 28 days beginning with the date of service of that notice the member, member firm, regulated firm or provisional member concerned serves notice on the head of staff that he is unwilling to accept the finding that a prima facie case exists, then, unless on reconsideration the Committee finds that no prima facie case exists, it shall prefer the whole or part of the complaint to the Disciplinary Committee under paragraph (2)(a).

Consent orders

16(1) If –

(a) under bye-law 15 the Investigation Committee is of the opinion that a complaint discloses a prima facie case; and

(b) after considering all the relevant circumstances (including the past disciplinary record, if any, of the member, member firm, regulated firm or provisional member concerned) the Committee is of the opinion that the complaint is one which it is appropriate to deal with under this bye-law, the following provisions of this bye-law shall apply.

(2) The Investigation Committee may with the agreement of the member, member firm, regulated firm or provisional member concerned make –

(a) any one or more of the orders which, on finding a formal complaint proved, the Disciplinary Committee would have power to make against the defendant by virtue of –

(i) bye-law 22(3) (f), (g) or (h); or
(ii) bye-law 22(4) (b), (c) or (d); or
(iii) bye-law 22(5)(b), (c) or (d); or
(iv) bye-law 22(6)(b), (c) or (d); or
(v) bye-law 22(7)(f) or (g),

according to whether the person concerned is a member, a member firm, an authorised firm, a registered auditor or a provisional member;

(b) if the person concerned is a member, member firm or regulated firm, any order which, on finding a formal complaint proved, the Disciplinary Committee would have power to make against the defendant under bye-law 23, 24 or 24A;

(c) an order that the member, member firm, regulated firm or provisional member concerned shall pay to the Institute a sum by way of costs.

(3) Before making any order under paragraph (2) the Investigation Committee shall serve on the member, member firm, regulated firm or

provisional member concerned a notice describing the action which it proposes to take if the member, member firm, regulated firm or provisional member agrees, and specifying the order which it would make in that event.

(4) A notice under paragraph (3) must –

(a) be in, or substantially in, such form as may be prescribed by regulations made by the Investigation Committee;
(b) explain the extent to which the finding of the Investigation Committee would be communicated to others;
(c) state that, if the member, member firm, regulated firm or provisional member concerned does not agree in writing to the proposed action within a stated period, a formal complaint may be preferred to the Disciplinary Committee which, in the event of its finding that complaint proved in whole or in part, would have available to it the complete range of orders mentioned in bye-laws 22, 23, 24 and 24A.

(5) If within the period stated in the notice the member, member firm, regulated firm or provisional member agrees in writing to the Investigation Committee proceeding as proposed in the notice, the Committee shall make the order specified in the notice unless, having regard to any further information which it has received, it is of the opinion –

(a) that a lesser or no penalty is appropriate, in which case it shall impose a lesser or no penalty, as the case may be;
(b) that a smaller or no sum is appropriate by way of costs, in which case it shall order a smaller sum to be paid by way of costs or make no order as to costs, as the case may be; or
(c) that no prima facie case exists, in which case it shall so find.

(6) If the member, member firm, regulated firm or provisional member does not within the period stated in the notice agree in writing to the Investigation Committee proceeding as proposed in the notice, the Committee shall prefer the complaint to the Disciplinary Committee under bye-law 15(2)(a) unless, having regard to any further information which it has received, it is of the opinion that no prima facie case exists, in which case it shall so find.

(7) Paragraphs (1), (4) and (5) of bye-law 32 (time limits for payment of fines) shall apply in relation to any fine imposed by an order made under paragraph (2)(a) or (b) of this bye-law as they apply in relation to a fine imposed by an order made by a tribunal; and paragraphs (2), (8) and (9) of bye-law 33 (time limits for payment of costs) shall apply in relation to any costs payable by virtue of an order made under paragraph (2)(c) of this bye-law as they apply in relation to costs payable by virtue of an order made under bye-law 33(1).

(8) Where any provision of bye-law 32 or 33 applies by virtue of paragraph

(7) of this bye-law, it shall do so with the modification that any reference to the date of the order is to be taken to refer to the date of the relevant order under this bye-law.

(9) Where the Investigation Committee makes an order under this bye-law, it shall cause to be published, as soon as practicable and in such a manner as it thinks fit, such a report as it thinks fit of its proceedings under this bye-law with respect to the complaint.

(10) Except in so far as the Investigation Committee in its absolute discretion otherwise directs, a report published under paragraph (9) shall –

(a) state the name of the person or body against whom the order was made; and
(b) describe the order or orders made against him and state that they were made with his agreement,

but need not include the name of any other person or body concerned in the complaint.

Cautions

16A(1) If –

(a) under bye-law 15 the Investigation Committee finds that a complaint discloses a prima facie case; and
(b) after considering all the relevant circumstances (including the past disciplinary record, if any, of the member, member firm, regulated firm or provisional member concerned) the Committee is of the opinion that the complaint is one which it is appropriate to deal with by way of a caution under this bye-law (with or without an order to pay costs),

the following provisions of this bye-law shall apply.

(2) The Investigation Committee shall serve on the member, member firm, regulated firm or provisional member concerned ("the subject of the complaint") a notice –

(a) stating that the Committee finds that the complaint discloses a prima facie case; and
(b) informing the subject of the complaint that the Committee proposes to make an order under this bye-law –
(i) that he be cautioned; or
(ii) that he be cautioned and pay to the Institute a fixed sum by way of costs,
as the case may be.

(3) A notice under paragraph (2) must be in, or substantially in, such form as may be prescribed by regulations made by the Investigation Committee and must explain the extent to which, in accordance with regulations,

the proposed order, if made, would be communicated to others; and in that paragraph "a fixed sum" means the fixed sum for the time being so prescribed for such costs.

(4) If within the period of 28 days beginning with the date of service of a notice under paragraph (2) above the subject of the complaint serves notice on the head of staff that he is unwilling to accept the finding that a prima facie case exists, then, unless on reconsideration the Committee finds that no prima facie case exists, it shall prefer the whole or part of the complaint to the Disciplinary Committee under bye-law 15(2)(a).

(5) If no notice under paragraph (4) is served on the head of staff within that period, the Investigation Committee shall make the order proposed in the notice served under paragraph (2).

(6) Any costs ordered under this bye-law shall be paid within the period of 30 days beginning with the date of the order; and bye-law 33(8) (latest time for payment of costs) shall apply to costs payable to the Institute under this bye-law as it applies to costs payable under bye-law 33, but with the omission of the words "or instalments of costs" and "or under".

(7) Except with the consent of the subject of the complaint in question, this bye-law shall not apply to a complaint involving facts or matters which occurred before 7 October 1999.

Complainant's right to review

Review of finding of no prima facie case

17(1) This bye-law applies where, under bye-law 15, 16 or 16A, the Investigation Committee finds that a complaint laid before it does not disclose a prima facie case against the member, member firm, regulated firm or provisional member concerned.

(2) A complainant may apply in writing to the head of staff for a review of the finding, and the head of staff shall refer every such application to a Reviewer of Complaints ("the Reviewer") who, subject to paragraph (3), shall consider the application.

(3) The Reviewer shall not consider the application if it was received by the head of staff after the end of the period of six months beginning with the date of the finding unless –

(a) the Reviewer is satisfied that the complainant could not reasonably have been expected to make the application within that period; or
(b) there is, in the opinion of the Reviewer, fresh evidence justifying consideration of the application.

(4) If, after considering the application, the Reviewer is of the opinion

that one or more of the circumstances mentioned in paragraph (5) apply, he shall remit the application to the Investigation Committee with a recommendation that the whole or part of the complaint be reconsidered.

(5) Those circumstances are that –

(a) fresh evidence of a material nature has been received since the date of the finding;

(b) there has been a failure on the part of the head of staff or the Investigation Committee to follow the procedure for processing or consideration of complaints laid down in these bye-laws or any regulations, and the Committee's consideration of the complaint has been prejudiced by that failure;

(c) there is reason to suspect a lack of independence on the part of any member of the Investigation Committee who took part in the consideration of the complaint, and the Committee's consideration of the complaint has been prejudiced by that lack;

(d) the finding was not one which could reasonably have been arrived at by the Investigation Committee upon due consideration of the facts and matters before it.

(6) If, after considering the application, the Reviewer is of the opinion that none of the circumstances mentioned in paragraph (5) applies, he shall so inform the complainant and the Investigation Committee and give them in writing his reasons for being of that opinion.

(7) The Reviewer may request the head of staff to provide him with such technical assistance as the Reviewer considers necessary to enable him to perform his functions under this bye-law; and the head of staff shall comply with any reasonable request made under this paragraph.

(8) The Reviewer may require the Investigation Committee to exercise its powers under bye-law 13 in order to obtain such information, such explanations and such books, records and documents as he considers necessary to enable him to perform his functions under this bye-law; and for this purpose the reference in that bye-law to the Committee's functions shall be taken to include those of the Reviewer.

Further investigation of complaint after review

18(1) If under bye-law 17(4) the Reviewer remits the application to the Investigation Committee with a recommendation that the whole or part of the complaint be reconsidered, the complaint or that part of it shall be treated by the Committee as if it had then been newly laid before it by the head of staff, except that –

(a) the Committee may have regard both to the information and any representations previously available to it in relation to the complaint and to any information or representations (whether written

or oral) received by it since the date of the finding mentioned in bye-law 17(1); and

(b) the Committee shall not take any decision on the complaint under paragraphs (1) to (3) of bye-law 15 until the member, member firm, regulated firm or provisional member concerned has been given a further opportunity to make written representations to it.

(2) If it appears to the Investigation Committee, after reconsidering the complaint as required by paragraph (1), that there is still no prima facie case against the member, member firm, regulated firm or provisional member concerned, it shall inform the Reviewer of its reasons for proposing so to find; and the Reviewer may, within the period of 28 days beginning with the date on which he is so informed, or such longer period as the Committee may allow, send the Committee such comments, if any, on the proposed finding as he thinks fit.

(3) On receipt of any such comments within the period mentioned in paragraph (2) the Investigation Committee shall consider its proposed finding in the light of them, and shall then decide whether or not it is of the opinion that the complaint discloses a prima facie case.

(4) If –

(a) within the period allowed by or under paragraph (2) the Reviewer informs the Investigation Committee that he has no comments on the proposed finding; or

(b) when that period ends no comments by the Reviewer have been received by the Committee,

the Committee shall proceed to decide whether or not it is of the opinion that the complaint discloses a prima facie case.

(5) If under paragraph (3) or (4), the Investigation Committee finds that the complaint does not disclose a prima facie case, it shall inform the complainant and the Reviewer in writing of its reasons for so finding.

Disciplinary proceedings

Tribunals

19(1) On receipt by the Disciplinary Committee of a formal complaint, the Chairman of that Committee or, failing him, any Vice-Chairman of that Committee –

(a) shall appoint three of its members, two of them being members of the Institute and the third not being an accountant, as a tribunal to hear that complaint; and

(b) shall appoint one of the three as chairman of the tribunal.

(2) If, in the case of a tribunal so appointed, any member of the tribunal –

(a) is for any reason unable to attend the hearing or any adjourned hearing of the formal complaint; or
(b) is in the course of the hearing unable to continue so to attend,

the remaining members, if not less than two in number, may at their discretion proceed or continue with the hearing; but if the defendant is present or represented at the hearing, they shall do so only if he or his representative consents.

(3) If, in a case falling within paragraph (2), the remaining members of the tribunal –

(a) do not proceed or continue with the hearing; or
(b) complete the hearing but are unable to agree on a finding,

the complaint shall be heard or re-heard by a new tribunal appointed under paragraph (1).

(4) If at any time during the hearing of a formal complaint the chairman of the tribunal appointed under paragraph (1) is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be completed by that tribunal, he shall so inform the Chairman or, failing him, any Vice-Chairman of the Disciplinary Committee, who shall thereupon direct that the complaint be re-heard by a new tribunal so appointed.

(5) The Disciplinary Committee may appoint a barrister or a solicitor to act as legal assessor at the hearing of a formal complaint.

(6) Where a new tribunal is appointed pursuant to paragraph (3) or (4), or to an order made on appeal under bye-law 29(2)(e), no member of the previous tribunal may be appointed as a member of the new one; but a person appointed as a legal assessor may continue to act at any re-hearing of the complaint.

Hearing of formal complaints

20(1) As soon as practicable after the appointment of a tribunal to hear a formal complaint, the head of staff shall serve on the defendant a notice stating the terms of the complaint and the time and place fixed for the hearing.

(2) The defendant may appear before the tribunal in person or by a representative.

(3) The tribunal shall give the defendant or his representative a reasonable opportunity of being heard before it.

(4) If the defendant does not attend and is not represented at the hearing, then, provided that the tribunal is satisfied that the notice required by paragraph (1) was served on him, the tribunal may hear the formal complaint in his absence.

(5) The Investigation Committee may appoint the head of staff or any member of the Institute, or may instruct a barrister or solicitor, to present the formal complaint before the tribunal.

Temporary suspension of activities of authorised firm

21(1) If, at any time while a tribunal is considering a formal complaint against an authorised firm, the tribunal is of the opinion, as regards all or any of the firm's investment business activities under the Financial Services Act 1986 or the firm's exempt regulated activities under the Financial Services and Markets Act 2000, that their continuation may materially prejudice the interests of any client of the firm, it may serve on the firm a notice specifying the activities as to which it is of that opinion and ordering the firm to suspend them for a specified period (not exceeding 30 days) beginning at the time of service of the notice.

(2) A notice under paragraph (3) of bye-law 16 (consent orders) served on an authorised firm shall mention the power available under this bye-law (as well as the orders referred to in paragraph (4)(c) of that bye-law).

Powers of tribunal

22(1) If the tribunal appointed to hear a formal complaint is of the opinion that the complaint has been proved in whole or in part, it shall make a finding to that effect; but if it is not of that opinion, it shall dismiss the complaint.

(2) If the tribunal finds that the formal complaint has been proved in whole or in part, it may (unless it is of the opinion that in all the circumstances it is inappropriate to do so) make against the defendant such one or more of the orders available against him under the following provisions of these bye-laws, namely –

(a) paragraph (3), (4), (5), (6) or (7) of this bye-law, as the case may be; and
(b) bye-laws 23 (waiver etc. of fees), 24 (remedial action) and 24A (expenses),

as it considers appropriate, having regard to the past disciplinary record, if any, of the defendant, the tribunal's views as to the nature and seriousness of the formal complaint (so far as proved), and any other circumstances which the tribunal considers relevant.

(3) If the defendant is a member, the orders available against him are –

(a) that he be excluded from membership;
(b) that his practising certificate be withdrawn either permanently or for a specified period;
(c) that any Insolvency Licence held by him be withdrawn;
(d) that he be ineligible for an Insolvency Licence;
(e) that he be ineligible for a practising certificate, either permanently or for a specified period;
(f) that he be severely reprimanded;
(g) that he be reprimanded;
(h) that he be fined a specified sum.

(4) If the defendant is a member firm, the orders available against it are –

(a) that it be prohibited from using the description "Chartered Accountants" for a specified period;
(b) that it be severely reprimanded;
(c) that it be reprimanded;
(d) that it be fined a specified sum.

(5) If the defendant is an authorised firm, the orders available against it are –

(a)(i) that its authorisation to conduct investment business granted by the Institute pursuant to the Financial Services Act 1986 be withdrawn or
(ii) that it shall cease to be authorised by the Institute to carry on exempt regulated services under the Financial Services and Markets Act 2000;
(b) that it be severely reprimanded;
(c) that it be reprimanded;
(d) that it be fined a specified sum.

(6) If the defendant is a registered auditor, the orders available against it are –

(a) that its registration granted at the instance of the Institute under the Companies Act 1989 be withdrawn;
(b) that it be severely reprimanded;
(c) that it be reprimanded;
(d) that it be fined a specified sum.

(7) If the defendant is a provisional member, the orders available against him are –

(a) that he be declared unfit to become a member;
(b) that he cease to be a provisional member and be ineligible for re-registration as a provisional member for a specified period not exceeding two years;
(c) that the registration of his training contract be suspended for a period not exceeding two years;
(d) that for a specified period not exceeding two years he be ineligible

to sit for such one or more of the Institute's examinations as may be specified or for any specified part of any of those examinations;

(e) that he be disqualified from such one or more of the Institute's examinations as may be specified or from any specified part of any of those examinations, not being an examination or part the result of which was duly notified to him by the Institute before the date of the order;

(f) that he be severely reprimanded;

(g) that he be reprimanded.

(8) An order under this bye-law may include such terms and conditions (if any) as the tribunal considers appropriate including, in the case of an order for exclusion from membership made against a member, a recommendation that no application for his readmission be entertained before the end of a specified period.

(9) An order under this bye-law against a member, member firm or regulated firm may include a direction requiring him (at his own expense) to obtain advice from a specified source and to implement the advice obtained.

(10) In this bye-law "specified", in relation to any order or direction under this bye-law, means specified in the order or direction.

Orders for waiver or repayment of fees or commission

23(1) If the tribunal appointed to hear a formal complaint against a member or member firm engaged in public practice or against a regulated firm finds the complaint proved in whole or in part, it may make one or more of the following orders against the defendant namely –

(a) that he shall waive the whole or part of any fee which has been agreed by or invoiced to a client;

(b) that he shall pay to the Institute the whole or part of any fee which the client has paid;

(c) that he shall pay to the Institute the whole or part of any sum of money which has been retained by the defendant in or towards payment of a fee by a client;

(d) that he shall pay to the Institute a sum assessed by the tribunal as the value (in whole or in part) of any commission to which he has become entitled (whether or not it has been received by him) in connection with the facts and matters which are the subject of the complaint.

(2) Before making an order under paragraph (1) the tribunal –

(a) if the defendant is present or represented before it, shall give him or his representative an opportunity to make representations to the tribunal with regard to the proposed order;

(b) if the defendant is neither present nor represented before it, shall –

(i) adjourn the hearing for a reasonable period;
(ii) serve on him a notice describing the order it proposes to make under paragraph (1); and
(iii) at the resumed hearing give him or his representative an opportunity to make representations to the tribunal, either orally or in writing, with regard to the proposed order.

(3) Where an order is made under paragraph (1), the total of –

(a) any fees ordered to be waived under paragraph (1)(a);
(b) any sum ordered to be paid under paragraph (1)(b);
(c) any sum ordered to be paid under paragraph (1)(c); and
(d) any sum ordered to be paid under paragraph (1)(d)

shall not exceed £10,000 or such other sum as may from time to time be fixed for the purposes of this paragraph by direction of the Council.

(4) The tribunal making an order under paragraph (1) may include in it such terms or conditions as it thinks fit.

(5) In this bye-law "client" includes a former client.

Remedial orders

24(1) If the tribunal appointed to hear a formal complaint against a member or member firm engaged in public practice or against a regulated firm finds the complaint proved in whole or in part, it may make one or more of the following orders against the defendant namely –

(a) that he shall return to any client any books or documents belonging to the client which are not the subject of a lien;
(b) that, as regards any specified fee, he shall provide the client with such particulars as may be specified;
(c) that he shall take such steps as may be specified, being steps (other than payment of compensation) which the tribunal considers appropriate for the purpose of resolving the issues which gave rise to the formal complaint.

(2) If the tribunal finds the complaint proved in whole or in part, then, whether it makes any order under paragraph (1) or not, the tribunal –

(a) may appoint a member, member firm or regulated firm other than the defendant to undertake or complete any work which the defendant had been engaged to perform for a client; and
(b) if it does so, shall order the defendant to pay the reasonable fees of that member, member firm or regulated firm for work done as a result of the appointment.

(3) Bye-law 23(2) shall apply in relation to the making of any order or appointment under paragraph (1) or (2) as it applies in relation to the making of an order under bye-law 23(1).

(4) In the event of a dispute between the defendant and a member, member firm or regulated firm appointed under paragraph (2) as to the fees payable by virtue of an order under paragraph (2)(b), the Investigation Committee may either –

(a) determine the fees payable; or
(b) order the parties to the dispute to submit the fees to arbitration in accordance with the directions of the Investigation Committee.

(5) The tribunal making an order under paragraph (1) may include in it such terms or conditions (if any) as it thinks fit.

(6) A defendant against whom an order has been made under paragraph (1) of bye-law 23 requiring him to do all or any of the things mentioned in that paragraph shall be treated for the purposes of paragraph (1)(a) of this bye-law as having no lien in respect of the fees to which the order relates, if those requirements –

(a) cover the whole of those fees; or
(b) cover only part of them, and the balance has been paid by the client.

(7) In this bye-law –
"client" includes a former client;
"specified", in relation to any order under this bye-law, means specified in the order.

Expenses

24A(1) If the tribunal appointed to hear a formal complaint against a member or member firm or against a regulated firm finds the complaint proved in whole or in part, it may make an order that the defendant shall pay a sum to the Institute which will be sufficient to reimburse the complainant for such expense as, in the opinion of the tribunal, was reasonably and necessarily incurred by the complainant in –

(a) bringing to the attention of or reporting to the head of staff any of the facts and matters which constitute the complaint; or
(b) making written representations to the head of staff on any of those facts and matters before the Investigation Committee has under bye-law 15 decided whether in its opinion the complaint discloses a prima facie case.

(2) Bye-law 23(2) shall apply in relation to the making of any order under paragraph (1) as it applies in relation to the making of an order under bye-law 23(1).

(3) Where an order is made under paragraph (1), the sum which is ordered to be paid shall not exceed £1,000 or such other sum as may from time to time be fixed for the purposes of this paragraph by the direction of Council.

(4) The tribunal making an order under paragraph (1) may include in it such terms and conditions as it thinks fit.

(5) In this bye-law and bye-law 34B, "complainant" means the person who under bye-law 9(1) brought to the attention of, or reported to, the head of staff any of the facts and matters which constitute the complaint.

Time when tribunal's order takes effect

25(1) Subject to the following provisions of this bye-law, an order made by the tribunal appointed to hear a formal complaint shall, unless the tribunal otherwise directs, take effect at the end of the period of 28 days beginning with the date of the order.

(2) If within that period the defendant serves notice of appeal –

(a) against the order; or
(b) where applicable, against the tribunal's omission to direct that the record of its decision required to be published under bye-law 35 shall not include the name of the defendant,

then, subject to paragraph (3), the order shall take effect, if at all, only after the appeal has been determined under the following provisions of these bye-laws.

(3) If, before the appeal has been so determined, the defendant by notice withdraws the notice of appeal –

(a) the tribunal's order shall take effect at the end of the period of 14 days beginning with the date on which the notice of withdrawal is served on the head of staff; and
(b) any fines which would have been due for payment before the end of that period if there had been no appeal shall become due at the end of that period.

(4) This bye-law does not apply to an order for the payment of costs made by the tribunal under bye-law 33(1).

Appeals

Right of appeal

26(1) Subject to bye-law 33(5) in the case of an order for exclusion from membership, if a tribunal makes an order against the defendant, he may within the period of 28 days beginning with the date of the order serve on the head of staff notice of appeal –

(a) against the order; or
(b) where applicable, against the tribunal's omission to direct that the record of its decision required to be published under bye-law 35 shall not include the name of the defendant.

(2) The grounds on which the defendant may appeal against an order include the ground that the amount of any costs ordered by the tribunal to be paid by him is excessive (but not the ground that the amount of any costs ordered by it to be paid to him by the Institute is too small).

(3) A notice of appeal under paragraph (1) shall be of no effect unless, before the end of the period of 28 days beginning with the date on which the written record of the tribunal's decision was served on him, or such longer period as the Chairman of the Appeal Committee or, failing him, its Vice-Chairman may within that period allow, the defendant serves on the head of staff a notice stating the grounds of appeal.

(4) A notice under paragraph (3) stating the grounds of appeal may be combined with the notice of appeal; but the grounds stated in a notice under paragraph (3) as served on the head of staff shall not be amended thereafter except with the leave of the panel appointed under bye-law 27 to hear the appeal.

(5) A defendant may withdraw a notice of appeal by serving on the head of staff notice to that effect.

(6) If the defendant serves a notice of appeal under paragraph (1) but fails to serve a notice stating the grounds of appeal before the end of the period allowed by or under paragraph (3), the tribunal's order shall take effect under bye-law 25(3) as if the defendant had served a notice of withdrawal of the appeal on the head of staff on the last day of that period.

(7) If, after the period of 28 days allowed by paragraph (1) has expired, the defendant serves on the head of staff a written application (in the prescribed form) for leave to serve notice of appeal under that paragraph notwithstanding the expiration of that period, then –

(a) the Chairman of the Appeal Committee or, failing him, its Vice-Chairman shall as soon as practicable appoint a panel (constituted as prescribed) to consider the application in accordance with the procedure prescribed for such panels, and

(b) the panel may give the defendant leave to serve notice of appeal under paragraph (1) within the period of 28 days beginning with the date on which notice of the panel's decision is served on him at an address specified by him in his application.

(8) Leave shall not be given under paragraph (7)(b) unless the panel is satisfied that the defendant could not reasonably have been expected to serve notice of appeal within the period of 28 days originally allowed by paragraph (1).

(9) Where, in the case of an order made by a tribunal against a defendant, leave to serve notice of appeal out of time is given under paragraph (7)(b) –

(a) the order shall be treated for the purposes of the bye-laws as if its date were the date of service on the defendant of notice of the panel's decision as mentioned in paragraph (7)(b), and references to the date of that order shall be construed accordingly;
(b) the provisions of the bye-laws shall have effect in relation to that order subject to such directions as may be given by the panel giving that leave, being directions which the panel consider necessary for the purpose of adapting or supplementing those provisions so as to fit the circumstances resulting from the giving of that leave.

(10) In this bye-law "prescribed" means prescribed by regulations.

Panels

27(1) As soon as practicable after the receipt by the head of staff of an effective notice of appeal under bye-law 26 the Chairman of the Appeal Committee or, failing him, its Vice-Chairman shall appoint a panel to hear the appeal.

(2) A panel so appointed shall consist of –

(a) a chairman, being either the Chairman or the Vice-Chairman of the Appeal Committee or, if neither of them is available to sit, another person (whether a member of the Appeal Committee or not) who is either a barrister or a solicitor;
(b) three members of the Appeal Committee who are members of the Institute; and
(c) one member of the Appeal Committee who is not an accountant.

(3) If any member of the panel, other than its chairman –

(a) is for any reason unable to attend the hearing or any adjourned hearing of the appeal; or
(b) is in the course of the hearing unable to continue so to attend,

the remaining members, if not less than four in number, may at their discretion proceed or continue with the hearing; but if the defendant is present or represented at the hearing, they shall do so only if he or his representative consents.

(4) If, in a case falling within paragraph (3), the remaining members of the panel –

(a) do not proceed or continue with the hearing; or
(b) complete the hearing but are unable to agree on how to determine the appeal,

the appeal shall be heard or re-heard by a new panel appointed under paragraph (1).

(5) If at any time during the hearing of an appeal the chairman of the panel appointed under paragraph (1) is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be completed by that panel, he shall so inform the Chairman or, failing him, the Vice-Chairman of the Appeal Committee who shall thereupon direct that the appeal be re-heard by a new panel so appointed.

(6) The Appeal Committee may appoint a barrister or solicitor to act as legal assessor at the hearing.

(7) Where a new panel is appointed pursuant to paragraph (4) or (5), no member of the original panel may be appointed as a member of the new one; but a person appointed as a legal assessor may continue to act at any re-hearing of the appeal.

Hearing of appeals

28(1) As soon as practicable after the appointment under bye-law 27(1) of a panel to hear an appeal, the head of staff shall serve on the defendant a notice stating the time and place fixed for the hearing.

(2) The defendant may appear before the panel in person or by a representative.

(3) The panel shall give the defendant or his representative a reasonable opportunity of being heard before it.

(4) If the defendant does not attend and is not represented at the hearing then, provided that the panel is satisfied that the notice required by paragraph (1) was served on him, the tribunal may hear the appeal in his absence.

(5) If the defendant or his representative so requests, the hearing of the appeal shall be held in public; but notwithstanding such a request, the panel may exclude the press and public from all or part of the hearing in circumstances in which Article 6 of the European Convention on Human Rights permits this.

(6) The Investigation Committee may appoint the head of staff or any member of the Institute, or may instruct a barrister or solicitor, to appear on behalf of the Committee at the hearing of the appeal.

Powers of panel on appeal

29(1) On an appeal under bye-law 26(1) against an order made on a formal complaint, the panel appointed to hear the appeal –

(a) shall take into consideration the record of the evidence given

before, and the documents produced to, the tribunal at the hearing of the complaint;

(b) may, if it thinks fit, re-hear any witness who gave oral evidence before the tribunal; and

(c) may on special grounds (as to which the panel shall be the sole judge) receive fresh evidence.

(2) On such an appeal, the panel may by order –

(a) affirm, vary or rescind any order of the tribunal;

(b) substitute for any such order or orders such other order or orders as it thinks appropriate, being in every case an order which the tribunal might have made on the formal complaint;

(c) include in any substituted order such terms and conditions, if any, as the panel thinks appropriate including, in the case of an order for the exclusion of a member from membership, a recommendation that no application for his readmission be entertained before the end of a period specified in the order;

(d) direct that the record of the tribunal's decision to be published under bye-law 35 shall not include the name of the defendant;

(e) direct that the complaint shall be re-heard by a new tribunal appointed under bye-law 19(1).

(3) An order made by a panel on an appeal under bye-law 26(1) shall take effect on the date of the order unless the panel directs that it shall take effect as from some later date specified in the order.

Intervention orders

Intervention orders

30(1) Where, whether in the course of considering a complaint or not, the Investigation Committee is of the opinion that a member engaged in public practice –

(a) has appeared before a court of competent jurisdiction charged with an indictable offence and has either –

(i) been remanded in custody on that charge; or

(ii) pleaded guilty to or been found guilty of such an offence;

(b) has been excluded from membership of any body (other than the Institute) mentioned or referred to in bye-law 7(2)(a);

(c) is a person whose professional competence or efficiency is seriously impaired as a result of ill health or mental incapacity;

(d) is a sole practitioner who has abandoned his practice; or

(e) is a member of a partnership or director of a body corporate which was engaged in public practice, but whose principals have all abandoned the practice,

the Committee may (subject to paragraph (3) and, where it applies,

paragraph (8)) make against him one or more of the orders available against him under paragraph (2).

(2) The orders available against a member are –

(a) that his practising certificate be suspended for such period (not exceeding two years) as the Investigation Committee considers appropriate in all the circumstances;
(b) that he shall not take on any new clients;
(c) that in respect of his professional activities he shall execute, in such terms as the Investigation Committee may specify in the order, a power of attorney or an enduring power of attorney in favour of another member designated by the Investigation Committee (in this paragraph referred to as "the substitute");
(d) that he shall instruct his bank that cheques drawn on his client bank account are not to be honoured unless signed or counter-signed by the substitute;
(e) that he shall provide the substitute with an account of all client account money;
(f) that he shall hand over to the substitute all books and documents concerning any of his clients and divert his professional mail to the substitute's registered address.

(3) Where a member is engaged in public practice –

(a) as a partner in a partnership in which one or more of the other partners are members so engaged; or
(b) as a director of a body corporate one or more of whose other directors are members so engaged,

an order under this bye-law (other than one confined to suspending his practising certificate) shall not be made against him unless it is also made against each other partner or director so engaged who is a member.

(4) In determining under this bye-law whether or not a member's professional competence or efficiency is seriously impaired as a result of ill-health or mental incapacity, the Investigation Committee may rely on a report by a registered medical practitioner; but the absence of such a report shall not prevent the Committee from so determining on the basis of the member's conduct.

(5) For the purposes of this bye-law a member shall, unless the contrary is proved, be presumed to have abandoned the practice of which he is a principal if –

(a) it appears to the Investigation Committee that he has, without reasonable explanation, been continuously absent from all offices of the practice for at least 30 days; or
(b) he has persistently failed to respond to efforts to contact him at his registered address.

(6) An order under this bye-law –

(a) may be framed so as to be in force indefinitely or for a specified period or until the occurrence of a specified event; and
(b) may include such terms and conditions (if any) as the Investigation Committee thinks fit.

(7) Where the Investigation Committee has made an order against a member under this bye-law, it may on a written application made by him or on its own initiative –

(a) by order discharge the order or vary it (whether so as to prolong its operation or in any other way); or
(b) if the order has ceased to have effect, make a fresh order under this bye-law.

(8) Before making an order against a member under this bye-law or taking any action under paragraph (7) the Investigation Committee shall –

(a) serve on the member concerned a notice describing (with reasons) the action it proposes to take; and
(b) give him a reasonable opportunity to make written representations to it and, if he so requests, give him or his representative a reasonable opportunity to make oral representations to it.

(9) Paragraph (8) shall not apply if, in the opinion of the Investigation Committee, delay in taking action under paragraphs (1) to (6) or paragraph (7) would seriously prejudice the interests of any person, whether a client of the member concerned or not; but where the Committee acts by virtue of this paragraph without having done as provided in paragraph (8), it shall promptly –

(a) serve on the member concerned a notice describing (with reasons) the action it has taken;
(b) give him a reasonable opportunity to make written representations to it and, if he so requests, give him or his representative a reasonable opportunity to make oral representations to it; and
(c) reconsider the action taken by it in the light of any representations so made.

(10) As soon as practicable after making any order under this bye-law the Investigation Committee shall serve a copy of the order on the member concerned.

(11) Where the Investigation Committee makes any order under this bye-law, it shall cause a statement to that effect to be published, as soon as practicable, in such manner as it thinks fit.

(12) Except insofar as the Investigation Committee in its absolute discretion otherwise directs, a statement published under paragraph (11) shall –

(a) state the name of the member against whom the order was made; and
(b) describe the order or orders made against him,

but need not include the name of any other person or body concerned.

Appeals against intervention orders

31(1) If the Investigation Committee makes an order against a member under bye-law 30 (intervention orders), he may within the period of 28 days beginning with the date of the order serve on the head of staff notice of appeal –

(a) against the order; or
(b) where applicable, against the Committee's omission to direct that the statement required to be published under bye-law 35 (as applied by the following provisions of this bye-law) shall not include the name of the member.

(2) The provisions of these bye-laws mentioned in column 1 of the table set out in paragraph (6) (which relate to appeals against orders made by tribunals) shall apply in relation to appeals under paragraph (1) of this bye-law as if references in those provisions to a tribunal, to an order made by a tribunal (or on a formal complaint) and to the defendant were respectively references to the Investigation Committee, to an order made by it under bye-law 30, and to the member against whom that order was made.

(3) In their application by virtue of paragraph (2) the provisions mentioned in column 1 of that table shall have effect subject to any further modifications specified in column 2 of the table.

(4) On an appeal under paragraph (1) the panel appointed to hear the appeal may, whether the appeal is successful or not, order the member concerned to pay the Institute by way of costs of the appeal such sum as the panel may in its absolute discretion determine.

(5) Any costs ordered under paragraph (4) shall, unless a longer period for payment (whether by instalments or not) is allowed by order of the panel, be paid within the period of 28 days beginning with the date of the order; and paragraphs (8) and (9) of bye-law 33 (time for payment of costs) shall apply in relation to any costs or instalment of costs payable under this bye-law as if references to that bye-law and to paragraph (8) of it were references to this bye-law and this paragraph respectively.

(6) The following is the table referred to above –

TABLE

(1)	(2)
the definition of "representative" in bye-law 1(2)	–
bye-law 26(3) to (10)	–
bye-law 27	–
bye-law 28	–
bye-law 29	(a) in paragraph (2)(b), for "on the formal complaint" substitute "under bye-law 30"; (b) in paragraph (2)(d), for "record of the tribunal's decision" substitute "statement"; and (c) for paragraph (2)(e) substitute— "(e) direct that the matter shall be referred back to the Investigation Committee for reconsideration."
bye-law 35	(a) for any reference to a record of a tribunal's decision substitute a reference to a statement; (b) in paragraph (2), for the words from "Where" to "in part" substitute "Where, on an appeal, a panel rescinds an order made under bye-law 30"; (c) in paragraph (3), omit "the tribunal or, as the case may be,"; (d) in paragraph (4), for "26(1)" substitute "31(1)"; (e) in paragraphs (5) and (6) omit "tribunal or" (3 times).

Fines and costs

Time limits for payment of fines

32(1) Subject to paragraph (2), a fine imposed by an order of a tribunal appointed to hear a formal complaint shall, unless a longer period for payment (whether by instalments or not) is allowed by the order, be paid within the period of 30 days beginning with the date of the order.

(2) If the defendant gives notice of appeal against the order of the tribunal within the period allowed by bye-law 26(1), the fine shall not become payable until the appeal has been determined under these bye-laws, and

shall then be payable, if at all, in accordance with the following provisions of this bye-law.

(3) A fine –

(a) which is imposed by an order of a panel under these bye-laws; or
(b) which, having been imposed by a tribunal under these bye-laws, is on appeal affirmed or varied in amount by an order of a panel under these bye-laws,

shall be paid within the period of 28 days beginning with the date of the order unless a longer period for payment (whether by instalments or not) is allowed by the order of the panel.

(4) Any fine or instalment of a fine imposed under these bye-laws must be received by the Institute before the close of business on the last day of the period allowed by or under these bye-laws for its payment (or, if that day is not a business day, before the close of business on the next business day).

(5) Where –

(a) a fine imposed by these bye-laws is payable by instalments; and
(b) any instalment is not duly received by the Institute as required by paragraph (4),

the whole of that fine or, as the case may be, so much of it as then remains unpaid shall become due for payment in accordance with paragraph (4) as if the last day of the period allowed for the payment of that instalment were the last day of the period allowed for the payment of the whole fine.

Powers of tribunals and panels as to costs

33(1) If the tribunal appointed to hear a formal complaint finds that the complaint has been proved in whole or in part, it may order the defendant to pay to the Institute by way of costs such sum as the tribunal may determine.

(1A) If the tribunal appointed to hear a formal complaint dismisses the complaint as wholly unproved or finds that the complaint has been proved in part only, it may order the Institute to pay to the defendant by way of costs such sum as the tribunal may (subject to and in accordance with regulations) in its absolute discretion determine.

(2) Any costs ordered under paragraph (1) shall, unless a longer period for payment (whether by instalments or not) is allowed by the order, be paid within the period of 30 days beginning with the date of the order.

(3) If within the period allowed by bye-law 26(1) the defendant serves notice of appeal against an order for payment of costs made under paragraph (1) of this bye-law, then, subject to paragraphs (4) and (5) of this bye-law (and to bye-law 26(3)), those costs shall not become payable until the appeal has been determined under these bye-laws, and shall then be payable, if at all, in accordance with the following provisions of this bye-law.

(4) If, before the appeal has been so determined, the defendant by notice withdraws the notice of appeal –

(a) the tribunal's order for payment of costs shall take effect at the end of the period of 14 days beginning with the date on which the notice of withdrawal is served on the head of staff; and
(b) any costs which would have been due for payment before the end of that period if there had been no appeal shall become due at the end of that period.

(5) A notice of appeal under bye-law 26(1) against an order that the defendant be excluded from membership shall be of no effect unless any costs ordered by the tribunal under paragraph (1) (or such part of those costs as may be determined by the Chairman of the Appeal Committee or, failing him, by its Vice Chairman, on the written application of the defendant) are paid on or before the giving of the notice; but any costs so paid shall be repaid if and so far as their amount is reduced or cancelled by the panel on the appeal.

(6) On an appeal against an order made by a tribunal, the panel appointed to hear the appeal –

(a) may by order reduce or cancel the amount of any costs ordered by the tribunal to be paid by the defendant;
(b) may, whether the appeal is successful or not, order the defendant to pay to the Institute by way of costs of the appeal such sum as the panel may in its absolute discretion determine;
(c) may, if it finds the complaint wholly unproved or finds that it has been proved in part only, order the Institute to pay to the defendant by way of costs such sum as the panel may, subject to and in accordance with regulations, in its absolute discretion determine.

(7) Any costs ordered by the panel under paragraph (6)(b), together with –

(a) any unpaid costs ordered by the tribunal under paragraph (1); or
(b) so much (if any) of those unpaid costs as remains payable after any reduction or cancellation under paragraph (6)(a),

shall, unless a longer period for payment (whether by instalments or not) is allowed by order of the panel, be paid within the period of 28 days beginning with the date of the order of the panel.

(8) Any costs or instalment of costs payable to the Institute under this bye-law must be received by the Institute before the close of business on the last day of the period allowed by or under this bye-law for payment (or, if that day is not a business day, before the close of business on the next business day).

(9) Where –

(a) any costs ordered by these bye-laws are payable by instalments; and
(b) any instalment is not duly received by the Institute as required by paragraph (8),

the whole of those costs or, as the case may be, so much of them as then remains unpaid, shall become due for payment in accordance with paragraph (8) as if the last day of the period allowed for the payment of that instalment were the last day of the period allowed for the payment of the whole of those costs.

Liability for fines and costs payable by member firms

34(1) Where a member firm has been ordered to pay any fine or costs under these bye-laws, the following provisions of this bye-law apply.

(2) Any member or former member who at, or at any time since, the relevant time –

(a) was a director of or a partner in the firm; or
(b) as a sole practitioner, himself constituted the firm,

shall be liable for the full amount of the fine or costs in question; and where two or more persons are so liable under this paragraph, they shall be jointly and severally liable.

(3) If any member or former member fails to pay on demand any amount which he is liable to pay under paragraph (2), the failure shall have the same consequences under the bye-laws as it would if the fine or costs had been imposed on him individually.

(4) In this bye-law "the relevant time" has the same meaning as in the definition of "firm" contained in bye-law 1(2).

Refund of fees, commission and expenses

Time limit for payment of fees, commission and expenses

34A Bye-law 32 (time limits for payment of fines) shall apply in relation to an order for the payment of a sum under bye-law 23(1) or bye-law 24A(1) as it applies in relation to orders for the payment of fines.

Refund of sums to complainants

34B When any sum of which payment is ordered under bye-law 23(1) or bye-law 24A(1) is paid to the Institute, the Institute shall pay the same sum to the client (if ordered under bye-law 23(1)) or to the complainant (if ordered under bye-law 24A(1)) within 21 days.

Publicity

Publication of findings and other orders

35(1) Subject to paragraphs (2) and (4), where a tribunal or panel makes any finding or other order under these bye-laws, it shall cause a record of its decision to be published, as soon as practicable, in such a manner as it thinks fit.

(2) Where a tribunal dismisses a formal complaint, or, on an appeal, a panel decides that a formal complaint has been proved neither in whole nor in part, it shall cause a record of its decision to be so published if, but only if, the defendant so requests.

(3) Unless the tribunal or, as the case may be, the panel otherwise directs, a record of its decision published under this bye-law shall state the name of the defendant and describe the finding and the other order or orders (if any) made against him, but need not include the name of any other person or body concerned in the formal complaint or appeal.

(4) A tribunal shall not cause a record of its decision to be published under paragraph (1) until the period allowed by bye-law 26(1) for giving notice of appeal against the order has expired; and if an effective notice of appeal is given under bye-law 26, then, unless the appeal is abandoned –

(a) no record of the tribunal's decision shall be published under paragraph (1) but
(b) subject to paragraph (2) a record of the panel's decision on the appeal shall be so published.

(5) Notwithstanding paragraphs (2) and (4), a tribunal or panel may cause a record of its decision to be published at any time if in its opinion publication is desirable in view of any statement or comment made in the public domain.

(6) The restrictions imposed by the preceding provisions of this bye-law on publication of a record of the decision of a tribunal or panel shall not apply if the hearing by the tribunal or panel (as the case may be) was held wholly or partly in public.

Publicity for the disciplinary process

36(1) Notwithstanding anything in these bye-laws, the Chairman of the Investigation Committee may at any time make such public statements as he thinks fit concerning –

(a) any matter relating to or connected with the performance by the Institute of any of its statutory functions;
(b) any complaint; or
(c) any matter relating to or connected with the performance by the Investigation Committee of its functions under bye-law 30 (intervention orders),

being a matter or complaint which in his opinion is or involves a matter of public concern.

(2) The power to make statements under paragraph (1) –

(a) shall be exercised in accordance with such guidelines as the Council may issue from time to time; and
(b) may, if the Chairman of the Investigation Committee is for any reason unavailable, be exercised by any Vice-Chairman of that Committee (in which case the reference in that paragraph to the Chairman's opinion shall be read as a reference to the opinion of that Vice-Chairman).

(3) The Chairman of the Investigation Committee may authorise the disclosure to a complainant of information concerning any proceedings brought or to be brought before the Investigation Committee or a tribunal or panel.

(4) An authorisation under paragraph (3) may be given subject to any restrictions which the Chairman of the Investigation Committee thinks appropriate.

(5) A hearing of a formal complaint or appeal may be held in public if the Council has authorised it to be so held; and an authorisation under this paragraph may –

(a) relate to a particular case, to cases of one or more classes, or to cases generally; and
(b) may be given subject to any restrictions which the Council thinks appropriate.

(6) Paragraph (5) does not affect a panel's duty under bye-law 28(5) to hear an appeal in public if so requested by the defendant or his representative, or its power under bye-law 28(5) to exclude the press and public in the circumstances there mentioned.

(7) Where any hearing is held in public by virtue of an authorisation under

paragraph (5), the chairman of the tribunal or panel may exclude the press and public from all or part of the proceedings if it appears to him desirable to do so in the interests of justice or for any other special reason.

(8) In this bye-law "statutory functions" means powers and duties conferred or imposed by or under any Act of Parliament or by or under any legislation (wherever in force) for the time being designated in regulations.

Commencement and transitional provisions

Commencement and transitional provisions

37(1) These bye-laws, as originally allowed, came into force on 1 September 1998; and references to these bye-laws in paragraphs (2) to (7) of this bye-law refer to them as originally allowed.

(2) Subject to the following paragraphs of this bye-law, these bye-laws apply in relation to –

(a) facts or matters which come to the attention of the head of staff (under bye-law 9(1) or otherwise) after the commencement of these bye-laws, including facts or matters which occurred at any time before, but come to his attention after, that commencement;
(b) facts or matters which came to the attention of the head of staff before the commencement of these bye-laws but were not laid by him before the Investigation Committee before that commencement; and
(c) facts or matters which immediately before the commencement of these bye-laws were the subject of proceedings under Schedule 2 (Professional Conduct) to the former bye-laws.

(3) In bye-law 7 (proof of certain matters) –

(a) paragraph (1) shall have effect in relation to any facts or matters falling within paragraph (2)(c) of this bye-law as if the references to a member firm were omitted;
(b) paragraphs (2) to (7) shall not apply in relation to facts or matters which came to the attention of the head of staff before the commencement of these bye-laws.

(4) An application for the review of a decision of the Investigation Committee made before the commencement of these bye-laws shall be proceeded with under Schedule 2 to the former bye-laws; but if under that Schedule the Reviewer of Complaints remits the application to the Investigation Committee with a recommendation that it should be reconsidered, the application shall from then on be proceeded with under bye-law 18 of these bye-laws.

(5) Where before the commencement of these bye-laws a tribunal or panel made a finding against a defendant under Schedule 2 to the former bye-laws, but did not make any other order against him, no record of its decision shall be published under bye-law 35 of these bye-laws unless the defendant so requests.

(6) Without prejudice to section 16(1) (general savings) of the Interpretation Act 1978 as applied by bye-law 1(3), if Schedule 2 to the former bye-laws is rescinded, its rescission shall not affect the Institute's right to enforce any order, direction or requirement which was in force immediately before that rescission.

(7) In this bye-law "the former bye-laws" means the bye-laws of the Institute as in force immediately before the commencement of these bye-laws.

(8) It is hereby declared that –

(a) the liability of a person or body to disciplinary action under these bye-laws on a complaint is to be determined in accordance with the bye-laws and regulations in force at the time when the facts or matters complained of occurred; but

(b) all disciplinary proceedings under these bye-laws are to be conducted in accordance with the bye-laws and regulations in force at the time of the proceedings.

(9) Paragraph (8) does not affect the operation of paragraphs (2) to (7) of this bye-law or any other provision of these bye-laws which expressly restricts or extends the application of these bye-laws or any of them.

SCHEDULE Bye-law 2

CONSTITUTION OF INVESTIGATION, DISCIPLINARY AND APPEAL COMMITTEES AND APPOINTMENT OF REVIEWERS OF COMPLAINTS

The Investigation, Disciplinary and Appeal Committees

1(1) The Council shall appoint an Investigation Committee, a Disciplinary Committee and an Appeal Committee, and in this paragraph "the Committees" means those Committees and "a Committee" means any of them.

(2) Initial appointment as a member of a Committee shall be for a period of not less than three years (such period may be extended at the discretion of Council); but a member or former member of a Committee may be re-appointed.

(3) The Council may terminate a person's membership of a Committee on

grounds of serious misconduct or incapacity in such manner as shall be prescribed in regulations made by Council. Such regulations may include a provision to suspend any person's membership of a Committee pending final determination.

(4) No person shall be a member of more than one of the Committees at the same time.

(5) The Council may pay remuneration to, and the reasonable expenses of, the non-accountant members of a Committee.

(6) A Committee may make such regulations (not inconsistent with the provisions of these bye-laws) as it considers necessary for the performance of its functions.

The Investigation Committee

2(1) The Investigation Committee shall consist of not fewer than 14 persons, of whom at least the required number must not be accountants.

(2) The required number for this purpose is one quarter or, if the total number of members of the Committee is not divisible by four, one quarter of the first higher number that is so divisible.

(3) The Committee may co-opt other persons, being either members of the Institute or persons who are not accountants, provided that the required number of non-accountants is maintained.

(4) At a meeting of the Committee three members of the Committee, of whom two must be members of the Institute and one must not be an accountant, constitute a quorum.

The Disciplinary Committee

3(1) The Disciplinary Committee shall consist of not fewer than 14 persons, of whom at least the required number must not be accountants.

(2) Paragraph 2(2) of this Schedule (meaning of "required number") applies for this purpose.

(3) No member of the Disciplinary Committee shall take part in a decision concerning a case if, while a member of the Investigation Committee, he took part in a decision on that case.

The Appeal Committee

4(1) The Appeal Committee shall consist of not fewer than 14 persons, of whom at least the required number must not be accountants.

(2) Paragraph 2(2) of this Schedule (meaning of "required number") applies for this purpose.

(3) The Chairman and Vice-Chairman of the Committee must each be either a barrister or a solicitor; and neither of them shall be an accountant.

(4) No serving member of the Council shall be appointed to the Appeal Committee. If a member of the Appeal Committee becomes a member of Council he shall with immediate effect cease to be a member of the Appeal Committee.

(5) A person who, as a member of the Investigation Committee or the Disciplinary Committee, has been concerned with a formal complaint or with the making of an order under bye-law 30 (intervention orders) shall not be appointed to a panel which is to hear an appeal arising out of that complaint or order.

Reviewers of Complaints

5(1) The Council shall appoint one or more Reviewers of Complaints, none of whom shall be an accountant.

(2) Appointment as a Reviewer of Complaints shall be for a period of not less than three years, and any such appointment may be renewed.

(3) The Council shall pay remuneration to, and the reasonable expenses of, every Reviewer of Complaints, and shall indemnify him against any civil liability incurred by him in that capacity.

(4) The Reviewer of Complaints or, if two or more such Reviewers are appointed, those Reviewers acting jointly, shall make a report to the Council annually.

Professional Conduct Regulations

INVESTIGATION COMMITTEE REGULATIONS

1 These regulations were made by the Investigation Committee ('the Committee') on 6 October 1998[1].

2 In these regulations unless the context otherwise requires or express reference is made in these regulations, words and phrases used in these regulations have the same meaning as in the Disciplinary Bye-laws. Furthermore:

'Director' means the person for the time being holding the office of the Director of the Professional Conduct Directorate of the Institute or any member of his department authorised by him to act in his name;

'Institute' means the Institute of Chartered Accountants in England and Wales.

3 The Committee may in its absolute discretion appoint one or more of its members or co-opt other persons to assist it to perform its functions. Such appointments may include the appointment of a monitor or team to assist the Director to investigate complaints.

4 If the Chairman considers that the appointment of one or more of its number is required on an urgent basis then he may make such appointment or appointments as he considers necessary and report back to the Committee at the next available meeting.

5 Where a member who has been the subject of a complaint dealt with in accordance with the Disciplinary Bye-laws makes a complaint about the handling of the case by the staff and remains dissatisfied notwithstanding an explanation, the Committee shall appoint one or more of its members (Investigation Committee Reviewer(s)) to review the member's complaint. The Reviewer shall consider written representations from the member and the staff and all documents he or she considers relevant. The Reviewer may, if he thinks fit, give the member and/or the staff an opportunity to make oral representations. The Reviewer(s) shall report back to the Committee and the Committee will notify both parties to the complaint of its conclusions in writing.

6 No objections shall be upheld to any technical fault in the procedure of the Committee nor in any decision by the Committee nor the terms of any

[1]Last amended on 7 February 2006 by the Investigation Committee

order issued by it provided that the proceedings are fair and the relevant Bye-laws and regulations have been observed.

7 The rules of judicial evidence will not apply. The Committee may at its discretion treat as evidence any testimony whether in written, oral or other forms.

8 If a dispute is referred to the Committee in accordance with Disciplinary Bye-law 9(4), the Secretary shall lay before the Committee a summary of the material facts and matters to which any relevant documentation may be appended.

9 The Committee shall consider the submission received under regulation 8 and decide whether or not any of the facts and matters could make the subject of the complaint liable to disciplinary action.

10 If the Committee is of the opinion that a submission under regulation 8 discloses that a member, firm or provisional member may have become liable to disciplinary action it shall instruct the staff to proceed in accordance with the Disciplinary Bye-laws.

11 If the Committee is of the opinion that the submission under regulation 8 does not disclose that a member, firm or provisional member may have become liable to disciplinary action it shall instruct the staff to dismiss the matter.

12 The Director or any member of the staff authorised by him, may exercise the Committee's power under Disciplinary Bye-law 13 in the following circumstances:

(i) if the member, member firm, regulated firm or provisional member has failed to satisfy a previous written request made by the staff when carrying out its function under the Disciplinary Bye-laws or
(ii) if in the opinion of the Director to make a written request prior to serving notice under Disciplinary Bye-law 14 would cause unreasonable delay.

13 'Representative' for the purpose of Disciplinary Bye-law 15(4)(b) or Disciplinary Bye-law 30(8)(b) (intervention orders) means a barrister or solicitor or any other member of the Institute or, with the agreement of the Committee, any person. Provided that the firm, provisional member or member being considered by the Committee shall supply to it the name and occupation and on request any other details of any proposed representative.

14 If the Committee prefers a formal complaint to the Disciplinary Committee under Disciplinary Bye-law 15(2)(a), the summary that is referred to in Disciplinary Bye-law15(6) shall be prepared by the Director and the Director shall appoint a member, solicitor, barrister or member of the Institute's staff to represent the Committee at any tribunal of the Disciplinary Committee.

15 If the Committee considers that a complaint should be deferred to monitor developments in accordance with Disciplinary Bye-law 15(2)(c)(ii) it shall instruct the Director to report at prescribed intervals the progress of those circumstances. Such monitoring may include enquiries of third parties as well as the subject of the complaint.

16 For the purpose of Disciplinary Bye-law 16(1)(b) and 16A(1)(b) 'disciplinary record' means any previous (adverse) disciplinary findings or orders whether made by the Investigation Committee, the Disciplinary Committee, the Appeal Committee, or by a Joint Disciplinary Tribunal or Appeal Committee of the Joint Disciplinary Scheme or the Accountancy Investigation and Discipline Scheme or any regulatory penalty as defined in the Audit Regulations, Designated Professional Body Handbook or the Insolvency Licensing Regulations but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under Disciplinary Bye-law 15(2)(d) that no further action be taken on the complaint or on any specified part of it.

17 The notice to be served under Disciplinary Bye-law 16(3) shall be in the form as set out in Schedule I to these regulations.

18 If the person or body served notice under Disciplinary Bye-law 16(3) has agreed to the terms of the order under Disciplinary Bye-law 16(2), the Investigation Committee Secretary may make the order on behalf of the Committee.

19 The notice to be served under Disciplinary Bye-law 16A(2) shall be in the form set out in Schedule II to these regulations.

20 Unless the subject of the complaint, served notice under Disciplinary Bye-law 16A(2), serves written notice on the Secretary of the Investigation Committee, within 28 days of service of such notice, that he is unwilling to accept the finding of a prima facie case exists, the Secretary of the Investigation Committee shall make the order on behalf of the Investigation Committee.

21 The fixed sum referred to in Disciplinary Bye-law 16A(3) shall be determined by the Committee from time to time and shall be, in each case, the fixed sum or where less, the actual costs incurred.

22 Any notice or document required to be served by the Committee in accordance with the Disciplinary Bye-laws and these regulations may be served personally or by first class post to the member, provisional member or firm at the last known place of business appearing in the Institute's register or his last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting for the purposes of this regulation and regulation 19.

23 If the Committee is asked for directions in the event of a dispute as to the fees under Disciplinary Bye-law 24(4) the Committee may:

(a) determine the amount payable; or
(b) order the issue to be referred to the Institute's Fee Arbitration Scheme.

24 If a member's conduct is, at any time, subject to consideration by the Secretary, Investigation Committee, Disciplinary Committee, Appeal Committee, Joint Disciplinary Scheme or Accountancy Investigation and Discipline Scheme, the Director may request the Members Registrar to defer demand for due payment of annual subscription until the conclusion of such consideration or disciplinary process whichever is the later.

SCHEDULE I

Notice served under Disciplinary Bye-law 16(3)

Dear Mr/Mrs/Ms [.....]

[INSERT BRIEF REFERENCE TO COMPLAINT QUOTING FILE REFERENCE]

On [INSERT DATE OF MEETING], the Investigation Committee considered this complaint including your representations. It concluded that there was a prima facie case in relation to heads [NUMBERS] and no prima facie case in relation to heads [NUMBERS]

Heads [NUMBERS]

Having considered all the relevant options, the Committee decided to deal with heads [NUMBERS] under Disciplinary Bye-law 16 and offer you the opportunity to accept a Consent Order. It is therefore proposing, subject to your agreement, to order that:

[INSERT ORDER LISTED IN DISCIPLINARY BYE-LAWS16(2) AND DETAILED HEADS OF COMPLAINT]

The reasons for this decision are:

.....

Heads [NUMBERS]

The Committee concluded that there was no prima facie case in relation to heads [NUMBERS]

[INSERT DETAILED HEADS OF COMPLAINT]

The reasons for this decision are:

Your option in relation to heads [numbers] prima facie case

You are required to respond to this offer of a Consent Order within 21 days letting me know which of the following four options you wish to adopt:

1. If you [your firm] wish(es) to accept the proposed order, please sign the enclosed copy order and return it to me.

   This will be appropriate in circumstances where you [your firm] do(es) not wish to dispute the complaint. The advantage of taking this option is that with your [your firm's] agreement the matter is concluded. However, it is important that you are aware that the order will be recorded as a disciplinary record against you [your firm]. A copy of the order will be sent to the national and financial press and will be made available to any enquirers on request.
2. If [you] [your firm] do(es) not accept that there is a prima facie case to answer and you consider that there is further information that the Committee should consider, please write to me detailing this information and I will put the complaint back to the Committee for reconsideration under Disciplinary Bye-law 16(5).
3. If [you] [your firm] accept(s) that there is a prima facie case but you wish to make representations as to the penalty the Committee proposes to impose, please let me have your [your firm's] representations in writing and I will put them to the Committee. If you wish to make representations on the amount of the financial penalty, you will need to complete a financial circumstances form. Please ring the Committee administrator on [NUMBER] for a form. Alternatively email [NAME]@icaew.co.uk.
4. If you[your firm] do(es) not wish to accept the proposed order, please let me know. The Investigation Committee will be informed and may then prefer a Formal Complaint to the Disciplinary Committee. The wording of the Formal Complaint may not necessarily be in identical terms to the complaint above.
5. If you [your firm] decide(s) not to accept the proposed order and a Formal Complaint is preferred, you will have the opportunity to attend a hearing before a disciplinary tribunal when you can deal with the matter yourself or be represented.

However, it is important that you are aware that the Disciplinary Committee has wider powers than those available to the Investigation Committee. (See Disciplinary Bye-laws 21, 22, 23 and 24). You should also be aware that this process will incur further costs by the Institute and if the Disciplinary Committee makes a finding against [you][your firm], [you][your firm] may be ordered to pay the Institute's costs.

If you do not respond within 21 days we will assume that you do not wish to accept the proposed order and the Investigation Committee may prefer the matter to the Disciplinary Committee as a Formal Complaint.

Heads [NUMBERS] – no prima facie case

In relation to these no prima facie case decisions, the complainant has the right to apply in writing to have the case reviewed by an independent Reviewer of Complaints and the Reviewer has the power to refer the matter back to the Investigation Committee for further consideration. The complainant must make his application within six months of the date of the Committee decision unless, in the opinion of the Reviewer, there is fresh evidence to justify consideration of the application for a review. I will let you know if such an application is made.

Please ring me on my direct line below if you have any queries on the process set out above.

COMPLAINT AGAINST MEMBER

I **[INSERT NAME OF MEMBER]** agree to the Investigation Committee proceeding with the proposed order stated in Notice dated **[INSERT DATE OF NOTICE].**

SIGNED .....

DATE .....

COMPLAINT AGAINST FIRM

I **[LEAVE BLANK FOR SIGNATORY TO COMPLETE]** on behalf of **[INSERT NAME OF FIRM]** agree to the Investigation Committee proceeding with the proposed order stated in Notice dated **[INSERT DATE OF NOTICE]**

SIGNED .....

ON BEHALF OF **[INSERT NAME OF FIRM]**

STATUS IN FIRM .....

DATE .....

SCHEDULE II

Notice served under Disciplinary Bye-law 16A

Dear Mr [.....]

INSERT DETAILS OF THE COMPLAINT AND THE DISCIPLINARY BYE-LAW UNDER WHICH LIABILITY TO DISCIPLINARY ACTION OCCURS

The Investigation Committee has considered the above complaint under reference [.....] and the representations made. The Committee has decided that the complaint discloses a prima facie case under the Disciplinary Bye-laws.

The Committee, after considering all the relevant circumstances, is of the opinion that it is appropriate to deal with the complaint under Disciplinary Bye-law 16A (Caution). The Committee is therefore proposing to order that:

[YOU] [YOUR FIRM] BE CAUTIONED

[OR]

[YOU] [YOUR FIRM] BE CAUTIONED AND PAY THE INSTITUTE THE SUM OF [£] BY WAY OF COSTS

The Committee will make this order unless, **within 30 days of the date of this letter**, [you] [your firm] serve notice on the Secretary of the Investigation Committee that [you] [your firm] does not accept that a prima facie case exists.

If such notice is served on the Secretary then, unless on reconsideration the Committee finds that no prima facie case exists, a formal complaint will be preferred to the Disciplinary Committee. In the event of finding the formal complaint proved, the Disciplinary Committee will have available to it the orders set out in Disciplinary Bye-laws 21, 22, 23 and 24 as appropriate.

An order made under Disciplinary Bye-law 16A will form a disciplinary record against [you] [your firm] and will be referred to should [you] [your firm] be subject to disciplinary action in the future.

A copy of the order will not be sent to the national or financial press but the Institute will notify the complainant, other regulators and any person making specific enquiry of the fact that a caution has been made against you.

N.B.

1 Failure to serve notice in writing, on the Secretary of the Investigation Committee that you do not accept that a prima facie case exists will result in the Investigation Committee making the proposed order.

2 If [you] [your firm] serves notice, within the period specified, that [you] [your firm] do[es] not accept that a prima facie case exists, then a formal complaint may be preferred to the Disciplinary Committee. However, the wording of that referral may not necessarily be in identical terms of the complaint above. [You] [your firm] should also be aware that the Disciplinary Committee has a wider range of penalties available to it than the Investigation Committee.

3 The above proposal does not affect any actions that may be taken of a regulatory nature by the Institute's Insolvency Licensing Committee, the Investment Business Committee or the Audit Registration Committee.

DISCIPLINARY COMMITTEE REGULATIONS

1 These Regulations were made by resolution of the Disciplinary Committee. Regulations 1 to 31 and 38 to 43 came into force on 1 September 1998. Regulations 32 to 37 came into force on 31 March 2000.

2 Except where express reference is made in this Regulation, words and phrases used in these Regulations have the same meaning as in the Disciplinary Bye-laws;

(a) 'ICAEW' means the Institute of Chartered Accountants in England and Wales;
(b) 'the Director' means the person holding the office which is responsible for the operation of the Institute's disciplinary arrangements in the Professional Standards Directorate.
(c) 'the Investigation Committee representative' means the person appointed by the Investigation Committee to represent that committee before the disciplinary tribunal and to present the formal complaint;
(d) Legal Assessor' means the solicitor or barrister appointed to act as Legal Assessor under Disciplinary Bye-law 19(5);
(e) 'Tribunal' means any tribunal of the Disciplinary Committee appointed to hear the formal complaint or a pre-hearing review;
(f) 'Tribunal Chairman' means a member of the Disciplinary Committee appointed to be a Chairman of a tribunal under Disciplinary Bye-law 19(1)(b);
(g) 'Disciplinary record' means any previous (adverse) disciplinary findings or orders whether made by the Investigation Committee, the Disciplinary Committee, the Appeal Committee or by a Joint Disciplinary Tribunal or Appeal Committee of the Joint Disciplinary Scheme or any regulatory penalty as defined in the Audit Regulations, Investment Business Regulations or the Insolvency Licensing Regulations but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under Disciplinary Bye-law 15(2)(d) that no further action be taken on the complaint or on any specified part of it.
(h) 'written record of decision' means the document prepared by the Legal Assessor and approved by the Chairman of the tribunal which records in writing a summary of the reasons for the finding and the order of the tribunal, including any term or condition on which the order was made.

3 Subject to Regulation 4, the defendant shall, unless he agrees to waive or vary any requirement for notice, as soon as practicable after the reference of a formal complaint to the Disciplinary Committee be given not less than 42 days written notice of the date, time and place of the hearing and of the terms of the formal complaint preferred against him.

4 Where the formal complaint comprises an allegation of breach of Disciplinary Bye-law 13(2) the defendant shall, unless he agrees to waive or vary any requirement for notice be given not less than 21 days written notice

of the date, time and place of the hearing and of the terms of the formal complaint preferred against him.

5 Notice of the hearing as required by Regulations 3 and 4 shall unless previously provided be accompanied by a copy of the formal complaint together with a summary of the complaint and the Investigation Committee submission and copies of any documents and/or any other material which the Investigation Committee intends to adduce in evidence.

6 The Director shall decide, in his absolute discretion whether an application for a postponement of a hearing which has not commenced should be granted.

7 Not less than 28 days before the date fixed for the hearing the Director may require the defendant to state in writing within 14 days of service of notice of such a requirement:

(a) whether he accepts the complaint and if not on what grounds he denies the complaint;
(b) whether he accepts the facts as stated in the summary and if not the grounds for challenge;
(c) if he accepts the complaint whether he has any explanation in mitigation;
(d) whether or not he intends to attend and/or be represented at the hearing.

8 At least 21 days before the day fixed for the hearing the defendant shall serve on the Director 8 copies of paginated and indexed bundles of all documents on which he intends to rely unless the documents have been included amongst the documents served in accordance with Regulation 5 above.

9 Regulation 7, 8 and 11 below shall not apply to any formal complaint which has been served in accordance with Regulation 4 above.

10 After the Investigation Committee has resolved to prefer a formal complaint but before any hearing the Director may require a defendant to provide such further information and documents relating to the complaint as the director thinks necessary for the just, expeditious and economic disposal of the case and may require the defendant to supply such further copies of any document as he considers necessary.

11 Not less than 21 days before the hearing each party shall serve on the other a written statement of any oral evidence which will be given by or on behalf of that party. Any such statement shall be signed, dated and include the name and address of the maker. Within the same period each party shall serve on the other, a copy of any document which will be relied upon at the hearing and provide sufficient copies for use at the hearing (at least 7). Nothing in this regulation shall prevent either party waiving wholly or in part the time period specified in this regulation or the tribunal by order directing such alternative time period as it may specify.

12 Prior to the commencement of the hearing of the formal complaint, any preliminary issues on procedure or any application for directions which are necessary or desirable for securing the just, expeditious and economical disposal of a formal complaint may be determined by a Pre-hearing Review Tribunal (which may or may not be the Tribunal appointed in accordance with Disciplinary Bye-law 19(1)). Any matters falling within this Regulation may be decided by agreement between the parties without a hearing.

13 The Director, Chairman or Vice Chairman of the Disciplinary Committee or the Chairman of any tribunal or any tribunal may direct that there be a Pre-hearing Review on the application of either party or act on their or its own volition.

14 Any notice or document may be served by the defendant by sending the notice or document addressed to the Director at Silbury Court, 412–416 Silbury Boulevard, Central Milton Keynes, MK9 2AF by first class post. Any notice or document required to be served on the defendant may be served personally or by first class post to the defendant at his last known place of business appearing in the register or his last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting.

15 The defendant is entitled to make written representations to (subject to Regulation 8 above), or to appear in person before a tribunal or be represented by a barrister or solicitor or any other member of the Institute or with the agreement of a tribunal, any person.

16 A tribunal may proceed in the defendant's absence when it is satisfied that Regulations 3 or 4, and 5 have been observed. A defendant is deemed present when he appears by his representative.

17 The Investigation Committee may be represented by a member of the secretariat or may instruct a barrister or solicitor.

18 At the commencement of the hearing the legal assessor shall read out the formal complaint and invite the defendant to state whether he accepts or denies the complaint.

19 The representative of the Investigation Committee shall outline the case against the defendant and subject to Regulation 11 produce any document or call any witness.

20 The defendant shall be entitled to address a tribunal and subject to Regulation 11 to give evidence and to produce any document or call any witness.

21 A witness for one party (including the defendant) may be questioned by or on behalf of the other party. A witness so questioned may be re-examined by or on behalf of the party calling him. Members of a tribunal may ask

questions of a witness. The Investigation Committee representative and the defendant or his representative may make a closing address. The defendant or his representative will have the final opportunity to address the tribunal.

22 The hearing shall be informal and the strict rules of evidence shall not apply. Subject to these regulations, the tribunal may adopt any method of procedure which it may consider fair and which gives each party an opportunity to have this case presented. The hearing will be in private and evidence will not be taken on oath.

23 A tribunal may in its discretion hear two or more formal complaints against a defendant at the same hearing.

24 A tribunal may with the agreement of all parties hear complaints against two or more defendants in the same hearing.

25 A tribunal may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either party.

26 An application for further adjournment made before a hearing is resumed may be determined by the Chairman of the Tribunal or in his absence the Chairman or Vice Chairman of the Disciplinary Committee.

27 A tribunal may adjourn the proceedings after making a finding on the formal complaint but before making an order.

28 If the Tribunal decides to exercise its powers under Disciplinary Bye-law 21, it shall serve a notice on the defendant firm in a form approved by the Disciplinary Committee.

29 The Legal Assessor will prepare the notice referred to in Regulation 28 for approval by the Chairman of the Tribunal and a copy of the notice will be sent to the Chairman of the Investment Business Committee.

30 On a finding that a formal complaint has been proved in whole or in part, the representative of the Investigation Committee shall inform the tribunal of any disciplinary record of the defendant.

31 The defendant or his representative shall be allowed to address the tribunal before any order is made.

32 A tribunal on finding a complaint not proved or proved in part only may, on the defendant's application, order that the Institute pay a specified sum in respect of the defendant's costs. In deciding whether such an order should be made, the Tribunal shall have regard to all the facts and matters it considers relevant including the conduct of the defendant and the conduct of the Institute. The sum payable by the Institute shall be in the amount determined by the Tribunal in its absolute discretion.

33 For the purposes of Regulation 32, the defendant's costs shall be limited to costs reasonably incurred by the defendant since the date of the preferral of the Formal Complaint by the Investigation Committee to the Disciplinary Committee.

34 The Tribunal shall give opportunity to the representative of the Investigation Committee to be heard.

35 If the Tribunal cannot deal fairly with the issue of costs against the Institute at the hearing, it will make such decisions of principle and detail as it can and the final order will be made by the Chairman of the Tribunal on considering any other material considered relevant.

36 If, for any reason the Chairman of the Tribunal considers that it would be inappropriate for him to make a final order, the order will be made by the Chairman or failing him the Vice Chairman of the Disciplinary Committee.

37 Unless a Tribunal orders an extended period, any costs to be paid by the Institute, will be paid within 28 days of the Institute authorising payment of the sum ordered.

38 A shorthand or stenograph note of the proceedings may be taken or a tape recording of them made, on behalf of a tribunal.

39 No objection shall be upheld to any technical fault in the complaint or in the procedure adopted by a tribunal provided that the proceedings are fair and the relevant Bye-laws and Regulations have been complied with.

40 Where a formal complaint (or part of the complaint) has been found proved the Director shall send to the defendant, as soon as reasonably practicable, notice of the decision of the tribunal and any order made.

41 A written record of the decision of the tribunal shall be prepared by the Legal Assessor for approval by the Chairman of the tribunal.

42 The Director shall send to the defendant a copy of the written record of decision where a formal complaint (or part of the complaint) has been found proved as soon as reasonably practicable after it has been approved by the Chairman of the tribunal.

43 All material and information provided by either the ICAEW or the defendant in connection with any disciplinary proceedings, whether oral or in writing, shall at all times remain confidential and no such material or information may be disclosed (directly or indirectly) except –

(i) to legal advisers for the purposes of the disciplinary proceedings;
(ii) where the defendant is a partner in or employed by a member firm to a partner in that firm;
(iii) to any other person to whom disclosure is necessary for the purposes of

obtaining evidence, information or assistance in connection with the disciplinary proceedings; and

(iv) to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover.

This Regulation does not apply to the written record of decision published in accordance with Disciplinary Bye-law 35(1) and 35(5).

DCRegs/01.08.2005

APPEAL COMMITTEE REGULATIONS

1 These Regulations were made by the Appeal Committee under paragraph 1(5) of the Schedule to the Disciplinary Bye-laws and came into force on 1 November 2002.

Interpretation

2 Except where express reference is made in this Regulation, words and phrases used in these Regulations have the same meaning as in the Disciplinary Bye-laws;

(a) 'Answer' means a written response to the notice and grounds of appeal served on the appellant by the respondent;
(b) 'Appellant' means a member (Intervention Orders Disciplinary Bye-law 30), or a defendant or defendant firm, (as defined in Disciplinary Bye-law 1) or an applicant (Review Committee and Re-admissions Sub-committee) who has given effective notice of appeal to the Director;
(c) 'Bye-laws' means all the Bye-laws of the Institute for the time being in force as amended from time to time;
(d) 'Chairman' means a member of the Appeal Committee appointed to be Chairman of the Panel in accordance with Disciplinary Bye-law 27(2)(a);
(e) 'Director' means the person holding the office which is responsible for the operation of the Institute's disciplinary arrangements in the Professional Conduct Directorate;
(f) 'ICAEW' means the Institute of Chartered Accountants in England and Wales;
(g) Membership Regulations means the Membership Regulations 2002 made by the Council under Clause 16 of the Supplemental Charter and Principal Bye-law 49(a);
(h) 'Notice of Appeal' means:
    (i) in the case of appeals from the Investigation Committee, the notice served on the Director under Disciplinary Bye-law 31(1) (Intervention Orders); or
    (ii) in the case of appeals from the Disciplinary Committee, the notice served on the Director under Disciplinary Bye-law 26(1); or
    (iii) in the case of appeals from the Review Committee, the notice served on the Secretary of the Review Committee under the appropriate provision in the Audit Regulations 1995, Investment Business Regulations 1997, the Designated Professional Body Handbook or the Insolvency Licensing Regulations 2004;
    (iv) in the case of appeals from the Re-admissions Sub-committee, the notice of appeal served under Membership Regulation 7,

and the term includes 'effective notice of appeal' under Disciplinary Bye-law 26(3) or 31(2)

(i) 'Panel' means a panel of the Appeal Committee appointed under Disciplinary Bye-law 27(1) and in accordance with Disciplinary Bye-law 27(2) or a panel of the Review Committee appointed under the relevant

provisions of the Review Committee Regulations; or a panel of the Appeal Committee appointed under Membership Regulation 8;

(j) 'Respondent' means in the case of an appeal against a decision of the Investigation Committee or the Disciplinary Committee, the Investigation Committee, in the case of an appeal against a decision of the Review Committee, the Review Committee; and in the case of an appeal against a decision of the Re-admissions Sub-committee, the Re-admissions Sub-committee;

(k) 'Re-admissions Sub-committee' means the Sub-committee of the Investigation Committee to which the Investigation Committee pursuant to Bye-law 49(b) has delegated its powers, authority or discretion in respect of applications for re-admission to membership;

(l) 'Review Committee' means the Committee appointed by the Council of the Institute to consider applications for review of any decision taken by the Audit Registration Committee, the Financial Services Authorisation Committee or the Insolvency Licensing Committee.

3 These Regulations, save where express reference is made, apply to the hearing by a panel of the Appeal Committee of any appeal, whether from the Investigation Committee (Intervention Orders only); a Tribunal of the Disciplinary Committee; the Review Committee or the Re-admissions Sub-committee.

4 Where notice of appeal has been served, but no grounds of appeal have been served, an application for an extension of the 28 day period for service of grounds of appeal must be made in writing to the Chairman within 28 days from the date of service of the written Record of Decision.

5 Regulations 6, 7, 12, 13 and 27–33 do not apply to appeals against refusal to readmit to membership.

6 Where a tribunal orders exclusion and payment of a fine and/or costs, a defendant may apply in writing to the Chairman of the Appeal Committee for a reduction in the amount of costs payable in accordance with Disciplinary Bye-law 33(5) (payment of costs before a Notice of Appeal can be effective). Any such application shall be addressed to the Chairman or Vice Chairman c/o Silbury Court, 412–416 Silbury Boulevard, Central Milton Keynes MK9 2AF and must be made expeditiously but no later than 21 days from the date of the Tribunal order.

7 Notice of appeal by a defendant, who has had an order for exclusion made against him, shall not be an effective notice of appeal unless either: –

(a) all the costs ordered by the tribunal have been paid; or

(b) that part of the costs ordered by the tribunal, which have been determined by the Chairman or Vice Chairman of the Appeal Committee in accordance with Regulation 6 above, has been paid.

8 Where effective notice of appeal is received by the Director, he shall as soon as practicable thereafter arrange a date for the hearing of the appeal.

9 *A* respondent may, within 14 days of receipt of an effective notice of appeal, serve on the appellant an answer to the appeal.

10 Not less than 28 days before the date appointed for the hearing of the appeal, the Director shall provide the appellant with the following;

(a) a copy of the notice of appeal and grounds of appeal;
(b) a copy of any Answer to the appeal by the Respondent;
(c) a copy of any documents or any other material submitted to the Investigation Committee, Disciplinary Committee, Review Committee or the Re-admissions Sub-committee as appropriate;
(d) a transcript of the proceedings, the subject of the appeal before the Disciplinary Committee or Review Committee.

New Evidence
11 (a)On the application of either party, the Appeal Committee may hear any witness or allow the production of any material that was not before the Tribunal/Re-admissions Sub Committee which heard the matter at first instance.

(b) Any such application must be made in writing to the Chairman of the Panel of the Appeal Committee appointed to hear the appeal not less than 21 days before the date fixed for hearing and give reasons for the application and specify the relevance to the grounds of appeal or the Answer of the new evidence.
(c) If the application to submit new evidence is granted, the successful party must immediately provide a copy of any new material and of any statement of any witness to be called at the hearing to the other party and make available for the panel, eight further copies.
(d) If one party is given leave to introduce new evidence for the appeal hearing, the other party may introduce evidence in rebuttal provided that they give the first party copies of any material or statements they intend to put in evidence and make copies available for the panel, not less than 10 days before the date fixed for the hearing.

Application for Leave to Serve Notice of Appeal outside the 28 day Time Limit
12 An application for leave to serve notice of appeal after the expiry of 28 days from the date of the order under Disciplinary Bye-law 26(7) (which will include notice of appeal under Disciplinary Bye-law 31(1)) and in the case of appeals from the Re-admissions Sub Committee after expiry of 28 days from the date on which written reasons for refusal were sent under Membership Regulation 6 shall:

(a) be in writing, and sent to the Director at Silbury Court, 412–416 Silbury Boulevard, Central Milton Keynes MK9 2AF;
(b) set out the reasons why notice of appeal could not reasonably have been expected to be given within the period of 28 days originally allowed;
(c) be accompanied by documents or other material in support of the application including, where appropriate, a medical certificate or other confirmation of any medical condition;

(d) specify an address to which correspondence relating to the application and any appeal, if appropriate thereafter, should be sent.

13 On receipt of an application, in the form specified in Regulation 12, the Chairman shall appoint a panel to consider the application. Any such panel may include a panel already appointed under Disciplinary Bye-law 27(1).

14 Where a panel gives leave to serve notice of appeal the Director shall send written notice setting out the decision of the panel to the defendant.

Pre-Hearing Review

15 (a)The Director, Chairman of the Appeal Committee or Vice Chairman or Chairman of any Panel appointed to hear an appeal, may of his or its own volition or on application by either party at any stage in the proceedings direct that there be a Pre-hearing Review.

(b) On any pre-hearing review a panel shall consider every application for directions made by any party and any written representations relating to the application and shall give such directions as it thinks necessary for the purpose of securing the just, expeditious or economical disposal of the proceedings.

(c) Without prejudice to the generality of paragraph (b) above, the panel may give such directions as it thinks fit in relation to:
  (i) amendment of any notice and/or grounds or answer to the appeal or any other document;
  (ii) the admission of any facts or documents;
  (iii) the admissibility in evidence of any documents or other material;
  (iv) the way in which evidence is to be given at the hearing;
  (v) the consideration of more than one appeal at the same time;
  (vi) the length of the hearing;
  (vii) the venue for the hearing.

Conduct of the Hearing

16 A respondent may be represented by a member of the secretariat or may instruct a barrister or solicitor.

17 The rules as to the admissibility of evidence in a court of law shall not apply. The panel may determine the conduct of its hearings in such manner as it considers appropriate for the clarification of the issues in the appeal and generally for the just conduct of the proceedings. Without prejudice to the generality of this provision, the order of the proceedings will be:

(a) in the case of appeals from the Review Committee, the parties may address the panel on the question of whether or not any arguable ground of appeal has been given in accordance with Audit Regulation 9.07 or Regulation 7.04 of the Designatory Professional Body Handbook or Insolvency Licensing Regulation 5.24 as appropriate. The panel shall then decide whether or not there is an arguable ground or grounds of appeal.

(b) where the appeal is from the Review Committee and the panel decides that there is one or more grounds of appeal then in respect of that ground or

grounds and in relation to all other appeals the following provisions shall apply;

(i) the Appellant or his representative may address the panel and adduce any new evidence in respect of which leave has been given or which is admissible under Regulation 11(a) above;
(ii) the Respondent may then address the panel and adduce any new evidence in respect of which leave has been given or which is admissible under Regulation 11 (a) or (d) above;
(iii) the Appellant may adduce any new evidence in rebuttal if the same is admissible under Regulation 11(d);
(iv) where a witness is called by either party to the appeal he may, after being questioned by the party calling him, be questioned by the other party. He may then be re-examined by the party calling him. The panel may ask questions of a witness at any stage;
(v) the Respondent may make a closing address to the panel followed by the Appellant.

18 The panel may in its absolute discretion hear two or more appeals from an Appellant at the same time.

19 The panel may in its absolute discretion hear the appeals of two or more Appellants at the same time.

20 The Chairman or Vice Chairman of the Appeal Committee or the Chairman of a panel, or a panel may postpone or adjourn proceedings from time to time as they think fit of their own volition or upon application by either party.

21 An application for a further adjournment made before a hearing is resumed may be determined by the Chairman of the Panel or in his absence the Chairman or Vice Chairman of the Appeal Committee.

22 The Appellant may make written representations to a panel, or appear in person or be represented by a barrister or solicitor or any other member of the Institute or with the agreement of a panel, or the Chairman or Vice Chairman of the Appeal Committee, any person.

23 A shorthand record or a tape recording of the proceedings may be taken on behalf of a panel.

24 Any notice or document may be served by an Appellant personally or by sending the notice or document addressed to the Director at Silbury Court, 412–416 Silbury Boulevard, Central Milton Keynes MK9 2AF by first class post. Any notice or document required to be served on the Appellant may be served personally or by first class post to the Appellant at his last known place of business appearing in the register or his last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting.

Public Hearings
25 A request by the Appellant for the hearing of the appeal to take place in public shall be made to the Director in writing, not less than 7 days before the date fixed for the hearing.

Review of Decisions and Correction of Errors
26 (a)The panel may of its own volition or upon application by either party, review any order made by it and may on such review revoke or vary that order on the grounds that–

(i) the order was wrongly made as a result of an error on the part of the panel, secretariat or either party, or;
(ii) a party did not receive proper notice of the proceedings leading to the order.

(b) an application made under paragraph (a) above shall be made within 28 days of the date of the making of the order.
(c) where at least one of the grounds in (a)(i) and (ii) above apply, the panel may direct that an appeal should be re-heard by a new panel of the Appeal Committee constituted under Disciplinary Bye-law 27(1).

Costs
27 The panel may order the Appellant to pay such sum by way of costs as it, in its absolute discretion, thinks fit.

28 A panel on finding a complaint not proved or proved in part only may, on the Appellant's application, order that the Institute pay a specified sum in respect of the Appellant's costs. In deciding whether such an order should be made, the panel shall have regard to all the facts and matters it considers relevant including the conduct of the Appellant and the conduct of the Institute. The sum payable by the Institute shall be in the amount determined by the panel in its absolute discretion.

29 For the purposes of Regulation 27, the Appellant's costs shall be limited to costs reasonably incurred by the Appellant since the date of the preferral of the Formal Complaint by the Investigation Committee to the Disciplinary Committee.

30 Where an application is made under Regulation 28, the panel shall give opportunity to the representative of the Investigation Committee to be heard.

31 If the panel considers that it cannot deal fairly with the issue of costs against the Institute at the hearing, because of lack of information, it will make such decisions of principle and detail as it can and will make directions as to the provision of further information to be provided by the Appellant and the final order will be made by the Chairman of the Panel having considered such additional information as is provided by the Appellant in accordance with the directions made by the panel.

32 If for any reason the Chairman of the Panel considers that it would be

inappropriate for him to make a final order, the order will be made by the Chairman or failing him the Vice Chairman of the Appeal Committee.

33 Unless a panel orders an extended period, any costs to be paid by the Institute, will be paid within 28 days of the Institute authorising payment of the sum ordered.

1 November 2002

The Scheme adopted by The Accountancy Investigation and Discipline Board

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ACCOUNTANCY INVESTIGATION AND DISCIPLINE BOARD SCHEME

MAY 2004

Scheme

1(1) This Scheme is made and adopted by the managing board of the AIDB (the "**Board**") on behalf of the AIDB, with the agreement in writing of The Financial Reporting Council, with effect on and from the Effective Date.

1(2) To safeguard the public interest by maintaining and enhancing the standards of conduct of Members and of Member Firms, this Scheme provides a system for:

(i) the investigation of Members' and of Member Firms' conduct in the course of their professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), including such conduct before they became Members and Member Firms, and

(ii) if warranted following such investigation, bringing disciplinary proceedings against Members and Member Firms.

1(3) This Scheme applies to any matter referred to the AIDB under paragraph 6(2), or assumed by the AIDB under paragraph 6(8) and to all steps and proceedings arising, directly or indirectly, there from or in consequence thereof or in relation thereto.

1(4) Every Member and every Member Firm shall have the obligations in relation to this Scheme set out in paragraphs 13(1) and 13(2).

1(5) This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

Interpretation

2(1) In this Scheme, unless inconsistent with the subject or context:

act of misconduct means any Member's or Member Firm's conduct in the course of his or its professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.

adverse finding means a finding by a Disciplinary Tribunal that a Member or Member Firm has committed an act of misconduct or has failed to comply with any of his or its obligations under paragraph 13(2).

AIDB means The Accountancy Investigation and Discipline Board

Limited, a company limited by guarantee incorporated in England and Wales, number 5081857.

AIDB Participant means a Participant who is participating in this Scheme.

Alternate Executive Counsel means a legally qualified person, appointed to that office by the Nominations Committee of The Financial Reporting Council.

Appeal Tribunal means a tribunal appointed by the Board under paragraph 9(7)(ii), to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member or Member Firm who or which gives or has given notice of appeal under paragraph 9(1).

conduct includes efficiency and competence, and includes a failure to act as well as a positive act.

Disciplinary Tribunal means a tribunal appointed by the Board under paragraph 8(1).

Effective Date for a Participant, its Members and/or Member Firms, means the earliest date by which both of the following events have occurred: –

(i) the adoption of the Scheme by the AIDB
(ii) the acceptance or approval of the Scheme in writing by or on behalf of the governing body of that Participant.

employ includes engage the services of, and ***employee*** shall be construed accordingly.

Executive Counsel: –

(i) means a legally qualified officer of the AIDB, appointed to that office by the Nominations Committee of The Financial Reporting Council; and
(ii) in relation to any matter where that officer is unable or unwilling to act, because of volume of work, actual or possible conflict of interest or any other reason whatsoever, includes the Alternate Executive Counsel or, where there is more than one Alternate Executive Counsel, the Alternate Executive Counsel designated in relation to any matter by the Board and references in this Scheme to the Executive Counsel shall be interpreted as referring to the Alternate Executive Counsel in those circumstances.

Firm means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.

Formal complaint means the formal document prepared by the Executive

Counsel and submitted to a Disciplinary Tribunal setting out the grounds (including particulars sufficient to enable such grounds to be properly understood by a Disciplinary Tribunal and the Members or Member Firms concerned) to support any allegation by the Executive Counsel that a Member or Member Firm has committed an act of misconduct.

Former Member means a person who was a Member at the time of the alleged misconduct but has ceased to be a Member.

Former Member Firm means a firm which was a Member Firm at the time of the alleged misconduct but has ceased to be a Member Firm.

JDS means the Joint Disciplinary Scheme established by some of the Participants and which became effective on 21 January 1993 with the objective of promoting the highest possible standards of professional and business conduct, efficiency and competence.

Member means: –

(i) a member of one or more of the AIDB Participants, or

(ii) other than in sub-paragraph 10(2)(v), any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the AIDB Participants in so far as such provisions relate to the system of discipline and professional conduct, and regulation, operated thereby.

Member Firm means a Firm which is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the AIDB Participants in so far as such provisions relate to the systems of discipline and professional conduct, and regulation, operated thereby, or two or more Members working together under a formal agreement.

Panel means the panel appointed pursuant to paragraph 10(1).

Participant means a member of the Consultative Committee of Accountancy Bodies and any other relevant accountancy body with the extension that, if an accountancy body ceases to be a Participant or an AIDB Participant at a time when any investigation or proceedings under this Scheme are proceeding, then for the purpose of the application of the provisions of this Scheme to that investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of a Tribunal), that body shall be regarded and treated as if it remained an AIDB Participant.

Regulations means regulations made by the Board, as may be amended from time to time.

Representative means a solicitor, advocate or counsel or a Member or any other person who is engaged or requested to represent a Member or a Member Firm under investigation or before a Tribunal.

The Financial Reporting Council means The Financial Reporting Council Limited, a company limited by guarantee and registered in England No. 2486368, and any other body which takes over the functions of The Financial Reporting Council.

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) appointed on behalf of the AIDB by the Board.

UK-connected company means:
(a) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;
(b) any company in the same group (as defined in section 53 of the Companies Act 1989) as such a company; and
(c) any associate (as defined in section 52 of the Companies Act 1989) of such a company or such a group company.

UK-connected business means:
(a) any sole-trader, firm, partnership or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and
(b) any associate (as defined in section 52 of the Companies Act 1989) of such a sole-trader, firm or partnership.

2(2) Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

2(3) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

Scope of the Scheme

3(1) A Member or Member Firm shall be liable to investigation on the grounds set out in paragraph 5(1) below.

3(2) A Member or Member Firm shall be liable to disciplinary proceedings on the grounds set out in paragraph 5(3) below.

3(3) For the avoidance of doubt, anything said, done or omitted by;
(i) an employee of a Member Firm within the scope of his employment, actual or ostensible; or
(ii) an agent of the Member Firm within the scope of his authority, actual or ostensible,
shall be taken as having been said, done or omitted by that Member Firm.

3(4) A Member Firm shall not avoid liability to disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, director or employee acting with actual or ostensible authority) is found to have fallen short of the standards reasonably to be expected of a Member Firm.

3(5) A Member or Member Firm will be liable to investigation and discipline under this Scheme regardless of whether the act of misconduct took place before or after the Effective Date.

3(6) A Member will be subject to investigation and discipline under this Scheme regardless of whether he was a Member at the time of the act of misconduct:

(i) if that act of misconduct took place after the Effective Date, even if the rules of the Participant to which the Member belongs provide otherwise; and

(ii) if that act of misconduct took place before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct that took place when a Member was not a Member.

3(7) A Former Member or Former Member Firm will be subject to investigation and discipline under this Scheme as if he or it were a Member or Member Firm:

(i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise: and

(ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct by a Former Member or Former Member Firm.

The Board

4 Without prejudice to the generality of the powers of the Board under the AIDB Memorandum and Articles of Association, the Board shall have power:

(i) to make such Regulations as the Participants shall agree with the Board for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that they are not inconsistent with this Scheme and that there shall have been prior consultation by the Board with the Participants;

(ii) to provide the Executive Counsel with procedural guidelines concerning the discharge of his duties;

(iii) to authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;

(iv) to authorise the remuneration of the members of any Tribunal and any other persons;

(v) to delegate to the Chairman of the Board its powers under sub-

paragraphs 4(iii) and 4(iv), paragraphs 8(1), 9(4) and sub-paragraph 9(6)(ii); and

(vi) to do all such other things as the Board considers incidental or conducive to the operation of this Scheme.

Grounds for Investigation and Disciplinary Proceedings

5(1) A Member or Member Firm shall be liable to investigation under this Scheme only where, in the opinion of the Board:

(i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and

(b) the matter needs to be investigated to determine whether there may have been an act of misconduct; or

(ii) it appears that the Member or Member Firm has failed to comply with any of its obligations under paragraph 13(2) below.

5(2) In deciding whether a matter raises or appears to raise important issues affecting the public interest in the United Kingdom for the purposes of sub-paragraph 5(1)(i)(a), the Board shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the accountancy profession in the United Kingdom. The Board shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

5(3) A Member or Member firm shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers that:

(i) there are grounds for delivering to the Board a formal complaint under paragraph 7(7) below alleging an act or acts of misconduct by that Member or Member Firm; or

(ii) there are grounds for submitting to a Disciplinary Tribunal a formal complaint under paragraph 7(7) below alleging that the Member or Member Firm has failed to carry out any of its obligations under paragraph 13(2) below.

5(4) In considering the question of whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him or it, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye-law, rule, regulation or guidance of any of the AIDB Participants, which applies to him or it.

Decision to Investigate

6(1) Without prejudice to paragraph 13(3), an investigation under this Scheme may be instituted in either of the circumstances described in paragraphs 6(2) and 6(8).

6(2) Where an AIDB Participant:

(i) Considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and

(ii) Considers that one or more of its Members or Member Firms may

have committed an act of misconduct in relation to that matter; and

(iii) Is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AIDB Participant in relation to the conduct in question,

then the AIDB Participant shall refer that matter to the AIDB and request that the AIDB conduct an investigation. Such a request from a Participant shall be published by the Board if it thinks fit. In the event that an AIDB Participant is in doubt as to whether a particular matter should be referred to the AIDB then the AIDB Participant shall consult with the AIDB for guidance.

6(3) Upon receipt of a reference pursuant to paragraph 6(2), the Board shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.

6(4) The decision of the Board to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 5(1), taking account of the considerations in paragraph 5(2), are met in relation to the matter referred.

6(5) Where the Board has decided to accept a reference made pursuant to paragraph 6(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the AIDB Participants.

6(6) If, in the opinion of the Board, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the AIDB Participant, or that any matters contained within the reference from the AIDB Participant should be excluded from the investigation, the Board may decide either to include or exclude any such matters from the investigation as appropriate.

6(7) Where the Board has decided to decline a reference made pursuant to paragraph 6(2) it shall: –

(i) give its reasons for the decision within fourteen days;

(ii) promptly state in writing its decision and the reasons for it and supply a copy thereof to the relevant AIDB Participant; and

(iii) if it thinks fit publish its decision.

6(8) Where an AIDB Participant is conducting an investigation into the conduct of a Member or Member Firm of which the Board is aware or the Board otherwise becomes aware of matters relating to the conduct of a Member or Member Firm, and, in either case, the Board:

(i) is of the opinion that the grounds for an investigation under paragraph 5(1), taking account of the considerations in paragraph 5(2), have been met; and

(ii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AIDB Participant in relation to the conduct in question,

the Board may, after consultation with any AIDB Participant whose

Members or Member Firms may be concerned in an investigation, decide that the matter shall be dealt with by the AIDB in accordance with this Scheme.

6(9) Where the Board has decided pursuant to paragraph 6(8), that a matter should be dealt with by the AIDB it shall give notice in writing of its decision and the reasons for it to the AIDB Participants. Upon receipt of such notice, the relevant AIDB Participant shall forthwith suspend any investigation relating to the matter on its part.

Investigation

7(1) (i) To assist the Board in exercising its powers under paragraph 6, it, and the Executive Counsel on its behalf, has power to require any AIDB Participant to provide to him such documentary information in its possession, or under its control, as the Board or the Executive Counsel, as the case may be, shall reasonably think fit and as the AIDB Participant can lawfully provide.

(ii) The foregoing power of the Board, and the Executive Counsel on its behalf, to require any AIDB Participant to provide documentary information shall include the power to call on it:-

(a) to permit the inspection and taking of copies of the documentary information, and

(b) to the extent reasonable, to supply copies of such documentary information at its own expense.

For the avoidance of doubt, documentary information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.

7(2) Where a reference is accepted by the Board under paragraphs 6(3) and 6(4):

(i) the scope of the investigation shall be set out within the notice in writing given by the Board referred to at paragraph 6(5);

(ii) in accordance with paragraph 6(6), such notice shall not be limited by the terms of the reference given by the AIDB Participant under paragraph 6(2) and shall include or exclude any matters relating to the matter as the Board shall see fit; and

(iii) the relevant AIDB Participant shall supply to the Board any material which is in the possession, or under the control, of that AIDB Participant which may reasonably be required for the purposes of the investigation and which the AIDB Participant can lawfully provide.

7(3) Where the Board decides under paragraph 6(8) that a matter shall be assumed by the AIDB to be dealt with in accordance with this Scheme:

(i) the scope of the investigation shall be set out within the notice in writing given by the Board as referred to at paragraph 6(9); and

(ii) the relevant AIDB Participant shall supply to the Board any material which is in the possession, or under the control, of that AIDB Participant which may reasonably be required for the purposes of the investigation.

7(4) In either case identified at paragraphs 7(2) and 7(3), the Board shall:
(i) transmit the notice in writing, together with any further material obtained pursuant to sub-paragraph 7(2)(iii), to the Executive Counsel to be dealt with in accordance with this Scheme, and
(ii) publish the fact of its decision to investigate unless this would not, in the opinion of the Board, be in the public interest.

7(5) Upon receipt of the documents transmitted pursuant to sub-paragraph 7(4)(i), the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers appropriate for the purposes of conducting the investigation. The Executive Counsel shall have power on behalf of the AIDB to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

7(6) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation that he is conducting then:
(i) the Executive Counsel shall report those facts and circumstances to the Board; and
(ii) the Board, after consultation with the relevant AIDB Participant (but within the Board's sole discretion), may direct in writing that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the AIDB Participants and the Members or Member Firms accordingly.

7(7) If, following his investigation, the Executive Counsel considers that any Members or Member Firms concerned appear to have committed an act of misconduct or to have failed to comply with its obligations under paragraph 13(2), then the Executive Counsel shall, subject to paragraphs 7(8) and 7(9), in the order set out below: –
(a) notify the Members or Member Firms concerned of his findings and the reasons for them and give each Member or Member Firm an opportunity to make written representations to him within such reasonable time as the Executive Counsel shall specify;
(b) consider whether the written representations provided by the Members or Member Firms concerned have given a satisfactory response to his findings;
(c) if, in the opinion of the Executive Counsel, the written representations provided have not given a satisfactory response, notify the Board thereof; and
(d) deliver to the Board a formal complaint against any Member or Member Firm concerned, which may be based on his amended findings having regard to sub-paragraphs 7(7)(b) and 7(7)(c).

7(8) A Member shall be liable to be disciplined under this Scheme only if he is, when a formal complaint is delivered under sub-paragraph 7(7)(d), or was, at the time of any alleged act of misconduct

(a) a citizen or subject of the United Kingdom; or
(b) working in the United Kingdom; or
(c) working in a United Kingdom registered audit firm; or
(d) working in, involved in providing services to or involved in auditing a UK-connected company or UK-connected business.

7(9) Notwithstanding that the Executive Counsel considers that a Member appears:
(i) to have committed an act of misconduct; and
(ii) to be within one or more of the four categories listed in paragraph 7(8),
the Executive Counsel shall take into account the existence and nature of other authorities and bodies outside the United Kingdom to which the Member may be subject for acts of misconduct. If, in consequence, the Executive Counsel is of the opinion that it would be inappropriate for the Member's conduct to be dealt with under the Scheme, the Executive Counsel may decide not to deliver a formal complaint in respect of the Member's conduct.

7(10) (i) A Member or Member Firm may, either voluntarily or at the invitation of the Executive Counsel at any stage (including, for the avoidance of doubt, during the hearing before the Disciplinary or Appeal Tribunal), make an admission in respect of some or all of the alleged acts of misconduct or alleged failures to comply with his or its obligations under paragraph 13(2) and such admission, if accepted by the Executive Counsel, shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission of the act of misconduct or failure to comply.
(ii) Any such admission shall (if made prior to a formal complaint being submitted to the Board by the Executive Counsel) be referred to in any formal complaint delivered by the Executive Counsel to the Board. Such formal complaint must include a statement agreed with the Executive Counsel giving particulars sufficient to enable the admitted act or acts of misconduct or failure to comply to be properly understood.

7(11) (i) If, following his investigation, the Executive Counsel does not deliver a formal complaint under paragraph 7(7) against a Member or Member Firm who or which has been investigated, he shall report that fact to the Board and such report shall include a statement of his reasons therefor. Any such report shall be dated and signed by the Executive Counsel.
(ii) The Board shall supply a copy of any such report to any Member or Member Firm concerned and each AIDB Participant.

7(12) The Board shall publish the outcome of the Executive Counsel's investigation as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Board, be in the public interest.

Disciplinary Proceedings

8(1) Where the Executive Counsel notifies the Board and delivers to it a formal complaint in accordance with paragraph 7(7), the Board shall serve the formal complaint on the Member or Member Firm concerned and shall, as soon as practicable, appoint a Disciplinary Tribunal to hear the formal complaint in accordance with the provisions of this Scheme.

8(2) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any formal complaint shall be in accordance with the Regulations.

8(3) In coming to its decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.

8(4) After hearing the formal complaint, the Disciplinary Tribunal shall in relation to the Member or Member Firm the subject of the formal complaint, either: –

(i) make an adverse finding in respect of some or all of the alleged acts of misconduct or failures to comply with the Member's or Member Firm's obligations under paragraph 13(2) forming the subject matter of the formal complaint, or

(ii) dismiss the formal complaint.

8(5) Where the Disciplinary Tribunal makes an adverse finding in relation to a Member or Member Firm, then: –

(i) it may order such sanctions against the Member or Member Firm as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate; but, if the act of misconduct occurred before the Effective Date, only in exceptional circumstances may the Disciplinary Tribunal impose a sanction more severe than could have been imposed under the relevant Participant's rules at the Effective Date;

(ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to sub-paragraph (i) above, may include an order that the Member or Member Firm be required to pay, in the manner set out in paragraph 12, the whole or part of the costs of, and incidental to, the investigation and the hearing of the formal complaint before the Disciplinary Tribunal. The amount to be paid by the Member or Member Firm is to be determined by the Disciplinary Tribunal provided that, where the Member or Member Firm has made an admission under paragraph 7(10), no such order for costs may be made in relation to any costs incurred after the date of the admission which relate to the subject matter of the admission; and

(iii) the Tribunal may make no order against the Member or Member Firm, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

8(6) If the Disciplinary Tribunal dismisses the formal complaint it may on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order the Board to pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the formal complaint being served on the Member or Member Firm.

8(7) Following its decision under paragraph 8(4), the Disciplinary Tribunal shall prepare a report on the Member or Member Firm concerned setting out the Tribunal's decision or decisions and the reasons for it or them and any related order or orders and send the report to the Board which shall then send a copy to the Member or Member Firm concerned and to the AIDB Participant.

8(8) (i) Unless the Disciplinary Tribunal shall otherwise decide, an adverse finding in relation to a Member or Member Firm and any order under paragraph 8(5) against a Member or Member Firm shall take effect 29 days after the date on which the finding or order is notified to the Member or Member Firm.

(ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member or Member Firm appeals against the order provided that the Tribunal considers that immediate action is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being lodged under paragraph 9(1). If the person appointed under paragraph 9(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed appellant. If the person appointed under paragraph 9(4) grants leave to appeal, the order shall take effect (subject to the relevant Appeal Tribunal decision) from the next working day after the date notification of the relevant Appeal Tribunal decision is sent to the Appellant.

8(9) The Board shall publish the report or reports prepared by the Disciplinary Tribunal as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Appeals

9(1) If a Disciplinary Tribunal makes an adverse finding in relation to any Member or Member Firm, with or without any order under paragraph 8(5), then subject to paragraph 9(2) the Member or Member Firm may, within 28 days after the date on which the finding and/or order is notified to him or it (provided always that a longer period may be allowed as set in paragraph 9(5) below), give to the Board notice of appeal against the finding and/or order.

9(2) An appeal under paragraph 9(1) against a decision of a Disciplinary Tribunal can be made on the following grounds:

(i) that the decision of the Disciplinary Tribunal was perverse or wrong in law; and/or

(ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or

(iii) that significant and relevant new evidence has come to light which was not previously available to the appellant and could not have become available to it on the making of reasonable enquiry; and/or

(iv) that the sanction imposed pursuant to paragraph 8(5) was manifestly unreasonable.

9(3) Any notice of appeal shall: –

(i) be in writing;

(ii) identify the finding and/or order appealed against; and

(iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

9(4) Upon receipt of a notice of appeal, the Board shall as soon as practicable appoint a person to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.

9(5) If the notice of appeal was not given to the Board within the 28 day period set out in paragraph 9(1), the person appointed under paragraph 9(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

9(6) Unless he has refused leave to appeal under paragraph 9(5), the person appointed under paragraph 9(4) shall give leave to appeal if he is satisfied that there is an arguable case for appeal on one or more of the grounds set out in paragraph 9(2).

9(7) (i) Following his decision to give leave to appeal under paragraph 9(6), or not to give leave to appeal, the person appointed under paragraph 9(4) shall notify the Board of his decision or decisions and the Board shall notify each Member or Member firm concerned and each AIDB Participant; and

(ii) the Board, once in receipt of such notice for leave to appeal, shall, if leave to appeal is given, appoint an Appeal Tribunal.

(iii) The order of the relevant Disciplinary Tribunal shall apply if leave to appeal is not given.

9(8) Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any formal complaint or appeal shall be in accordance with the Regulations.

9(9) In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.

9(10) An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence adduced pursuant to sub-paragraph 9(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in paragraph 8(5).

9(11) On an appeal the Appeal Tribunal shall have power to: –

(i) affirm, vary or rescind any adverse findings or orders of the Disciplinary Tribunal in relation to or against any Appellant;

(ii) substitute in relation to or against such Appellant, any other adverse findings and/or orders which it considers appropriate and which the Disciplinary Tribunal could have made under paragraph 8(5);

(iii) save that the Appeal Tribunal shall so exercise its powers under subsections 9(10)(i) and 9(10)(ii) that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the Disciplinary Tribunal.

(iv) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to sub-paragraph 9(2)(iii), order that the matter be reheard by the Disciplinary Tribunal which made the relevant adverse findings or orders or failing that by a fresh Disciplinary Tribunal;

(v) order that any Appellant be required to pay, in the manner set out in paragraph 12 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal;

(vi) should it grant the appeal, on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order the Board to pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the formal complaint being served on the Member or Member Firm.

9(12) Following its decision under paragraph 9(11), the Appeal Tribunal shall prepare a report on the Member, Member Firm, Members or Member Firms concerned setting out the Appeal Tribunal's decision or decisions and any related order or orders and send the report or reports to the Board which shall then send a copy to the Member or Member Firm concerned and to the AIDB Participants.

9(13) The decision or decisions of the Appeal Tribunal shall take effect from the date it is announced.

9(14) At any time before the date of a report which sets out the decision of an Appeal Tribunal in respect of the appeal of an Appellant in accordance with paragraph 9(12), such Appellant may abandon his or its appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm under sub-paragraph 8(5)(i) and 8(5)(ii) any adverse findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal and may make an order under sub-paragraph 9(11)(v) in relation to the whole or part of the costs of and incidental to the appeal.

9(15) The Board shall publish the report prepared by the Appeal Tribunal as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Disciplinary and Appeal Tribunals

10(1) The Board shall maintain a Panel of individuals who are appointed by the Board from time to time and who, in the opinion of the Board, have the appropriate qualifications and experience to sit on a Tribunal. Appointment to the Panel shall be for an initial period of at least three years and the terms of appointment shall be as set out in the Regulations.

10(2) A Tribunal shall be composed as follows:

(i) Each Tribunal shall consist of either three or five persons as the Board in its absolute discretion thinks fit.

(ii) The Chairman of a Disciplinary Tribunal shall be a lawyer (either a former member of the judiciary, a barrister, an advocate or a solicitor). The chairman of an Appeal Tribunal must be a former member of the judiciary or a Queen's Counsel.

(iii) A three-person Tribunal must comprise in addition to the Chairman:
  (a) a lay person (who is neither a lawyer nor an accountant); and
  (b) an accountant.

(iv) A five-person Tribunal must include in addition to the Chairman:
  (a) at least one lay person (who is neither a lawyer or an accountant); and
  (b) two (but no more than two) accountants.

(v) Each accountant appointed to a Tribunal shall be a Member with appropriate experience.

(vi) No serving member of the governing body of, or any offier or employee of, any of the AIDB Participants shall be appointed to a Tribunal. However, former members of the governing bodies and former officers or employees of AIDB Participants shall not be precluded from appointment.

(vii) No person who is a member, director or officer of any of The Auditing Practices Board Limited, The Financial Reporting Council Limited, The Accounting Standards Board Limited, The Professional Oversight Board for Accountancy Limited, The Financial Reporting Review Panel Limited or the AIDB or a member of the Council of The Financial Reporting Council Limited or a member

appointed to any Board of any subsidiary company of The Financial Reporting Council Limited shall be appointed to a Tribunal.

(viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the adverse finding and/or order which is the subject of the appeal, or with any earlier proceedings relevant thereto, shall be appointed to a Tribunal.

10(3) Subject to sub-paragraphs 10(2)(i) to 10(2)(v) (inclusive), if more than one Disciplinary Tribunal is appointed to hear formal complaints arising out of the same matter, any of the members appointed to one of the Tribunals may be appointed to the other or others.

10(4) Where there are two or more notices of appeal against findings or orders made by the same Disciplinary Tribunal, the Board may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to sub-paragraphs 10(2)(i) to 10(2)(v) inclusive, if more than one Appeal Tribunal is appointed to hear appeals against adverse findings and/or orders which are in any way connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

10(5) Subject to the provisions of this Scheme, at any time before the hearing of a formal complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the formal complaint or appeal.

10(6) A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):

(i) the Chairman is unable to be present; or

(ii) there shall not be present at least three members of the Tribunal; or

(iii) there shall not be amongst members of the Tribunal present at least one lawyer, one accountant and one lay person who is neither a lawyer nor an accountant.

10(7) If a session of a hearing can and does proceed in the absence of a tribunal member, that member shall not participate in any further sessions or consideration of the matter. If a session is postponed pursuant to paragraph 10(6), or if for any other reasons any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Board which shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate). In any such case where the Board decides that it would be appropriate and consistent with ensuring a fair hearing of the

matter, it shall appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the appointment of a new Tribunal any of the members of the original Tribunal may be appointed to the new Tribunal.

10(8) Any matter to be decided by a Tribunal shall be decided by a majority of votes. In the case of an equality of votes, the Chairman shall have a second vote.

10(9) The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it considers necessary where in the opinion of the Tribunal the circumstances are such that publicity would prejudice the interests of justice.

10(10) The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) or respondent (before an Appeal Tribunal) and shall bring evidence against the Member or Member Firm the subject of the formal complaint or appeal before the Tribunal. Every Tribunal shall give any Member or Member Firm the subject of a formal complaint before it a reasonable opportunity to hear the evidence against him or it, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Tribunal. Any such Member or Member Firm shall be entitled to be represented by a Representative at all hearings of the Tribunal.

10(11) The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

10(12) The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:

(i) ensure fairness between the parties; and

(ii) preserve the interests of justice.

10(13) If the subject matter of a formal complaint to be heard arises wholly or mainly in Scotland, the Disciplinary Tribunal shall sit in Scotland, the Chairman shall be a former member of the Scottish judiciary, an advocate or a solicitor qualified in Scotland and each non-accountant member shall be a person residing in Scotland.

Standard of Proof

11 The standard of proof on which a formal complaint, or any part thereof, is to be decided shall be the balance of probabilities. The more serious the allegation the higher the degree of probability that is required.

Payments

12 Where a Tribunal makes an order for the payment of a fine and/or costs against a Member or Member Firm, then: –

(i) in the case of a Member, such monies shall be due from and paid by

him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;

(ii) in the case of a Member Firm, such monies: –
  (a) shall be due from the Member Firm concerned; and/or
  (b) shall be jointly and severally due from, and shall be paid by, those Members who were partners in, members of, directors of or the proprietor of such Member Firm during any part of the time relevant to the adverse finding or thereafter, whether or not they were Members or it was a Member Firm during any part of that time;
  (c) shall be so due from, and shall be paid by, the Member Firm and the individuals referred to in sub-paragraph 12(ii)(b) even if it ceased to be a Member Firm or they ceased to be Members on or after the date of the report of the Disciplinary Tribunal;

(iii) in either case, such monies shall be paid to the AIDB on behalf of The Financial Reporting Council, and applied in the manner agreed between The Financial Reporting Council and the AIDB Participants;

(iv) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under paragraph 9(5), such fine and/or costs shall be paid not later than 28 days after the date when the order takes effect under sub-paragraph 8(8)(ii) and in the event that such fine and/or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;

(v) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision is notified under paragraph 9(11) to the Member or Member Firm and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;

(vi) the AIDB will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment;

(vii) in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment, the Member concerned shall be excluded as a Member of one or more AIDB Participants and in the case of a Member Firm the removal of registration by one or more AIDB Participants shall be recommended.

Obligations of Members and Member Firms

13(1) Every Member and every Member Firm shall at all times co-operate fully, and every Member Firm shall use its best endeavours to ensure that every employee of that Member Firm shall co-operate fully, with the Executive Counsel and with any Disciplinary Tribunal or Appeal Tribunal established pursuant to this Scheme. Without prejudice to the generality thereof, such full co-operation shall include complying with any notice served pursuant to paragraph 13(2).

13(2) The Executive Counsel shall have power by notice served on any Member or Member Firm to call on him or it to provide (to the extent that such Member or Member Firm can lawfully do so): –

(i) to the Executive Counsel or to any person appointed or employed by him or by the Board on behalf of the AIDB, information and explanation relevant to any matter under investigation orally and/or in writing as the Executive Counsel shall require, and

(ii) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require.

The foregoing power of the Executive Counsel by notice to call on any Member or Member Firm to provide information and/or explanation and/or evidence shall include the power to call on him or it: –

(a) to permit the inspection and taking of copies of the books, documents, records, telephone recordings or computer held information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member or Member Firm, and

(b) to the extent reasonable, to supply copies of such books, documents, records, telephone recordings or computer held information of whatsoever kind at his or its own expense.

It shall be the duty of any Member or Member Firm on whom a notice is served under this paragraph 13(2) to comply with it within the period of 14 days beginning with the date of service or such longer period as the Executive Counsel may allow.

13(3) If, at any time, the Executive Counsel considers that: –

(i) there are grounds upon which a Disciplinary Tribunal could make an adverse finding that one or more Members or Member Firms, whether or not they are within the scope of any investigation, have failed to carry out any obligation under paragraph 13(2), and

(ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,

he shall take the steps at sub-paragraphs 7(7)(a) to 7(7)(d). Where a formal complaint under sub-paragraph 7(7)(d) specifies grounds which the Executive Counsel alleges justify an adverse finding by reference to sub-paragraph 5(1)(ii), that formal complaint may be heard by the Disciplinary Tribunal which is hearing or is to hear another formal complaint, where the Board considers that to be appropriate when it appoints a Disciplinary Tribunal to hear the former formal complaint.

Proof of Certain Matters

14(1) The fact that a Member or Member Firm: –

(i) has, before a Court of competent jurisdiction in the United Kingdom, been convicted of an indictable offence, or

(ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted an indictable offence in the United Kingdom if the conduct in question had occurred there,

shall for the purposes of this Scheme be conclusive evidence of an act of mis-conduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.

14(2) The fact that a Member or Member Firm has before a Court of competent jurisdiction in the United Kingdom or equivalent jurisdiction outside the United Kingdom been convicted of a summary only offence may be considered by a Tribunal as evidence when determining whether that Member or Member Firm has committed an act of misconduct, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.

14(3) The fact that a Member or Member Firm: –

(i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986 or the Companies Act 1989; or

(ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986,

shall, for the purposes of this Scheme, be conclusive evidence of an act of mis-conduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in, or at the time of, the disciplinary proceedings or disqualification order.

14(4) A finding of fact: –

(i) in any report of an inspector appointed under the Companies Act 1985;

(ii) in any civil or criminal proceedings before a Court of competent jurisdiction in the United Kingdom or any court outside the United Kingdom;

(iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 14(5);

(iv) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of section 34 (accountant's report) of the Solicitors Act 1974;

(v) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or

(vi) in any report or proceedings which, in the opinion of the relevant

Tribunal, corresponds or correspond to any report or proceedings referred to in sub-paragraph (i) to (v) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

14(5) The bodies referred to at sub-paragraph 14(4)(iii) are: –

(i) The Financial Services Authority;
(ii) The Financial Services and Markets Tribunal;
(iii) any recognised self-regulating organisation or recognised professional body within the meaning of the Financial Services Act 1986;
(iv) The Financial Reporting Review Panel;
(v) any recognised professional body within the meaning of the Insolvency Act 1986;
(vi) any recognised supervisory body within the meaning of the Companies Act 1989;
(vii) any designated professional body within the meaning of the Financial Services and Markets Act 2000;
(viii) any body replacing, additional to or pre-dating a body identified in sub-paragraphs 14(5)(i) to (vii) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

14(6) Paragraphs 14(1) to 14(5) (inclusive) are without prejudice to the generality of paragraphs 8(3) and 9(8) and nothing in paragraph 14(4) shall affect the evidential status of any report or other document not referred to in paragraph 14(4).

Legal Representation of Members

15 If a Tribunal concludes that:

(i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because for example of the complexities of the issues involved; and
(ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may after application require the AIDB to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Member Firms

16 If a Member Firm ceases to be a Member Firm, discontinues its business or ceases to exist, the rights and the obligations which would otherwise have fallen on such Member Firm may be exercised and shall be discharged respectively by the Members who were partners in, directors or members of such Member Firm at any time from the beginning of the time relevant to the matter under investigation until it ceased to be a Member Firm, discontinued its business or ceased to exist.

Disclosure of Information

17 The Regulations may make provision enabling the Board or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world. Any such provision shall contain such safeguards as the Board considers appropriate.

Transfers from the JDS

18 The Board shall be empowered to accept the transfer to it from the JDS of any matter previously referred to the JDS and thereafter to deal with it under the applicable JDS and related regulations.

Amendment and termination of this Scheme

19 This Scheme may be amended by the Board, with the agreement in writing of The Financial Reporting Council and the governing body of each of the AIDB Participants, or terminated by the Board by giving notice of not less than six months expiring on 31st December in any year.

Adopted on the 13th day of
May 2004 by the AIDB.

Appendix 1

AIDB Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in paragraph 8(5)(i).

Members
Reprimand

Severe Reprimand

Exclusion as a Member of one or more AIDB Participants and that the exclusion be for a recommended specified period of time

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment exclusion as a Member of one or more AIDB Participants)

Waiver/repayment of client fees

Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence)

Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such certificate, registration, authorisation or licence not be reinstated for a specified period of time.

Member Firms
Reprimand

Severe Reprimand

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

Waiver/repayment of client fees

Order that a Member Firm be ineligible for a prescribed period for registration or authorisation or a licence (for the practice of any activity requiring such registration, authorisation or licence)

Order that a Member Firm's registration or authorisation or licence be withdrawn (for the practice of any activity requiring such registration, authorisation or licence). The Tribunal may recommend that such registration, authorisation or licence not be reinstated for a specified period of time.

The Regulations adopted by the Accountancy Investigation and Discipline Board

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ACCOUNTANCY INVESTIGATION AND DISCIPLINE BOARD SCHEME REGULATIONS

Interpretation

1. These Regulations shall be interpreted and applied subject to and in accordance with the Accountancy Investigation and Discipline Board Scheme adopted by the Accountancy Investigation and Discipline Board (the Board) on 13 May 2004 with such amendment or amendments as may from time to time be made thereto (the "Scheme"). In these Regulations "partner" means a partner, member or director in a Member Firm, however that Firm may be constituted.

Effective Date

2. These Regulations shall take effect on 13 May 2004 and shall apply to all investigations and disciplinary proceedings under the Scheme.

Designation of a partner by his Member Firm

3. When a Member Firm:

   (a) has an obligation to give oral information, explanation or evidence in terms of paragraph 13 of the Scheme; or
   (b) has a right under paragraph 7(7)(a), 7(10)(i), or 10(10) of the Scheme which it exercises to make written representations, attend a hearing or to make oral representations;

   that obligation shall be performed by and that right may be exercised by a partner designated by such Member Firm. If, for the purposes of (a) above, the Member Firm fails to designate a partner, the Executive Counsel or, where a Tribunal exists, the Tribunal may do so. For the avoidance of doubt, a designated partner is not a Representative for the purposes of the Scheme.

Identification of those under investigation

4. The notice in writing given by the Board to a Participant under paragraph 6(5) of the Scheme shall, to the extent that it is known, identify each Member or Member Firm under investigation so that the Participant can inform him or it accordingly.

Notices

5. (a) All notices and other communications required by the Scheme or these Regulations to be made or given to a Member or Member Firm shall be delivered personally to the Member or left at his last known registered address or delivered to a partner in the Member Firm or sent by facsimile or by post:
   (i) in the case of a Member in practice, subject to paragraph (f) below, to his principal place of business and in the case of a Member not in practice to the address last notified by him to the Participant to which he belongs as his address for communications; and
   (ii) in the case of a Member Firm, subject to paragraphs (d) to (f) below,

to the senior Member partner or equivalent in the case of a partnership or to the managing director or equivalent in the case of a body corporate at its present or last known principal place of business.

(b) A notice or other communication sent by post shall be given or made by properly addressing and posting a letter containing the same by recorded delivery post. A notice sent by facsimile shall be deemed to have been effected by proof that the facsimile was sent to the correct number.

(c) The accidental omission to send or deliver a notice or other communication to, or the non-receipt of a notice or other communication by, a Member or Member Firm entitled to receive the same pursuant to the Scheme or these Regulations shall not invalidate any investigation, appeal, disciplinary or other proceedings as the case may be to which such notice or other communication relates.

(d) If a Member Firm so requests in writing, all notices and communications directed to that Member Firm may thereafter be addressed to a partner who is a Member designated by such Member Firm to receive them on behalf of the Member Firm.

(e) If a Member Firm ceases to be a Member Firm, discontinues its business or otherwise ceases to exist, the Executive Counsel or a Tribunal (subject to prior notice to all Members who were partners at the material time in such Member Firm as far as is practical) may designate one of such Members to receive on behalf of all of them, all relevant notices or other communications issued by the Executive Counsel or such Tribunal.

(f) If a Member or Member Firm so requests in writing, all notices and communications directed to that Member or Member Firm may thereafter be addressed to his or its legal adviser.

Budgets and authority for expenditure

6. The Board shall set budgets for all matters related to an investigation, disciplinary proceedings and appeals, as the case may be, including for the remuneration of tribunal members and the relevant travel and subsistence costs of persons connected with any case. For an investigation, the Executive Counsel shall put forward to the Board in writing his recommendation for the budget, following receipt of notice pursuant to paragraph 7(4) of the Scheme. The Board may in its absolute discretion amend an approved budget to such extent as it sees fit.

7. The Executive Counsel may, within the budget set by the Board, authorise all disbursements incurred by him in connection with an investigation, disciplinary proceedings or an appeal. The Board shall pay, or provide for the payment of, all disbursements properly incurred and accounted for by the Executive Counsel in accordance with this Regulation.

8. A Tribunal may from time to time be authorised by the Board:

(a) to engage any person whose services may be required to assist the Tribunal;

(b) within such limits as may be prescribed by the Board, to authorise the remuneration of any person referred to in paragraph (a) of this Regulation and authorise other disbursements properly incurred by the Tribunal in the conduct of the hearing or appeal (as the case may be); and
(c) to take any other action which the Tribunal may consider necessary or desirable for the purpose of the hearing or appeal (as the case may be).

The Board shall pay, or provide for the payment of, all disbursements properly incurred and accounted for by the Tribunal with the authority of the Board.

The Executive Counsel Seeking information

9. (a) The Executive Counsel may call upon any Member or Member Firm (including any Member or Member Firm under investigation) to provide promptly to him or to the Members or Member Firms carrying out detailed investigations at the direction of the Executive Counsel or to solicitors or counsel or other persons engaged by him, such information as the Executive Counsel considers necessary for the purposes of the investigation and to co-operate in any other manner required by paragraph 13 of the Scheme.
(b) The Executive Counsel shall receive from any Member or Member Firm under investigation or subject to disciplinary proceedings, any information which may be tendered to the Executive Counsel and which, in the opinion of the Executive Counsel, may be material to the investigation.
(c) The Executive Counsel may request or receive from any other person any information which may be material to the investigation or disciplinary proceedings.
(d) Information given under paragraph (a) or (c) of this Regulation shall be provided orally and/or in writing as the Executive Counsel shall decide.

Executive Counsel's findings and proposals for action

10. A formal complaint delivered to the Board pursuant to sub-paragraph 7(7)(d) of the Scheme shall include or be accompanied by a summary of those facts and circumstances on which the formal complaint is based, specifying the manner in which the Executive Counsel alleges that the Member or Member Firm has been guilty of an act or acts of misconduct.

11. If admissions are made by a Member or Member Firm under sub-paragraph 7(10)(i) of the Scheme, the Executive Counsel shall inform the Member or Member Firm of the provisions of sub-paragraphs 7(10)(i) and (ii) in relation to such admissions.

Tribunals

12. (1) A person appointed by the Board to the Panel in accordance with paragraph 10 of the Scheme

(i) may be remunerated on such terms as the Board shall determine from time to time; and

(ii) shall immediately following appointment, provide to the Board a written undertaking that he will not seek or accept appointment as an officer, employee, or member of the governing body of a Participant for the duration of his membership of the Panel or of his participation in a Tribunal (whichever is later).

(2) A retiring member of the Panel shall be eligible for re-appointment by the Board for a further period of three years.

(3) The Secretary to the Board may also act or another person selected and appointed by the Board may be appointed to act as Secretary to each Tribunal, to administer the Tribunal in accordance with the Scheme, the Regulations and the directions of the Tribunal. He may provide information to the Tribunal on procedural matters. He shall not retire with the Tribunal when it deliberates.

(4) A Tribunal member shall remain on the Tribunal notwithstanding that his term on the Panel has expired provided that his term has not ceased pursuant to regulation 12(5).

(5) A person's appointment to the Panel shall cease immediately on accepting an appointment contrary to regulation 12(1), on being declared bankrupt, on being convicted of a relevant criminal act as defined in regulation 12(6), on being deemed by a qualified medical practitioner to be of unsound mind, or on being excluded as a Member or having ceased to be a Member as a result of bankruptcy of one or more AIDB Participants.

(6) Relevant criminal act shall mean a criminal act other than one which in the opinion of the Board has no material relevance to his fitness to be a member of the Panel whether or not the criminal act was committed and/or the conviction was secured in England and Wales, Scotland, Northern Ireland or the Republic of Ireland.

13. The Board shall deliver to the Tribunal appointed in terms of paragraph 8(1) or 9(6)(ii) of the Scheme a copy of the complaint or notice of appeal and any admissions made under paragraph 7(10)(i) of the Scheme.

14. (a) As soon as practicable after its appointment the Tribunal shall give not less than six weeks' notice (or such lesser period as the Tribunal, Executive Counsel and Member or Member Firm shall agree) to the Member or Member Firm concerned and the Executive Counsel of the time and place appointed for the hearing of the complaint or appeal. Reasonable notice shall be given of any adjournment or deferment of the time appointed for the hearing or of the time appointed for any further hearing. Either party may seek an adjournment, on reasonable notice in writing being given to the Tribunal and the other party, and, if the Tribunal at its discretion consents, it shall order an adjournment.

(b) The notice of hearing given under paragraph (a) of this Regulation shall also set out details of the procedure to be followed at any hearing and contain notice of the rights of the Member or Member Firm

concerned to be legally represented, and to make representations and written submissions. The notice shall also be accompanied by a copy of the Scheme and Regulations.

Pre-Hearing Directions

15. (a) The pre-hearing directions provided for under paragraph 10(5) of the Scheme may include:
    (i) Fixture of hearing dates.
    (ii) The exclusion of the public (including the press) from the hearing in terms of paragraph 10(9) of the Scheme.
    (iii) The disclosure of documents.
    (iv) A requirement on any party to give particulars of any relevant matter and the form for such provision.
    (v) Requirements in respect of skeleton arguments or other submissions.
    (vi) The form in which evidence is to be prepared and supplied for the hearing.
    (vii) The use of expert witnesses.
    (viii) The dates by which any directed action shall be taken.
    (ix) Provisions for default in respect of directions.

    (b) Any party may apply for pre-hearing directions in writing to the Tribunal, with copies to the other parties.

    (c) Where it is the intention of the Tribunal to dispose of an application for pre-hearing directions or otherwise to give such directions, the Tribunal shall give reasonable notice in writing to all parties and shall invite submissions in such form as the Tribunal shall direct.

    (d) Oral argument shall not ordinarily be heard before pre-hearing directions are given.

    (e) Pre-hearing directions shall be signed by the Chairman of the Tribunal and communicated to the parties.

    (f) Pre-hearing directions shall continue to bind the parties notwithstanding that the composition of the Tribunal may change at or after the commencement of the hearing.

    (g) Where any party fails to comply with any pre-hearing direction it shall be open to the Tribunal to make any further order or direction, including an order for the payment of costs, as may be just. Any such failure to comply shall be a fact to which the Tribunal may have regard at the hearing and the Tribunal may draw such inference from it as is justified.

    (h) Nothing in this Regulation shall be taken to limit the powers of the Tribunal, and the Tribunal may revisit any question or matter notwithstanding that it has already been the subject of a pre-hearing direction.

    (i) Any hearing for pre-trial directions may take place before the Chairman of the Tribunal sitting alone.

    (j) Notwithstanding the above, the Chairman may at any time give such directions for the just and expeditious hearing of a complaint as he thinks fit.

Open Hearings

16. (1) The Tribunal shall give notice in whatever form it may direct publicising the date and place the hearing will be held, irrespective of whether it shall have decided in terms of paragraph 10(9) of the Scheme that the public (including the press) shall be excluded throughout all or part of a hearing.

(2) Notwithstanding that neither of the parties has made any submission for pre-hearing directions prior to the commencement of the hearing requesting that the public should be excluded from it, either may make such a submission, in accordance with paragraph 10(9) of the Scheme, at any time before the conclusion of the proceedings, but the parties shall not be entitled to have reheard any evidence which has already been heard in the presence of the public. Argument on such a submission shall be in private before the Tribunal. If a direction to exclude the public is made after the hearing has commenced in public, the Tribunal shall thereupon give notice in whatever form it directs of the exclusion.

(3) A hearing is regarded as being conducted in public notwithstanding that no members of the public actually attend it. Notwithstanding that the public are excluded from a hearing by reason of the operation of paragraph 10(9) of the Scheme, any individual may be admitted to the hearing of a complaint by special direction of the Tribunal.

(4) Where the respondent to a formal complaint requests that the hearing before the Tribunal shall be held in private and another respondent (or respondents) to formal complaints to be heard by the same Tribunal either does not make or opposes such request, the Tribunal, when deciding whether or not to grant the request in accordance with paragraph 10(9) of the Scheme, shall have regard in particular to:

(i) the views of all parties;

(ii) the feasibility and appropriateness of holding separate hearings of the formal complaint against those who have requested a hearing in private and those who have not; and

(iii) any additional cost likely to be involved by holding separate hearings as aforesaid.

(5) Notwithstanding a decision that the whole or any part of the hearing shall be in public, the Tribunal may at any time sit in private in accordance with paragraph 10(9) of the Scheme.

(6) The Tribunal shall normally allow to be present at any session of a hearing:

(a) the Executive Counsel and any person appearing on his behalf;

(b) any Member subject to disciplinary proceedings before the Tribunal;

(c) a Representative of any such Member or Member Firm;

(d) a solicitor or counsel accompanying any other witness giving evidence before the Tribunal. In respect of any such other witness such solicitor or counsel is permitted to be present for the purpose only of advising the witness he is accompanying;

(e) any other person whom the Tribunal in its discretion allows to be present.

Conduct of Disciplinary Proceedings and Appeals

17. The complaint made against a Member or Member Firm may only be amended or supplemented with the consent of the Disciplinary Tribunal. No objection shall be upheld to any technical fault in the complaint or the proceedings of the Tribunal provided that in accordance with natural justice the proceedings are fair to the Member or Member Firm.

18. (a) Not later than 4 weeks before the commencement of the hearing of a complaint, the Executive Counsel shall submit to the Tribunal and the Member or Member Firm concerned a list of the names and addresses of the witnesses he proposes to call together with summaries of their evidence and copies of any documents to be adduced.
    (b) Not later than 2 weeks before the commencement of a hearing the Member or Member Firm concerned shall submit to the Tribunal and the Executive Counsel a list of the names and addresses of the witnesses he or it proposes to call together with summaries of their evidence and copies of any documents to be adduced.
    (c) Neither party shall, without the consent of the other or the permission of the Tribunal, call any witness or adduce any document other than those submitted in terms of (a) and (b) of this Regulation.
    (d) A Member or Member Firm under enquiry shall be entitled to make submissions to the Tribunal in writing and may elect to submit all or any part of his or its evidence in writing, but nevertheless may be required to appear before the Tribunal.

19. All written submissions shall be delivered to the Tribunal seven days prior to the date fixed for the commencement of the hearing, subject to waiver of this requirement by the Tribunal, with a copy to the Executive Counsel. On receipt of such submissions, copies thereof shall be forwarded to any other Members or Member Firms concerned by the Tribunal.

20. Subject to the Scheme and to these Regulations the conduct and proceedings of the hearing before the Disciplinary Tribunal shall be determined by the Chairman of the Tribunal in consultation with the other members of the Disciplinary Tribunal. The Disciplinary Tribunal may prohibit the production of evidence and calling of witnesses not notified in the pre-hearing disclosure procedure or notified but with insufficient detail for the nature of the evidence concerned to be readily understood, unless it considers that there were good grounds for such non-disclosure or lack of detail. The Disciplinary Tribunal may at its discretion extend the time periods provided for in Regulations 18 and 19.

21. The Tribunal, whether the hearing shall be in public or private, shall arrange for a record to be made of its proceedings and of oral evidence given by witnesses during the hearing, such record to be an electronic recording and a written contemporaneous transcript.

22. The order of the proceedings for the hearing of a complaint shall, unless the Disciplinary Tribunal otherwise directs, be as follows:

    (a) submissions by or on behalf of the Executive Counsel;
    (b) hearing of any witnesses called by or on behalf of the Executive Counsel, followed by cross-examination of such witnesses by or on behalf of the Member/Member Firm concerned, and re-examination by the Executive Counsel of a witness who has been cross-examined;
    (c) submissions by the Member/Member Firm concerned;
    (d) hearing of any witnesses called by or on behalf of the Member/Member Firm concerned, followed by cross-examination of such witnesses by or on behalf of the Executive Counsel, and re-examination by the Member/Member Firm of a witness who has been cross-examined;
    (e) closing submissions by or on behalf of the Executive Counsel;
    (f) closing submissions by the Member/Member Firm concerned.

    The members of the Tribunal may ask questions of any witness or other person appearing before the Tribunal at any time.

    A Representative may act on behalf of a Member or Member Firm under this Regulation.

    The Disciplinary Tribunal may permit any witness to be recalled.

23. Subject to the Scheme and to these Regulations, the conduct and proceedings of an appeal notified under paragraph 9(1) of the Scheme shall be determined by the Chairman of the Appeal Tribunal in consultation with the other members of the Tribunal.

24. The order of the proceedings on an appeal shall, unless the Appeal Tribunal otherwise directs, be as follows:-

    (a) submissions by the Appellant;
    (b) if permitted by the Appeal Tribunal under Regulation 23, the re-hearing of any witness called before the Disciplinary Tribunal and/or the receipt of fresh evidence followed by cross-examination and re-examination of such witnesses by or on behalf of the Executive Counsel or the Appellant, as the case may be;
    (c) submissions by or on behalf of the Executive Counsel, including the submission of evidence and the calling of any witnesses; and
    (d) if requested by the Appellant, closing submissions by the Appellant.

    A Representative may act on behalf of an Appellant under this Regulation.

25. Any request to the Appeal Tribunal to hear any witness (which shall be only in respect of new evidence) shall be in writing and shall be accompanied by a statement in writing of the evidence proposed to be given by such witness. If the Appeal Tribunal accedes to the request, the party to the proceedings so requesting shall be responsible for arranging

for the attendance of the witness before the Appeal Tribunal, at such time and place as the Appeal Tribunal may appoint.

26. Except as provided in these Regulations, no person who attends a hearing of a Tribunal shall be entitled to address the Tribunal or to ask questions of any witness.

27. The Disciplinary or Appeal Tribunal shall, at an appropriate stage in the proceedings but before making, affirming or amending an order or orders under paragraphs 8(5) or 9(10)(i) and (ii) of the Scheme, invite representations from the Member or Member Firm concerned in respect of the possible orders that the Tribunal may make, affirm or amend under Appendix 1 to the Scheme. Such representations may be made orally (which may be made by a Representative) and/or in writing. The Member or Member Firm concerned may call witnesses in support of their representations. The representations shall not be directed to the validity of the finding of the Tribunal. The Executive Counsel shall inform the Tribunal of any previous findings made either under this Scheme or by a disciplinary body of a Participant against the Member or Member Firm.

28. If, having reached an adverse finding under paragraph 8(4)(i) of the Scheme, the Tribunal is considering the making of an order in respect of costs under paragraph 8(5)(ii) or 9(11)(v) of the Scheme or on the abandonment of an appeal or at the conclusion of the hearing of the appeal the Appeal Tribunal is considering the making of an order in respect of the costs of the appeal under paragraph 9(11)(v) of the Scheme, it shall, before making such order, inform such Member or Member Firm or Appellant in writing of the finding and give to the Member or Member Firm reasonable opportunity to make representations in respect of the costs orally (which may be made by a Representative) and/or in writing as the Tribunal may direct. Such representations shall be directed to the amount of the costs and not to the validity of the finding.

29. If, after notice has been given under paragraph 9(1) of the Scheme, neither an Appellant nor his Representative appears at the hearing of the appeal, the Appeal Tribunal may proceed with the hearing or may adjourn the hearing.

30. If there is more than one appeal from a Disciplinary Tribunal, all such appeals shall, unless the Appeal Tribunal otherwise decides, be heard together.

31. At any hearing in private, the Tribunal shall normally allow to be present:

    (a) any Member subject to disciplinary proceedings or an appeal before the Tribunal;
    (b) a Representative on behalf of a Member or Member Firm subject to disciplinary proceedings or an appeal;
    (c) the Executive Counsel and any person appearing on his behalf;

(d) a solicitor or counsel accompanying a witness; and
(e) any other person whom the Tribunal in its discretion allows to be present.

32. For the purpose of receiving evidence under paragraphs 9(9) and 9(10) of the Scheme, the Appeal Tribunal may, as it thinks fit, receive any new evidence in writing and/or request that a witness attend a hearing.

Transcripts and copies of evidence and representations

33. If so requested by any witness who has given oral evidence to it, the Tribunal shall provide that witness without charge with a transcript of his evidence.

34. The Tribunal shall provide a transcript of the proceedings and copies of any documentary evidence given before it to the Executive Counsel and if so requested, to a Member or Member Firm who is a party to the proceedings or to any related proceedings under the Scheme.

Report(s) by the Tribunal

35. (a) The signed report shall record the conclusions reached by the Tribunal on the complaints or appeal and the reasons for any findings under paragraph 8(4) or 9(10) of the Scheme against the Member or Member Firm. A Member Firm shall be identified by the name (or names) under which business was carried on during the period relevant to the finding. Terms of the report shall be agreed by each of the Tribunal members. In the absence of unanimity amongst the members of the Tribunal on the evidence, any inferences to be taken from the evidence or on the conclusions, findings or orders of the Tribunal, dissenting views shall be recorded. Otherwise the report shall state that the Tribunal reached unanimous agreement on the conclusions, findings and orders.

(b) Any report by the Tribunal under paragraph 8(7) or 9(11) of the Scheme is confidential, unless and until it or parts of it are published under paragraph 8(9) or 9(14) of the Scheme, and prior to such publication no part of it shall be disclosed by the person to whom it is given except for the purposes of the proceedings to his legal advisers and if he is a partner in, or employed by, a Member Firm to partners in that firm.

Retention of documents

36. The record of proceedings referred to in Regulation 21 and other documents relating to such proceedings shall be kept by the Board. All documents relating to investigations, disciplinary proceedings and appeals under the Scheme shall be retained by the Board for not less than six years from the date of conclusion of the investigation, disciplinary proceedings or appeal, as the case may be. All documents not retained shall be destroyed.

Confidentiality of Information

37. (a) Subject to sub-paragraphs (b), (c) and (d) below, information, which

comes to the knowledge of the Executive Counsel, the Board, a Disciplinary Tribunal, an Appeal Tribunal or a Member or Member firm in the course of an investigation or disciplinary proceedings under the Scheme may only be used and disclosed

(i) in the course of and for the purposes of an investigation or disciplinary proceedings;
(ii) at a public hearing;
(iii) in any notice, report or finding published pursuant to the terms of the Scheme; or
(iv) as required by law;

and shall otherwise be treated as confidential.

(b) Any disclosure of such information (save where the disclosure is made in one of the circumstances set out in paragraphs 37(a)(ii), (iii) and (iv) and paragraph 37 (b)) shall be on terms that it is confidential and no such information shall be disclosed (directly or indirectly) by the person provided with it except:
   (i) to his legal advisers for the purposes of obtaining advice in relation to the investigation or disciplinary proceedings;
   (ii) if he is a partner in or director of, or employed by, a Member Firm, to the partners in or directors of that firm;
   (iii) to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the investigation or disciplinary proceedings;
   (iv) for the purposes of a public hearing; and
   (v) as required by law.

(c) Such information may be disclosed by the Executive Counsel or the Board to any regulatory body, any investigation or prosecuting authority, or to any person, body or authority carrying out any role similar to that of regulation, investigation or prosecution in any part of the world.

(d) This regulation shall not apply to any information which is obtained by the Executive Counsel, the Board, the Disciplinary Tribunal or the Appeal Tribunal which is or comes to be in the public domain or is disclosed at a public hearing or in relation to which confidentiality has been waived.

The Duty to Report Misconduct

The following guidance was approved by the Council on 4 August 1993. Amendments[1] have since been made to update references to legislation, bye-laws and guidance. The duty was introduced in December 1991 and the relevant bye-laws now are Disciplinary Bye-laws 9(1) and 9(2).

Introduction

1 The public interest requires the reporting of acts of misconduct which, if they were to go unreported, could adversely affect the good name of the profession. It does not require that members or Institute staff should be obliged to report the minor perceived faults of other members. This paper sets out the views of the Council as to the facts or matters which they are under a *duty* to report to the Institute in the public interest. It does not in any way affect the *right* of a member to report to the Institute or the *right* or *duty* to report elsewhere. (See paragraph 27 below.) Anyone in doubt as to the application of this guidance may consult the Institute. (See paragraphs 24–26 below.)

2 The purpose of the Institute's disciplinary arrangements is to allow consideration be given to allegations that members and provisional members may have fallen short of the high ethical and technical standards expected of them. In doing so the Institute furthers the public interest.

3 Because members are in a unique position to discover and appreciate the significance of the acts of fellow members and provisional members Disciplinary Bye-laws 9(1) and 9(2) place on members a duty to report certain facts or matters to the Institute's Professional Conduct Directorate at Silbury Court, 412–416 Silbury Boulevard, Central Milton Keynes MK9 2AF; (telephone: 01908 546235; email:psocomp@icaew.co.uk) where such a report is in the public interest.

The Duty to Report

4 Disciplinary Bye-laws 9(1) and 9(2) provide that:

It shall be the duty of every *member* where it is in the public interest to do so to report any facts or matters indicating that a *member* and/or *firm* or *provisional member* may have become liable to disciplinary action. In determining whether it is in the public interest to report such facts or matters regard shall be had to such guidance as the *Council* shall give from time to time.

5 For the purpose of Disciplinary Bye-laws 9(1) and 9(2) it is in the public interest that a member's conduct should be considered by the Investigation Committee wherever a member or provisional member has or may have:

[1] *Amended 26 August 2004; further amended 31 August 2006 – Professional Standards Board*

(i) committed any offence involving dishonesty, fraud or cheating;
(ii) committed any imprisonable offence under Part V of the Criminal Justice Act 1993, the Insolvency Act 1986, the Company Directors Disqualification Act 1986, the Companies Acts 1985 and 1989, the Financial Services and Markets Act 2000, the Proceeds of Crime Act 2002 (which includes provisions relating to money laundering) or any similar or related legislation in the corporate or financial services spheres; or
(iii) been convicted of any offence for which they have received a custodial sentence, whether suspended or not.

6 It is also in the public interest that a member's or provisional member's conduct should be considered by the Institute in the circumstances listed below. The circumstances are where the member or provisional member has or may have:

(i) as a member or employee of a firm at any time authorised or licensed by the Institute for investment business, been responsible for a serious breach of the Institute's Investment Business Regulations or the regulations contained in the Institute's Designated Professional Body Handbook under the Financial Services and Markets Act 2000;
(ii) as a member or employee of a firm registered by the Institute as an auditor, been responsible for a serious breach of the Institute's Audit Regulations;
(iii) as an insolvency practitioner licensed by the Institute, committed a serious breach of the Insolvency Act or Rules or the Institute's Insolvency Licensing Regulations;
(iv) been responsible for a serious breach of the Institute's Client Money Regulations;
(v) been responsible for a serious breach of the Money Laundering Regulations 2003;
(vi) performed their professional work or the duties of their employment in a grossly incompetent manner;
(vii) committed a serious breach of faith in a professional respect; or
(viii) committed a serious financial irregularity.

7 In deciding whether the circumstances listed in paragraphs 5 and 6 above arise members should take note of the commentary below.

Suspicion Alone is not Enough

8 It is important to understand that the reporting member does not have to conduct any investigations or to take a decision as to whether a member or provisional member has been guilty of misconduct. What they are required to report are facts or matters indicating that a member or provisional member may have become liable to disciplinary action. It is not enough merely to have a suspicion that a member or provisional member has committed misconduct; nor is there any duty to report unsupported speculation or vexatious comment.

Information Available to more than one Member

9 Where a partner[2] or employee in a practising firm becomes aware of the misconduct of a fellow partner or employee of the same firm which is reportable under Disciplinary Bye-laws 9(1) and 9(2) and that misconduct is known to other members in the same firm the primary duty to report rests on the senior partner with knowledge of the conduct in question. In such a case, the duty to report may be discharged on their behalf by another partner, such as the compliance partner, according to the arrangements of the firm or the decision of the senior partner concerned. Where misconduct has been drawn to the attention of the senior or other responsible partner other partners and employees privy to the information may rely on their decision as to whether a report should be made under Disciplinary Bye-laws 9(1) and 9(2) and the fact that no such report has been made does not place them under a duty to report unless they have clear evidence that the facts have been concealed for an improper motive. A similar approach should be adopted by members in business, but only if the more senior person is a member of the Institute.

Matters of Public Knowledge

10 Once facts are in the public arena, as a result of being reported in the national press or media, the Institute may be presumed to be aware of them and no duty to report arises. Members must nevertheless report to the Director of the Professional Conduct Directorate any facts concerning a matter so reported which might give rise to a disciplinary action against another member if they had information additional to that which is generally available and which might be of assistance to the Professional Conduct Directorate. Where a member is uncertain whether the Institute is aware of particular matters e.g. facts disclosed in the local press they should take all reasonable steps to check the position, for example by the Professional Conduct Directorate (Helpline: 01908 546235).

Confidentiality and Legal Constraints

11 Before making a report under Disciplinary Bye-laws 9(1) and 9(2) a member should consider whether they are in any way constrained by a duty of confidentiality to a client, their employer or anyone else. There are circumstances in which the public interest may justify a breach of confidence and crime, fraud and other serious misconduct are not protected by the duty of confidentiality. This is a difficult area of law on which further guidance may be found in the Members' Handbook Section **3.2** at Section 140 of the Code of Ethics – 'Confidentiality', and in Section **7.1** – 'Professional conduct and disclosure in relation to defaults or unlawful acts'. Auditors should refer to the relevant standards and guidance issued by the Auditing Practices Board, for example the Auditing Standard ISA (UK and Ireland) 240 – 'The auditor's responsibility to consider fraud in an audit of financial statements', and ISA (UK and Ireland) 250 – 'Consideration of laws and regulations in an audit of financial statements'. Where necessary, members should seek legal advice.

[2]References to "partner" include director of a corporate practice engaged in public practice and member of a limited liability partnership engaged in public practice

12 The disclosure of information may also be prohibited by Acts of Parliament or court order. In considering any suspected failure to comply with Disciplinary Bye-laws 9(1) and 9(2) the Investigation Committee will have regard to any legal advice which the member has received concerning the obligation of confidentiality. If the member is aware that a Suspicious Activity Report (SAR) has been made of known or suspected money laundering, then caution should be taken to avoid committing the tipping off offence under money laundering legislation. Further guidance on this offence can be found in the Members' Handbook Section **7.2** 'Anti-money laundering (proceeds of crime and terrorism)'.[3]

Members in Business

13 The duty to report applies to members in business as it does to members in practice.

14 The duty to report applies to the conduct of a member in business as it does to the conduct of a member in practice, but note particularly paragraphs 11 and 12 above.

A Member's own Conduct

15 A member is as responsible for reporting their own conduct (to the extent described in this guidance) as they are responsible for reporting the conduct of another. In the event of disciplinary proceedings the fact that a member has made such a report will count in their favour.

When to Report

16 The duty to report arises when a member is aware of facts or matters which should in light of the information known to that member at that time indicate that a duty to report has arisen in accordance with this guidance. Any substantial delay in reporting could amount to a failure to report.

17 Occasionally (but not in circumstances to which paragraphs 12 and 27 apply), it may be reasonable and prudent for a member before making a report to invite the member the subject of a possible report to comment on the facts in the first member's possession. The purpose of such consultation would be to draw the suspected shortcomings to the member's attention and give him the opportunity of correcting any misunderstanding. It would be highly improper for a member to use the threat of reporting as a means of securing any advantage over another member. Where a member delays reporting in order to consult the member in question and such delay is not unreasonable this will not amount to a failure to report.

[3]Members should be aware it is anticipated that this guidance will be revised in the near future

How to Report
18 The report, which should be in writing and accompanied by any relevant documents or copies thereof, should be sent to the Director, Professional Conduct Directorate.

The Consequences of Reporting
19 A report received under Disciplinary Bye-laws 9(1) and 9(2) will be considered and processed in accordance with the Disciplinary Bye-laws.

20 Reports will be assessed and if appropriate referred either for investigation or conciliation.

21 A member who is concerned that a report made under Disciplinary Bye-laws 9(1) and 9(2) to the Institute could result in a liability for defamation may wish to take their own legal advice. A report which is made exclusively to the Institute in good faith and without malice would however attract a defence of qualified privilege i.e. the statement was made in fulfilment of an obligation to a person who had a duty to receive it.

The Consequences of not Reporting
22 A failure to report where there is a requirement to report under Disciplinary Bye-laws 9(1) and 9(2) would constitute grounds for disciplinary action against a member under Disciplinary Bye-law 4(1)(c). In deciding whether a member is in breach of the Disciplinary Bye-laws for failing to make a report the Investigation Committee will have regard to any duty of confidentiality to which the member may be subject (paragraphs 11 and 12 above) and to the promptness of the report (paragraphs 16 and 17 above). They also take their decisions on the basis of the facts as they were known to the member at the time rather than as they might seem with the benefits of hindsight.

Commencement
23 This duty came into force on 19 December 1991. It applies to facts which occurred prior to that date, but only if they first became (sufficiently) known to the member in question on or after that date.

Consulting the Institute
24 Members who, having studied this guidance, are still unsure whether they are under a duty to report may consult the Ethics Advisory Services, if necessary on a no-name basis. The Ethics Advisory Services are confidential and free from the duty to report misconduct within the Institute (see paragraph 25). Further information on the Ethics Advisory Services can be found at www.icaew.co.uk/ethicsadvice.

25 It is not in the public interest that the duty to report misconduct should constrain members or Institute staff appointed by or on behalf of the Council to offer ethical advice to members from doing so or inhibit members or Institute staff needing advice from seeking it. Consequently, members and staff appointed by or on behalf of the Council to offer ethical advice to members

will not be under a duty to report information received by them in confidence from members seeking such advice, subject only to the requirements of the general law which apply to all citizens. The same exemption applies to members of the Support Members Scheme registered with the Ethics Advisory Services.

26 It should be noted that discussion with a counsellor does not relieve a member of the duty to report under Disciplinary Bye-laws 9(1) and 9(2) where such duty exists.

Duty to Report to Other Regulators

27 Members in practice, and others working in the regulated sector for the purposes of the money laundering legislation, have a duty to report the acquisition of criminal proceeds and other activities within the definition of "money laundering" to their Money Laundering Reporting Officer or to the Serious Organised Crime Agency (SOCA). Known or suspected terrorist activity must also be reported without delay. Further guidance on this is given in the Members' Handbook, Section **7.2** 'Anti-money laundering (proceeds of crime and terrorism)'[4]. There are a number of other specific requirements to report criminal activities, misconduct or other matters to clients, their management or governing bodies, to regulators or to other third parties. In addition, members may be in a position where they judge that it would be appropriate (and they have a right) to make further disclosures to third parties in the public interest. Further guidance on reporting defaults and unlawful acts by clients, employers or their staff is given in the Members' Handbook at Section **7.1** 'Professional conduct and disclosure in relation to unlawful acts', or its successor. Auditors should refer to current Auditing Standards and guidance. In particular, attention is drawn to Auditing Standard ISA (UK and Ireland) 240 'The auditor's responsibility to consider fraud in an audit of financial statements', section A – Considerations of laws and regulations in an audit of financial statements' and section B – 'The auditor's right and duty to report to regulators in the financial sector'; and related practice notes for example Practice Notes 18 (Building Societies), 19 (Banks), 20 (Insurers) and 21 (Investment Business) and 24 (Friendly Societies). Auditors also have a duty to report matters of material regulatory significance to a number of regulators outside the financial services sector. Members are reminded that where they have a duty to report crime to the police or other proper authority that a report to the Professional Conduct Directorate does not relieve them of that duty.

Commentary on Paragraphs 5 and 6

Paragraph 5

It would be wrong for a member when agreeing to a partner or employee leaving or resigning from a practising firm to accept a condition that the criminal acts of the latter would go unreported. Such an arrangement must be distinguished from the situation where a partner or employee leaves after

[4]Members should be aware it is anticipated that this guidance will be revised in the near future

denying allegations which it has not been possible to substantiate. Members should bear in mind that disciplinary action based on a criminal act would have to be established before the Disciplinary Committee to a level of proof similar to the high degree of proof called for in a criminal trial.

Paragraph 6
Members are not liable to disciplinary action for every mistake or omission, but only in the circumstances mentioned in Disciplinary Bye-law 4(1)(b) where those circumstances evidence serious incompetence.

Professional Indemnity Cases
It is not in the public interest that clients who have suffered financial loss as a result of the acts of members should be deterred from obtaining financial compensation where they are entitled to it at law. The mere fact that conduct has been or is the subject of a claim under a professional indemnity policy is not of itself sufficient to give rise to a duty to report.

The Duty on Firms to Investigate Complaints – Guidance on How to Handle or Avoid Them

Please note that complaints concerning ***investment business*** *conducted between October 1988 and November 2001 are governed by the specific requirements of the Institute's Investment Business Regulations 2.38 and 2.39. However, the following advice may also be helpful in that area.*

A The Duty

1 The Bye-laws have, since June 1993, placed a duty on firms to investigate complaints. The duty requires, inter alia, that:

(a) A firm must ensure that all new clients are made aware in writing of the principal to be contacted in the event of their wishing to complain about the firm's services and of their right to complain to the Institute.
(b) If a firm receives a complaint concerning the services it has provided or failed to provide to a client or former client it must immediately cause the complaint to be investigated by a principal.
(c) If, following such an investigation the firm is of the opinion that the complaint is justified in whole or in part it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, the provision of information, the return of books or documents, the reduction or repayment of fees, or otherwise.

Informing the Client

2 The requirements include a formal duty to advise all **new** clients in **writing** of their right to complain to the Institute and of the name of a principal in the firm whom they should contact if they wish to complain. Although the duty as phrased only applies to 'new clients', it is best practice for firms to ensure that all clients of the practice, including existing clients, receive such a notification. In the case of new clients it would be most convenient to include this notification in the engagement letter. Notification need not be a burden, nor should it be couched in legal or bureaucratic language. It might, for example, take the following form:

> HELP US GIVE YOU THE BEST SERVICE
>
> If at any time you would like to discuss with us how our service to you could be improved or if you are dissatisfied with the service you are receiving please let us know by telephoning [*insert name of relevant person*].
>
> We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your

complaint to your satisfaction you may of course take up the matter with the Institute.

[NB. General advice on engagement letters is given in a Help Sheet – '*Engagement Letters*' – produced by Advisory Services and available at www.icaew.co.uk or by telephoning 01908 248032]

Internal Complaints Procedures

3 The duty does not include a requirement for a formal complaints procedure. However, most firms, and particularly medium and large sized firms may well find it convenient to have such a procedure. A good complaints procedure will include the following elements:

(i) review by a principal other than the principal responsible for the client's affairs;
(ii) reference to the client where the facts are not clearly established;
(iii) prompt rectification of the error, with apology and offer of waiver or reduction of fee where appropriate – see paragraph 18 below;
(iv) full explanation to client if complaint unjustified (this is usually best achieved face to face, but it is always wise to record this explanation in the form of a letter);
(iv) if complainant remains unsatisfied notifying them of their right to make a complaint to the Institute;
(v) drawing serious complaints to the attention of the senior principal.

4 If a complainant reports a matter to the Institute the firm concerned may have to demonstrate their compliance with the duty. In such circumstances, it is desirable that:

(a) the steps in the complaints procedure are set out in writing in a policy document, and
(b) the observance of the procedure is documented in the case of every complaint received.

The Investigating Principal

5 Personal responsibility lies with the investigating principal, once they have received the complaint, to ensure that:

(i) the steps in any formal complaints procedure (see above) are complied with;
(ii) they deal personally with the complaint, thoroughly, expeditiously and with courtesy;
(iii) the senior principal (or their nominee) is informed of the progress of the investigation;
(iv) if the investigation does not resolve the complaint, in the case of a client remaining dissatisfied, the procedure set out in section C below is properly concluded.

Although the requirement to investigate complaints is framed so as to lie upon the firm, a principal who has been informed by the client of a complaint and

who fails to pursue it in accordance with the above may personally become liable to disciplinary action also.

Sole Practitioners
6 The formal procedure indicated in paragraph 3 (above) will be impracticable for a sole practitioner, but they are likely to find it helpful to establish an arrangement whereby complaints which they believe to be unsubstantiated but which the client persists in making are reviewed by their alternate. Additionally, sole practitioners could ask a support member to review the complaint.

Paragraph 4 (above) recommends documentation of the observance of the complaints procedure in the case of every complaint received. Since a sole practitioner is ultimately answerable in respect of any allegation regarding their firm, once a complaint is received such documentation is of equal importance to the practitioner.

B Practical Ways to Avoid or Defuse Complaints

7 Complaints received by the Institute relating to the services provided (or alleged lack thereof) by firms fall into the following main groups:

Fee disputes
Delay
Failure to respond to correspondence
Failure to carry out duties
Poor work/poor advice.

The Institute's experience is that a large majority of these complaints could have been avoided by a few simple measures usually at no extra cost to the firm. By contrast, the cost of dealing with a complaint, in terms of chargeable time and general hassle can be considerable. The following are a few practical suggestions to avoid the most obvious pitfalls which emerge from a consideration of complaints received.

Fees
8 Where an estimate or quotation is given, confirm it in writing and identify precisely the work which will be carried out.

Where there is likely to be an over-run on estimated fees, let the client know as soon as possible. Tell the client why the over-run has occurred, estimate the additional cost to finish the work, and get the client's agreement to continue. Confirm the new agreement in writing as soon as possible.

Where no estimate or quotation has been given keep a sense of proportion between the cost to the client for the work and the value to the client of the work. If in doubt, refer to the client to confirm the instructions. (Further

advice on Fee Disputes is given in paragraph 14, and on the Fee Arbitration Service in section **D** below.)

Delay
9 Prioritise work. Find out when the client wants it completed by and work to that date or earlier if possible.

If work has to be re-prioritised, make sure that the moving of clients' work down the queue does not create problems for the clients themselves.

Don't take on more work than your practice can handle. If you find that you have done so, consider the use of (reliable) sub-contractors or, if the increase in work looks permanent, engaging more staff.

If for whatever reason you are unable to attend to your clients' affairs for a period, let them know what is happening and give realistic estimates for the length of delay which will be involved. Wherever possible delegate the work to an appropriate level within your practice.

Failure to respond to correspondence
10 Consider instituting internal performance standards, communicated to clients, whereby a substantive response to correspondence is made within a (specified) reasonable period. Where this is not practicable or desirable, then:

- ensure all incoming correspondence is acknowledged – even if only by way of card – upon receipt;
- prioritise correspondence between urgent and non-urgent; use the phone/fax/e-mail to transmit urgent information, and confirm by way of letter.

If it is not convenient to deal with the matter now, and if it is not urgent, send a holding reply indicating when you are likely to be able to respond.

Ensure that your office systems are such that correspondence does not get overlooked or mislaid.

Failure to carry out duties
11 Agree and confirm with your client the exact work you are going to be doing. Many complaints in this area relate to work which the clients *assume* will be done by their accountant but no specific instructions were given. Make your engagement letters comprehensive and confirm in writing any additions or alterations thereto.

Make sure *you* understand what your client has instructed you to do.

Install review procedures to ensure that all work has been properly completed.

Poor work/poor advice
12 Institute a system of quality control within your practice.

Again, be careful not to take on more work than your practice can handle. If you find that you have done so, consider the use of another firm or reliable sub-contractors or, if the increase in work looks permanent engage more staff.

Make sure that:

- work within your practice is delegated to the appropriate level;
- the advice which you give is applicable to the client's particular circumstances;
- you have procedures to include diarising key dates, e.g. tax election dates;
- you keep up to date with changes, especially in those areas subject to frequent change e.g. taxation legislation.

However, even in the best regulated of practices clients may complain. When this occurs the following general and specific guidance may prove to be useful.

When a complaint comes in

13 The guidance which follows applies to all principals and not just the firm's nominated investigating principal.

Complaints are often construed – and sometimes presented – as personal criticism. Try not to assume an adversarial stance in dealing with a complaint because if this occurs then objectivity, and often reasoned argument, disappear.

However emotionally a complaint is presented, at the outset there is usually still a reservoir of goodwill held by clients for their accountants. Often a genuine apology or offer to make amends, without admitting liability, at this stage will resolve the matter to everybody's satisfaction.

When dealing with a complaint, recognise that it is a sad fact of life that whilst clients who have the highest regard for their accountant will only recommend the practice to one or two close acquaintances, those who have a grievance which they feel is not being sufficiently addressed will spread the news to anyone willing to listen. The effect of this adverse publicity on a practice can be totally out of proportion to the matter at issue.

Try to see the matter from the client's viewpoint. Remember how you felt when you last had a problem with one of your suppliers or your local garage.

Try to resolve the matter speedily. Unresolved grievances can take up a disproportionate amount of your (otherwise chargeable) time.

Wherever possible, meet the client. Letters can appear impersonal and even telephone conversations can be misleading as to what is truly being expressed. A meeting can do a lot to resolve matters speedily to everyone's satisfaction. However, in certain cases you must be prepared for the meeting to open stormily as the client vents their anger. If this happens, let the client have their say and do not be drawn on individual issues. If asked to comment, state that

you will respond once you have heard all that your client has to say. Once the client has vented their anger, provided that you have maintained an attitude of reasoned concern over what they have had to say, you will usually find that the subsequent discussion is more reasonable and productive.

You should always consider whether any complaint should be notified to your PII insurers. (See 31, below.)

Fee Disputes

14 Your client is entitled, on request and without further charge, to a detailed breakdown of the bill in dispute. The *minimum* information which you should give is the number of hours involved, the chargeable rate per hour, and a description as to what the work related to. Show any discounts/write-offs that you have already applied in arriving at the fees invoiced. A leaflet is available at www.icaew.co.uk or by telephoning the Helpline 01908 546235.

The right of lien is far from straightforward. Before exercising *any* lien over a client's property in your possession, check that it is in accordance with the guidance set out in the Members' Handbook Section 9.4 – 'Documents and records: ownership, lien and rights of access'. If in doubt consult your solicitors.

Remember that the purpose of a lien is to persuade an otherwise reluctant client to pay the amount properly due by him and not to exact payment from a client who has genuine reservations over the bill. Where a client has indicated that the bill is in dispute and especially where the dispute is to be resolved by formal means (e.g. arbitration or litigation) the continued exercise of a lien may be inappropriate and may well be construed by the client as mere vindictiveness.

Your particular attention is drawn to Section 240 of the Code of Ethics – Fees and Other Types of Remuneration, particularly paragraph 240.4F (see the Members' Handbook Section 3.2) which requires that a member exercising a lien should take reasonable and prompt steps to resolve any dispute relating to the amount of the fee so that the exercise of the lien becomes unnecessary.

The Institute has, for many years, operated its own Fee Arbitration Scheme – (see section **D** below).

Delay

15 Explain to the client the reason for the delay. Agree (and confirm in writing) a time-scale for the work to be completed *and then adhere to it*.

Where you accept that you are responsible for the delay and there is any possibility of a claim for damages, you should consult with your PII insurers. In other cases, make your apologies to the client and consider making an ex gratia monetary offer, if appropriate.

Where the delay has been caused by outside third parties let the client know this and the efforts you have been making to progress matters.

Where the delay has been caused because you have been waiting for information from the client, check that they know this – did they actually receive your letter?

Failure to respond to correspondence
16 Find out the reason for the failure – did you receive the letter in the first place?

Explain to the sender the reason for the delay. Agree a timetable for reply *and then adhere to it*.

Use the phone/fax/e-mail to transmit information required and then confirm later by way of letter.

Failure to carry out duties
17 Examine the complaint impartially. Was it clearly agreed that you would do this work? If so explain to the client the reasons why it was not done and, without admitting liability, make a suitable apology or offer of amends.

If it was not clearly agreed that you would do the work then was it reasonable for the client to assume that you would be doing it? If there is any possibility of a claim for damages, consult with your PII insurers. Otherwise, explain to the client the reason for the misapprehension and, if appropriate, make a suitable apology or offer of amends.

If it was not reasonable for your client to assume that you would be doing the work then explain the point at issue and why you require specific instructions to do the task. If they still wish you to act then get those specific instructions and find out if there are any other similar areas where the client has mistakenly assumed that you will be acting.

Poor work/poor advice
18 This is the most emotive of all of the areas of complaint as there is often actual or implied personal criticism. Try to react impartially and to divorce the problem (which is both yours and your client's) from the person involved (you).

Define the precise area of dissatisfaction and the reasons why your client is dissatisfied. By concentrating on and dealing with these you will stop the matter developing into a wide-ranging and unfocused complaint about the overall standard of work which nobody can defuse because it is too generalised.

Where on consideration you feel that the client has not received the standard of service which they could reasonably expect, and there is any possibility of a claim for damages, consult with your PII insurers. In other cases be frank and open about it, and make a suitable apology or offer of amends.

On the other hand, where you find no grounds for the complaint do not dismiss it out of hand. Go through it with your client again, explaining why what happened did happen. Make sure your client understands what you are saying and try not to introduce too many technical terms into your explanation if this is likely to cause confusion.

Where there is a mixture of both a 'good' and a 'bad' level of service provided, talk it through with your client. Explain where and why you do not agree with him, state where you are in agreement, and come up with positive proposals as to how to right the matter.

Above all, try to see matters from your client's viewpoint. Put yourself in their shoes and think how *you* would feel were the positions reversed.

19 Remember, all complainants start with a problem that has given them a sense of grievance. To defuse a complaint you must remove either the problem (which can include explaining why there is no problem) or the sense of grievance. Such removal is far more easily done in co-operation with your client than by attempting to dictate terms.

In other words agree a solution – don't try to impose one.

C Referral of a Complaint to the Institute Where the Client Remains Dissatisfied

20 If a mutually acceptable resolution to the problem cannot be reached between you and your client you should remind them of their right to refer the matter to the Institute.

21 Any fears which you may have about the repercussions of this will probably be misplaced, and may well be based upon the fact that your only contact with the Professional Conduct Directorate of your Institute has been through a reading of the reports of the Professional Conduct Committees published in *Accountancy* each month. Such reports, however, represent a very small proportion of the total workload handled by that Department.

22 The first reaction by the Institute upon receipt of a letter from your client will usually be to see whether a mutually acceptable resolution to the problem can be found by the impartial intervention of a member of staff acting as a conciliator. In fact, about 80 per cent of all complaints received by the Institute are resolved at staff level and never go to a Professional Conduct Committee.

23 This conciliation process is intended to be a user-friendly service. It is not legalistic in nature, nor is it adversarial, but concentrates upon the problem and the sense of grievance generated therefrom and, by setting these in the context of the Institute's Bye-laws, Guidance and Regulations, tries to remove

one or the other. Where a matter is resolved by this process it is most unlikely that disciplinary proceedings will ensue.

24 It is only if the conciliation process fails that the matter may be transferred to a case manager for investigation. This is a process of an entirely different nature. The aim is to gather and impartially consider the evidence available to ascertain whether it justifies formal disciplinary proceedings. It is necessarily a more rigorous approach and may foster a more adversarial attitude between the parties concerned.

25 For further information ask for the leaflet, *What Happens if a Complaint is Made Against You*.

D Fee Arbitration Service

26 Fee disputes are one of the commonest causes of complaint against Chartered Accountants, but the Institute will not in general adjudicate upon them because they are essentially questions for resolution in a court of law. (Fees for Investment Business conducted between October 1988 and November 2001 are an exception: Institute regulations explicitly require those not to be 'unfair' or 'unreasonable' and a complaint of unfairness or unreasonableness will be examined by the Institute.)

27 As a service to members and their clients the Institute offers a fixed cost Fee Arbitration Scheme. Arbitration is a consensual process and thus the Scheme requires the agreement of both parties.

28 The cost of the Institute's Fee Arbitration Scheme is fixed in proportion to the fee in dispute. That cost is allocated between the parties in accordance with the following formula: where the arbitrator's award makes no change to the fee charged or is within 5 per cent of that figure the client will be liable to pay the award and arbitration cost. If the award is between 5 and 15 per cent below the amount in dispute the client will pay the award and share the arbitration cost equally with the member. If the award is 15 per cent or more below the amount in dispute the member will bear all the arbitration cost.

29 Both parties are required to put the arbitration cost 'into the pot' at the outset, and the 'winner' under the formula above is refunded. The Institute makes a (non-returnable) administrative charge to both parties.

30 An explanatory leaflet and full information about fee arbitration are available at www.icaew.co.uk or by telephoning 01908 546299.

E Professional Indemnity Insurance

31 A complaint may be a prelude to a claim which will need to be referred to Professional Indemnity Insurers. It is essential that an assessment is made of

all complaints when they are lodged. In the event that a complaint is considered to have the potential for a claim insurers/brokers should be notified at once.

Where a complaint has to be referred to insurers it will be essential if cover is not to be affected to act in accordance with advice proffered by the insurers.

Where complaints which have not been assessed as potential insurance claims are concerned any concession that is made should be accompanied by a phrase such as 'As a gesture of goodwill and without admission of liability we are prepared to . . .'.

(Amended 26 August 2004; further amended 31 August 2006 – Professional Standards Board)

Council Guidelines on Publicity for the Disciplinary and Regulatory Processes

Made under former Bye-Law 89A, now Disciplinary Bye-law 36

1 These guidelines apply to any announcement under Disciplinary Bye-law 36 concerning the affairs of a member or member firm, whether the member or member firm is named in the announcement or not.

2 In order to comply with the Disciplinary Bye-law such announcement:

a. must be confined to the consideration by any relevant Committee of
   i. any matter relating to or connected with the carrying out by the Institute of functions assumed by it under any statute; or of
   ii. any complaint; and
b. must be or involve a matter of public concern.

3 What amounts to a matter of public concern is largely subjective and a matter for judgement at the time, but the following will always be a matter of public concern:

a. the collapse with substantial loss of funds of a listed or other public interest company;*
b. any other matter in which the conduct of a member or member firm is the subject of criticism from an official body or gives rise to widespread public discussion;
c. except where it is insubstantial, unsupported by evidence or manifestly unsound:
   i. any complaint in which a member of the Council of the Institute is personally concerned; and
   ii. any complaint that the Institute or any of its officers, Committees or officials has acted corruptly, improperly or negligently.

4 Any announcement under Disciplinary Bye-law 36 will be made by the Chairman of the Investigation Committee or the Chairman of the appropriate regulatory Committee (or in their absence the Vice Chairman of the relevant Committee).

5 Examples of the sort of announcement which might be made under the paragraph are:

'The ICAEW has received from the Secretary of State a copy of the report of Inspectors appointed under section [ ] to look into the affairs of XYZ plc. The report is being studied and will be dealt with in accordance with the procedures laid down in the Institute's bye-laws. If those procedures should result in a finding adverse to any member or member firm, the finding will normally be the subject of a further announcement.'

'The ICAEW has received a complaint concerning the auditors of XYZ plc at the time of its collapse. It is being dealt with in accordance with procedures laid down in the Institute's bye-laws. If those procedures should result in a finding adverse to any member or member firm, that finding will normally be the subject of a further announcement.'

'The ICAEW is studying the collapse of XYZ plc with a view of determining whether there are grounds for investigating the conduct or competence of any member or member firm. If that examination should result in a finding adverse to any member or member firm, that finding will normally be the subject of a further announcement.'

'The ICAEW has considered a complaint against Messrs A, B & C and decided that there are no grounds for disciplinary or other action.' (Only to be used where the fact of the complaint is public knowledge or at the request of the member/firm concerned.).

'A Professional Conduct Committee of the ICAEW has found Mr AB not guilty of misconduct in relation to. . . .' (Only to be used where the fact of the complaint is public knowledge or at the request of the member/firm concerned.).

6 No announcement will name or otherwise identify a member or member firm unless this is necessary or desirable in order to maintain public confidence in the Institute or its members. It will be necessary or desirable to name a member or member firm:

i. where failure to do so would defeat the purpose of the announcement, for example because it would not be possible to relate the announcement to the subject of public concern; or
ii. where the name is already a matter of public knowledge.

7 Save where urgent action is desirable to maintain confidence in the profession or the Institute or its members any member or member firm named in an announcement will be given, not less than 48 hours before the making of an announcement, a copy of its terms.

8 An announcement under the Bye-law will be accompanied by a short written statement in standard form describing the disciplinary and regulatory arrangements of the Institute, including the representation of non-accountants on relevant Committees and the relationship of the Professional Conduct Committees to the Joint Disciplinary Scheme.

9 Once an announcement has been made, no further announcement will be made prior to the conclusion of any investigation, save in explanation of the Institute's procedures following a finding of not proved or the upholding of an appeal against a finding of proved or unless circumstances change in such a way as to make the original announcement incorrect or misleading.

* The term 'listed company' means:

a. a company whose shares or securities have been admitted to listing by a recognised stock exchange; and
b. a company whose equity share capital is marketed under the regulations of a recognised stock exchange, e.g. companies whose shares are dealt in on the Unlisted Securities Market.

The term 'other public interest company' means a company or other organisation in either the private and public sectors which is 'in the public eye' because of its size or the product or services it provides. Examples of such companies and organisations would be large charitable organisations and trusts, major monopolies, duopolies, building societies, industrial and provident societies or credit unions, deposit-taking organisations, and those holding investment business client money.

MEMBERS' HANDBOOK

Section 3

Code of Ethics

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Approach, Scope and Authority

(This Code of Ethics applies from 1 September 2006. Where guidance relates to projects commencing prior to that date, previous guidance may be applied up to completion of the project)

Introduction
Approach
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Introduction

1.1 *One of the principal objects of the Royal Charter is to maintain a high standard of efficiency and professional conduct by members* of the Institute. The Code of Ethics ('this Code') applies to all members* of the Institute (which for the purposes of this Code also includes affiliates, provisional members*, and employees of a member firm* or an affiliate) and member firms* where relevant. These are referred to in the remainder of this Code as professional accountants*.*

1.2 *Professional accountants* have a responsibility to take into consideration the public interest (considered in more detail in paragraph 100.1) and to maintain the reputation of the accountancy profession. Personal self-interest must not prevail over those duties. This Code helps professional accountants* to meet these obligations by providing them with ethical guidance. Failure to follow this Code may lead to a professional accountant* becoming liable to disciplinary action as outlined in the Disciplinary Bye-laws 4, 5, 6 and 6A.*

Approach

1.3 *Guidance is given in the form of fundamental principles and illustrations of how they are to be applied in specific situations. These are available at the Institute's web site www.icaew.co.uk/membershandbook. The fundamental principles are drawn from the duties owed by professional accountants*, whether in practice or not, and from the requirements of the Royal Charter. They are framed in broad and general terms and constitute basic requirements of professional behaviour. The illustrations provide guidance on what is expected of*

* See Definitions

professional accountants in relation to particular situations that commonly arise either in practice or in business. The value of this principles-based approach is that it avoids excessive legalism by not having to anticipate every contingency, whilst at the same time being helpful in giving examples of problem situations. In some instances, prohibitions or mandatory actions arise from the analysis of threats: these are considered further in 100.10 below.*

Scope

1.4 *Professional accountants* are expected to follow the guidance contained in the fundamental principles in all of their professional and business activities whether carried out with or without reward and in other circumstances where to fail to do so would bring discredit to the profession. A professional accountant* should also follow the requirements in the illustrations, including prohibitions or mandatory actions, where circumstances are the same as, or analogous to, those addressed by those illustrations. Failure to follow such guidance may be justified in those rare circumstances where to follow a precise prohibition or mandated action would result in failure to adhere to the fundamental principles.*

1.5 *For convenience, the illustrations in this Code are grouped into parts applicable principally to professional accountants* working in public practice and business respectively, but professional accountants* may find any of them of use in relevant circumstances.*

1.6 *Professional accountants* should be guided not merely by the terms but also by the spirit of this Code and the fact that particular conduct does not appear among a list of examples does not prevent it amounting to misconduct. Professional accountants* should ensure that work for which they are responsible, which is undertaken by others on their behalf, is carried out in accordance with the requirements of this Code. Member firms* are reminded that this Code applies to their employees, whether members* or not and that they are responsible for applying this requirement.*

1.7 *Certain areas of work are reserved by statute to professional accountants* who are in practice, whether or not with other persons, namely investment business, insolvency and audit. In these areas professional accountants* may be subject to rules laid down by laws and regulation, breach of which can give rise to disciplinary proceedings against the professional accountant*.*

1.8 *Should the advice in this Code conflict with laws and regulations, professional accountants* are bound to follow the laws and regulations.*

1.9 *Professional accountants* working overseas should comply with this Code unless to do so would breach local laws and regulations.*

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* See Definitions

Authority

1.10 *In determining whether or not a complaint is proved, the Investigation and Disciplinary Committees may have regard to any Code of practice, ethical or technical, and to any regulations affecting professional accountants*, laid down or approved by the Council.*

1.11 *Paragraph 100.2 notes that safeguards are required to be put into place where the threats to adherence of the fundamental principles are other than clearly insignificant.* Thus, significance will be relevant in determining whether there has been a breach of the guidance. Where the intent behind and consequences of the action in question are trivial and inconsequential, the requirements of this Code will not have been breached. In the event of a complaint, the Investigation and Disciplinary Committees will consider the matter, including perceptions of a reasonable and informed third party, having knowledge of all relevant information and will be the arbiter.*

International Federation of Accountants Code of Ethics

1.12 *Except as noted below, this Code has been derived from the International Federation of Accountants (IFAC) Code of Ethics. Accordingly, compliance with the remainder of this Code will ensure compliance with the principles of the IFAC Code. Paragraph numbering in the rest of this Code replicates that used in the IFAC Code of Ethics, except in respect of:*

- *Sections 221, 241 and Part D which have no direct equivalent in the IFAC Code of Ethics;*
- *Wording in italics in the other Sections, where additional discussion and/or requirements have been considered by Council to be useful or necessary. The fact that wording is or is not in italics does not indicate any differences in the degree of importance that should be attached to it.*

A direct link has been retained to paragraph numbering in the IFAC Code of Ethics. However, as a result of the additional discussion and requirements noted above, and deletion of material that is not applicable to the professional accountants of the Institute, the paragraph referencing in this Code is not necessarily consecutive.*

1.13 *The Auditing Practices Board (APB) has stated, in ISA (UK and Ireland) 200, that it is not aware of any significant instances where the relevant parts of the International Federation of Accountants (IFAC) Code of Ethics are more restrictive than the APB's Ethical Standards.*

1.14 *If professional accountants* are conducting assurance engagements other than audit, whether provided to audit clients or others, they should follow the ethical guidance on assurance engagements contained in Section 290.*

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* See Definitions

1.15 *Legislation has required the Institute to adopt, as regards auditor independence requirements, the Ethical Standards for Auditors, issued by the Auditing Practices Board ('APB'). Accordingly, as considered in further detail at the start of Section 290, when conducting audit engagements* in the UK and the Republic of Ireland, professional accountants* should comply with the requirements of the APB's Ethical Standards for Auditors. When performing audit engagements* elsewhere, professional accountants* should comply with the requirements of Section 290 of the IFAC Code of Ethics (www.ifac.org/Store/).*

Other Sources of Guidance

1.16 *Professional accountants* who are in doubt as to their ethical position may seek advice from the following sources, available to all members* of the Institute:*

- *The Institute's Ethics Advisory Services by e-mail: ethics@icaew.co.uk or phone +44 (0)1908 248258. The Ethics Advisory Services are confidential and free from the duty to report professional misconduct within the Institute. Further information on the Ethics Advisory Services can be found at www.icaew.co.uk/ethicsadvice, along with helpsheets and answers to a number of frequently asked questions.*
- *The Institute's money laundering helpline, by e-mail: mlenquiries@icaew.co.uk or telephone +44 (0)1908 248320. This provides advice on general issues concerning the regulations or specific issues, which can be discussed anonymously.*
- *The Support Members Scheme. This is wider in scope than the Ethics Advisory Services. The Support Members Scheme is run by volunteer members of the Institute from a wide range of backgrounds. It is a confidential, free service exempt from the duty to report misconduct and provides advice and help to members* in difficulties. A member* can contact the Support Members Scheme by phone on 0800 917 3526.*

1.17 *Seeking advice from the Ethics Advisory Services does not discharge a professional accountant's* duty to report misconduct, including their own misconduct (see Section 2.7, 'The duty to report misconduct' in the Members' Handbook (www.icaew.co.uk/membershandbook)).*

1.18 *A professional accountant* should consider taking legal advice to resolve issues arising from the application of laws and regulations to particular situations relating to confidentiality, disclosure, privilege, self-incrimination and other areas.*

1.19 *Additional support material and case studies on ethics are included in the Institute's Continual Professional Development (CPD) website at www.icaew.co.uk/cpd.*

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* See Definitions

General Application of this Code (Part A)

Section 100	Introduction and fundamental principles
Section 110	Integrity
Section 120	Objectivity
Section 130	Professional competence and due care
Section 140	Confidentiality
Section 150	Professional behaviour
Appendix to Section A	

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.

Acting in the public interest involves having regard to the legitimate interests of clients, government, financial institutions, employers, employees, investors, the business and financial community and others who rely upon the objectivity and integrity of the accounting profession to support the propriety and orderly functioning of commerce. This reliance imposes a public interest responsibility on the profession. Professional accountants should take into consideration the public interest and reasonable and informed public perception in deciding whether to accept or continue with an engagement or appointment, bearing in mind that the level of the public interest will be greater in larger entities and entities which are in the public eye.*

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* should observe and comply with the ethical requirements of this Code.

100.2 This Code is in three parts. Part A establishes the fundamental principles of professional ethics for professional accountants* and provides a conceptual framework for applying those principles. The conceptual framework provides guidance on fundamental ethical principles. Professional accountants* are required to apply this conceptual framework to identify threats to compliance with the fundamental principles, to evaluate their significance and, if such threats are other than clearly insignificant* to apply safeguards to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.

* See Definitions

100.3 Parts B and C illustrate how the conceptual framework is to be applied in specific situations. It provides examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles and also provides examples of situations where safeguards are not available to address the threats and consequently the activity or relationship creating the threats should 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 the guidance in Part C relevant to their particular circumstances.

Fundamental Principles

100.4 A professional accountant* is required to comply with the following fundamental principles:

(a) Integrity
A professional accountant* should be straightforward and honest in all professional and business relationships.

(b) Objectivity
A professional accountant* should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

(c) Professional Competence and Due Care
A professional accountant* 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. A professional accountant* should act diligently and in accordance with applicable technical and professional standards when providing professional services*.

(d) Confidentiality
A professional accountant* 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 professional accountant* or third parties.

(e) Professional Behaviour
A professional accountant* should comply with relevant laws and regulations and should avoid any action that discredits the profession.

Each of these fundamental principles is discussed in more detail in Sections 110–150.

* See Definitions

Conceptual Framework Approach

100.5 The circumstances in which professional accountants* operate may give rise to specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates such threats and specify the appropriate mitigating action. In addition, the nature of engagements and work assignments may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires a professional accountant* to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest. This Code provides a framework to assist a professional accountant* to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant*, a professional accountant* should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level, such that compliance with the fundamental principles is not compromised.

100.6 A professional accountant* has an obligation to 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.

100.7 A professional accountant* should take qualitative as well as quantitative factors into account when considering the significance of a threat. If a professional accountant* cannot implement appropriate safeguards, the professional accountant* should decline or discontinue the specific professional service involved, or where necessary resign from the client (in the case of a professional accountant in public practice*) or the employing organisation (in the case of a professional accountant in business*).

100.8 A professional accountant* may inadvertently violate a provision of this Code. Such an inadvertent violation, depending on the nature and significance of the matter, may not compromise compliance with the fundamental principles provided, once the violation is discovered, the violation is corrected promptly and any necessary safeguards are applied.

100.9 Parts B and C of this Code include examples that are intended to illustrate how the conceptual framework is to be applied. The examples are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a professional accountant* that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for a professional accountant* merely to comply with the examples presented; rather, the framework should be applied to the particular circumstances encountered by the professional accountant*.

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* See Definitions

Threats and Safeguards

100.10 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest threats, which may occur as a result of the financial or other interests of a professional accountant* or of an immediate or close family* member;
(b) Self-review threats, which may occur when a previous judgement needs to be re-evaluated by the professional accountant* responsible for that judgement;
(c) Advocacy threats, which may occur when a professional accountant* 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, a professional accountant* becomes too sympathetic to the interests of others; and
(e) Intimidation threats, which may occur when a professional accountant* may be deterred from acting objectively by threats, actual or perceived.

Parts B and C of this Code, respectively, provide examples of circumstances that may create these categories of threats for professional accountants in public practice* and professional accountants in business*. Professional accountants in public practice* may also find the guidance in Part C relevant to their particular circumstances. *Part D deals with professional accountants* undertaking insolvency work*.

Professional accountants should note that each of the categories of threat discussed above may arise in relation to the professional accountant's* own person or in relation to connected persons such as members of their family or partners* or persons who are close to the professional accountants* for some other reason, for instance by reason of a past or present association, obligation or indebtedness.*

100.11 Safeguards that may eliminate or reduce such 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.

100.12 Safeguards created by the profession, legislation or regulation include, but are not restricted to:

- 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.

* See Definitions

- External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant*.

100.13 Parts B and C of this Code, respectively, discuss safeguards in the work environment for professional accountants in public practice* and those in business. *Part D deals with professional accountants* undertaking insolvency work*.

100.14 Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organisation, include, but are not restricted to:

- Effective, well publicised complaints systems operated by the employing organisation, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behaviour.
- An explicitly stated duty to report breaches of ethical requirements.

100.15 The nature of the safeguards to be applied will vary depending on the circumstances. In exercising professional judgement, a professional accountant* should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be unacceptable.

Where a professional accountant decides to accept or continue an engagement, appointment, task or employment in a situation where a significant threat to the fundamental principles has been identified, the professional accountant* should be able to demonstrate that the availability and effectiveness of safeguards has been considered and it was reasonable to conclude that those safeguards will adequately preserve their compliance with the fundamental principles. It may be useful to document the reasoning and other evidence which supports the evaluation of threats and safeguards to such an extent that it enables a reasonable and informed third party to conclude that the decisions are acceptable.*

Ethical Conflict Resolution

100.16 In evaluating compliance with the fundamental principles, a professional accountant* may be required to resolve a conflict in the application of fundamental principles.

100.17 When initiating either a formal or informal conflict resolution process, a professional accountant* should consider the following, either individually or together with others, as part of the resolution process:

(a) Relevant facts;
(b) Relevant parties
(c) Ethical issues involved;

* See Definitions

(d) Fundamental principles related to the matter in question;
(e) Established internal procedures; and
(f) Alternative courses of action.

Having considered these issues, a professional accountant* should determine the appropriate course of action that is consistent with the fundamental principles identified. The professional accountant* should also weigh the consequences of each possible course of action. If the matter remains unresolved, the professional accountant* should consult with other appropriate persons within the firm* or employing organisation for help in obtaining resolution.

It will generally be preferable for the ethical conflict to be resolved within the employing organisation before consulting individuals outside the employing organisation.

100.18 Where a matter involves a conflict with, or within, an organisation, a professional accountant* should also consider consulting with those charged with governance of the organisation, such as the board of directors or the audit committee*.

100.19 It may be in the best interests of the professional accountant* to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

100.20 If a significant conflict cannot be resolved, a professional accountant* may wish to obtain professional advice from the *Institute* or legal advisors, and thereby obtain guidance on ethical issues without breaching confidentiality. For example, a professional accountant* may have encountered a fraud, the reporting of which could breach the professional accountant's* responsibility to respect confidentiality. The professional accountant* should consider obtaining legal advice to determine whether there is a requirement to report.

Further information on sources of guidance is available in paragraphs 1.16 to 1.19 of this Code.

100.21 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant* should, where possible, refuse to remain associated with the matter creating the conflict. The professional accountant* may determine that, in the circumstances, it is appropriate to withdraw from the engagement team* or specific assignment, or to resign altogether from the engagement, the firm* or the employing organisation.

More detailed guidance on the ethical conflict resolution process is available in the Appendix to Part A.

* See Definitions

Section 110 Integrity

110.1 The principle of integrity imposes an obligation on all professional accountants* to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

It follows that a professional accountant's advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.*

110.2 A professional accountant* should not be associated with reports, returns, communications or other information where they believe that the information:

(a) Contains a materially false or misleading statement;
(b) Contains statements or information furnished recklessly; or
(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

110.3 A professional accountant* will not be considered 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 judgement because of bias, conflict of interest or the undue influence of others.

Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.

120.2 A professional accountant* may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence the professional judgement of the professional accountant* should be avoided.

Section 130 Professional competence and due care

130.1 The principle of professional competence and due care imposes the following obligations on 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*.

* See Definitions

130.2 Competent professional service requires the exercise of sound judgement in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

(a) Attainment of professional competence; and
(b) Maintenance of professional competence.

130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development develops and maintains the capabilities that enable a professional accountant* to perform competently within the professional environments.

Further guidance on continuing professional development is available at www.icaew.co.uk/cpd and in the Learning & Professional Development Directorate Regulations which are available in the Members Handbook at www.icaew.co.uk/membershandbook.

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* should take 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* should make clients, employers or other users of the professional services* aware of limitations inherent in the services to avoid the misinterpretation of an expression of opinion as an assertion of fact.

Section 140 Confidentiality

The Principle of Confidentiality

140.0 *The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature. A safe and proper approach for professional accountants* to adopt is to assume that all unpublished information about a client's or employer's affairs, however gained, is confidential. Professional accountants* should be aware that some clients or employers may regard the mere fact of their relationship with a professional accountant* as being confidential.*

140.1 The principle of confidentiality imposes an obligation on professional accountants* to refrain from:

(a) Disclosing outside the firm* or employing organisation confidential information acquired as a result of professional and business relationships

* See Definitions

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.

Professional accountants in public practice must not disclose confidential information to a client even though the information is relevant to an engagement for, or would be beneficial to, that client.*

Where professional accountants in public practice have confidential information which affects an assurance report, or other report which requires a professional accountant* to state their opinion, the professional accountant* cannot provide an opinion which they already know, from whatever source, to be untrue. If the professional accountant in public practice* is to continue the engagement, the professional accountant* must resolve this disparity. In order to do so, the professional accountant* is entitled to apply normal procedures and to make such enquiries in order to enable the professional accountant* to obtain that same information but from another source. Under no circumstances, however, should there be any disclosure of confidential information outside the firm*.*

140.2 A professional accountant* should maintain confidentiality even in a social environment. The professional accountant* should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or immediate family* member.

140.3 A professional accountant* should also maintain confidentiality of information disclosed by a prospective client or employer.

This requirement extends not only to clients, past and present, but also to third parties from or about whom information has been received in confidence. The principle of confidentiality clearly does not prevent an employee from using the skills acquired while working with a former employer in undertaking a new role with a different organisation. Professional accountants should neither use nor appear to use special knowledge which could only have been acquired with access to confidential information. It is a matter of judgement as to the dividing line which separates experience gained, from special knowledge acquired.*

140.4 A professional accountant* should also consider the need to maintain confidentiality of information within the firm* or employing organisation.

140.5 A professional accountant* should take all 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.

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* See Definitions

Member firms should ensure that all who work on their behalf are trained in, and understand:*

- *The importance of confidentiality;*
- *The importance of identifying any conflicts of interest and confidentiality issues between clients, or between themselves or the firm and a client, in relation to a current or prospective engagement; and*
- *The procedures the firm* has in place for the recognition and consideration of possible conflicts of interest and confidentiality issues.*

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* should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

140.6A *Detailed guidance on conflicts of interest, including situations where such conflicts may result in threats (or perceived threats) to preservation of confidentiality, are included in Section 220.*

Disclosure of Confidential Information

140.7 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 authorised by the client or the employer;
(b) Disclosure is required by law, for example:
  (i) Production of documents or other provision of evidence in the course of legal proceedings; or
  (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and

Where required by law or regulations to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either themselves or their employing organisation, professional accountants should always disclose that information in compliance with relevant legal requirements. Professional accountants* should take care when communicating relevant facts to others relating to known or suspected money laundering or terrorist activities. Under the Money Laundering Regulations 2003 and the Terrorism Act 2000, it is a criminal offence to 'tip off' a money launderer or terrorist. For further discussion, please refer to the money laundering legislation and guidance available at www.icaew.co.uk/moneylaundering.*

* See Definitions

(c) There is a professional duty or right to disclose, when not prohibited by law:
  (i) To comply with the quality review of a member body or professional body;
  (ii) To respond to an inquiry or investigation by a member body or regulatory body;
  (iii) To protect the professional interests of a professional accountant* in legal proceedings; or
  (iv) To comply with technical standards and ethics requirements.

A professional accountant may disclose confidential information to third parties, when not obliged to do so by law or regulations, if the disclosure can be justified in the public interest and is not contrary to laws and regulations. Before making such disclosure, professional accountants* should obtain legal or professional advice as to their duties and obligations in the context of their professional and business relationships, and possible protection under the Public Interest Disclosure Act 1998. Further guidance on disclosure in the public interest is available in Section 7.1, 'Professional conduct and disclosure in relation to defaults or unlawful acts' in the Members' Handbook (www.icaew.co.uk/membershandbook).*

Confidentiality and privilege is a complex area. For example, information which is confidential may not be privileged and, therefore, may be admissible in court proceedings. Privilege is a difficult area, quite distinct from confidentiality, and it is recommended that further advice be taken if a professional accountant is in doubt as to the action that should be taken.*

Guidance on money laundering reporting requirements in privileged circumstances is included in Technical Release 02/06, available at www.icaew.co.uk/technical.

140.8 In deciding whether to disclose confidential information, professional accountants* should consider the following points:

(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 judgement should be used in determining the type of disclosure to be made, if any;
(c) the type of communication that is expected and to whom it is addressed; in particular, professional accountants* should be satisfied that the parties to whom the communication is addressed are appropriate recipients;
(d) whether or not the information is privileged, either under Legal Professional

* See Definitions

Privilege or in Privileged Circumstances under Section 330 of the Proceeds of Crime Act 2002 (see Technical release 02/06); and

(e) the legal and regulatory obligations and the possible implications of disclosure for the professional accountant.*

140.9 *The paragraphs above deal with professional accountants'* treatment of confidential information belonging to a client or employer. There is another context in which professional accountants* will be given or may obtain information which they must handle sensitively. Professional accountants* may be approached in confidence with information about alleged illegal or improper actions on the part of employees or management of the business for which the informant works or with which the informant has some other relationship. Professional accountants* may receive that information because of being trusted by the informant, or may receive it in connection with work their firm* is carrying out for the informant's employer.*

Whatever the circumstances in which the information comes to professional accountants, the professional accountants* should:*

- *Advise informants to pass the information to their employer through the medium of the employer's own internal procedures (if they exist);*
- *Use their best endeavours to protect the identity of the informant, taking care not to mislead the informant as to the extent to which this can be done, and should only cause the employer to be made aware of the informant's identity where this cannot be avoided; and*
- *Take care in determining the quality of the information and how best to use it, if at all.*

140.10 *For a more detailed explanation of the operation of the provisions of the Public Interest Disclosure Act 1998, professional accountants* are referred to ICAEW Technical Releases 16/99 'Receipt of Information in Confidence by Auditors' and 17/99 'Public Interest Disclosure Act 1998' (www.icaew.co.uk/technical).*

Section 150 Professional Behaviour

150.1 The principle of professional behaviour imposes an obligation on professional accountants* to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.

Professional accountants should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.*

* See Definitions

150.2 In marketing and promoting themselves and their work, professional accountants* should not bring the profession into disrepute. Professional accountants* should be honest and truthful and should 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.

Appendix to Part A—Further guidance on Ethical Conflict Resolution

Further guidance on the matters discussed in paragraph 100.17:

(a) Relevant facts
In order to clarify and identify the problem, the professional accountant should seek to establish the known facts of the situation and any limitations. It may not be possible to obtain all relevant facts but the professional accountant* may be able to obtain more background information to address the limitations by:*
- *Referring to the organisation's policy, procedures, code of conduct and previous history;*
- *Discussing the matter with parties internal and external to the organisation. For example trusted managers and colleagues.*

(b) Relevant parties
The professional accountant should consider affected parties ranging from individuals, organisations to society. The parties to be considered include, but are not limited to, employees, employers, shareholders, consumers/clients, investors, government and the community at large.*

(c) Ethical issues involved.
The professional accountant should consider the professional, organisational and personal ethical issues of the matter.*

(d) Fundamental principles related to the matter in question.
The professional accountant should refer to the guidance contained in this Code in order to establish which fundamental principles are affected by the situation.*

(e) Established internal procedures
The professional accountant should refer to the employing organisation's internal procedures and also consider which parties should be involved in the ethical conflict resolution process, in what role and at what stage. For example, the professional accountant* needs to consider when it would be*

* See Definitions

appropriate to refer to external sources for help, such as the Institute (see paragraphs 1.16 to 1.19 of this Code for sources of advice and guidance). Professional accountants may find it useful to discuss the ethical conflict issue within the organisation with the following parties:*

- *Immediate superior;*
- *The next level of management;*
- *A corporate governance body, for example, the audit committee*;*
- *Other departments in the organisation which include, but are not limited to, legal, audit and human resources departments.*

(f) Alternative courses of action
In considering courses of action, the professional accountant should consider the following:*

- *The organisation's policies, procedures and guidelines;*
- *Applicable laws and regulations;*
- *Universal values and principles adopted by society;*
- *Long term and short term consequences;*
- *Symbolic consequences;*
- *Private and public consequences.*

When evaluating the suggested course of action, a professional accountant should test the adequacy of the suggested course of action by considering the following:*

- *Have all consequences associated with the course of action been discussed and evaluated?*
- *Is there any reason why the suggested course of action should not stand the test of time?*
- *Would a similar course of action be undertaken in a similar situation?*
- *Would the suggested course of action stand scrutiny from peers, family and friends?*

* See Definitions

Professional Accountants in Public Practice (Part B)

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Section 200 Introduction

200.1 This Part of this Code illustrates how the conceptual framework contained in Part A is to be applied by professional accountants in public practice*. The examples in the following Sections are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a professional accountant in public practice* that may create threats to compliance with the principles. Consequently, it is not sufficient for a professional accountant in public practice* merely to comply with the examples presented; rather, the framework should be applied to the particular circumstances faced.

200.2 A professional accountant in public practice* should not 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 rendering of professional services*.

Fundamental Principles

200.2A *Professional accountants are required to comply with the following fundamental principles:*

* See Definitions

(a) Integrity
Professional accountants should be straightforward and honest in all professional and business relationships.*

(b) Objectivity
Professional accountants should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.*

(c) Professional Competence and Due Care
Professional accountants have 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. Professional accountants* should act diligently and in accordance with applicable technical and professional standards when providing professional services*.*

(d) Confidentiality
Professional accountants 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 professional accountant* or third parties.*

(e) Professional Behaviour
Professional accountants should comply with relevant laws and regulations and should avoid any action that discredits the profession.*

Threats and Safeguards
200.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest;
(b) Self-review;
(c) Advocacy;
(d) Familiarity; and
(e) Intimidation.

These threats are discussed further in Part A of this Code.

The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to a financial statement audit client*, a non-financial statement audit assurance client* or a non-assurance client.

* See Definitions

200.4 Examples of circumstances that may create self-interest threats for a professional accountant in public practice* include, but are not limited to:

- A financial interest* in a client or jointly holding a financial interest* with a client.
- Undue dependence on total fees from a client.
- Having a close business relationship with a client.
- Concern about the possibility of losing a client.
- Potential employment with a client.
- Contingent fees* relating to an assurance engagement*.
- A loan* to or from an assurance client* or any of its directors or officers.

200.5 Examples of circumstances that may create self-review threats include, but are not limited to:

- The discovery of a significant error during a re-evaluation of the work of the professional accountant in public practice*.
- Reporting on the operation of financial systems after being involved in their design or implementation.
- Having prepared the original data used to generate records that are the subject matter of the engagement.
- A member of the assurance team* being, or having recently been, a director or officer* of that client.
- A member of the assurance team* being, or having recently been, employed by the client in a position to exert direct and significant influence over the subject matter of the engagement.
- Performing a service for a client that directly affects the subject matter of the assurance engagement*.

200.6 Examples of circumstances that may create advocacy threats include, but are not limited to:

- Promoting shares* in a listed entity* when that entity is a financial statement audit client*.
- Acting as an advocate on behalf of an assurance client* in litigation or disputes with third parties.

200.7 Examples of circumstances that may create familiarity threats include, but are not limited to:

- A member of the engagement team* having a close or immediate family* relationship with a director or officer* of the client.
- A member of the engagement team* having a close or immediate family* relationship with an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement.
- A former partner* of the firm* being a director or officer* of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.
- Accepting gifts or preferential treatment from a client, unless the value is clearly insignificant*.

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* See Definitions

- Long association of senior personnel with the assurance client*.

200.8 Examples of circumstances that may create intimidation threats include, but are not limited to:

- Being threatened with dismissal or replacement in relation to a client engagement.
- Being threatened with litigation.
- Being pressured to reduce inappropriately the extent of work performed in order to reduce fees.

200.9 A professional accountant in public practice* may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorised. In either professional or business relationships, a professional accountant in public practice* should always be on the alert for such circumstances and threats.

200.10 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 100.12 of Part A of this Code.

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. A professional accountant in public practice* should exercise judgement to determine how to best deal with an identified threat. In exercising this judgement a professional accountant in public practice* 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 reasonably conclude to be acceptable. 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*.

200.12 Firm-wide safeguards in the work environment may 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 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 clearly insignificant*, to an acceptable level.

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* See Definitions

- For firms* that perform assurance engagements, documented independence* policies regarding the identification of threats to independence*, the evaluation of the significance of these threats and the evaluation and application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant*, to an acceptable level.
- 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 those assurance clients* and related entities from which they must be independent.
- 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 Engagement-specific safeguards in the work environment may include:

- Involving an additional professional accountant* to review the work done 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.

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* See Definitions

200.15 Safeguards within the client's systems and procedures may include:

- When a client appoints a firm* in public practice to perform an engagement, persons other than management ratify or approve the appointment.
- 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.

200.16 *Professional accountants* who are in doubt as to their ethical position may seek advice from the Institute's Ethics Advisory Services by e-mail: ethics@icaew.co.uk or phone +44 (0)1908 248258. Further information on guidance is available in paragraphs 1.16 to 1.19 of this Code.*

Section 210 Professional Appointment

210.0 *Clients have the right to choose their accountants, whether as auditors or professional advisers, and to change their accountants if they so desire. Professional accountants* have the right to choose for whom they act.*

Client Acceptance

210.1 Before accepting a new client relationship, a professional accountant in public practice* should consider whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management and activities).

210.2 Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

Further information relating to money laundering legislation and guidance is included in paragraph 210.12.

210.3 The significance of any threats should be evaluated. If identified threats are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

210.4 Appropriate safeguards may include obtaining knowledge and understanding of the client, its owners, managers and those responsible for its

* See Definitions

governance and business activities, or securing the client's commitment to improve corporate governance practices or internal controls.

210.5 Where it is not possible to reduce the threats to an acceptable level, a professional accountant in public practice* should decline to enter into the client relationship.

210.6 Acceptance decisions should be periodically reviewed for recurring client engagements.

Engagement Acceptance

210.7 A professional accountant in public practice* should agree 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* should consider whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team* does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

210.8 A professional accountant in public practice* should evaluate the significance of identified threats and, if they are other than clearly insignificant*, safeguards should be applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:

- 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.

210.9 When a professional accountant in public practice* intends to rely on the advice or work of an expert, the professional accountant in public practice* should evaluate whether such reliance is warranted. The professional accountant in public practice* should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in a Professional Appointment

210.10 A professional accountant in public practice* who is asked to replace

* See Definitions

another professional accountant in public practice*, or who is considering tendering for an engagement currently held by another professional accountant in public practice*, should determine whether there are any reasons, professional or other, for not accepting the engagement, such as circumstances that threaten compliance with the fundamental principles. 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.

The Institute is of the view that upon being asked to accept an appointment, professional accountants should undertake the same procedures with all accountants and should consider whether they should be applied when replacing other professional advisers.*

210.11 The significance of the threats should be evaluated. Depending on the nature of the engagement, this may require direct communication with the existing accountant* to establish the facts and circumstances behind the proposed change so that the professional accountant in public practice* can decide whether it would be appropriate 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 existing accountant* that may influence the decision as to whether to accept the appointment.

The Institute is of the view that there are unlikely to be any circumstances where, having been asked to accept an appointment, the professional accountant in public practice should not at least seek to contact the existing accountant*. The appropriate procedures are considered further in the Appendix to this Section.*

210.12 An existing accountant* is bound by confidentiality. The extent to which the professional accountant in public practice* can and should 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.

However, care must be taken when communicating all relevant facts to a professional accountant in situations where the existing accountant* knows or suspects that their client is involved in money laundering or a terrorist activity. Under the Money Laundering Regulations 2003 and the Terrorism Act 2000, it is a criminal offence to 'tip off' a money launderer or terrorist. Accordingly:*

- *The prospective accountant should not specifically enquire whether the existing accountant* has reported suspicions of money laundering or terrorism. Such questions place the existing accountant* in a difficult position and are likely not to be answered. In addition, the prospective accountant should not ask the existing accountant* whether client identification or 'knowing your client' procedures have been carried out under anti-money laundering*

* See Definitions

legislation. The prospective accountant has responsibility for obtaining information for client identification and 'knowing your client' and this cannot be delegated to the existing accountant.*

- *Disclosure of money laundering or terrorist suspicion reporting by the existing accountant* to the potential successor should be avoided because this information may be discussed with the client or former client.*

For further discussion, please refer to the money laundering legislation and guidance (www.icaew.co.uk/moneylaundering) and the Institute's Ethics Advisory helpsheet on 'Changes in professional appointments' (www.icaew.co.uk/ethicsadvice).

210.13 In the absence of specific instructions by the client, an existing accountant* should not ordinarily volunteer information about the client's affairs. Circumstances where it may be appropriate to disclose confidential information are set out in Section 140 of Part A of this Code.

210.14 If identified threats are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

210.15 Such safeguards may include:

- Discussing the client's affairs fully and freely with the existing accountant*;
- Asking the existing accountant* to provide known information on any facts or circumstances, that, in the existing accountant's* opinion, the proposed accountant should be aware of before deciding whether to accept the engagement.

When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant* will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.

Counsel has advised that an existing accountant who communicates to a prospective accountant matters damaging to the client or to any individuals concerned with the client's business will have a strong measure of protection where any action for defamation to be brought against the existing accountant* in that the communication will be protected by qualified privilege. This means that the existing accountant* should not be liable to pay damages for defamatory statements even if they turn out to be untrue, provided that they are made without malice. There is little likelihood of an existing accountant* being held to have acted maliciously provided that:*

- *Only what is sincerely believed to be true is stated; and*
- *Reckless imputations are not made against a client or connected individuals for which there can be no reason to believe they are true.*

210.16 A professional accountant in public practice* will ordinarily need to obtain the client's permission, preferably in writing, to initiate discussion

* See Definitions

with an existing accountant*. Once that permission is obtained, the existing accountant* should comply with relevant legal and other regulations governing such requests. Where the existing accountant* provides information, it should be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing accountant*, the proposed accountant should try to obtain information about any possible threats by other means such as through inquiries of third parties or background investigations on senior management or those charged with governance of the client.

If the client fails or refuses to grant the existing accountant permission to discuss the client's affairs with the proposed successor, the existing accountant* should report that fact to the prospective accountant who should consider carefully the reason for such failure or refusal when determining whether or not to accept nomination/appointment.*

210.17 Where the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice* should, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.18 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 give rise to potential threats to professional competence and due care resulting from, for example, a lack of or incomplete information. Safeguards against such threats include notifying the existing accountant* of the proposed work, which would give the existing accountant* the opportunity to provide any relevant information needed for the proper conduct of the work.

The Institute is of the view that in circumstances where the professional accountant is asked to undertake work which is relevant to the work of the existing accountant, the professional accountant* should notify the existing accountant* of the proposed work, unless the client provides acceptable reasons why the existing accountant* should not be informed. The professional accountant* should be aware of the risks of undertaking such work without the advantage of communicating with the other accountants. Further guidance on providing second opinions is available in Section 230 of this Code.*

210.19 *Guidance on appropriate procedures to be adopted by professional accountants* relating to changes in professional appointments is included as an Appendix to this Section.*

Transfer of Records

210.20 *An existing accountant* should deal promptly with any reasonable request for the transfer of records and may have the right of particular lien if there are unpaid fees (see Section 240 of this Code and Section 9.4,*

* See Definitions

'Documents and records, ownership, lien and right of access' in the Members' Handbook (www.icaew.co.uk/membershandbook)). Professional accountants should be aware that the courts have held that no lien can exist over books or documents of a registered company which, either by statute or by articles of association of the company, have to be available for public inspection (see Section 9.4, 'Documents and records, ownership, lien and rights of access' in the Members' Handbook (www.icaew.co.uk/membershandbook)). It may be necessary for professional accountants* to obtain legal advice prior to the exercise of a lien.*

If the existing accountant has fees outstanding from a client they are entitled to mention this to the potential successor. However, if this is as a result of genuine reservations by the client this may not be a reason to withhold cooperation with a successor. It may be useful to consider the section on fee disputes in Section 2.8, 'Duty on firms to investigate complaints' in the Members' Handbook (www.icaew.co.uk/membershandbook).*

210.21 *The prospective accountant often asks the existing accountant* for information as to the client's affairs. If the client is unable to provide the information and lack thereof might prejudice the client's interests, such information should be promptly given. In such circumstances, no charge should normally be made unless there is good reason to the contrary. An example of such a reason would be that a significant amount of work is involved. Where a charge is made, the arrangements should comply with Section 240 of this Code.*

Appendix to Section 210 – Changes in Professional Appointments Procedures

Prospective Accountants

1 *In the majority of cases, the appropriate procedures for any professional accountant* who is invited to act in succession to another, whether the changeover is at the insistence of the client or of the existing accountant*, is to:*

- *Explain to the prospective client that there is a professional duty to communicate with the existing accountant*; and*
- *Request the client (i) to confirm the proposed change in accountant to the existing accountant* and (ii) to authorise the existing accountant* to co-operate with the prospective accountant; and*
- *Write to the existing accountant* regarding the prospective involvement with the client and request disclosure of any issue or circumstance which might be relevant to the successor's decision to accept or decline the appointment (making oral enquiry if no written reply is forthcoming).*

2 *When these procedural steps have been taken, the prospective accountant should consider, in light of the information received from the existing accountant*, or any other factors, including conclusions reached following discussion with the client, whether:*

* See Definitions

- *To accept the engagement, or*
- *Accept it only after having addressed any factors arising from the information received from the existing accountant* (this may include imposing conditions on acceptance), or*
- *Decline it.*

3 *The prospective accountant should ordinarily treat in confidence any information provided by the existing accountant*, unless it is needed to be disclosed to perform the role required (such as making investigations into matters which need the perspective of the client's officers or senior employees).*

4 *In circumstances where the enquiries referred to above are not answered, the prospective accountant should write to the existing accountant* by recorded delivery service stating an intention to accept the engagement in the absence of a reply within a specific and reasonable period. The prospective accountant is entitled to assume that the existing accountant's* silence implies there was no adverse comment to be made, although this does not obviate the requirement in 210.11 to consider all appropriate circumstances.*

5 *A professional accountant* which is nominated as a joint auditor should communicate with all existing auditors and be guided by similar principles to those set out in relation to nomination as an auditor. Where it is proposed that a joint audit appointment becomes a sole appointment, the surviving auditor should communicate formally with the other joint auditor as though for a new appointment.*

6 *A professional accountant* invited to accept nomination on the death of a sole practitioner should endeavour to obtain such information as may be needed from the latter's alternate (where appropriate), the administrators of the estate, or other source.*

Existing Accountants*

7 *The appropriate procedure for any professional accountant* who receives any communication in terms of the above paragraphs, whether or not the professional accountant* is still in office, is to:*

- *Answer promptly any communication from the potential successor about the client's affairs; and*
- *Confirm whether there are any matters about those affairs which the prospective accountant ought to know, explaining them meaningfully, or confirm there are no such matters.*

8 *If the existing accountant* has made one or more suspicious activity reports relating to money laundering or terrorism, the existing accountant* should not disclose that fact to the prospective accountant, or make other disclosures that could amount to tipping off. However, the existing accountant's* legal and professional obligations remain. In order to meet these obligations, the existing accountant* can undertake one or more of the following actions:*

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* See Definitions

- *Contacting the relevant investigating authority, for example, the Serious Organised Crime Agency (SOCA), to ascertain if appropriate wording can be agreed in a communication;*
- *Include a factual reference to the irregularities; (further discussion is included in the Institute's Ethics Advisory Services Helpsheet on Changes in Professional Appointments);*
- *Consider seeking legal advice.*

Guidance on money laundering reporting requirements in privileged circumstances is included in Technical Release 02/06, available at www.icaew.co.uk/technical.

9 *The above actions are also relevant when the existing accountant* is preparing the required statement of circumstances in accordance with Section 394 of the Companies Act 1985, or other similar statutory provisions, of matters connected with ceasing to hold office which, the auditor believes, should be brought to the notice of the professional accountants* or creditors of the client or under other statutes to relevant regulatory bodies.*

10 *It is best practice for the prospective accountant and the existing accountant* to record in writing such discussions as are referred to in the paragraphs above.*

11 *Where the professional accountant* decides to accept nomination / appointment having been given notice of any matters which are the subject of contention between the existing accountant* and the client, the professional accountant* should be prepared, if requested to do so, to demonstrate to the Investigation Committee that proper consideration has been given to those matters.*

Further Information

12 *Professional accountants*' attention is drawn to additional guidance as follows:*

- *Statement of Auditing Standards (www.frc.org.uk/apb/publications):*
  - *ISA 240 – 'The auditor's responsibility to consider fraud in an audit of financial statements';*
  - *ISA 250 – 'Consideration of laws and regulations in an audit of financial statements';*
  - *ISA 510 – 'Initial engagements – opening balances and continuing engagements – opening balances'*
- *Practice Note 12 (Revised) 'Money laundering' (www.frc.org.uk/apb/publications)*
- *Section 7.2 – 'Anti-money laundering (proceeds of crime and terrorism)' in the Members' Handbook (www.icaew.co.uk/membershandbook)*
- *Technical Release 02/06 – 'Guidance on changes to the money laundering reporting requirements: the exemption from reporting knowledge or suspicion of money laundering formed in privileged circumstances' (www.icaew.co.uk/technical).*

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* See Definitions

- *Helpsheet 1 – 'Changes in professional appointments' (www.icaew.co.uk/ethicsadvice)*

Section 220 Conflicts of Interest

220.1 A professional accountant in public practice* should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when a professional accountant in public practice* competes directly with a client or has a joint venture or similar arrangement with a major competitor of a client. A threat to objectivity or confidentiality may also be created when a professional accountant in public practice* performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.

Subject to the specific provisions, there is, however, nothing improper in a professional accountant in public practice having two clients whose interests are in conflict.*

220.2 A professional accountant in public practice* should evaluate the significance of any threats. Evaluation includes considering, before accepting or continuing a client relationship or specific engagement, whether the professional accountant in public practice* has any business interests, or relationships with the client or a third party that could give rise to threats. If threats are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

A test is whether a reasonable and informed observer would perceive that the objectivity of professional accountants or their firms* is likely to be impaired. The professional accountants* or their firms* should be able to satisfy themselves and the client that any conflict can be managed with available safeguards. Attention is also drawn to the ethical conflict resolution process in Part A.*

Safeguards

220.3 Depending upon the circumstances giving rise to the conflict, safeguards should ordinarily include the professional accountant in public practice*:

(a) Notifying the client of the firm's* business interest or activities that may represent a conflict of interest, and obtaining their consent to act in such circumstances; or
(b) Notifying all known relevant parties that the professional accountant in public practice* is acting for two or more parties in respect of a matter

* See Definitions

where their respective interests are in conflict, and obtaining their consent to so act; or

(c) Notifying the client that the professional accountant in public practice* does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service) and obtaining their consent to so act.

Professional accountants' attention is drawn to Section 240 Fees and other types of remuneration and Section 241 Agencies and referrals which provides additional guidance on the ethical and legal considerations relating to these areas, including fiduciary relationships and accounting for commission and other benefits.*

220.4 The following additional safeguards should also be considered:

(a) The use of separate engagement teams*; and
(b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing); and
(c) Clear guidelines for members of the engagement team* on issues of security and confidentiality; and
(d) The use of confidentiality agreements signed by employees and partners* of the firm*; and
(e) Regular review of the application of safeguards by a senior individual not involved with relevant client engagements.

220.4A *Where a conflict of interest arises, the preservation of confidentiality, and the perception thereof will be of paramount importance. Therefore firms* should deploy safeguards, which generally will take the form of information barriers, whose principle features may include:*

- *Ensuring that there is, and continues to be, no overlap between the teams servicing the relevant clients and that each has separate internal reporting lines;*
- *Physically separating, and restricting access to, departments providing different professional services*, or creating such divisions within departments if necessary, so that confidential information about one client is not accessible by anyone providing services to another client where their interests conflict;*
- *Setting strict and carefully defined procedures for dealing with any apparent need to disseminate information beyond a barrier and for maintaining proper records where this occurs.*

The professional accountant should ensure that the adequacy and effectiveness of the barriers are closely and independently monitored and that appropriate disciplinary sanctions are applied for breaches of them. The overall arrangements should regularly be reviewed by a designated senior partner.*

Professional accountants should note that it has been suggested by the courts that in some circumstances information barriers must be constructed as part of the organisational structure of the firm to be effective, rather than on an ad hoc basis.*

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* See Definitions

220.4B *If client service issues render it impracticable to put in place such safeguards or suitable alternatives, it is important that relevant parties who have conflicts of interest which may result in threats to preservation of confidentiality, are made aware of and agree to the professional accountant* continuing to act for them.*

220.5 Where a conflict of interest poses a threat to one or more of the fundamental principles, including objectivity, confidentiality or professional behaviour, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice* should conclude that it is not appropriate to accept a specific engagement or that resignation from one or more conflicting engagements is required.

220.6 Where a professional accountant in public practice* has requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, then they must not continue to act for one of the parties in the matter giving rise to the conflict of interest.

Professional accountants' attention is drawn to Section 290, 'Independence – assurance engagements', Section 400, 'The practice of insolvency', and to Section 221, 'Corporate finance advice', for guidance on issues arising from certain reporting assignments, insolvency appointments and corporate finance activities.*

Section 221 Corporate Finance Advice

(Issued as Statement 1.203 October 2002: reformatted and updated as regards to changes in legislation as at 1 August 2006)

Introduction

221.0 *The nature of corporate finance activities is so wide ranging that all the threats to objectivity and conflicts of interest identified respectively in Section 200 and Section 220 can arise when professional accountants* provide corporate finance advice.*

Categories of Corporate Finance Activity

221.1 *Categories of activity covered by this Section are as follows:*

(a) general corporate finance advice;
(b) acting as adviser in relation to takeovers and mergers;
(c) underwriting and marketing or placing securities on behalf of a client; and
(d) acting as sponsor or nominated adviser under the Listing Rules and the AIM Rules respectively.

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* See Definitions

221.2 *Professional accountants* should note that the guidance given in relation to general corporate finance advice is applicable to all categories of activity.*

General Principles applicable to all Professional Accountants*

Statutory and Other Regulatory Requirements

221.3 *Professional accountants* must be aware of and comply with current legislative and regulatory measures and professional guidance governing corporate finance assignments. As a guide, a list of legislative and regulatory measures current at 1 August 2006 is given in Appendix 1 to this Section but professional accountants* should ensure that they are aware of the most up-to-date legislative and regulatory requirements.*

221.4 *Professional accountants* are required to comply with the City Code on Takeovers and Mergers ('the City Code') (see Appendix 2 to this Section) in respect of all relevant takeover transactions involving companies governed by the City Code and should treat the general principles of the City Code as best practice guidance in respect of other takeover transactions.*

221.5 *Professional accountants* proposing to provide corporate finance advice to a client or his employer should at the outset draw attention to the legislative and regulatory responsibilities which will apply to the client or his employer. The professional accountant* should make clear to the client or his employer that, where necessary, legal advice should be taken. The professional accountant* should also draw attention to his own responsibilities under professional ethical guidance.*

Acquisition Searches

221.6 *It may be appropriate for a professional accountant* to conduct an acquisition search which could identify another client or his employer as a target provided the search is based solely on information which is not confidential to that client.*

Interests of Shareholders and Owners

221.7 *Professional accountants* should remain aware when giving advice that they should have regard to the interests of all shareholders and owners unless they are specifically acting for a single or defined group thereof. This is particularly so when advising on a proposal which is stated to be agreed by directors and/or majority shareholders or owners.*

Preparation of Documents

221.8 *Any document should be prepared in accordance with normal professional standards of integrity and objectivity and with a proper degree of care. All statements or observations therein must be capable, taken individually or as a whole, of being justified on an objective examination of the available facts.*

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* See Definitions

221.9 *In order to differentiate the roles and responsibilities of the various advisers, professional accountants* should ensure that these roles and responsibilities are clearly described in all public documents and circulars and that each adviser is named.*

221.10 *Professional accountants* intending to comment on published audited accounts should act in accordance with paragraph 221.21 below.*

Overseas Transactions

221.11 *This Section has been drafted with regard to the situation in the United Kingdom and the Republic of Ireland. Professional accountants* should apply the spirit of the guidance, subject to local legislation and regulation, to overseas transactions of a similar nature.*

General Corporate Finance Advice Applicable to Professional Accountants in Public Practice*

221.12 *The nature of corporate finance activities is so wide ranging that all the threats to objectivity identified in Section 100 and Section 200, can arise when professional accountants in public practice* provide corporate finance advice to both assurance* and non-assurance clients: the self-interest threat, the self-review threat, the advocacy threat, the familiarity or trust threat and the intimidation threat.*

When advising a non-assurance client there can be no objection to a professional accountant in public practice accepting an engagement which is designed primarily with a view to advancing that client's case, though the professional accountant in public practice* should be aware that the self-interest threat could arise. Where a non-assurance client has received advice over a period of time on a series of related or unrelated transactions it is likely that, additionally, the familiarity or trust threats may exist. But where a professional accountant in public practice* advises an assurance client* which is subject to a takeover bid or where a professional accountant in public practice* acts as sponsor or nominated adviser to an assurance client involved in the issue of securities, the self-interest threat will become more acute and the advocacy threat will arise.*

Some corporate finance activities such as marketing or underwriting of securities contain so strong an element of advocacy as to be incompatible with the objectivity required for the reporting roles of an auditor or reporting accountant. Even where the activities of an auditor or reporting accountant are restricted to ensuring their clients' compliance with the Listing Rules or the AIM Rules, it is likely that a self-review threat could arise.

221.13 *It may be in the best interests of a company for corporate finance advice to be provided by its auditor and there is nothing improper in the professional accountant in public practice* supporting an assurance client* in this way.*

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* See Definitions

221.14 *A professional accountant in public practice's* objectivity may be seriously threatened if he should extend his role into management of an assurance client. Co-ordination tasks, such as initiating and organising meetings, issuing timetables and reporting progress, are unlikely to threaten reporting objectivity. When involved in negotiations on behalf of an assurance client, the professional accountant in public practice* should ensure that he does not assume the role of taking decisions for a client which would prejudice reporting objectivity. Accordingly, the professional accountant in public practice* should ensure that the client takes full responsibility for the final decisions arising from any such negotiations.*

Conflict of Interest

221.15 *Professional accountants in public practice* should be aware of the danger of a conflict of interest arising. All reasonable steps should be taken to ascertain whether a conflict of interest exists or is likely to arise in the future between a professional accountant in public practice* and his clients, both with regard to new clients and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.*

221.16 *The attention of professional accountants in public practice* is directed to Section 220, 'Conflicts of interest' and to the safeguards indicated in paragraphs 220.3 and 220.4 of that Section. Where there appears to be a conflict of interest between clients but after careful consideration the professional accountant in public practice* believes that either the conflict is not material or is unlikely seriously to prejudice the interests of any of those clients and that its safeguards are sufficient, the professional accountant in public practice* may accept or continue the engagement. Unless client confidentiality considerations dictate otherwise it would be advisable, if appropriate, to seek the clients' consent. Considerations that lead to a conclusion to accept or continue the engagement should be explicitly recorded.*

221.17 *Where a professional accountant in public practice* acts or continues to act for two or more clients having obtained consent, if appropriate, in accordance with the previous paragraphs, safeguards will need to be implemented to manage any conflict which arises. The safeguards may include:*

(a) the use of different partners and teams for different clients, each having separate internal reporting lines;
(b) all necessary steps being taken 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, where it is appropriate.

Any decision on the part of a sole practitioner should take account of the fact that the safeguards at (a) to (c) of the above paragraph will not be available to

* See Definitions

him or her. Similar considerations apply to small firms where the number of partners is insufficient to spread the work as indicated above.

221.18 *Where a conflict of interest is so fundamental that it cannot be managed effectively by the implementation of appropriate safeguards and is likely seriously to prejudice the interests of a client, the engagement should not be accepted or continued even if all relevant clients consent to the engagement.*

221.19 *Where a professional accountant in public practice* is required for any reason to disengage from an existing client, the professional accountant in public practice* should do so as speedily as practicable having regard to the interest of the client.*

Documents for Client and Public Use

221.20 *In the case of a document prepared solely for the client and its professional advisers, it should be a condition of the engagement that the document should not be disclosed to any third party without the firm's prior written consent.*

221.21 *A professional accountant in public practice* is, in the absence of any indication to the contrary, entitled to assume that a company's published financial information that has been reported on by a professional accountant in public practice* has been prepared properly and in accordance with all relevant Accounting Standards. If a professional accountant in public practice* is commenting in a public document on such financial information and where scope for alternative accounting treatment exists, and the accuracy of the comment or observation is dependent on an assumption as to the actual accounting treatment chosen, that assumption must be stated, together with any other assumptions material to the commentary. Where the professional accountant in public practice* is not in possession of sufficient information to warrant a clear opinion this should be declared in the document.*

221.22 *A professional accountant in public practice* must take responsibility for anything published under his name, provided he consented to such publication, and the published document should make clear the client for whom the professional accountant in public practice* is acting. To prevent misleading or out-of-context quotations, it should be a condition of the engagement that, if anything less than the full document is to be published, the text and its context should be expressly agreed with the professional accountant in public practice*.*

Takeovers and Mergers

City Code Transactions

221.23 *Professional accountants in public practice* are reminded that, if in doubt as to the propriety of any aspect of a City Code transaction with which they are involved, they should consult the Panel on Takeovers and Mergers ('The Takeover Panel'). (See Appendix 2 of this Section).*

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* See Definitions

221.24 *Where a professional accountant in public practice* finds itself acting as auditor or reporting accountant for two or more parties involved in a transaction subject to the City Code, a perceived conflict of interest may arise. In such circumstances (subject to paragraph 221.26 below) a professional accountant in public practice* may act for more than one party, including both offeror and offeree companies as auditor, as reporting accountants, and in the provision of incidental advice consistent with these roles but must implement adequate safeguards (see paragraph 221.27 above).*

Lead Advisers in City Code Transactions

221.25 *For the purposes of this Section, a 'lead adviser' is the professional accountant in public practice* primarily responsible for advising on, organising and presenting an offer or the response to an offer. This definition would include an 'independent financial adviser' required under Rule 3 of the City Code.*

221.26 *In no circumstances should a professional accountant in public practice* be a lead adviser to more than one party involved in a transaction subject to the City Code. Where a professional accountant in public practice* finds itself* acting in *an auditor or reporting accountant role for any party involved in a transaction subject to the City Code, the professional accountant in public practice* should not act as lead adviser for any party involved, save in the circumstances set out below in paragraphs 221.27–221.29.*

221.27 *A professional accountant in public practice* who is auditor to a target company may be requested to act as lead adviser to a bidder on an offer subject to the City Code. Where the bid is hostile, it is likely that the professional accountant in public practice's* objectivity will be perceived to be prejudiced by its possession of material confidential information on the target and it will not therefore be able to advise on the offer. However, if the bid is agreed, the professional accountant in public practice* may be able to act or continue to act as lead adviser to the bidder with the agreement of the target and subject to the prior approval of the Takeover Panel. The professional accountant in public practice* should obtain confirmation from its clients that their interests would not be prejudiced if the professional accountant in public practice* were to act or continue to act in both capacities.*

221.28 *Where a professional accountant in public practice* is acting as lead adviser to a company which is involved in a bid subject to the City Code, conflicts of interest for the professional accountant in public practice* may arise due to an existing relationship with a second or subsequent bidder. Providing that the relationship with the second or subsequent bidder is confined to that of auditor or reporting accountant, and subject to the prior approval of the Takeover Panel, the professional accountant in public practice* may continue to act as lead adviser, providing that it is satisfied that the implementation of safeguards (see paragraph 221.27 above) provides the necessary level of protection to each of the clients involved.*

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* See Definitions

221.29 *Where a professional accountant in public practice* is requested to act as lead adviser to a target company in relation to a bid which is subject to the City Code from a company which is an existing assurance client, it may act as lead adviser to the target company only with the prior approval of the Takeover Panel.*

The ethical guidance for professional accountants in public practice seeking to act for more than one party in a takeover transaction subject to the City Code is summarised in Appendix 3 to this Section. Appendix 3 has been prepared only as a useful reference and is not intended to form part of this Section.*

Transactions not Subject to the City Code

221.30 *Where a takeover is not subject to the City Code, and there is no substantial public interest involved, a professional accountant in public practice* may, subject to the implementation of appropriate safeguards (see paragraphs 221.16 and 221.17 above), provide financial advice to both sides or to competing bidders. However, the professional accountant in public practice* should not act as lead adviser to both the target and a bidder in respect of such a transaction. The professional accountant in public practice* should be alive to the possibility of conflicts of interest arising in relation to minority interests and should ensure that any such conflicts are addressed. Where appropriate, the advisory client and minority interests should be advised as to the desirability of the minority interests appointing a wholly independent adviser.*

Underwriting and Marketing of Shares

221.31 *A professional accountant in public practice* should not underwrite or market an issue or sale to the public of shares or securities of a company on which he has reported within the last two years or is to report as auditor or as reporting accountant. Nor should the professional accountant in public practice* undertake to accept nomination as auditor or reporting accountant of a company whose shares he is underwriting or marketing. Involvement of this kind would give rise to an advocacy threat, self-review threat and self-interest threat such that the professional accountant in public practice's* objectivity in the auditor and/or reporting accountant function would be endangered.*

221.32 *It may be appropriate:*

(a) for an auditor or reporting accountant otherwise to assist a client in raising capital; or
(b) for an auditor or reporting accountant otherwise to provide independent advice to a client, or its professional advisers, in connection with the issue or sale of shares or securities to the public; or
(c) for an auditor or reporting accountant otherwise to provide advice as sponsor or as an AIM nominated adviser to a company as set out below.

In these situations the professional accountant in public practice should adopt steps similar to those described in paragraph 220.3 and 220.4 of Section 220 and, additionally, set up procedures to review and identify any potential conflicts*

* See Definitions

of interest which could compromise the professional accountant in public practice's objectivity.*

Sponsors and Nominated Advisers

221.33 *The attention of professional accountants in public practice* is drawn to:*

(a) the UK Listing Authority's Listing Rules when a firm accepts the responsibilities of a sponsor;

(b) the London Stock Exchange's Alternative Investment Market ('AIM') Rules and, in particular, the Nominated Adviser Eligibility Criteria when acting as a nominated adviser defined by the AIM Rules. AIM's requirement is that for AIM companies to maintain their trading facility they should have a nominated adviser at all times. In this context professional accountants in public practice should have in place procedures to enable them to identify whether any conflicts exist or are likely to arise in the future before acting as a nominated adviser. Professional accountants in public practice* should note the policy of the London Stock Exchange that it will not normally allow a nominated adviser to be the reporting accountant to the issuer unless appropriate safeguards are in place as set out in paragraph 221.17 above. Furthermore, professional accountants in public practice* should note that the London Stock Exchange does not permit a nominated adviser to act for any other party to a transaction or takeover other than its AIM client company. In cases of doubt, professional accountants in public practice* should consult the London Stock Exchange.*

221.34 *Considerable care needs to be taken if a professional accountant in public practice* is also to act as sponsor or nominated adviser to an assurance client*. A threat to the objectivity of the auditor or reporting accountant can arise as the duties of a sponsor or nominated adviser are different from those of an auditor or reporting accountant and are owed to a different party. Although it is quite possible that no conflict will arise between the two roles, professional accountants in public practice* need to recognise the possibility of conflicts arising, particularly if the role of sponsor or nominated adviser is to include any advocacy of the directors' views or if the transaction is to involve any issue of securities. To comply with the requirements of paragraph 221.31 above, where there is an issue of securities associated with such a transaction, a separate broker should be appointed to take responsibility for any underwriting or marketing of the company's shares.*

Appendix 1 to Section 221 – Corporate Finance Advice

Information on Statutory and Other Regulatory and Professional Requirements

For the assistance of professional accountants a list of the relevant legislative and regulatory measures and professional guidance is set out below. This reflects the position as at **1 August 2006**. Professional accountants* should be aware that this list may be subject to variation in the future and when undertaking corporate*

* See Definitions

finance assignments professional accountants should ensure they are aware of the current status of the list.*

1 *The Financial Services and Markets Act 2000, the Companies Act 1985 as amended, Part V of the Criminal Justice Act 1993 and, where applicable, the requirements of the Financial Services Authority's Handbook (http://www.fsa.gov.uk/Pages/handbook/) or the Institute's Designated Professional Body Handbook (www.icaew.co.uk/dpb);*

2 *The City Code on Takeovers and Mergers (the 'City Code');*

3 *The Financial Services Authority Handbook Listing, Prospectus and Disclosure Rules and the London Stock Exchange Alternative Investment Market (AIM) Rules;*

4 *The AIM authority's Nominated Adviser Eligibility Criteria;*

5 *The Admission and Disclosure Standards of the London Stock Exchange;*

6 *The Auditing Practices Board's Ethical Standards, in particular ES 5 Non-Audit Services Provided to Audit Clients (www.frc.org.uk/apb/publications.);*

And in the Republic of Ireland:

7 *Investment Intermediaries Act, 1995 as amended by the Investor Compensation Act, 1998 and the Insurance Act, 2000 ('IIA'), and where applicable the requirements of the Central Bank of Ireland's Rule Book or the Institute's Investment Business Regulations and Guidance;*

8 *Irish Takeover Panel Act, 1997;*

9 *The Listing Rules of the Irish Stock Exchange: the IEX Rules;*

10 *Code of Conduct issued by the Central Bank of Ireland under Section 37 of the IIA, as amended by S. 30 of the Insurance Act 2000;*

11 *European Communities (Takeover Bides (Directive 2004/25/EC) Regulations 2006 (RoI);*

12 *Investment Funds, Companies and Miscellaneous Provisions act, 2005 (RoI);*

13 *Market Abuse (Directive 2003/6/EC) Regulations 2005 (RoI);*

14 *Prospectus (Directive 2003/71/EC) Regulations 2005.*

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* See Definitions

Appendix 2 to Section 221 – Corporate Finance Advice

1 *A professional accountant in public practice* who provides takeover services for clients is required to comply with the City Code on Takeovers and Mergers: ('the City Code') and with all rulings made and guidance issued under them by the Panel on Takeovers and Mergers ('the Takeover Panel').*

2 *Accordingly a professional accountant in public practice* proposing to provide takeover services to a client should at the outset:*

(a) explain that these responsibilities will apply; and
(b) include in the terms of the engagement recognition of the professional accountant in public practice's obligation to comply with the City Code including any steps which the professional accountant in public practice* may be obliged to take in performing those responsibilities. A specimen clause for the engagement letter is set out in paragraph 3 below.*

Specimen Clause for Engagement Letters

3 *The client agrees and acknowledges that where the services provided by the professional accountant in public practice* relate to a transaction within the scope of the City Code on Takeovers and Mergers ('the City Code'), the client and the professional accountant in public practice* will comply with the provisions of the City Code and will observe the terms of the Guidance Note published by the Institutes of Chartered Accountants relevant to such services or transactions. In particular, the client acknowledges that:*

(a) if the client or its advisers or agents fail to comply with the City Code then the professional accountant in public practice may withdraw from acting for the client; and*
(b) the professional accountant in public practice is obliged to supply to the Takeover Panel any information, books, documents or other records concerning the services or transaction which the Takeover Panel may require.*

Scope of Takeover Services

4 *'Takeover services' means any professional services provided by a professional accountant in public practice* to a client in connection with a transaction to which the City Code applies.*

5 *The kinds of activities most commonly relevant for this purpose include:*

(a) acting as financial adviser to one of the parties (for example, as 'Rule 3 adviser' to the offeree company);
(b) reporting on profit forecasts and/or valuations for the purposes of takeover documents;
(c) approving financial promotions issued in connection with a takeover transaction for the purposes of s. 21 of the Financial Services and Markets Act 2000;

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* See Definitions

(d) conducting acquisition searches for clients, and introducing clients to other parties with a view to effecting transactions; and
(e) advising in relation to acquisitions and disposals of securities of companies which are subject to City Code.

6 *Whilst the City Code does not define precisely the range of activities and transactions within its scope, paragraph 3 of the Introduction to the City Code describes the companies and transactions which are subject to the City Code. In practice, those engaged in providing takeover services rarely experience difficulty in determining whether the City Code is or may be relevant to the activities proposed to be undertaken for any particular client. In cases of any doubt the Takeover Panel should be consulted.*

Special Responsibilities
7 *A professional accountant in public practice* who has provided or is providing takeover services to a client should:*

(a) supply to the Takeover Panel any information, books, documents or other records concerning the relevant transaction or arrangement which the Takeover Panel may properly require and which are in the possession or under the control of the professional accountant in public practice; and*
(b) otherwise render all such assistance as the professional accountant in public practice is reasonably able to give to the Takeover Panel, provided that in each case the relevant information, books, documents or other records were acquired by the professional accountant in public practice* in the course of providing the relevant takeover services.*

8 *Except with the consent of the Takeover Panel, a professional accountant in public practice* should not provide or continue to provide any takeover services to any person if the Takeover Panel has stated that it considers that such a person is not likely to comply with the standards of conduct for the time being expected in the United Kingdom concerning the practices of those involved in takeovers, mergers or substantial acquisitions of shares and the Takeover Panel has not subsequently indicated a change in this view. A person to whom this paragraph applies will normally have been named in a statement published by the Takeover Panel, inter alia, for the purposes of Rule 4.3.1 of the Financial Services Authority's Handbook on Market Conduct.*

9 *If professional accountants in public practice* have included in the engagement letter agreed with the client a provision as outlined in paragraph 3 above, they will be able to discharge their responsibilities under paragraph 7 and/ or 8 above, without any breach of confidentiality or duty to the client. While professional accountants in public practice* should include such a provision, it is recognised that, on occasion, compliance with such responsibilities may still involve a breach of confidentiality to a third party or a breach of some other duty owed to the client. In such circumstances this Appendix is not applicable.*

The Financial Services and Markets Act 2000
10 *The provision of corporate finance services may require authorisation by the*

* See Definitions

Financial Services Authority or a licence under the Designated Professional Body arrangements. However, this Guidance Note applies to all professional accountants in public practice whether authorised/licensed or not.*

Appendix 3 to Section 221 – Corporate Finance Advice

Guidance for firms* seeking to act for more than on party in a takeover subject to the City Code

This table is intended for illustrative purposes only and should be read in conjunction with Section 221, Corporate Finance Advice.

	Bid Situation	***Target***	***Bidder***	***Subsequent Bidder***	*Comments*
A	*Agreed – relationship with one bidder*	*Ass*	*Ass*	–	*Permitted- paragraph 221.24*
B		*Adv*	*Ass*	–	*Permitted by agreement with the Takeover Panel – see paragraph 221.29*
C		*Ass*	*Adv*	–	*Permitted with conditions – see paragraph 221.27*
D		*Adv*	*Adv*	–	*Prohibited – see paragraph 221.26*
E	*Hostile – one bidder*	*Ass*	*Ass*	–	*Permitted with conditions – see paragraph 221.24*
F		*Adv*	*Ass*	–	*Permitted by agreement with the Takeover Panel – see paragraph 221.29*
G		*Ass*	*Adv*	–	*Prohibited – see paragraph 221.26 and 221.27*
H		*Adv*	*Adv*	–	*Prohibited – see paragraph 221.26*

* See Definitions

I	*Subsequent bidder emerges*	*Ass*	*Ass*	*Ass*	*Permitted – see paragraph 221.24*
J		*Ass*	*–*	*Ass*	*Permitted – see paragraph 221.24*
K		*Adv*	*–*	*Ass*	*Permitted – see paragraph 221.28*
L		*Ass*	*–*	*Adv*	*Prohibited – see paragraph 221.26*
M		*Adv*	*–*	*Adv*	*Prohibited – see paragraph 221.26*
N	*Acting for rival bidders*	*–*	*Ass*	*Ass*	*Permitted – see paragraph 221.24*
O		*–*	*Adv*	*Ass*	*Permitted – see paragraph 221.28*
P		*–*	*Ass*	*Adv*	*Prohibited – see paragraph 221.26*
Q		*–*	*Adv*	*Adv*	*Prohibited – see paragraph 221.26*

In all of the above cases where a professional accountant in public practice may be permitted to act for more than one party, professional accountants in public practice* must consider the potential threats and put in place the appropriate safeguards as set out in paragraph 221.33. Furthermore, where stated, permission for the professional accountant in public practice* to act for more than one party should be obtained from the Takeover Panel.*

Key

Adv Professional accountant in public practice acts as lead adviser (see paragraph 221.17)*

Ass Professional accountant in public practice acts as auditor or reporting accountant.*

As regards the application of this guidance to non-audit assurance engagements, professional accountant in public practice's* attention is drawn to the explanatory note contained in Definitions.*

Notes

1) This matrix does not address a reverse takeover situation, where the offeror is required by the City Code to appoint advisers.

2) The matrix does not cover the takeover of private companies, except those which are subject to the City Code. Private companies are subject to the general requirements of the Institute's Code of Ethics.

Section 230 Second Opinions

230.0 *Opinions expressed informally by a professional accountant* may be acted on, and professional accountants* should bear in mind the potential consequences of those opinions. Oral opinions should as a matter of good practice, because of legal implications, be confirmed in writing as soon as practicable after giving the opinion. If a professional accountant* is asked for a 'general opinion' (one relative to a hypothetical situation not related to specific entities or circumstances), whether written or oral, the professional accountant* should ensure that the recipient of the opinion understands that it has been given in the context of that particular hypothetical situation only.*

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 give rise to threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant*, or is based on inadequate evidence. The significance of the threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgement.

This Section does not apply to expert evidence assignments, opinions pursuant to litigation and opinions provided to other firms and their clients jointly.*

230.2 When asked to provide such an opinion, a professional accountant in public practice* should evaluate the significance of the threats and, if they are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include seeking client permission to contact the existing accountant*, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant* with a copy of the opinion.

The Institute is of the view that a professional accountant providing a second opinion will normally need to seek contact with the existing accountant* (particularly if the existing accountant* is engaged as auditor) and the client in order to:*

- *Ascertain the circumstances in which the consultation has been made; and*
- *Be apprised of all the facts relevant to the issue at the time the opinion is given.*

230.3 If the company or entity seeking the opinion will not permit communication with the existing accountant*, a professional accountant in

* See Definitions

public practice* should consider whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

The Institute is of the view that if the client will not allow the opinion-giver to carry out any of the steps referred to above, the opinion-giver must normally decline to act (particularly if the existing accountant is engaged as auditor).

Section 240 Fees and Other Types of Remuneration

240.0 *The Institute does not set charge-out rates or otherwise prescribe the basis for calculating fees, nor does it ordinarily investigate complaints relating solely to the quantum of fees charged. However, professional accountants in public practice* have certain professional responsibilities in relation to fees as set out in the following paragraphs.*

240.1 When entering into negotiations regarding professional services*, a professional accountant in public practice* may quote whatever fee deemed to be 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 significance of such threats will depend on factors such as the level of fee quoted and the services to which it applies. In view of these potential threats, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards which may be adopted include:

- 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 *The basis on which fees will be calculated should be discussed and explained at the earliest opportunity together with, where practicable, the estimated initial fee. Fees should be determined by reference to:*

- *The seniority and professional expertise of the persons necessarily engaged on the work;*
- *The time expended by each;*
- *The degree of risk and responsibility which the work entails;*
- *The nature of the client's business, the complexity of its operation and the work to be performed;*
- *The priority and importance of the work to the client;*
- *Together with any expenses properly incurred.*

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* See Definitions

240.2B *The Institute is of the view that the arrangements agreed should be confirmed in writing prior to the commencement of any engagement, normally in an engagement letter, including a confirmation of any estimate, quotation or other indication, and where the basis of future fees will differ from that of initial fees, the basis on which such fees will be rendered. Where there is no engagement letter the professional accountant in public practice* should confirm the initial discussion in writing to the client as soon as practicable.*

240.2C *In the case of assurance work, and in particular audit work, professional accountants in public practice* who obtain work having quoted levels of fees which they have reason to believe are significantly lower than existing fees or, for example, those quoted by other tendering firms*, should be aware that their objectivity and the quality of their work may appear to be threatened by self-interest in securing the client. Such professional accountants in public practice* should ensure that their work complies with relevant standards guidelines and regulations and, in particular, quality control procedures.*

240.2D *In the event of a complaint being made to the Institute where fees were a feature in obtaining or retaining the work, professional accountants in public practice* should be prepared to demonstrate that:*

- *The work done was in accordance with relevant standards; and*
- *The client was not misled as to the basis on which fees for the current and/or subsequent years are to be determined.*

Contingent Fees*

240.3 Contingent fees* are widely used for certain types of non-assurance engagements.[1] They may, however, give rise to threats to compliance with the fundamental principles in certain circumstances. They may give rise to a self-interest threat to objectivity. The significance of such threats will depend on factors including:

- 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 such threats should be evaluated and, if they are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards may include:

- 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.

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* See Definitions

[1] *Contingent fees* for non-assurance services provided to assurance clients* are discussed in Section 290 of this part of this Code.*

- Quality control policies and procedures.
- Review by an objective third party of the work performed by the professional accountant in public practice*

240.4A *In some formal appointments under insolvency legislation, in particular bankruptcies, liquidations and administrations, the remuneration of the professional accountant in public practice* may, by statute, be based on a percentage of:*

- *Realisations or the value of the property with which the professional accountant in public practice* has to deal; and/or*
- *Distributions.*

Consequently, it may not be possible to base the fee on the principle in paragraph 240.4 above.

240.4B *In some circumstances, such as advising on a management buy-in or buy-out, the raising of venture capital, acquisition searches or sales mandates, where no professional opinion is given, it may not be appropriate to charge fees save on a contingent fee* basis: to require otherwise might deprive potential clients of professional assistance, for example where the capacity of the client to pay is dependent upon the success or failure of the venture.*

240.4C *Due diligence* assignments, particularly those performed in relation to a prospective transaction, typically involve a high level of risk and responsibility. A higher fee may be charged for such work in respect of a completed transaction than for the same transaction if it is not completed, for whatever reason, provided that the difference reflects any additional risk and responsibility.*

Fee Information and Disputes

240.4D *A professional accountant in public practice* should furnish, either in the fee account or subsequently on request, and without further charge, such details as are reasonable to enable the client to understand the basis on which the fee account has been prepared.*

240.4E *Where fees rendered without prior agreement exceed, by more than a reasonable amount, a quotation or estimate or indication of fees given by a professional accountant in public practice*, the professional accountant in public practice should be prepared to provide the client with a full and detailed explanation of the excess and to take steps to resolve speedily any dispute which arises.*

240.4F *A professional accountant in public practice* whose fees have not been paid may be entitled to retain certain books and papers of a client by exercising a lien and may refuse to pass on information to the client or the successor accountant until those fees are paid (but see Section 210, 'Professional appointment'). However, a professional accountant in public practice* who so acts should be prepared to take reasonable and prompt steps to resolve any dispute relating to the amount of that fee. In respect of any fee dispute, a professional accountant in public practice* should be aware of the fee arbitration services offered by the Institute.*

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* See Definitions

240.4G *Overdue fees may give rise to a perceived or real self-interest threat. They may be regarded as a loan made to a client (see Section 280). Similar considerations apply to work-in-progress for a client if billing is unduly deferred.*

Referrals and Commissions

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 the sale of goods or services to a client. Accepting such a referral fee or commission may give rise to self-interest threats 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 another professional accountant in public practice* but requires specialist services not offered by the existing accountant*. The payment of such a referral fee may also create a self-interest threat to objectivity and professional competence and due care.

240.7 A professional accountant in public practice* should not pay or receive a referral fee or commission, unless the professional accountant in public practice* has established safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards may include:

- Disclosing to the client any arrangements to pay a referral fee to another professional accountant* 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.

Remuneration of employees would not normally be included within the scope of the payments addressed above.

240.7A *A fiduciary relationship between a professional accountant in public practice* and his or her client will arise where the accountant acts as the client's agent; and/or where the accountant gives professional advice to the client so as to give rise to a relationship which the law would regard as one of 'trust and confidence'. Where a fiduciary relationship exists at the time between a professional accountant in public practice* and a client, the professional accountant in public practice* is legally bound to account to the client for any commission, fee or other benefit received from a third party at any time. The Institute is advised that the effect is that a professional accountant in public practice* will require the informed consent of the client if the professional accountant in public practice* is to retain the commission, fee or other benefit or*

* See Definitions

any part of it. If professional accountants in public practice are in doubt as to whether the circumstances give rise to a fiduciary relationship, they are recommended to seek appropriate legal advice.*

240.7B *Under the general law, professional accountants* must adopt one of the following courses in respect of commission receivable[2]:*

(a) Account to the client for the commission or other benefit
This could be effected:
- *By payment of the whole commission or benefit to the client, or*
- *By deducting the amount received from the fees otherwise chargeable to the client and by showing such deduction on the face of the bill.*

(b) Obtain the client's advance consent to each receipt of commission
This involves obtaining consent before the commission is received and the firm must disclose, in advance, the actual amount of the commission (or its basis of calculation) and the terms and timing of its payment.*

(c) Obtain the client's advance general consent to the member's retaining commission*
This could be by way of the engagement letter, or by a supplementary agreement, containing explicit wording permitting such retention, such as the following:

'In some circumstances, commissions or other benefits may become payable to us [or to one of our associates] in respect of transactions we [or such associates] arrange for you, in which case you will be notified in writing of the amount and terms of payment. [The fees that would otherwise be payable by you as described above will [or will not] be abated by such amounts.] You consent to such commission or other benefits being retained by us [or, as the case may be, by our associates,] without our, [or their,] being liable to account to you for any such amounts.'
Note:

i. *Before the client agrees to any such provision, examples must be given of likely commissions that may be received and the likely amounts, and it should be emphasised that these are only examples and may not cover all receipts in the future. If, in the future, abnormally large commissions are received which were not envisaged when the engagement letter was signed, it would be advisable to obtain specific consent to the retention of those commissions in order to meet any assertion that retention of such commission was not authorised by the engagement letter.*

ii. *Any further provision which indicated likely levels of commission, and then continued 'Commissions of less than £X will be retained by us, and commissions of more than £X will be divided equally between yourselves and ourselves' might be effective. Members* are advised, however, to consult with their lawyers before including such a provision.*

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* See Definitions

[2] *Professional accountants* are reminded that where detailed regulatory requirements cover the same issues as this Code, the regulatory requirements prevail where theses are more onerous.*

iii. *Where an existing client of the member* is to sign a new engagement letter containing such a provision as is referred to above, the firm* should explain that, in the absence of the signed engagement letter, the firm* could retain the commission only if the client gave full and informed consent on each occasion after receiving full disclosure of the amount involved, whereas, once the letter is signed, the firm* can keep the commission.*

(d) Obtain the client's subsequent consent

If the member does not obtain the client's consent in one of the ways referred to in paragraphs 240.7B ii or 240.7B iii above, the commission may still be able to be retained if the client subsequently expressly consents to such retention (on the basis of full disclosure of the amount, terms and timing of payment).*

240.7C *Alternatively professional accountants* will be able to retain the commission if the client (with knowledge of all relevant facts) impliedly consents by acquiescing in such retention, for instance by deciding to proceed with the transaction having been notified both of the fact that the firm* will receive commission and of the full details of that commission.*

240.7D *Even where a fiduciary relationship does not exist, where a professional accountant in public practice* becomes aware that any commission, fee or other benefit may be received (directly or indirectly), there should be disclosed to the client in writing:*

- *That commission or benefit will result or is likely to result, and*
- *When the fact is known, that such commission or benefit will be received, and*
- *As early as possible, the amount and terms of the benefit to the professional accountant in public practice*.*

240.7E *As regards payments of referral fees, professional accountants in public practice* have a responsibility to ascertain that a referral manner is in accordance with this Code because professional accountants in public practice* must not do, or be seen to do, through others what they may not do themselves. To this end, professional accountants in public practice* should consider whether there are any indications that the work or client has been initially procured in an unprofessional manner.*

In addition, where needed to complete a referred engagement properly, professional accountants in public practice should:*

- *Satisfy themselves as to the competence and professional standards of staff within their firm* whose work on the engagement it would be their duty to review; and*
- *Ensure their right of direct access to the client and, in appropriate circumstances, render their own fee account to the client.*

240.7F *In the case of insolvency work, Insolvency Practitioners should have regard to Part D, The Practice of Insolvency.*

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* See Definitions

240.7G *Where an invitation to conduct a statutory audit comes other than directly from the client, the professional accountant in public practice should first ensure that the audit appointment has properly been made in accordance with statute. It should be made clear to all interested parties on all relevant documents that the professional accountant in public practice* is acting as principal*, with all that that function implies. In those circumstances, professional accountants in public practice* should deal directly with the client and should render their own fee account in addition to complying with the other requirements above.*

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.

Attention is drawn to additional requirements in respect of agency and referral arrangements, in Section 241.

Section 241 Agencies and Referrals

241.1 *When referring or receiving referred work or when establishing agency arrangements, which are in effect permanent arrangements for making referrals, professional accountants in public practice* are required to assess threats to compliance with the fundamental principles and to apply safeguards. A referral covers a formal request made in the course of a professional relationship for advice on the selection of a potential professional adviser and may also cover an informal request, regardless of whether there is an existing relationship.*

Attention is drawn to additional requirements in respect of referral fee arrangements, in Section 240.

Duty of Care

241.2 *In making a referral, a duty of care may arise. The extent of a duty of care varies according to the circumstances, including whether the exchange or provision of information was solicited or not. A greater duty of care will arise for matters which are reasonably expected to be within a professional accountant in public practice's* knowledge or where a fee is charged. A professional accountant in public practice* needs to look at this from the client or enquirer's point of view and what their expectations would be of what a professional accountant in public practice* would be expected to know:*

- *Where a referral fee is received, or where the service referred is in a professional or finance – related sphere, the client (or enquirer) can reasonably presume knowledge by the professional accountant in public practice*. Any limitation of knowledge would clearly need to be explained.*
- *Where the enquiry relates to a service outside the normal sphere of expertise of an accountant and no referral fee is contemplated, then it is reasonable to*

* See Definitions

presume that the enquiry is being made in a personal capacity, unless circumstances suggest otherwise. It is still advisable to express any limitations of knowledge and to clarify, in case of doubt, that any opinion is based on personal experience rather than in a professional capacity.

241.3 *When making a referral, disclosure of relevant knowledge limitations should be considered. Professional accountants in public practice should consider whether it would be in their interest for such knowledge limitations to be disclosed in writing, according to the circumstances. Factors that a professional accountant in public practice* should consider when making such a decision include:*

- *The nature of the professional relationship with the enquirer (an existing client, someone who could reasonably be considered to be making the enquiry as a prospective client, or a casual enquiry).*
- *The context in which the enquiry is made. Is it professional or personal, casual or formal?*
- *The nature of the personal relationship. Does the enquirer know the professional accountant in public practice* is a Chartered Accountant and are they consulting them as a respected professional?*
- *The scope of enquiry and whether a referral fee is contemplated, as considered in Section 240.*
- *The enquirer's expectations.*

241.4 *A referral arises typically, when the professional accountant in public practice* does not have the expertise and/or resource in house to undertake the potential engagement. It follows that the professional accountant in public practice* will not necessarily know enough to be able to completely assess whether the third party is the optimum choice or not. This is an inevitable limitation in most referrals, and what the referral is based on will vary. However, the professional accountant in public practice* should consider the fitness for purpose of the third party to address the client's needs.*

241.5 *In making that consideration, the professional accountant in public practice*:*

- *Can take account of the professional or regulatory status of the prospective referee;*
- *Is not normally expected to have to make additional enquiries about the prospective referee and can make the assessment based on what is already known.*

241.6 *A referral should not normally be made to a third party even with a disclaimer, when, taking into account known factors, the professional accountant in public practice* knows of a better alternative. If the client or enquirer insists on being referred to a particular third party and the professional accountant in public practice* believes there is a better alternative, the reference may be made but the client or enquirer should be made aware of the professional accountant in public practice's* concerns. Where the referral relates to an end product or service, rather than an intermediary, and the professional accountant in public*

* See Definitions

practice knows there are other alternatives but does not know if they are better, this should be explained.*

241.7 *If there is a relationship with the third party, for example a family connection or an automatic referral arrangement, there are clear self-interest or familiarity threats and the connection should be disclosed. This is particularly important where a professional accountant in public practice* is considering recommending the products of another supplier with which there is an agency, and/or a principal* or employee of the professional accountant in public practice's* firm* is a principal* or officer of the other supplier. If in substance there is a one-to-one relationship between the professional accountant in public practice* and the third party (for example, the professional accountant in public practice* is the only accountant in the area and the third party is the only solicitor), which implies automatic referral, this should also be disclosed.*

241.8 *In summary, professional accountants in public practice* should:*

- *Consider any factors they are aware of that would indicate the proposed third party is not fit for purpose in terms of the potential engagement. The professional accountant in public practice* should take into account what a reasonable person might expect a Chartered Accountant to know;*
- *Make clients (or enquirers) that are proposed to be referred, aware of limitations in knowledge;*
- *Disclose any referral arrangement;*
- *Ensure that any contractual arrangement does not override the needs of an individual client.*

Establishing Agencies

241.9 *The guidance which follows is intended to assist professional accountants in public practice* in their arrangements with other suppliers of services and products.*

241.10 *This Section addresses agreements that in effect provide for permanent arrangements for referrals. The issues are considered to be similar to those above for referrals in general except that an agency contract will usually bind the agent in terms of who it can refer to for particular types of work. When professional accountants in public practice* are considering the establishment of an agency, it is important that the terms of the agency contract (actual or implied) should not require exclusive referral of all clients regardless of suitability. For example, a professional accountant in public practice* should not be party to an agency by which it is constrained to channel all funds received by it for investment into a single bank/building society. Such a clause would make important safeguards inoperable.*

241.11 *Before accepting appointment as auditor of another entity of which they are an agent, professional accountants in public practice* should consider whether the agency constitutes a material business relationship. See Section 290, 'Independence – assurance engagements.'*

241.12 *Professional accountants in public practice* should not, because of the*

* See Definitions

self-interest threat, enter into any financial arrangements with another supplier either personally or through their firm which would prejudice the objectivity of themselves or their firm*.*

241.13 *Before accepting or continuing an agency with another supplier, professional accountants in public practice* should satisfy themselves that their ability to discharge their professional obligations to their clients is not compromised.*

241.14 *A professional accountant in public practice* should not in any circumstances conduct its practice in such a manner as to give the impression that it is a principal* rather than an agent. This would include considering signs on premises and any other outward signs or literature used. This would relate in particular to agencies with entities such as banks and building societies, where confusion as to status can arise (see also Section 9.3, 'The names and letterheads of practising firms' in the Members' Handbook (www.icaew.co.uk/membershandbook).*

241.15 *Firms* in the Republic of Ireland must be authorised under the Investment Intermediaries Act, 1995 to hold an agency with a building society and that arrangement should relate solely to deposit taking and not for example relate to products of a particular insurance company or unit trust organisation for which the building society is an appointed representative. Firms* holding building society agencies must ensure that their agency agreement contains no obligation which would cause or would be perceived to cause, them to breach the provisions of either the Act or the Institute of Chartered Accountants in Ireland's Investment Business Regulations and Guidance. Firms* cannot hold agencies with banks.*

Investment Business Agencies and Introductions

241.16 *When considering referrals of investment business ('introductions') or the establishment of investment business agencies, professional accountants in public practice* should apply the general principles and requirements set out in the previous Sections. However, they will also need to consider:*

- *Whether the introduction or agency is permitted by regulation; and*
- *Whether the status of the third party investment business provider is compatible with the requirement to give objective advice.*

Regulated activities under the Financial Services and Markets Act 2000 (United Kingdom)

241.17 *In order to make a decision about whether an introduction is a regulated activity, the professional accountant in public practice* must look at how the introduction is made and also what type of investment the client is considering (such as life assurance and pensions, unit trusts, shares*, mortgages or general insurance). A regulated introduction can only be made under the terms of the Act by a firm which is licensed by the Institute as a Designated Professional Body ('DPB') (a licensed firm) or a firm which is authorised by the*

* See Definitions

Financial Services Authority ('authorised'). Unauthorised / unlicensed firms are restricted in that they can only make introductions for general financial advice where no specific type of investment is referred to, or for a restricted range of investments, such as shares* and unit trusts. Such introductions can only be made to those authorised firms* who can give independent advice. However, unauthorised / unlicensed firms* can provide information to a client about a third party provided no recommendation is made.*

241.18 *Further guidance on the difference between a regulated introduction and the provision of information in respect of insurance business, and the regulatory consequences thereof, is set out in Schedule 6 to part 3 of the DPB Handbook, available at www.icaew.co.uk/dpb.*

241.19 *Having established that an introduction can be made in compliance with regulatory requirements, professional accountants in public practice* should bear in mind the need to provide their clients with objective advice, in compliance with these ethical standards.*

241.20 *Professional accountants in public practice* can become appointed representatives of another authorised firm. When selecting which authorised firm to become an appointed representative of, professional accountants in public practice* should again bear in mind the need to provide their clients with objective advice.*

Regulated Activities under the Investment Intermediaries Act, 1995 (Republic of Ireland)

241.21 *Professional accountants in public practice* may only make an introduction or refer clients to another authorised firm if they are themselves authorised to conduct investment business under the Investment Intermediaries Act 1995 and where required hold an appropriate letter of appointment.*

241.22 *Professional accountants in public practice* when selecting an authorised firm should bear in mind the need to provide their clients with objective advice.*

Status of Investment Business Providers

241.23 *Authorised firms* can fall into the following categories:*

Type of firm	*What the firm can recommend*	*Can there generally be introductions to this type of firm?*
• *Independent*	*Recommend products from the whole market and offer clients the ability to pay by fee. Only these firms* can describe themselves as independent financial advisers. The client may be able to elect for the adviser to be paid by commission.*	*Yes (241.24 below)*

* See Definitions

• *Whole of market (UK only)*	*Recommend products from the whole market but do not offer clients the ability to pay by fee. The firm is remunerated by commission.*	*Yes (241.25 below)*
• *Multi-tied* • *(Multi-agency in RoI)*	*Recommend the products of more than one product provider with whom the firm has agreements, but recommends on less than the whole market.*	*Depends on scope of choice (241.26 below)*
• *Tied*	*Recommend the products of one product provider.*	*No (241.27 below)*

241.24 *An introduction to an independent firm would be likely to meet the requirement to give objective advice but professional accountants in public practice* are reminded of the general requirements above.*

241.25 *Professional accountants in public practice* may also regard 'whole of market' authorised firms* as equivalent to independent firms* as the method by which the authorised firm is remunerated (which is the difference between independent and whole of market) is not relevant for the purposes of compliance with this statement.*

241.26 *Professional accountants in public practice* may in some situations be able to introduce to multi-tied firms* and still comply with the ethical requirements (however, see paragraphs 241.16–241.18 above as to whether the introduction can only be made by a DPB licensed firm or an FSA authorised firm, if it is a 'regulated' activity). Clearly the principal threat is that clients might not be offered the most appropriate choice. The professional accountant in public practice* will need to assess the client's requirements and whether the multi-tied firm places business with the product providers who account for a large majority of the relevant market or offer the sector of the market which is most suitable for the client's needs. However, members* must ensure that in making such an assessment, they are not effectively making their own recommendation unless they are able to do so under the terms of a licence or authorisation. The professional accountant in public practice* may decide that this does not restrict the client's access to the range of product providers to an extent where there is any potential detriment. The professional accountant in public practice* should make the client aware of restrictions in the range of investments offered by the firm to which the client is being referred.*

241.27 *An introduction to a tied firm restricts the client's ability to obtain independent advice and would therefore not be objective.*

241.28 *Similar considerations to those noted above apply to whether a professional accountant in public practice* should become an appointed representative under the Financial Services and Markets Act 2000. Thus, for example, a professional firm* cannot become an appointed representative for*

* See Definitions

regulated investment business, of a tied firm as the agency agreement would probably oblige the firm to make referrals to the principal in all circumstances and the firm* would be unable to provide objective advice.*

Section 250 Marketing Professional Services*

250.1 When a professional accountant in public practice* solicits new work through advertising* or other forms of marketing, there may be potential threats to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behaviour is created if services, achievements or products are marketed in a way that is inconsistent with that principle.

250.2 A professional accountant in public practice* should not bring the profession into disrepute when marketing professional services*. The professional accountant in public practice* should be honest and truthful and should not:

- Make exaggerated claims for services offered, qualifications possessed or experience gained; or
- Make disparaging references to unsubstantiated comparisons to the work of another.

In particular, where professional accountants in public practice seek to make comparisons of their promotional material between their practices or services and those of others, great care will be required. In particular, they should ensure that such comparisons:*

- *Are objective and not misleading*,
- *Relate to the same services*,
- *Are factual and verifiable, and*
- *Do not discredit or denigrate the practice or services of others*.

Particular care is needed in unclear or subjective claims of size or quality. For example, it is impossible to know whether a claim to be 'the largest firm' in an area is a reference to the number of partners or staff, the number of offices or the amount of fee income. A claim to be 'the best firm' is unlikely to be able to be substantiated.*

If the professional accountant in public practice* is in doubt whether a proposed form of advertising* or marketing is appropriate, the professional accountant in public practice* should consult with the *Institute*.

250.3 *A professional accountant in public practice* should ensure that all advertisements, including in letterheads, invoices and other practice documents, comply with the law and should conform with the requirements of the relevant Advertising Standards Authority (for example, the British Code of Advertising) notably, as to legality, decency, clarity, honesty and truthfulness.*

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* See Definitions

250.4 *If reference is made in promotional material to fees, the basis on which the fees are calculated, or to hourly or other charging rates, the greatest care should be taken to ensure that such reference does not mislead as to the precise range of services and the time commitment that the reference is intended to cover. Professional accountants in public practice* are unlikely to be able to comply with the requirements of 250.2 if making a comparison in such material between their fees and the fees of another accounting practice, whether members* or not. A professional accountant in public practice* may offer a free consultation at which fees are discussed.*

250.5 *Professional accountants in public practice* should never promote or seek to promote their services, or the services of other professional accountants in public practice*, in such a way, or to such an extent, as to amount to harassment of a potential client.*

It should be noted that special rules apply in relation to the conduct of Insolvency Practice and licensed practitioners should have regard to the relevant legislation and to Part D. Similarly professional accountants in public practice whose firm* is registered for the conduct of investment business should have recourse to the relevant Investment Business Regulations.*

250.6 *Further guidance on marketing professional services* is available to members in a helpsheet from the Ethics Advisory Services (www.icaew.uk./ethicsadvice). See also Sections 210, 'Professional appointment' and 230, 'Second opinions'.*

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 ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift from a client is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.

260.2 The significance of such threats will depend on the nature, value and intent behind the offer. Where gifts or hospitality which a reasonable and informed third party, having knowledge of all relevant information, would consider clearly insignificant* are made, 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 there is no significant threat to compliance with the fundamental principles.

* See Definitions

260.3 If evaluated threats are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice* should not accept such an offer.

260.4 *Further guidance on dealing with gifts and hospitality in an assurance engagement is available in paragraph 290.213.*

Section 270 Custody of Client Assets

270.1 A professional accountant in public practice* should 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 behaviour and may be a self-interest threat to objectivity arising from holding client assets. To safeguard against such threats, a professional accountant in public practice* entrusted with money (or other assets) belonging to others should:

(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.

Regulations on the procedures required to be adopted by professional accountants holding client monies are available in Section 6.6 'Clients' money regulations' in the Members' Handbook, which is available at (www.icaew.co.uk/membershandbook.). For firms* licensed by the Institute under the Designated Professional Bodies arrangements, additional requirements are included in Chapter 4 of the Designated Professional Bodies Handbook (www.icaew.co.uk/dpb).*

270.3 In addition, professional accountants in public practice* should be aware of threats to compliance with the fundamental principles through association with such assets, for example, if the assets were found to derive from illegal activities, such as money laundering. As part of client and engagement acceptance procedures for such services, professional accountants in public practice* should make appropriate inquiries about the source of such assets and should consider their legal and regulatory obligations. They may also consider seeking legal advice.

* See Definitions

Further guidance on money laundering regulation and legislation is available in Section 7.2, 'Anti-money laundering (proceeds of crime and terrorism)' which is available at (www.icaew.co.uk/membershandbook).

See also Section 9.4, 'Document and records: ownership, lien and rights of access' in the Members' Handbook (www.icaew.co.uk/membershandbook).

Section 280 Objectivity–All services

280.1 A professional accountant in public practice* should consider when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or directors, officers or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.

280.2 A professional accountant in public practice* who provides an assurance service is required to 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. Section 290 provides specific guidance on independence* requirements for professional accountants in public practice* when performing an assurance engagement*.

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.

In particular objectivity may be subject to self-interest or familiarity threats in the following circumstances.

a) Family, other personal or business relationships
Objectivity may be subject to a self-interest threat where a mutual business interest exists with a client or any officer or employee of the client. In such circumstances, safeguards should be applied and adequate disclosure of any conflict of interest should be made to all relevant parties.

Professional accountants in public practice who hold office in a client company or have a comparable business relationship with a client, should be aware of the dangers inherent in seeking to combine such a role with that of business adviser or other professional service having regard to the self-interest threat to their objectivity. In such circumstances, professional accountants in public practice* should be aware of the distinctive nature of each of the roles in which they are professionally engaged, and employ safeguards, including disclosure where appropriate.*

* See Definitions

*b) Loans**
Objectivity may be subject to a self-interest threat if a firm, or any principal* of the firm* should directly or indirectly make a loan* to, or receive a loan* from the client, or give or accept any guarantee in relation to a debt of the client, firm* or principal*.*

A firm or principal* in the firm* should not receive from or make a loan* to a client unless the client is a bank or similar institution and the transaction is under normal commercial conditions. This is because the perceived self-interest threat arising in such circumstances is generally seen as being too great to be reduced to an acceptable level by the application of any safeguards.*

c) Beneficial Interest in Shares and other Investments*
A self-interest threat to objectivity of a professional accountant in public practice may arise in relation to any investment in a company or undertaking with which there is a professional relationship. The threats should be evaluated and safeguards should be considered and applied as necessary. If the value of the investment is material to the financial circumstances of the professional accountant in public practice*, the threat to independence* cannot be reduced to an acceptable level by the application of any safeguards. Consequently the professional accountant in public practice* should cease to advise professionally or dispose of the interest.*

See also Section 260, 'Gifts and hospitality'.

280.4 A professional accountant in public practice* should evaluate the significance of identified threats and, if they are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:

- 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.

See also Section 220, 'Conflicts of interest'.

Section 290 Independence–Assurance engagements*

Scope
290.0 *When conducting audit engagements* in the UK and Republic of Ireland, members* should comply with the requirements of the Auditing Practices Board's ('APB's') Ethical Standards[3]. Before undertaking other assurance engagements* for audit clients, members* should consider the impact of the proposed engagement on the integrity and independence* of the audit, by reference to the APB's Ethical Standards.*

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* See Definitions
[3] *APB Ethical Standards 1 to 5 and the Provisions Available for Smaller Entities, available at www.frc.org.uk/apb/publications.*

290.0A *When performing audit engagements* in other territories, professional accountants* should comply with the requirements of Section 290 of the IFAC Code of Ethics (www.ifac.org/Store/) in force at the time of the engagement. The Auditing Practices Board (APB) has stated, in ISA (UK and Ireland) 200, that it is not aware of any significant instances where the relevant parts of the IFAC Code of Ethics are more restrictive than the Ethical Standards.*

290.0B *The remainder of this Section applies to assurance engagements* other than audits. Accordingly, elements of Section 290 of the IFAC Code of Ethics which relate only to audit engagements* have not been reproduced in this Section and paragraph numbering is therefore not sequential.*

290.0C *Note that the Statements of Investment Circular Reporting Standards (SIRS), issued by the APB [will], require compliance with an Ethical Statement for Reporting Accountants (ESRA), also [to be] issued by the APB. Accordingly any professional accountant in public practice* issuing a report that states that the work has been carried out in accordance with the SIRS will need to comply with the independence* requirements of the ESRA [when issued].*

290.1 In the case of an assurance engagement* it is in the public interest and, therefore, required by this Code of Ethics, that members of assurance teams*, firms* and, when applicable, network firms* be independent of assurance clients*.

Objectivity required in respect of non-assurance engagements is considered in Section 280.*

Other Assurance Engagements*

290.2 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 Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply. For a description of the elements and objectives of an assurance engagement*, reference should be made to the Assurance Framework (www.ifac.org/IAASB/).

290.3 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.

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* See Definitions

290.4 The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term 'subject matter information' is used to mean the outcome of the evaluation or measurement of subject matter. For example:

- The recognition, measurement, presentation and disclosure represented in the financial statements* (subject matter information) result from applying a financial reporting framework for recognition, measurement, presentation and disclosure, such as International Financial Reporting Standards, (criteria) to an entity's financial position, financial performance and cash flows (subject matter).
- 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).

290.5 Assurance engagements* may be assertion-based or direct reporting. In either case they involve three separate parties: a public accountant in public practice*, a responsible party and intended users.

290.6 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.

290.7 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.

290.8 Independence* requires:

Independence* of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

Independence* in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant

* See Definitions

[4] *A U.S. publication used to conduct an evaluation of an organisation's internal control system.*

[5] *A publication from the Canadian Institute of Chartered Accountants which provides advice and guidance on the criteria for control.*

information, including safeguards applied, would reasonably conclude a firm's*, or a member of the assurance team's*, integrity, objectivity or professional scepticism had been compromised.

290.9 The use of the word 'independence'* on its own may create misunderstandings. Standing alone, the word may lead observers to suppose that a person exercising professional judgement ought to be free from all economic, financial and other relationships. This is impossible, as every member of society has relationships with others. Therefore, the significance of economic, financial and other relationships should also be evaluated in the light of what a reasonable and informed third party having knowledge of all relevant information would reasonably conclude to be unacceptable.

290.10 Many different circumstances, or combination of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to independence* and specify the appropriate mitigating action that should be taken. In addition, the nature of assurance engagements* may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires firms* and members of assurance teams* to identify, evaluate and address threats to independence*, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest.

A Conceptual Approach to Independence*

290.11 Members of assurance teams*, firms* and network firms* are required to apply the conceptual framework contained in Section 100 to the particular circumstances under consideration. In addition to identifying relationships between the firm*, network firms*, members of the assurance team* and the assurance client*, consideration should be given to whether relationships between individuals outside of the assurance team* and the assurance client* create threats to independence*.

290.12 The examples presented in this Section are intended to illustrate the application of the conceptual framework and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances that may create threats to independence*. Consequently, it is not sufficient for a member of an assurance team*, a firm* or a network firm* merely to comply with the examples presented, rather they should apply the framework to the particular circumstances they face.

290.13 The nature of the threats to independence* and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level differ depending on the characteristics of the individual assurance engagement*, that is, the purpose, subject matter information and intended users of the report. A firm* should, therefore, evaluate the relevant circumstances, the nature of the assurance engagement* and the threats to independence* in deciding whether it is appropriate to accept or continue an engagement, as

* See Definitions

well as the nature of the safeguards required and whether a particular individual should be a member of the assurance team*.

Further consideration of the nature of threats and safeguards that may be appropriate is included in Section 200.

Assertion-based Assurance Engagements*[6]

290.15 In an assertion-based assurance engagement*, the members of the assurance team* and the firm* are required to be independent of the assurance client* (the responsible party, which is responsible for the subject matter information and may be responsible for the subject matter). Such independence* requirements include prohibitions regarding certain relationships between members of the assurance team* and directors, officers and employees of the client in a position to exert direct and significant influence over the subject matter information. Also, consideration should be given to whether threats to independence* are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter of the engagement. Consideration should also be given to any threats that the firm* has reason to believe may be created by network firm* interests and relationships.

290.16 In the majority of assertion-based assurance engagements*, the responsible party is responsible for the subject matter information and the subject matter. However, in some engagements the responsible party may not be responsible for the subject matter. For example, when 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).

290.17 In those 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* are required to be independent of the party responsible for the subject matter information (the assurance client*). In addition, consideration should be given to any threats the firm* has reason to believe may be created by interests and relationships between a member of the assurance team*, the firm*, a network firm* and the party responsible for the subject matter.

Direct Reporting Assurance Engagements*[7]

290.18 In a direct reporting assurance engagement* the members of the assurance team* and the firm* are required to be independent of the assurance client* (the party responsible for the subject matter).

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* See Definitions

[6] *See appendix to Definitions, paragraph 10*

[7] *See appendix to Definitions, paragraph 10*

Restricted use reports

290.19 In the case of an assurance report expressly restricted for use by identified users, the users of the report are considered to be knowledgeable as to the purpose, subject matter information and limitations of the report through their participation in establishing the nature and scope of the firm's* instructions to deliver the services, including the criteria against which the subject matter are to be evaluated or measured. This knowledge and the enhanced ability of the firm* to communicate about safeguards with all users of the report increase the effectiveness of safeguards to independence* in appearance. These circumstances may be taken into account by the firm* in evaluating the threats to independence* and considering the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level. At a minimum, it will be necessary to apply the provisions of this Section in evaluating the independence* of members of the assurance team* and their immediate and close family*. Further, if the firm* had a material financial interest*, whether direct or indirect, in the assurance client*, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Limited consideration of any threats created by network firm* interests and relationships may be sufficient.

Independence* from Assurance Client* – Summary

290.19A *The independent requirements for assurance engagements* can be summarised as follows:*

Parties needing to be independent of the assurance client*	***Type of assurance engagement****
*Assurance team**	*All assurance engagements*.*
*Firm**	*Assurance engagements* where there is not a restricted use report.* *For assurance engagements* for non-audit clients, where there is a restricted use report, the firm* may not need to comply with the full independence* requirements of this Statement but should not have a material financial interest* in the client.*
*Network firms**	*All assurance engagements* for financial statement audit clients* (because of auditor independence* requirements)*

Multiple Responsible Parties

290.20 In some assurance engagements*, whether assertion-based or direct reporting, there might be several responsible parties. In such engagements, in determining whether it is necessary to apply the provisions in this Section to

* See Definitions

each responsible party, the firm* may take into account whether an interest or relationship between the firm*, or a member of the assurance team*, and a particular responsible party would create a threat to independence* that is other than clearly insignificant* in the context of the subject matter information. This will take into account factors such as:

- 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 associated with the engagement. If the firm* determines that the threat to independence* created by any such interest or relationship with a particular responsible party would be clearly insignificant* it may not be necessary to apply all of the provisions of this Section to that responsible party.

Other Considerations

290.21 The threats and safeguards identified in this Section are generally discussed in the context of interests or relationships between the firm*, network firms*, members of the assurance team* and the assurance client*. When the assurance team* has reason to believe that a related entity* of an assurance client* is relevant to the evaluation of the firm's* independence* of the client, the assurance team* should consider that related entity* when evaluating independence* and applying appropriate safeguards.

290.22 The evaluation of threats to independence* and subsequent action should be supported by evidence obtained before accepting the engagement and while it is being performed. The obligation to make such an evaluation and take action arises when a firm*, a network firm* or a member of the assurance team* knows, or could reasonably be expected to know, of circumstances or relationships that might compromise independence*. There may be occasions when the firm*, a network firm* or an individual inadvertently violates this Section. If such an inadvertent violation occurs, it would generally not compromise independence* with respect to an assurance client* provided the firm* has appropriate quality control policies and procedures in place to promote independence* and, once discovered, the violation is corrected promptly and any necessary safeguards are applied.

290.23 Throughout this Section, reference is made to significant and clearly insignificant* threats in the evaluation of independence*. In considering the significance of any particular matter, qualitative as well as quantitative factors should be taken into account. A matter should be considered clearly insignificant* only if it is deemed to be both trivial and inconsequential.

Objective and Structure of This Section

290.24 The objective of this Section is to assist firms* and members of assurance teams* in:

(a) Identifying threats to independence*;
(b) Evaluating whether these threats are clearly insignificant*; and

* See Definitions

(c) In cases when the threats are not clearly insignificant*, identifying and applying appropriate safeguards to eliminate or reduce the threats to an acceptable level.

Consideration should always be given to what a reasonable and informed third party having knowledge of all relevant information, including safeguards applied, would reasonably conclude to be unacceptable. In situations when no safeguards are available to reduce the threat to an acceptable level, the only possible actions are to eliminate the activities or interest creating the threat, or to refuse to accept or continue the assurance engagement*.

290.25 This Section concludes with some examples of how this conceptual approach to independence* is to be applied to specific circumstances and relationships. The examples discuss threats to independence* that may be created by specific circumstances and relationships (paragraphs 290.100 onwards). Professional judgement is used to determine the appropriate safeguards to eliminate threats to independence* or to reduce them to an acceptable level. In certain examples, the threats to independence* are so significant the only possible actions are to eliminate the activities or interest creating the threat, or to refuse to accept or continue the assurance engagement*. In other examples, the threat can be eliminated or reduced to an acceptable level by the application of safeguards. The examples are not intended to be all-inclusive.

290.27 When threats to independence* that are not clearly insignificant* are identified, and the firm* decides to accept or continue the assurance engagement*, the decision should be documented. The documentation should include a description of the threats identified and the safeguards applied to eliminate or reduce the threats to an acceptable level.

290.29 Audit committees* can have an important corporate governance role when they are independent of client management and can assist the Board of Directors in satisfying themselves that a firm* is independent in carrying out its audit role. There should be regular communications between the firm* and the audit committee* (or other governance body if there is no audit committee*) of listed entities regarding relationships and other matters that might, in the firm's* opinion, reasonably be thought to bear on independence*.

290.30 Firms* should establish policies and procedures relating to independence* communications with audit committees*, or others charged with governance of the client. Matters to be communicated will vary in each circumstance and should be decided by the firm*, but should generally address the relevant matters set out in this Section.

Engagement Period

290.31 The members of the assurance team* and the firm* should be independent of the assurance client* during the period of the assurance engagement*. The period of the engagement starts when the assurance team* begins to perform assurance services and ends when the assurance report is

* See Definitions

issued, except when the assurance engagement* is of a recurring nature. If the assurance engagement* is expected to recur, the period of the assurance engagement* ends with the notification by either party that the professional relationship has terminated or the issuance of the final assurance report, whichever is later.

290.32 The firm* should consider whether any financial or business relationships or previous services may create threats to independence*.

* See Definitions

APPLICATION OF FRAMEWORK TO SPECIFIC SITUATIONS: CONTENTS

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Introduction

290.100 The following examples describe specific circumstances and relationships that may create threats to independence*. The examples describe the potential threats created and the safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level in each circumstance. The examples are not all inclusive. In practice, the firm*, network firms* and the members of the assurance team* will be required to assess the implications of similar, but different, circumstances and relationships and to determine whether safeguards, including the safeguards in paragraphs 200.12 to 200.15 can be applied to satisfactorily address the threats to independence*.

290.101 The examples illustrate how safeguards should be applied to fulfill the requirement for the members of the assurance team* and the firm* to be independent of an assurance client* that is not a financial statement audit client*. The examples do not include assurance reports expressly restricted for use by identified users. As stated in paragraph 290.19 for such engagements, members of the assurance team* and their immediate and close family* are required to be independent of the assurance client*. Further, the firm* should

* See Definitions

not have a material financial interest*, direct or indirect, in the assurance client*.

290.102 The examples should be read in conjunction with paragraphs 290.20 which explain that, in the majority of assurance engagements*, there is one responsible party and that responsible party comprises the assurance client*. However, in some assurance engagements* there are two responsible parties. In such circumstances, consideration should be given to any threats the firm* has reason to believe may be created by interests and relationships between a member of the assurance team*, the firm*, a network firm* and the party responsible for the subject matter.

290.103 Interpretation 2005–01 to this Section provides further guidance on the application of the independence* requirements contained in this Section to assurance engagements* that are not financial statement audit engagements* *in a number of example situations. This is included as an Appendix to this Section.*

Financial Interests*

290.104 A financial interest* in an assurance client* may create a self-interest threat. In evaluating the significance of the threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, it is necessary to examine the nature of the financial interest*. This includes an evaluation of the role of the person holding the financial interest*, the materiality of the financial interest* and the type of financial interest* (direct or indirect).

290.105 When evaluating the type of financial interest*, consideration should be given to the fact that financial interests* range from those where the individual has no control over the investment vehicle or the financial interest* held (e.g., a mutual fund, unit trust or similar intermediary vehicle) to those where the individual has control over the financial interest* (e.g., as a trustee) or is able to influence investment decisions. In evaluating the significance of any threat to independence*, it is important to consider the degree of control or influence that can be exercised over the intermediary, the financial interest* held, or its investment strategy. When control exists, the financial interest* should be considered direct. Conversely, when the holder of the financial interest* has no ability to exercise such control the financial interest* should be considered indirect.

290.106 If a member of the assurance team*, or their immediate family* member, has a direct financial interest*, or a material indirect financial interest*, in the assurance client*, the self-interest threat created would be so significant the only safeguards available to eliminate the threat or reduce it to an acceptable level would be to:

(a) Dispose of the direct financial interest* prior to the individual becoming a member of the assurance team*;

* See Definitions

(b) Dispose of the indirect financial interest* in total or dispose of a sufficient amount of it so that the remaining interest is no longer material prior to the individual becoming a member of the assurance team*; or
(c) Remove the member of the assurance team* from the assurance engagement*.

290.107 If a member of the assurance team*, or their immediate family* member receives, by way of, for example, an inheritance, gift or, as a result of a merger, a direct financial interest* or a material indirect financial interest* in the assurance client*, a self-interest threat would be created. The following safeguards should be applied to eliminate the threat or reduce it to an acceptable level:

(a) Disposing of the financial interest* at the earliest practical date; or
(b) Removing the member of the assurance team* from the assurance engagement*.

During the period prior to disposal of the financial interest* or the removal of the individual from the assurance team*, consideration should be given to whether additional safeguards are necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Discussing the matter with those charged with governance, such as the audit committee*; or
- Involving an additional professional accountant* to review the work done, or otherwise advise as necessary.

290.108 When a member of the assurance team* knows that his or her close family* member has a direct financial interest* or a material indirect financial interest* in the assurance client*, a self-interest threat may be created. In evaluating the significance of any threat, consideration should be given to the nature of the relationship between the member of the assurance team* and the close family* member and the materiality of the financial interest*. Once the significance of the threat has been evaluated, safeguards should be considered and applied as necessary. Such safeguards might include:

- The close family* member disposing of all or a sufficient portion of the financial interest* at the earliest practical date;
- Discussing the matter with those charged with governance, such as the audit committee*;
- Involving an additional professional accountant* who did not take part in the assurance engagement* to review the work done by the member of the assurance team* with the close family* relationship or otherwise advise as necessary; or
- Removing the individual from the assurance engagement*.

290.109 When a firm* or a member of the assurance team* holds a direct financial interest* or a material indirect financial interest* in the assurance client* as a trustee, a self-interest threat may be created by the possible influence of the trust over the assurance client*. Accordingly, such an interest should only be held when:

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* See Definitions

(a) The member of the assurance team*, an immediate family* member of the member of the assurance team*, and the firm* are not beneficiaries of the trust;
(b) The interest held by the trust in the assurance client* is not material to the trust;
(c) The trust is not able to exercise significant influence over the assurance client*; and
(d) The member of the assurance team* or the firm* does not have significant influence over any investment decision involving a financial interest* in the assurance client*.

290.110 Consideration should be given to whether a self-interest threat may be created by the financial interests* of individuals outside of the assurance team* and their immediate and close family* members. Such individuals would include:

- Partners*, and their immediate family* members, who are not members of the assurance team*;
- Partners and managerial employees who provide non-assurance services to the assurance client*; and
- Individuals who have a close personal relationship with a member of the assurance team*.

Whether the interests held by such individuals may create a self-interest threat will depend upon factors such as:

- The firm's* organisational, operating and reporting structure; and
- The nature of the relationship between the individual and the member of the assurance team*.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Where appropriate, policies to restrict people from holding such interests;
- Discussing the matter with those charged with governance, such as the audit committee*; or
- Involving an additional professional accountant* who did not take part in the assurance engagement* to review the work done or otherwise advise as necessary.

290.111 An inadvertent violation of this Section as it relates to a financial interest* in an assurance client* would not impair the independence* of the firm*, the network firm* or a member of the assurance team* when:

(a) The firm*, and the network firm*, have established policies and procedures that require all professionals to report promptly to the firm* any breaches resulting from the purchase, inheritance or other acquisition of a financial interest* in the assurance client*;
(b) The firm*, and the network firm*, promptly notify the professional that the financial interest* should be disposed of; and

* See Definitions

(c) The disposal occurs at the earliest practical date after identification of the issue, or the professional is removed from the assurance team*.

290.112 When an inadvertent violation of this Section relating to a financial interest* in an assurance client* has occurred, the firm* should consider whether any safeguards should be applied. Such safeguards might include:

- Involving an additional professional accountant* who did not take part in the assurance engagement* to review the work done by the member of the assurance team*; or
- Excluding the individual from any substantive decision-making concerning the assurance engagement*.

290.122 If a firm* has a direct financial interest* in an assurance client* the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Consequently, disposal of the financial interest* would be the only action appropriate to permit the firm* to perform the engagement.

290.123 If a firm* has a material indirect financial interest* in an assurance client* a self-interest threat is also created. The only action appropriate to permit the firm* to perform the engagement would be for the firm* to either dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

290.124 If a firm* has a material financial interest* in an entity that has a controlling interest in an assurance client*, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. The only action appropriate to permit the firm* to perform the engagement would be for the firm* either to dispose of the financial interest* in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

290.125 When a restricted use report for an assurance engagement* is issued, exceptions to the provisions in paragraphs 290.106 to 290.110 and 290.122 to 290.124 are set out in 290.19.

Loans* and Guarantees

290.126 A loan*, or a guarantee of a loan*, to the firm* from an assurance client* that is a bank or a similar institution, would not create a threat to independence* provided the loan*, or guarantee, is made under normal lending procedures, terms and requirements and the loan* is immaterial to both the firm* and the assurance client*. If the loan* is material to the assurance client* or the firm* it may be possible, through the application of safeguards, to reduce the self-interest threat created to an acceptable level. Such safeguards might include involving an additional professional accountant* from outside the firm*, or network firm*, to review the work performed.

* See Definitions

290.127 A loan*, or a guarantee of a loan*, from an assurance client* that is a bank or a similar institution, to a member of the assurance team* or their immediate family* would not create a threat to independence* provided the loan*, or guarantee, is made under normal lending procedures, terms and requirements. Examples of such loans* include home mortgages, bank overdrafts, car loans* and credit card balances.

290.128 Similarly, deposits made by, or brokerage accounts of, a firm* or a member of the assurance team* with an assurance client* that is a bank, broker or similar institution would not create a threat to independence* provided the deposit or account is held under normal commercial terms.

290.129 If the firm*, or a member of the assurance team*, makes a loan* to an assurance client*, that is not a bank or similar institution, or guarantees such an assurance client's* borrowing, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level, unless the loan* or guarantee is immaterial to both the firm* or the member of the assurance team* and the assurance client*.

290.130 Similarly, if the firm* or a member of the assurance team* accepts a loan* from, or has borrowing guaranteed by, an assurance client* that is not a bank or similar institution, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level, unless the loan* or guarantee is immaterial to both the firm* or the member of the assurance team* and the assurance client*.

Close Business Relationships with Assurance Clients*

290.132 A close business relationship between a firm* or a member of the assurance team* and the assurance client* or its management, will involve a commercial or common financial interest* and may create self-interest and intimidation threats. The following are examples of such relationships:

- Having a material financial interest* in a joint venture with the assurance client* or a controlling owner, director, officer or other individual who performs senior managerial functions for that client.
- Arrangements to combine one or more services or products of the firm* with one or more services or products of the assurance client* and to market the package with reference to both parties.
- Distribution or marketing arrangements under which the firm* acts as a distributor or marketer of the assurance client's* products or services, or the assurance client* acts as the distributor or marketer of the products or services of the firm*.

Unless the financial interest* is immaterial and the relationship is clearly insignificant* to the firm* and the assurance client*, no safeguards could reduce the threat to an acceptable level. Consequently, in both these circumstances the only possible courses of action are to:

(a) Terminate the business relationship;

* See Definitions

(b) Reduce the magnitude of the relationship so that the financial interest* is immaterial and the relationship is clearly insignificant*; or
(c) Refuse to perform the assurance engagement*.

Unless any such financial interest* is immaterial and the relationship is clearly insignificant* to the member of the assurance team*, the only appropriate safeguard would be to remove the individual from the assurance team*.

290.134 The purchase of goods and services from an assurance client* by the firm* or a member of the assurance team* would not generally create a threat to independence* providing the transaction is in the normal course of business and on an arm's length basis. However, such transactions may be of a nature or magnitude so as to create a self-interest threat. If the threat created is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Eliminating or reducing the magnitude of the transaction;
- Removing the individual from the assurance team*; or
- Discussing the issue with those charged with governance, such as the audit committee*.

Family and Personal Relationships

290.135 Family and personal relationships between a member of the assurance team* and a director, an officer or certain employees, depending on their role, of the assurance client*, may create self-interest, familiarity or intimidation threats. It is impracticable to attempt to describe in detail the significance of the threats that such relationships may create. The significance will depend upon a number of factors including the individual's responsibilities on the assurance engagement*, the closeness of the relationship and the role of the family member or other individual within the assurance client*. Consequently, there is a wide spectrum of circumstances that will need to be evaluated and safeguards to be applied to reduce the threat to an acceptable level.

290.136 When an immediate family* member of a member of the assurance team* is a director, an officer or an employee of the assurance client* in a position to exert direct and significant influence over the subject matter information of the assurance engagement*, or was in such a position during any period covered by the engagement, the threats to independence* can only be reduced to an acceptable level by removing the individual from the assurance team*. The closeness of the relationship is such that no other safeguard could reduce the threat to independence* to an acceptable level. If application of this safeguard is not used, the only course of action is to withdraw from the assurance engagement*.

290.137 When an immediate family* member of a member of the assurance team* is an employee in a position to exert direct and significant influence over the subject matter of the engagement, threats to independence* may be created. The significance of the threats will depend on factors such as:

* See Definitions

- The position the immediate family* member holds with the client; and
- The role of the professional on the assurance team*.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Removing the individual from the assurance team*;
- Where possible, structuring the responsibilities of the assurance team* so that the professional does not deal with matters that are within the responsibility of the immediate family* member; or
- Policies and procedures to empower staff to communicate to senior levels within the firm* any issue of independence* and objectivity that concerns them.

290.138 When a close family* member of a member of the assurance team* is a director, an officer, or an employee of the assurance client* in a position to exert direct and significant influence over the subject matter information of the assurance engagement*, threats to independence* may be created. The significance of the threats will depend on factors such as:

- The position the close family* member holds with the client; and
- The role of the professional on the assurance team*.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Removing the individual from the assurance team*;
- Where possible, structuring the responsibilities of the assurance team* so that the professional does not deal with matters that are within the responsibility of the close family* member; or
- Policies and procedures to empower staff to communicate to senior levels within the firm* any issue of independence* and objectivity that concerns them.

290.139 In addition, self-interest, familiarity or intimidation threats may be created when a person who is other than an immediate or close family* member of a member of the assurance team* has a close relationship with the member of the assurance team* and is a director, an officer or an employee of the assurance client* in a position to exert direct and significant influence over the subject matter information of the assurance engagement*. Therefore, members of the assurance team* are responsible for identifying any such persons and for consulting in accordance with firm* procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the closeness of the relationship and the role of the individual within the assurance client*.

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* See Definitions

290.140 Consideration should be given to whether self-interest, familiarity or intimidation threats may be created by a personal or family relationship between a partner* or employee of the firm* who is not a member of the assurance team* and a director, an officer or an employee of the assurance client* in a position to exert direct and significant influence over the subject matter information of the assurance engagement*. Therefore partners* and employees of the firm* are responsible for identifying any such relationships and for consulting in accordance with firm* procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the closeness of the relationship, the interaction of the firm* professional with the assurance team*, the position held within the firm*, and the role of the individual within the assurance client*.

290.141 An inadvertent violation of this Section as it relates to family and personal relationships would not impair the independence* of a firm* or a member of the assurance team* when:

(a) The firm* has established policies and procedures that require all professionals to report promptly to the firm* any breaches resulting from changes in the employment status of their immediate or close family* members or other personal relationships that create threats to independence*;
(b) Either the responsibilities of the assurance team* are re-structured so that the professional does not deal with matters that are within the responsibility of the person with whom he or she is related or has a personal relationship, or, if this is not possible, the firm* promptly removes the professional from the assurance engagement*; and
(c) Additional care is given to reviewing the work of the professional.

290.142 When an inadvertent violation of this Section relating to family and personal relationships has occurred, the firm* should consider whether any safeguards should be applied. Such safeguards might include:

- Involving an additional professional accountant* who did not take part in the assurance engagement* to review the work done by the member of the assurance team*; or
- Excluding the individual from any substantive decision-making concerning the assurance engagement*.

Employment with Assurance Clients*

290.143 A firm* or a member of the assurance team's* independence* may be threatened if a director, an officer or an employee of the assurance client* in a position to exert direct and significant influence over the subject matter information of the assurance engagement* has been a member of the assurance team* or partner* of the firm*. Such circumstances may create self-interest, familiarity and intimidation threats particularly when significant connections remain between the individual and his or her former firm*. Similarly, a member of the assurance team's* independence* may be

* See Definitions

threatened when an individual participates in the assurance engagement* knowing, or having reason to believe, that he or she is to, or may, join the assurance client* some time in the future.

290.144 If a member of the assurance team*, partner* or former partner of the firm* has joined the assurance client*, the significance of the self-interest, familiarity or intimidation threats created will depend upon the following factors:

(a) The position the individual has taken at the assurance client*.
(b) The amount of any involvement the individual will have with the assurance team*.
(c) The length of time that has passed since the individual was a member of the assurance team* or firm*.
(d) The former position of the individual within the assurance team* or firm*.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Considering the appropriateness or necessity of modifying the assurance plan for the assurance engagement*;
- Assigning an assurance team* to the subsequent assurance engagement* that is of sufficient experience in relation to the individual who has joined the assurance client*;
- Involving an additional professional accountant* who was not a member of the assurance team* to review the work done or otherwise advise as necessary; or
- Quality control review of the assurance engagement*.

In all cases, all of the following safeguards are necessary to reduce the threat to an acceptable level:

(a) The individual concerned is not entitled to any benefits or payments from the firm* unless these are made in accordance with fixed pre-determined arrangements. In addition, any amount owed to the individual should not be of such significance to threaten the firm's* independence*.
(b) The individual does not continue to participate or appear to participate in the firm's* business or professional activities.

290.145 A self-interest threat is created when a member of the assurance team* participates in the assurance engagement* while knowing, or having reason to believe, that he or she is to, or may, join the assurance client* some time in the future. This threat can be reduced to an acceptable level by the application of all of the following safeguards:

(a) Policies and procedures to require the individual to notify the firm* when entering serious employment negotiations with the assurance client*.
(b) Removal of the individual from the assurance engagement*.

* See Definitions

In addition, consideration should be given to performing an independent review of any significant judgements made by that individual while on the engagement.

Recent Service with Assurance Clients*

290.146 To have a former officer, director or employee of the assurance client* serve as a member of the assurance team* may create self-interest, self-review and familiarity threats. This would be particularly true when a member of the assurance team* has to report on, for example, subject matter information he or she had prepared or elements of the financial statements* he or she had valued while with the assurance client*.

290.147 If, during the period covered by the assurance report, a member of the assurance team* had served as an officer or director of the assurance client*, or had been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement*, the threat created would be so significant no safeguard could reduce the threat to an acceptable level. Consequently, such individuals should not be assigned to the assurance team*.

290.148 If, prior to the period covered by the assurance report, a member of the assurance team* had served as an officer or director of the assurance client*, or had been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement*, this may create self-interest, self-review and familiarity threats. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the assurance client*, is to be evaluated in the current period as part of the current assurance engagement*. The significance of the threats will depend upon factors such as:

- The position the individual held with the assurance client*;
- The length of time that has passed since the individual left the assurance client*; and
- The role the individual plays on the assurance team*.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Involving an additional professional accountant* to review the work done by the individual as part of the assurance team* or otherwise advise as necessary; or
- Discussing the issue with those charged with governance, such as the audit committee*.

Serving as an Officer or Director on the Board of Assurance Clients*

290.149 If a partner or employee of the firm* serves as an officer or as a

* See Definitions

director on the board of an assurance client* the self-review and self-interest threats created would be so significant no safeguard could reduce the threats to an acceptable level. Consequently, if such an individual were to accept such a position the only course of action is to refuse to perform, or to withdraw from the assurance engagement*.

290.150 The position of Company Secretary has different implications in different jurisdictions. The duties may range from administrative duties such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulations or providing advice on corporate governance matters. Generally this position is seen to imply a close degree of association with the entity and may create self-review and advocacy threats.

290.152 Routine administrative services to support a company secretarial function or advisory work in relation to company secretarial administration matters is generally not perceived to impair independence*, provided client management makes all relevant decisions.

Long Association of Senior Personnel with Assurance Clients*

290.153 Using the same senior personnel on an assurance engagement* over a long period of time may create a familiarity threat. The significance of the threat will depend upon factors such as:

- The length of time that the individual has been a member of the assurance team*;
- The role of the individual on the assurance team*;
- The structure of the firm*; and
- The nature of the assurance engagement*.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied to reduce the threat to an acceptable level. Such safeguards might include:

- Rotating the senior personnel off the assurance team*;
- Involving an additional professional accountant* who was not a member of the assurance team* to review the work done by the senior personnel or otherwise advise as necessary; or
- Independent internal quality reviews.

Provision of Non-assurance Services to Assurance Clients*

290.158 Firms* have traditionally provided to their assurance clients* a range of non-assurance services that are consistent with their skills and expertise. Assurance clients* value the benefits that derive from having these firms*, which have a good understanding of the business, bring their knowledge and skill to bear in other areas. Furthermore, the provision of such non-assurance services will often result in the assurance team* obtaining information regarding the assurance client's* business and operations that is

* See Definitions

helpful in relation to the assurance engagement*. The greater the knowledge of the assurance client's* business, the better the assurance team* will understand the assurance client's* procedures and controls, and the business and financial risks that it faces. The provision of non-assurance services may, however, create threats to the independence* of the firm*, a network firm* or the members of the assurance team*, particularly with respect to perceived threats to independence*. Consequently, it is necessary to evaluate the significance of any threat created by the provision of such services. In some cases, it may be possible to eliminate or reduce the threat created by application of safeguards. In other cases, no safeguards are available to reduce the threat to an acceptable level.

290.159 The following activities would generally create self-interest or self-review threats that are so significant that only avoidance of the activity or refusal to perform the assurance engagement* would reduce the threats to an acceptable level:

- Authorising, executing or consummating a transaction, or otherwise exercising authority on behalf of the assurance client*, or having the authority to do so.
- Determining which recommendation of the firm* should be implemented.
- Reporting, in a management role, to those charged with governance.

290.160 The examples set out in paragraphs 290.169 to 290.205 are addressed in the context of the provision of non-assurance services to an assurance client*. The subject matter information of *non-audit* assurance services may be limited in nature. Threats to independence*, however, may arise when a firm* provides a non-assurance service related to the subject matter information, of a non-financial statement audit assurance engagement*. In such cases, consideration should be given to the significance of the firm's* involvement with the subject matter information, of the engagement, whether any self-review threats are created and whether any threats to independence* could be reduced to an acceptable level by application of safeguards, or whether the engagement should be declined. When the non-assurance service is not related to the subject matter information, of the non-financial statement audit assurance engagement*, the threats to independence* will generally be clearly insignificant*.

290.161 The following activities may also create self-review or self-interest threats:

- Having custody of an assurance client's* assets.
- Supervising assurance client* employees in the performance of their normal recurring activities.
- Preparing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records and customer orders).

The significance of any threat created should be evaluated and, if the threat is

* See Definitions

other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- Making arrangements so that personnel providing such services do not participate in the assurance engagement*;
- Involving an additional professional accountant* to advise on the potential impact of the activities on the independence* of the firm* and the assurance team*.

290.162 New developments in business, the evolution of financial markets, rapid changes in information technology, and the consequences for management and control, make it impossible to draw up an all-inclusive list of all situations when providing non-assurance services to an assurance client* might create threats to independence* and of the different safeguards that might eliminate these threats or reduce them to an acceptable level. In general, however, a firm* may provide services beyond the assurance engagement* provided any threats to independence* have been reduced to an acceptable level.

290.163 The following safeguards may be particularly relevant in reducing to an acceptable level threats created by the provision of non-assurance services to assurance clients*:

- Policies and procedures to prohibit professional staff from making management decisions for the assurance client*, or assuming responsibility for such decisions.
- Discussing independence* issues related to the provision of non-assurance services with those charged with governance, such as the audit committee*.
- Policies within the assurance client* regarding the oversight responsibility for provision of non-assurance services by the firm*.
- Involving an additional professional accountant* to advise on the potential impact of the non-assurance engagement* on the independence* of the member of the assurance team* and the firm*.
- Involving an additional professional accountant* outside of the firm* to provide assurance on a discrete aspect of the assurance engagement*.
- Obtaining the assurance client's* acknowledgement of responsibility for the results of the work performed by the firm*.
- Disclosing to those charged with governance, such as the audit committee*, the nature and extent of fees charged.
- Making arrangements so that personnel providing non-assurance services do not participate in the assurance engagement*.

290.164 Before the firm* accepts an engagement to provide a non-assurance service to an assurance client*, consideration should be given to whether the provision of such a service would create a threat to independence*. In situations when a threat created is other than clearly insignificant*, the non-assurance engagement* should be declined unless appropriate safeguards can be applied to eliminate the threat or reduce it to an acceptable level.

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* See Definitions

Preparing Accounting Records and Financial Statements*

290.169 Self-review threats may be created if, for example, the firm* developed and prepared prospective financial information and subsequently provided assurance on this prospective financial information. Consequently, the firm* should evaluate the significance of any self-review threat created by the provision of such services. If the self-review threat is other than clearly insignificant* safeguards should be considered and applied as necessary to reduce the threat to an acceptable level.

Such safeguards might include:

- *Making arrangements so such services are not performed by a member of the assurance team*;*
- *Implementing policies and procedures to prohibit the individual providing such services from making any managerial decisions on behalf of the assurance client*;*
- *Requiring the source data for the accounting entries to be originated by the assurance client*;*
- *Requiring the underlying assumptions to be originated and approved by the assurance client**.

Valuation Services

290.174 A valuation comprises the making of assumptions with regard to future developments, the application of certain methodologies and techniques, and the combination of both in order to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.

290.179 When the firm* performs a valuation that forms part of the subject matter information of an assurance engagement*, the firm* should consider any self-review threats. If the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

Such safeguards might include:

- *Involving an additional professional accountant* who was not a member of the assurance team* to review the work done or otherwise advise as necessary;*
- *Confirming with the assurance client* their understanding of the underlying assumptions of the valuation and the methodology to be used and obtaining approval for their use;*
- *Obtaining the assurance client's* acknowledgement of responsibility for the results of the work performed by the firm*;*
- *Making arrangements so that personnel providing such services do not participate in the assurance engagement*, and*
- *The extent and clarity of any disclosures.*

In determining whether the above safeguards would be effective, consideration should be given to the following matters:

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* See Definitions

- *The extent of the assurance client's* knowledge, experience and ability to evaluate the issues concerned, and the extent of their involvement in determining and approving significant matters of judgement.*
- *The degree to which established methodologies and professional guidelines are applied when performing a particular valuation service.*
- *For valuations involving standard or established methodologies, the degree of subjectivity inherent in the item concerned.*
- *The reliability and extent of the underlying data.*
- *The degree of dependence on future events of a nature which could create significant volatility inherent in the amounts involved.*

Recruiting Senior Management

290.203 The recruitment of senior management for an assurance client*, such as those in a position to affect the subject matter information of the assurance engagement*, may create current or future self-interest, familiarity and intimidation threats. The significance of the threat will depend upon factors such as:

- The role of the person to be recruited; and
- he nature of the assistance sought.

The firm* could generally provide such services as reviewing the professional qualifications of a number of applicants and provide advice on their suitability for the post. In addition, the firm* could generally produce a short-list of candidates for interview, provided it has been drawn up using criteria specified by the assurance client*.

The significance of the threat created should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. In all cases, the firm* should not make management decisions and the decision as to whom to hire should be left to the client.

Corporate Finance and Similar Activities

290.204 The provision of corporate finance services, advice or assistance to an assurance client* may create advocacy and self-review threats. In the case of certain corporate finance services, the independence* threats created would be so significant no safeguards could be applied to reduce the threats to an acceptable level. For example, promoting, dealing in, or underwriting of an assurance client's* shares* is not compatible with providing assurance services. Moreover, committing the assurance client* to the terms of a transaction or consummating a transaction on behalf of the client would create a threat to independence* so significant no safeguard could reduce the threat to an acceptable level.

290.205 Other corporate finance services may create advocacy or self-review threats; however, safeguards may be available to reduce these threats to an acceptable level. Examples of such services include assisting a client in

* See Definitions

developing corporate strategies, assisting in identifying or introducing a client to possible sources of capital that meet the client specifications or criteria, and providing structuring advice and assisting a client in analyzing the accounting effects of proposed transactions. Safeguards that should be considered include:

- Policies and procedures to prohibit individuals assisting the assurance client* from making managerial decisions on behalf of the client;
- Using professionals who are not members of the assurance team* to provide the services; and
- Ensuring the firm* does not commit the assurance client* to the terms of any transaction or consummate a transaction on behalf of the client.

Fees – Relative Size

290.206 When the total fees generated by an assurance client* represent a large proportion of a firm's* total fees, the dependence on that client or client group and concern about the possibility of losing the client may create a self-interest threat. The significance of the threat will depend upon factors such as:

- The structure of the firm*; and
- Whether the firm* is well established or newly created.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Discussing the extent and nature of fees charged with the audit committee* or others charged with governance;
- Taking steps to reduce dependency on the client;
- External quality control reviews; and
- Consulting a third party, such as a professional regulatory body or another professional accountant*.

A presumption of dependence on a client or intermediary arises where it is expected that annual fee income from all services provided by the firm or its network firm* to that client or a related entity*, or intermediary, will regularly exceed 15 per cent of the aggregate gross practice income of the firm* or its network. In the case of listed entities the proportion falls to 10 per cent.*

Where the percentage of income from a client represents 10 per cent or more of the firm's total income it should carry out a review to ensure that there is no significant threat to independence* and apply safeguards where necessary. In the case of listed clients the firm* should initiate a review where the income from the client represents 5 per cent or more of the firm's* total income and disclose this percentage to the assurance client's* governance body.*

290.207 A self-interest threat may also be created when the fees generated by the assurance client* represent a large proportion of the revenue of an

* See Definitions

individual partner*. The significance of the threat should be evaluated and, if the threat is other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Policies and procedures to monitor and implement quality control of assurance engagements*; and
- Involving an additional professional accountant* who was not a member of the assurance team* to review the work done or otherwise advise as necessary.

Fees – Overdue

290.208 A self-interest threat may be created if fees due from an assurance client* for professional services* remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

- Discussing the level of outstanding fees with the audit committee* or others charged with governance.
- Involving an additional professional accountant* who did not take part in the assurance engagement* to provide advice or review the work performed.

The firm* should also consider whether the overdue fees might be regarded as being equivalent to a loan* to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm* to be re-appointed.

Pricing

290.209 When a firm* obtains an assurance engagement* at a significantly lower fee level than that charged by the predecessor firm*, or quoted by other firms*, the self-interest threat created will not be reduced to an acceptable level unless:

(a) The firm* is able to demonstrate that appropriate time and qualified staff are assigned to the task; and
(b) All applicable assurance standards, guidelines and quality control procedures are being complied with.

Contingent Fees*

290.210 Contingent fees* are fees calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. For the purposes of this Section, fees are not regarded as being contingent if a court or other public authority has established them.

290.211 A contingent fee* charged by a firm* in respect of an assurance engagement* creates self-interest and advocacy threats that cannot be reduced to an acceptable level by the application of any safeguard. Accordingly, a firm* should not enter into any fee arrangement for an assurance engagement* under which the amount of the fee is contingent on the result of

* See Definitions

the assurance work or on items that are the subject matter information of the assurance engagement*.

290.212 A contingent fee* charged by a firm* in respect of a non-assurance service provided to an assurance client* may also create self-interest and advocacy threats. If the amount of the fee for a non-assurance engagement* was agreed to, or contemplated, during an assurance engagement* and was contingent on the result of that assurance engagement*, the threats could not be reduced to an acceptable level by the application of any safeguard. Accordingly, the only acceptable action is not to accept such arrangements. For other types of contingent fee* arrangements, the significance of the threats created will depend on factors such as:

- The range of possible fee amounts;
- The degree of variability;
- The basis on which the fee is to be determined;
- Whether the outcome or result of the transaction is to be reviewed by an independent third party; and
- The effect of the event or transaction on the assurance engagement*.

The significance of the threats should be evaluated and, if the threats are other than clearly insignificant*, safeguards should be considered and applied as necessary to reduce the threats to an acceptable level. Such safeguards might include:

- Disclosing to the audit committee* or others charged with governance, the extent and nature of fees charged;
- Review or determination of the final fee by an unrelated third party; or
- Quality and control policies and procedures.

Due diligence assignments, particularly those performed in relation to a prospective transaction, typically involve a high level of risk and responsibility. A firm* carrying out a due diligence* assignment may charge a higher fee for work relating to a completed transaction than for the same transaction if it is not completed, for whatever reason, provided that the difference reflects any additional risk and responsibility.*

Gifts and Hospitality

290.213 Accepting gifts or hospitality from an assurance client* may create self-interest and familiarity threats. When a firm* or a member of the assurance team* accepts gifts or hospitality, unless the value is clearly insignificant*, the threats to independence* cannot be reduced to an acceptable level by the application of any safeguard. Consequently, a firm* or a member of the assurance team* should not accept such gifts or hospitality.

A similar consideration will apply to an immediate or close family member of a member of the assurance team* other than where a person receives a benefit in their own right and not because of the connection.*

* See Definitions

Actual or Threatened Litigation

290.214 When litigation takes place, or appears likely, between the firm* or a member of the assurance team* and the assurance client*, a self-interest or intimidation threat may be created. The relationship between client management and the members of the assurance team* must be characterised by complete candor and full disclosure regarding all aspects of a client's business operations. The firm* and the client's management may be placed in adversarial positions by litigation, affecting management's willingness to make complete disclosures and the firm* may face a self-interest threat. The significance of the threat created will depend upon such factors as:

- The materiality of the litigation;
- The nature of the assurance engagement*; and
- Whether the litigation relates to a prior assurance engagement*.

Once the significance of the threat has been evaluated the following safeguards should be applied, if necessary, to reduce the threats to an acceptable level:

(a) Disclosing to the audit committee*, or others charged with governance, the extent and nature of the litigation;
(b) If the litigation involves a member of the assurance team*, removing that individual from the assurance team*; or
(c) Involving an additional professional accountant* in the firm* who was not a member of the assurance team* to review the work done or otherwise advise as necessary.

If such safeguards do not reduce the threat to an appropriate level, the only appropriate action is to withdraw from, or refuse to accept, the assurance engagement*.

Appendix to Section 290

This interpretation *(2005–01)* provides guidance on the application of the independence* requirements contained in Section 290 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 290 that are relevant in the consideration of independence* requirements for all assurance engagements*. For example, paragraph 290.15 states that consideration should be given to any threats the firm* has reason to believe may be created by network firms* interests and relationships. Similarly, paragraph 290.21 states that for assurance clients*, that are other than listed entity* financial statement audit clients*, when the assurance team* has reason to believe that a related entity* of such an assurance client* is relevant to the evaluation of the firm's* independence* of the client, the assurance team* should consider that related entity* when evaluating independence* and applying appropriate safeguards. These matters are not specifically addressed in this interpretation.

* See Definitions

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, consideration should be given to any threats the firm* has reason to believe may be created by interests and relationships between a member of the assurance team*, the firm*, a network firm* and the party responsible for the subject matter.

Direct Reporting Assurance 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 290 to each responsible party, the firm* may take into

* See Definitions

account whether an interest or relationship between the firm*, or a member of the assurance team*, and a particular responsible party would create a threat to independence* that is other than clearly insignificant in the context of the subject matter information. This will take into account:

- 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 clearly insignificant* it may not be necessary to apply all of the provisions of this Section to that responsible party.

The following example has been developed to demonstrate the application of Section 290. 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 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**

* See Definitions

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 other than clearly insignificant*. 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 290.20).

For example Company 8 accounts for 0.16% 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 which would be considered to be the assurance client* (paragraph 290.20).

A2 An entity other than the companies measures the reserves and provides an assertion to the firm* and to intended users.

The firm* would be required to be independent of the entity that measures the reserves and provides an assertion to the firm* and to intended users

* See Definitions

(paragraph 290.17). That entity is not responsible for the subject matter and so consideration should be given to any threats the firm* has reason to believe may be created by interests/relationships with the party responsible for the subject matter (paragraph 290.17). There are several parties responsible for 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 other than clearly insignificant*.

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 other than clearly insignificant*. 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 290.20).

For example Company 8 accounts for 0.16% of the reserves, therefore a business relationship or interest with the 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* are required to be independent of those responsible parties which would be considered to be the assurance client* (paragraph 290.20).

D2 The firm* directly measures the reserves of some of the companies

The application is the same as in example D1.

* See Definitions

Professional Accountants in Business (Part C)

Section 300 Introduction
Section 310 Potential Conflicts
Section 320 Preparation and Reporting of Information
Section 330 Acting with Sufficient Expertise
Section 340 Financial Interests
Section 350 Inducements
Appendix to Part C

Section 300 Introduction

300.1 This Part of this Code illustrates how the conceptual framework contained in Part A is to be applied by professional accountants in business*.

Professional accountants in business should also read Part A which sets out the fundamental principles and conceptual framework that professional accountants* are required to adhere to. It may also be helpful for professional accountants in business* to refer to other parts of this Code in relevant circumstances: for example, Sections 221, 'Corporate finance advice', and 241, 'Agencies and referrals.'*

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.

Professional accountants in business are engaged in an executive or non-executive capacity in such areas as commerce, industry, the public and service sectors (including public sector bodies), education, the not for profit sector, regulatory bodies or professional bodies.*

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 organisations. The legal form of the relationship with the employing organisation, if any, has no

* See Definitions

bearing on the ethical responsibilities incumbent on the professional accountant in business*

Professional accountants are reminded that this Code applies to all their professional and business activities, with and without reward.*

300.4 A professional accountant in business* has a responsibility to further the legitimate aims of their employing organisation. This Code does not seek to hinder a professional accountant in business* from properly fulfilling that responsibility, but considers circumstances in which conflicts may be created with the absolute duty to comply with the fundamental principles.

300.5 A professional accountant in business* often holds 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 The examples presented in the following Sections are intended to illustrate how the conceptual framework is to be applied and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a professional accountant in business* that may create threats to compliance with the principles. Consequently, it is not sufficient for a professional accountant in business* merely to comply with the examples; rather, the framework should be applied to the particular circumstances faced.

Fundamental Principles

300.6A *Professional accountants* are required to comply with the following fundamental principles:*

(a) Integrity
Professional accountants should be straightforward and honest in all professional and business relationships.*

(b) Objectivity
Professional accountants should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.*

(c) Professional Competence and Due Care
Professional accountants have 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. Professional accountants* should act*

* See Definitions

diligently and in accordance with applicable technical and professional standards when providing professional services.*

(d) Confidentiality
Professional accountants 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 professional accountant* or third parties.*

(e) Professional Behaviour
Professional accountants should comply with relevant laws and regulations and should avoid any action that discredits the profession.*

Threats and Safeguards
300.7 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest;
(b) Self-review;
(c) Advocacy;
(d) Familiarity; 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, but are not limited to:

- Financial interests*, loans* or guarantees.
- Incentive compensation arrangements.
- Inappropriate personal use of corporate assets.
- Concern over employment security.
- Commercial pressure from outside the employing organisation.

300.9 Circumstances that may create self-review threats include, but are not limited to, business decisions or data being subject to review and justification by the same professional accountant in business* responsible for making those decisions or preparing that data.

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.

* See Definitions

300.11 Examples of circumstances that may create familiarity threats include, but are not limited to:

- A professional accountant in business* in a position to influence financial or non-financial reporting or business decisions having an immediate or close family* member who is in a position to benefit from that influence.
- Long association with business contacts influencing business decisions.
- Acceptance of a gift or preferential treatment, unless the value is clearly insignificant*.

300.12 Examples of circumstances that may create intimidation threats include, but are not limited to:

- 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 Professional accountants in business* may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorised. In all professional and business relationships, professional accountants in business* should always be on the alert for such circumstances and threats.

300.14 Safeguards that may eliminate or reduce to an acceptable level the threats faced by professional accountants in business* fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and
(b) Safeguards in the work environment.

300.15 Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 100.12 of Part A of this Code.

300.16 Safeguards in the work environment include, but are not restricted to:

- The employing organisation's systems of corporate oversight or other oversight structures.
- The employing organisation's ethics and conduct programs.
- 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 behaviour and the expectation that employees will act in an ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.

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* See Definitions

- 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*.

Safeguards created by the individual include, but are not restricted to:

- *Continuing Professional Development, including keeping up to date with technical and ethical requirements;*
- *Keeping records of contentious issues and approach to decision making;*
- *Maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals;*
- *Using an independent mentor;*
- *Maintaining contact with legal advisers and professional bodies.*

The professional accountant's attention is drawn to the discussions on ethical conflict resolution in Section 100 and on other sources of guidance in paragraphs 1.16 to 1.19 of this Code.*

300.17 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* should consider seeking 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 *disassociate from the task and/or* resign from the employing organisation.

300.18 *To assist professional accountants* to determine an appropriate course of action when faced with a situation which could threaten their compliance with the fundamental principles the following Sections (preparing and reporting of information; acting with sufficient expertise; financial information; inducements and disclosing confidential information) give examples of specific areas of activity which could give rise to ethical dilemmas and the action which could be taken in response. This is not a comprehensive list of examples but aims to cover the key areas most likely to be encountered by professional accountants*. Illustrative case studies of how the guidance might be applied in example situations are included in the Appendix to this guidance. In addition, a number of interactive case studies on common ethical issues encountered by professional accountants in business* can be found at www.icaew.co.uk/cpd/ethicaldilemmas/reallifeexamples).*

300.19 *Professional accountants* who are in doubt as to their ethical position may seek advice from the Institute's Ethics Advisory Services by e-mail: ethics@icaew.co.uk or phone +44 (0)1980 248258. Further guidance on sources of advice is available in paragraphs 1.16 to 1.19 of this Code.*

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* See Definitions

Section 310 Potential Conflicts

310.1 A professional accountant in business* has a professional obligation to comply with the fundamental principles. There may be times, however, when their responsibilities to an employing organisation and the professional obligations to comply with the fundamental principles are in conflict. Ordinarily, a professional accountant in business* should support the legitimate and ethical objectives established by the employer and the rules and procedures drawn up in support of those objectives. Nevertheless, where compliance with the fundamental principles is threatened, a professional accountant in business* must consider a response to the circumstances.

310.2 As a consequence of responsibilities to an employing organisation, a professional accountant in business* may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles. Such pressure may be explicit or implicit; it may come from a supervisor, manager, director or another individual within the employing organisation. A professional accountant in business* may face pressure to:

- Act contrary to law or regulation.
- Act contrary to technical or professional standards.
- Facilitate unethical or illegal earnings management strategies.
- Lie to, or otherwise intentionally mislead (including misleading by remaining silent) others, in particular:
  - o The auditors of the employing organisation; or
  - o Regulators.
- Issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:
  - o The financial statements*;
  - o Tax compliance;
  - o Legal compliance; or
  - o Reports required by securities regulators.

310.3 The significance of threats arising from such pressures, such as intimidation threats should be evaluated and, if they are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:

- Obtaining advice where appropriate from within the employing organisation, an independent professional advisor or *the Institute* (see paragraphs 1.16 to 1.19 of this Code).
- The existence of a formal dispute resolution process within the employing organisation.
- Seeking legal advice.

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* See Definitions

Informal discussions with fellow professional accountants in business or in practice may assist in clarifying the steps needed to be taken.*

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 discussion and analysis, and the management letter of representation provided to the auditors as part of an audit of financial statements*. A professional accountant in business* should 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 should ensure that those financial statements* are presented in accordance with the applicable financial reporting standards.

320.3 A professional accountant in business* should 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 objectivity or professional competence and due care, may be created where a professional accountant in business* may be pressured (either externally or by the possibility of personal gain) to become associated with misleading information or to become associated with misleading information through the actions of others.

Accordingly, professional accountants should not be associated with reports, returns, communications or other information where they believe that the information:*

- *Contains a materially false or misleading statement;*
- *Contains statements or information furnished recklessly;*
- *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 degree to which the information is, or may be,

* See Definitions

misleading. The significance of the threats should be evaluated and, if they are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include consultation with superiors within the employing organisation, for example, the audit committee* or other body responsible for governance, or with the Institute.

320.6 Where it is not possible to reduce the threat to an acceptable level, a professional accountant in business* should refuse to remain associated with information they consider is or may be misleading. Should the professional accountant in business* be aware that the issuance of misleading information is either significant or persistent, the professional accountant in business* should consider informing appropriate authorities in line with the guidance in Section 140. The professional accountant in business* may also wish to seek legal advice or resign.

Section 330 Acting with Sufficient Expertise

330.1 The fundamental principle of professional competence and due care requires that a professional accountant in business* should 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* should not intentionally mislead an employer as to the level of expertise or experience possessed, nor should a professional accountant in business* fail to seek appropriate expert advice and assistance when required.

330.2 Circumstances that threaten the ability of a professional accountant in business* to perform duties with the appropriate degree of professional competence and due care include:

- 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 such threats 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 threats should be evaluated and, if they are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards that may be considered include:

- Obtaining additional advice or training.
- Ensuring that there is adequate time available for performing the relevant duties.

* See Definitions

- Obtaining assistance from someone with the necessary expertise.
- Consulting, where appropriate, with:
  - o Superiors within the employing organisation;
  - o Independent experts; or
  - o The Institute.

330.4 Where threats cannot be eliminated or reduced to an acceptable level, professional accountants in business* should consider 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 should be clearly communicated.

Section 340 Financial Interests*

340.1 Professional accountants in business* may have financial interests*, or may know of financial interests* of immediate or close family* members, that could, in certain circumstances, give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or 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, but are not limited to situations where the professional accountant in business* or an immediate or close family* member:

- Holds a direct or indirect financial interest* in the employing organisation and the value of that financial interest* could be directly affected by decisions made by the 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, share options in the employing organisation, the value of which could be directly affected by decisions made by the professional accountant in business*;
- Holds, directly or indirectly, share options in the employing organisation which are, or will soon be, eligible for conversion; or
- May qualify for share options in the employing organisation or performance-related bonuses if certain targets are achieved.

340.2 In evaluating the significance of such a threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, professional accountants in business* must examine the nature of the financial interest*. This includes an evaluation of the significance of the financial interest* and whether it is direct or indirect. Clearly, what constitutes a significant or valuable stake in an organisation will vary from individual to individual, depending on personal circumstances.

340.3 If threats are other than clearly insignificant*, safeguards should be

* See Definitions

considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards may include:

- Policies and procedures for a committee independent of management to determine the level of form of remuneration of senior management.
- Disclosure of all relevant interests and of any plans to trade in relevant shares* to those charged with the governance of the employing organisation, in accordance with any internal policies.
- Consultation, where appropriate, with superiors within the employing organisation.
- Consultation, where appropriate, with those charged with the governance of the employing organisation or relevant professional bodies.
- Internal and external audit procedures.
- Up-to-date education on ethical issues and the legal restrictions and other regulations around potential insider trading.

340.4 A professional accountant in business* should neither manipulate information nor use confidential information for personal gain.

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 should be carefully considered. Self-interest threats to objectivity or confidentiality are created where an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the professional accountant in business* or an immediate or close family* member.

350.3 The significance of such threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, having knowledge of all relevant information, would consider the inducement insignificant and not intended to encourage unethical behaviour, then 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.

* See Definitions

350.4 If evaluated threats are other than clearly insignificant*, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in business* should 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 should be adopted. A professional accountant in business* should assess the risk associated with all such offers and consider whether the following actions should be taken:

(a) Where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organisation;
(b) Inform third parties of the offer – for example, a professional body or the employer of the individual who made the offer; a professional accountant in business* should, however, consider seeking legal advice before taking such a step;
(c) Advise immediate or close family* members of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example as a result of their employment situation; and
(d) Inform higher levels of management or those charged with governance of the employing organisation where immediate or close family* members are employed by competitors or potential suppliers of that organisation.

Making Offers

350.5 A professional accountant in business* may be in a situation where the professional accountant in business* is expected to, or is under other pressure to, offer inducements to subordinate the judgement of another individual or organisation, influence a decision making process 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* should not offer an inducement to improperly influence 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* should follow the principles and guidance regarding ethical conflict resolution set out in Part A of this Code.

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* See Definitions

*Appendix to Part C—Case Studies of Circumstances Faced By Professional Accountants in Business**

The case studies are illustrative and should be read in conjunction with the guidance contained in this Code. Ultimately it is the requirements contained in this Code that must be applied to the particular circumstances. In addition, a number of interactive case studies on common ethical issues encountered by professional accountants in business can be found on www.icaew.co.uk/cpd/ethicaldilemmas/reallifeexamples).*

The case studies below provide examples of work place dilemmas that could arise in the areas of activity described in Sections 310 to 350 of the guidance. The case studies are intended for illustrative purposes only and should be read in conjunction with the guidance.

The possible course of action included in the case studies below may differ according to a variety of variables, including but not limited to: industry sector, size of business, seniority, organisation structure, role and culture.

Case studies

1. *Unsupported expenses*
2. *Incorrect reporting of financial information*
3. *Non-disclosure to auditors*
4. *Acting without sufficient expertise*
5. *Personal financial interest* in a proposal*
6. *Inappropriate business practices*
7. *Inducements for non-disclosure of information*
8. *Earnings management*
9. *Disclosing of personal information*
10. *Transfer of funds to an offshore account*

Case Study 1 Unsupported expenses
Case outline
You are the Finance Director of an organisation. You become concerned that the Chief Executive is making frequent overseas trips and charging the expense to the organisation. The relevance of the destinations and the nature of the activities undertaken appear to have only partial relevance to your organisation's activities. *You raise your concerns with the Chief Executive, who gives assurances that the nature and purpose of these trips is covered by an 'understanding' with the organisation's Chairman. This is not evidenced in writing, and no further justification for the expenses is forthcoming.*

* See Definitions

Case Study 1 Unsupported expenses (continued)

Key fundamental principles

Integrity—*Would processing the payments without adequate explanation be seen as being honest and fair by others?*

Objectivity—*How will you be able to demonstrate your independence*, actual or perceived, from the Chief Executive?*

Professional Competence and Due Care—*How can allowing the expense payments to be processed without adequate explanation be seen as acting with due skill, care and diligence?*

Professional Behaviour—*How should you proceed so as not to discredit yourself?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, best practices, Code of Ethics, applicable laws and regulations. Is it possible to obtain details or documentation of the "understanding" between the Chief Executive and the Chairman? Have you discussed the matter directly with the Chief Executive and /or Chairman to ensure you have the real facts?

Identify affected parties: Key affected parties are you, the Chief Executive and the Board. Other possible affected parties are the expense processing department, human resources, internal audit, tax department, Audit committee, employees, shareholders and financial backers.*

Who should be involved in resolution: Consider not just who should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? At what point will you consider involving the Board and the Audit committee?*

Possible course of action

Discuss the issue further with the Chief Executive and ask for details of the trip or documentary evidence of this "understanding" between the Chief Executive and the Chairman. During this discussion, explain to the Chief Executive the reasons why this information is needed, for example, to conform with the organisation's policies, procedures and guidelines. Explain to the Chief Executive that it may be necessary to ensure that the contentious items are included in a P11D, and argued as a deductible expense with the Revenue. If the Chief Executive will not provide the necessary information, explain that the matter will have to be discussed with the Chairman, and you will set up a meeting with all three of you.

* See Definitions

Case Study 1 Unsupported expenses (continued)

If no satisfactory response is obtained from the Chief Executive and the Chairman, next steps could include discussion with the Board, internal audit, Audit committee and external auditors.*

During the resolution process, it may be helpful to document your involvement, the substance of the discussions held, who else was involved, what decisions were made and why.

Case Study 2 Incorrect reporting of financial information

Case outline

You are a reporting accountant in a company. Your immediate manager is a very forceful, domineering individual and you have accepted his views over the last two years on the level of work in progress. He has given you specific assurances that work in progress has increased by 200% during the current reporting period, and instructed you to report this level in the monthly management accounts. The year end draft financial accounts show that the organisation has only just met its business plan financial targets.

Evidence then becomes available (which you were not aware of when the draft accounts were produced) to indicate that something is clearly wrong and the work in progress had not increased at anywhere near the rate advised by your manager.

Key fundamental principles

***Integrity**—Will you be able to demonstrate that the accounts are true and fair without re-drafting?*

***Objectivity**—How would you maintain your objectivity given that your immediate manager is a forceful, perhaps intimidating individual?*

***Professional Competence and Due Care**—Are the draft accounts prepared in accordance with technical and professional standards?*

***Professional Behaviour**—How should you proceed so as not to discredit yourself?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, best practices, Code of Ethics, applicable

* See Definitions

Case Study 2 Incorrect reporting of financial information (continued)

laws and regulations. Is the evidence that work in progress is incorrectly stated supported by other documentation, for example, any hard copy relating to the valuation, or analytical review of cost of sales, margins and cash flows?

Identify affected parties: Key affected parties are you and your immediate manager. Other possible affected parties are the next levels of management, recipients of the management accounts and the financial accounts, finance, purchasing, accounts payable, human resources, internal audit, Audit committee, Board, external auditors, shareholders and financial backers.*

Who should be involved in resolution: Consider not just who should be involved, but also for what reason and the timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Have you discussed the matter with your immediate line manager in light of all the available evidence and possible consequences? Can you discuss the matter with recipients of the management and financial accounts? At what point will you consider involving other affected parties?

Possible course of action

Check the relevant facts by corroborating with other available documentation, for example, cost of sales calculations, margins, previous stock counts and other financial information. Discuss the matter with your immediate line manager to determine an appropriate course of action, for example, undertaking another stock count.

If you feel that your manager's response is not appropriate, discuss the matter with recipients of the management and draft financial accounts and the next level of management. Next steps could include discussion with the senior management, internal audit, Audit committee, the Board, external auditors or other actions indicated in internal whistle-blowing procedures.*

During the resolution process, it may be helpful to document your involvement, the substance of the discussions held, who else was involved, what decisions were made and why.

* See Definitions

Case Study 3 Non-disclosure to auditors

Case outline

You are employed as an Accounting Systems Manager. During your work you overhear a Financial Controller in one department, saying that she had not been disclosing certain things to the auditor. You don't know whether to believe this but are uneasy, as the culture appears to be one of "getting away with as much as possible". In addition, you have heard that a bribe was paid to an overseas company to secure work. You are uneasy about the situation and worried that a poor relationship with your line manager may prevent you from exploring the accuracy of the statements given to you.

Key fundamental principles

Integrity*—Can you overlook the financial controller's comments, the culture and the bribe allegedly paid to the overseas company and still demonstrate integrity?*

Objectivity*—Knowing that something may be wrong, how can you maintain your objectivity?*

Confidentiality*—Is there any basis in which you could or should make disclosures?*

Professional Behaviour*—How should you proceed so as not to discredit yourself?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, best practices, Code of Ethics, applicable laws and regulations. Can you corroborate the facts further with documentation or discussion with relevant parties? Do you have an internal process for whistle-blowing? What steps have you taken to understand money laundering legislation and the Public Interest Disclosure Act?

Identify affected parties: Key affected parties are you, the financial controller, the employee raising allegations about a bribe, line manager and auditor. Other possible affected parties are employees, next level of management, internal audit, Audit committees, the Board, shareholders and financial backers.*

Who should be involved in resolution: Consider not just who should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance?

* See Definitions

Case Study 3 Non-disclosure to auditors (continued)

Do you have trusted colleagues with whom you can discuss your position? At what point will you consider involving your line manager, next level of management, the Board and the Audit committee?*

Possible course of action

Check the relevant facts and discuss the matter with your immediate line manager. If you feel that the response by the line manager is not satisfactory, next steps may be to discuss the matter further with the next level of management, internal audit, Audit committee and the Board.*

If you have suspicions or evidence of money laundering, contact the Institute or the Money Laundering Helpline and/or take legal advice.

During the resolution process, it may be helpful to document your involvement, the substance of the discussions held, who else was involved, what decisions were made and why.

Case Study 4 Acting without sufficient expertise

Case outline

Your employer has put you in charge of a project, which you consider requires detailed actuarial knowledge. You are uneasy about doing the work given that you do not possess the necessary expertise and are uncertain about what to say to the employer.

Key fundamental principles

***Professional Competence and Due care**—Do you have the necessary skills and experience to undertake the work?*

***Professional Behaviour**—How should you proceed so as not to bring discredit yourself?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, best practices, Code of Ethics, applicable laws and regulations, Can you demonstrate your lack of expertise in this area, the potential impact on the organisation and pension fund and offer alternatives? Can you make reference to the Institute's professional values and disciplinary process?

* See Definitions

Case Study 4 Acting without sufficient expertise (continued)

Identify affected parties: Key affected parties are you and your employer. Other possible affected parties are the auditors, employees, human resources, pensioners, shareholders and financial backers.

Who should be involved in resolution: Consider not just who should be involved, but also for what reason and the timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? At what point will you consider involving the next level of management and human resources?

Possible course of action

Discuss your concern of lack of actuarial knowledge with your employer and suggest clearly defining the scope of the project and a course of action for addressing issues such as lack of actuarial knowledge, for e.g., employing a person with the necessary expertise. During the discussion focus on the potential consequences to the business, pension fund and you personally, of undertaking this project. Explain that employing a person with the necessary expertise does not remove your obligation to ensure that the work is conducted in accordance with accounting standards, laws and regulations.

If your employer does not agree to the suggested course of action, it may be appropriate to discuss the matter with the next level of management. If the response from management is not satisfactory, it may be necessary to involve internal audit, Audit committee, pension and/or Investment Committee and the Board.*

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

Case Study 5 Personal financial interest* in a proposal

Case outline

You have been appointed Finance Director (FD) to a public sector organisation, which has major difficulty attracting and retaining skilled staff. The Board has asked you to draw up a benefits package to assist in overcoming this problem. You are told that your entitlement to benefits will be in accordance with the new scheme. You conduct appropriate research and conclude that a significant increase in the whole range of benefits is required in order to achieve the Board's objective.

* See Definitions

Case Study 5 Personal financial interest* in a proposal (continued)

Key fundamental principles

Integrity—*How will you manage your personal interest with the need to be true and fair?*

Objectivity—*How will you manage your personal interest in the benefits package with the need to remain unbiased and consider only the relevant facts?*

Professional Competence and Due Care—*Do you have all the necessary skills to draw up such a package?*

Professional Behaviour—*How should you proceed so as not to bring discredit yourself?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, best practices, Code of Ethics, applicable laws and regulations. Is the information used for assessing the potential new benefits package independent? Who else has been involved in the proposal for the new benefits package?

Identify affected parties: Key affected parties are you and the Board. Other possible affected parties are employees, human resources, shareholders and financial backers.

Who should be involved in resolution: Consider not just who should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? Have you discussed the matter with the Board and/or human resources?

Possible course of action

Before explaining your findings to the Board, it may be advisable to tell the Board how you approached the project and who else was involved, for example, human resources. You should declare your conflict of interest and not vote on the proposal for the new benefits package. It may be advisable to involve human resources or another independent party to present the findings to the Board. During the presentation, demonstrate how your findings were arrived at and who else was involved in the project.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

* See Definitions

Case Study 6 Inappropriate business practices

Case outline

You have recently accepted a new, and better-paid, job and are due to start in a week. At interview, the company explained its charging system. On reflection it appears that customers are charged inflated rates that exceed agreed fixed prices. You are beginning to feel uncomfortable, and worry that you might be doing the wrong thing accepting this position.

Key fundamental principles

Integrity—*If your assessment is accurate, should you associate yourself with this kind of practice? How can you withdraw with integrity?*

Objectivity—*How can you overcome the risk that that your self-interest (better pay/career opportunities) will cause you to accept the role, despite your concerns?*

Professional Behaviour—*How should you proceed so as not to bring discredit on yourself?*

Discussion

Identify relevant facts: Do you have facts, or could you have misunderstood the charging scheme? Do you have supporting evidence (from, for example, employees of your potential employer)? Did you explore this problem area during the interview? Can you discuss it at this stage?

Identify affected parties: Key parties affected are you and the prospective employer. Other possible parties affected are your current employer (e.g., if you have resigned), and your family (who may be affected whether you accept or decline the new job).

Who should be involved in resolution: Consider not just whom you should involve, but also why and when. Can your Institute provide help and advice? Are there trusted colleagues with whom you can discuss your position? Can you talk with the prospective employer about your concerns?

Possible course of action

Check out your facts. Arrange an informal talk with a sales person to explain their practices again. Consider whether what you learn supports your initial views. Discuss remaining concerns with a trusted colleague (take care not to reveal confidential information). Consider whether you will be able to influence the business practices of the company. Discuss your concerns

Case Study 6 Inappropriate business practices (continued)

with the new employer and ask whether they can help resolve this issue with you. If this seems unlikely, and you wish to withdraw, consider taking legal advice (e.g., through the Citizens Advice Bureau), and withdraw from the role. At all times keep your family aware of your concerns, approach and possible implications.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

Case Study 7 Inducements for non-disclosure of information

Outline of the case

You have been with your employer less than a year but things have not turned out well and you are moving on. You have some grave concerns about business conduct, and believe there maybe issues which should be disclosed (to auditors or the regulator). You are negotiating a compromise agreement, and you have been led to understand that if you report any concerns you will not receive a settlement, whereas if you agree to a gagging clause then you will receive a substantial payoff.

Key fundamental principles

***Integrity**—How far do you need to go to demonstrate your integrity?*

***Objectivity**—How will you manage the conflict between financial benefit and integrity?*

***Confidentiality**—Is there any basis on which you could make disclosures?*

Discussion

Identify relevant facts: Do you have the facts to back up your discomfort? Do you have all the facts, or only a selection, and can you get to the rest? What steps have you already taken to try to resolve your concerns, and are they documented? Do you understand how to use Public Interest Disclosure Act (PIDA) to obtain protection?

Identify affected parties: Key affected parties are you and the employer. Other possible affected parties are the regulator, auditor, and the public, as well as your family.

Who should be involved in resolution: Consider not just whom you should involve, but also why and when. Can your Institute provide help and advice? Are there trusted colleagues with whom you can discuss your position?

Case Study 7 Inducements for non-disclosure of information (continued)

Can you talk with the prospective employer about your concerns? Have you made full disclosures to your solicitor, and received advice? Have you discussed the matter with your family?

Possible course of action

Try to keep the issues clear. One is how to deal with the issues of concern; the second is achieving a satisfactory financial settlement. Take advice early and often. It is key to establish whether the facts support your concerns. If so, you must judge if there is a basis for disclosure—your Institute can advise you—and whether PIDA can provide any protection to you (Public Concern at Work can provide confidential advice http://www.pcaw.co.uk.). If there is a basis, you need to determine what the value and consequences of that disclosure might be for you, your family, the firm, the industry and the profession. Resist the gagging clause, and argue for your concerns about the company's behaviour to be documented and considered by the executive body. Ensure that your family is at all times aware of your concerns, actions and implications, but take care not to reveal confidential information.*

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

Case Study 8 Earnings management

Outline of the case

You are the Financial Controller in a family business, though in reality you would be considered to be the Finance Director. After some financial difficulties a bank and a venture capitalist have invested and acquired over 33% of the shares, but no Board seats. The continuing support of the Bank and Venture Capitalist are dependent on performance figures being achieved. You have been told that if you put in the "right" figures you will get a large bonus and 1% share option.*

The company is secretive and as little information as possible being given to the auditors and the investors. You believe that some figures may be being 'massaged'. You have tentatively raised your concerns with the father and son Chairman and Chief Executive. You have been told that if you pursue the matter and/or fail to put in the right figures you will lose the bonus and share option.

* See Definitions

Case Study 8 Earnings management (continued)

Key fundamental principles

Integrity—*Can you support the business without being involved in potentially misleading information?*

Objectivity—*How can you avoid your financial interest* influencing your professional judgement?*

Professional Behaviour—*How will you manage relationships with the affected parties?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, applicable laws and regulations. Double check your facts, including forecast figures and the assumptions underlying them. Consider whether the culture of secrecy means that you are not in possession of material facts and challenge the management if necessary.

Identify affected parties: Key parties are you, the family, professional advisers, bankers and venture capitalists. Other possible affected parties are your family, the Institute and the profession.

Who should be involved in resolution: Consider not just whom you should involve, but also why and when. Are there trusted colleagues or friends with whom you can discuss your position? Can your Institute provide advice and assistance? Have you discussed the matter with your family?

Possible course of action

Discount the short-term financial benefits on offer. Prepare a range of forecasts for the family, and impress on them the implications of short-term manipulation in the long term. Encourage the family to focus on the underlying business issues, and address them to enhance long term value. Draw up realistic figures for presentation, and explain how your professional standing demands that these be presented. Do not become involved in manipulation, and do not allow your name to be associated with figures not prepared by you. Consider whether the values of the organisation are consistent with your own, and if necessary your employment options.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

* See Definitions

Case Study 9 Disclosing personal information

Outline of the case

You are the Finance Director of a district council. The Chairman of the finance committee approaches you asking to see all the information the housing benefits Section of your department hold about the financial and personal affairs of a councilor.

The Chairman of the finance committee insists on seeing this information (saying he will not disclose the source), even though he cannot identify any legitimate reason. The Chairman is not willing for you to contact the councillor about this.

Key fundamental principles

***Integrity**—Would the actions proposed be fair and honest? Would there be any breaches of trust?*

***Objectivity**—Where is the boundary between your duty to the employer and that to the claimant? How do you avoid being brought into political wrangling that could compromise you in the future?*

***Confidentiality**—Are there proper grounds for disclosing the information?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, applicable laws and regulations. Relevant facts may include allegations of fraud or impropriety on the part of the councilor, whether in the public domain or not.

Identify affected parties: Key affected parties are the Chairman and the Councilor. Other possible affected parties are the committee the Chairman represents, political allies and opponents of the two core parties, those responsible for the administration of Housing Benefit, and the officer responsible for Data Protection.

Who should be involved in resolution: Consider not just whom you should involve, but also why and when. You and Chairman must engage effectively. Other parties may need to be drawn in depending on the facts, but may include Data Protection officers, housing benefits officers, legal officers and Internal Audit representatives. It is possible that senior council figures may need to support you in resisting the Chairman.

Case Study 9 Disclosing personal information (continued)

Possible course of action

Try to get the request formalised in memorandum form, with reasons appended, and maintain a file of related correspondence. If this is not forthcoming, ensure that notes are made and kept off site. Impress on the Chairman, the duty of confidentiality and legal implications associated with the request, if necessary with the help of specialist or legal knowledge. Refer the Chairman to public domain information, if any, but deny access to other information. Try to establish whether there is a basis for investigating the councilor, e.g., for reasons of suspected impropriety, and the reasons why the councilor should not be asked for consent. Determine whether in the light of those reasons, internal or external investigation may be appropriate, and who by; and whether or not it is appropriate to inform the councilor of the request and any follow-up actions.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

Case Study 10 Transfer of funds to an offshore account

Outline of the case

You work as an interim Finance Director. You are not an Executive Director, do not attend board meetings and don't appear as a Director on the Companies House register. A newly appointed director paid a substantial sum of money into the company to save it from financial collapse. The new director asked you to transfer several thousands of pounds into an off-shore account. When an explanation was sought the director told you that the sum was to pay for work. However, no invoice or supporting documents were offered. You received a memorandum instructing you to make the payment and confirmation that the transaction was to pay for legitimate expenses. You conclude that as you are an employee you cannot refuse in the absence of evidence that you are being asked to commit a crime or other irregularity. You therefore make the payment but express concern to the Chief Executive and Chairman. Shortly after challenging the director you are informed your interim role could not continue due to financial difficulties.

An Insolvency Practitioner who has been appointed as administrator has contacted you. He is seeking details from you.

Case Study 10 Transfer of funds to an offshore account **(continued)**

Key fundamental principles

Integrity*—Were the actions you took, and would any conversation with the liquidator be, unfair, untruthful or dishonest in any way?*

Objectivity*—Where is the boundary between your duty to the former employer and the Insolvency Practitioner?*

Confidentiality*—Are there proper grounds for disclosing the information?*

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, applicable laws and regulations. Of particular relevance might be Proceeds of Crime Act 2002, and provisions relating to 'furthering, concealing, aiding, abetting' money laundering. Have you made records of how you attempted to deal with the offshore payment, and the responses?

Identify affected parties: Key affected parties are you, the investor/ director, the Administrator and creditors. Other possible affected parties are the Institute and profession as a whole, as well as your family.

Who should be involved in resolution: Consider not just whom you should involve, but also when and why. Take advice early and often from your Institute, and if necessary from a lawyer.

Possible course of action

You will normally be able to cooperate openly with an administrator, but you should ask for an explicit statement from the Administrator of the authority under which he is requesting the information. On receipt, consider seeking legal advice, unless you are very familiar with the law and your duties in respect of it. Open a dialogue with the administrator, and try to establish the scope of the enquiry. If there is any suggestion of potential action against you for wrong-doing, seek further legal advice and continue your discussions under legal guidance. Ensure that you keep a record of all interactions with the administrator.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

The Practice of Insolvency (Part D)

Section 400 Introduction and Fundamental Principles
Appendix to Section 400

Section 400 Introduction and Fundamental Principles

(Issued as Statement 1.202 January 2004: reformatted September 2006)

400.1 *The practice of insolvency is principally governed by statute and secondary legislation. This document guides insolvency practitioners in relation to circumstances applying outside both. An Insolvency Practitioners' principal guide will be the fundamental principles.*

Fundamental Principles

400.2 *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 they deliver a client or employer receives competent professional service based on current developments in practice, legislation and techniques is delivered. 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.

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* See Definitions

(e) Professional Behaviour
An Insolvency Practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession.

400.3 *It is the Code of Ethics, and the spirit that underlies it, that govern the conduct of practitioners. Failure to observe the Code may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of a practitioner. Whereas the Competence of practitioners is a statutory requirement for the granting of a licence (and is therefore assessed by monitoring), the fundamental principle of objectivity is the most common to be applied to the situations in which practitioners work, and experience has shown it is in this respect that practitioners need detailed guidance. It is therefore to that fundamental principle that the following Framework is addressed, though it has to be stressed that the others are of equal importance and application.*

Framework Approach: Threats to Objectivity
400.4 *This Section provides a framework within which practitioners can identify actual or potential threats to objectivity, and whether there are any safeguards that might be available to offset them. The practitioner's objectivity is most likely to be impaired by conflicts of interest. The framework is directed to situations which involve potential conflicts of one kind or another. The practitioner should beware of conflicts of interest. They threaten the practitioner's objectivity in two ways:*

(a) Self-review threat, and
(b) Self-interest threat.

400.5 *Objectivity can be impaired in two principal ways:*

(a) if the practitioner's exercise of professional judgement may be influenced by an earlier such exercise in relation to the same entity, in which case a question of 'self-review' may arise. It might also be that the practitioner's familiarity, either with the individuals or subject-matter connected with the appointment, is too great; and
(b) if the practitioner has a 'self-interest' in an appointment.

400.6 *Self-review threats relate to situations where the practitioner has or had a 'material professional relationship' with the company or individual in relation to which or whom the appointment is taken. 'Material professional relationship' is explained more fully below and see the Appendix for specific examples.*

400.7 *There is a subset of self-review threats, know as Familiarity or Trust threats. These threats arise from personal contacts, either before or after the commencement of the insolvency process, between the insolvency practitioner and other individuals; be they the individual to whom, or individuals connected with the entity to which, the insolvency appointment is made. The insolvency practitioner may be over-influenced by the personality and qualities of those individuals or by trusting representations they make, or may fail to make adequate enquiries as to either.*

400.8 *Self-interest threats are those which can affect the reasoning the practitioner applies because it is, or might be, affected by considerations that*

either favour, or are prejudicial or disadvantageous to the practitioner. Again, familiarity or trust threats may be present in this context, where, for example, there is a personal connection between the insolvency practitioner and a director of an insolvent company.

400.9 *Threats falling either within 400.5 (a) or 400.5 (b) may be general in nature or peculiar to the particular circumstances of the case. They require the practitioner to consider them in the light of the circumstances in which the appointment is offered or undertaken. It is always a matter for the practitioner to assess whether he or she may accept and/or continue an engagement in the particular context that obtains at the time.*

400.10 *It will always be up to the practitioner to justify his or her actions in cases of doubt. Whether the practitioner takes or continues an appointment will depend on what threats there are and whether, in that event, the introduction of safeguards would overcome those threats. Sometimes, though, the mere perception of risk or conflict will tend to undermine confidence in the practitioner's objectivity, and so make acceptance or continuation unwise.*

400.11 *The practitioner must not only be satisfied as to the actual objectivity which he or she can bring to their judgement, decisions and conduct, but also must be mindful of how they will be perceived by others.*

400.12 *A practitioner should also be aware of the threat to objectivity if he or she were to engage in regular or reciprocal arrangements in relation to appointments with another practice or organisation. The framework is essentially rule/prohibition-based because of the nature of insolvency.*

400.13 *The self-interest and self-review threats referred to in the Appendix require the practitioner to decline or resign appointment, unless in the individual examples of each, there is stated a means by which appointment can be accepted.*

400.14 *The self-review threats relate to circumstances existing before the appointment is offered compared with those existing at the date of acceptance (or during the currency) of an insolvency appointment. Where there has been a 'material professional relationship' with the company or individual, there will be a self-review threat. The threat that lies behind a 'material professional relationship' is that the insolvency practitioner, who is the custodian of what are often competing interests in the prosecution of an insolvency appointment, may improperly and inappropriately advocate or favour one or more of those interests. In that way, the practitioner's objectivity is lost. Any such relationship will normally require the practitioner to decline appointment and assess before an appointment is accepted.*

400.15 *There appears in the Appendix a series of the most common situations in which practitioners are required to decline a particular appointment.*

400.16 *It is improper for a practitioner to be influenced by self-interest threats which arise from a significant financial or other benefit accruing, or which might*

accrue, to the practitioner or to anyone with whom the practitioner is associated or connected, or by the avoidance of disadvantage to all or some of these.

400.17 *There appears in the Appendix to this Section, a number of situations in which 'self-interest' threats have to be identified and assessed before an appointment is accepted. Note: The Appendix is a non-exclusive list of common situations in which the self-review and self-interest threats are often present. As such, it is subordinated to the body of the Code, and the Insolvency fundamental principles in particular.*

Appendix to Section 400

This Appendix includes 'particular circumstances', common situations in which practitioners may face ethical dilemmas, analysed by reference to the framework.

Group A – Examples of the Self-Review Threats

Introduction

1 *Paragraphs 3 to 23 inclusive refer to specific situations in which a practitioner may not properly accept appointment because the concept of 'material professional relationship' is central to them.*

2 *In situations other than those dealt with, a practitioner should only accept office in any insolvency role sequential to one in which the practitioner or his or her practice or a current employee or partner of the practice has previously acted after giving careful consideration to the implications of acceptance in all the circumstances of the case, and satisfying himself or herself that objectivity is unlikely to be, or appear to be, impaired, by a prospective conflict of interest or otherwise. If the practitioner remains in doubt as to his or her position, the matter should be drawn to the attention of his/her authorising body. The attention of practitioners is drawn to the statutory disqualification on acting as an insolvency practitioner in Section 390 of the Insolvency Act 1986.*

The Concept of Material Professional Relationship

3 *A material professional relationship with a client, such as is referred to in paragraphs 8 to 10 below, arises where a practice or, subject to the provisions of paragraphs 31 and 32 (below), a principal or employee of the practice, is carrying out, or has during the previous three years carried out, material professional work for that client. Material professional work would include the following:*

(a) where a practice or person has carried out, or has been appointed to carry out, audit work for a company or individual to which the appointment is being considered; or

(b) where a practice or person has carried out one or more assignments, whether of a continuing nature or not, of such overall significance or in such circumstances that a practitioner's objectivity in carrying out a subsequent insolvency appointment might be, or be seen to be, impaired.

4 *A material professional relationship with a company or individual (as referred to in paragraphs 8 to 10 below) includes any material professional relationship with companies or entities controlled by that company or individual or under common control, where the relationship is material in the context of the company or individual to whom appointment is being sought or considered.*

5 *A material professional relationship could also arise where a practice or person has carried out professional work for any director or shadow director of a company of such a nature that a practitioner's objectivity in carrying out a subsequent insolvency appointment in relation to that company could be or could reasonably be seen to be prejudiced.*

6 *In forming views as to whether a material professional relationship exists, practitioners should have regard to existing or previous relationships with firms with which they are, or have been associated which might impair, or appear to impair, their objectivity, including relationships whereby they or their firm are held out by name, association or other public statements as being part of a national or international association.*

7 *A practitioner should take reasonable steps prior to his acceptance of any insolvency appointment to ascertain whether any of the above work has been performed.*

Appointment as Nominee andlor Supervisor of a Company Voluntary Arrangement, Administrator, Administrative or Other Receiver

8 *Where there has been a material professional relationship (as to which see paragraphs 3–7 above) with a company, no principal or employee of the practice should accept appointment as nominee or supervisor of a voluntary arrangement, administrator or administrative or other receiver in relation to that company. (See also paragraphs 11–14 and 31 and 32 below).*

Appointment as Nominee andlor Supervisor of an Individual Voluntary Arrangement, Trustee in Bankruptcy or Trustee under a Deed of Arrangement

9 *Where there has been a material professional relationship (as to which see paragraph 3–7 above) with an individual, no principal or employee of the practice should accept appointment as nominee or supervisor of a voluntary arrangement or as trustee in bankruptcy or as a trustee under a deed registered under the Deeds of Arrangement Act 1914 in relation to that individual. (See also paragraphs 31 and 32 below).*

Appointment as Liquidator

10 *Where there has been a material professional relationship (as to which see paragraphs 3–7 above) with a company, no principal or employee of the practice should accept appointment as liquidator of the company if the company is insolvent. Where the company is solvent such appointments should not be accepted without careful consideration being given to all the implications of acceptance in the particular case, and a practitioner should satisfy himself or herself that the directors' declaration of solvency is likely to be substantiated by events. (See also paragraphs 31 and 32 below).*

Appointment as Investigating Accountant at the Instigation of a Creditor

11 *A material professional relationship would not normally arise where the relationship is one which springs from the appointment of the practice by, or at the instigation of, a creditor or other party having a financial interest in a company or business, to investigate, monitor or advise on its affairs provided that:*

(a) there has not been a direct involvement by a principal or employee of the practice in the management of the company or business; and
(b) the practice continues to have its main client relationship with the creditor or other party, rather than with the company or proprietor of the business, and the company or the proprietor of the business is aware of this.

12 *If the circumstances of the initial appointment are such as to prevent the open discussion of the financial affairs of the company with the directors, an investigating practitioner or other principal in the practice may be called upon to justify the propriety of their acceptance of the subsequent appointment.*

13 *Where a practitioner or his/her firm has undertaken an investigation into the financial affairs of a company at the request of a secured creditor of the company, and he/she is asked, as a consequence, by that creditor to accept appointment as administrator or administrative receiver, he/she must satisfy himself/herself that the company, acting by its board of directors, does not object to his/her acceptance of the appointment. If the company does object, but the creditor still wishes to appoint the practitioner, he/she should separately consider whether the circumstances are such that, in accepting the appointment, he/she will be able to act and be seen to act independently and effectively.*

14 *Where in exceptional circumstances, prior warning of an appointment is not given to the company by the secured creditor, the practitioner should objectively and independently consider all relevant issues, including the reasons for such decision, before accepting appointment.*

Conversion of Members' Voluntary Winding-up into Creditors' Voluntary Winding-up

15 *Where a practitioner has accepted appointment as liquidator in a members' voluntary winding up and is obliged to summon a creditors' meeting under Section 95 of the Insolvency Act 1986 because it appears that the company will be unable to pay its debts in full within the period stated in the directors' declaration of solvency, the practitioner's continuance as liquidator will depend on whether he or she believes that the company will eventually be able to pay its debts in full or not.*

(a) If the company will not be able to pay its debts in full and the practitioner has previously had a material professional relationship with the company such as is set out in paragraphs 3–7 above, the practitioner should not accept nomination under the creditors' winding up.
(b) If the company will not be able to pay its debts in full but the practitioner has had no such material professional relationship, the practitioner may accept nomination by the creditors and continue as liquidator with the creditors'

approval, subject to giving careful consideration as to the implications, etc referred to in the Introduction to this Appendix.

(c) If the practitioner believes that the company will eventually be able to pay its debts in full, the practitioner may accept nomination by the creditors and continue as liquidator. However, if it should subsequently appear that this belief was mistaken, the practitioner must then resign, and may not accept re-appointment, if he or she has previously had a material professional relationship with the company.

Insolvent Liquidation Following an Appointment as Administrative or Other Receiver

16 *Where a principal or employee of a practice (subject to the provisions of paragraphs (31 and 32 below) is, or, in the previous three years, has been administrative receiver of a company, or a receiver under the Law of Property Act 1925 or otherwise, of any of its assets, no principal or employee of the practice should accept appointment as liquidator of the company in an insolvent liquidation.*

17 *This restriction does not apply where the previous appointment was made by the Court. However, before a Court-appointed receiver accepts subsequent appointment as liquidator, the practitioner should give careful consideration as to whether his or her objectivity might be, or appear to be, impaired and, if so, the appointment should be refused.*

Liquidation Following Appointment as Supervisor of a Voluntary Arrangement or Administrator

18 *Where a practitioner, or any principal or employee of his practice, has been supervisor of a voluntary arrangement or administrator of a company, the practitioner may, if the considerations indicated in the Introduction to the Annex above are satisfied, accept appointment as liquidator if so nominated by the creditors or appointed by the Secretary of State under section 137 of the Insolvency Act 1986.*

19 *However, where the relevant previous role is that of administrator, the practitioner should not accept nomination or appointment as liquidator unless either:*

(a) the practitioner has the support of a creditors' committee appointed under Section 26 of the Insolvency Act 1986; or

(b) the practitioner has the support of a meeting of creditors called either under the Act or informally, of which all known creditors have been given notice.

Bankruptcy Following Appointment as Supervisor of an Individual Voluntary Arrangement

20 *Where a practitioner, or any principal or employee of his or her practice, has been supervisor of a voluntary arrangement in relation to a debtor, the practitioner may, provided the considerations indicated in the Introduction to the Annex above are satisfied, accept appointment as trustee in bankruptcy of that debtor provided that it is effected by a general meeting of the creditors under the*

provisions of Section 292(1)(a) of the Insolvency Act 1986, or if the practitioner has been appointed by the Court under Section 297(5) of the Act, or by the Secretary of State under Section 296 of the Act.

Administrator, Nominee and/or Supervisor of a Voluntary Arrangement Following Appointment as Administrative Receiver or LPA or Other Receiver

21 *Where a principal or employee of a practice (subject to the provisions of paragraphs 31 and 32 below) is, or in the previous three years has been, an administrative receiver of a company, or a receiver under the Law of Property Act 1925 or otherwise, of any of its assets, no principal or employee of the practice should accept appointment as administrator or nominee and/or supervisor of a voluntary arrangement of the company, unless the previous appointment was made by the Court.*

Audit Following Appointment as Supervisor of a Voluntary Arrangement, Administrator or Administrative or Other Receiver

22 *Where a principal or employee of a practice (subject to the provisions of paragraphs 31 and 32 below) has acted as supervisor of a voluntary arrangement, administrator or administrative receiver of a company, or receiver of any of its assets, no principal or employee of the practice should accept appointment as auditor of the company for any accounting period during which the supervisor, administrator or receiver acted.*

Pension Schemes of Companies in Liquidation, Administration or Receivership – Appointment of 'Independent Trustee'

23 *A practitioner should not appoint a principal or employee of his or her practice, or any close connection of any of the above or of himself or herself, as 'Independent Trustee' of the pension scheme of a company of which he or she is the liquidator, administrator or administrative or other receiver.*

Group B – Examples of the Self-Interest Threats

Personal Relationships

24 *The current legislation includes specific duties to report on the conduct of directors or shadow directors of an insolvent company. (See for example the requirement under Section 7 (a) of the Company Directors Disqualification Act 1986 to report 'unfit' conduct to the Secretary of State, and Sections 213 and 214 of the Insolvency Act 1986 on fraudulent trading and wrongful trading). Practitioners should have regard at all times to the spirit of objectivity and should not accept an insolvency appointment in relation to a company where any personal connection with a director, former director or shadow director of the company, is such as to impair or reasonably appear to impair the practitioner's objectivity. Nor should a practitioner accept an insolvency appointment in relation to an individual where any personal connection with the individual is such as to impair or reasonably appear to impair the practitioner's objectivity.*

25 *The attention of practitioners is also drawn to the definitions relating to*

persons 'connected' with a company in Sections 249 and 435 of the Insolvency Act 1986. This concept of 'connection' or 'relationship' is explored in a different context below (see paragraphs 29 and 30).

Relationship with a Debenture Holder

26 *A practitioner should, in general, decline to accept an insolvency appointment in relation to a company if he or she, or a principal or employee of the practice, has such a personal or close and distinct business connection with the debenture holder as might impair or appear to impair the practitioner's objectivity. It is not considered likely that a 'close and distinct business connection' would normally exist between an insolvency practitioner and, for example, a clearing bank or other major financial institution. However, such a close and distinct business connection would exist where a practitioner, a principal or employee of the practice, holds an insolvency appointment to such a bank or financial institution.*

Purchase of the Assets of an Insolvent Company or Debtor

27 *The Insolvency Rules 1986 contain prohibitions on members of a liquidation or creditors' committee acquiring any asset in the estate of an insolvent company or debtor (save with leave of the Court or the committee). Save in circumstances which clearly do not impair the practitioner's objectivity, a practitioner appointed to any insolvency appointment in relation to a company or debtor, should not himself or herself acquire, directly or indirectly, any of the assets of the company or debtor, nor knowingly permit any principal or employee of his or her practice, or any close relative of the practitioner or of a principal or employee, directly or indirectly, to do so. Where a contract is already in existence between the insolvent company or debtor and a principal or employee of the practitioner's practice, the practitioner should draw the matter to the attention of his/her authorising body.*

Obtaining Insolvency Work

28 *The special nature of insolvency appointments makes the payment or offer of any commission for, or the furnishing of any valuable consideration towards, the introduction of insolvency appointments inappropriate. This does not, however, preclude an arrangement between a practitioner and a bona fide employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the practitioner through the efforts of the employee.*

Other Potential Conflicts of Interest

Group, Associated and Family-Connected Companies

29 *Practitioners should be particularly aware of the difficulties likely to arise from the existence of inter-company transactions or guarantees in group, associated or 'family-connected' company situations. Acceptance of an insolvency appointment in relation to more than one company in the group or association may raise issues of conflict of interest. Nevertheless it may be impracticable for a series of different insolvency practitioners to act. A practitioner should not*

accept multiple appointments in such situations unless the practitioner is satisfied that he or she is able to take steps to minimise problems of conflict and that his or her overall integrity and objectivity are, and are seen to be, maintained.

Relationships Between Insolvent Individuals and Insolvent Companies

30 *A practitioner who, or a principal or employee of whose practice, is acting as insolvency practitioner in relation to an individual may be asked to accept an insolvency appointment in relation to a company of which the debtor is a major shareholder or creditor or where the company is a creditor of the debtor. It is essential, if the practitioner is to accept the new appointment, that the practitioner should be able to show that the steps indicated in the paragraph above have been taken. Similar considerations apply if it is the company appointment which precedes the individual appointment.*

Transfer of Principals and Employees including Practice Mergers

31 *When two or more practices merge, principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new insolvency appointments to clients of either of the former practices. However, existing appointments which are rendered in apparent breach of guidance by such merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate conflict, such as a potential need to sue a new colleague.*

32 *Where a principal or an employee of a practice has, in any former practice, undertaken work upon the affairs of a company or debtor in a capacity which is incompatible with an insolvency assignment of his new practice, the practitioner should not personally work or be employed on that assignment, save in the case of an employee of such junior status that his or her duties in the former practice did not involve the exercise of any material professional judgement or discretion.*

Joint Appointments

33 *A practitioner who is invited to accept an insolvency appointment jointly with another practitioner should be guided by similar principles to those set out in relation to sole appointments. Where a practitioner is specifically precluded by the guidance herein from accepting an insolvency appointment as an individual, a joint appointment will not render the appointment acceptable.*

Solicitation for Proxies

34 *In addition to any statutory consequences which it may incur, solicitation for insolvency work in any way amounting to that which a reasonable person would regard as harassment, or otherwise so as to represent a breach of the guidance will be taken into account when considering whether a practitioner should continue to be authorised.*

In terms of the Insolvency Rules 1986, remuneration may be disallowed to a liquidator (Rule 4.150) or trustee (Rule 6.148) whose appointment has been procured by improper solicitation.

Examples in Respect of Cases Conducted under Scottish Law

Appointment as Trustee under a Trust Deed for creditors, Trustee in bankruptcy or as an agent of the Accountant in Bankruptcy

35 *Where there has been a material professional relationship with a client, no principal or employee of the practice should accept appointment as Trustee in a Trust Deed or as Interim or Permanent Trustee in Sequestration or as an agent of the Accountant in Bankruptcy in relation to that client.*

Bankruptcy following appointment as Trustee under a Trust Deed for creditors and where the Accountant in Bankruptcy is Permanent Trustee

36 *Where a member, or any principal or employee of his practice, has been Trustee under a Trust Deed for creditors, the member may, provided the considerations under the self review threat and the material professional relationship clauses are satisfied, accept appointments as Interim or Permanent Trustee in Sequestration.*

Where the Accountant in Bankruptcy is the Permanent Trustee, a member may, provided the considerations above are satisfied, accept appointments as agent in the Sequestration.

Definitions

In this Code the following expressions have the following meanings assigned to them:

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. (For an assurance client that is a financial statement audit client see the definition of financial statement audit client*.)
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. (www.ifac.org/IAASB/).

* See elsewhere within Definitions

Note on assurance engagements

To assist the professional accountant in determining what engagements fall to be considered as assurance engagements, and thus fall within the scope of Section 290, a number of paragraphs from the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board, are included in an Appendix to these Definitions.*

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*. For the purposes of a financial statement audit engagement* this includes those at all successively senior levels above the engagement partner* through the firm's* chief executive;

(ii) those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement*; and

(iii) those who provide quality control for the assurance engagement*, including those who perform the engagement quality control review for the assurance engagement*; and

(c) For the purposes of a financial statement audit client*, all those within a network firm* who can directly influence the outcome of the financial statement audit engagement*.

Audit committee

Those charged with governance. This may be a separate committee or the full Board.

Audit engagement

An engagement to perform an audit of financial statements, that requires to be performed in accordance with auditing standards issued by the Auditing Practices Board.*

* See elsewhere within Definitions

	Note on the definition of Audit engagement *The Auditing Practices Board (APB) auditing standards apply to audits of financial statements. Paragraphs 2 and 2–1 of ISA (UK and Ireland) 200, issued by the APB, state:* *'2. The objective of an audit of financial statements is to enable the auditor to express an opinion whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework. The phrases used to express the auditor's opinion are "give a true and fair view" or "present fairly, in all material respects," which are equivalent terms.* *2–1. The "applicable financial reporting framework" comprises those requirements of accounting standards, law and regulations applicable to the entity that determine the form and content of its financial statements.'*
Clearly insignificant	A matter that is deemed to be both trivial and inconsequential.
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 or result of a transaction or the result of the work performed. A fee that is established by a court or other public authority is not a contingent fee.
Direct financial interest	A financial interest*: • Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or • Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control.
Director or officer	Those charged with the governance of an entity, regardless of their title, which may vary from country to country. *Whether or not a person is an officer within the meanings of the Companies Acts is not relevant for the purposes of this Code.*

* See elsewhere within Definitions

Due diligence	*A term used to describe a wide range of services with or without the inclusion of an expression of professional opinion. It is work commissioned by a client involving enquiries into specified aspects of the accounts, organisation and activities of an undertaking.*
Engagement team	All personnel performing an engagement, including any experts contracted by the firm* in connection with that engagement.
Existing accountant	A professional accountant in public practice* currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services* for a client.
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	The balance sheets, income statements or profit and loss accounts, statements of changes in financial position (which may be presented in a variety of ways, for example, as a statement of cash flows or a statement of fund flows), notes and other statements and explanatory material which are identified as being part of the financial statements.
Financial statement audit client	An entity in respect of which a firm* conducts a financial statement audit engagement*. When the client is a listed entity*, financial statement audit client* will always include its related entities*.
Financial statement 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 in accordance with an identified financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing. This includes a Statutory Audit, which is a financial statement audit required by legislation or other regulation.

* See elsewhere within Definitions

	Note that 'reasonable assurance' is a term used by the International Auditing and Assurance Standards Board to denote an assurance opinion which, while giving less than absolute assurance, is expressed in a positive form.
Firm	(a) A *member firm**; (b) An entity that controls such parties; and (c) An entity controlled by such parties.
Immediate family	A spouse (or equivalent) or dependant.
Independence	Independence is: (a) Independence of mind – the states of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional judgement. (b) Independence in appearance – the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's*, or a member of the assurance team's*, integrity, objectivity or professionals scepticism had 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.
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.
Loan	*A loan is a sum of money lent, whether direct or through a third party, with the intention that it will be repaid with or without interest.*
Member	*A member of the Institute, an affiliate, an employee of a member firm* or affiliate, or a provisional member*.
Member firm	*This means, for the purposes of this Code:*

* See elsewhere within Definitions

(a) A member 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 members; 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 members; 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 members; and*

(ii) More than 50 per cent of the nominal value of the voting shares is held by members*; and*

(iii) More than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by members*.*

Network firm — An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm* nationally or internationally.

Partner or Principal — *References to a partner or principal of a firm* include the following:*

- *A partner/principal;*
- *A sole-practitioner;*
- *A director of a corporate firm;*
- *A member of a limited liability partnership;*
- *An employee of a corporate firm who is:*
  - *A responsible individual within the meaning of the Audit Regulations;*
  - *A licensed insolvency practitioner; or*
  - *Defined as such in circumstances determined by Council.*

Professional Accountant — *A member* or where appropriate, member firm*.*

* See elsewhere within Definitions

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. *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*.*
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.
Professional services	Services requiring accountancy or related skills performed by a professional accountant* including accounting, auditing, taxation, management consulting and financial management services.
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 provided the client is material to such entity; (b) An entity with a direct financial interest* in the client provided that such entity has significant influence over the client and the interest in the client is material to such entity; (c) An entity over which the client has direct or indirect control; (d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest* that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and

* See elsewhere within Definitions

(e) An entity which is under common control with the client (hereinafter a 'sister entity') provided the sister entity and the client are both material to the entity that controls both the client and sister entity.

In the above definition, 'client' refers to an assurance client or a financial statement audit client* as appropriate to the engagement.*

Shares — *Reference to shares should be taken to include debentures, loan stocks, bonds, units, rights, warrants, options, partnership interests and the like. A person's holdings include holdings by a nominee on behalf of that person or by a trust created by that person for his or her personal benefit.*

Note on use of 'should' in this Code.

As noted in Section 1, professional accountants are expected to follow the guidance contained in the fundamental principles in all of their professional and business activities whether carried out with or without reward and in other circumstances where to fail to do so would bring discredit to the profession. A professional accountant should also follow the requirements in the illustrations, including prohibitions or mandatory actions, where circumstances are the same as, or analogous to, those addressed by those illustrations. Failure to follow such guidance may be justified in those rare circumstances where to follow a precise prohibition or mandated action would result in failure to adhere to the fundamental principles. See also Section 1, paragraphs 1.1 and 1.4.*

Appendix to Definitions – Extracts from International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board

7 *'Assurance engagement' means an engagement in which a practitioner 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.*

8 *The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. For example:*

- *The recognition, measurement, presentation and disclosure represented in the financial statements (outcome) result from applying a financial reporting framework for recognition, measurement, presentation and disclosure, such as International Financial Reporting Standards, (criteria) to an entity's financial position, financial performance and cash flows (subject matter).*

* See elsewhere within Definitions

- *An assertion about the effectiveness of internal control (outcome) results from applying a framework for evaluating the effectiveness of internal control, such as COSO[8] or CoCo,[9] (criteria) to internal control, a process (subject matter).*

In the remainder of this Framework, the term 'subject matter information' will be used to mean the outcome of the evaluation or measurement of a subject matter. It is the subject matter information about which the practitioner gathers sufficient appropriate evidence to provide a reasonable basis for expressing a conclusion in an assurance report.

9 *Subject matter information can fail to be properly expressed in the context of the subject matter and the criteria, and can therefore be misstated, potentially to a material extent. This occurs when the subject matter information does not properly reflect the application of the criteria to the subject matter, for example, when an entity's financial statements do not give a true and fair view of (or present fairly, in all material respects) its financial position, financial performance and cash flows in accordance with International Financial Reporting Standards, or when an entity's assertion that its internal control is effective is not fairly stated, in all material respects, based on COSO or CoCo.*

10 *In some assurance engagements, 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. These engagements are called 'assertion-based engagements.' In other assurance engagements, the practitioner 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. These engagements are called 'direct reporting engagements'.*

11 *Under this Framework, there are two types of assurance engagement a practitioner is permitted to perform: a reasonable assurance engagement and a limited assurance engagement. The objective of a reasonable assurance engagement is a reduction in assurance engagement risk to an acceptably low level in the circumstances of the engagement[10] as the basis for a positive from of expression of the practitioner's conclusion. The objective of a limited assurance*

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* See elsewhere within Definitions

[8] *'Internal Control – Integrated Framework' The Committee of Sponsoring Organizations of the Treadway Commission.*

[9] *'Guidance on Assessing Control – The CoCo Principles' Criteria of Control Board, The Canadian Institute of Chartered Accountants.*

[10] *Engagement circumstances include the terms of the engagement, including whether it is a reasonable assurance engagement or a limited assurance engagement, the characteristics of the subject matter, the criteria to be used, the needs of the intended users, relevant characteristics of the responsible party and its environment, and other matters, for example events, transactions, conditions and practices, that may have a significant effect on the engagement.*

engagement is a reduction in assurance engagement risk to a level that is acceptable in the circumstances of the engagement, but where that risk is greater than for a reasonable assurance engagement, as the basis for a negative form of expression of the practitioner's conclusion.

12 *Not all engagements performed by practitioners are assurance engagements. Other frequently performed engagements that do not meet the above definition (and therefore are not covered by this Framework) include:*

- *Engagements covered by International Standards for Related Services, such as agreed-upon procedures engagements and compilations of financial or other information.*
- *The preparation of tax returns where no conclusion conveying assurance is expressed.*
- *Consulting (or advisory) engagements[11] such as management and tax consulting.*

13 *An assurance engagement may be part of a larger engagement, for example, when a business acquisition consulting engagement includes a requirement to convey assurance regarding historical or prospective financial information. In such circumstances, this Framework is relevant only to the assurance portion of the engagement.*

14 *The following engagements, which may meet the definition in paragraph 7, need not be performed in accordance with this Framework:*

(a) Engagements to testify in legal proceedings regarding accounting, auditing, taxation or other matters; and

(b) Engagements that include professional opinions, views or wording from which a user may derive some assurance, if all of the following apply:

(i) Those opinions, views or wording are merely incidental to the overall engagement;

(ii) Any written report issued is expressly restricted for use by only the intended users specified in the report;

(iii) Under a written understanding with the specified intended users, the engagement is not intended to be an assurance engagement; and

(iv) The engagement is not represented as an assurance engagement in the professional accountant's report.

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[11] *Consulting engagements employ a professional accountant's technical skills, education, observations, experiences, and knowledge of the consulting process. The consulting process is an analytical process that typically involves some combination of activities relating to: objective-setting, fact-finding, definition of problems or opportunities, evaluation of alternatives, development of recommendations including actions, communication of results, and sometimes implementation and follow-up. Reports (if issued) are generally written in a narrative (or 'long form') style. Generally the work performed is only for the use and benefit of the client. The nature and scope of work is determined by agreement between the professional accountant and the client. Any service that meets the definition of an assurance engagement is not a consulting engagement but an assurance engagement.*

15 *A practitioner reporting on an engagement that is not an assurance engagement within the scope of this Framework, clearly distinguishes that report from an assurance report. So as not to confuse users, a report that is not an assurance report avoids, for example:*

- *Implying compliance with this Framework, ISAs, ISREs or ISAEs.*
- *Inappropriately using the words 'assurance,' 'audit' or 'review'.*
- *Including a statement that could reasonably be mistaken for a conclusion designed to enhance the degree of confidence of intended users about the outcome of the evaluation or measurement of a subject matter against criteria.*

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MEMBERS' HANDBOOK

Section 4

Regulations Relating to Membership

Regulations Governing the Information to be Supplied by Members

1 The Regulations
These Regulations were made by the Council under Bye-law 49 (a).

2 Definitions
Words and expressions defined in the Bye-laws have the same meanings in these Regulations.

The following definitions are relevant to these Regulations.

Annual Members Data Questionnaire means a questionnaire or profile document sent to a member from time-to-time.

Members' Registrar means the person of that title appointed by the Chief Executive.

NOTE: (This note does not form part of the Regulations.) Bye-law 1 provides that the term 'registered address' means:

(a) in the case of a *member in practice*, the place of business registered by him with the Institute or, where more than one such business is registered by him, such place of business indicated by him as being his principal place of business; and,
(b) in the case of a *member not in practice*, the address registered by him with the Institute.

3 Information to be supplied
Upon admission, an associate shall provide the Members' Registrar with particulars of his full names, and his Registered Address.

A member may provide a further address in addition to a Registered Address to which he may elect to have all correspondence sent and this shall be recorded as the Second Address.

A member shall complete and return to the Members' Registrar the Annual Members Data Questionnaire or profile document.

A member shall inform the Members' Registrar of any change or changes to information previously provided to the Members' Registrar under these Regulations within a period of 28 days from any such change or changes taking effect.

A member shall supply the Members' Registrar with any other information relative to his membership, practice or employment which the Council may

reasonably require for carrying out the provisions of the Royal Charter, Byelaws, Regulations or in pursuing the Institute's aims.

Regulations Governing the Payment of the Annual Subscription

1 The regulations
These Regulations were made by the Council under Bye-law 49 (a).

2 Definitions
Words and expressions defined in the Bye-laws have the same meanings in these Regulations.

The following definitions are relevant to these Regulations.

Status means whether or not a member is employed, is retired, is unemployed or is taking a career break and, the country of residence of a member indicated by the Registered Address.

Note (This note does not form part of the Regulations.) Bye-law 1 provides that the term 'registered address' means:

(a) in the case of a *member in practice*, the place of business registered by him with the Institute or, where more than one such business is registered by him, such place of business indicated by him as being his principal place of business; and,
(b) in the case of a *member not in practice*, the address registered by him with the Institute.

3 Payment of subscriptions
Save as otherwise provided below the rate of subscription applicable to a member throughout any calendar year shall be determined by reference to the status of the member on the first day of January in that year or on the date of his admission if later than the first day of January.

Where a person is admitted to membership after the last day of June in any year he shall pay one-half only of the subscription otherwise applicable to him for that year.

Regulations governing the Power to Reduce, Remit or Refund Fees and Subscriptions

1 The Regulations
These Regulations were made by the Council under Bye-law 49(a).[1]

2 Definitions
Words and expressions defined in the Bye-laws have the same meanings in these Regulations:

The following definitions are relevant to these Regulations.

Admission Fee means the fee for admission to membership.

Annual subscription means the subscription payable by a member from time-to-time.

Applicant means a member of the Institute applying for a waiver, reduction, remission or refund of a fee or subscription.

Application means an application to the Members' Registrar for a waiver, reduction, remission or refund of a fee or subscription.

Designated Countries means countries which are known to the Members' Registrar as having Exchange Control regulations with delays of three or more months before release of funds or which otherwise prevent payment of the annual subscription.

Half rate means half of the annual subscription which would normally be payable by a member.

Income means all income of the applicant, whether earned or unearned, from all sources except that, for the purposes of calculating such income all pensions and State Benefits shall not be taken into account.

Life Membership Fee means the fee payable by an applicant seeking Life Membership.

Low rate means the rate of reduced subscription payable by an applicant granted such a reduction.

The Members' Registrar means the person of that title appointed by the Chief Executive.

[1] These regulations were last amended by Council on 1 March 2006 with effect from 1 January 2007.

3 Income limits
Reduced subscriptions shall be authorised in accordance with this regulation. The rate payable shall be calculated as follows:

Level A An applicant with an income less than £11,250 shall pay the Low Rate; or,

Level B An applicant with an income greater than £11,250 but less than £22,500 shall pay the Half Rate.

4 Reduced Subscriptions
Applications must be received by the Members' Registrar before 31 March in the year to which the subscription applies but no application shall be considered in respect of previous years.

Applications are invited from any member whose status on 1 January in any year is covered by one of the categories below:

(a) A member taking a career break to bring up a young family, the youngest child of whom is under 12 years of age on 1 January;
(b) A member who is 'registered' unemployed on 1 January;
(c) A member registered as a full-time student attending structured study, on 1 January, subject to a maximum of one year;
(d) A member suffering from any illness that prevents the taking up of gainful employment for a period of not less than 3 months which includes 1 January and, is not receiving income from any company scheme;
(e) A member with an income below Level 'B' of Regulation 3.

5 Retired Members
Applications are invited from any member who has attained the age of 60 and whose status on 1 January in any year is that they are retired from **all** remunerated business and professional activities and do not hold a current practicing certificate.

Retired members shall pay the Half Rate.

Applications must be received by the Members' Registrar before 31 March in the year to which the subscription applies but no application shall be considered in respect of previous years.

6 Life Membership
(a) A member who has attained the age of 60 and has been a member for at least 30 years shall, on payment of the appropriate fee, be granted Life Membership provided that **all** remunerated business and professional activities have ceased and that a practising certificate, if held, is surrendered.
(b) A member who is prevented from taking up gainful employment due to illness diagnosed as incurable and or progressive shall, on production of adequate documentary medical justification, be granted 'Life

Membership' and shall be given a waiver of the fee. The age requirement of Regulation 6(a) above shall not apply.

(c) A member who has attained the age of 75 years or who has been a member of the Institute for at least 50 years, and who has no remunerated business activities, shall be granted Life Membership without payment of the Life Membership fee.

(d) The Life Membership fee shall be a sum equal to twice the subscription payable by a member whose Registered Address is in continental Europe.

7 Documentation and justification

It shall be the responsibility of the applicant to ensure that his application is supported by documentation in a form prescribed from time-to-time by the Members' Registrar, the cost of which shall be met by the applicant.

8 Deferment of payment

The Members' Registrar may defer the period within which payment of the annual subscription or other fees must be made as follows;

(a) Where payment of the annual subscription is due from a member residing in a Designated Country;

(b) Where payment of the annual subscription is due from a member retained in membership at the request of the Secretary of the Investigation Committee;

(c) Where advance payment of the subscription or fee would cause unnecessary hardship;

(d) Where a member has applied for a reduction of subscription and is awaiting a decision;

(e) Where the Members' Registrar considers a deferment to be appropriate.

9 Appeals

(a) Any member aggrieved at any determination by the Members' Registrar under these regulations shall have a right of appeal to the Treasurer or a person nominated by the Treasurer provided that he gives the Members' Registrar written notice of his intention to appeal within 28 days of receiving such notification.

(b) On hearing an appeal the Treasurer or a person nominated by the Treasurer shall have power on the basis of written representation from the applicant to make whatever determinations in accordance with these regulations he sees fit.

Regulations relating to Membership Cessation, Re-admission and Resignation

1 These Regulations were made by the Council on 3 December 2002[1] under Clause 16 of the Supplemental Charter and Principal Bye-law 49(a).

2 In these Regulations, unless the context otherwise requires, the following expressions have the meanings assigned to them and any other expressions shall have the same meanings as in the Principal Bye-laws:

(a) the 'Members' Registrar' means the person of that title appointed by the Chief Executive;
(b) the 'Re-admissions Sub-Committee' means the Sub-Committee of the Investigation Committee to which the Investigation Committee pursuant to Principal Bye-law 49(b) has delegated its powers, authorities or discretion in respect of applications for re-admission to membership. Such Sub-Committee shall consist of not fewer than 3 members of the Investigation Committee, of whom at least one shall not be an accountant.
(c) the 'Director' means the person for the time being holding the office of the Director of the Professional Conduct Directorate of the Institute of Chartered Accountants in England and Wales (ICAEW) or any member of his department authorised by him to act in his name.

Cessation of membership for non-payment of fine and costs

3 The Secretary to the Disciplinary Committee may exercise the power of the Investigation Committee under Principal Bye-law 7(c) to extend the period within which a fine or costs must be paid by a member whose registered address is outside the United Kingdom where the Secretary of the Disciplinary Committee is satisfied that for reasons beyond the member's control he is unable to remit the amount due.

Re-admissions to membership

4 The Members' Registrar shall (save in those cases set out in Regulation 5 below) re-admit to membership of the Institute under Principal Bye-law 9 any person who having ceased to be a member applies for re-admission to membership and who in the opinion of the Members' Registrar has satisfactorily answered all the questions in the form of application approved by the Investigation Committee. Such re-admission shall be unconditional or subject only to conditions affecting future payments.

5 In those cases set out as follows the discretion of the Council to re-admit to membership under Principal Bye-law 9 shall be exercised by the Re-admissions Sub-Committee (on consideration of papers submitted to it) in accordance

[1]Last amended on 31 August 2006 by the Professional Standards Board; changes take effect from 1 January 2007

with guidelines approved by the Investigation Committee and as amended from time-to-time:

(a) a person whose membership ceased by operation of an order made pursuant to the Disciplinary Bye-laws;
(b) a person whose membership ceased by virtue of bankruptcy;
(c) a person against whom the Members' Registrar has been notified that there is an unresolved complaint;
(d) a person whose membership ceased by virtue of his failure to pay fines and/or costs imposed pursuant to the Disciplinary Bye-laws;
(e) a person who has been out of membership for more than four years;
(f) any other person whose application for re-admission to membership the Members' Registrar for any reason considers should be dealt with by the Re-admissions Sub-Committee.

Re-admission fees

6 Where a person:

(a) applies to be re-admitted under Regulation 4 they shall pay on application a re-admission fee equivalent to the annual subscription applicable to their Registered Address in the year of application; or
(b) applies to be re-admitted under Regulation 5 they shall pay on application a re-admission fee equivalent to twice the annual subscription applicable to their Registered Address in the year of application.

7 The re-admission fee payable is additional to any subscriptions, whether outstanding from the year in which the person ceased to be a member or payable for the year in which they are re-admitted to membership.

8 Where a person is not re-admitted, any fees and subscriptions paid pursuant to these regulations will be repayable.

Waivers

9 An applicant seeking re-admission to membership whose membership has ceased under the terms of Principal Bye-law 7 (b), failure to pay the annual subscription by 31 March, shall be granted a waiver of either part or whole of the re-admission fee provided he can demonstrate to the Members' Registrar's satisfaction that the non or late payment of the annual subscription was due to circumstances which were wholly outside the applicant's control.

10 In the event that the Re-admissions Sub-Committee refuses an application for re-admission to membership it shall give written reasons for refusal.

Appeals against Refusal to re-admit to Membership

11 An applicant refused readmission to membership may, within 28 days of the date on which the written reasons for such refusal are sent to him, give notice of appeal to the Director. Any such notice shall state the grounds of appeal.

12 As soon as practicable after receipt by the Director of an effective notice

of appeal under Regulation 11 above, the Chairman of the Appeal Committee, or failing him its Vice Chairman, shall appoint a panel to hear the appeal and Disciplinary Bye-laws 27, 28 and 29 shall apply as appropriate. With the exception of Appeal Committee Regulations 6, 7, 12, 13 and 27–33 the Appeal Committee Regulations shall apply to the hearing of the appeal.

Resignations

13 The Members' Registrar shall accept the resignation of any member tendered under Principal Bye-law 6 unless (i) he has been notified that there is an unresolved complaint against that member; or (ii) there is in his view any other reason why the resignation should be considered by the Investigation Committee in either of which cases the Members' Registrar shall refer the tendered resignation to the Investigation Committee to be dealt with.

14 In all other cases the discretion of the Council to accept the resignation of a member under Principal Bye-law 6 shall be exercised by the Investigation Committee.

Commencement

15 These Regulations shall apply to all matters considered after 1 January 2007 notwithstanding the date upon which any application was made.

MEMBERS' HANDBOOK

Section 5

Regulations relating to Learning and Professional Development

Learning & Professional Development Regulations

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Learning & Professional Development Regulations

Preliminary

Authority

1 These *regulations* are made by resolution of the Learning & Professional Development Directorate of the Institute with authority of the *Council* made in a resolution dated 3rd November 1993 under clause 2(b) of the *Supplemental Charter* and pursuant to clause 16 thereof.

Scope

2 These *regulations* are made for the purposes of the *bye-laws* and govern:

(a) the education and training of *students* pursuant to bye-law 2;
(b) the conditions for the award of a *Professional Accountancy Certificate*;
(c) admission to *membership* of the Institute pursuant to bye-laws 2–4;
(d) the conditions under which a *member* shall be eligible to hold a *practising certificate* pursuant to bye-law 52;
(e) the conditions which a *member* shall satisfy to qualify under the Companies Act 1989 pursuant to bye-law 56;
(f) Deleted
(g) the conditions for the award of an *Advanced Diploma*;
(h) the manner in which a *member* who is an *Associate* shall satisfy the *Council* as to the *member's* fitness to become a *Fellow* of the Institute pursuant to clause 7 of the *Supplemental Charter*; and
(i) the appeal against any decision made under sub-paragraphs (a)–(h) above.

Effective date

3 These *regulations* shall take effect from 8 February 1994 or on such later date as the *Committee* shall decide in respect of any amendments or additions thereto and shall supersede any previous such *regulations* issued by or on behalf of the *Council*.

Interpretation of terms–bye-laws

4 Save as otherwise defined in regulation 5, expressions defined in bye-law 1 shall have the same meanings in these *regulations* and the following are relevant:

Council means the Council of the Institute;

European Community includes the European Economic Area where any provision relates to a matter to which the European Economic Area Agreement relates;

member means a member of the Institute and *membership* shall be construed accordingly;

practice and *public practice* mean practice as a public accountant in any part of the world otherwise (subject to bye-law 51(b) concerning directors of a body corporate) than as an employee;

practising certificate means a certificate issued to a *member* by the Institute authorising him to engage in *public practice;*

provisional member (formerly known as *student)* means a person:

(a) who is training under a *training contract*; or
(b) who has trained under such contract and is eligible either to sit for the professional examinations of the *Institute* or, having successfully sat those examinations, to apply for *membership*;

and for the purposes only of this definition an order under bye-law 22(7)(d) of the Disciplinary Bye-laws (concerning eligibility to sit examinations) shall be disregarded.

Royal Charters means the Royal Charter dated 11th May 1880 and the *Supplemental Charter* dated 21st December 1948;

Supplemental Charter means the Supplemental Royal Charter dated 21st December 1948; and

United Kingdom includes the Channel Islands and the Isle of Man.

Interpretation of terms– regulations

5 In these *regulations* the following expressions shall have the following meanings:

Advanced Diploma means an award granted under the scheme approved by members under resolution 7 of the *Institute's* Special Meeting held on 3 June 1997;

approved training means practical training and experience obtained at or from a *Training Organisation* or such other organisation as the *Committee* shall approve;

Associate means the class of *membership* of the *Institute* to which a person is admitted who has satisfied the requirements for *membership* prescribed in these *regulations*;

bye-law or *bye-laws* means a bye-law or the bye-laws of the *Institute* for the time being in force;

cancellation means the ending of a *training contract* before *approved training* has been completed;

CCAB means the Consultative Committee of Accountancy Bodies;

Committee means the Learning & Professional Development Board (or such other Committee as the *Council* may from time-to-time designate) or any Committee, Sub-Committee, person or persons acting under its direction;

Continuing Professional Development (CPD) means the provisions of Principal Bye Law 56 namely that a member shall:

(a) keep under review his needs for training and development having regard to the professional and other work he undertakes;
(b) where such a review identifies a specific need for training or development act promptly to meet such need; and
(c) certify annually to the Institute compliance with these provisions and, if requested by the Institute, provide such evidence of compliance as may be required.

Continuing Professional Education (CPE) means the arrangements for the maintenance of professional competence by the continuous updating of knowledge and skills applicable up to 31 December 2004 or such later date as may be specified in respect of a particular member or class of members.

Devolved Assessment means an assessment whose conduct is devolved by the *Institute* to other organisations;

Fellow means the class of *membership* to which a person is admitted who has satisfied the requirements for Fellowship prescribed in these *regulations*;

independent student means a person who has been registered as such by the *Institute*, who has satisfied the requirements for entry into a *training contract* but who is not serving under, or has not previously served under, a *training contract*;

The Institute means the Institute of Chartered Accountants in England and Wales;

Institute examinations means Technical Core 1, Technical Core 2, and the Final Admitting Examination; and the Professional Stage and Advanced Stage.

Qualified Person Responsible for Training means the person nominated under regulation 7 to be responsible for the *approved training* to be carried out at or from a *Training Organisation*;

Non-core means study and assessment in subjects outside Technical Core 1 and Technical Core 2 syllabuses, which underpin these syllabuses;

Non-member means an individual who is not a current member or *student* of the Institute;

post qualification work experience means work experience received after the *qualification date*;

Professional Accountancy Certificate means a certificate awarded by the *Institute* on successful completion of the Professional Stage including *devolved assessments*;

qualification date means the date on which a *provisional member* or *member* becomes or became eligible to apply for membership. This is the later of the date on which a *provisional member* or *member*:

(a) is or was notified of having passed the last of the *Institute examinations* that they are required to pass for admission to *membership*;
(b) completes or completed their *approved training*;
(c) is or was notified that they have satisfied all of the *non-core* requirements (if applicable).

qualified and *responsible individuals* to be defined in accordance with 4.01, 4.02, 4.03, 4.04 and 4.06 of the *Audit Regulations and Guidance*;

recognised degree means any degree or postgraduate diploma award of an academic institution in the *United Kingdom* or Republic of Ireland or, at the discretion of the *Committee*, a degree awarded elsewhere or a combination of qualifications corresponding to such degree or diploma;

Recognised Qualifying Body means a body declared by the Secretary of State for Trade and Industry for the purposes of the Companies Act 1989 as a Body able to grant the Audit Qualification for audit regulation purposes.

registration means the acceptance by the *Institute* in the manner prescribed by these *regulations* of an *independent student* or *provisional member* and of any amendments thereafter to the *provisional member's training contract*;

Regulating Panel means the Regulating Panel appointed by the *Committee* pursuant to regulation 91;

Secretary means the Secretary to the *Committee* or any person acting in any such capacity by the direction of the *Council*;

student means an *independent student* or a *provisional member*;

study leave means periods of leave or absence by a *provisional member* from the *Training Organisation* for the purpose of completing learning programmes in preparation for *Institute examinations* and *devolved assessment*;

training contract means a contract made between a *Training Organisation* and a candidate for *membership* in which both parties acknowledge their mutual commitment to provide an effective period of *approved training* on the one hand and a proper contribution to the work of the *Training Organisation* on the other;

training office means an office within a *Training Organisation*;

Training Organisation means a person, firm, body or undertaking authorised by these *regulations* to provide *approved training*;

Schedules

6 Except when otherwise stated, the references to Schedules are to Schedules to these *regulations* and such Schedules shall have the same status and effect as if they were set out herein as part hereof.

Training Organisations

Eligibility

7 An organisation shall be authorised as a *Training Organisation* only if and so long as:

(a) it nominates a *Qualified Person Responsible for Training* who satisfies the requirements of regulation 8;
(b) it initially and periodically thereafter satisfies the *Committee* that it can meet the Training Standards and such other conditions as the *Committee* may from time-to-time determine; and
(c) it pays to the *Institute* such fees as *the Committee* may from time-to-time set.

Qualified Person Responsible for Training

8 The *Qualified Person Responsible for Training* nominated under regulation 7(a) shall:

(a) be a person who is a partner in the organisation (or 'member' in the case of a limited liability partnership) if the organisation is in *public practice*; or
(b) be a person who is a director of the organisation if the organisation is a body corporate engaged in *public practice*; or
(c) be a person of appropriate status in the organisation if the organisation is outside *public practice*; or
(d) be a person approved by the *Committee*; and
(e) comply with the conditions set by the *Training Standards*.

9 Deleted

Authorisation

10 The *Committee* shall: Powers of committee

(a) give or withhold authority to organisations applying to become or to remain *Training Organisations*;
(b) determine the maximum number of *provisional members* that may be based at a *Training Organisation* at any one time; and
(c) impose such conditions or restrictions on authorisation as the *Committee* in its absolute discretion considers necessary

providing that existing *Training Organisations* which do not meet the standards are given a reasonable period of time in which to effect improvement.

Change in Circumstances

11 (a) The *Qualified Person Responsible for Training* shall notify the *Secretary* in writing of any material change in his *Training Organisation* which may affect its ability to meet the Training Standards referred to in regulation 7(c);
(b) A *Training Organisation* shall notify the *Secretary* of the name of any person nominated as *Qualified Person Responsible for Training* to replace the person previously nominated under regulation 7(b); and
(c) In either case the *Committee* shall thereupon satisfy itself that the *Training Organisation* can continue to satisfy the requirements of regulation 7.

12 The *Committee* may waive or vary the requirements of regulations 7–11 in such circumstances as the *Committee* in its absolute discretion considers acceptable. Discretionary provisions

13 A *Training Organisation*, or a *member* based at a *Training Organisation*, which or who has been the subject of an order under Disciplinary Bye-Laws 16 or 22 or under the Investment Business, Insolvency Licensing or Audit Regulations shall be referred to the *Committee* which shall decide whether or not to take further action under regulation 11 (c). Disciplinary orders

Status of Adverse Decisions Pending Appeal

14 An adverse decision made under regulation 10, 11 or 13, shall remain in abeyance until:

(a) the period for giving notice of appeal under regulation 89 (and, if applicable, regulation 91) has expired; and
(b) in the event that notice of appeal is given, until the Appeal Panel (and, if applicable, the Appeal Board) has communicated its decision in writing, to the Appellant.

Entry Requirement

Minimum entry requirement

15 To be eligible to enter a *training contract*, a candidate shall meet one of the minimum educational standards set out in the First Schedule.

Other qualifications or experience

16 Exceptionally the *Committee* may, at its discretion, accept qualifications or a combination of qualifications or experience other than those given in the First Schedule as satisfying the requirement for entry into a *training contract*.

Non-Core

Non-core

17 The *Committee* shall award credits for the *non-core* subjects and for *devolved assessments* at its discretion and such credits shall normally be obtained through one or other or a combination of:

(a) an *Institute* accredited learning programme provided by tutors, *training organisations* or other suppliers;
(b) award of credit for prior learning based on prior academic or vocational study as the *Committee* may approve.

18 A *student* may be awarded credits in accordance with regulation 17 on the basis of an accredited learning programme, prior learning or such other study method approved by the *Committee*, that is undertaken by the *student* prior to the date that he or she becomes eligible to enter a *training contract*.

19 A *student* will cease to be eligible to obtain credits in the *non-core* subjects or devolved assessments at the point at which he or she ceases to be eligible to sit the *Institute examinations*, as defined under regulation 20(a)

Professional Assessment

20 (a) To be eligible to sit the *Institute examinations* a candidate must have satisfied:
(i) the requirement for entry into a *training contract* in accordance with regulations 15 or 16;

(ii) the examination eligibility criteria prescribed by the *Committee*;
(iii) such other requirements as the *Committee* may from time to time prescribe.

(b) To be eligible to apply to sit the aptitude test referred to in regulation 62(c), a candidate must:
(i) be a member of an accountancy body approved by the *Council* pursuant to clause 12(a) of the *Supplemental Charter*; or
(ii) be an individual authorised as an accountant by an appropriate authority pursuant to clause 12(a) of the *Supplemental Charter*; or
(iii) be an accountant to whom the European Community Council Directive 89/48/EC applies, pursuant to clause 12(b) of the *Supplemental Charter*; and
(iv) declare if they have a criminal conviction, bankruptcy order or IVA, have failed to satisfy a judgement debt, hold an adverse finding by any professional body or regulator or have been involved in any other activity that brings into question their fitness and propriety.
(v) satisfy such other requirements, as the *Committee* shall from time to time prescribe.

21 The *Committee* may in exceptional circumstances vary or waive the requirements prescribed under regulation 20(a).

Credit for prior learning

22 (a) A *student* may claim credit from one or more subjects in the *Institute examinations* and *devolved assessments* on the basis of prior learning and assessment and the *Committee* shall decide, at its discretion, whether such credit shall be awarded.

(b) Credit in one or more subjects, or parts thereof, of the aptitude test may be granted by the *Committee*, in its absolute discretion, to a candidate who holds one or more professional qualifications in addition to those set out in regulation 20(b).

Rejection of applications and refusal of admission to examination centre

23 The *Committee* may reject a candidate's application to sit an examination or test, or may refuse the candidate's admission to an examination centre as the result of:

(a) the candidate's ineligibility for such examination or test, including ineligibility by reason of an order by the *Disciplinary Committee* under Disciplinary Bye-laws 22(7)(b)(c)(d) or (e); or
(b) the *Committee* upholding, after investigation, a complaint of the candidate's misconduct or involvement in an irregularity at a previous examination or test; or

(c) any other circumstances which the *Committee* in its absolute discretion may decide would justify such rejection or refusal.

Access

24 Candidates with permanent disabilities as defined under the Disability Discrimination Act will be provided with assistance to enable equal access to the assessments.

25 The *Committee* shall instruct the *Secretary* to send all candidates notice of their results in the examination or test but:

Withholding of results

(a) the *Committee* may withhold such notice for any of the reasons set out in sub-paragraphs (a), (b) and (c) of regulation 23, save that notice may also be withheld pending the result of the investigation referred to in sub-paragraph (b) of that regulation; and
(b) the *Committee* shall withhold such notice:
  (i) pending the result of the referral of a complaint against the candidate to the *Investigation* or *Disciplinary Committees*;
  (ii) when a candidate is declared unfit for membership by the *Disciplinary Committee* under Disciplinary Bye-law 22 (7) (a).

Correspondence about results

26 The *Committee* shall be under no obligation to enter into correspondence with third parties regarding examination results. Students results will only be released to a student's training office if the student has previously given their consent.

Award of Professional Accountancy Certificate

27 A *Professional Accountancy Certificate* in such form as the *Committee* may prescribe shall be issued to a *student* who:

(a) has successfully completed courses in preparation for, and has completed, the Professional Stage (including devolved assessments) and;
(b) has paid such fees (if any) and at such time as the *Committee* may from time-to-time determine

28 Remove

29 Remove

Approved Training and Post Qualification Work Experience

Minimum period of approved training

30 (a) A candidate for admission to *membership* pursuant to clause 5 of the *Supplemental Charter* shall complete a period of *approved training* under a *training contract* as follows:

(i) of not less than three years and not more than five years; or
(ii) of not less than two years and not more than four years if the candidate is a member of an accountancy body which is a member of *CCAB*.

(b) The period of *approved training* to be completed by the individual candidate shall be determined in accordance with sub-paragraph (a) of this regulation by agreement between the candidate and the *Training Organisation* which is to provide the *approved training*.

(c) The *committee* may exercise its discretion in reducing the length of approved training where applicants fail to meet the requirement in 30 (a). Cases will only be considered where the shortfall is minimal, the technical work experience requirement has been met and the reason for not meeting the full requirement is for circumstances beyond the control of the student.

Period of post qualification work experience

31 A *member* intending to apply for a *practising certificate* pursuant to regulation 69 shall complete two years of *post qualification work experience*. Such experience shall:

(a) be obtained in the professional activities in which the member intends to practise;
(b) subject to regulation 32, commence no earlier than the member's *qualification date*;
(c) be undertaken within the four year period immediately preceding the date on which application is made under regulation 69.

Commencement of training

32 (a) *Approved training* shall be deemed to have commenced or to have recommenced on the date so specified in the *training contract*, save that the *Committee* may deem such training to have commenced or recommenced on such other date as the *Committee* in its absolute discretion considers appropriate.

(b) When appropriate, *post qualification work experience* may be deemed by the *Committee* to have commenced on the later of the date the *member*, as a *provisional member*, successfully sat their last remaining *Institute examination* or successfully undertook assessment in their last remaining *non-core* subject(s), provided *approved training* was completed on or before that date.

Part-time service

33 *Approved training* may be undertaken on a part-time basis at the discretion of the *Committee* and subject to an appropriate extension to the *training contract* and to such adjustment to the period of the *provisional member's* examination eligibility as the *Committee* may decide.

Minimum period of technical work experience

34 During *approved training* a *provisional member* shall be provided with a period of technical work experience, including

practical instruction as defined from time to time by the *Committee*, of not less than:

(a) 300 days for a *provisional member* required to complete less than three years of *approved training; or*
(b) 450 days for a *provisional member* required to complete three or more years of *approved training*.

Training environment

35 (a) To satisfy the requirements of regulation 34 a *provisional member* shall count such technical work experience as is provided by:
  (i) the *Training Organisation* specified in the *training contract* provided such experience is on the business of such organisation;
  (ii) such other organisation as the *Committee* in its absolute discretion, shall approve;
  (iii) subject to sub-paragraphs (b) and (c) of this regulation, secondment to such other organisation as the Qualified Person *Responsible for Training* shall approve in accordance with such conditions as the *Committee* shall from time-to-time decide.

(b) A *provisional member* shall only be seconded to another *Training Organisation* if the maximum number of *provisional members* determined under regulation 10(b) is not thereby exceeded save that the following *provisional members* shall be regarded as supernumerary:
  (i) Deleted
  (ii) those undertaking *approved training* as part of a sandwich course; and
  (iii) with the agreement of the *Committee*, those completing *approved training* following the withholding of authorisation from a previous *Training Organisation* under sub-paragraph (a) of regulation 10.

(c) The provisions of sub-paragraphs (a), (b) and (c) of this regulation may be waived in such circumstances as the *Committee* in its absolute discretion considers to be acceptable.

(d) (i) A maximum of 50% of the technical work experience may be gained on secondment to an environment approved by the ICAEW to train students.
  (ii) A maximum of 33 per cent of the technical work experience may be gained on secondment to an environment not approved by the ICAEW to train students.

Other components of approved training

36 (a) *Approved training* shall also include, as applicable:
  (i) any period of *study leave*;
  (ii) any period of absence for the purpose of sitting an examination prescribed by the Institute;

(iii) any other period of absence, including holidays and absence due to illness.

Extensions

(b) Should the minimum period required under regulation 34 not be attained, the period of *approved training* shall be correspondingly extended, save that the *Committee* may, in its absolute discretion, waive this regulation in such circumstances as it considers to be acceptable. Such extension shall have no effect on the *provisional member's* period of examination eligibility.

Training records

37 (a) *Provisional members* shall maintain records of *approved training* in such form as may be decided from time to time by the *Committee*.

(b) *Training Organisations* shall ensure that such records are maintained and made available to representatives of the *Institute* when required.

Conditions under which provisional members may engage in practice

38 A *provisional member* shall not engage in public practice unless the *provisional member:*

(a) is a member of the Association of Accounting Technicians or of an accountancy body which is a member of *CCAB*; and

(b) is authorised to engage in public practice by the said Association or accountancy body; and

(c) has obtained the consent of the Qualified Person *Responsible for Training*, if applicable

Training Contract

Previous training contracts

39 A *training contract* which was in force immediately prior to the date on which these *regulations* took effect shall be deemed to be a *training contract* as now defined in these *regulations*.

Amendments to training contracts

40 The provisions in a *training contract* shall not be altered or amended save with the consent of the *Committee* which may grant or withhold such consent at the *Committee's* absolute discretion.

Execution of training contract

41 A *training contract* shall be executed on or before the date on which *approved training* is to commence.

Provisional members' terms and conditions of employment and disputes

42 (a) Before the execution of a *training contract*, the *provisional member* shall be provided with a copy of the statement of terms and conditions under which the *provisional member* will be employed and that statement shall include such specific clauses as the *Committee* may from time-to-time require. The Institute may request a copy of the training contract.

(b) A dispute may be referred to the *Committee* when such dispute is between a *Training Organisation* and either a *provisional member* or any other person who is both eligible under regulation 15 and a candidate for entry into a *training contract* and:
  (i) has arisen from the recruitment and selection of *provisional members*; or
  (ii) has arisen from the clauses referred to in sub-paragraph (a) of this regulation, or otherwise concerns *approved training*;
  (iii) cannot be resolved within the *Training Organisation* or, when applicable, by the local Society of Chartered Accountants; and
  (iv) does not relate solely to remuneration.

Probationary period

43 The terms and conditions of employment agreed by a *Training Organisation* with a *provisional member* shall include provision for a probationary period beginning at the start of the *provisional member's* employment, provided that the *training contract* started within the probationary period allowed under employment legislation.

Membership of students' society

44 A *provisional member* shall become a member of a Chartered Accountant Students' Society at the start of the *training contract* and shall remain a member throughout and after completion of *approved training*

Change of Training Office

45 The *training office* specified in the *training contract* may be changed with the consent of the *provisional member* concerned to another *training office* of the same *Training Organisation*. The *provisional member* shall not unreasonably withhold consent to the change.

Transfer of training contract

46 Subject to the provisions of regulation 54, a *training contract* may at any time by agreement between the parties be *transferred*.

Suspension of training contract

47 Subject to the provisions of regulations 50, 54 and 55:

(a) a *training contract* shall be suspended if an order to that effect is made by the *Disciplinary Committee* under Disciplinary Bye-law 22 (7) (b) or (c);
(b) a *training contract* may be suspended by agreement between the parties thereto due to the *provisional member's* absence (which shall otherwise count as *approved training* under regulation 36) because of:
  (i) maternity leave;
  (ii) prolonged illness, in which case the *Committee* may deem the suspension to have commenced from the onset of such illness;

(iii) any other circumstances that the *Committee* in its absolute discretion considers acceptable.

(c) a *training contract* which commenced during the placement of a *provisional member* undertaking a sandwich course shall be deemed to be suspended from the date on which such placement or placements end until the date of the *provisional member's* resumption of *approved training* following the completion of that course.

Cancellation of training contract

48 A *training contract* shall be *cancelled* in the following circumstances

(a) by mutual agreement between the parties thereto; or
(b) by one party giving written notice to the other in accordance with the statement of terms and conditions provided to the *provisional member* under regulation 42 (a).

49 A *training contract* shall be automatically *cancelled:*

(a) when the employment of the *provisional member* by the employer named in the statement provided under regulation 42 (a) is ended in circumstances where continuity of employment is not preserved under current legislation; or
(b) with effect from a date which shall be determined by the *Committee*, if the *Training Organisation* ceases to be authorised under regulation 7; or
(c) if the *provisional member* is declared unfit to become a *member* by the *Disciplinary Committee* under Disciplinary Bye-law 22 (7) (a).

50 No period between the commencement and suspension or *cancellation* of a *training contract* in which the *provisional member* received less than thirteen weeks technical work experience shall count as *approved training*.

Entry into a further training contract

51 A *provisional member* whose previous *training contract* was *cancelled* under regulation 48 or was automatically *cancelled* under regulation 49 (a) or shall normally be permitted to enter a further *training contract* provided:

(a) the *provisional member's* suitability to resume *approved training* has previously been confirmed to the *Committee* by the *student's* last *Training Organisation*; and
(b) deleted;
(c) the *provisional member* is eligible to sit the *Institute examinations* or has passed such examinations

save that the *Committee* may waive this regulation in such circumstances as the *Committee*, in its absolute discretion, considers to be acceptable.

52 A *provisional member* whose previous *training contract* was automatically *cancelled* under regulation 49 (c) shall not be permitted to enter a further *training contract*.

53 A *provisional member* who has completed the period of *approved training* agreed under regulation 30 but who has not progressed to *membership* within the period prescribed under these *regulations* shall not normally be permitted to enter a further *training contract*.

54 A *provisional member* who resumes *approved training* under regulation 46 or 51 shall, subject to regulation 55, complete a further period of *approved training* which, when combined with the *provisional member's* previous period(s) of *approved training*, shall satisfy the requirements of regulations 30 and 34.

55 If there has been a period of more than two years in aggregate since the *provisional member* first commenced *approved training* in which:

(a) the current *training contract* was suspended; or
(b) the *provisional member* was not receiving *approved training* due to the suspension and/or *cancellation* of a previous *training contract*

the *provisional member* may be required to complete such additional period of *approved training* and technical work experience as the *Committee* shall from time to time determine.

Student Registration

Registration and re-registration of provisional members

56 (a) (i) Following the execution of a *provisional member's* initial *training contract* and of any further *training contract* entered by the *provisional member* under regulation 51, the *Training Organisation* shall promptly apply to the *Institute* to *register* such *provisional member* and shall provide such evidence of the *provisional member's* educational qualifications and other information as the *Committee* may require.

(ii) Provisional members are required to declare if they have a criminal conviction, bankruptcy order or IVA, have failed to satisfy a judgement debt, hold an adverse finding by any professional body or regulator or have been involved in any other activity that brings into question their fitness and propriety.

Notification of changes

(b) The *Training Organisations* shall promptly notify the *Institute* of the following occurrences and shall provide such relevant information as the *Committee* may require:

(i) an extension to the period of *approved training* pursuant to regulation 36 (b)
(ii) a change to the *provisional member's training office* within the *Training Organisation* pursuant to regulation 45;
(iii) Deleted
(iv) the *cancellation* of the *provisional member's training contract* pursuant to regulations 48 or 49 (a)
(v) the start and end dates of any period of suspension.

Registration of independent students

57 *Independent students* shall similarly apply to the *Institute* to be registered and shall in addition pay such fee (if any) as the *Committee* may from time-to-time prescribe and shall provide such evidence of the educational qualifications and other information as the *Committee* may require.

58 Deleted

Refusal and withdrawal of registration

59 (a) The *Committee* may, in its absolute discretion, refuse to *register* or to re-register any person as a *student*.
(b) The *registration* of a *student* shall be withdrawn, or shall be deemed to have been withdrawn:
(i) on the date on which the *training contract* was suspended under regulation 47 (a) or *cancelled* under regulation 49 (c); or
(ii) with effect from the date of any bankruptcy order made against the *student* or any other declaration as in 56a(ii);
(iii) on such other date and in such other circumstances as the *Committee*, in its absolute discretion, may decide.

and the *student* shall thereafter cease to be a *student* as defined in regulation 4 or 5.

Admission to Membership

Conditions for admission

60 An applicant for *membership* pursuant to clause 5 of the *Supplemental Charter* shall be entitled to be admitted an *Associate* of the *Institute* only if the *Council* is satisfied that the applicant:

(a) has successfully completed a course in preparation for and has passed the *Institute examinations*;
(b) has obtained the required credits for *non-core* subjects and/or *devolved assessments*;
(c) has successfully completed a period of *approved training* in accordance with regulations 30 and 34;
(d) has completed appropriate structured training in professional ethics;

(e) is fit for membership. Provisional members are required to declare if they have a criminal conviction, bankruptcy order or IVA, have failed to satisfy a judgement debt, hold an adverse finding by any professional body or regulator or have been involved in any other activity that brings into question their fitness and propriety;
(f) has paid the requisite admission fee and subscription.

Time limits for applications

61 (a) An application under regulation 60 shall be made not more than twelve months after the applicant's *qualification date*.
(b) The *Committee* may, in its absolute discretion, extend the said period of twelve months in respect of any applicant:
(i) if the *Committee* considers that the circumstances justify such an extension; and
(ii) on payment by the applicant of such delayed admission surcharge (if any) as the *Committee* may in its absolute discretion decide in such case.

Conditions for reciprocal membership

62 An applicant for membership pursuant to clause 12 of the *Supplemental Charter* shall be entitled to be admitted an *Associate* of the *Institute* only if the *Council* is satisfied that the applicant:

(a) is a qualified member of one of the following accountancy bodies:
(i) the Institute of Chartered Accountants in Australia;
(ii) the Canadian Institute of Chartered Accountants;
(iii) the Institute of Chartered Accountants of New Zealand;
(iv) the South African Institute of Chartered Accountants; or
(v) the Institute of Chartered Accountants of Zimbabwe; or
(b) is a national of a member state of the *European Community* who holds a diploma in accountancy to which Council Directive 89/48/EC applies;
(c) has successfully completed an aptitude test;
(d) is fit for membership;
(e) has paid the requisite admission fee and subscription.

Certificates of training and suitability

63 (a) An application for admission to *membership* shall be made in such form as the *Committee* may from time to time prescribe. An application made under regulation 60 shall include the following certificates provided by the *Qualified Person Responsible for Training*, or a deputy appointed by the *Qualified Person Responsible for Training* and who satisfies the requirements of regulation 8:
(i) in respect of the practical training and the range and depth of work experience provided by the *Training Organisation*, that the applicant is qualified for admission; and

(ii) that the applicant is fit for membership.

(b) The application shall be accompanied by such evidence from or on behalf of the *Qualified Person Responsible for Training* as the *Committee* may require in support of the certificate given in sub-paragraph (a) (i) of this regulation.

(c) A *Qualified Person Responsible for Training* (or deputy appointed by the *Qualified Person Responsible for Training* under sub-paragraph (a) of this regulation) who feels unable to provide either or both of the certificates required under sub-paragraph (a) of this regulation shall inform the *Committee* of the reasons for withholding such certificate or certificates.

64 Admission to *membership* shall normally take effect on the first day of the month following acceptance of an application by the *Committee*.

65–67 Deleted

Practising Certificate Eligibility

[*Note: The Council's statement on public practice may be found in the Section 6.1]*

68 A *member*, including a *member* to whom the Regulation Governing Corporate Practice apply, shall be entitled to engage in *public practice* in the *United Kingdom* or any other member state of the *European Community* only if the *member* holds a current *practising certificate*. Bye-law 51

69 A *member* shall be eligible to hold a *practising certificate* as follows: Conditions for obtaining a practising certificate

where the *member* has never held a *practising certificate*, or where four years or more will have elapsed between the expiry date of his last *practising certificate* and the commencement date of his new one, if the *member* shall first have satisfied the *Committee* that he:

(a) has met the requirements of regulation 31;

(b) has complied with the applicable requirements of *Continuing Professional Education (CPE)* or *Continuing Professional Development* as appropriate throughout the two year period immediately preceding the date of application.

(c) understands the Fundamental Principles set out in the *Council's* Guide to Professional Ethics and in particular Fundamental Principle 3 (competence to undertake work);

(d) has undertaken to comply with the *Council's* Professional Indemnity Insurance Regulations;

(e) is a fit and proper person to hold a *practising certificate*; or

where less than four years will have elapsed between the expiry date of his last *practising certificate* and the commencement date of his new one, if the *member* shall first have confirmed to the *Committee* that he will continue to:

(f) comply with the Fundamental Principles set out in the *Council's* Guide to Professional Ethics and in particular Fundamental Principle 3;
(g) maintain competence in the accounting services he intends to provide;
(h) comply with the *Council's* Professional Indemnity Insurance Regulations.

Discretionary Provisions

70 The *Committee* may vary or waive the requirements of regulation 69 in such circumstances as the *Committee* in its absolute discretion considers to be acceptable.

Audit Qualification

Categories of members who must satisfy requirements

71 Regulations 74–75 shall apply to *members* admitted on or after 1 January 1990 who started *approved training* as *students:*

(a) before 1 January 1990 but who had not been admitted to membership by 1 January 1996; or
(b) on or after 1 January 1990.

72 Regulations 74–75 shall also apply to *members* admitted before 1 January 1990 who were not *members* immediately before 1 January 1990 and immediately before 1 October 1991.

Companies Act 1989

73 *Members* to whom regulations 74 and 75 apply who wish to undertake audit work as *qualified* or *responsible individuals* within a firm of *registered auditors*, shall obtain prior confirmation from the *Institute* that they hold an appropriate qualification as defined in the Companies Act 1989. Other *members* shall be deemed to hold such appropriate qualification.

Conditions for qualification

74 In order to obtain the confirmation referred to in regulation 73, the *members* concerned must:

(a) have completed a minimum of 144 weeks of general training and work experience, of which at least 96 weeks shall have been completed under the supervision of *members* who themselves hold an appropriate qualification; and
(b) have completed a minimum of 48 weeks of audit work experience from an environment approved by the Institute, of which:
  (i) at least 24 weeks shall have been in company audit work as defined in the Companies Act 1989, and the rest either in company audit work or in other audit work similar to

company audit work where the nature of such work conforms with the definition agreed by the *Institute* and the Secretary of State for Trade and Industry.

Discretionary powers

75 The *Committee* may, to the extent permitted by the provisions of the Companies Act 1989, vary or waive the requirements of regulation 74 in respect of *members* who are unable to meet them in whole or in part, if the *Committee* in its absolute discretion is satisfied that, in all the circumstances of the case, such relaxation is justified.

76–79 Deleted

Advanced Diplomas

Conditions for Advanced Diploma

80 A *member* shall be entitled to apply for an *Advanced Diploma* at any time following the *member's* admission as an *Associate* of the *Institute*.

81 A *member* applying for an *Advanced Diploma* shall be required to pay in advance such fees as the *Committee* may from time-to-time decide.

82 A *member* applying for an *Advanced Diploma* shall be required to satisfy the *Committee* that he has attained an appropriate level of knowledge and skill in the activity for which the *Advanced Diploma* is sought by:

(a) demonstrating a depth and breadth of relevant professional work which the *Committee* accepts as equating with five years' experience in such activity;
(b) demonstrating the completion of *Continuing Professional Education (CPE)* and *Continuing Professional Development (CPD)* as appropriate;
(c) successfully completing assessment by viva voce examination by two assessors appointed by the *Committee*; and
(d) successfully completing separate assessments by one or more of the following as the *Committee* may from time to time consider appropriate:
  (i) written examination;
  (ii) portfolio;
  (iii) dissertation;
  (iv) thesis;
  (v) qualification awarded, or external assessment conducted, by another body.

83 All such assessments shall be conducted at such times and in such places as the *Committee* may from time to time decide.

84 Any *member* who has satisfied the *Committee* as aforesaid shall be entitled to such *Advanced Diploma* unless the *Committee* for good and sufficient reason relating to the *member's* conduct determines otherwise.

85 In determining the appropriate level of knowledge and skill to be attained in the relevant activities for the purposes of regulation 82, the *Committee* will seek specialist advice from such bodies as the *Committee* may formally appoint for that purpose.

86 The *Committee* shall appoint Assessors to assess the evidence of knowledge and skill submitted by applicants for an *Advanced Diploma*, conduct viva voce examinations, and make recommendations to the *Committee* for the award of *Advanced Diploma*.

87 A certificate in such form as the *Committee* may prescribe shall be issued to every *member* granted an *Advanced Diploma*.

88 Deleted

Advancement to Fellowship

Conditions for Fellowship

89 An *Associate* may apply to become a *Fellow* of the *Institute* pursuant to clause 7(b) of the *Supplemental Charter*, provided such *Associate* has been a *member* for a continuous period of not less than ten years. The *Committee* may require such *Associate* to provide such additional information and evidence as it sees fit including evidence as to the *Continuing Professional Education (CPE)* and *Continuing Professional Development (CPD) as appropriate* which the said *Associate* has undertaken, and of any disciplinary findings or orders against the said *Associate* or of any disciplinary proceedings outstanding, and a failure without reasonable cause to provide such information or evidence may be a ground for refusing the application.

Discretionary provisions

90 The *Committee* may in its absolute discretion vary or waive the requirements of regulation 89 in respect of an *Associate* whose period of membership of the *Institute*, commencing on or after 1 July 1978, has not been continuous but in aggregate has not been less than ten years, if the *Committee* is satisfied, in all the circumstances of the case, of the *Associate's* fitness to become a *Fellow*.

Regulating Panel

Responsibilities of Regulating Panel

91 The Learning & Professional Development Directorate shall appoint a *Regulating Panel* with power to:

(a) approve or refuse admission to *membership* pursuant to clauses 5 and 12 of the *Supplemental Charter*;
(b) authorise the affixing of the Common Seal of the *Institute* to *membership* certificates pursuant to bye-law 60;
(c) provide or refuse confirmation of eligibility to hold a *practising certificate* pursuant to bye-law 52 (a);
(d) approve or refuse applications for advancement to *Fellowship* pursuant to clause 7 (b) (ii) of the *Supplemental Charter*;
(e) decide any other discretionary matters and applications concerning the education and training of *students* and *members* and *non-members* arising from the *bye-laws* and these *regulations*, with the exception of:
  (i) the *Disciplinary Bye-laws* save where the *Committee* is required to act thereunder;
  (ii) regulations 17–19 and 22.

Appeal Panel

Appeals to the learning & professional Development Directorate

92 (a) Notice of a decision by the *Committee* under Regulation 91 shall be communicated in writing to the person who is subject to that decision.
(b) The said person may, subject to sub-paragraph (d) of this regulation and to regulation 93, give notice of appeal against the said decision provided such notice is given in writing by the said person ('the Appellant') and is received by the *Secretary* within twenty-one days from the date of the notice referred to in sub-paragraph (a) of this regulation.
(c) An appeal under this regulation shall be heard by a panel of three members appointed by the Learning & Professional Development Directorate ('The Appeal Panel'). At least one member of the Appeal Panel shall be a member of the Learning & Professional Development Directorate.
(d) The right to give notice of appeal shall not apply to any decision:
  (i) concerning the Appellant's educational or professional qualifications or experience under regulations 15 and 16;
  (ii) concerning award(s) to the Appellant of credit(s) for prior learning under regulation 22, in respect of subjects in the *Institute examinations* or in the *aptitude test*;
  (iii) concerning the determination of a result in an *Institute examination or aptitude test*;
  (iv) concerning the award of the *Professional Accountancy Certificate*;
  (v) concerning the award of *Advanced Diplomas* under regulations 80–88.
(e) The Appeal Panel shall consider:
  (i) the information considered by the *Committee* referred to

in sub-paragraph (a) of this regulation and the said *Committee's* reasons for reaching the said decision; and

(ii) such further written submission as may be made to the Appeal Panel by the Appellant and the said *Committee*; and

(iii) such of these *regulations*, the *bye-laws*, the provisions of the *Supplemental Charter* and such guidelines and instructions issued thereunder as the Appeal Panel may decide are relevant and the Appeal Panel shall then uphold, waive or vary the said decision.

(f) The decision of the Appeal Panel shall be given by notice in writing

(g) In discharging its responsibilities, the provisions of these regulations shall apply to the Appeal Panel *mutatis mutandis* as if references therein to the *Committee* were references to the Appeal Panel

Powers delegated to Appeal Panel

93 A notice of appeal under regulation 92 shall only be accepted by the Appeal Panel if the appellant provides grounds for claiming that one or both of the following circumstances obtain:

Ground for appeal

(a) the *Committee* misconstrued, or acted in breach of, any of these *regulations*, the *bye-laws* or the provisions of the *Supplemental Charter* or any guidelines and instructions issued under such *regulations, bye-laws* or provisions;

(b) the decision of the *Committee* was one which, in all the circumstances, no tribunal properly directing itself and acting reasonably would have made.

Appeal Board

94 A further appeal against a decision by the *Committee* under these *regulations* may be made under bye-law 58 and the Regulations Governing Appeals provided:

Appeal to Council

(a) the said decision has been the subject of an appeal under regulations 92 and 93; and

(b) the Appeal Panel has upheld or varied such decision.

First Schedule: Entry Routes

The Institute will accept the following qualifications as meeting its educational requirements for entry into a training contract for a minimum period of Approved Training agreed within the limits set out in regulation 30.

Academic Qualifications

UK or Irish graduate awards

Any recognised degree awarded by UK or Irish university or college

NVQ/SVQ Level 4 awards
NVQ level 4 qualifications including BTEC Higher National Certificates or Diplomas

NVQ/SVQ Level 3 awards
NVQ Level 3 qualifications including BTEC National Certificates and Diplomas

GCE A Level
2 A level passes plus 3GCSE passes at grades A–C
2 Vocational A levels or 1 double award plus 3 GCSE passes at grades A–C or one GNVQ intermediate award or BTEC first diploma (merit)

Scottish Qualification Certificate
3 higher grades and 2 standard grades or equivalent

Irish School Leaving Certificate
6 passes with at least 3 at higher grade

European/ International Baccalaureate

A recognised University Access Course

Overseas Academic Qualifications

Graduate Awards
Any degree from a recognised university which is comparable to a UK Bachelors degree

School Leaving Qualifications
Any award which is comparable to our expectations for GCE A level entry requirements.

See www.ucas.ac.uk for list of overseas school leaving qualifications and their equivalence

Professional Accountancy Qualifications
Member of AAT

Student of AAT who has achieved NVQ level 3 Intermediate Stage

Member of ACCA, CIMA or CIPFA

Student of ACCA, CIMA, CIPFA, ICAI* or ICAS* who has sat and passed all papers of every examination stage of the body concerned, up to and including the following examinations;

ACCA Part One
CIMA Foundation
CIPFA Foundation
ICAI Professional Examination II
ICAS Test of Competence

**ICAI or ICAS Members are eligible to apply for Reciprocal Membership of the Institute under clause 11 of the Supplemental Royal Charter. ICAI or ICAS students will normally be allowed, on prior application to the Institute, to count up to 12 months of their service under an ICAI or ICAS Training Contract as Approved Training under an ICAEW Training Contract.*

Pass in a recognised Accountancy Foundation Course

Overseas Accountancy Bodies
Member or student who has passed all the examinations required for membership of the Institutes of Chartered Accountants of Bangladesh, Ghana, India, Nigeria, Pakistan, Sri Lanka or Certified Public Accountants (USA), Australia, China and Malaysia

Student who has passed all the examinations, required for membership of the Institute of Chartered Accountants in Australia, the Canadian Institute of Chartered Accountants, the Institute of Chartered Accountants of New Zealand, or the Institute of Chartered Accountants of Zimbabwe

or The South African Institute of Chartered Accountants

Student who has passed all the examinations required for membership of professional accountancy bodies recognised under the EC Mutual Recognition Directive.

Note: Members of the Institute of Chartered Accountants in Australia, the Canadian Institute of Chartered Accountants, the Institute of Chartered

Accountants of New Zealand, the Institute of Chartered Accountants of Zimbabwe and the South African Institute of Chartered Accountants are eligible to apply for reciprocal membership under clause 12 of the Supplemental Royal Charter and regulation 62. Similar arrangements apply to Members of professional accountancy bodies recognised under the EC Mutual Recognition Directive.

Other professional and vocational qualifications

Associate of the:

Institute of Actuaries (AIA)
Chartered Institute of Bankers (ACIB)
Chartered Insurance Institute (ACII)
Institute of Physics (AIP)
Institute of Chartered Secretaries and Administrators (ACIS)
Royal Institution of Chartered Surveyors (ARICS)
Chartered Institute of Taxation (CTA)
Association of Taxation Technicians (ATT)
Barrister at Law, Solicitor
Chartered Engineer
Licentiate or Graduate of the Royal Society of Chemistry (LRSC/GRSC)
Associate of the:
Association of Business Executives (AMABE)
Association of Cost and Executive Accountants (ACEA)
Association of International Accountants (AAIA)
Faculty of Business Administrators of the Corporation of Executives & Administrators (AFBA)
Institute of Commercial Management (AMInstCM)
Institute of Financial Accountants (AFA)
Library Association (ALA)
Institute of Medical Laboratory Sciences (AIMLS)
Member of Hotel, Catering and Institutional Management Association (MHCIMA)
Graduate of the Institute of Personnel and Development (GradIPD)

Mature Entrants

Persons over 25 years of age without qualifications as listed above but with at least 7 years acceptable professional accountancy experience may be considered on individual application to the Institute.

Qualifications not listed above (Regulation 16)
Other qualifications that match GCE A level standard may be considered on individual application to the Institute.

Continuing Professional Development Regulations

These regulations were made by Council on 8 June 2005 and came into force on 1 July 2005.

1. Members shall co-operate with the Institute, its staff and any Committee carrying out functions under Principal Bye law 56[1] (Continuing Professional Development).

2. Members shall supply any information requested under Principal Bye Law 56 (whether in the Annual Members Profile or otherwise) promptly and in accordance with the terms specified. Information includes any evidence requested to demonstrate compliance with continuing professional development. Such evidence may include records, documents and other information whether in hard copy or electronic form.

3. Where the Institute has any issues or concerns relating to compliance with Principal Bye law 56 these will be notified in writing to the member. The member shall, within 15 business days of receipt of such notification (or such longer period as may be allowed), provide a response in writing addressing such issues or concerns.

4. If a member is a CPD exempt member (as defined in these regulations) paragraphs (a) and (b) of Principal Bye law 56 do not apply.

5. Members shall complete a certificate relating to compliance with Principal Bye law 56 in the format set out in the Schedule to these regulations (whether included in the Annual Members' Profile or otherwise).

6. Where a member makes a complaint about the conduct of Institute staff responsible for administering the continuing professional development arrangements and remains dissatisfied notwithstanding an explanation, the Committee shall appoint one of its members to review the complaint. The appointed Committee member shall consider written or oral representations from those concerned and all documents he considers relevant. He may make such enquiries as he deems appropriate and shall then report to the Committee.

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[1] Principal Bye law 56 states-Except as may be provided in regulations a member shall
(a) keep under review his needs for training and development having regard to the professional and other work he undertakes;
(b) where such a review identifies a specific need for training or development act promptly to meet such need; and
(c) certify annually to the Institute compliance with these provisions and, if requested by the Institute, provide such evidence of compliance as may be required.

Interpretation

7. In these regulations unless the context otherwise requires or express reference is made, words and phrases in these regulations have the same meaning as in the Principal and Disciplinary Bye laws. Furthermore:

'Annual Members' Profile' means the questionnaire or similar document sent to members by the Institute requesting information under the Regulations Governing the Information to be Supplied by Members;

'business days' means normal working days excluding Saturdays, Sundays, Public and Bank holidays;

'Committee' means the committee appointed by Council for the purposes of the supervision of continuing professional development under Principal Bye law 56;

'CPD exempt member' means a member who–

(a) provides no accountancy service (with or without reward); and
(b) provides no other service for reward; and
(c) does not act as a trustee, director of a body corporate or in any other capacity which carries with it an equivalent level of legal or financial responsibility; and
(d) has no intention of providing the services in (a), (b) or (c) of this paragraph in the future.

'work' means–

(a) the provision of any accountancy service as defined in the Council Statement on Public Practice[2] (with or without reward);
(b) the provision of any other service for reward;
(c) acting as a trustee, director of a body corporate or in any other capacity which carries with it an equivalent level of legal or financial responsibility.

[2] Extract Council Statement on Public Practice Section 6.2. 'Accountancy services include preparing or advising upon accounts or financial information, auditing and financial reporting, insolvency, taxation and financial (or management) consultancy but in the case of consultancy work only where the principal consultancy activity is accountancy related.'

Continuing Professional Development Accreditation Regulations

These regulations were made by the LPD Board on 6 December 2005 and came into force on 1 January 2006

1. An Employer may apply for its professional development arrangements to be accredited by the Institute.

2. The accreditation assessment will be conducted by Institute staff at such times and in such places as the Committee may direct.

3. If an application under Regulation 1 is unsuccessful further applications may be made subject to any conditions imposed by the Committee.

4. The Committee's decision whether to issue an accreditation certificate acknowledging that the professional development arrangements of the Employer are within the Institute's requirements for continuing professional development shall be final.

5. The Committee shall determine the criteria for the accreditation and in the case of a successful accreditation, issue an accreditation certificate, on such terms and conditions as it may require. Including conditions relating to the use of the Institute's logo or name in association with the Employer.

6. The accreditation certificate shall only be valid for the period specified therein. Applications for renewal should be forwarded to the CPD Accreditation Registrar three months prior to expiry of the accreditation certificate.

7. Any Employer issued with a current accreditation certificate shall inform the CPD Accreditation Registrar of any significant change or proposed change to its professional development, training or appraisal arrangements.

8. The Committee in its absolute discretion may withdraw the accreditation certificate at any stage prior to its expiry for cause.

9. Where a member or Employer makes a complaint about the conduct of Institute staff responsible for administering the accreditation arrangements and remains dissatisfied notwithstanding an explanation, the Committee shall appoint one of its members to review the complaint. The appointed Committee member shall consider written or oral representations from those concerned and all documents he considers relevant. He may make such enquiries as he deems appropriate and shall then report to the Committee.

Interpretation

10. In these regulations, unless the context otherwise requires or express reference is made in these regulations, words and phrases have the same meaning as in the Principal and Disciplinary Bye Laws.

'Committee' means the committee appointed by Council for the purposes of the supervision of continuing professional development under Principal Bye law 56.

'Employer' means for the purposes of these regulations, any body which has fifteen or more partners (including 'members' in the case of a limited liability partnership), directors or employees who are members of the Institute; or any other body which the Committee in its absolute discretion may determine.

'accreditation certificate' means the certificate issued by the Committee following a satisfactory assessment of the Employer's professional development arrangements.

'CPD Accreditation Registrar' means the person or persons appointed to administer the accreditation arrangements for continuing professional development.

Corporate Finance Qualification Regulations

These regulations were made by Council on 8 June 2005 and came into force on 1 July 2005 pursuant to the Scheme for the granting of Certificates, Diplomas and Advanced Diplomas in Corporate Finance approved in general meeting on 8 June 2004

Experience Route

1. A candidate shall be entitled to apply for assessment for the award of the Advanced Diploma in Corporate Finance and entitlement to use the designatory letters, CF (Corporate Finance), based on his previous experience in corporate finance work.

2. The Committee shall determine the criteria for the making of an award based on experience.

3. An application made under Regulation 1 must be received by the Corporate Finance Registrar at the Institute of Chartered Accountants in England and Wales, Gloucester House, 399 Silbury Boulevard, Central Milton Keynes MK9 2HL by 30 June 2006[1].

4. A candidate shall pay on submission of his application for the award such fee or fees as may be prescribed by the Committee.

5. An assessment will be conducted at such times and in such places as the Committee may from time-to-time decide.

6. An Advanced Diploma in Corporate Finance certificate in such form as the Committee may prescribe shall be issued to each successful candidate.

7. A candidate awarded the Advanced Diploma in Corporate Finance may use the letters 'CF' (representing the words 'Corporate Finance') after their name. The right to use 'CF' is at the discretion of the Institute and the entitlement to use the letters may be removed by the Council of the Institute for cause.

8. Notwithstanding Regulation 3, if an application under Regulation 1 is unsuccessful one further application may be made, provided that the further application is received by the Corporate Finance Registrar within 12 months

[1] The Learning and Professional Development Board has authorised the extension of this deadline to 31 December 2006.

of the date of notification that the first application for the award was unsuccessful.

9. The Committee's decision whether to make an award of the Corporate Finance Advanced Diploma shall be final.

Interpretation

10. In these regulations unless the context otherwise requires or express reference is made in these regulations, words and phrases have the same meaning as in the Principal and Disciplinary Bye laws.

'Committee' means the committee appointed by Council with responsibility for the supervision and administration of the corporate finance award scheme.

'Corporate Finance Registrar' means the person or persons appointed to maintain the corporate finance qualification database.

MEMBERS' HANDBOOK

Section 6

Regulations and Guidance relating to Practice

Council Statement on Public Practice

Introduction

If you wish to engage in public practice you must hold a practising certificate and be covered by Professional Indemnity Insurance. In order to help clarify the scope of public practice for you, Council has produced a Statement which seeks to define when you are, and are not, considered to be engaging in public practice. The Council's statement is reproduced below.

Following on from this Statement there are guidance notes which explain how you can obtain a practising certificate. You should read these guidance notes in conjunction with the Council's Guidelines on Continuing Professional Education[1], and the Learning & Professional Development Directorate Regulations set out in this section of the Handbook.

Council's Statement on Public Practice

1 A member engages in public practice when personally and directly he or she provides or holds himself or herself out to provide accountancy services to the public as an individual principal or as a partner in a firm or director of a company providing such services to the public (a 'public practitioner').

2 Accountancy services include preparing or advising upon accounts or financial information, auditing and financial reporting, insolvency, taxation, and financial (or management) consultancy but in the case of consultancy work only where the principal consultancy activity is accountancy related.

Exclusions

3 A member employed by a public practitioner does not by virtue of his or her employment engage in public practice, but he or she would be so engaged if providing accountancy services to the public as a principal outside his or her duties of employment.

4 Subject to the same proviso a member who is employed to provide accountancy services to his or her employer does not thereby engage in public practice.

5 An employee of a firm of public practitioners who is required by his or her

[1]The Council's Guidelines on Continuing Professional Education were replaced in January 2005 by new Continuing Professional Development Guidelines. These are reproduced within this Section.

employer to act as a trustee, administrator or the donee of a power of attorney is not subject to the direction of his or her employer in the exercise of the duties of such an office and, in these respects, acts more as a sole practitioner than as an employee. Nevertheless, since the employee is not holding himself or herself out, personally, as providing services to the public he or she is not merely by reason of such an appointment engaged in public practice.

6 A member who acts as a director of companies, whether in an executive or non-executive capacity, does not thereby engage in public practice unless one or more of those companies is a public practitioner and the member deals personally and directly with accountancy clients (see Corporate Practice Regulation 4(b)).

7 A consultant to a firm of public practitioners is not engaged in practice if he or she simply provides accountancy services to the firm.

8 A member or principal of a firm whose primary purpose is to provide finance, insurance services or computer installation, applications or training, is not engaged in public practice.

9 A member who gratuitously or for a nominal fee (not more than £50[2] at present value) (i) provides accountancy services to a small charitable, community, religious or sporting body, or to similar bodies of a non profit-making nature, or (ii) acts as auditor to a small entity that is not required to be audited by a registered auditor is not engaged in public practice provided such services are not entered into primarily with a view to earning fees.

Consequences

10 A member who engages in public practice as described above must hold a current practising certificate.

11 A member must hold a practising certificate to qualify as a responsible individual in an audit firm registered by the Institute or to be an insolvency practitioner licensed by the Institute.

12 A member who holds a practising certificate must comply with the Professional Indemnity Insurance Regulations.

Responsibility

13 It is each member's own personal responsibility to decide whether or not he or she is engaged in public practice and whether he or she is thus required to hold a practising certificate and Professional Indemnity Insurance.

[2]£50 is the value set in 1992. The value in 2002 is estimated to be £64.

14 If a member remains in doubt as to whether his or her activities amount to engaging in public practice, an enquiry giving all the facts of his or her circumstances may be made of the Director of CAASE (Chartered Accountants Advisory Service on Ethics).[3]

15 A member who is not engaged in public practice may nevertheless incur liabilities against which protection can be obtained only by holding Professional Insurance. Members should therefore be mindful of the possible consequences to themselves and others from acting without insurance in a professional capacity, and if so acting, should inform the person to whom services are provided of the absence of protection.

This statement was issued by the Council of the Institute and first published February 1992.

[3]Now the Head of Ethics Advisory Services (EAS)

Regulations governing Corporate Practice

1 These regulations were made by the Council on 6 November 1991 under former Bye-law 59(b) (now Bye-law 51(b)). They came into force on 1 December 1991.

Interpretation

2 Words and phrases used in these Regulations have the same meaning as in the Bye-laws.

3 The term 'director' means any person occupying the position of director, by whatever name called and includes a shadow director within the meaning of the Companies Act 1985, section 741(2).

Corporate Practice

4 A member is, by virtue of being a director of a body corporate, to be regarded as engaging in public practice if:

(a) the body corporate is engaged in public practice; and
(b) he deals directly or indirectly with accountancy clients or potential accountancy clients of the body corporate in the course of its public practice.

5 A member may not so engage in public practice if it is contrary to any applicable law for the body corporate in question to engage in public practice.

Notes

(These notes do not form part of the Regulations)

(i) Regulation 4 permits members to engage in public practice as directors of bodies corporate. Under Bye-law 51(b) members are already permitted to engage in public practice as sole practitioners and partners and under Bye-law 1 practice as an employee is not treated as public practice.
(ii) As a result of these Regulations the only restrictions on corporate practice are now:
  (a) those contained in the Institute's Audit Regulations;
  (b) those contained in the Institute's Investment Business Regulations; and
  (c) those contained in the Institute's Use of the Title 'Chartered Accountants' Regulations.
(iii) A member who is an employee of a corporate firm is required to hold a practising certificate (a) if he is a responsible individual within the

meaning of the Audit Regulations; (b) if he is an insolvency practitioner licensed by the Institute; or otherwise (c) in circumstances prescribed by the Council.

(iv) The effect of Regulation 4 is that a director of a practising firm whose responsibilities are confined, for example, to personnel matters would not be regarded as being engaged in public practice and would not therefore be required to hold a practising certificate.

(v) Guidance on what constitutes engaging in public practice is contained in the Council statement in Section 6.1.

(vi) The Companies Act 1985, section 741(2), states that: 'In relation to a company ''shadow director" means a person in accordance with whose directions or instructions the directors of the company are accustomed to act. However, a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.'

Regulations governing the Use of the Description 'Chartered Accountants' and General Affiliates of the Institute of Chartered Accountants in England and Wales

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.

2 In these regulations, the term 'Chartered Accountant' means a member of the Institute of Chartered Accountants in England and Wales (the Institute) 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.

3 Words and phrases used in these regulations have the same meanings as in the Disciplinary Bye-laws unless otherwise stated or the context otherwise requires.

4 'Member Firm' means:

(a) a body corporate engaged in public practice of which 50 per cent or more of the directors are Chartered Accountants and more than 50 per cent of the aggregate in nominal value of the voting and of the non-voting shares are held by Chartered Accountants;
(b) a partnership engaged in public practice of which 50 per cent or more of the partners are Chartered Accountants and in which more than 50 per cent of the rights to vote on all, or substantially all, matters at meetings of the partnership are held by Chartered Accountants; or
(c) a member engaged in public practice as a sole practitioner.

5 The Interpretation Act 1978 applies to these regulations in the same way as it applies to an enactment.

6 In these regulations, unless the context otherwise requires:

(a) words importing the masculine gender include the neuter (as well as, by virtue of the Interpretation Act 1978 as applied by regulation 5, the feminine);

(b) words importing the neuter gender include both the masculine and the feminine.

7 A member firm which engages in public practice is entitled to describe itself as 'Chartered Accountants' provided that any partner or director who is not a chartered accountant holds affiliate status from the Institute under its Investment Business Regulations, Audit Regulations, Insolvency Licensing Regulations or these Regulations.

8 A member firm entitled under these regulations to use the description 'Chartered Accountants' shall not cease to be so entitled notwithstanding that the requirements of regulation 7 have not been met provided that it can demonstrate its intention of meeting the requirements of that regulation and that it has not failed to meet those requirements for a period in excess of 3 months.

9 An applicant for recognition as a general affiliate under these regulations shall submit an application and provide an undertaking in the form prescribed in the Schedule to these regulations.

10 A person recognised as a general affiliate shall not have any right or entitlement under the Institute's Royal Charter, Supplemental 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.

11 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.

12 The Disciplinary Bye-laws shall apply to a complaint against a general affiliate as they apply to complaints against members and without prejudice to the generality of the foregoing the term 'defendant' shall be read and construed as including a general affiliate.

13 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:

(i) that he cease to be a general affiliate
(ii) that he be reprimanded
(iii) that he be severely reprimanded
(iv) that he be fined a specified sum
(v) that he pay the whole or part of the costs incurred by the Institute in investigating a complaint and bringing disciplinary proceedings in respect of any complaint found proved.

14 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 director of the member firm.

15 These regulations may be amended or repealed by the Committee of the Professional Standards Office (CPSO)

16 The CPSO shall be responsible for determining applications for general affiliate status. Such status may be granted if the CPSO is satisfied that:

(i) the applicant is a principal, or has been offered the position of a principal, in a member firm;
(ii) 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:
  (a) that he is or has been bankrupt or entered into an individual voluntary arrangement;
  (b) 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;
  (c) 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;
  (d) that he is a partner in a firm which:
    (i) has had a winding-up order made against it on grounds of insolvency; or
    (ii) has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
    (iii) has had an administration order made against it on grounds of insolvency; or
    (iv) has had a receiver appointed by a creditor or by a court on the application of a creditor;
  (e) that he is a director of a body corporate engaged in public practice which:
    (i) has been the subject of an effective resolution passed by the shareholders for it to be wound up or has had a winding-up order made against it on grounds of insolvency; or
    (ii) has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
    (iii) has had an administration order made against it on grounds of insolvency; or
    (iv) has had a receiver appointed by a creditor or by a court on the application of a creditor.
  (f) that he has had an adverse finding of a disciplinary nature made against him by any professional or regulatory body;

(g) 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;
(h) that he has been the subject of a Disqualification Order under the Company Directors Disqualification Act 1986 or under the Insolvency Act 1985 or 1986;
(i) 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 1985 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);
(j) that he has pleaded guilty to or been found guilty of any indictable offence in England and Wales or to any comparable offence elsewhere.

(iii) the applicant has completed a form of undertaking in the terms set out in the Schedule to these regulations.

(iv) the applicant is able to demonstrate appropriate and relevant experience of accountancy or of a related discipline or has one or more of the following qualifications:
(a) Membership of the Association of Chartered Certified Accountants
(b) Membership of the Chartered Institute of Management Accountants.
(c) Membership of the Chartered Institute of Public Finance and Accountancy
(d) Membership of the Chartered Institute of Taxation
(e) Membership of the Institute of Management Consultants.
(f) Membership of the Association of Accounting Technicians.

17 Sub-paragraph (iv) of Regulation 16 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.

18 A general affiliate shall pay such annual subscription as the CPSO may determine from time-to-time.

19 The CPSO may delegate to any member of the Institute's staff or to any committee or sub-committee of the Institute power to take any decision under these regulations which it is empowered to take other than the power to amend or repeal them. A committee to which authority is delegated by the CPSO may delegate any decision which it is empowered to take to a sub committee or any member of staff.

20 The CPSO may at any time withdraw general affiliate status from an individual if:

(i) it considers that he is a no longer a fit and proper person;
(ii) he has ceased to be engaged, or to be entitled to engage in accountancy or a discipline relevant to the profession of Accountancy;
(iii) the firm of which he is a principal has ceased to be a member firm;
(iv) he has ceased to be a principal in the member firm to which his affiliate status related;
(v) he has failed to comply with any restriction or condition imposed on him with the authority of the Institute;
(vi) he has failed to pay the annual subscription within 30 days of the due date;
(vii) he has breached or not complied with any applicable requirement of the Royal Charter Supplemental Charter, Bye-laws or Regulations of the Institute;
(viii) 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

21 A general affiliate may tender his resignation by notice in writing to the Secretary General and on its acceptance by the CPSO, but not until then, he shall cease to be a general affiliate.

22 The CPSO may impose restrictions or conditions at the time of grant of general affiliate status, or at any time thereafter, if it considers it appropriate to do so.

23 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.

24 Any notice or other document required to be served on a general affiliate may be sent by pre-paid post to him at his registered address or at his last known or usual place of residence or business.

25 Any notice or other document required under these regulations to be served by a general affiliate may be sent to the Professional Standards Office at Silbury Court, 412–416 Silbury Boulevard, Central Milton Keynes, MK9 2AF.

26 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.

27 These regulations shall not affect the validity of any dispensation previously granted to a 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.

28 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.

2 August 2000

SCHEDULE

Part I

Form of Application

1 Firm name:

Address :

Telephone :

Fax:

Email :

This Schedule is under review

2 Name of Applicant :

Surname :

Forenames :

Date of Birth :

Address

3 Has the Applicant been granted affiliate status by the Institute on a previous occasion, e.g. for Audit, Investment Business or Insolvency (if so, give details).

4 Professional Qualifications held by applicant		
Title of Qualification	Awarding Body	Date of Award

UNDER REVIEW

5 Experience of Accountancy		
Names & addresses of companies/firms/organisations with whom experience acquired	Status in company/firm/ organisation	Date
Summary of relevant experience		

UNDER REVIEW

6 Experience of a discipline related to accountancy

Names of company/firm/ organisation with whom experience was acquired.	Status in company/firm/ organisation	Date
Summary of relevant experience		

7 I enclose a cheque for £314 being the fee payable for consideration of this application

22 March 2000

UNDER REVIEW

Part II

Undertaking

1 I, the undersigned hereby apply to the Institute of Chartered Accountants in England and Wales to be accepted as a general affiliate under the Regulations Relating to the Use of the Description 'Chartered Accountants' and to General Affiliates of the Institute of Chartered Accountants in England and Wales.

2 I certify that the information given in this application is correct and I confirm as follows:

(a) that I have never been declared bankrupt or, subject to an individual voluntary arrangement under the Insolvency Act 1986 or any other arrangement or composition with creditors nor to a Deed of Arrangement or an assignment by reason of insolvency of my assets for the benefit of my creditors, nor have I been a partner in a firm or director of a corporate body which has been the subject of insolvency proceedings;
(b) that I have not been the subject of an adverse disciplinary finding made against me by any professional or regulatory body;
(c) that I have not been removed for misconduct from the Office of Liquidator, Trustee, Receiver, Receiver and Manager, Administrative Receiver, Administrator or Supervisor of a voluntary arrangement;
(d) that I have not been the subject of a Disqualification Order under the Companies Directors Disqualification Act 1986 or under the Insolvency Act 1985 or 1986;
(e) that I have not been found to have knowingly and wilfully in relation to the conduct of an Insolvency, or 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 1985 or any equivalent predecessor legislation, including 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);
(f) that I have not pleaded guilty to or been found guilty of any indictable offence in England or Wales nor have I have pleaded guilty to or been found guilty of a comparable offence elsewhere.

3 I undertake that if accepted as a general affiliate, I will comply with the Charter, Supplemental Charter, the Principal Bye-laws and the Disciplinary Bye-laws and Regulations which at the time of acceptance or thereafter are in force. In particular, I will:

(a) observe and uphold the ethical and professional standards of the Institute;
(b) perform faithfully and promptly any service that I am retained or employed to undertake in my professional capacity;
(c) provide promptly and willingly all such information and assistance as I am able, if asked to do so by the Institute in pursuance of its duties;

(d) pay any fee required by the Institute of general affiliates.

4 I understand that I shall not be entitled to call myself a Chartered Accountant and that general affiliate status does not confer any rights, acknowledgements, status or designatory letters on a general affiliate nor entitle a general affiliate to be publicly represented as having such.

5 I acknowledge and agree that if I am accepted as a general affiliate, I shall be subject to the disciplinary procedures of the Institute for any failure to comply with its bye-laws or regulations or to fulfil the undertakings in this application or any false or misleading statement made in this application.

Signed .....

Full name

6 *To be completed in the case of a Sole Practitioner who intends to take the applicant into partnership*

I am a Chartered Accountant and Sole Practitioner. I confirm that the applicant for general affiliate status will, subject to his application being approved, become my partner and I confirm that the information provided by him in this form is true to the best of my knowledge and belief and that he is a fit and proper person to become a general affiliate of the Institute.

Signed .....

Full name

Firm name

Address

N.B. A sole practitioner taking a non-member into partnership will need to obtain confirmation from another member who should give the confirmation immediately below that the prospective general affiliate is 'fit and proper'.

I am a Chartered Accountant and confirm that the applicant is known to me and that to the best of my knowledge and belief the information provided by him in the form of application is true and that he is a fit and proper person to become a general affiliate of the Institute.

Signed .....

Full name

Address

7 *For completion in the case of a firm or company other than a sole practitioner*

We are Chartered Accountants and are partners in/directors of the firm/company referred to in the application above and confirm that the applicant for general affiliate status is a partner in or director of or, subject to the successful grant of general affiliate status, will be admitted to partnership or become a director of the above firm/company.

We confirm that the information given in the form of application is true to the best of our knowledge and belief and that the applicant is a fit and proper person to become a general affiliate of the Institute.

.....

(signature) Partner/Director 1
Full Name :

.....

(signature) Partner/Director 2
Full Name :

22 March 2000

UNDER REVIEW

Professional Indemnity Insurance Regulations and Guidance

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Appendix A **Participating insurers**

Some changes are planned to these regulations to come into effect from 1 January 2007. Once these changes are in force an updated version of this Section will be placed on the website at icaew.co.uk/membershandbook. A note will also be placed on the website at icaew.co.uk/pii that will set out the changes.

Changes to the professional indemnity insurance regulations
The PII regulations were originally issued in August 1991. These have now been revised to improve the clarity of the wording and to make other improvements and changes.

In deciding the format for the revised regulations an aim was to make them 'user-friendly'. This has been dealt with in a number of ways. The regulations are now divided into chapters and each covers a specific area. Within the limits of regulations which have a legal standing, the wording is in 'plain English'.

Guidance is now included with the regulations, or if too long, it is in chapter 6. The regulations are in **bold** print to distinguish them from the guidance. Where defined terms are used in the regulations they are printed in *italics*. The guidance is printed in plain type throughout.

The following gives a brief outline of the major revisions to the regulations.

- The period of retroactive cover is increased from five to six years. This is more in keeping with current practice. Most insurance policies already provide for a period of six years or more already. However, firms do not have to amend their policies in this respect until the first renewal after 1 January 1999.
- A new regulation has been added to define the period for the gross fee income to be used in calculating the amount of insurance.
- For those who need to enter the assigned risks pool (see chapter 4) the process is now easier.

Members and others who need to comply with the regulations
Professional indemnity insurance is compulsory for all members of the Institute who have a practising certificate regardless of the amount of practice income. This is a requirement of the regulations governing post-qualification education and training.

Council's statement on public practice is in Section 6.1 and states:

1 A member engages in public practice when personally and directly he or she provides or holds himself or herself out to provide accountancy services to the public as an individual principal or as a partner in a firm or director of a company providing such services to the public (a 'public practitioner').
2 Accountancy services include preparing or advising upon accounts or financial information, auditing and financial reporting, insolvency, taxation and financial (or management) consultancy but in the case of consultancy work only where the principal consultancy activity is accountancy related.

Similarly the regulations for audit, investment business and insolvency require those so regulated to meet the requirements of the PII regulations.

Responsibility of members
The PII regulations apply to individual members but in practical terms professional indemnity insurance usually covers their practising entity – for example their partnership or their sole practice. For those members in practice with non-members these PII regulations effectively apply to the entire mixed

practice. For example, in a mixed partnership, the principle of joint and several liability will make the member partner jointly liable for the actions of his non-member partners. Therefore the insurance should cover the whole practice, not just the member partner.

Members who are responsible for making their own or their firm's professional indemnity insurance arrangements should be sure that those arrangements comply with the PII regulations. Many members are in firms and the professional indemnity insurance arrangements are handled by someone else on their behalf. This does not affect the responsibility of individual members to ensure they meet the PII regulations.

Level of insurance cover
Chapter 3 details the requirements for the minimum level of cover you must obtain. When deciding on how to achieve that level of cover you should consider the following:

- professional indemnity insurance – your broker will be able to help you to obtain cover; and
- the amount of excess to be borne by the insured – this level should only be decided after consideration of both the firm's and the principals' resources, including the borrowing capacity of each. Consider the past incidence of claims and your ability to meet multiple losses.

This is only the minimum amount of cover and you should always consider if this is adequate for your firm.

Inability to obtain insurance
If you cannot obtain cover which satisfies the PII regulations you may be able to enter the assigned risks pool for a period of time until cover is obtained in the market. Chapter 4 provides details.

Who can provide insurance
You must obtain the minimum level of cover, subject to any allowable excess, from a participating insurer and Appendix A explains who these are.

Certificate of compliance
Each year the Institute requires confirmation of compliance with the PII regulations. All those covered by these regulations are asked to complete and return a certificate of compliance. The Institute may check with brokers or insurers that the information is correct.

For many members the confirmation will be sent to their firm, and will cover all the members who are principals in the firm.

Further advice
It is possible that the minimum level of cover, while complying with the PII regulations, will not be high enough to ensure that all claims made against you will be covered. You should consider carefully the level of cover which is right

for you or your firm. To assist you in this, chapter 6 includes answers to the queries which are most often raised by members and some general guidance notes.

Your broker will be able to help you if you have any further queries. If you would like to talk to someone at the Institute please telephone:

Practice insurance section	01908 546365

Other useful telephone numbers are:

Advisory Services	01908 248032
Assigned risk pool manager	01603 207652*

* Members should refer to chapter 4 before contacting the Assigned Risk Pool Manager.

Non-practising members
Some members hold a practising certificate even though they are not engaged in public practice. There is no requirement for these members to have professional indemnity insurance. Such members are required to confirm annually that they are still not practising. If any practice activity is contemplated, then such members should obtain professional indemnity insurance, in accordance with these regulations, before the work commences. The Members' Registrar should also be informed that practice has commenced, together with the name of the firm that the member intends to practice under. The special situation of employees who hold practising certificates under the Audit Regulations or Insolvency Licensing Regulations is dealt with at regulation 5.3.

CHAPTER 1

General

Authority and Commencement
1.1 These *regulations* are issued by the authority of *Council.*

1.2 The *regulations* come into effect on 1 November 1998.

1.3 The Professional Indemnity Insurance Regulations which came into effect on 1 August 1991 cease to have effect on 1 November 1998. Except that any insurance held under regulation 12 of those regulations shall be deemed to meet the requirements of *regulation* 3.1b of these *regulations* until the date of its next renewal after 1 January 1999.

The definition of qualifying insurance in the previous regulations had a period of retroactive cover of five years. These regulations have a period of six

years. Insurance already in force on 1 November 1998 does not need amending until the first renewal after 1 January 1999.

Interpretation

1.4 Words and expressions have the meaning given by the Interpretation Act 1978 unless defined in these *regulations.* The definitions in these *regulations* take precedence.

1.5 In these *regulations*, words importing the singular number include the plural number and vice versa. Words importing the neuter gender include both the masculine and feminine. Headings do not affect the interpretation of these *regulations.* The *regulations* will be governed by, and interpreted according to, English law.

1.6 Any reference to legislation, Bye-laws, regulations, schemes or other documents will apply to any re-enactment, re-issue or amendment.

Definition of terms

1.7 In these *regulations* the following words have the following meanings.

assigned risks pool	**The arrangements by which firms who are otherwise unable to obtain professional indemnity insurance may do so for a limited period and to which all *participating insurers* subscribe.**
assigned risks pool manager	**The broking firm which advises the *Institute* and which manages the *assigned risks pool.***
authorised firm	**A sole practitioner, a partnership or a body corporate authorised under the Institute's Investment Business Regulations.**
authorised insurer	**An insurer authorised by the Financial Services Authority in the *United Kingdom,* or by the Department of Enterprise, Trade and Employment in the Republic of Ireland, to carry on general insurance business in the *United Kingdom* or the Republic of Ireland respectively; or** **an insurance company with a head office in a member state of the European Union other than the *United Kingdom* and entitled to carry on insurance business corresponding to that mentioned in the definition of authorised insurers in the Insurance Brokers (Registration) Act 1977; or** **an insurance company which has a branch or agency in such a member state and is entitled under the law**

	of that state to carry on insurance business corresponding to that mentioned in the definition of authorised insurers in the Insurance Brokers (Registration) Act 1977.
licensed firm	**a sole practitioner, a partnership or a body corporate licensed under the Institute's Designated Professional Body arrangements.**
Bye-laws	**The Bye-laws of the *Institute.***
certificate of compliance	**The certificate used by the *Committee* to monitor compliance with these *regulations.***
Committee	**The Professional Indemnity Insurance Committee of the *Institute.***
Council	**The Council of the *Institute.***
firm	**a a *member* engaged in public practice as a sole practitioner or with others in a partnership or a body corporate;** **b an *authorised firm*;** **c a *licensed firm;*** **d a *registered auditor*;** **e an *insolvency practitioner*; or** **f an *insolvency affiliate.***
gross fee income	**All income in respect of work carried on in public practice, including:** **a fees for personal appointments in respect of work covered by professional indemnity insurance;** **b fees from third parties as commissions or brokerage (whether or not offset against charges to a client) and;** **c fees received in respect of work sub-contracted to others.** **It does not include:** **a the recovery of disbursements and expenses which do not form part of the chargeable fee for professional services rendered;**

	b value added tax. Gross fee income must include the fees received in respect of work which the firm has subcontracted to others. This is unless the work is clearly shown as a disbursement and the client knows that the firm is not taking professional responsibility for the work.
insolvency affiliate	**An individual granted affiliate status under the Institute's Insolvency Licensing Regulations.**
insolvency practitioner	**An individual licensed under the Institute's Insolvency Licensing Regulations.**
Institute	**The Institute of Chartered Accountants in England and Wales.**
Institutes	**The *Institute,* the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland.**
Joint Advisory Panel	**The *Joint Advisory Panel* appointed under regulation 5.10.**
Investigation and Discipline Scheme	**The scheme, or any predecessor or successor scheme, established under clause 1b(vii A) or clause 1b(viii A) of the Supplemental Royal Charter of 21 December 1948.**
member	**A member of the *Institute.***
minimum limit of indemnity	**The amount of insurance required each year under these *regulations.***
participating insurer	**An *authorised insurer* who has agreed to the terms and conditions described in Appendix A of these *regulations.***
principal	**A sole practitioner, partner, director or member of a limited liability partnership, of a *firm.***
practising certificate	**The certificate issued to a *member* by the *Institute* authorising the *member* to engage in public practice.**
qualifying insurance	**Insurance which:** **a is underwritten by *participating insurers* (see Appendix A);** **b includes retroactive cover for liabilities arising from work carried out in the previous six years, except for claims or potential claims known about at the time the insurance was first taken out; and**

	c is underwritten in terms of the minimum wording approved by the *Institute.*
	A policy which does not use the exact approved minimum wording must contain a difference in conditions endorsement in a form approved by the Institute. The required cover may be provided by more than one insurance policy. Retroactive cover may be for a shorter period than six years if the member has only just started in practice. The guidance notes in chapter 6 explain this further.
registered auditor	**A sole practitioner, a partnership or a body corporate registered under the *Institute's* Audit Regulations.**
regulations	**These regulations as modified or amended.**
secretariat	**The people employed by the *Institute* to carry out its functions.**
United Kingdom	**Includes the Channel Islands and the Isle of Man.**

CHAPTER 2

Scope and Monitoring

This chapter explains who needs to take out professional indemnity insurance and how this is monitored. If you are about to start practising you should contact the Institute, which will be able to provide any further information you need.

Scope

2.1 These *regulations* apply to:

a a *member* holding a *practising certificate* and resident in the *United Kingdom* or the Republic of Ireland;
b a *member* in public practice in the *United Kingdom* or the Republic of Ireland;
c an *authorised firm*;
d a *licensed firm;*
e a *registered auditor*;
f an *insolvency practitioner;* and
g an *insolvency affiliate.*

The regulations governing post-qualification education and training require a member who has a practising certificate to meet the requirements of these PII regulations. This is regardless of the form of practice (that is as a sole practitioner, or as a principal in a partnership or a body corporate) or the amount of practice income. Similarly those regulated by the regulations for

audit, investment business or insolvency have to meet the requirements of the PII regulations.

Members who hold a practising certificate, but who do not engage in public practice, do not need to have professional indemnity insurance.

A practising certificate is evidence of being in public practice but these PII regulations only apply to those members who are also resident, or in practice, in the United Kingdom or the Republic of Ireland. Other members who hold a practising certificate but who are resident elsewhere do not need insurance that meets the requirements of these regulations. If a member is in practice in another country then some form of insurance is recommended, but it is not mandatory. Under the regulations governing post-qualification education and training the Institute has reserved the right to inspect the work of overseas members.

However, there is no geographical limit in the regulations for audit, investment business and insolvency.

Firms that are licensed by the Institute under the Designated Professional Body arrangements and those authorised by the Financial Services Authority will need to consider the insurance requirements specified in the EU's Insurance Mediation Directive. This applies only if such firms undertake regulated activities relating to those contracts of insurance covered by the Directive. Further information is provided in the Designated Professional Body Handbook (see note 3 at the end of part 2 of the Handbook).

2.2 These *regulations* also apply to a *member* for a period of two years after ceasing to hold a practising certificate.

2.3 Those *members* who do not make their own professional indemnity insurance arrangements should ensure that the arrangements of their *firm* comply with these *regulations.*

All members with practising certificates should satisfy themselves that they or their firm have suitable arrangements in place to comply with these regulations.

2.4 In deciding whether these *regulations* have been complied with the *Committee* will take into account any guidance issued from time-to-time, by or on behalf of *Council.* In the event of any actual or apparent conflict between these *regulations* and such guidance, the wording of these *regulations* will apply.

Monitoring

2.5 Every *firm* is required to return a completed *certificate of compliance* with the *regulations* to the *Institute* each year.

2.6 The *Committee* can require such further information and evidence as it may reasonably need from *members, firms* and *participating insurers.*

The Institute sends a reminder letter and blank certificate to all those covered by these regulations before the date on which the insurance is due for renewal. Individual principals in a firm will not receive separate certificates unless they are also in another firm on their own account. Members who hold a practising certificate but who are not engaged in public practice will not receive a certificate but will be required to declare annually that they are not engaged in public practice.

As soon as you have negotiated your new cover you should complete the certificate and return it to the Institute. It is important that you comply with this requirement. If you have any problems completing the certificate, or if you experience any delay in renewing your cover, you will receive reminders from the Institute and you should contact the practice insurance section to explain the reasons for the delay.

If you fail to complete the certificate, or to explain to the Institute why you are unable to do so, the consequences may be serious. You may be in danger of losing your registered auditor status, investment business authorisation and/or insolvency practitioner status. Your eligibility to hold a practising certificate could also be in danger and you may also be liable to disciplinary action.

Cessation of practice

2.7 A *member* who ceases to be engaged in public practice in the *United Kingdom* or the Republic of Ireland must use his best endeavours to ensure that he is covered by arrangements which satisfies these *regulations* for at least two years from the date he ceased in public practice. The terms and extent of any cover must be equivalent to that provided by his *firm's* previous *qualifying insurance.*

2.8 When a *firm* ceases the *members* in practice in that *firm* at the date of cessation shall ensure that there is in place appropriate cover to meet requirements of *regulation* 2.7 for at least 24 months following the cessation of the practice. Thereafter the *members* in practice in that *firm* shall use their best endeavours to ensure cover is in place to meet requirements of *regulation* 2.7 for a further four years. The terms and extent of the cover must be equivalent to that provided by the *firm's* previous qualifying insurance.

(Regulation 2.8 is effective from 1 October 2002.)

It is extremely important that you secure 'run off' cover for your previous practice after you cease to practice. This is to cover you for claims for work done while in practice but arising after the practice ceased. Such cover is a requirement of these regulations and it is in your own interests, whether or not you think you might have a claim in future. If your practice has been taken over by someone else this cover may be effected by the new practice or by you.

You should maintain this cover for at least two years and at the end of that

period you should carefully consider whether you need to continue cover. This will depend on whether you have had, or expect to have, any claims since you ceased practice. It is the Institute's recommendation that you should maintain run off cover for at least six years.

A member who keeps a practising certificate after ceasing in public practice is required by these regulations to have run off cover in accordance with regulation 2.7.

There is further guidance in chapter 6 about what to do in the case of other practice changes.

CHAPTER 3

Terms of cover

This chapter explains the Institute's scheme of insurance and the level of cover you should have in place. Professional indemnity insurance works on a claims made basis. This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy. This is irrespective of when the work concerned was carried out. It is therefore important that insurance remains in force to provide protection against any claims which may arise in the future for work done in the past.

It is most important that you check carefully the wording of your policy. This is so you understand:

- exactly how the insurance works;
- what is covered;
- on what terms; and
- subject to what terms, conditions and exclusions.

Remember that the terms of any additional policies that you obtain for levels of cover over and above the minimum levels required by these regulations may not necessarily be the same as the terms of the qualifying insurance offered by participating insurers.

Ability to meet claims
3.1 A *firm* must:

a take reasonable steps to meet claims arising from being in public practice; and
b arrange *qualifying insurance* which meets the limits in *regulation* 3.2.

As well as taking reasonable steps to meet any claims that do arise, a priority is to limit the risk of claims against you. The guidance in chapter 6 gives some examples of the matters you should consider. Regulation 2.1 details who is subject to these regulations.

Qualifying insurance
Qualifying insurance is a special type of insurance for those in public practice. This insurance can only be obtained from certain insurers who are known as 'participating insurers' for the purpose of these regulations. Further details of these insurers are in Appendix A.

All participating insurers have agreed to provide cover under terms which match those of the Institute's approved minimum wording. Those members taking out cover with a participating insurer can be certain that their policy meets the minimum requirements. These terms may be amended by insurers in an individual policy to include extensions of cover beyond the requirement of the approved minimum wording.

As an extra safeguard, the Institute has asked those participating insurers which use a slightly different wording to include a 'difference in conditions' endorsement in their wording. In the event of a dispute between a policy holder and his insurer, the endorsement will ensure that the Institute's minimum wording overrides that of the insurer where the insurer's wording is less favourable.

A current policy will primarily provide cover for past acts, whether or not cover was in place at the time of the act. Sometimes insurers may put a 'retroactive date' on the policy, limiting the period of cover for past acts. The date must be at least six years before the date of the current policy, or when the practice started if sooner.

The current text of the minimum policy wording and the difference in conditions endorsement may be obtained from your broker, insurer or the Institute.

Firms that are licensed by the Institute under the Designated Professional Body arrangements and those authorised by the Financial Services Authority will need to consider the insurance requirements specified in the EU's Insurance Mediation Directive. This applies only if such firms undertake regulated activities relating to those contracts of insurance covered by the Directive. Further information is provided in the Designated Professional Body Handbook (see note 3 at the end of part 2 of the Handbook).

Minimum limit of indemnity
3.2 Except where *regulation* 3.3 applies the *minimum limit of indemnity* must be £1 million for any one claim and in total.

This means that the insurance must pay a maximum of at least £l million for a single claim or a number of claims totaling £l million. It may be possible to obtain cover of £l million for each and every claim, regardless of the number of claims made. Your cover up to the minimum limit of £l million must be taken out with a participating insurer. Cover above that limit does not have to be with a participating insurer, nor does it need to comply with the minimum approved wording.

3.3 If the *gross fee income* of a *firm* is less than £400,000, the *minimum limit of indemnity* for any one claim and in total must be equal to two and a half times its *gross fee income*, with a minimum of:

1 £50,000 for a sole practitioner;
2 in any other case £100,000.

Once a firm's gross fee income exceeds £400,000, the two and a half times multiplier gives an answer of £1 million which is the maximum required by these regulations. However, firms should always consider if this is sufficient for their situation.

3.4 *Gross fee income* should be based on the accounting year of the *firm* which immediately precedes the start of the policy.

Gross fee income must include the fees received in respect of work which the firm has subcontracted to others. This is unless the work is clearly shown as a disbursement and the client knows that the firm is not taking professional responsibility for the work.

The figure of gross fee income should be based on the most recently completed accounting year. If this is your first year in practice, you should give your broker an estimate of your gross fee income. However, if the most recently completed accounts are not for a year or are for a period ending some time previously to the policy renewal date then you may need to estimate the gross fee income figure to use. It is advisable not to decrease the amount of cover from that previously held until a completed set of accounts shows a decrease in gross fee income. This is because although the insurance is on a claims made basis, regardless of when the work was done, claims do arise from previous years and if turnover was greater in the past the possibility of claims may be higher.

Council's statement on public practice is repeated in the introduction to these regulations and will help you to decide what should be included in your gross fee income.

3.5 The *minimum limit of indemnity* can include an excess provided that:

a for a sole practitioner the excess is not more than £30,000;
b for a partnership, the excess is not more than £30,000 multiplied by the number of *principals;*
c for a body corporate, the excess is not more than the greater of:
  1 £30,000; or
  2 the total of the amounts accepted by the *principals* as a legally binding personal obligation (but excluding any amount over £30,000 accepted by any *principal*).

Although there is a minimum amount of insurance needed, part of this can be borne as an excess as in any other form of insurance. However, the above regulation sets a limit to the amount of the excess.

The minimum limit of indemnity may include a self insured element so long as it does not exceed the limits in these regulations. The limits are set out in full in the above regulation although the Committee does have the power (see regulation 5.3) to vary these in specific situations. However, the general rule is that the maximum should be £30,000 per principal.

(Regulation 3.5 was amended with effect from 1 January 2004, the previous limit was £20,000.)

3.6 If the *Committee* is satisfied that a group (however composed) of *firms* has shown that together they comply with these *regulations,* it is at the *Committee's* discretion to allow that group to be treated as a single entity (compound firm) for the purposes of these *regulations.*

The Committee can treat a 'group' of separate firms as a compound firm. Such a firm will usually comprise a number of associated firms which appoint one of their number to arrange insurance under one policy.

CHAPTER 4

Inability to obtain cover

It is possible, for example if you have had a number of claims, that you may not be able to obtain cover. This chapter explains the provisions which will help you and what you need to do if you are refused cover in the insurance market with a participating insurer. The assigned risks pool is effectively an insurer of last resort and was set up to ensure that members are almost always able to comply with these regulations whatever their circumstances.

Every participating insurer has agreed to subscribe to the assigned risks pool. This can provide cover in an emergency and for up to two years, although premium levels are considerably higher than charged outside the assigned risks pool. The assigned risks pool manager (see introduction for telephone number) acts as coordinator between firms, participating insurers and the Institute. If you wish to apply to enter the assigned risks pool you should telephone the assigned risks pool manager who will be able to help you and will provide the documents you need.

If you establish to the satisfaction of the Joint Advisory Panel (regulation 5.10) that you cannot obtain the professional indemnity insurance cover required by these regulations then you are eligible for admission to the assigned risks pool.

Reasons for entering the Assigned Risks Pool

4.1 The *Joint Advisory Panel* will permit an applicant to be insured in the a*ssigned risks pool* if:

a the applicant has evidence of declinature from *participating insurers* in a form satisfactory to the *Joint Advisory Panel;*

b the applicant is unable to obtain a quotation from any *participating insurer* other than a quotation which (in the opinion of the *Joint Advisory Panel*) amounts to constructive declinature. Prima facie evidence of constructive declinature will be:

1 the quotation of a premium which the applicant is unable to pay within six months from the commencement of the policy; or

2 the quotation of a premium which has such an effect on the applicant's financial security that it jeopardises its ability to carry on its business.

or

c where cover following cessation of public practice (see *regulation* 2.7) is not available from any *participating insurer.*

You may apply for entry into the assigned risks pool if you or your firm cannot obtain cover to comply with these regulations from any participating insurer. Declinature and constructive declinature are insurance terms. Declinature means that you have been refused cover. Constructive declinature means that you have been offered cover but only at a premium which you cannot pay or which, if you did pay it, would put your practice at risk financially. If you wish to plead constructive declinature you must satisfy the Joint Advisory Panel, producing such evidence as the Panel requires that the premium quoted meets one or more of the conditions of regulation 4.1b.

Procedure for entering the assigned risks pool

4.2 Application for admission into the a*ssigned risks pool* must be made to the *assigned risks pool manager.* Any application must include:

a evidence of declinature satisfactory to the *Joint Advisory Panel*, or

b a declaration by the applicant of the circumstances it considers to be evidence of constructive declinature. The *assigned risks pool manager* will refer the matter to the *Joint Advisory Panel*, which will decide whether particular cases constitute constructive declinature and whether the firm can enter the *assigned risks pool.*

4.3 An applicant will be given a short term admission to the *assigned risks pool* provided the applicant has signed the contract for entry, while other *participating insurers* are approached or while the *Joint Advisory Panel* decides whether there has been constructive declinature.

The Joint Advisory Panel has delegated the authority to approve evidence of declinature to the assigned risks pool manager.

It is possible to enter the assigned risks pool on a short term basis if your current insurers have declined to provide renewal terms and have not agreed to an extension of cover. Temporary cover for up to thirty days may be granted in the assigned risks pool and should provide sufficient time for all participating insurers to be approached.

The assigned risks pool manager will explain that anyone attempting to gain

entry to the assigned risks pool must approach other participating insurers to seek insurance. For details of participating insurers and how they should be approached you should refer to the assigned risks pool manager.

4.4 Before admission to the *assigned risks pool* the applicant must;

a supply the *assigned risks pool manager* with any information it may reasonably require;
b agree to pay to the a*ssigned risks pool manager* within thirty days any required deposit and agree to pay within six months the balance to meet the full premium as eventually assessed;
c agree to submit, at the applicant's own expense, to investigations as required by *regulation* 4.5; and
d consent to the *assigned risks pool manager* notifying the *Committee* of the application for admission to the *assigned risks pool* and whether or not it was granted.

The cover provided in the assigned risks pool will not include claims made or circumstances reported or known to you before you entered the assigned risks pool. Before entry into the assigned risks pool it is therefore essential to notify existing insurers, before the existing policy expires, of all known claims or circumstances which might give rise to a claim.

4.5 Once in the *assigned risks pool* the person, *member* or *firm* must submit, at its own expense, to an investigation by the *Committee* or its appointed agent and, if the *Committee* so decides, a further investigation at a later date. A deposit for the costs of the investigation may be required at the *Committee's* discretion. The investigation will:

a determine the reasons why cover could not be obtained; and
b ascertain what steps, if any, should be taken to enable cover to be obtained outside the *assigned risks pool.*

4.6 The *Committee* will notify the person, *member* or *firm* of any action it should take following the investigation. If, as part of the investigation, the *Committee* considers that the interests of any clients of the person, *member* or *firm*, or of the public, may be adversely affected, the *Committee* will refer the matter to any regulatory, disciplinary or other committee of the *Institute* for that committee to take appropriate action.

Before you can enter the assigned risks pool you must sign a contract which requires you to pay the premium determined by the Joint Advisory Panel and have a review of your practice. A significant premium deposit is payable immediately. A final adjustment will be made once your position has been reviewed. You must also pay the cost of the investigation and any follow-up investigation which is necessary.

The Institute will arrange for an investigation of your firm. This report will be used by the Joint Advisory Panel when deciding whether you are in a position to be able to leave the assigned risks pool and, if not, what steps should be taken by you to satisfy insurers. It is also to enable the Committee

to assess whether it should report any matters for possible regulatory or disciplinary action.

Leaving the assigned risks pool

4.7 The written approval of the *Joint Advisory Panel* is required before a person, *member* or *firm* can remain in the *assigned risks pool* for more than twenty four consecutive months.

4.8 Applications for extensions of time in the *assigned risks pool* must be made, through the *assigned risks pool manager,* to the *Joint Advisory Panel* which has absolute discretion to grant the application for continuation in the *assigned risks pool.* The decision of the *Joint Advisory Panel* in respect of the continuation will be final. Any such extension may be granted subject to the requirements of *regulation* 4.4.

4.9 The written approval of the *Joint Advisory Panel* for a person, *member* or *firm* to remain in the *assigned risks pool* must be submitted to the *Committee.* If the *Committee* considers that the interests of any clients of the person, *member* or *firm*, or of the public, may be adversely affected by the person, *member* or *firm* remaining in the *assigned risks pool*, the *Committee* will refer the matter to any regulatory, disciplinary or other committee of the *Institute* for that committee to take appropriate action.

It is a requirement that a member who holds a practising certificate must comply with these regulations. A member will therefore lose the right to a practising certificate at the end of the expiry of the maximum two year period (or any extension) allowed in the assigned risks pool if no other arrangements are made to meet the requirement of these regulations.

If a member ceases to be eligible to hold a practising certificate then the bye-laws require that the practising certificate must be returned to the Institute immediately.

You can leave the assigned risks pool at any time if you obtain cover in the general insurance market. You must normally leave the assigned risks pool after two years and, if it is not possible to obtain cover at the end of those two years, you will no longer be eligible to hold a practising certificate. It may be possible to obtain an extension of time within the assigned risks pool but this is at the discretion of the Joint Advisory Panel. Further, such an extension must be acceptable to the Committee.

It is essential to advise the assigned risks pool manager of any claim or circumstance which might give rise to a claim before you leave the assigned risks pool. It is also essential, when seeking cover outside the assigned risks pool, to make any potential insurer aware of your time in the assigned risks pool, otherwise this could jeopardise your cover and your new insurers might refuse a claim on the grounds of material non-disclosure.

CHAPTER 5

The Committees

Professional Indemnity Insurance Committee

Composition
5.1 *Council* will appoint the *Committee*, which must consist of at least four *members,* and its quorum is three.

Responsibilities
5.2 The *Committee* is responsible for:

a reviewing the *qualifying insurance* criteria*;*
b monitoring compliance with these *regulations* and reporting non-compliance to any regulatory, disciplinary or other committee of the *Institute;*
c deciding the content of the annual *certificate of compliance* with these *regulations* (*regulation* 2.5);
d approving the form and content of the contract for entry into the *assigned risks pool;*
e ensuring the commissioning of investigations into *firms* applying to be admitted to the *assigned risks pool* (*regulation* 4.5);
f making a referral to any regulatory, disciplinary or other committee of the *Institute* for that committee to take appropriate action following an investigation under *regulation* 4.5;
g designating *authorised insurers* as *participating insurers*; and
h granting, at its absolute discretion, an exemption under *regulation* 5.3.

5.3 The *Committee* may, at its absolute discretion, and in such terms as it decides:

a grant an exemption from the requirements of these *regulations* to a *member* who is a *principal* in a practice which is regulated by another professional body and has in place the professional indemnity insurance required by that body;
b waive or relax the requirements of *regulation* 3.5 (level of excess);
c allow a *firm* subject to these *regulations* to combine with others to comply with these *regulations;*
d waive or relax the requirements of these *regulations* concerning *participating insurers;*
e grant an exemption from the requirements of these *regulations* to a *member* who is an employee in a *firm* and who is holding a practising certificate only to meet the requirement of the audit or insolvency regulations and who is not engaged in public practice in another *firm* or on their own account; and
f grant an exemption from the requirements of these regulations to a *member* who holds a practising certificate but who is not engaged in public practice.

This regulation allows the Committee to exempt members and firms from the requirements of particular regulations. These are the only exemptions allowed.

You may be in a firm which is regulated and insured under the requirements of another professional body. The Institute can advise you if your cover meets the requirements of these regulations and whether you may apply to the Committee for an exemption from them.

In exercising its discretion, the Committee will take account of whether the cover is at least equivalent to that required by these regulations, and whether the insurer in question is a participating insurer in the Institute's scheme.

The minimum requirements may include a self insured element so long as it does not exceed the limits in these regulations. The limits are set out in full in regulation 3.5. The Committee can vary these in specific situations although the general rule is that the maximum self insured element should be £30,000 per principal.

The committee can permit a group of firms to arrange the insurance required by these regulations jointly. Regulation 3.6 details exactly how this can happen.

The committee can relax the requirements relating to participating insurers.

The Audit Regulations allow an employee to be designated as a responsible individual and the Insolvency Regulations allow an employee to hold an insolvency licence. Both sets of regulations require such an employee to hold a practising certificate. However, there is no need for such an employee to have his own professional indemnity insurance.

Some members hold a practising certificate even though not engaged in public practice. There is no need for such members to have their own professional indemnity insurance.

If the individual is also engaged in public practice in another firm or otherwise on his own account, insurance must be obtained to meet the requirements of these regulations.

In all cases, any relaxation of the regulations is at the discretion of the committee which may attach conditions to the relaxation.

5.4 The *Committee* may publish its decisions or advice as and where it considers appropriate.

5.5 Except where *regulation* 5.6 applies, the *Committee* may delegate its duties to sub-committees or to the *secretariat*.

5.6 The *Committee* may not delegate the following decisions:

a a relaxation from these *regulations* for *members* insured under the requirements of another body; and
b a relaxation under *regulation* 3.5 (level of self-insured excess).

Provision of information to the Committee

5.7 In carrying out its functions under these *regulations,* the *Committee* has the power to require a person, *member* or *firm* subject to these *regulations* to provide any information (including books, papers and records) about it or its clients. This power also applies to any of the *Committee's* sub-committees, the *secretariat,* or any duly appointed agent.

5.8 Information provided to the *Committee* under these *regulations* will be treated as confidential but may be disclosed if the *Committee* considers it appropriate in the following circumstances:

a in connection with the procedures set out in these *regulations;*
b in connection with disciplinary proceedings by the *Institute* or the *Investigation and Discipline Scheme;*
c in connection with the discharge by the *Institute* of its function as a regulatory body; or
d as required by law or regulations.

5.9 A person, *member* or *firm* which was subject to these *regulations* will nevertheless continue to be subject to *regulation* 5.7 in so far as the enquiries or information required relate to any period up to and including the date when compliance with these regulations was no longer required.

It is important that confidentiality is maintained so as to avoid prejudicing the terms of members' insurance cover. Except for the circumstances described in regulation 5.8 neither the Committee, nor any member of the Institute or secretariat, may disclose the insurance details of any member to any person other than that member.

Joint Advisory Panel

5.10 The *Joint Advisory Panel* will:

a consist of two representatives from each of the *Institutes,* one of whom shall be nominated Chairman by joint agreement of the Presidents of the *Institutes,* and four representatives from the *participating insurers;*
b have a quorum for meetings of four members, two of whom must be representatives of the *Institutes* and two of the *participating insurers;* and
c meet as required and at least twice a year.

5.11 The *participating insurers'* membership of the *Joint Advisory Panel* will be reviewed annually by the *assigned risks pool manager* by reference to the *participating insurers'* level of participation in the *assigned risks pool.*

5.12 The *Joint Advisory Panel* is responsible for:

a reviewing the progress, effectiveness and viability of the *participating insurers* scheme including the *assigned risks pool;*
b reviewing insurance matters referred to the *Institute*;
c determining applications for admission to the *assigned risks pool;*
d determining applications for extensions in particular cases to the maximum of twenty four months in the *assigned risks pool;* and

e dealing with any other matters referred to the *Joint Advisory Panel.*

The Joint Advisory Panel ensures that there is a regular exchange of information between the Institutes and insurers and that the regulations are suitable to meet current market conditions. The Joint Advisory Panel also provides technical expertise and, in particular, monitors firms in the assigned risks pool.

CHAPTER 6

Additional Guidance

6.1 This chapter has been compiled from questions asked by members and should answer most of your queries. If you are unable to find the answer to your particular problem, you should contact your broker, or the Practice Insurance section of the Professional Standards Directorates.

6.2 This section, together with the guidance included with the regulations, also provides guidance on the 'reasonable steps' that regulation 3.1 requires firms to take.

Certificate of compliance

6.3 The certificate of compliance is the document used by the Institute to collect information on the amount of insurance each firm has. It is sent to all those who have professional indemnity insurance in a reminder pack just before cover needs to be renewed each year.

6.4 Individual principals in a firm will not receive separate certificates unless they are also in another firm on their own account. Members who hold a practising certificate but who are not engaged in public practice will not also receive a certificate.

Claims handling

6.5 All principals, together with their employees, should be made aware of the importance of notifying insurers promptly of claims or circumstances which may give rise to a claim. Everyone in the firm should know that failure to comply with underwriters' requirements in this regard could seriously prejudice the firm's rights and entitlement to indemnity under the policy.

6.6 One person, at the level of principal, should be given the task of recording and coordinating information about claims or circumstances and of notifying brokers/underwriters accordingly. That person should regard the prompt notification to brokers/underwriters as a first priority and should not wait until there have been developments or until a detailed report of the matter has been prepared.

6.7 All staff should be encouraged to report promptly to the individual designated in the above paragraph any matters of which they become aware.

6.8 Claims or circumstances should be regarded objectively. If there are circumstances which might reasonably give rise to a claim then insurers should be notified immediately. This is regardless of the fact that currently allegations may be vague or not specified and regardless of whether the member personally thinks liability is unlikely. (In this latter regard the question of liability is a legal one which only lawyers and, ultimately, the courts are competent to decide.)

6.9 There should be a regular item on the agenda of principals' meetings to discuss any matter that might lead to a claim and also to monitor any claims that have been made.

6.10 Prior to renewal and the completion of the proposal form, a circular should be sent to all principals requiring confirmation that they are not aware (after enquiry of staff who report to them if applicable) of any claim or circumstance which may give rise to a claim. The circular should remind principals and staff of the importance of the declaration and that failure could prejudice the firm's rights under the policy. In addition, it should make clear that the period between the completion of the proposal form and renewal is a critical one and that any matter or circumstance arising in that period must be notified as a matter of great urgency.

Cost of cover

6.11 This is a matter between you and your insurer and the Institute will not become involved in these discussions unless you are offered a quotation which you are unable to pay within six months from the commencement of the policy, or which has such an effect on your financial security that it jeopardises your ability to carry on your business (regulation 4.1).

Level of cover

6.12 Having carried out your risk assessment procedures (see paragraphs 6.16 to 6.23) you should decide the level of cover required, considering:

- the minimum level required by these regulations;
- the likely level of exposure of the firm to claims;
- whether current cover is consistent with that of similar firms, using available resources such as interfirm comparison, information held by your broker, and information held jointly with other firms in a mutual arrangement;
- the advice from experts on what cover is available and its cost. This should include consideration of whether the cover offered includes legal costs within, rather than in addition to, the limit of indemnity. Your broker will be able to assist you;
- the level of the firm's own resources to meet claims. This includes the availability of both firm and personal assets and reserves held to meet known claims.

Practice mergers etc

6.13 You must plan in advance if your firm's structure changes. For example, if you are about to merge with another firm, you and your fellow principals must ensure that the new firm has sufficient qualifying insurance in order for you to comply with the regulations. If your firm is dividing, each new firm must have sufficient qualifying insurance in its own right. Further guidance is in paragraph 6.24 onwards.

Recommended level of insurance cover (limit of indemnity)

6.14 The minimum required level is set out in chapter 3. No firm is currently required to have more than £1 million insurance cover but for many firms this limit may not be adequate. It is important to note that all firms are required to take reasonable steps to be able to meet claims arising from professional business.

Reminder letter from the Institute

6.15 This, together with a blank certificate of compliance, is sent out as a reminder to every firm and member, (resident in the United Kingdom or the Republic of Ireland) and holding a practising certificate but not engaged in public practice before cover is due for renewal. If you have not already started to negotiate your cover for next year you should do so immediately you receive the reminder.

Risk assessment

6.16 Your first priority is to limit the risk of claims against your firm.

6.17 The Institute's Advisory Services produces a Help Sheet 'Managing Professional Liability Risk', which sets out in detail the steps you should take to limit the risk of claims and what you should consider before accepting new clients, or new work from existing clients.

6.18 A firm should carry out a risk assessment and take any appropriate action. This would normally be at least annually, in the context of an impending renewal of PII cover, and at any other time when the composition of the firm or its client base changes significantly. The assessment should give consideration to the possibility of being sued should anything go wrong and the possible amount of such a claim:

- client by client, having regard to whether the work is ongoing or one-off;
- client by client, having regard to the maximum potential exposure of those interested in the client, for example shareholders and creditors.

6.19 External information such as the general economic climate and the types of business experiencing difficulties should also be considered as part of the assessment.

6.20 As part of the assessment of each client (and new clients before they are taken on) the following should be considered:

- instructions received, and nature of work to be carried out and the

resources necessary in time and staff to complete tasks in a timely and accurate manner;
- credibility of management;
- quality of accounting, financial and management controls;
- type of business;
- continued viability of company;
- the effect of the fee on the quality of the work.

6.21 If you decide that work done for any client creates a potentially higher than average risk, whether or not you are charging a fee, you should:

- evaluate your ability to mitigate the risk in terms of procedures;
- initiate safety procedures, for example a review by another principal;
- reconsider your quality control and assurance procedures;
- decide whether to retain the client.

6.22 Remember the need to cover:

- all of your firm's current staff, including sub-contractors and consultants;
- all of your firm's activities including, for example, joint audit appointments;
- past and new principals and predecessors in business.

6.23 After taking any limiting action you must then assess the remaining risk before deciding upon the level of professional indemnity insurance. Bear in mind the firm's claims history and the need for regular analysis of prime causes of any failures experienced by the firm.

Retroactive cover

6.24 When a practitioner ceases in public practice (and assuming he does not keep his practising certificate) then 'run-off' cover should be arranged. This is explained below.

6.25 The position can be more complicated when a practitioner moves between practices. The obligation is on individual members to have 'qualifying insurance'. An important part of what constitutes qualifying insurance is retroactive cover. Although the insurance is on a claims made basis, which means the relevant time is when a claim is made, not when the work was done, insurers will frequently put a retroactive date on the policy. This cannot be less than six years and may well be much longer. The practical effect is that the insurers will not accept a claim if the original work was done before the retroactive period started.

6.26 When a practitioner changes practice, either by moving between firms or leaving a partnership to become a sole practitioner, it is very important that this retroactive part of the cover is maintained. This can be achieved in a number of ways:

- as retroactive cover in the new practice;
- as a former principal in the old practice;
- as a special policy;
- as a last resort, in the assigned risks pool (see chapter 4).

6.27 It is the member's responsibility to ensure that this element of the cover is in place. If the cover is provided by the insurance policy of a practice the member has just left, then the provision of such insurance, and confirmation of its continued existence, should form part of any 'leaving' agreement.

6.28 Similar consideration applies when practices merge or break-up into smaller firms. Each member should ensure, through one route or another, that retroactive cover is in place. It may be necessary to take advice form a specialist insurance broker. As with all such matters, advance planning is essential.

Run off cover

6.29 Members are expected to use their best endeavours to ensure they are covered by arrangements which comply with the Institute's regulations for at least twenty four months after they cease to practice. The terms and extent of any cover should be equivalent to any previous qualifying insurance. It is to cover the practitioner for claims received after ceasing in practice for work done while in practice.

6.30 Run off cover may be provided under the policy of a continuing practice or you may need to take out an individual policy. If your former practice has undertaken to include run off cover for you in its current cover, you must remember to check that it continues to cover you for at least two years. At the end of that time you should consider whether you need continued cover.

6.31 You should continue to assess your need for such cover each year until you are satisfied that there is no possibility of a claim being made. It is recommended that you consider maintaining run-off cover for six years after you cease to practice.

Terms used in policy documents

Aggregate

6.32 The total limit of indemnity available. The policy may describe this as 'any one claim and in all' or 'each and every claim and in the aggregate'.

Claims made basis

6.33 This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy only. This is irrespective of when the work concerned was carried out. It is therefore important that insurance remains in force to provide protection against any claims which may arise in the future for work done in the past.

Each and every claim

6.34 The limit of indemnity specified in the policy schedule available to meet 'each and every' claim. This may also be written as 'any one claim'. In this

case, there is no overall limit and multiple claims, each up to the limit, could be made.

Limit of indemnity
6.35 The maximum amount that an insurer is obliged to pay out, either in aggregate or each and every claim, to meet valid claims against the firm while the insurance is in force.

APPENDIX A

Participating Insurers

The Financial Services Authority (or the Department of Enterprise, Trade and Employment in the Republic of Ireland) is responsible for authorising insurers to carry on general insurance business in the United Kingdom or the Republic of Ireland. Any such authorised insurer prepared to agree to the conditions of the Institute's scheme may apply to the assigned risk pool manager to be designated as a participating insurer.

To be a participating insurer, an authorised insurer has to agree to:

- provide insurance in accordance with these regulations;
- subscribe to the assigned risks pool, as described in chapter 4;
- supply the Institute or its appointed agent such information as it may reasonably require;
- refer to arbitration all disputes with insured firms involving disagreement about:
  1 which of two or more participating insurers should indemnify a firm; or
  2 how two or more participating insurers should indemnify a firm.

The Institute has a list of participating insurers which is updated every year and is included with the reminder letter and certificate of compliance. Further copies can be obtained from the Institute's website at icaew.co.uk/pii.

Most insurers underwrite in groups (facilities) with a lead underwriter and several following underwriters. On the list provided by the Institute, those insurers which accept business direct are indicated. The other insurers must be approached through a broker, preferably a Lloyd's broker, with access to all participating insurers.

Practice Assurance Regulations

Some changes are planned to these regulations to come into effect from 1 January 2007. Once these changes are in force an updated version of this Section will be placed on the website at icaew.co.uk/membershandbook.

These regulations were made by Council on 6 October 2004 and came into force on 1 November 2004 and are applicable wherever members are required under the Principal bye-laws to hold a practising certificate.

1 PC holders and member firms shall act in accordance with the PA Standards.

2 Payment of the PA scheme fee is due on the same date, and under the same conditions, as apply to the practising certificate fee.

3 Failure to pay the PA scheme fee will have the same consequences in relation to a PC holder's eligibility to hold a practising certificate as failure to pay the practising certificate fee.

4 Members and member firms shall co-operate with the Institute, its staff and any Committee carrying out functions under the PA scheme.

5 If any functions or responsibilities of the Institute under the PA scheme are undertaken by another person or body with the agreement of the Institute, members and member firms shall co-operate with such other person or body as if it were the Institute.

6 The Institute's logo or the legend '*A member of the ICAEW Practice Assurance scheme*' or both may be used by member firms. Firms subject to the PA scheme which are not member firms as defined in the Disciplinary Bye-laws may not use the Institute logo but may use the legend. Any use of the logo or legend shall follow Institute guidance.

7 All member firms shall:

(a) appoint from that member firm a PA contact principal who shall be:
  (i) in the case of a sole practice, the practitioner;
  (ii) in the case of a partnership, a partner;
  (iii) in the case of a limited liability partnership (LLP), a member of the LLP;or
  (iv) in the case of a corporate body, a director; and
(b) except in the case of (a)(i) notify the Institute forthwith of the appointment and any changes of appointment.

8 Member firms and PC holders shall supply any information requested by the Institute under the PA scheme (whether in the Annual Return or otherwise) promptly and in accordance with the terms specified.

9 Member firms shall notify the Members Registrar of:

(a) any changes to information provided relating to the composition of the firm within 10 business days of the change taking effect, and
(b) any changes to:
  (i) the name or trading name;
  (ii) the registered address;
  (iii) the main telephone number; and
  (iv) the e-mail address
  of the member firm within 20 business days of the change taking effect.

Provision of this information under the Institute's Audit Regulations or Designated Professional Body Handbook shall satisfy this regulation.

10 The Institute will notify a member firm or a PC member not less than 30 business days in advance of a visit.

11 (a) If, on the receipt of the visit notice, the member firm or PC member is of the opinion that it will not be convenient to comply with Regulations 13 and 14 on the visit date, the member firm or PC member shall, not more than 10 business days after receipt of the visit notice, inform the Institute in writing of 3 further dates (being business days) on which Regulations 13 and 14 can be met.
(b) The 'further dates' referred to in paragraph (a) shall not be later than 45 business days after the visit date.

12 Regulations 10 and 11 will not apply where the Chairman of the Committee is of the opinion that it is in the public interest for a visit to be conducted with less than 30 business days notice. Where he is of that opinion, the Chairman will authorise the issue of a visit notice to a member firm or PC member.

13 A member firm or PC member shall provide appropriate facilities to the PA reviewer to enable him to carry out his functions during a visit.

14 The member firm or the PC member shall use best endeavours to ensure that the following are available during a visit:

(a) in the case of a member firm, the PA contact principal and all relevant staff;
(b) in the case of a PC member, the PC member; and
(c) in the case of a member firm and a PC member all information, books, records and documents whether in hard copy or electronic form (including those specified in the visit notice) which the Institute considers necessary to enable it and the PA reviewer to perform their functions under the PA scheme.

15 Following a visit any issues or concerns will be notified by the Institute in

writing to the member firm or PC member. The member firm or PC member shall, within 15 business days of receipt of such notification (or such longer period as may be allowed), provide a response in writing to the Institute addressing such issues or concerns.

16 The Institute shall keep confidential all material and information provided by member firms or members in connection with the PA scheme, whether oral or in writing, except that such material or information may be disclosed (directly or indirectly) to any body undertaking regulatory or law enforcement responsibilities.

17 Where a member firm or member makes a complaint about the handling of a visit or the conduct of Institute staff administering the PA scheme and remains dissatisfied notwithstanding an explanation, the Committee shall appoint one of its members to review the complaint. The appointed member shall consider written or oral representations from those concerned and all documents he considers relevant. He may make such enquiries as he deems appropriate and shall then report to the Committee.

18 Any breach of these regulations by a PA contact principal shall be deemed also to be a breach by the member firm.

Interpretation

In these regulations unless the context otherwise requires or express reference is made, words and phrases in these regulations have the same meaning as in the Principal and Disciplinary Bye-laws. Furthermore:

'Annual Return' means the return sent to member firms and PC holders by the Institute requesting information for the purposes of the PA scheme;

'business days' means normal working days excluding Saturdays, Sundays, Public and Bank holidays;

'Committee' means the committee appointed by Council in connection with the PA scheme;

'PA contact principal' means a person appointed by the member firm to be the main point of contact with the Institute for the purposes of the PA scheme and in connection with these regulations;

'PA reviewer' means the person or persons appointed by the Institute to visit member firms and PC members;

'PA scheme' means the scheme, system or arrangements for the inspection, monitoring and review of the efficiency and competence of member firms and PC holders made under sub-clause 1(b) (viiiB) of the Supplemental Charter;

'PA Standards' means the principles-based Standards issued in conjunction with the PA scheme;

'PC holder' means a member holding a practising certificate;

'PC member' means a PC holder engaged in public practice in a firm which is not a member firm;

'visit' means the visit to a member firm or PC member by a PA reviewer;

'visit date' means the date or dates specified in the visit notice;

'visit notice' means a notice specifying a date or dates for a visit served on the member firm or PC member; such notice may include a description (whether in specific or general terms) of the information and records required during the visit.

Clients' Money Regulations

1 These Regulations are made by the Council of the Institute of Chartered Accountants in England and Wales, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They come into force on 1 January 2004. The Regulations dated 1 April 1992 remain applicable after this date only in respect of actions or omissions or acts prior to the coming into force of these Regulations.

Scope
2 These Regulations apply in relation to all United Kingdom and Ireland offices of Firms and, subject to Regulation 29, to the Principals of such Firms. A Firm must receive or hold Clients' Money only in accordance with these Regulations.

Where a Firm is authorised by the Financial Services Authority, any monies received or held which are Investment Business Clients' Money as defined by the Financial Services Authority's Handbook must be dealt with in accordance with that Handbook, which takes precedence over the requirements of these Regulations.

Clients' Money
3 **'Clients' Money'** means money of any currency (whether in the form of cash, cheque, draft or electronic transfer) which a Firm holds or receives for or from a client, including money held by a Firm as stakeholder, and which is not immediately due and payable on demand to the Firm for its own account. Clients' Money must be held in the currency in which it was received unless the client instructs otherwise in writing.

4 Where a Firm has a power or control over the client's own account, though not meeting the definition of Clients' Money, it must ensure that it has the specific written authority of the client acknowledged by the Bank before exercising that authority, and it must maintain adequate records of the transactions it undertakes.

5 Fees paid in advance for professional work agreed to be performed and clearly identifiable as such shall not be regarded as Clients' Money for the purposes of these Regulations. A cheque or draft received by a Firm, which is drawn in favour of a client or third party, does not constitute Clients' Money.

Interpretation
6 The words listed below shall have the meanings indicated:

'Bank' means:

(a) a branch in the United Kingdom or Ireland of:
    (i) the Bank of England;

(ii) the Central Bank of Ireland;
(iii) the Central Bank of another member State of the European Union;
(iv) a person who has permission under part 4 of the Financial Services and Markets Act to accept deposits; or
(v) a building society within the meaning of the Building Societies Act 1986 which has adopted the power to provide money transmission services and has not assumed any restriction on the extent of that power.

(b) a branch outside the United Kingdom or Ireland of:
(i) a bank within the meaning of paragraph (a) above;
(ii) a bank which is a subsidiary or parent company of such a bank;
(iii) a credit institution, as defined in the First EU Banking Coordination Directive number 77/780 (EEC), established in a member State of the European Union other than the United Kingdom or Ireland and duly authorised by the relevant supervisory authority in that member State; and

(c) (i) a bank on the Island of Guernsey that is registered as a Deposit Taker under the Banking Supervision (Bailiwick of Guernsey) Law 1994;
(ii) a bank on the Island of Jersey including a registered person under the Banking Business (Jersey) Law 1991;
(iii) a bank on the Isle of Man including a bank which is licensed under the Isle of Man Banking Act 1998.

'Client Bank Account' is an account at a Bank in the name of the Firm separate from other accounts of the Firm which may be either a general account or an account designated by the name of a specific client or by a number or letters allocated to that account and which, in all cases, includes the word 'client' in its title.

'Council' means the Council of the Institute, or any Committee, entity or individual delegated by Council to exercise any powers or discharge any functions on its behalf.

'Firm' means a sole practitioner who is a Member, or a partnership, or a body corporate or a limited liability partnership comprised in whole or in part of Members, the business of whom or of which includes carrying on the profession of accountancy.

'Independent Accountant's Report' is a report, (in such form as the Council shall from time-to-time determine) covering such period as the Council or its nominee may require, to the Chief Executive or his nominee, required in terms of Regulation 28(b) and commissioned by the Firm which the Firm must ensure states whether, in the view of the Independent Accountant:

(a) it has adequate systems so that it can comply with the Regulations and make the confirmations necessary in terms of Regulation 27;
(b) it has complied with the Clients' Money Regulations as at the reporting date; and
(c) while carrying out the work in support of the Report, anything has come

to the Independent Accountant's attention which caused him or her to believe that the Firm has failed to comply with the Regulations.

'Independent Accountant' means a firm which is a registered auditor under the Companies Act 1989, the Companies (Northern Ireland) Order 1990 or the Companies Act 1990 in the Republic of Ireland and which has satisfied itself that it is independent of the Firm on which the Independent Accountant is reporting, in the terms referred to on 'Independence – assurance engagements' in Section 290 in the Code of Ethics.

'Mixed Monies' means monies received (whether in the form of cash, cheque, draft or electronic transfer) or held by a Firm or Principal in terms of Regulation 9 which comprises or includes Clients' Money and money due to the Firm.

(Note: for any Firms authorised by the Financial Services Authority, any monies so received or held which include an element of Investment Business Clients' Money, as defined by the Financial Services Authority's Handbook, must be dealt with in accordance with the Handbook.)

'Notice' means written notice sent by first-class pre-paid recorded delivery to a Firm's place of business or given in person by the Council (or its nominee) to any Principal.

'Principal' means a Member who is a sole practitioner or who is a partner in a Firm which is a partnership or who is a director of a Firm which is a body corporate or who is a member of a limited liability partnership.

7 References in these Regulations to any statutory provision or European legislation shall include any statutory modification or re-enactment thereof and any amendment thereto.

Client identification

8 Before holding any Clients' Money on behalf of a Client the Firm must first verify the identity of the Client. (See Explanatory Note 8 below.)

Opening a Client Bank Account

9 (a) Subject to Regulation 11 hereof, a Firm which receives or holds Clients' Money or Mixed Monies or money which under Regulation 11 hereof the Firm is required to pay into a client account, must immediately open one or more Client Bank Accounts. Any Firm may maintain one or more Client Bank Accounts as appropriate. All money which is Clients' Money must be held in a Client Bank Account.

(b) On opening a Client Bank Account, a Firm must notify the Bank in writing that:

(i) all money standing to the credit of that account is held by the Firm as Clients' Money and that the Bank is not entitled to combine the account with any other account or exercise any right to set off or

counterclaim against money in that account in respect of any money owed to it on any other account of the Firm;
(ii) interest payable on the money in the account must be credited to that account;
(iii) the Bank must describe the account in its records to make it clear that the money in the account does not belong to the Firm; and
(iv) the Bank must acknowledge in writing that it accepts these terms.
(NB. Sub-paragraph (i) was changed with effect from 1 July 2004. Any Firm that has opened a clients' money bank account using the former wording, that referred to an agent, has until 31 December 2005 to obtain a revised confirmation from the bank.)

(c) For a Client Bank Account in the United Kingdom or Ireland, if the Bank does not provide the acknowledgement required under sub-paragraph (b) above within 20 business days of the Firm sending the notice, the Firm must:
(i) withdraw all money from the account;
(ii) close the account; and
(iii) deposit the money with another Bank in a Client Bank Account; or
(iv) as a last resort, return the money to the client.

(d) A Firm may only hold Clients' Money in a Bank outside the United Kingdom or Ireland if the client is informed in writing:
(i) of the country or territory where the account will be held; and
(ii) either that the Bank has given the acknowledgement required under Regulation 9(b)(iv), or where the Bank's acknowledgement has not been received, the Firm has advised the client that the Clients' Money held in that account may not be protected as effectively as it would if held in a Bank in the United Kingdom or Ireland; and
(iii) the client has agreed in writing to the money being paid into, or remaining in, that Bank.

(e) A Firm may not hold Clients' Money (or money which would, if held in a Bank (see Regulation 6) be Clients' Money) outside the European Union unless:
(i) the client is informed in writing of the country or territory where the account will be held; and
(ii) the client has agreed in writing to the money being paid into, or remaining in, the institution where the money is held; and
(iii) the client accepts in writing that where money is so held it will not have the protection afforded by these Regulations.

Payment into a Client Bank Account

10 Clients' Money or Mixed Monies received by a Firm or by any Principal must be paid immediately into a Client Bank Account, or to the client.

11 A Firm must only pay money into a Client Bank Account, if:

(a) the Firm is required to make such payment under these Regulations; or
(b) the money is the Firm's own money and:

(i) it is required to be so paid for the purpose of opening and maintaining the account and the amount is the minimum amount required for that purpose; or
(ii) it is so paid in order to restore in whole or in part any money paid out of the account in contravention of these Regulations.

12 A Firm shall not be regarded as having breached Regulations 10 and 11 simply because it transpires that money which the Firm paid into a Client Bank Account in the reasonable belief that it was required so to do under these Regulations should not have been paid into such an account, provided that immediately upon discovering the error the Firm takes the necessary steps to withdraw the money which has been paid into such account in error.

13 Where money of any one client in excess of £10,000 is held or is expected to be held by the Firm for more than 30 days, the money must be paid into a Client Bank Account designated by the name of the client or by a number or letters allocated to that account.

(Note: The Client Bank Account in this Regulation must be a separate account, rather than a memorandum account in the Firm's books. In other words, the account will be for that client (or clients acting jointly) only.)

Interest

14 Subject to Regulations 15 and 16, a Firm must:

(a) place Clients' Money in an interest-bearing account unless the interest earned would not be material. (See Explanatory Note 5 below); and
(b) ensure that a fair rate of interest (see Explanatory Note 5 below) on the money is earned; and
(c) ensure that all interest earned is paid or credited to the client, or as the client instructs in writing.

15 Regulation 14 shall not apply to Clients' Money held by a Firm as stakeholder though a Firm may not itself earn interest on it unless Regulation 16 applies.

16 The Firm and the client may agree in writing different arrangements for the payment of interest on Clients' Money held. This agreement may be in the engagement letter with the client.

17 It shall be a breach of these Regulations if a Firm fails to comply with any of the terms of any such agreement as is referred to in Regulation 16.

18 For the purposes of Regulations 14 to 17 Clients' Money held by a Firm for two or more clients acting together in one or more transaction must be treated as though held for a single client.

Withdrawal from a Client Bank Account

19 When a cheque or draft including money which is not Clients' Money is

paid into a Client Bank Account, the money which is not Clients' Money must be withdrawn as soon as the cheque or draft is cleared.

20 A Firm may withdraw from a Client Bank Account:

(a) (i) money, not being Clients' Money, paid into a Client Bank Account for the purpose of opening or maintaining the account; or
(ii) the element of Mixed Monies which are not Clients' Money;
(b) money paid into a Client Bank Account contrary to these Regulations or which would have been so but for Regulation 12;
(c) money required to be withdrawn under Regulation 19;
(d) interest which the client has agreed in writing should not be paid to him (see Regulation 16);
(e) money properly required for a payment to a client;
(f) money properly required for or towards payment of a debt due to the Firm from a client otherwise than in respect of fees earned by the Firm;
(g) money withdrawn in accordance with Regulation 22, for or towards payment of fees payable to the Firm by the client;
(h) money drawn on a client's written authority or in conformity with any written contract between the Firm and the client;
(i) money which may be properly transferred into another Client Bank Account or into a bank account in the name of an individual client or clients acting jointly (see Regulation 18).

Any withdrawal from a Client Bank Account may only be made where an authority in respect of that withdrawal has been signed by a Principal of the Firm or by an employee of the Firm to whom authority in writing has been delegated from the Principals of the Firm. (See explanatory Note 12 below.)

21 The Firm must ensure that at all times the sum of the credit balances held for all clients is at least equal to the total balance held in all Client Bank Accounts and that no amount may be withdrawn from the bank account for any client which is greater than the credit balance held for that client.

22 Money may only be withdrawn from a Client Bank Account for or towards payment of fees payable by the client to the Firm if:

(a) the precise amount thereof has been agreed by the client or has been finally determined by a court or arbiter; or
(b) the fees have been accurately calculated in accordance with a formula agreed in writing by the client on the basis of which the amount thereof can be determined; or
(c) thirty days have elapsed since the date of delivery to the client of a statement of fees and the client has not questioned the amount therein specified as due.

23 Monies which, in terms of Regulation 20, are payable to the Firm, shall be withdrawn as soon as reasonably practicable.

Records and Reconciliation

24 A Firm must keep Clients' Money records (including the notice and acknowledgement under Regulation 9(b)(iv)) which show:

(a) details of all money paid into and out of all Client Bank Accounts;
(b) entries of all Clients' Money paid direct to the client, or, on the client's instructions, paid to a third party, identifying that person;
(c) entries of all cheques received and endorsed over by the Firm to the client or, on the client's instruction, endorsed over to a third party, identifying that person;
(d) entries of all electronic transfers received or made of money and transferred direct to the client or, on the client's instructions, transferred to a third party, identifying that person; and
(e) details of all transactions on each client's ledger account which will easily identify the balance held for each client and which will reconcile to the total of Clients' Money held in the Client Bank Accounts.

25 A Firm must:

(a) at least once every five weeks, reconcile the total balances on all its Client Bank Accounts with the total corresponding credit balances in respect of its Clients, as recorded by it, and where any difference arises, correct it immediately; and
(b) at the same time as carrying out the reconciliation under sub-paragraph (a) above, reconcile the balance on each Client Bank Account, as recorded by it, with the balance on that account as set out in the statement issued by the Bank and, where any difference arises, correct it immediately, unless the difference arises solely as a result of timing differences.

26 Records kept in accordance with Regulations 24, 25 and 27(a) shall be preserved for at least 6 years from the date on which they were made and the Firm shall hold them available for inspection.

Returns and Reports

27 Principals must:

(a) confirm that their Firm meets the requirements of these Regulations and shall supply such evidence as these Regulations and/or Council may require to support such confirmation; and
(b) ensure that their Firm conducts a review at least annually, to consider whether systems it has maintained have been adequate to enable it:
  (i) to comply with these Regulations;
  (ii) to carry out the reconciliations in accordance with Regulation 25; and
  (iii) to prepare any return required under Regulation 27(a) and to confirm its compliance with these Regulations;

Where possible the review should be conducted by a Principal who is not involved in the handling of Clients' Money.

Significant breaches of these Regulations require to be reported by the Firm to the Institute or its nominee.

28 To enable Council to ascertain whether or not these Regulations are being complied with it:

(a) may appoint a person or persons to inspect the books and records of the Firm or any of its Principals. Notice given by Council or on behalf of Council, the Firm or any of its Principals shall be signed by the Chief Executive, or his nominee; or
(b) may require the Firm to provide an Independent Accountant's Report;

and it shall be the responsibility of the Firm and its Principals to make books and records available for inspection in accordance with such a Notice and to provide an Independent Accountant's Report in accordance with such a requirement.

The Responsibility of a Principal

29 Every Principal shall be responsible for any breach of these Regulations on the part of his Firm unless he proves that responsibility for the breach was entirely that of another Principal or Principals.

30 Where as a result of any disciplinary proceedings which may arise out of a breach of these Regulations a Firm is ordered to pay a fine, monetary penalty or costs all Principals of the Firm shall be jointly and severally liable for the payment thereof and Regulation 29 shall have no application to such liability.

31 A Firm which is a sole practitioner may not receive or hold Clients' Money unless it has arrangements with another appropriately qualified firm or person to enable the proper distribution or processing of Clients' Money held by the Firm in the event of the incapacity or death of the sole practitioner. All such Firms holding Clients' Money at the date of coming into force of these Regulations (see Regulation 1) must inform Council or its nominee in writing of these arrangements within three months. Otherwise, notification of such arrangements must be made in writing before or immediately following the first receipt of Clients' Money by the Firm, and immediately following any change (including cancellation) in the arrangement. (See Explanatory Note 10 below.)

Unidentified and Untraced Clients

32 Where the ownership of Clients' Monies cannot, for whatever reason, be attributed to identifiable clients or their representatives, or cannot be sent to them because their whereabouts are unknown the money must be retained on deposit for the benefit of those clients.

EXPLANATORY NOTES

(These notes do not form part of the Regulations)

1 For convenience only, these Regulations have been drafted in terms of the duties imposed on Firms. However, disciplinary proceedings can be brought against Members, Affiliates or Firms under Regulation 29 and attention is drawn to that Regulation.

2 A cheque or draft which is not *Clients' Money* shall be forwarded to the payee or dealt with in accordance with the client's written instructions. (See definition of Clients' Money.)

3 Money held by a Firm as stakeholder is governed by these Regulations (Regulation 3) but the payment of interest provisions do not apply (Regulation 15).

4 Unless the Firm agrees otherwise with a client (Regulation 16) a Client Bank Account must be an interest bearing account if 'material interest' would be likely to be earned within the meaning of Regulation 14 and any interest thereby received, or which ought to have been received, shall in the absence of such agreement be paid to the client in accordance with Regulation 14.

5 Interest would be material under Regulation 14 if the money is likely to be held for at least the number of weeks shown in the left hand column of the following table and the minimum credit balance of the client equals or is more than the sum in the right hand column (see Regulation 18 for 'aggregated' Clients' Money).

Number of Weeks	Minimum Balance
8	£1,000
4	£2,000
2	£10,000
1	£20,000

This is merely a guide. The obligation of the Firm is to take reasonable steps to ensure that the client does not lose material sums of interest because the money remains in low or non-interest bearing accounts. There may be circumstances, for example, where money should be placed on overnight deposit.

The fair rate of interest earned must be at least the minimum deposit rate offered publicly by a Bank for small deposits.

6 Interest on Clients' Money received by way of cheque should be calculated either from the day it is received or cleared. Both payments and withdrawals must be treated in the same way. If the Firm chooses to credit interest from the

date the cheque is cleared, and wants to include interest in a payment to a client, it should assume that the cheque will clear on the fifth business day after the cheque is sent to the client.

7 Whereas these Regulations govern the treatment and withdrawal of fees from monies held in a Client Bank Account, they do not relate to commissions received by the Firm. In this respect, the attention of members is drawn to 'Conflicts of interest and confidential information' in Section 220 in the Code of Ethics.

8 The Fédération des Experts Comptables Européens, of which the Institute is a member, is a signatory to the EU's 'Charter for the European Professional Associations in support of the fight against organised crime'. To comply with the obligations under the Charter, firms should verify the identity of a client before any money is held on behalf of that client.

To avoid potential embarrassment, it is suggested that firms verify a client's identity when a professional relationship is first established, rather than later when any client's money may be first received. Guidance on suitable procedures to verify a client's identity can be found in the Members' Handbook statement 7.2 on Anti-money laundering guidance.

Members are advised that converting or concealing criminal property or terrorist funds, for example by allowing them to be passed through the clients' money account, is a criminal offence under the money laundering legislation. However, the offence is not committed if a prompt report is made to the law enforcement authorities and their permission obtained to continue the transaction. More guidance on the recognition of when this might be the case, and advice on reporting money laundering suspicions, is contained in Members' Handbook statement 7.2.

Where client money is held for the first time after the implementation date of these regulations on behalf of an entity who was already a client at that date, the firm should consider carefully if it has sufficient evidence of the client's identity through the course of past dealings.

It is now a requirement of the Money Laundering Regulations that firms should verify the identity of all new clients which would then deal with the identification requirements outlined above.

9 Members are reminded to consider any income tax implications relating to interest received and paid on Client Bank Accounts.

10 Sole practitioners are required by Regulation 31 to have an arrangement with another person to provide the clients with access to their money held by the firm in the event of the incapacity or death of the sole practitioner. The Regulation details when these arrangements have to be in place by. The arrangement could most easily be with another firm where the sole practitioner already has an alternate or consultation arrangement.

There is no requirement that this arrangement has to be with another chartered accountant, but when selecting an alternate, the practitioner should consider:

- If the alternate is to be a firm, whether that firm is itself subject to similar client money requirements, such as a solicitor, or is otherwise capable of undertaking the task.
- If the alternate is to be an individual, whether he or she has the appropriate experience to deal with these responsibilities.

In either case, the sole practitioner needs to be convinced of the integrity of the proposed alternate and that the alternate understands the Client Money Regulations and what the alternate may be required to do. If you are unsure about the suitability of a particular person for this role, contact the Ethics Advisory Services' helpline for assistance.

Whoever is chosen, it would be best practice to inform clients of the identity of this person.

The Advisory Service has a help sheet on general alternate arrangements that can be adapted for the purposes of these Regulations. This is on the website at www.icaew.co.uk/memberservices. Select 'publications & helpsheets' and then 'helpsheets'.

Details of the arrangements, and any changes, should be sent to the Professional Conduct Directorate, Silbury Court, Silbury Boulevard. Milton Keynes, MK9 2AF. Although there is no requirement to use it, there is a standard form on the Institute's website. Select 'members' then 'practice', then 'practice requirements and look under "clients" money regulations'.

11 Insolvency practitioners are reminded that these Regulations apply when they receive money in pre-insolvency situations. If, subsequent to an insolvency appointment, monies are received as payable to the firm, it should either be endorsed over to the insolvency appointment or banked in a clients' money account and withdrawn as soon as the cheque clears.

12 Regulation 20 sets out the various circumstances in which money can be withdrawn from a Firm's Client Bank Account. It requires such withdrawals to be authorised by a Principal or an employee of the firm provided that in the latter case the extent of the delegation from the principals is recorded in writing. The written delegation should also detail any restrictions on the use of this delegated authority.

In deciding who can have this authority, the Principals should consider the trust that is being placed in the individual and their ability to carry out this function with due care and integrity.

The Principals should note that they are responsible for the Firm's compliance with the Clients' Money Regulations, regardless of any delegation that may have been made. Regulation 27 requires the Principals to review the Firm's compliance with the Regulations and this review should include the operation of any delegated powers.

MEMBERS' HANDBOOK

Section 7

Guidance for all Members

Professional Conduct and Disclosure in Relation to Defaults or Unlawful Acts

(Approved by Council, 4th May 2005; Revised 1st September 2006)

The guidance is intended to be of general application to all members and refers to a number of specific areas of law and regulations, for example, Section 7.2 'Anti-money laundering (Proceeds of Crime and Terrorism)'. A list of additional sources can be found in the Appendix. Members are strongly advised to consult additional sources of guidance as appropriate.

The guidance in this Section reflects the law as at 1st September 2006.

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1. Introduction

Purpose

1.1 This guidance is intended to provide advice to members on their responsibilities relating to defaults and unlawful acts encountered in the course of professional work and to their position where disclosure is made. This statement covers:

a) circumstances where a member is required or, may be permitted to, disclose

confidential information to a third party relating to defaults or unlawful acts without the consent of the party to whom the duty of confidentiality is owed;
b) practical guidance on liaising with authorities seeking disclosure of confidential information.

1.2 For the purposes of this guidance, a default or unlawful act stems from civil or criminal law. A default can be broadly defined as a failure to perform a task or fulfill an obligation required by law. An unlawful act is an act which is contrary to the law. The most common offences members are likely to encounter in their professional work include:

a) fraud or theft which may involve falsification or alteration of accounting records or other documents, misappropriation of assets, suppression or omission of the effects of transactions from documents and other records, recording of transactions without substance, intentional misapplication of accounting policies or wilful misrepresentations of transactions or of the entity's state of affairs;
b) insider dealing, market abuse and other acts of dishonesty which may include payment and receipt of bribes, conspiracy, soliciting or inciting to commit a crime and attempting to commit a crime or operating an anti-competitive cartel;
c) money laundering offences resulting from acquiring, using, possessing, arranging or concealing 'criminal property', failure by a person working in the regulated sector to report known or suspected money laundering to the organisation's Money Laundering Reporting Officer (MLRO) or Serious Organised Crime Agency (SOCA) or 'tipping off' offences;
d) offences in relation to taxation;
e) health and safety offences which may include corporate manslaughter;
f) breaches of employment legislation including, for example, unlawful discrimination;
g) environmental offences;
h) criminal damage which may include arson with intent to endanger life;
i) perjury and contempt offences;
j) bankruptcy or insolvency offences.

1.3 Where this guidance refers to an organisation, this includes any entity in which a member is a principal, employee or to which the member is a contractor.

Scope

1.4 This guidance applies to:

a) all members, provisional members and affiliates, including when acting as contractors or in a self-employed capacity;
b) member firms and regulated firms;
c) current and previous clients and employers. A member may be required or permitted to disclose confidential information relating to defaults or unlawful acts relating to previous clients or employers.

1.5 The guidance is of general application and does not cover:

a) specific duties and responsibilities relating to directors and the reserved areas of audit, investment and insolvency which are dealt with elsewhere (see Appendix for further references);
b) client's taxation affairs which are dealt with in Section 7.3, 'Professional conduct in relation to taxation' in the Members' Handbook;
c) information subject to Legal Professional Privilege. If a member believes or knows that the information relating to the default or unlawful act is subject to legal professional privilege, the member is encouraged to seek further advice. Guidance on money laundering reporting requirements in privileged circumstances can be found in Technical Release 02/06 (see Appendix).

1.6 The guidance is not intended to deal with requests for disclosure under provisions for general access to information held by public authorities, such as under the Freedom of Information Act 2000, or in respect of subject access requests under the Data Protection Act 1998. Requirements under these Acts, including requirements for disclosure, are not aimed specifically at defaults and unlawful acts, but may be much more general. Further guidance on these requirements can be found elsewhere (see Appendix).

Overseas Members

1.7 Paragraph 1.9 in the Code of Ethics in the Members' Handbook (www.icaew.co.uk/membershandbook) states that members working overseas should comply with the Code of Ethics unless to do so would breach local laws and regulations.

Key Considerations in relation to Defaults or Unlawful Acts

Institute's Code of Ethics

1.8 The Code of Ethics sets out the five fundamental principles and reference should be made to Section 3.2, 'General application (Part A)' of the Code of Ethics (www.icaew.co.uk/membershandbook) available in the Members' Handbook.

1.9 The fundamental principle of confidentiality is particularly relevant to the disclosure of defaults or unlawful acts to third parties. A member acquiring or receiving information in the course of professional work should not disclose this information outside the employing organisation without the informed consent from the party to whom the duty of confidentiality is owed (preferably in writing) unless there is a right or obligation to do so (see Section 140, 'Confidentiality' in the General Application (Part A) of the Code of Ethics).

1.10 Members must preserve the confidentiality of information of their clients and employer except where disclosure is justified:

a) by legal authority (see paragraphs 2.11–2.23);
b) in the public interest (see paragraphs 2.24–2.32); or
c) to protect a member's own interests (see paragraph 2.33).

Laws and Regulations
1.11 Laws and regulations are added to, amended, and/or replaced over time. In order to identify and, if appropriate, disclose a default or unlawful act members have responsibility to keep up-to-date with key changes in the laws and regulations that affect the role, business sector and country in which they operate (see Appendix for further references).

Sources of Advice

Institute
1.12 Members who are in doubt as to their ethical position may seek advice from the Institute's Ethics Advisory Services by e-mail ethics@icaew.co.uk or telephone +44 (0)1908 248258. The Ethics Advisory Service is available to all members including their representatives and is a confidential service free from the duty to report professional misconduct within the Institute. Further information on the Ethics Advisory Service can be found at http://www.icaew.co.uk/ethicsadvice.

1.13 Seeking advice from the Ethics Advisory Services does not discharge a member's duty to report misconduct, including their own misconduct. (see Section 2.7, 'The Duty to Report Misconduct' in the Members' Handbook (www.icaew.co.uk/membershandbook).

1.14 A member requiring specific money laundering advice should contact the Institute's money laundering helpline by e-mail mlenquiries@icaew.co.uk or telephone +44 (0)1908 248320. The money laundering helpline provides advice on general issues concerning the regulations or specific issues, which can be discussed anonymously.

Other
1.15 A member should also consider taking legal advice to resolve issues arising from the application of laws and regulations to particular situations relating to confidentiality, disclosure, privilege, self-incrimination and other areas.

1.16 From time-to-time it may be necessary to seek legal advice at short notice. Therefore, it may be in a member's interest to have in mind suitably qualified individuals from whom legal advice can be sought.

1.17 If a member is considering taking advice from sources other than the Institute regarding disclosure in relation to defaults or unlawful acts, the member should consider, amongst other factors, whether the qualifications, experience and background of the individual or organization providing the advice are appropriate to the circumstances.

2. Defaults or Unlawful Acts

Discovering a Default or Unlawful Act

2.1 A member is expected to apply appropriate levels of knowledge, judgement and expertise when considering whether an act is a default or unlawful act but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the role or task being undertaken. Experience in a particular role, business, or country may result in a member having greater knowledge in relation to defaults or unlawful acts than a lay person's knowledge. If so, a member is expected to use that greater knowledge or expertise. For example, a tax adviser is expected to have greater knowledge and expertise in what constitutes a default or unlawful act in relation to taxation.

2.2 If a member suspects that a client or employer or someone acting for a client or employer is committing or has committed a default or unlawful act, a member should, where appropriate, investigate the matter to obtain an understanding of the nature of the act and the circumstances in which it has occurred. Not all suspicions turn out to be well founded. Unless otherwise required, disclosure of suspected defaults or unlawful acts prematurely can be detrimental to the member, employer and/or clients. A member should not disclose suspicions of defaults or unlawful acts unless required to do so by law, the process of law or after careful thought and having taken appropriate advice.

2.3 A member will have to exercise professional judgement in deciding who to discuss the matter with, since this may depend on the nature of the act, the circumstances and individuals involved. A member should refer to the internal policies and procedures of the employing organisation for guidance as to whom to discuss known or suspected defaults or unlawful acts with.

2.4 In general, unless there is a good reason not to, a member should first discuss known or suspected defaults or unlawful acts within reporting lines in the employing organisation and/or the client, if appropriate, before disclosing the matter to third parties. Reporting lines may include, but are not limited to, the member's immediate superior, the next level of management, the organisation's Money Laundering Reporting Officer (MLRO) and a corporate governance body, for example, the Audit Committee. Some individuals may also have obligations to report direct to a regulator in certain circumstances, such as those involving matters of material regulatory concern. For example, Health and Safety officers may have obligations to report to the Health and Safety Executive, or approved persons under the Financial Services and Markets Act 2000 to the Financial Services Authority.

2.5 If a member suspects that a superior and/or management are involved in the default or unlawful act, the member is encouraged to discuss the matter with a higher level of authority in the organisation, for example, the Audit Committee or formal whistleblowing helplines.

2.6 Any discussions with individuals regarding defaults or unlawful acts

should be subject to compliance with the money laundering regulations regarding reporting requirements and 'tipping off' offences. Reports of known or suspected money laundering offences (whether voluntary or required by law) should normally be made to the MLRO without delay or, if the organisation does not have a MLRO, to the Serious Organised Crime Agency (SOCA). The MLRO, if there is one, will determine whether or not a report should be made to SOCA (see Section 7.2, 'Anti-money laundering (proceeds for crime and terrorism) (www.icaew.co.uk/membershandbook).

2.7 Wherever possible, a member should advise individuals or the organisation to disclose the default or unlawful act to the proper authorities (see paragraph 2.12) and/or take corrective action.

2.8 A member may wish to consider taking legal advice in the following situations:

a) where no higher authority exists within the organisation with whom that matter can be discussed;
b) if the member believes that no corrective action will be taken by the relevant individuals and/or organisation;
c) if a member believes that the appropriate disclosures to the proper authorities will not be made in a reasonable period of time;
d) where otherwise uncertain how to proceed.

Disclosure to Third Parties

2.9 Disclosing information to third parties without a client or employer's consent may be justified, despite the duty of confidentiality. A member may be required or permitted to make a disclosure to a third party if justified:

a) by legal authority (see paragraphs 2.11–2.23);
b) in the public interest (see paragraphs 2.24–2.32); or
c) to protect a member's own interests (see paragraph 2.33).

2.10 When making a disclosure to a third party without consent based on 2.9 b) or 2.9 c), a member must act reasonably and in good faith when dealing with the proper authorities and exercise caution when making statements and assertions.

Disclosure authorised or required by legal authority

2.11 The law or process of law may require or permit disclosure of information to the proper authorities without the employer's or client's consent. Failure to comply with disclosure requirements required by law or the process of law may result in a member breaching the law and committing an unlawful act or default.

2.12 Proper authorities[1] are defined by the courts as those third parties who have a proper interest in receiving such information, for example, law

[1]Proper authorities per Denning L J in *Initial Services* V *Putterrill*, 1968

enforcement agencies and regulators. The proper authorities in the United Kingdom may include, but are not limited to, the Serious Fraud Office, the Crown Prosecution Service, police forces, the Financial Services Authority, the Department of Trade and Industry, Designated Professional Bodies, Recognised Supervisory Bodies, Recognised Professional Bodies, the Panel on Takeovers and Mergers, the Society of Lloyd's, the Bank of England, local authorities, the Charity Commission for England and Wales, the Office of the Scottish Charity Regulator and HM Revenue & Customs.

2.13 Before disclosing information to an organisation, committee or agency, a member should check its legal authority. For example, whether disclosure to a Parliamentary Committee or Ombudsman is required may need to be checked.

2.14 In the absence of consent, a member should consider the following before deciding to disclose confidential information:

a) refer to the organisation's internal procedures for liaising with authorities;
b) identify the authority, agency or regulator making the disclosure request;
c) clarify under what authority disclosure is sought;
d) ensure the extent of the request does not exceed the authority or contravene the law;
e) establish whether the relevant individuals or organisation may be informed of the request or disclosure;
f) keep records of decisions and actions taken (paragraphs 2.34–2.35).

The above points are discussed in greater detail in Section 3 of this guidance.

2.15 Some situations where a member is required to provide confidential information proactively to the proper authorities without the client's or employer's consent and without a request from the proper authorities or process of law, include but are not limited to:

a) knowledge or belief that information would be material in preventing an act of terrorism, or apprehending, prosecuting or convicting a terrorist which must be disclosed as soon as reasonably practicable to the police;
b) knowledge or suspicion of money laundering, formed by an individual in the regulated sector which must be disclosed to the organisation's MLRO or the SOCA (paragraphs 2.17–2.19);
c) information of regulatory significance, when acting as an auditor or examiner of a charity which must be disclosed to the Charity Commission;

2.16 Some situations where a member may be required to disclose information, if requested, to the proper authorities without a client's or employer's consent, include, but are not limited to circumstances surrounding:

a) knowledge or belief that an employer or client has committed fraud, disclosure to the police may be required;
b) certain information when acting as a liquidator to the Department of Trade and Industry;
c) information given on oath to an inspector appointed by the Secretary of State to investigate the affairs of a company;

d) specified information to the liquidator, administrative receiver or administrator of the client or employer (see Section 9.4, 'Documents and Records: Ownership, Lien and Rights of Access' in the Members' Handbook (www.icaew.co.uk/membershandbook); or
e) information required by the process of law, for example, pursuant to a Court Order.

2.17 There are reporting requirements in relation to money laundering which override the duty of confidentiality and these are set out in the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2003. These often require difficult judgments to be made as to whether or not a situation has arisen which would require a member to report information to the employing organisation's Money Laundering Reporting Officer (MLRO) or the Serious Organised Crime Agency (SOCA).

2.18 A member should take care when communicating relevant facts to others relating to known or suspected money laundering or terrorist activities. Under the Proceeds of Crime Act 2002, the Money Laundering Regulations 2003 and the Terrorism Act 2000, it is a criminal offence to 'tip off' a money launderer or terrorist, or prejudice an investigation. For further discussion, refer to the Institute's money laundering guidance (http://www.icaew.co.uk/moneylaundering).

2.19 A member requiring specific advice on the Money Laundering Regulations 2003 should contact the Institute (paragraph 1.15).

2.20 If a member receives notice that a Court order will be sought requiring the member to make a disclosure then, unless it is inappropriate to do so, the member should inform the client or employer that such a request has been made, to give them an opportunity to consent to the member making a disclosure.

2.21 A member may be required to disclose information as part of the legal disclosure process or following the service on the member of a witness summons, including a summons to produce documents. (see Section 9.4, 'Documents and Records: Ownership, Lien and Rights of Access' in the Members' Handbook (www.icaew.co.uk/membershandbook).

2.22 If a summons or other similar type of demand is addressed specifically to the member, that member has a legal obligation to comply with the request.

2.23 If a member considers the above points regarding disclosure of confidential information due to legal authority and is still uncertain as to whether or not disclosure is appropriate, it may be appropriate to seek legal advice.

Disclosure in the public interest
2.24 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Hence, a member should disclose confidential information, when not obliged to do so by law or

regulation, if the disclosure can be justified in the 'public interest' and is not contrary to laws or regulations.

2.25 Section 100, 'Introduction and Fundamental Principles', paragraph 100.1 in the Code of Ethics defines acting in the public interest as 'having regard to the legitimate interests of clients, government, financial institutions, employers, employees, investors, the business and financial community and others who rely upon the objectivity and integrity of the accounting profession to support the propriety and orderly functioning of commerce'.

2.26 Examples of situations which may be regarded as being in the public interest, as set out in the Public Interest Disclosure Act 1998 (PIDA) include but are not limited to the disclosure of information where there has been:

a) a criminal offence;
b) a failure or likely failure to adhere to legal obligations;
c) a miscarriage of justice;
d) matters where the health and safety of individuals is endangered or likely to be endangered;
e) damage or possible damage to the environment.

2.27 Whilst the public interest is a concept recognised by the courts, the absence of a legal definition of public interest places members in a difficult position as to whether or not matters should be disclosed on this ground. Hence, a member must consider each situation on its own merits and take advice if unsure how to proceed.

2.28 When considering whether or not a disclosure is justified in the public interest, a member should take one or more of the following into account:

a) reliability and quality of information available and degree of suspicion;
b) whether members of the public are likely to be affected;
c) the possibility or likelihood of repetition;
d) whether the individuals or organisation will be willing to disclose the matter and remedy the situation;
e) the gravity of the matter, for example, the size of the amounts involved and the extent of the likely damage;
f) legal or regulatory obligations;
g) legal protection for breach of duty of confidentiality;
h) any legal advice obtained.

2.29 If a member believes a matter should be disclosed in the public interest, the member should first consider whether it is appropriate to disclose the matter (and if so, in what manner) to the relevant individuals or organisation to give them an opportunity to address it, before making disclosure of it to the appropriate authority.

2.30 A member should consider carefully the approach to be taken to disclosure and to whom it should be made. A member may have a defence to the Institute's disciplinary proceedings relating to breach of duty of confidentiality if:

a) the member had an honest and reasonable belief that the disclosure is made in the public interest; and
b) such disclosure is made to a proper authority (paragraph 2.11–2.12).

2.31 PIDA may provide statutory protection to a member making public interest disclosures. PIDA provides protection to 'workers' (as defined in the Act) making disclosures in the public interest and allows such workers to claim compensation for discrimination, dismissal or victimisation following such disclosures.

2.32 In order for a 'worker' to be provided with protection under PIDA a 'worker' must make a 'protected disclosure' in 'good faith' to an employer, legal adviser, prescribed person or other appropriate person. In order for a disclosure to qualify as a 'protected disclosure', a 'worker' must have a reasonable belief that the 'protected disclosure' is substantially true. Further information on PIDA is available in Technical Release 17/99.

Disclosure for the protection of the Member's own interest
2.33 A member may disclose to the proper authorities information concerning a client or employer where the member's own interests require disclosure of that information. In general, members should only disclose information which is adequate, relevant and necessary in order to allow the protection of their own interests. Examples of such situations include, but are not limited to, the following:

a) to enable the member to defend himself against a criminal charge or to clear himself of suspicion;
b) to resist proceedings for a penalty or civil proceedings in respect of a taxation offence, for example in a case where it is suggested that the member assisted or induced a client or employer to make or deliver incorrect returns or accounts (see Section 7.3, 'Professional Conduct in Relation to Taxation' in the Members' Handbook (www.icaew.co.uk/membershandbook);
c) to resist a legal action brought against him;
d) to enable the member to defend himself in disciplinary proceedings (see Section 2.7, 'The Duty to Report Misconduct' in the Members' Handbook (www.icaew.co.uk/membershandbook); or
e) to enable the member to sue for unpaid fees.

Documentation
2.34 When disclosing confidential information, a member must bear in mind that any decision to disclose may be called into question at a future date. Thus, a member is advised to keep detailed contemporaneous notes of meetings and telephone conversations relating to the matter.

2.35 In situations where a member discloses confidential information to a third party, a member is encouraged to keep a record of:

a) any consent given;
b) discussions held or decisions taken concerning the disclosure of confidential information;

c) a schedule summarizing disclosures and to whom they were made;
d) copies of relevant documentation; and
e) any legal or other advice obtained.

3. Liaising with authorities seeking disclosure

3.1 It is in the interests of the profession and the public that members and law enforcement agencies, regulatory authorities and other authorities cooperate with each other in order to enable them to carry out their functions.

3.2 When liaising with law enforcement agencies, authorities and regulators, it is important that members communicate their position effectively by emphasizing that although they have to comply with laws and regulations and the process of law, they must also consider their duty of confidentiality to their employer and clients. Those charged with enforcing the law and regulations include, but are not limited to, police officers, investigating officers or representatives from organisations such as the Financial Services Authority and the Child Support Agency.

3.3 Whilst those requesting information may come from diverse organisations and may approach a member via telephone, written communications or during a visit, the principles which underpin a member's approach to liaising with the law enforcement agencies, regulatory authorities and other authorities are the same.

3.4 A member should consider, as appropriate, the following when liaising with law enforcement agencies, regulatory bodies and other authorities:

a) Refer to the organisation's internal procedures for liaising with authorities
A member should refer to the organisation's internal policies and procedures for disclosure of confidential information to authorities.
b) Identify the authority, agency or regulator making the disclosure request.
A member should identify which authority, agency or regulator the person is purporting to represent. A member should not be afraid to ask for proof of identity and other verification of credentials. If in any doubt, it would be reasonable for a member to ask for time to check the identity of the individual and the organisation, perhaps by telephoning the office of the agency or regulatory authority allegedly being represented. A member must not disclose confidential information to individuals without being satisfied as to the identity of these individuals.
A member who is approached by an insolvency practitioner or official receiver to disclose confidential information should also establish in what capacity the insolvency practitioner or official receiver is acting. The powers and rights of such individuals vary slightly between roles. (see Section 9.4, 'Documents and Records: Ownership, Lien and Rights of Access' in the Members' Handbook (www.icaew.co.uk/membershandbook)).
c) Clarify under what authority disclosure is being sought.
Some powers are statutory, for example an Act of Parliament may give

authority to a particular agency to demand information without further action. Other statutory provisions require the official to take further steps before being able to demand disclosure, for example a court order may be needed.

A member should check with the individual requesting the disclosure under what powers they are seeking it, preferably obtaining the full reference for the power (for example the Act and Section). If acting under a court order a member should be provided with a copy. Disclosure should not be made without assurance that due process of law has been followed, for example, checking that the order has an official court seal and refers to the relevant party.

d) Ensure the extent of the request does not exceed the authority or contravene the law.

Although it would not be unreasonable to assume that a properly identified individual is ordinarily acting within their power, if a member is in doubt the member should not hesitate to ask for time to check that such powers exist. A member should be careful not to disclose information which is not covered by the authority and its powers. For example, a right to access specific documents under a Court order does not equate to unfettered access to all files.

A member must also consider whether the information being requested is covered by Legal Professional Privilege. If so, a member is encouraged to seek further advice.

e) Establish whether the relevant individuals or organisation may be informed of the request or disclosure.

Wherever possible, consent should be sought from the client or employer, to respond openly to a request for information from law enforcement agencies and authorities acting within their legal powers. However, it should be noted that representatives from law enforcement agencies may approach the member before the client or employer is aware of investigations into their affairs. The matters subject to disclosure may be extremely sensitive. Disclosing the request for information might prejudice an investigation or represent an offence for example, 'tipping off' a money launderer. It is therefore, important that a member establishes if the request and/or disclosure may be discussed with the employer or client.

f) Keep records of decision and actions taken.

Disclosure without a client's or employer's consent represents a departure from generally accepted principles of confidentiality. It is therefore important, for their own benefit, that a member records details of any disclosures made. In most cases, it will be necessary to keep such records confidential (see paragraphs 2.34–2.35).

If in doubt as to any of the matters referred to above, a member should seek legal advice before disclosing information.

4. Appendix – Websites

Additional sources of guidance and useful websites, include, but are not limited to:

a) Members Handbook (http://www.icaew.co.uk/membershandbook/), in particular:
   - Section 2.7, 'The duty to report misconduct'
   - Section 3.2, 'General application (Part A)' of the Code of ethics
   - Section 7.2, 'Anti-money laundering (proceeds of crime and terrorism)'
   - Section 7.3, 'Professional conduct in relation to taxation'
   - Section 8.1, 'Financial and accounting responsibilities of directors'
   - Section 9.4, 'Documents and records: ownership, lien and rights of access'

b) Technical Releases (http://www.icaew.co.uk/index.cfm?AUB=tb2i_33241 MNXI_86202), in particular:
   - 16/99 Receipt of Information in Confidence by Auditors
   - 17/99 Public Interest Disclosure Act 1998
   - 07/04 Data Protection Act 1998 and its application to the major practice streams of accountancy practices
   - 49/05 The Proceeds of Crime Act 2002 (POCA) as amended by the Serious Organised Crime and Police Act 2005
   - 02/06 Guidance on Changes to the Money laundering reporting requirements: the exemption from reporting knowledge or suspicion of money laundering formed in privileged circumstances.

c) Statements of Auditing Standards (http://www.frc.org.uk/apb/publications /sas.cfm), in particular:
   - ISA 240 – The Auditor's Responsibility to consider Fraud in an Audit of Financial Statements
   - ISA 250 – Consideration of Laws and Regulations in an Audit of financial Statements (Section A) and The Auditor's right and duty to report to regulators in the financial sector (Section B)

d) Audit Technical Releases (http://www.icaew.co.uk/index.cfm?AUB=tb2i_ 33120 MNXI_86200), in particular:
   - Audit 02/05 Guidance on the implications of the Freedom of Information Act 2000

e) APB Practice Notes (http://www.frc.org.uk/apb/publications/sas.cfm), in particular:
   - PN12 – Money Laundering – Interim guidance for Auditors in the UK (Revised)

f) Legislation and Regulations (http://www.legislation.hmso.gov.uk/), in particular:
   - The Theft Act 1968
   - Data Protection Act 1998
   - Public Interest Disclosure Act 1998
   - The Terrorism Act 2000
   - Freedom of Information Act 2000
   - Proceeds of Crime Act 2002
   - Money Laundering Regulations 2003
   - The Serious Organised Crime and Police Act 2005

Anti-money Laundering (Proceeds of Crime and Terrorism) Second interim guidance for accountants

The Institute, in conjunction with other CCAB members, is seeking to revise, update and consolidate current guidance and aim to seek Treasury approval for a revised handbook section. This section has not been updated to incorporate changes since March 2004. In particular, Members are advised to consult, in addition to this section:

Tech 49/05 Money Laundering: The Proceeds of Crime Act 2002 as amended by the Serious and Organised Crime and Police Act, and Tech 02/06 Guidance on changes to the Money Laundering reporting requirements: the exemption from reporting knowledge or suspicion of money laundering formed in privileged circumstances.

Further guidance can be found on the Institute's website at www.icaew.co.uk/moneylaundering and the Joint Money Laundering Steering Group's website at www.jmlsg.org.uk.

As soon as revised guidance is available, it will be published on the Institute's website.

Text of Section

Guidance issued by the Consultative Committee of Accountancy Bodies [CCAB] for accountants in fulfilling the requirements of the anti-money laundering sections of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

The anti-money laundering legislation lays significant obligations on all citizens who encounter money laundering, or could be involved in it. This Guidance has been drawn up for the assistance of accountants working outside relevant business (as defined in the Money Laundering Regulations 2003) as well as those within it. Although the obligations are greater and more detailed for those working within the scope of 'relevant business', accountants working outside this sector are recommended to obtain a general knowledge of the legislation, of their obligations under it and of the obligations of their colleagues working within the regulated sector. In particular, members of the CCAB bodies working outside the regulated sector will be expected to have read the Executive Summary and Section 27 of this Guidance.

Legal advice has not been taken on this version of the Guidance. If in doubt as to the action they should take, accountants are advised to take their own legal advice.

The interpretation of certain sections of the law remains uncertain at the present time, and the CCAB is in urgent consultation with Government, to obtain clarification as soon as possible. Specifically, additional Guidance will be issued as soon as possible, on whether suspicions should be reported in cases where they have been formed in circumstances which would otherwise be legally privileged. This version of the Guidance replaces that issued on 16 February 2004, and includes a substantive version of Appendix 1 'NCIS[1] Disclosure Forms and Guidance Notes'. No other changes have been made, apart from the addition of that Appendix and the correction of minor typographical errors.

Issued on 16 February, Appendix 1 added 9 March 2004

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[1]Please note that NCIS has been superseded by the Serious and Organised Crime Agency (SOCA).

Second Interim Guidance for Accountants Published in February 2004

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1. Executive Summary

All accountants working in the UK

I. Accountants are covered by two pieces of anti-money laundering legislation, the Proceeds of Crime Act 2002 (*the Act*) and the Money Laundering Regulations 2003 (*the Regulations*) which come into force on 1 March 2004, along with the existing Terrorism Act 2000 (as amended by the Anti-terrorism Crime and Security Act 2001)(*the TA 2000*). These introduce major changes to accountants' responsibilities, and potential criminal liability, for all accountants working in the UK, but particularly for accountants working in practising firms and any other relevant business (as defined in *the Regulations*).

II. *Money laundering* now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime. It has a very wide definition, details of which are contained in *the Act*. For the purposes of this guidance, it also involves similar activities relating to terrorist funds, which include funds that are likely to be used for terrorism, as well as the proceeds of terrorism.

III. Any person involved in any known or suspected *money laundering* activity in the UK risks a criminal conviction carrying a jail term of up to fourteen years. In assessing whether an *individual* had knowledge or suspicion, the Courts are likely to take into account the level of skill and experience held by that *individual*, including a professional qualification. 'Knowledge' in this context is likely to include wilful blindness. It is a defence against a charge of money laundering to make a disclosure to the National Criminal Intelligence Service (*NCIS*) or in accordance with an employer's anti-money laundering procedures (if any). Guidance on what constitutes *money laundering*, and how it can be reported, is given below, together with further guidance on requirements for those employed in relevant business.

IV. Accountants working wholly or mainly outside the UK will still need to exercise caution in relation to the UK legislation. The legislation will apply to those who carry out any professional work in the UK, even where this takes the form of a limited assignment or an occasional client meeting.

Accountants working in relevant business, including accountancy practice

V. Accountants working in practice or other *relevant business* must report knowledge or suspicions of *money laundering* (whether involving a *client* or other party) to *NCIS*, or in accordance with their employer's anti-money laundering procedures, or otherwise face the prospect of criminal liability. This includes circumstances where such accountants should have been suspicious (i.e., where they have reasonable grounds for suspicion) as well as where they are suspicious. *Reports* can be faxed to *NCIS* on 0207 238 8286.

VI. *Relevant businesses* will have to:

- Appoint a nominated officer (usually known as the money laundering reporting officer or *MLRO* and referred to as such in this guidance) to

receive *money laundering reports* from colleagues and to make *reports* to *NCIS*.
- Train relevant principals and employees on the requirements of the legislation, including how to recognise and deal with potential *money laundering*, how to report to the *MLRO*, and how to identify *clients*.
- Verify the identity of new clients and keep records of the evidence obtained.
- Establish appropriate internal procedures to forestall and prevent *money laundering*.

These obligations will apply to sole practitioners with employees. Sole practitioners without employees will have slightly different legal requirements, because they do not have to appoint an *MLRO*, but in other respects are recommended to follow this guidance.

VII. *Businesses*, principals and employees face significant criminal penalties where they breach the requirements of the new legislation.

VIII. The Proceeds of Crime Act came into force on 24 February 2003. For accountants undertaking investment business, and any other accountants who were subject to the Money Laundering Regulations 1993, the reporting offences in the Act applied from 24 February 2003. However, the new offence, of failure to report a *money laundering* suspicion, as well as the requirements outlined in paragraph VI, will impact accountants in practice, and in other sectors providing *relevant business* for the first time, from 1 March 2004.

2. Background and Purpose

2.1 This guidance has been prepared for the members of the following *CCAB* bodies working in the UK:

- The Institute of Chartered Accountants in England and Wales.
- The Institute of Chartered Accountants in Ireland.
- The Institute of Chartered Accountants of Scotland.
- The Association of Chartered Certified Accountants.
- The Chartered Institute of Management Accountants.
- The Chartered Institute of Public Finance and Accountancy.

and also for any other persons acting as an accountant, whether or not they are engaged in *relevant business* (including the provision of *accountancy services* by way of business). The term '*accountancy services*' is not defined in either the Proceeds of Crime Act 2002 (*the Act*) or the Money Laundering Regulations 2003 *(the 2003 Regulations*) but a definition has been included in section 28 below. The guidance is also recommended for use by those providing insolvency services, tax advice, audit services or services in relation to the formation, operation or management of a company or trust, to the extent that these are not covered by guidance issued by a more appropriate body.

2.2 Much of the guidance relates to procedures required of *businesses* and

individuals carrying out *relevant business*. However, all accountants are recommended to be aware of the primary money laundering offences, how they might be committed and how they should be reported to *NCIS*. The term '*relevant business*' is discussed further in section 27.4 below.

2.3 The primary legislation covered by this guidance is *the Act*, sections 327–340, section 342 and Schedule 9 and the Terrorism Act 2000 (as amended by the Anti-terrorism Crime and Security Act 2001) (*the TA 2000*) and associated regulations. The guidance covers relevant sections of *the 2003 Regulations*, which are Treasury regulations implementing the Second EC Money Laundering Directive (2001/97/EC). *The 2003 Regulations* were laid before Parliament on 28 November 2003 and come into force 1 March 2004 for purposes relevant to this guidance.

2.4 This guidance does not deal with the requirements of the Financial Services Authority's (*FSA*) Money Laundering Sourcebook (to which *businesses* with an *FSA* authorisation must have regard). However, it does cover the requirements on firms with a licence to provide non-mainstream financial services from one of the *CCAB* bodies, under the Designated Professional Body provisions of Chapter XX of the Financial Services and Markets Act 2000.

2.5 This guidance is intended to assist *individuals* and *businesses* to understand and comply with the requirements of *the Act, the TA 2000* and *the 2003 Regulations*. This guidance does not constitute legal advice and *businesses* should be aware that alternative interpretations of the law may be possible. If *businesses* wish to adopt alternative interpretations, they are encouraged to take legal advice first. Similarly, for situations and issues not covered by this guidance, it may be appropriate for *businesses* to obtain legal advice.

2.6 This guidance has not been approved by the Treasury. However, the Courts will be free to take it into account in relation to the work of accountants and related trades and professions, as will regulators and in particular the disciplinary functions of the professional bodies for accountants.

2.7 *The Act* and *the 2003 Regulations* impose obligations both on organisations and *individuals*. The term '*businesses*' is used throughout this document to refer to organisations undertaking *relevant business* including any body or sole practitioner providing accountancy services by way of business. The term '*individuals*' refers to both principals and employees. The obligations on *individuals* are generally dealt with separately from the obligations on *businesses*. However, *individuals* should familiarise themselves with the obligations imposed on *businesses*.

2.8 *The Act* and *the 2003 Regulations* impose different obligations depending on the nature of the *business's* or *individual's* business or role. The principal distinctions are that *the 2003 Regulations* apply only to those conducting *relevant business* and set out the systems and procedures required to be implemented by such *businesses*. *The Act* and *the TA 2000* impose extended

reporting offences on those in the regulated sector. The scope of 'relevant business', as defined in *the Regulations* and the 'regulated sector' as defined in *the Act* and *the TA 2000* are identical. In this guidance, the term '*relevant business*' is applied to both. When reading this guidance, *businesses* and *individuals* who do not carry out *relevant business* need to interpret the guidance accordingly. This guidance assumes that many *businesses* and most accountancy firms will find it easier, and possibly more effective, to apply the requirements to all of their services and has therefore been drawn up on that basis. That is, however, a decision for each *business* to take.

2.9 *The Act* imposes criminal sanctions on *anyone* who commits an offence of *money laundering*, tipping off or prejudicing an investigation. It also creates a reporting offence for *MLROs* in the non-regulated sector. The *money laundering* offences under *the TA 2000* are defined differently, notably to include funds intended for use in terrorism, as well as the proceeds of terrorism. *The TA 2000* also requires everyone forming a belief or suspicion of terrorist *money laundering* in the course of their trade or profession to make a *report*. None of these requirements are confined to those in the regulated sector.

2.10 More detail on the offences under the legislation are given in Appendix 2. Definitions and abbreviations are provided in section 28.

3. The Legislation

3.1 The Proceeds of Crime Act 2002

The Act redefines *money laundering* and the *money laundering* offences. It creates new mechanisms for investigating and recovering the proceeds of crime, and revises and consolidates the requirement on *businesses* and *individuals* to report knowledge of, suspicion of or reasonable grounds to suspect *money laundering*.

3.2 The 2003 Regulations

3.2.1 Whilst *the 2003 Regulations* replace and significantly expand the scope and coverage of the Money Laundering Regulations 1993 (*the 1993 Regulations*), the 'failure to report' offences introduced by *the Act* have applied to *businesses* and *individuals* conducting business within the scope of the 1993 Regulations since 24 February 2003. The *money laundering* offences (ss 327–328), and those of tipping off (s 333) and prejudicing an investigation (s 342) have applied to all *individuals* since 24 February 2003.

3.2.2 *The 2003 Regulations* apply to *relevant business*, and extend the previous definition of *relevant financial business* to include, inter alia:

- the provision by way of business of *accountancy services*;
- the activities of a person appointed to act as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 or Article 3 of the Insolvency Northern Ireland Order 1989;

- the provision by way of business of advice about the tax affairs of another person;
- the provision by way of business of audit services by a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 or Article 28 of the Companies (Northern Ireland) Order 1990;
- the provision by way of business of services in relation to the formation, operation or management of a company or a trust; and
- dealing in goods, whenever a transaction involves accepting a cash payment of €15,000 or more (high value dealers).

Further discussion of *relevant business* is included in section 27 below.

3.2.3 The key requirements imposed on *businesses* by *the 2003 Regulations* include the requirement to establish procedures to confirm the identity of new *clients*, to appoint a Money Laundering Reporting Officer (*MLRO*) to whom principals and employees must make *money laundering reports*, to establish systems and procedures to forestall and prevent *money laundering*, and to provide relevant *individuals* with training on *money laundering* and awareness of the *business's* procedures in relation to *money laundering*. These requirements are set out more fully in section 14.2 below.

3.3 The TA 2000

3.3.1 The third key component of *money laundering* legislation is *the TA 2000*, which relates to the proceeds of terrorism and terrorist financing. The relevant offences under *the TA 2000* and the Terrorism (United Nations Measures) Order 2001 are summarised in Appendix 2.

3.3.2 The interaction of *the Act, the TA 2000* and *the 2003 Regulations* means that, in general, *businesses* and *individuals* will now be required to make a *report* where there are reasonable grounds to know, believe or suspect *money laundering* whenever such grounds come to the *business* or *individual* in the course of the *firm's* business. Further detail is provided in Appendix 2.

4. Money Laundering

4.1 *Money laundering* is the term used for a number of offences involving the proceeds of crime or terrorist funds. It now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime. For the purposes of this guidance, it also involves similar activities in relation to terrorist funds, which include funds that are likely to be used for terrorism, as well as the proceeds of terrorism.

4.2 Someone is engaged in *money laundering* under *the Act* where they:

- Conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property;
- Enter into or become concerned in an arrangement which they know

or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person; or
- Acquire, use or have possession of criminal property.

And they know or suspect that the property in question constitutes or represents a benefit from criminal conduct.

4.3 Property is criminal property if it:

- Constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct; or
- Represents such a benefit directly or indirectly, in whole or in part; and
- The alleged offender knows or suspects that it constitutes or represents such a benefit.

4.4 Criminal conduct is conduct which constitutes an offence in any part of the United Kingdom or would constitute an offence in any part of the United Kingdom if it occurred there.

4.5 For the avoidance of doubt criminal property includes (but is by no means limited to):

- the proceeds of tax evasion;
- a benefit obtained through bribery and corruption (including both the receipt of a bribe and the income received from a contract obtained through bribery or the promise of a bribe);
- benefits obtained, or income received, through the operation of a criminal cartel; and
- benefits (in the form of saved costs) arising from a failure to comply with a regulatory requirement, where that failure is a criminal offence.

4.6 It should be noted that there are thousands of criminal offences in the United Kingdom which, if committed, are likely to result in a person benefiting from an offence and, if he has the necessary knowledge or suspicion, thereby committing one of the *money laundering* offences. Both the *money laundering* offences and criminal property are very widely defined. Further information, including the statutory references, is included in Appendix 2.

4.7 An element of intent is required before many criminal offences can be committed. For example, theft can only be committed where the offender is dishonest and has an intent to permanently deprive. Where no offence has been committed, no *money laundering* can arise. In some cases, where the monetary proceeds of a suspected theft or tax fraud are small, it may be that the perpetrators were acting in error, or in the mistaken impression that they had permission to act as they did. However, in cases where there are reasonable grounds to suspect that an offence has been committed, a report must be made. It may be that criminal intent is suspected where, for example, there is a pattern of suspect behaviour, or where the act giving rise to the proceeds is clearly criminal, such as acts involving drug trafficking, paedophilia or terrorism.

5. Offences

5.1 The main *money laundering* offences are set out in sections 327 to 329 of *the Act*. Further offences relating to the requirements to *report money laundering*, and tipping off, are set out in sections 330 to 333. Additional offences are contained in sections 336 and 342 of *the Act* and in *the TA 2000* and related regulations. More detailed information on these offences is contained in Appendix 2.

5.2 The key point to note is that *the Act* introduces an 'all crime' reporting regime. That is, *money laundering* offences can relate to the proceeds of any criminal activity. This effectively means that *MLROs* will need to report to the National Criminal Intelligence Service (*NCIS*) when they have suspicion or reasonable grounds to know or suspect that a criminal offence, which gives rise to criminal proceeds, has been committed. This applies regardless of whether that offence has been committed by a *client* or by any other party. The *report* must be made as soon as practicable. The breadth of the definition of *money laundering* is demonstrated by the fact that it includes the possession of the proceeds of an offender's own crime. Some examples include cost savings resulting from breaches of health and safety regulations, property acquired by theft, cartel offences under the Enterprise Act, and tax evasion (both of direct and indirect taxes).

5.3 In addition to the offences under *the Act*, all persons, *individuals* and *businesses* alike, already have an obligation to *report* belief or suspicion of the proceeds from, or finance likely to be used for, terrorism, or its laundering. This obligation relates to information that came to them in the course of their business or employment. This is required by *the TA 2000* which is applicable throughout the United Kingdom whether or not persons are involved in regulated or *relevant business*. Where *individuals* are involved in business in the regulated sector, they have an obligation to make a *report* where there are reasonable grounds for them to know or suspect that the relevant offence under *the TA 2000* has been committed, as well as when they have actual knowledge. *Reports* in relation to terrorism may be made using the *NCIS* disclosure report in the same way as for *reports* under *the Act*.

6. Knowledge and Suspicion

6.1 Generally speaking, knowledge is likely to include:

- Actual knowledge.
- Shutting one's mind to the obvious.
- Deliberately refraining from making inquiries, the results of which one might not care to have.
- Deliberately deterring a person from making disclosures, the content of which one might not care to have.
- Knowledge of circumstances which would indicate the facts to an honest and reasonable person.

- Knowledge of circumstances which would put an honest and reasonable person on inquiry and failing to make the reasonable inquiries which such a person would have made.

6.2 Suspicion is not defined in existing legislation. Case law and other sources indicate that suspicion is more than speculation but it falls short of proof or knowledge. Suspicion is personal and subjective but will generally be built on some objective foundation and so there should be some degree of consistency in how a *business's MLRO* treats possible causes of suspicion.

6.3 *Businesses* should also be alert to the fact that an objective test applies to the offence of failure to report in the regulated sector under section 330 of *the Act* and under *the TA 2000*. That is, *businesses*, and *individuals*, would commit an offence even if they did not know or suspect that a *money laundering* offence was being committed, if they had reasonable grounds for knowing or suspecting that it was. In other words, if another reasonable person in the same position would have been suspicious and made a *report*, a person who does not make a *report* may have committed an offence.

6.4 In considering whether a *report* is required, judgement needs to be made about whether there are 'reasonable grounds' for knowledge or suspicion in a particular case. 'Reasonable grounds' should not be confused with the existence of higher than normal risk factors which may affect certain sectors or classes of persons. For example, cash-based businesses or complex overseas trust and company structures may be capable of being used to launder money, but this capability of itself is not considered to constitute 'reasonable grounds'. Existence of higher than normal risk factors require increased attention to gathering and evaluation of 'know your customer' information, and heightened awareness of the risk of *money laundering* in performing professional work, but do not of themselves require a *report* of suspicion to be made.

6.5 For 'reasonable grounds' to come into existence, there needs to be sufficient information to advance beyond speculation that it is possible that someone is laundering money, or a generalised assumption that low levels of crime (e.g. not declaring all cash takings) are endemic in particular sectors.

6.6 Considering the following three points may be of assistance in determining whether there are reasonable grounds for knowledge or suspicion that someone is committing a *money laundering* offence:

- Does the conduct under scrutiny fall within that which is potentially criminal?
- If so, is the person or entity under scrutiny suspected of having engaged in this conduct such that proceeds resulted?
- What factors and information have led to the formation of knowledge or suspicion, i.e., how will the grounds for the *report* be described to *NCIS*?

It is important to note section 340(3)(b) of *the Act* which specifies that 'property is criminal property if it constitutes a person's benefit from criminal conduct . . . and the alleged offender knows or suspects that it constitutes or represents such a benefit'.

6.7 The client confidentiality override provisions contained in sections 337(1) and 338(4) are only available in certain circumstances. The requirements include:

- knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that a person has committed a *money laundering* offence (section 337(3)); or
- a prohibited act (acts mentioned in sections 327(1), 328(1) or 329(1)) will be or has been committed.

Disclosure without reasonable grounds for knowledge or suspicion will increase the risk of a *business* or an *individual* being open to an action for breach of confidentiality.

7. Absence of De Minimis Concessions

7.1 *Money laundering reports* need to be made irrespective of the quantum of the benefits derived from, or the seriousness of the offence. This is necessary because there are no de minimis concessions contained in *the Act, the TA 2000* or *the 2003 Regulations*.

7.2 The lack of de minimis concessions does not mean that accountants are required to report instances in which they are aware of matters which merely give a higher than normal reason for speculation or a raised level of professional scepticism, rather than reasonable grounds to suspect that someone is engaged in *money laundering*. Additional guidance on the appropriate action to be taken under these circumstances is given elsewhere in this guidance and particularly in section 6 and paragraph 4.7.

8. Client Confidentiality

8.1 The making of a *report* based on knowledge, suspicion or reasonable grounds for such takes precedence over *client* confidentiality considerations. *The Act* provides protection for any breach of any duty under the laws of the constituent parts of the United Kingdom to keep confidential the information that gives rise to the knowledge, suspicion or reasonable grounds to suspect *money laundering*. These provisions apply to those inside or outside the regulated financial sector, and include *reports* that are made voluntarily in addition to *reports* made in order to fulfil reporting obligations.

8.2 The *MLRO* should disclose all information that is relevant to the suspicion and the type of report being made. There may well be many details that are not relevant that should not be disclosed.

8.3 Similar protection is provided under *the TA 2000*.

8.4 For guidance in relation to information subject to legal professional privilege, see section 12 below.

9. Tipping Off

9.1 Care should be taken not to tip off a money launderer, as this will constitute an offence under *the Act*. There are also similar offences under *the TA 2000*. The offence can be committed when there is knowledge or suspicion that a *report* has been made, or, for terrorism related offences, also that a *report* will be made. This includes internal *reports* made to a nominated officer (i.e., the *MLRO*). Similarly, if any disclosure is made which is likely to prejudice any investigation by the authorities, an offence may be committed. *Businesses* should exercise caution when disseminating knowledge that a *money laundering* suspicion has arisen, and that a *report* has been made. More detailed guidance on the offence of tipping off is contained in Appendix 3.

9.2 Tipping off will only arise where disclosures are made which are likely to prejudice an investigation which might be conducted following the *report*. This does not prevent *businesses* and *individuals* discussing with clients, and advising on, issues regarding prevention of money laundering or other related matters, on a non-specific basis. Similar considerations apply to the offence of prejudicing an investigation, outlined in section 9.3 below.

9.3 It must be noted that, whilst tipping off requires a person to have knowledge or suspicion that a *report* has been or will be made, a further offence of prejudicing certain investigations is included in Part 8 of *the Act*. Under this provision, it is an offence to make any disclosure which may prejudice an investigation of which a person has knowledge or suspicion, or to falsify, conceal, destroy, etc. documents relevant to such investigations. A further offence of making a disclosure which is likely to prejudice a terrorist investigation applies under *the TA 2000* when a person knows or has reasonable cause to suspect that a terrorist investigation is being or will be conducted, regardless of whether a *report* has been made. More detailed information on these offences is given in Appendix 2.

10. Tax Related Offences

10.1 Tax related offences are not in a special category. The proceeds or monetary advantage arising from tax offences are treated no differently from the proceeds of theft, drug trafficking or other criminal conduct. This includes tax offences committed abroad if the action would have been an offence were it to have taken place in the United Kingdom. There is no need for there to be any consequential effect on the United Kingdom's tax system.

10.2 Tax evasion offences will fall within the definition of *money laundering*. This includes both the underdeclaring of income and the overclaiming of expenses. For direct tax, common criminal offences generally involve some criminal intent or dishonesty. For indirect tax section 167(3) Customs and Excise Management Act 1979 provides that a wide range of innocent/

accidental errors are criminal offences even though they are, in practice, generally dealt with under the civil penalty regime. The effect of section 340 of *the Act* is that there cannot be a *money laundering* offence where the person involved does not know or suspect that a benefit results from criminal conduct. One interpretation of the law is that innocent errors which constitute criminal offences do not need to be reported. It is expected that *NCIS's* reporting guidance will state that they do not consider that section 167(3) offences should be reported, in the absence of intent. Notwithstanding this, a taxpayer may acquire the relevant knowledge or suspicion when they are advised that they have submitted an incorrect return. Further, firms and *individuals* should be wary of relying on what might be seen as 'technical' defences in any situations where they consider that they have information which would be of interest or importance to law enforcement.

10.3 The legislation impacts tax advisers who are about to make, or who offer or provide services that could lead to, disclosures of misstatements to the Inland Revenue or HM Customs and Excise, on behalf of their *clients*, or who will be encouraging their *clients* or potential *clients* to make such disclosures. If there are reasonable grounds to know or suspect that potential disclosures to the Inland Revenue or to HM Customs and Excise relate to criminal conduct, then a *report* should be made to *NCIS* as well. *The Act* requires that *reports* to *NCIS* be made as soon as practicable.

11. Penalties

11.1 Offences may be tried in a Magistrate's Court or in a Crown Court depending on severity. Cases tried in a Magistrate's Court can attract penalties up to the maximum fine (£5,000), up to six months' imprisonment, or both. Cases tried in the Crown Court can attract unlimited fines and the following terms of imprisonment:

- up to fourteen years, for the main *money laundering* offences;
- up to five years, for the failure to *report* offence and the tipping off offences; and
- up to two years' imprisonment for contravention of the systems requirements of *the Regulations*.

11.2 All the *money laundering* offences may be committed by a *business* or an *individual*. Where *businesses* fail to comply with *the Regulations*, *an offence* will also be committed by any officer or partner who consented or connived at the commission of an offence by *the business*, or where the offence was attributable to any neglect on their part.

11.3 Under sections 331 and 332 of *the Act*, there are specific offences of failure by *MLROs* to pass on to *NCIS* knowledge or suspicions of (or in the case of s 331, reasonable grounds to know or suspect) *money laundering* which came to them as a result of *reports* they have received. The offence under section 332 applies to any *MLRO* appointed by a *business* whether or not it carries out any *relevant business*.

12. Legal Privilege

12.1 Legal privilege can provide a defence for a professional legal adviser (section 330(10)) to a charge of failing to report suspicions of *money laundering*. This only applies where information is received in privileged circumstances, and where the information is not communicated to or by the lawyer with the intention of furthering a criminal purpose (section 330(11)). There is no specific provision in *the Act* providing the same protection for accountants or for persons who are not legally qualified who provide legal advice. A legally qualified person working in any context, and advising his employer, can claim the defence. This covers in-house solicitors working as such.

12.2 *Businesses* may consider that they are in possession of legally privileged information impressed with the privilege of a third party (including a *client*), for example, where they have been instructed by a lawyer on behalf of his *client* in respect of legal proceedings. If a *report* under *the Act* would result in the disclosure of that information, the *business* may wish to take legal advice to ascertain whether there are any grounds which may form a defence in respect of the failing to disclose offences under sections 330 to 332 of *the Act*, or whether a report should be made notwithstanding the existence of third-party privilege.

12.3 At the time this Guidance is issued, discussions are being undertaken with Government, over how legal privilege should be interpreted when access to privileged information by accountants leads them to form a *money laundering* suspicion. *Individuals*, who encounter a dilemma over whether or not they should report matters which they believe should be treated as privileged, and therefore confidential, are advised to consult their *MLRO*, and may wish to do so on a no-name and non-specific (to the extent possible to determine whether matters are privileged) basis initially. The *MLRO* will then need to establish whether privilege applies before deciding on further action. Reasons for the conclusion reached should be recorded. The *MLRO* should bear in mind that he may have an obligation to make an onwards 'no names' *report* to *NCIS*; the fact that he does not know the identity of those involved is no defence if he is otherwise obliged to make a *report*. The extent to which the *MLRO* is covered by the privilege defence (if it was available to the *individual* making a report to him) is also currently under discussion with Government.

13. Geographical Coverage and Extra-territoriality

13.1 The legislation applies to *businesses* operating in the United Kingdom, including to *businesses* working from a United Kingdom office for a *client* who is based abroad. *Businesses* with foreign offices, and particularly *businesses* with *individuals* temporarily working abroad or on secondment, may wish to seek legal advice in relation to the need for procedures for those *individuals* to ensure that the *individuals* and the *business* comply with the United Kingdom's legal requirements as well as the local legal requirements.

13.2 Irrespective of the strict legal position a United Kingdom *business* may wish to consider putting in place a *business* wide *money laundering* strategy to protect its global reputation and United Kingdom regulated business, particularly when the United Kingdom *business* exercises control over the business performed outside the United Kingdom, or outsources United Kingdom business to offshore locations.

13.3 In the UK legislation, *money laundering* is defined to include not only actions in relation to the proceeds of crimes undertaken in the UK, but also in relation to the proceeds of an act which takes place abroad but which would have been an offence if it had taken place in the UK. There are a number of actions which would be an offence in the UK, but which due to a number of reasons (including social and cultural background) will not be offences in the jurisdiction in which they occur. Examples could include breaches of health and safety rules. There is no exemption from reporting these instances, but it may be appropriate for them to be reported only in an abbreviated and/or aggregated form covering a number of examples. *NCIS* guidance on the use of their abbreviated form of *report* (see paragraph 20.1) should be followed. In any case, suspicions relating to terrorism, drug trafficking or similar offences should always be the subject of a full *report*, no matter what the attitude of the jurisdiction involved.

14. What Businesses Need To Do

14.1 This section should be read in conjunction with Transitional Arrangements (see section 24 below).

14.2 From 1 March 2004, *businesses* need to maintain the following procedures, in respect of all *relevant business*:

- Appoint an *MLRO* and implement internal reporting procedures.
- Train *individuals* to ensure that they are aware of the relevant legislation, know how to recognise and deal with potential *money laundering*, how to report suspicions to the *MLRO*, and how to identify *clients*.
- Establish internal procedures appropriate to forestall and prevent *money laundering*, and make relevant *individuals* aware of the procedures.
- Verify the identity of new *clients* and maintain evidence of identification.
- Maintain records of *client* identification, and any transactions undertaken for or with the *client*.
- *Report* suspicions of *money laundering* to *NCIS*.

Records of *client* identification need to be maintained for five years after the termination of a *client* relationship by any part of the firm providing *relevant business*. Records of transactions also need to be maintained for five years from the date when all activities in relation to the transaction were completed.

15. The MLRO

15.1 *The 2003 Regulations* require *businesses* to appoint a nominated officer to receive internal reports. This officer is usually called the money laundering reporting officer or *MLRO*. This should be one of the first matters to be addressed by *businesses*. The person appointed as the *MLRO* should have a suitable level of seniority and experience. In many accounting firms and similar *businesses* the principal, or one of the principals, would be a suitable person. There is no obligation on a sole practitioner to appoint an *MLRO* where the sole practitioner does not employ any staff, or act in association with any other person.

15.2 *Individuals* should make internal *reports* of *money laundering* to the *MLRO*. The *MLRO* is then required to consider the internal *report* in the light of any relevant information available to the *business*. If, on consideration, the *MLRO* concludes that he has knowledge or suspicion (or reasonable grounds for knowledge or suspicion) of *money laundering*, then the matter should be reported to *NCIS*. If in doubt, *MLROs* may wish to seek legal advice and, if a *report* is not made, they should document the reasons. Documentation is very important when deliberating whether to make a report to *NCIS*. Being able to demonstrate a reasonable process, diligently undertaken in good faith and in accordance with relevant guidance, may assist an *MLRO* in being able to defend himself against allegations of failing to disclose.

15.3 The *MLRO* can delegate these tasks to other *individuals*. However, *MLROs* cannot relieve themselves of their responsibility. The *MLRO* can be held to be personally liable if they receive *reports* of *money laundering* but fail to make a *report* to *NCIS*, where required to do so. As a result, the *MLRO* needs to ensure that they do not take a 'hands off' approach to their duties, and should seek to maintain control over the internal processes. Other offences that the *MLRO* could commit are set out in Appendix 2.

15.4 It will be necessary for *businesses* to develop alternative procedures for situations where the *MLRO* is going to be unavailable for a period of time, since *reports* have to be made as soon as is reasonably practicable. It would generally not be acceptable to delay filing a *report* with *NCIS* in such a situation. An acceptable solution would be to nominate or appoint an appropriate deputy *MLRO* to consider the validity of internal *reports* and decide whether the matter should be reported to *NCIS*.

15.5 *Businesses* are required to establish and maintain internal procedures and ensure that *individuals* are adequately trained. It may be appropriate for *MLROs* to take responsibility for fulfilling these requirements.

16. Training

16.1 *Businesses* are required to take appropriate steps to ensure that relevant *individuals* are provided with training on the provisions of *the 2003 Regulations*,

the main *money laundering* offences (both those in *the Act* and those in *the TA 2000*), and on how to recognise and deal with situations that may involve *money laundering*. Training will ideally enable *businesses* to establish a culture of complying with *money laundering* requirements. It is recommended that *businesses* document the provision of training to enable them to demonstrate their compliance.

16.2 The level of training provided to *individuals* should be appropriate to their role and seniority within the *business*. Apart from knowledge of the main *money laundering* offences, relevant *individuals* are not expected to have a detailed knowledge of what constitutes a criminal offence beyond that knowledge which could reasonably be expected of a person of their position and seniority. The training should cover the basic obligations of *businesses* under *the Act, the TA 2000* and *the 2003 Regulations*, what the *individual* is expected to do to ensure that the *business* fulfils those obligations, and on what the *individual* is expected to do to fulfil their personal obligations. It should also include information on how to recognise and deal with activities that may be related to *money laundering*. Finally, relevant *individuals* need to be made aware of the *business's* procedures to forestall and prevent *money laundering*, including the *business's* identification, record keeping and reporting procedures.

16.3 Training does not need to be performed in-house, although in many instances *businesses* may prefer to conduct training by this route. Attendance by *individuals* at conferences, seminars and training courses run by external organisations, or participation in computer-based training courses, may be taken to represent an effective method of fulfilling the training obligations imposed on *businesses*. However, common sense judgement should be used to determine the appropriateness of any course, seminar or conference.

17. Internal Procedures

17.1 *Businesses* will need to review their existing internal control procedures to ensure that they include measures appropriate to forestall and prevent *money laundering*. Where necessary, modifications should be made to existing procedures. It is difficult to provide guidance on particular procedures, as the services offered by various *businesses* will result in differing risks and vulnerabilities. However, it is recommended that *businesses* include consideration of the following:

- *Client* acceptance procedures, including provisions as to identification (section 18) and gathering 'know your *client*' information, including the client's expected patterns of business, its business model and its source of funds. Such information not only assists in spotting suspicious transactions or activity but also enhances the ability of the *MLRO* to make sound judgements on whether to make disclosures and assists in increasing the quality of those disclosures.
- Controls over *client* money, and transactions passing through the *client*

account with particular reference to the identity of the *client*, the commercial purpose of the transaction and the source and destination of the funds.
- Advice and other services to *clients*, the nature of which could be of use to a money launderer.
- The appropriateness of internal reporting lines.
- The role of the *MLRO*.

18. Identification Procedures

18.1 Subject to the transitional arrangements (see section 25 below), *businesses* need to be able to establish that new *clients* are who they claim to be.

18.2 In formulating their approach, *businesses* may wish to consider the risks attaching not only to different types of *clients*, but also different types of services. Based on these risk assessments, *businesses* can determine the appropriate degree of information that may be required in respect both of 'know your *client*' and identification evidence.

18.3 By way of example, basic identification procedures for *individuals*, private companies and trusts who have been met face-to-face are illustrated below. These may not be appropriate in all circumstances. For example, more thorough procedures may be appropriate for offshore trusts in high-risk jurisdictions.

18.4 Identification procedures for an individual would typically include seeing, and taking copies of, evidence establishing the *client's* full name and permanent address. An official document with a photograph is particularly valuable evidence of identity. This would most likely take the form of a new style driving licence or a passport, with a separate document being used to confirm the address, such as a recent utility bill. There are legal restrictions on the copying of passports. Photocopies of passports should be in black and white, should be limited to the personal details pages and should not be used other than for purposes of identification under *the Regulations*.

18.5 For private companies, partnerships or sole traders, the *business* needs to establish the identity of the entity itself, its business activity, and, where appropriate, having taken into account the risk profile of the *client*, the identities (as illustrated above) of the owners, principal directors, partners and sole traders. Suitable evidence of identity for the entity may include a copy of the certificate of incorporation, evidence of the company's registered address, and a list of shareholders and directors.

18.6 For trusts the key identification requirements will generally involve ascertaining the nature and purpose of the trust, and the original source of funding as well as the identities of the trustees/controllers, principal settlers and beneficiaries.

18.7 In the case of insolvency work, and some other circumstances, it is possible that some lack of cooperation may be encountered in certain circumstances. Guidance for members carrying out insolvency work has been issued by the Association of Business Recovery Professionals (R3).

18.8 *Businesses* might also wish to check the names of new *clients* against lists of known terrorists and other sanctions information. Certain lists can be found in Appendix 4.

18.9 Chapter 4, Know Your Customer and Identification Evidence, of the *JMLSG* Guidance Notes provides useful additional guidance in relation to the identification of *clients*, including those operating through other forms of business structure. The *JMLSG* Guidance Notes are tailored for use by organisations regulated by the *FSA*, but Chapter 4 should be able to be adapted and applied to the business of accountants.

18.10 Records of identification are required to be maintained for a period of five years after the business relationship has ended. *Businesses* will need to ensure that records are not inadvertently destroyed by one department, where another is still within the five-year period or has embarked on a new business relationship with the *client*.

19. Banking and Client Money

19.1 Practising accountants are reminded of a related identification issue. The 'Charter for the European Professional Associations in support of the fight against organised crime' was signed on 27 July 1999 on behalf of the *CCAB* bodies. The Charter requires firms to verify *client* identity when handling *client* money. This is of significance for firms that hold any *client* money in their ordinary or designated *client* money bank accounts. Those with *client* money bank accounts denominated in foreign currencies should take particular care. Please note that this is not a new requirement, and should already be followed by firms.

19.2 Special care needs to be taken when handling *clients'* money in order to avoid participating in a *transaction* involving *money laundering*. Such services may be considered to represent a higher than normal risk and so require a higher level of 'know your *client*' and identification procedures. Handling a *client's* money may also give rise to constructive trust issues (see section 21 below).

20. Reporting Suspicions to NCIS and Requesting Consent

20.1 The *NCIS* coordinates the holding and dissemination of information amongst the law enforcement agencies. To assist in dealing with the volume of *reports* and inputting to their database, *NCIS* has designed standard

disclosure forms for full and abbreviated disclosures. These are in the format preferred by *NCIS*, but their format is not currently prescribed by law. Copies of both the standard forms of report and guidance for their use will be available on the *NCIS* website from 1 March 2004. The guidance will include a listing of those categories of *report* for which the abbreviated form is appropriate. The abbreviated *report* will be used not only for individual *reports* of lesser intelligence value, but also for aggregated *reports* where a number of low intelligence value *reports* (where these comply with criteria set by *NCIS*) can be made in one abbreviated *report*. A wide number of the types of reportable instances encountered in the course of an audit or similar engagement may be aggregated for reporting purposes. It will not be available for use in any instance where there is any likelihood that the law enforcement authorities (including the tax authorities or any regulator) will find the *report* valuable in deciding to undertake an investigation.

20.2 It is recommended that *MLRO*s use these disclosure forms, and the associated guidance when filing *reports* with *NCIS*, though they are not mandatory and any alternative form may be used. It is recommended that *reports* are sent in by post or by fax, unless an assured form of secure electronic submission is available. *Businesses* must state the basis of their knowledge or suspicion, and should be able to provide other required information that is relevant to the *report*, where it is already available or where obtaining it does not delay the *report* or raise tipping off concerns. *Businesses* may not have available all the information requested, such as bank account details or records of individual *transactions*, in which case they may be omitted. A copy of the disclosure form will be available online from the *NCIS* website (http://www.ncis.co.uk) along with a guide to completion, from 1 March 2004. In the meantime, the old form of standard *report* is still available. *Reports* using both the old and new standard forms of *report* will be acceptable for some time. *Businesses* may wish to consider applying to use money.web, a secure online reporting system provided by *NCIS*.

20.3 *Businesses* and *individuals* are recommended to have regard to the need to minimise the risk of their name (or the names of parties who are not suspected of money laundering) being linked to a *report* of suspicion by other than the appropriate authority. When making reports, the following steps may be employed to enhance confidentiality of the source of the *report*:

- showing the name of the *business* or *individual* making the *report* once only on the front sheet of the reporting form as the source ID and not anywhere else in the *report*; and
- not including the names of the personnel either making *reports* to the nominated officer or who are involved in the *client* work giving rise to the *report*.

In most circumstances, this will result in the name of the *MLRO* being given as the contact for response to queries.

20.4 The *NCIS* or the law enforcement authority undertaking an investigation will contact the *business* (usually the *MLRO*) if they have any queries about

the disclosure. *Businesses* and *individuals* should be cautious in responding to requests for additional information, and generally route them through the *MLRO*, to ensure their response is covered by appropriate protection against claims for breach of confidentiality. Except for requests for clarification or explanation of material already included within a suspicion *report* made to *NCIS*, it is recommended that disclosure of further information takes place only:

- in response to a court order or other legal powers requiring disclosure, such as those available to the Serious Fraud Office; or
- after careful consideration, and documenting the justification for making a disclosure in the public interest.

20.5 If the *business or individual* considers that any action that they may have planned to take, or may be asked by their client to take, would be a *money laundering* offence under sections 327–329 of *the Act*, a request for *consent* must also be made either with or after the related *report* is made to *NCIS*. Until consent is received, no action by the *business* or *individuals* which could be considered to constitute an offence under sections 327–329 of *the Act* must take place for a period of seven working days (starting the first working day after the request for *consent* is made to *NCIS*), unless *NCIS* gives *consent* for it to go ahead. This could mean that particular work for a *client* has to stop until *consent* is given (although see also section 24.2 below – Cessation of work). Failure to observe this requirement places *MLROs, individuals* and *businesses* at risk of committing offences under sections 327 to 329 and 336 of *the Act*. It is also an offence for the *MLRO* to consent to any such action after an internal *report* has been made to him and before the seven-day period has expired, in the absence of *consent* by *NCIS*. *NCIS* interpret the consent provisions narrowly. For example, the payment of suspect funds into and out of the *business's client* account could be considered as separate *transactions*. The lapse of seven days following a *consent* to a payment into the account may not count towards the consent period for the payment out of the account, e.g., by way of repayment of the funds. If the *client* requests repayment, a further *report* and request for *consent* may have to be made. If this could result in a delay, it may give rise to tipping off issues. Therefore, when time is particularly pressing, the *business* should mark this on the disclosure form and that *consent* is requested, fax it to *NCIS* (0207 238 8286), and follow up with a phone call to the Duty Desk (020 7238 8262/8607).

20.6 To avoid undue delay and uncertainty, it is important that *businesses* contact *NCIS* immediately it becomes apparent that a request for *consent* needs to be made. All requests for *consent* must be made in writing.

20.7 *Businesses* and *individuals* need to note that it is not possible to receive *consent* to any action other than one which would otherwise constitute an offence under sections 327–329 of *the Act*, i.e., it is not possible to get *consent* to tip off or prejudice an investigation. The guidance in paragraph 22.2 should be followed where *businesses* or *individuals* are concerned as to whether an intended communication to a third party may constitute either tipping off or be prejudicial to an investigation.

20.8 If no response is received from *NCIS* within the seven working days, *NCIS* are deemed to have provided the *consent* requested, and the *business* is entitled to proceed. *Consent* is not required when the *business* has made a *report* but has no involvement in the suspected *money laundering* and is not in any other way assisting it. For example, if the *report* concerns a matter that had been observed in a *client's business* when providing unconnected services. *Businesses* are referred to Appendix 2, where the offences under sections 327 to 329 of *the Act* are set out more fully.

20.9 Where *NCIS* refuses to issue its *consent*, and provides notice of its refusal, there is a further moratorium period of 31 calendar days starting on the day that the *business* receives the refusal notice from *NCIS*. During the moratorium period the *MLRO* cannot consent to, and the *business* and *individuals* cannot proceed with, the matter in respect of which *consent* was requested and refused. At the expiry of the moratorium period *NCIS* is deemed to have *consented* to the request and the *business* is then entitled to proceed.

20.10 *Businesses* may, on occasion, wish to make reports where the identity of the person believed to have acted in a criminal fashion is not known. In such cases, to avoid rejection of disclosures for insufficient information, *businesses* should at least include in the 'subject' or 'associated subject' fields the name of the business or individual affected by the criminal conduct, or any other parties connected to the incident. The 'subject' or 'associated subject' fields are not reserved only for those in respect of whom knowledge or suspicion is being reported, but may also be used for individuals and entities connected to or affected by the transaction or activity being reported. This assists *NCIS* in building as full a picture as possible of the circumstances.

21. Constructive Trusts

21.1 A conflict can sometimes arise between the *money laundering* legislation and civil law. A *business* may suspect that certain assets are the proceeds of crime and make a *report* about them. In such circumstances, it is possible that the victim of the original crime may be the true owner of the assets and have a civil claim to recover them. Such assets could be sums of money which have passed through an accounting firm's *client* bank account. If the firm has notice that such assets are not rightfully owned by the *client* then there is a risk that the firm may be considered to be a constructive trustee for the true owner. If the firm has any indication that this may be the case, then the report to *NCIS* should make clear the possible constructive trustee position.

21.2 If the firm has made a *report* about funds in its *client* bank account and the *client* subsequently requests the funds to be moved or otherwise paid away, a further *report* should be made to *NCIS*. If *NCIS* refuse to consent to the transfer of funds, and they are therefore retained, the firm is unlikely to be prosecuted for 'tipping off', provided the reason given to the *client* for the refusal to complete the transaction is agreed with *NCIS*. However, the firm

might incur civil liability to the client. Even if *NCIS* consents to the transfer of the funds and the firm follows *NCIS*'s advice, the firm may find itself liable as a constructive trustee of the true owner. However, if the firm fails to transfer the funds because it is concerned about the constructive trust issue it may become liable for tipping off. The position regarding constructive trusts is complex and it would be advisable to obtain legal advice where appropriate.

22. Interaction of Different Reporting Duties

22.1 Accounting firms and other *businesses* may well, on occasion, be in a position of having to fulfil other reporting duties after reporting suspicion to *NCIS*, to which different reporting standards may apply. Examples may include audit reports on financial statements; reports to regulators under Statement of Auditing Standards (SAS) 620 (revised); section 394 Companies Act 1985 statements on resignation as an auditor; reports on directors' conduct within the terms of the Company Directors Disqualification Act 1986; and reports under section 218 of the Insolvency Act 1986. Members of professional bodies may have obligations to report misconduct by members of the same body.

22.2 In some cases, it will not be necessary to refer to the substance of the matter reported to *NCIS* in other reports. If it is considered necessary, firms may find the following principles useful when pursuing their other reporting duties, in order to reconcile their otherwise conflicting responsibilities:

- For the generality of reports for clients, or for publication, it should be noted that it is not possible to obtain consent to 'tip off'. However, *businesses* should request contact with the relevant investigating authority to see if wording can be agreed for reports which satisfies both the *business's* other duties and the needs of the relevant law enforcement authority. If such wording can be agreed, it is unlikely that the *business* will know or suspect that the report will prejudice an investigation, which is an essential element of the tipping off offence;
- Where reports are required to regulators or government agencies, which are not intended for publication or receipt by clients, caution is still required as regards tipping off and it is recommended that *businesses* seek to identify a person within the organisation to whom they are reporting that has the requisite appreciation of *the Act* and appropriate seniority, thus mitigating the risk of tipping off; and
- If a suitable compromise cannot be reached that reconciles the duties of *businesses* to make other reports with the need to avoid tipping off, *businesses* should seek legal advice and potentially the directions of the Court to protect themselves.

22.3 If suspicion has been reported, or may be reported, *businesses* and *individuals* need to be cautious in responding to professional clearance letters. Similar considerations apply as those set out in section 22.2 above. In particular, it is recommended that *businesses* and *individuals* do not respond to questions in professional clearance letters concerning either their satisfaction

as to the identity of an entity or *individual* or as to whether any report of suspicion has been made, or contemplated.

22.4 There may also be professional requirements, for example, for auditors to report matters to those charged with governance under the APB's Statement of Auditing Standards 610, or to *clients* under ethical or practical guidance issued by accountancy bodies. These requirements should be interpreted in the light of the need to avoid tipping off. Further consideration of this is given in Appendix 3.

23. Risk-based Approach

23.1 In applying the requirements for *client* identification, in determining for *client* acceptance and monitoring purposes the level of 'know your *client*' information considered desirable, and in relation to the level of scepticism that should be adopted, *businesses* may apply a risk-based approach. Certain business activities are more likely to involve money laundering than others. However, it should be remembered that money launderers are not obvious. On the contrary, they rely on appearing plausible. They may be deceitful on occasions and omit revealing relevant facts to their accountant.

23.2 *Businesses* need to be aware in particular of the risks attaching both to types of services and types of *clients* in respect of:

- being used by a *client* or third party to launder money (e.g., through *client* accounts);
- being used to design arrangements to facilitate money laundering (e.g., trusts and complex offshore structures);
- the *client* laundering money; and
- third parties using the *client* to launder money.

24. What Businesses Are Not Required To Do

Whilst the new legislation imposes new requirements on relevant *business*, it is worthwhile pointing out what *businesses* do not need to do, or indeed, what they should avoid doing. In particular, *businesses* are not required to carry out any additional procedures to seek out money laundering, but only to be in a position to recognise and report potential money laundering which they encounter in the course of their normal work.

24.1 Investigating suspicion in accounting firms

Suspicions are the result of an accounting firm applying a healthy level of objectivity and professional experience to the information it comes across in the ordinary course of providing accountancy services or other relevant *business*. Firms are not required to carry out investigative work beyond what they would normally do as part of their professional relationship. Indeed, to do so might well involve committing the offence of tipping off. *MLROs*

are required to consider information available to the firm, when deciding whether to make a *report* to *NCIS*. Further investigations into possible *money laundering* should be left to the law enforcement agencies.

24.2 Cessation of work

There is no automatic need to cease working for a particular client where a *business* has filed a *report*. In particular, no consent is required from *NCIS* to continue to carry on any function where a *report* has been made under section 330 of *the Act*, and the *business* will not itself commit one of the main *money laundering* offences by continuing its work for the *client*.

The primary reason to cease work on a particular transaction would be that the *business* would assist a money launderer by continuing with the work, in circumstances where the *business* has not received consent from *NCIS*. Further guidance on this is given in Reporting Suspicions to NCIS (see section 20 above). Regardless of whether the *business* ceases or continues to work, care must be taken to ensure that the potential money launderer is not tipped off.

24.3 Resignation

There is no obligation for a *business* to continue to act for a *client* where it does not believe that it is in its commercial interests to do so, or would be incompatible with professional or ethical requirements. However, in circumstances where a *report* has been made, care must be taken to avoid tipping off the client or a third party. Further guidance on this matter is given in Appendix 3.

25. Transitional Arrangements

25.1 *Businesses* and *individuals* which became subject to the failure to report offence under *the Act* from 24 February 2003 (that is *businesses* (including sole traders) and *individuals* within them conducting business within the scope of the 1993 Regulations, that is relevant financial business) generally do not need to report knowledge, suspicion, or reasonable grounds to suspect *money laundering* if all the information that gave rise to that knowledge or suspicion came to the *business's* or the *individual's* attention before that date. A similar transitional provision is included in *the 2003 Regulations* and the amendment to Schedule 9 of *the Act*. This means that *businesses* or *individuals* not within the regulated sector before 1 March 2004 will only need to report knowledge or suspicions of *money laundering* if part or all of the information that gave rise to that knowledge or suspicion came to the attention of the *business* or *individual* on or after that date (or if a *report* is necessary for another reason, such as because the *business* or the *individual* would otherwise commit one of the main *money laundering* offences). Even where there is no obligation to *report*, the information which gave rise to a suspicion will still be useful when evaluating whether any new information gives rise to a need to make a *report*, and may be reported, if desired, under section 337 of *the Act*.

25.2 Despite the transitional provision outlined above, *businesses* should be aware that they may still be under an obligation to make a *report* under *the TA 2000*, or alternatively *businesses* may wish to consider making a *report* under section 337 of *the Act* in respect of historical matters.

25.3 *MLRO's* have a personal obligation, under section 332 of *the Act*, to report any knowledge or suspicion of *money laundering* which they have as a result of an internal report, even if they, and the person reporting to them, and/or their *business*, are not within the scope of *the 1993* or *2003 Regulations*. This applies in respect of knowledge or suspicions formed as a result of information which came to them, partially or wholly, on or after 24 February 2003.

25.4 Unless specified below, *businesses* will not need to implement and maintain identification procedures for *clients* until 1 March 2004. From that date, *businesses* are obliged to confirm the identity of new *clients* for relevant business, but are not obliged to do so for existing *clients* for relevant business with whom there is already a business relationship.

25.5 *Businesses* which are authorised under *FSMA 2000*, or are otherwise bound by *the 1993 Regulations*, have to maintain identification procedures under *the 2003 Regulations* except in relation to *clients* with whom a business relationship was formed before 1 April 1994 (reg 30(1)). That is the date the outgoing *1993 Regulations* took effect. *Businesses* which are authorised by the *FSA* need to follow the *FSA's* requirements as well.

25.6 Whilst mindful of these commencement dates, *businesses* are advised to determine for themselves whether to maintain identification procedures for existing *clients*, particularly where the perceived risk inherent in a *client's* business, structure or location is considered to be high. Know your *client* requirements may also be inherent in audit and some other professional requirements, which may interrelate with those in place as part of a *business's* anti-money laundering procedures.

26. Money Laundering Legislation Outside the UK

26.1 *Businesses* are under no obligation under United Kingdom legislation to acquaint themselves with the money laundering legislation in other countries. However, if they visit other countries to provide services to United Kingdom or foreign *clients*, or have branches abroad, it would be wise to do so, in order to avoid committing any offences in those countries.

26.2 *Businesses* should be aware that some countries, for example the United States, have legislation with extra-territorial affect. The most significant effect would be on businesses with clients dealing in United States dollars.

27. Non-Practising Accountants

27.1 Accountants employed in business will be subject to *the Act* and *the 2003 Regulations* where they are employed by an entity that falls within the scope of *the Act* and *the 2003 Regulations* (see section 27.4 below for more details). Such accountants should apply the guidance provided by their employers, guidance issued by the relevant regulator or trade association or, in the absence of such guidance, the aspects of this guidance that relate to the obligations on individuals and *relevant businesses*.

27.2 Accountants employed outside *relevant business* will generally not be subject to the failure to report offence imposed by section 330 of *the Act* nor *the 2003 Regulations*. However, they should be aware that they could still commit offences under *the Act*. In particular, they could commit one of the primary *money laundering* offences (offences under sections 327–329 of the Act), the offence of tipping off (section 333), or the offence of prejudicing an investigation (section 342). Therefore, they should at least familiarise themselves with the areas of this guidance that describe those offences. If their employer has nominated an *MLRO*, or similar officer, the accountant should normally report their suspicions to that person. If for any reason that is not possible or appropriate, individuals may report direct to *NCIS*. The guidance given in section 20 and Appendix 1 may be of assistance in these circumstances. In either case, businesses and individuals are covered by the confidentiality override provisions contained in both *the Act* and *the TA 2000*. This protection covers voluntary reports, of *money laundering*, where the information giving rise to knowledge or suspicion did not arise in the context of *relevant business*.

27.3 All accountants remain subject to *the TA 2000* which is applicable throughout the United Kingdom, regardless of the nature of the business of their employer. It requires them to report possession of, and other activities relating to, terrorist funds, which include funds which are likely to be used for terrorist purposes as well as the proceeds of terrorism.

27.4 *Relevant business* is defined in paragraph 2(2) of the Regulations. Apart from what might be summarised as banking, investment business (and other *FSMA 2000* regulated activities) and accountancy or audit, the scope of sections 330 and 331 of *the Act* and *the 2003 Regulations* includes (in summary):

- Money service operators;
- Estate agency work;
- The business of operating a casino;
- Insolvency practitioners;
- Tax services;
- The business of providing legal services, involving financial or real property transactions;
- Company and trust formation, operation or management; and
- The business of dealing in goods which involves accepting payments in cash of €15,000 or more ('high value dealers').

Individuals or *businesses* involved in the provision of management consultancy services or interim management should be particularly alert to the possibility that they could be within the scope of the duty to report under sections 330 and 331 of *the Act* and the requirements of *the 2003 Regulations* because they may supply the service of forming, operating or managing companies, or provide accountancy services.

27.5 Money service operators and high value dealers are regulated by HM Customs and Excise as set out in Part III of *the 2003 Regulations*.

28. Definitions and Abbreviations

(The) Act	The Proceeds of Crime Act 2002.
(The) 1993 Regulations	The Money Laundering Regulations 1993. SI 1993/1933
(The) (2003) Regulations	The Money Laundering Regulations 2003. SI 2003/3075
Accountancy services	Any service provided to a third party by way of business, which meets all of the following criteria: (a) The form and substance of the relationship between the service provider and the recipient are that of professional adviser/client, rather than employee/employer; (b) The service pertains to the recording, review or reporting of financial information for the service recipient; and (c) The service does not relate solely to the provision and/or installation of software for the production of financial records. Accountancy practice, including that carried out on a part-time basis, is included within this definition, but not non-commercial arrangements, such as when a company provides accounting services for other companies under common ownership.
Applicant for business	A person seeking to form a business relationship, or carry out a one-off transaction, with a business acting in the course of relevant business carried on by the business in the UK. Referred to as a client in this guidance.
A business	A company, partnership or other organisation carrying on relevant business, within the meaning of the Regulations. This includes accountancy practices, whether structured as partnerships, sole practitioners or corporate practices.
Business relationship	Any arrangement for the carrying out of transactions on a regular basis where the value of those transactions, or the total amount of any payments to be made by any person to any other in the course of the arrangement is not known at the outset. The agreement of terms of engagement

	with a client would be indicative of the start of a business relationship.
CCAB	Consultative Committee of Accountancy Bodies.
Client(s)	See applicant for business. This term is inclusive of the customers of a relevant business, as well as clients of a professional practice.
Consent	Permission given, generally by NCIS, for the carrying out of any action that would constitute a money laundering offence in the absence of that permission. The definition and ruling legislation for the giving of consent is in section 335 of the Act, which also deals with the passing of the consent from the MLRO to the individual concerned.
FSA	Financial Services Authority.
FSMA 2000	Financial Services and Markets Act 2000.
Individuals	Includes the partners, directors, subcontractors, consultants and staff of a firm of accountants and employees of other relevant businesses.
JMLSG	Joint Money Laundering Steering Group.
Money laundering	For the purposes of this guidance, money laundering is defined to include those offences relating to terrorist finance, which require to be reported under the TA 2000, as well as the principal money laundering offences as defined in the Act. These offences are outlined in Appendix 2.
MLRO	Money Laundering Reporting Officer. This term is used to describe the nominated officer appointed under paragraph 7(1) of the Regulations and section 331 of the Act.
NCIS	National Criminal Intelligence Service.
One-off transaction	Any transaction other than one carried on in the course of an existing business relationship.
Relevant business	For the purposes of this Guidance, this includes 'relevant business' as defined in paragraph 2(2) of the Regulations, and also 'the regulated sector' as defined in the Proceeds of Crime Act Schedule 9 (as amended). These two categories are identical in their scope and include the provision of accountancy services by way of business. See sections 3.3.2 and 27.4 for more details on the scope of this definition.

Relevant financial business	A phrase used in the Money Laundering Regulations 1993 to define their scope as including, amongst other things, regulated activities as defined by the FSMA 2000.
Report	A report made by an individual who knows or suspects that money laundering is taking place, or has reasonable grounds for knowing or suspecting that it is. The report may involve a particular activity or transaction, and may be external (generally from the MLRO to NCIS) or internal (generally from an individual to the MLRO).
(The) TA 2000	Terrorism Act 2000 (as amended by the Anti-Terrorism Crime and Security Act 2001).
Transaction(s)	JMLSG and FSA guidance is that this includes the provision of advice. This guidance follows that approach.

Appendix 1 – NCIS Disclosure Form and Guidance Notes

The *NCIS* has produced standard disclosure forms which may be used when filing *reports* with them. Their use is not mandatory, but the forms are *NCIS's* preferred format for reporters to submit a disclosure and their use may assist both reporters, in ensuring that their *report* is appropriate in extent and content, and *NCIS* in making efficient use of the material, for intelligence purposes. The forms and associated guidance are primarily intended for use by *businesses* which form suspicions in the course of *relevant business* and it is recommended that *businesses* do use the forms. Individuals or entities not conducting *relevant business* may also find them of assistance in formulating and submitting a *report*. The latter may be submitting *reports* voluntarily, in the public interest, or as a defence to a criminal charge, where the individual or entity knows or suspects that they may have been caught up in one of the main *money laundering* offences.

The disclosure forms consist of three main elements, for use in different circumstances:

- The Source Registration Document. This gives the identification details of the entity or individual making the *report*. It only needs to be completed on the first occasion a *report* is made (whether a standard disclosure or a limited intelligence value *report*) or subsequently when any of the details change. Members of a professional body should enter this as their 'regulator', and their firm's registered number or membership number under regulator ID.
- Modules 2 to 6 of the Standard Disclosure Report Form. These give a format for the inclusion of information making up a standard *report*, in the form requested by *NCIS*. Not all the modules will need to be completed on every occasion, depending on the nature of the suspicion being reported. For example, considerable space is included for details of 'associated subjects' and 'transactions' neither of which may be an identifiable part of many suspicions formed by accountants or related professionals. It may also be appropriate to leave other boxes blank, or completed with 'unknown', where information is not already known to, or readily obtainable by, the reporting entity.
- Limited Intelligence Value Report Form. This provides a short form *report*, primarily for use where a *report* is required, but where it is unlikely to be useful in enforcing the law and the underlying knowledge or suspicion meets the *NCIS* criteria for limited intelligence value. It may be used not only for individual instances of suspicions of limited intelligence value, but also for an aggregated *report* of a number of individual instances which are accumulated during the course of an engagement (including engagements other than audits). Those making *reports* are recommended to follow the guidance provided by *NCIS*, in deciding whether use of the limited value reporting format is appropriate. Standard *reports* should be made for instances of deliberate and knowing tax evasion (involving direct or indirect tax) as well as any occasion where the

underlying offence is a serious crime, such as terrorism, drug trafficking or paedophilia.

The *NCIS* consulted representative bodies of those sectors providing relevant business, including the *CCAB*, and took their views into account in drafting the recommended forms and guidance. However, further changes may be made, as experience is gained on their use. For this reason, copies of the forms have not been included in this document, but *businesses* and individuals are recommended to obtain copies direct from *NCIS*, to ensure that up-to-date information is used. *NCIS's* forms and guidance can be downloaded from their website, on www.ncis.gov.uk/disclosure.asp, or requested by e-mail from ECBDutyDesk@ncis.co.uk. These forms can be completed electronically, printed off and submitted by post or fax to *NCIS*. Alternatively, copies for completion manually can be requested by telephone (020 7238 8282). Reports should always be submitted by post or fax, unless encrypted or the reporter is a member of the money.web community.

Appendix 2 – Criminal Offences under the Anti-money Laundering Legislation

Offences under the Proceeds of Crime Act 2002

Money laundering offences
The following are *money laundering* offences under the specified sections of *the Act*:

- s327 'Concealing' criminal property (including concealing or disguising its nature, source, location, disposition, movement, ownership or rights attaching; converting, transferring or removing from any part of the UK).
- s328 'Arranging' (entering into or becoming concerned in an arrangement which the business or an individual knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person).
- s329 Acquiring, using or possessing criminal property.

The offences under sections 327, 328 and 329 are wider than they may initially appear, because of the width of the definition of criminal property (see sections 4.3 and 4.5 above).

Defences to the offences under sections 327, 328 and 329 include:

- A *report* was made to *NCIS* or the *MLRO* in respect of the act (i.e., the concealing, arranging, acquiring etc.) and consent was received from *NCIS* or the *MLRO*, before the act took place.
- A report was made to *NCIS* or the *MLRO* after the act, where there was a good reason for the failure to make the *report* before the act took place, and was made on the reporter's own initiative and as soon as practical.

- It was the intention to make a *report* to *NCIS* or the *MLRO* but there was a reasonable excuse for not having done so.

For section 329, it is also a defence if the property is acquired or used for adequate consideration, so long as it is not known or suspected that the goods or services provided may help another person in carrying out criminal conduct.

Provisions on the interpretation of these offences and other matters within the money laundering part of *the Act* are included within section 340. In particular, the following subsections should be noted:

- The *money laundering* offences are defined in terms of criminal property.
- Under subsection 340(3) criminal property does not include a benefit from criminal conduct, where the alleged offender does not know or suspect that property constitutes or represents such a benefit.
- Under section 340(11), *money laundering* includes not only an act which constitutes an offence under sections 327, 328 or 329, but also:
  - An attempt, conspiracy or incitement to commit such an offence;
  - Aiding, abetting, counselling or procuring the commission of such an offence; or
  - An act which would constitute any of these offences if done in the UK.

Failure to report offences
Other offences under *the Act* include:

- s330 Failure by an individual in the regulated sector to inform *NCIS* or the business's *MLRO*, as soon as practicable, of knowledge or suspicion (or reasonable grounds for knowing or suspecting) that another person is engaged in money laundering. For this purpose, *money laundering* is as defined in section 340(11) of *the Act*, and includes an attempt to launder money and aiding and abetting, as well as the offences in sections 327 to 329.

  Defences include that there was a reasonable excuse for not having made a *report* to the *MLRO* or *NCIS*; or that the person does not know or suspect *money laundering and* their employer has not provided them with appropriate training.

  The court is obliged to take into account whether a person followed relevant guidance issued by a trade or professional body and approved by the Treasury, in deciding whether this offence was committed.
- s331 Failure by *MLROs* in the regulated sector to make the required report to *NCIS* as soon as practicable if an internal *report* leads them to know or suspect, or gives them reasonable grounds to know or suspect, that a person is engaged in *money laundering*.

  It is a defence that there was a reasonable excuse for not having made a *report*. The courts are obliged to take into account whether the person followed relevant guidance in deciding whether the offence was committed.

- s332 Section 332 creates a similar offence for *MLROs* who are not in the regulated sector. The key difference is that such *MLROs* must have knowledge or suspicion to commit the offence (reasonable grounds is not enough) and the court is not obliged to take account of relevant guidance.

Businesses should obtain legal advice before relying upon the reasonable excuse defences to the offences in sections 327–332. Courts have defined reasonable excuse narrowly in other contexts. Each case will turn on its own facts. Circumstances that give rise to a reasonable excuse are likely to encompass the fear of physical violence or other menaces which make it unreasonable for the potential reporter either to disclose their suspicions or to refuse to act for the *client*. The extent to which they extend beyond this is unclear.

Tipping off and other offences

- s333 The offence of tipping-off occurs when the *MLRO*, or any *individual* makes a disclosure which is likely to prejudice any investigation which might be conducted following a *report*, if they know or suspect that such a *report* (including an internal one) has been made. It is a defence if the person did not know or suspect that the disclosure was likely to prejudice the investigation.
- s342 Any *individual* who knows or suspects that an investigation into *money laundering* (or certain confiscation or civil recovery investigations) is being, or is about to be, conducted, makes a disclosure which is likely to prejudice the investigation or if they falsify, conceal, destroy or otherwise dispose of documents relevant to the investigation (or causes or allows this to take place).
- s336 *MLROs* also commit an offence if they consent to a transaction which they know or suspect is *money laundering* under ss327 to 329, where consent has not been received from *NCIS* (either express, or implied by the passing of the seven-day notice period or the 31-day moratorium period).

Offences under the Terrorism Act 2000 (as amended by the Anti-terrorism, Crime and Security Act 2001)

Money laundering offences

There are a number of offences under *the TA 2000* which trigger an obligation to make a *report*. For the purposes of this guidance, all of these offences (outlined below, and as defined in sections 15 to 18 of *the TA 2000*) are included within the definition of *money laundering*.

Someone is engaged in *money laundering* under section 18 of *the TA 2000* if they enter into or become concerned in an arrangement which facilitates (by concealment, removal from the jurisdiction, transfer to nominees, or in any other way) the retention or control of terrorist property. It is a defence if

the person did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Property is terrorist property if it is:

- Likely to be used for the purposes of terrorism; or
- The proceeds (whether wholly or partly, directly or indirectly) of the commission of an act of terrorism, or of acts carried out for the purposes of terrorism.

Further offences under *the TA 2000* which trigger a reporting obligation are:

- s15 Terrorist fund-raising (receiving, providing or inviting another to provide money or other property, where a person intends, or has reasonable cause to suspect, that it may be used for the purposes of terrorism).
- s16 Use of money or other property for the purposes of terrorism, or, possession of money or other property where a person intends or has reasonable cause to suspect that it may be used for the purposes of terrorism.
- s17 Funding arrangements (entering into or becoming concerned in an arrangement as a result of which money or other property is to be made available to another, when a person knows or has reasonable cause to suspect that it may be used for the purposes of terrorism).

Other terrorism offences which constitute *money laundering* for the purposes of this guidance include:

- Making funds available (making funds or financial (or related) services available directly or indirectly to or for the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or for the benefit of a person controlled, owned, or acting on behalf of such a person). This offence is created by the Terrorism (United Nations Measures) Order 2001.

Failure to report offences
It is an offence under section 19 of *the TA 2000* for any person who believes or suspects that another person has committed an offence under sections 15 to 18 to fail to make a *report* as soon as reasonably practicable, where the information on which his belief or suspicion is based comes to them in the course of their trade, profession, business or employment.

Section 21A (inserted by Schedule 2 of the Anti-terrorism Crime and Security Act 2001) extends this offence, for people carrying on *business* in the regulated sector, to include an objective test. That is to include those with knowledge or suspicion, and also those with reasonable grounds for knowing or suspecting. For this purpose, the 'regulated sector' has been extended by the Treasury by Order, and brought into line with *relevant business* as defined in *the 2003 Regulations*.

There is a defence, in relation to both these failure to report offences, of reasonable excuse. In relation to the Section 21A (regulated sector) offence, the courts are required to take into account relevant guidance, which has been approved by the Treasury.

It is also an offence under *the TA 2000* (section 38B) for a person to fail to make a disclosure as soon as reasonably practicable to a constable if they have information which they know or believe might be of material assistance:

- In preventing the commission by another person of an act of terrorism; or
- In securing the apprehension, prosecution, or conviction of a person for a terrorist offence.

It is a defence for a person to prove that he had a reasonable excuse for not making the disclosure.

Tipping off offences
Section 39 of *the TA 2000* creates offences where:

- A person discloses anything which is likely to prejudice a terrorist investigation, or interferes with material (including falsifying, concealing, destroying or disposing of it or permitting someone else to do so) likely to be relevant to the investigation, where he knows or has reasonable cause to suspect that a constable is or is proposing to conduct a terrorist investigation.
- A person knows or has reasonable cause to suspect that a disclosure to the police under *the TA 2000* has been made, and he makes a disclosure which is likely to prejudice any resultant investigation or interferes with material likely to be relevant to such an investigation.

It is a defence if a person did not know or have reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation, or that he had a reasonable excuse for the disclosure or interference.

Offences under The Money Laundering Regulations 2003

The 2003 Regulations include the offences summarised below.

- Regulation 3 — Persons who carry on *relevant business* in the United Kingdom must:
  - Comply with the requirements of *the 2003 Regulations*, in respect of identification procedures, record-keeping procedures and internal reporting procedures;
  - Establish other appropriate procedures for the purpose of forestalling and preventing *money laundering*; and
  - Take appropriate measures, so that relevant employees are made aware of the relevant law on *money laundering* (including terrorist related *money laundering*) and

trained in how to recognise and deal with possible *money laundering*.

An offence is committed by a *business* which does not comply with these requirements, or by a partner or officer of the *business* where they consented to or connived at the contravention of these requirements or the contravention was attributable to any neglect on their part.

- Regulation 28 — The Treasury may direct any person who carries on *relevant business*:
  - Not to enter into or proceed further with a *business relationship*; or
  - Not to carry out or proceed further with a *one-off transaction*

  in relation to a person who is based or incorporated in a country (other than an EEA state) to which the Financial Action Task Force has decided to apply counter measures. An offence is committed by persons who fail to comply with such a direction.

Appendix 3 – Tipping Off

In order to commit the offence of tipping off under *the Act, businesses* and *individuals* need to:

- know or suspect that a *report* has been made under *the Act* (this includes both internal *reports* and *reports* to *NCIS*); and
- know or suspect that their actions are likely to prejudice an investigation which might be conducted following that *report*.

Under *the TA 2000*, tipping off can also be committed when *businesses* and *individuals* know or have reasonable cause to suspect that *a report* will be made.

It is important to note that the offence of tipping off covers not only tipping off the suspect that a *report* has been made, but any other disclosure of information that might be prejudicial to an investigation, such as informing a third party who then warns the suspect, or making a public statement which is likely to hinder an investigation.

The offence of prejudicing an investigation set out in section 342 of *the Act* does not require knowledge or suspicion of a *report* having been made, simply that an investigation is underway or may begin. In this context an investigation means a confiscation investigation, a civil recovery investigation or a money laundering investigation.

Nothing prevents a *business* from making normal commercial enquiries to learn more about a *transaction* or to determine whether a concern amounts to a suspicion. This cannot amount to tipping off if it is done before an internal *report* is made, and the *individual* has no knowledge or suspicion that a *report*

has been filed with *NCIS*. Once a *report* has been made, *businesses* and *individuals* should take care in making any further enquiries and should consider only doing so under the *MLRO's* direction. In addition, caution is required where circumstances exist, such that the offence of prejudicing an investigation may be committed.

Clients and potential *clients* may seek to ask direct questions as to the intentions of *businesses* and *individuals* as regards reporting to *NCIS* or whether any such *reports* have been made. Responses need to be considered in the light of the dangers of tipping off and prejudicing an investigation, and *businesses* may wish to consider taking a standard position of refusing to comment or to respond in any way to all such enquiries, and make clear that this is a standard response.

It is unlikely to be regarded as tipping off if a *business* places a notice in its reception area or includes a standard paragraph in every engagement letter to the effect that it is obliged to *report* any knowledge, suspicion or reasonable grounds to suspect *money laundering* to *NCIS*. Clearly, there are circumstances where tipping off could occur, for example where a *firm* sends such an engagement letter immediately after they have been informed of a potential crime. In considering whether to include such a notice in reception, or standard paragraph, *firms* may wish to take into account that it is not necessary to do so and may not be desirable.

Reports to *NCIS* are made under the operation of statutory requirements, and as such may be included under standard paragraphs on confidentiality within engagement letters provided such paragraphs allow for disclosure of information in accordance with applicable law and regulation and the orders of a court with jurisdiction over the matter in question.

Auditors making a report to those charged with governance, in accordance with Statement of Auditing Standards 610, issued by the Auditing Practices Board, will need to take into account the possibility of tipping off. Disclosure to directors or senior management may constitute tipping off if, for example, the auditors suspected the management or Board of the *client* of being complicit in the suspected *money laundering* or of being likely to pass on information to others, or take any actions which in turn could prejudice *a money laundering* investigation. Similar issues arise when considering whether to discuss possible *money laundering* suspicions with *clients'* internal audit function or *MLRO*. It would be advisable for *businesses* to record the reasons for their decisions in this area.

Appendix 4 – Additional Sources of Guidance

Joint Money Laundering Steering Group Guidance

The Joint Money Laundering Steering Group *(JMLSG)* issues guidance for banks and other businesses in the regulated financial services which has been developed over the last ten years. The *JMLSG's* Guidance Notes are widely

regarded as the leading source of guidance on anti-money laundering practice in the United Kingdom. It is published by the Joint Money Laundering Steering Group, Pinners Hall, 105–108 Old Broad Street, London EC2N 1EX.

The *JMLSG* Guidance Notes are written for the financial sector authorised by the *FSA*. Much of the terminology and references reflect this, though other *businesses*, including accountancy practices, will find that some of the guidance is both appropriate and useful, for application in their business.

Chapter 4, Know Your Customer and Identification Evidence, is particularly comprehensive and is recommended to accountants for further guidance. The following chapters and appendices may also be relevant:

- Chapter 2 What the UK Law, Regulations and Financial Sector Rules Require
- Chapter 5 Recognising and Reporting Suspicious Activity
- Chapter 7 Record Keeping
- Appendix C Existing UK law

Useful websites
When seeking further information in relation to *money laundering*, a list of useful websites would include (but is by no means limited to):
Consultative Committee of Accountancy Bodies:
http://www.ccab.org.uk
Institute of Chartered Accountants in England and Wales:
http://www.icaew.co.uk/moneylaundering
Institute of Chartered Accountants in Ireland:
http://www.icai.ie
Institute of Chartered Accountants of Scotland:
http://www.icas.org.uk
Association of Chartered Certified Accountants:
http://www.accaglobal.com
Chartered Institute of Management Accountants:
http://www.cimaglobal.com
Chartered Institute of Public Finance and Accountancy:
http://www.cipfa.org.uk
National Criminal Intelligence Service:
http://www.ncis.gov.uk
NCIS disclosure template can be downloaded from:
http://www.ncis.gov.uk/disclosure.asp
Her Majesty's Stationery Office:
http://www.hmso.gov.uk
Joint Money Laundering Steering Group:
http://www.jmlsg.org.uk
Auditing Practices Board:
http://www.frc.org.uk/apb
Financial Action Task Force:
http://www.fatf-gafi.org

Bank of England information on terrorist organisations:
http://www.bankofengland.co.uk/sanctions
US Department of Treasury listing of known terrorists:
http://www.treas.gov/offices/enforcement/ofac/sdn/index.html
US Government listing:
http://www.fbi.gov/mostwant/terrorists/fugitives.htm

Professional Conduct in Relation to Taxation

Amended Section 7.3 (formerly section 1.308) of the Members Handbook of the Institute of Chartered Accountants in England and Wales effective from 1 September 2006

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FOREWORD TO THIS EDITION

The previous edition of Section 7.3 (formerly Section 1.308) of ICAEW Members Handbook was published as TAXGUIDE 1/04 on 30 April 2004 jointly with other tax-interested professional bodies. The full text of the ICAEW Members Handbook is at *www.icaew.co.uk/membershandbook*.

Effective from 1 September 2006 of the Members' Handbook, ICAEW has published a new Guide to Professional Ethics as Section 3 to replace the former Section 1.2 (see *http://www.icaew.co.uk/index.cfm?route=135959*) and the contents of the Members' Handbook have been reorganised.

The text of this edition of Section 7.3, effective from 1 September 2006 and published as TAXGUIDE 7/06, is the same as the previous version save that the cross references to other ICAEW Members Handbook Statements have been amended following the reorganisation of all its contents and some secretarial amendments and annotations made, shown generally in *italics*. As all the changes are minor, HM Revenue and Customs have not been asked to review this edition.

We also include in this memorandum fifty questions which are intended to help members find the answers to queries and which were originally published in June 2004 in TAXline Tax Practice No.7 with the text of the previous version of this Handbook Statement.

We are in the preliminary stages of undertaking a review of this Handbook Statement to update it for developments since April 2004.

PCB
30.8.06

AIMS AND OBJECTIVES

The purpose of these guidelines is to assist and advise members, whether in practice or employment, about their duties and responsibilities when dealing with:

- those whom they advise;
- the tax authorities; and
- other professional advisers.

SUMMARY

- These guidelines represent the joint views of the bodies involved in their preparation (see paragraph 1.3). They are intended to assist members both

generally in dealing with clients and the tax authorities and specifically in relation to irregularities and errors.

- A member's primary duty is to ensure that his actions comply with the law. He owes a contractual duty to the client to act for him with the requisite degree of skill and care, and the contractual relationship should be governed by a letter of engagement. The member also has duties to the tax authorities, notably of compliance with the law and the honest presentation of his client's circumstances.
- It is the taxpayer's responsibility to ensure that returns made to the tax authorities are correct and complete. It is for the member to assist him to decide on the extent and manner of disclosure of facts in relation to his tax affairs.
- Where a member becomes aware that irregularities have occurred in relation to a client's tax affairs, he should advise the client of the consequences, and the manner of disclosure. If necessary, appropriate specialist advice should be taken.
- Where a client refuses to follow the advice of a member in relation to issues involving disclosure, the member should consider whether he should continue to act. If appropriate, specialist advice should be taken.
- If mistakes are made by the tax authorities there may be a need, and in some cases a duty, on the part of the client and sometimes the member, to put matters right.
- Members may have statutory duties of disclosure where they have suspicions of criminal activity.
- When approached for information on a client's affairs by another adviser the member should ensure that he has his client's authority before making any disclosure.
- These guidelines apply equally to members in employment.

FIFTY QUESTIONS

Answers to the following 50 questions are all contained in this guidance note. The relevant paragraph numbers are provided in each case. However, members are advised to review Sections 1 and 2 of these guidelines and the opening comments to each Section in addition to the highlighted paragraphs when considering the answers to particular questions.

1 What is your most important duty as a tax adviser? (paragraphs 2.1 and 2.2)

2 What is your duty towards the UK tax authorities? (paragraphs 2.4 and 2.5)

3 What is your duty to overseas tax authorities? (paragraph 2.6)

4 How should the terms of your contractual relationship with clients be established? (paragraphs 2.7–2.9)

5 What should you do if a client refuses to make full disclosure to you? (paragraphs 2.10, and 2.11)

6 What should you do if you can foresee the imminent cessation of a client relationship? (paragraph 2.12)

7 Should you keep notes of meetings and telephone conversations regarding clients' tax affairs? (paragraph 2.13)

8 Should you record all oral advice given to clients? (paragraph 2.14)

9 What should you do if asked to advise on matters that go beyond your own level of competence? (paragraph 2.15)

10 What is the difference between tax avoidance and tax evasion? (paragraphs 2.17–2.19)

11 Why should you keep some working papers separate from others? (paragraph 2.21)

12 What general obligations are you under when you receive requests for client information from the Revenue authorities? (paragraphs 2.22–2.27)

13 What should you do if you receive official requests for information concerning an ex-client? (paragraph 2.28)

14 What should you do if faced with a situation in which the tax authorities are seeking to remove documents from your office? (paragraph 2.31)

15 What should you do if consulted about or if you receive an official request for the disclosure of material that you or your client believes qualifies for legal professional privilege? (paragraphs 2.34 and 2.49)

16 What should you do if consulted about or if you receive an official request to disclose material that you or your client believes to be privileged at common law? (paragraphs 2.38 and 2.49)

17 What should you do if you become aware of irregularities or errors in a client's tax affairs? (paragraphs 2.39, 2.43, 4.5, 4.9–4.11)

18 If a client refuses to make or permit a disclosure to the tax authorities, can you consider the materiality of the amount involved? (paragraph 2.42)

19 Why should clients be encouraged to make adequate disclosure to the Revenue? (paragraph 3.2)

20 What are the Revenue's powers of discovery? (paragraph 3.3)

21 What reasons are there for encouraging clients to make fuller disclosure than is strictly necessary? (paragraphs 3.6 and 3.9–3.17)

22 Should you provide the same level of disclosure when seeking a statutory clearance? (paragraph 3.19)

23 For what categories of offence can the Revenue seek penalties? (paragraph 4.2)

24 What should you do when the Revenue allege that an irregularity may have occurred? (paragraphs 4.12–4.14)

25 What should you do when the Revenue's Special Compliance Office (SCO) takes an interest in a client's tax affairs? (paragraphs 4.15–4.23)

26 What should you do if your client is unwilling or refuses to make a full and prompt disclosure? (paragraphs 4.24–4.43 and 4.47)

27 Should you volunteer information about a former client to their new adviser? (paragraph 4.44)

28 What should you do when you receive a request for information from a new adviser? (paragraphs 4.45–4.46)

29 To what extent should you consider indirect taxes when preparing accounts (paragraphs 4.48–4.50)

30 What should you do if you become aware that the Revenue have made an error in dealing with the affairs of a client? (paragraphs 5.5, 5.6 and 5.17)

31 Why should you consider taking legal advice if a client does not give permission for you to inform the Revenue that an excessive tax refund has been made? (paragraphs 5.8 and 5.11)

32 Why should you keep a written record of all advise given to clients in connection with Revenue errors? (paragraph 5.9)

33 What are the offences for which you might be at risk of prosecution in connection with excessive tax refunds? (paragraph 5.13)

34 Do you have a legal obligation to press the Revenue to issue an assessment before the limit for so doing expires? (paragraph 5.19)

35 What will a Revenue investigator consider if you (as a chartered accountant) are personally investigated? (paragraphs 6.3 and 6.5)

36 What should you do if the Revenue indicate that they intend to investigate you (a chartered accountant)? (paragraph 6.4)

37 What do the Revenue have to prove before they can impose a penalty on you (a chartered accountant)? (paragraph 6.7)

38 What should you do if asked by the Revenue to disclose information or to provide access to certain working papers? (paragraphs 6.12–6.13)

39 What should you do if you believe that the Revenue may investigate criminal proceedings against you? (paragraphs 6.14–6.21)

40 To whom are you responsible for the accuracy of VAT refunds prepared on behalf of a client? (paragraph 7.1)

41 Why should you seek indemnities from overseas clients for whom you act as a 'tax representative' for VAT purposes? (paragraph 7.2)

42 How much information do you need to supply to Customs in order to be able to rely on any unequivocal ruling received in writing? (paragraph 7.5)

43 In what circumstances can you rely on the 'Sheldon Statement' (VAT ESC 3.5 in Notice 48, March 2002)? (paragraphs 7.6–7.10 and 7.17)

44 What should you do if a written ruling from Customs appears to be incorrect? (paragraph 7.13)

45 What are the limits as to the extent to which Customs are bound by undertakings and statements of policy which they have given or issued? (paragraphs 7.15 and 7.16)

46 What can you do if you obtain a ruling from Customs with which you disagree? (paragraph 7.18)

47 How extensive are Customs powers to seek information? (paragraphs 7.19 and 7.22–7.24)

48 What should you do if unsure as to the implications of any question posed by Customs? (paragraph 7.21)

49 What should you do if you suspect a client may have defrauded the Crown of tax or have been negligent with regard to VAT matters? (paragraphs 8.1–8.8 and 8.37–8.39)

50 What should you do if a client admits an irregularity in connection with his VAT affairs? (paragraphs 8.9–8.36)

INTRODUCTION

1 PRELIMINARY

Purpose of Guidelines

1.1 These guidelines have been prepared for the assistance of members and include practical advice about a range of legal and ethical issues. In some instances the guidance put forward goes beyond strict rights and duties. In following the guidelines, it should be particularly borne in mind that each case

depends upon its own circumstances and that a member who is in doubt about his position or responsibilities should seek advice from his professional body and, where appropriate, his legal advisers.

1.2 The guidelines are of general application and are intended as guidance in a range of circumstances. Chapters 3 onwards are primarily directed towards direct taxes and VAT. However, the principles are equally applicable to other taxes.

1.3 The guidelines have been prepared in conjunction with the Chartered Institute of Taxation, the Association of Taxation Technicians, the Institute of Indirect Taxation, the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants.

1.4 The Revenue have reviewed Chapters 2 to 6 and Chapters 2, 7 and 8 have been reviewed by Customs. Whilst not necessarily agreeing with all the views expressed, both bodies acknowledged that the parts reviewed are an acceptable basis for dealings between members and the tax authorities.

1.5 The guidelines supersede all previous editions, the last of which was issued in 2000. They should be read in conjunction with the introduction and general principles set out in Section 7.1 'Professional conduct and disclosure in relation to defaults or unlawful acts'. (see *http://www.icaew.co.uk/membershandbook/*). (*Note: Members whether in practice or business should refer to the Code of Ethics effective from 1 September 2006 – see http://www.icaew.co.uk/index.cfm?route=135959*).

Interpretation

1.6 In these guidelines, 'client' includes, where the context requires, 'former client'. 'Member' (and 'members') includes 'firm' or 'practice' and the staff thereof. 'The Revenue', 'Inland Revenue', 'Customs' and 'tax authorities' mean HM Revenue & Customs. The masculine gender imports the feminine gender throughout this document.

Abbreviations

1.7 The following abbreviations have been used:

CEMA 1979	Customs and Excise Management Act 1979
CoP	Code of Practice
FA	Finance Act
GAAP	Generally Accepted Accounting Principles
HRA 1998	Human Rights Act 1998
LPP	Legal Professional Privilege
NCIS	National Criminal Intelligence Service (*now absorbed into Serious Organised Crime Agency* ('SOCA'))
PACE 1984	Police and Criminal Evidence Act 1984
POCA 2002	Proceeds of Crime Act 2002
SCO	Inland Revenue Special Compliance Office

SP	Statement of Practice
STC	Simons Tax Cases
TA 1988	Income and Corporation Taxes Act 1988
TMA 1970	Taxes Management Act 1970
VATA 1994	Value Added Tax Act 1994

2 PRINCIPLES APPLICABLE TO ALL TAXES

Generally

2.1 A member's most important duty is to ensure that his actions comply with the law. This requires that he complies with any direct obligation imposed upon him by statute or common law to do or refrain from particular actions (for example compliance with a TMA 1970 s.20(3) notice) and that he does not assist his client in the commission of any act which breaches the client's legal obligations (for example the provision of inaccurate accounts or misleading representations on transactions). Subject to that overriding duty, he owes a contractual duty to carry out the tasks that he has agreed to do with the requisite skill and care.

2.2 The discharge of this duty will often require the member to advise the client of the client's obligations under the relevant tax legislation and the consequences of non-compliance. Whether the client follows the member's advice is ultimately the client's decision. If, however, the client decides not to act in accordance with the member's advice as to his obligations, then the member must ensure that he does not take any steps which assist the client in that non-compliance because that would be in breach of the member's duty not to assist in what is likely to be an unlawful act and would in itself be an unlawful act; see for example TMA 1970 s.99.

2.3 Subject to the foregoing, the member owes his client a duty to act in his best interests in carrying out his client's instructions. In so doing a member has 'one client at a time' and he should not feel precluded from acting for a client in a particular manner which is lawful simply because such a practice, if it became widespread, might make the tax authorities' job more difficult or would not be a manner in which other clients would wish to act.

2.4 A member's duty towards the tax authorities is to comply with the appropriate legislation and the common law when dealing on behalf of a client with a matter which is governed by tax law. In all dealings relating to the tax authorities, a member must act honestly and do nothing that might mislead the authorities.

2.5 A member may disclose information to the tax authorities without his client's consent only when required to do so by law. It would only be where the member would render himself liable to civil penalty or criminal sanction that the member is under a legal duty to disclose to the authorities. Such obligations, which are mainly imposed by statute, override the contractual duty of confidentiality and loyalty which a member owes to his client. Otherwise a

member does not have an obligation, as a matter of law, to disclose to the tax authorities information which has been given to him in confidence even though it may be potentially relevant to some tax issue. See also paragraphs 2.43–2.47: 'Fiscal offences and money laundering'.

Overseas taxes

2.6 A person who is acting as a tax agent for a principal who is subject to the tax jurisdiction of another country could well be subject to different obligations in relation to confidentiality or disclosure depending on the tax law and general law of that country. Subject to that caveat, members should apply the principles set out in these guidelines in dealing with issues relating to overseas taxes. See also paragraphs 2.43–2.47.

Relationship with the client

2.7 In dealing with a client's taxation affairs, a member's role is often that of agent but he may be acting as principal in an advisory capacity. The contractual relationship should be governed by an appropriate letter of engagement in order that the scope of both the member's and the client's responsibilities are made clear: see Section 9.1: 'Managing the professional liability of accountants' (*http://www.icaew.co.uk/membershandbook/*). For reasons explained elsewhere in these guidelines (see in particular paragraph 4.32), members are strongly urged to include in the letter of engagement a statement to the following effect:

> 'We will observe the professional rules and practice guidelines of our professional Institute and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us authority to correct HM Revenue &Customs errors.'

Members should refer to the guidance issued in August 2001 as TAXGUIDE 2/01: 'Engagement letters for tax practitioners' (see *http://www.icaew.co.uk/index.cfm?AUB=TB2I_42967,MNXI_42967*). (*Note: currently being updated.)* Members should bear in mind that an engagement letter once agreed with a client is a contract and should be aware and make a note of any variations that have subsequently been made, whether orally or in writing.

2.8 Every contractual relationship should be covered; if the member acts for a partnership and also for one or more of the partners, then the partnership and each partner acted for are separate clients for the purposes of these guidelines. Likewise, if the member acts for a husband and wife, each is a separate client.

2.9 If the client is a body corporate, the client is the company and not the directors. Where a default of any kind is discovered, the matter should be raised at the appropriate level in the client organisation. Where the directors' actions have resulted in the company's defrauding the Crown, references in these guidelines to the 'client' should be regarded in the first instance as referring to the directors. For example, where the member has to advise a client to make a

full disclosure to the tax authorities, the advice should be addressed to the directors. If it is believed that this advice will not be brought to the attention of the board as a whole, it should be given to each director, and then, if appropriate, to shareholders.

2.10 A member should deal with taxation work only on the basis that the client is prepared to make full disclosure to him. Such disclosures are governed by confidentiality as an implied contractual term.

2.11 These guidelines explain the position of members if a client refuses to act in accordance with the member's advice, for example where the client has unreasonably delayed either the production of information needed for the preparation of returns or accounts or full disclosure of irregularities. The member should consider whether to continue to act for the client but should note the recommendations contained in Chapters 4 and 8 of these guidelines regarding termination of relationships with the client.

2.12 If a member believes that a relationship with a client has been or is likely to be terminated, whether by the client or by the member, the member needs to take extra care to make clear to the client in writing what matters within the terms of the engagement have been dealt with and what remains to be done, and by what date it should be done, and also what further action the member will, or will not, take.

2.13 A member is advised to keep detailed notes (preferably typed) of meetings and telephone conversations with his clients, the tax authorities and any other third parties regarding his clients' affairs. By this means the member may protect himself in the event of a subsequent dispute over what was said at the time and, in the case of what the member perceives to be important meetings and conversations, he should consider ensuring that such notes are signed and dated by the originator.

2.14 It would be prudent for a member either to write to the client confirming oral advice as a matter of course or at least to make a note on file of advice given and he should consider sending a copy of that note to the client for his information and comment. This will allow the client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given. Exceptionally, where it is felt that the note is of particular importance, it may be sensible to have the creation of the file note witnessed.

2.15 Members will from time to time find themselves having to advise on matters which require specialist knowledge. In such circumstances, they should be careful not to go beyond their own level of competence and, if necessary, should seek help from a specialist in the field.

2.16 Members may also find it helpful to refer to Section 7.1 'Professional conduct in relation to defaults or unlawful acts' (see *http://www.icaew.co.uk/membershandbook/*).

Tax avoidance

2.17 Tax avoidance is legal and is to be distinguished from evasion which is illegal. All taxpayers have the right to arrange their affairs under the law to minimise their liability to tax. The member should consider carefully the merits of arrangements which may be considered artificial by the tax authority concerned. Such schemes should be considered in the light of the client's wider interests because of the risk that they may be challenged by the tax authorities. A scheme which depends fundamentally on concealment from the tax authorities may very well amount to tax evasion, or at least may be viewed in that light by the tax authorities.

2.18 The tax authorities say that they object to arrangements set up for no purpose other than to avoid tax. They see such artificial arrangements as fundamentally different from choosing one commercial approach which generates a lower tax bill than another, or the mere organisation of a taxpayer's affairs in such a way as to minimise the tax bill. This is a difficult and controversial area, where the approach of the Courts has changed over time. Members may find it helpful to bear in mind the dicta of Lord Hoffman in *MacNiven v Westmoreland Investment* [2001] STC 237 at page 257:

> 'If the question is whether a given transaction is such as to attract a statutory benefit, such as a grant or assistance like legal aid, or a statutory burden, such as income tax, I do not think it promotes clarity of thought to use terms like stratagem or device. The question is simply whether upon its true construction, the statute applies to the transaction. Tax avoidance schemes are perhaps the best example. They either work (*Inland Revenue Commissioners v. Duke of Westminster* [1936] A.C. 1) or they do not (*Furniss v. Dawson* [1984] A.C. 474). If they do not work, the reason, as my noble and learned friend, Lord Steyn, pointed out in *Inland Revenue Commissioners v. McGuckian* [1997] 1 W.L.R. 991, 1000, is simply that upon the true construction of the statute, the transaction which was designed to avoid the charge to tax actually comes within it. It is not that the statute has a penumbral spirit which strikes down devices or stratagems designed to avoid its terms or exploit its loopholes.'

2.19 For a helpful exploration of Inland Revenue attitudes, members may like to refer to an article in Tax Bulletin Issue 49 issued in October 2000. The article is concerned with FA 2000 section 144 which introduced a new criminal offence aimed at tax fraud and includes the following passage:

> 'The borderline between avoidance and evasion
>
> 'In the same [parliamentary] debate at least one member raised the subject of the impact of the new offence on tax advisers, especially those involved in advising on arrangements which could be characterised as tax avoidance. We do not consider that the new offence has led to any change in the law in this area.
>
> 'Where a scheme labelled as "avoidance" by its participants and their

advisers admittedly fails, the key issue as a matter of criminal law would be whether they have been dishonest in the unsuccessful effort to reduce the relevant tax liability. It would be for the courts to decide as a question of fact whether that is the case.

'Concern has been expressed in some quarters that as a result the decision will not normally be taken by those with professional experience of tax matters and, given the highly technical nature of much tax law, that state of affairs may lead to injustice. That is an issue well beyond the scope of this article, but it may be helpful to remember that possible dishonesty becomes a consideration in this context only in certain circumstances. That is where there is some suggestion that the participants in an avoidance scheme are not merely relying on the intrinsic technical soundness of the arrangements actually put in place to reduce the liability but also on concealment of the facts from the inspector. If so, then, if the scheme fails, it is perfectly possible that the criminal courts may find there has been an offence. But conversely, where there is no trace of any concealment of the true facts of arrangements for which there is a respectable technical case, it is hard to imagine how a criminal offence can have been committed.'

Disclosure

2.20 In all tax matters, the member must act in good faith in dealings with the tax authorities: in particular the member must take reasonable care when making statements or asserting facts on behalf of a client. However, the member's duty to try to ensure that the information provided is accurate and that relevant facts are not withheld is not always simple to achieve, especially if the client does not cooperate. See Chapters 3 (direct tax) and 7 (indirect tax).

Files and working papers

2.21 Members should keep copies of returns etc. and organise their working papers to separate matters such as the preparation of accounts and tax returns from those on which audit and other opinions may be expressed, because the latter are normally protected from disclosure.

Responses to official requests

2.22 The starting point is that a member owes his client a contractual duty of confidentiality. Although the client's consent to the disclosure of relevant information is normally implied, if there is a real doubt about the information which the member proposes to disclose, it is wise to obtain the client's consent expressly. When doing so, the member will normally be able to advise the client whether it is in the client's best interests to disclose such information. This Section deals with the circumstances in which the member or the client can be compelled to provide further information.

2.23 A distinction must be made between a request for information informally ('informal requests') and those requests for information which are made in exercise of a power to require the provision of the information requested

('statutory requests'). In general, only the latter form of request is capable of overriding the member's contractual duty of confidentiality to his client. Informal requests may be merely forerunners of statutory requests compelling the disclosure of such information. Consequently, it will normally be sensible for the client to comply with such requests or persuade the tax authority that a more limited request would be appropriate. The member should advise the client as to the reasonableness of the informal request and likely consequences of non-compliance and let the client make his decision. As regards, statutory requests addressed to the client the member should advise the client about rights of appeal.

2.24 In relation to statutory requests, a distinction should be drawn between requests addressed to the client and those addressed to the member. Again, only the latter type of request is capable of overriding the member's contractual duty of confidentiality because the former type of request imposes duties on the client and not on the member. In relation to the former category of request, the member should provide the client with advice concerning the validity of the request, appropriate methods of complying with the request and the serious consequences of non-compliance. Normally, the client in receipt of such advice will consent to the member providing such information on his behalf.

2.25 A statutory request addressed to the member, if valid, imposes a set of legal obligations directly upon the member. Failure to comply with such obligations can expose the member to serious civil and criminal penalties. Save in relation to limited categories of information (for example information covered by legal professional privilege), a member can and should decide how he complies with a valid information request without requiring the consent of his client. Normally, he will be able to discuss such matters with the client, although certain powers may preclude communication between the member and the client; for example, TMA 1970 s.20BA & Sch.1AA and POCA 2002 s. 333.

2.26 Whether the statutory request is addressed to the client or the member, it will normally be helpful to answer the following questions:

(a) Was the notice validly issued; for example did the officer making the request have the necessary authority to issue the notice and did he act in accordance with the various procedural safeguards?
(b) Do one or more of the pieces of information requested qualify as information which are either expressly or impliedly excluded from the ambit of the power authorising the request? For example, a client who receives a notice under TMA 1970 s.20(1) is not obliged to disclose otherwise relevant information if it is covered by LPP and a barrister, solicitor or advocate who receives a notice under TMA 1970 s.20B(3) is not obliged and, therefore, not authorised, to disclose LPP material without his client's consent.

Given the complexity of the some of the rules relating to the scope of particular information powers, it may be appropriate to take specialist legal advice.

2.27 Where a category of documents falls outside the scope of the statutory request, the member remains under a duty to preserve the confidentiality of his client.

2.28 Where the member has ceased to act for a client, he remains subject to the duty of confidentiality. In relation to general and statutory requests which are addressed to the former client, the member should refer the enquirer either to the former client or his new agent. In relation to statutory requests addressed to the member, the termination of his professional relationship with the client does not affect his duty to comply with that request.

2.29 Advice given by a member to his client is not normally disclosable by the member to the tax authorities because it is normally not relevant to the tax treatment of the underlying transaction. But this may not always be the case: for example, where the tax treatment depends upon whether the client had a tax avoidance purpose, the advice the client was receiving at the time about the alternatives open to him might be relevant. Subject to particular common law and statutory exceptions, the member might be compelled to disclose such advice although this is a difficult and contentious area.

2.30 As regards Revenue taxes only, an inspector may, under certain conditions, obtain access to documents in a member's possession or power relevant to tax liabilities: TMA 1970 s.20(3). However, this excludes documents which are the property of a member and were either created in relation to certain audit functions or relate to tax advice: TMA 1970 s.20B(9) and (10). The powers included in TMA 1970 s.20BA and Sch.1AA need also to be borne in mind. As regards the powers of Customs, see paragraph 7.19. As to ownership of documents, when in doubt the member should consider taking legal advice.

2.31 A member should be aware of the powers of the tax authorities in relation to the removal of documents; he may also find it helpful to have identified a lawyer or other practitioner with relevant specialist knowledge of both civil and criminal law from whom he can obtain advice. If a member is faced with a situation in which the tax authorities are seeking to enforce disclosure by the removal of documents, he should consider seeking immediate advice from such a source before permitting such removal. Since there may be little time to take advice, the member should consider putting in place a protocol giving guidance to his colleagues and staff as to what preliminary steps should be taken in the event that the member's premises are subject to a raid.

Legal professional privilege

2.32 LPP is related to but not quite the same as the general duty of confidentiality owed to a client. LPP, a part of the common law, was originally developed in the context of court proceedings, whether civil or criminal. In court or tribunal proceedings, the rule operates to exclude privileged material from having to be disclosed to the other party or, if known to the other party, being brought into evidence by him. Until recently, it was thought that the rule might not apply outside court or tribunal proceedings. However, the English

Courts have recognised that the public policy behind LPP can be achieved only if the confidentiality of such material is protected from information-gathering powers which are exercisable even when no court or tribunal proceedings are pending. Consequently, the protection given to LPP material potentially applies to limit the scope of the tax authorities' investigation powers.

2.33 Until the House of Lords' decision in *R (on the application of Morgan Grenfell & Co Ltd) v. Special Commissioner of Income Tax* [2002] STC 786, the Revenue contended that TMA 1970 s. 20(1) impliedly overrode the right to confidentiality conferred on LPP material. The House of Lords held that the right to communicate in confidence with a legal adviser was a fundamental constitutional right. It could be overridden by Parliament but only if the statute did so expressly or by necessary implication. General words of wide meaning are not enough to found such an inference. None of the statutory language relied upon by the Revenue was considered by the House of Lords to be sufficiently compelling to justify the conclusion that Parliament had decided to override such an important right. Since the terms of the other information powers offer less support for an implied override argument, it is considered that this decision is of general application and all Revenue and Customs' investigatory powers take effect subject to the client's right to confidentiality in respect of the LPP material.

2.34 It is, therefore, of critical importance to ascertain whether the documents requested qualify as LPP material because the protection given to such material is more extensive than that conferred by the statutory exceptions. Due to the complexity of the common law rules on what qualifies as LPP material, specialist legal advice is likely to be required, particularly if the member or the client is minded not to disclose a document on the ground that it is privileged.

2.35 At common law, the concept of LPP is complex. The protection it provides has significant limitations. It is not the case that every communication, of whatever nature, by or to a lawyer (barrister, Scottish advocate or solicitor) is privileged. At common law, the two significant situations in which privilege arises are as follows:

(a) *Litigation privilege*
Documents created for the dominant purpose of litigation are privileged. The privilege covers not only documents prepared by the lawyer, but also documents brought into existence by third persons for the predominant purpose of litigation. The existence of a second significant purpose will prevent the document from being privileged. Therefore, once litigation has started or is contemplated, documents prepared by non-lawyer advisers (including tax advisers) may be privileged. It is considered that litigation for this purpose includes a tax appeal, although there appears to be no case in which this point has been expressly confirmed.

Scots law similarly provides for the privilege of communications post litem motem. Though there is doubt as to when the privilege begins to attach to

a communication prepared in advance of litigation, which would include a tax appeal, there is a strong argument that the protection arises as soon as anything occurs to indicate that the Revenue are querying the tax liability of the taxpayer. For example, where the Revenue challenge the completeness of a return or the correctness, in fact or law, of the basis upon which a self-assessment has proceeded.

(b) *Advice privilege*
Documents passing between a client and his legal advisers are privileged if they are written for the purpose of obtaining or giving legal advice. Who is a legal adviser for this purpose is not entirely clear. The description is not restricted to lawyers in private practice and can include employed lawyers. On the present state of the authorities (many of which date from an era where the range of services offered by non-lawyers was much more limited), this type of privilege does not normally extend to documents recording communications to or from non-lawyers, even though such advisers may regularly advise on a particular area of the law and have professional qualifications to do so. So tax advice (not obtained for purposes of litigation) from a non-lawyer adviser is not privileged at common law. Nor are commissioned reports or investigations of companies. If a member is in any doubt in this very complex area he should seek legal advice.

2.36 LPP should not be confused with the protections from disclosure to the Revenue given to tax advisers by some subsections of TMA 1970 s.20B. These latter protections arise from express statutory provisions and are protections of the adviser restricting the powers of the Revenue to require information or documents from him. LPP, on the other hand, exists under the common law and is the privilege, not of the lawyer, but of the lawyer's client. The general common law rule is that the client, unless he waives the privilege, cannot be required to produce documents or answer questions where the subject matter is protected by privilege; nor can the lawyer produce the documents or answer the questions without the client's consent. There are exceptions, one of which is where a document came into existence as a step in criminal or illegal activity in which case the document is not privileged. (*Note: Whilst common law LPP applies only to clients of lawyers, with effect from 21 February 2006 a form of statutory privilege in relation to the reporting of money laundering applies also to clients of other 'relevant professional advisers'*.)

2.37 Members should bear in mind that, even if material is not protected by LPP or a statutory exemption, there may be recourse to the HRA 1998, although the position is uncertain and controversial.

2.38 If a member is consulted about, or receives himself, a request from the tax authorities, in the form of a statutory notice, which calls for the disclosure of material which he believes to be privileged at common law and which the client does not agree to disclose, it is suggested that the member should consider seeking specific legal advice. There is little guidance on these questions in reported cases. It is, however, not uncommon for members, or their clients, when asked for some particular document or item of information by the tax

authorities, to reply to the effect that, because the document or information is privileged, it is not being disclosed. If a member is consulted about, or receives himself, a request from the tax authorities (whether in the form of statutory notice or not) which calls for disclosure of material which he believes to be privileged at common law and which the client does not agree to disclose, it is suggested that in the first instance the member should reply along the lines mentioned, briefly setting out the grounds on which privilege is claimed. The tax authorities may not pursue the matter: frequently they do not. If they press the request for the documents or information, it may be appropriate for either the member or client to commence proceedings to determine the status of the material in advance of any penalty proceedings for non-compliance.

Irregularities and errors

2.39 In the course of a member's relationship with the client, whether as agent or principal, he may become aware of irregularities or errors in the client's tax affairs. The client should be informed at once, normally in writing. Tact may be required and immediate corrective action may be difficult but the member should be seen to have acted correctly at the outset (see also Chapters 4 and 8). See also paragraphs 2.43–2.47.

Materiality

2.40 Counsel has advised that the concept of a 'true and fair view' incorporates the concept of materiality. Accordingly the effect of FA 1998 s. 42 (1) (which requires profits to be computed in accordance with GAAP) is to permit a trading entity to disregard non-material adjustments in computing its profits for tax purposes; s.42 is extended to the profits of a Schedule A business by TA 1988 s.21A. However, members should bear in mind that in other contexts tax law does not explicitly recognise the concept of materiality.

2.41 Whether an amount is to be regarded as material depends upon the facts and circumstances in each case. An amount which is not regarded as material for audit purposes may still be material for tax purposes. The tax authorities are not prepared to indicate whether there is an absolute minimum which they are prepared to disregard as not material. In the context of direct tax a figure of £100 or less might reasonably be seen as not material in the majority of circumstances.

2.42 In considering whether or not he must cease to act because a client refuses to make or permit a disclosure to the tax authorities, a member may reasonably have regard to the materiality of the amount involved. See also paragraph 5.2 regarding Revenue errors and Chapters 4 and 8 as regards a situation in which a member must cease to act.

Fiscal offences and money laundering

2.43 Where members become aware of tax irregularities, they should also bear in mind that under the money laundering legislation, fiscal offences can amount to money laundering.

2.44 Tax-related offences involve evasion and not avoidance and are not in a

special category. Tax evasion is a crime, the proceeds of which have to be treated in exactly the same way as those from drug trafficking, terrorist activity, theft, fraud, etc. Offences may relate to direct tax such as income tax or corporation tax, or they may relate to indirect tax such as VAT. Whilst not all tax-related offences are indictable, most are, including frauds against the Revenue or Customs. (*Note: there can be no money laundering until there are proceeds of crime, in other words, in respect of tax evasion, until the tax has become due and has not been paid.*)

2.45 A member who has knowledge of or reasonable grounds for suspecting money laundering should consider whether he has an obligation to make a report to the appropriate authorities (the Money Laundering Reporting Officer in his organisation or the Serious Organised Crime Agency). (*Note: formerly reports were made to the National Criminal Intelligence Service; NCIS has been absorbed into SOCA.*)

2.46 Where a report has been made to SOCA, the client should not be informed where this would be considered tipping off under the terms of the Money Laundering legislation. (*Note: advice on tax matters to a client to persuade him to stop breaking the law by evading tax is not tipping off.*) Members should also note that a report made to NCIS is not a substitute for a proper disclosure to the tax authorities.

2.47 This is an important subject and can involve the member in criminal penalties. There have been recent changes in EU and UK law. Members should familiarise themselves with the required rules and procedures in Part 7 of POCA 2002 and the Money Laundering Regulations 2003 (SI 2003/3075) (*Note: both as amended, for example, with effect from 21st February 2006, s. 330(6) POCA 2002 was amended by The Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 (SI 2006/308) to extend exemption from reporting knowledge or suspicion of money laundering formed in privileged circumstances to a new but limited category of 'other relevant professional advisers' – see TECH 2/06 at* http://www.icaew.co.uk/index.cfm?route=125055) and should read carefully the current professional guidance on the avoidance, recognition and reporting of money laundering (see Section 7.2 'Anti-money laundering (Proceeds of Crime and Terrorism): second interim guidance for accountants' at www.icaew.co.uk/membershandbook (currently being updated) and CCAB and ICAEW Advisory Service and Tax Faculty guidance at www.icaew.co.uk/moneylaundering). Members who are in any doubt about their responsibilities in this area should seek appropriate advice (for example from the Institute's money laundering helpline).

Members in employment

2.48 Whilst these guidelines are addressed primarily to members in practice, they apply equally to members employed in professional practice and in business. Additional assistance for such members will be found in Section 7.1 'Professional conduct and disclosure in relation to defaults and unlawful acts'; see www.icaew.co.uk/membershandbook/.

Human Rights
2.49 The tax authorities are constrained by HRA 1998. UK legislation should be construed if possible in a manner which is consistent with the European Convention on Human Rights. Similarly, public authorities are, subject to limited exceptions, obliged to act consistently with Convention rights, in particular in the exercise of their discretionary powers. Under Article 8 of the European Convention, everyone, including legal persons, has the right to respect for his private life and is entitled to privacy in relation to both his personal and business correspondence. A breach of that confidentiality is permitted only if and to the extent that it is authorised by law or it is in pursuit of a legitimate aim which must constitute a pressing social need, and the breach is no more than is proportionate to the social need which is sought to be advanced. See *Foxley v United Kingdom* (2000) 31 EHRR 637, 647, paragraph 44 in relation to a breach of the right to confidentiality sought to be advanced. Against this background, all requests for access to information held by a professional adviser should be considered carefully. In cases where doubts arise, members should seek guidance from a suitably-qualified adviser.

FORMER INLAND REVENUE TAXES

Chapters 3 to 6 should be read in conjunction with Chapters 1 and 2.

3 DISCLOSURE

Generally
3.1 The taxpayer has primary responsibility to submit correct and complete returns to the best of his knowledge and belief.

3.2 In general, it is likely to be in a taxpayer's own interest to ensure that factors relevant to his tax liability are adequately disclosed to the Revenue. The reasons for this are twofold:

(a) his relationship with the Revenue is more likely to be on a satisfactory footing if he can demonstrate good faith in his dealings with them; and
(b) he is likely thereby to be protected from the raising of a discovery assessment under TMA 1970 s.29.

Disclosure and discovery
3.3 Under TMA 1970 s.29(1), an officer of the Board is given powers to make an assessment to make good a loss of tax if he discovers that income has not been assessed, or has been under-assessed, or that excessive relief has been given. However, no such assessment may be made unless:

(a) the loss of tax is attributable to fraudulent or negligent conduct on the part of the taxpayer or his agent; or
(b) at the expiry of the period during which the officer is entitled to enquire into the taxpayer's return (normally 12 months from the filing date) the

officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation giving rise to the loss of tax.

3.4 Information under TMA 1970 s.29(6) is to be regarded as made available to the officer if:

(a) it is contained in the return for the relevant year, or in any accounts, statements or documents accompanying the return or produced in the course of an enquiry into the return; or
(b) it is contained in any claim for the relevant year, or in any accounts, statements or documents accompanying the claim or produced in the course of an enquiry into the claim; or
(c) it is information the existence of which, and the relevance of which, could reasonably be expected to be inferred by the officer from the foregoing, or which is notified in writing to the officer.

3.5 Under TMA 1970 s.29(7), in determining the extent of the information that is to be regarded as available to the officer in considering a return or claim for a particular year, there is to be included information made available to the officer in respect of returns for the two preceding years.

3.6 For the most part, the Revenue do not anticipate that it is necessary for a taxpayer to provide supporting documentation in order to satisfy the taxpayer's overriding need to make a correct return. The view expressed in the notes accompanying the return is that, where it is necessary for that purpose, explanatory information should be entered in the 'white space' provided with the return. However, the Revenue do recognise that the taxpayer may wish to supply further details of a particular computation or transaction in order to minimise the risk of a discovery assessment being raised at a later time (see in particular the Revenue Press Release dated 31 May 1996 reproduced in Tax Bulletin 23 in June 1996: see http://www.hmrc.gov.uk/bulletins/discoveryand). The member's duty is therefore not only to assist his client to make a return that is correct and complete but also to ensure that the client is aware of the factors involved in making a fuller disclosure than is strictly necessary, in order to minimise the risk of a subsequent discovery assessment. Among those factors are:

(a) the terms of the applicable law;
(b) the view taken by the member;
(c) the extent of any doubt that exists;
(d) the manner in which disclosure is to be made; and
(e) the materiality of the item in question.

3.7 In dealing with the tax authorities or other third parties in relation to a client's tax affairs, a member should bear in mind that he is acting as the agent of his client. He has a duty to present his client's case to the best of his ability and in the best possible light. Although a member is not required to verify information provided by a client, he should take reasonable care to ensure that the facts presented are correct and that no attempt has been made to mislead.

3.8 A member owes a duty of confidentiality to the client. Thus, in general,

a member should not disclose any information received in a professional capacity without the consent of the client whether in the engagement letter or elsewhere (see paragraph 2.7).

3.9 In their Press Release dated 31 May 1996, the Revenue indicated their views as to the manner in which taxpayers should make their own disclosures. While this guidance may be adequate for taxpayers with straightforward affairs it is not considered that it can be regarded as satisfactory for more complex cases, which probably encompass the majority of taxpayers who are represented by agents.

Accompanying documents

3.10 In the preparation of a tax return, there is no duty to provide more information to the tax authorities than the return requires simply because some pieces of information known to the member might support a different tax treatment from that which the member, after due consideration of all the information available to him, honestly considers to be the tax treatment. On the other hand it may be in the client's best interest to furnish more information than he is strictly required to do because this is likely to lead to a more reasonable approach by the tax authorities, thereby saving money and time in the long run and giving greater certainty.

3.11 The member should discuss with the client the extent to which documents are to be submitted to accompany the return. For companies, accounts are required in almost all cases. For traders there is no such requirement but it is likely to be good practice to send them in all but the simplest cases, because they supplement the self-assessment information contained in the tax return. In such cases it is also likely to be desirable to:

(a) supply computations linking the accounts to the figures in the tax return;
(b) supply analyses of major items contained in the accounts, with explanations of disallowances; and
(c) refer to these on the face of the return.

3.12 In non-trading cases it is likely to be desirable to supply further information where the identity of figures is not readily apparent, for example:

(a) computations of chargeable gains including valuations where appropriate; and
(b) lists of investment income.

3.13 Where the taxpayer has undertaken a significant transaction in the year, it may be desirable to provide documentation, for example a sale agreement. However, in so doing the member should consider whether the relevance of the document could 'reasonably be expected to be inferred' without further amplification, particularly in the context of a lengthy document. It would be sensible, therefore, to indicate why the taxpayer considers it relevant to the return.

3.14 In considering the extent to which the relevance of accompanying

documents needs to be explained, the member is entitled to assume that the Revenue are broadly familiar with, but not expert in:

(a) normal accountancy terminology;
(b) generally-accepted accounting principles and financial reporting standards;
(c) generally-accepted auditing principles and auditing standards;
(d) the requirements of the Companies Acts; and
(e) the background to, and the relevance of, the usual wording of auditors' reports and accountants' reports.

3.15 The Revenue have indicated that they will regard documents as accompanying the return if they are sent in support of the return and within one month of its submission.

Additional disclosure

3.16 Cases will arise where there is doubt as to the correct treatment of an item of income or expenditure, or the computation of a gain or allowance. In such cases the member ought to consider carefully what disclosure, if any, might be necessary. For example, additional disclosure should be considered:

(a) where the Revenue have published their interpretation or have indicated their practice on a point, but the taxpayer proposes to adopt a different view, whether or not supported by legal opinion; and
(b) where there is inherent doubt as to the correct treatment of an item, for example expenditure on repairs which might be regarded as capital in whole or part.

3.17 A member who is uncertain whether his client should disclose a particular item or its treatment should consider taking further advice before reaching a decision and should ensure that the client understands the issues and implications and the proposed course of action. Such decision may have to be justified at a later date, so the member's files should contain sufficient evidence to support the position taken, including contemporaneous notes of discussions with the client or with other advisers, copies of any second opinion obtained and the client's final decision.

Requests to the Revenue for guidance including clearance applications

3.18 The Revenue have made it clear that they require a high standard of disclosure if a taxpayer is to be able to rely on a Revenue clearance or on guidance provided in response to a request from a taxpayer or his agent. In their own words, the taxpayer 'must put all his cards face upwards on the table' in such circumstances and indicate the use which it is intended to make of the guidance. It is implicit that in so doing the taxpayer would need to indicate those areas where he is doubtful about the correct interpretation of the law or the application of Revenue practice.

3.19 It is, however, considered that a distinction should be drawn between situations where the client is seeking the ruling of the Revenue pursuant to a statutory clearance procedure and those situations where the client is asking

the Revenue for a ruling on the tax treatment of a particular transaction. In the former case, the relevant information for an effective clearance will normally be prescribed by the statute creating the clearance procedure. In the latter case, the client is seeking to attach to a ruling by an officer which he is not obliged to give a finality normally accorded to the decisions of the tax tribunals and the Courts in relation to a category of transactions about which the officer may not have the same specialist knowledge as the specialists dealing with statutory clearances. Although it will normally be prudent for a member to err on the side of fuller disclosure in relation to both types of clearances, in the case of statutory clearances it may not be necessary to go into the same detail concerning the law.

4 ACQUIRING KNOWLEDGE OF DIRECT TAX IRREGULARITIES

For the purposes of this Chapter, the term 'irregularity' is intended to cover innocent errors, negligent conduct (by either the client or an adviser) and also matters which could be treated as civil or criminal fraud for direct tax purposes.

Generally

4.1 A member must do nothing to assist a client to plan or commit any offence or to conceal any offence which has been committed. A member must exercise great care to avoid the commission of an offence by knowingly or recklessly making false statements or false representations when assisting a client whom the member suspects may have defrauded the Crown of tax or of having been negligent in regard to tax matters.

4.2 The offences for which the Revenue seek penalties fall into two categories:

- failures (in which can be included payment failures leading to surcharges), where the penalty applies unless the taxpayer can demonstrate reasonable excuse and remedial action without unreasonable delay, as for example, in TMA 1970 s.118(2); and
- errors, where the penalty will apply only if the error was made fraudulently or negligently. The phrase 'innocent error' needs some care: an error that is innocent even of neglect is not culpable, but there is no implication of deliberate intention in neglect.

The Revenue take the prima facie view that any error may be due at least to negligence, but will seek to establish the facts of the case.

4.3 Counsel has advised that if a taxpayer in good faith receives advice from a person who he reasonably believes has appropriate and relevant experience and knowledge, and to whom he has given full and accurate particulars of the matter, to the effect that, say, a particular receipt is not taxable, then he is not negligent if he submits his return relying on that advice. Counsel has advised that this remains correct even if the adviser on whom the taxpayer reasonably relied was himself acting negligently or even fraudulently.

4.4 A taxpayer might make a return unaware that it contained a wholly-innocent error. If that error subsequently comes to his notice he must then act without unreasonable delay to remedy it. If he does not, TMA 1970 s.97 will treat the incorrect return as having been made negligently for TMA 1970 s.95 penalty purposes.

4.5 A member who, as a result of any work undertaken on behalf of a client, has reason to believe that a tax irregularity or error has occurred should discuss with the client the matter which gave rise to that belief and consider whether in the circumstances it is appropriate for him to act. Where the member has not acted in relation to that question, he should take into account the fact that he may not be party to all the facts and circumstances and may not therefore be able to reach a conclusion on this issue. It is not the duty of the member to pursue to a conclusion a matter in respect of which he has not been engaged, unless it affects work in respect of which he has been engaged. Members should be aware that Statement of Auditing Standards 110 'Fraud and Error' gives guidance to auditors which may have relevance in a fiscal context. Members are particularly referred to paragraphs 50–64 of that publication. (*Note: superseded for audits of financial statements for periods commencing on or after 15 December 2004 by International Standard on Auditing (UK and Ireland) 240 ('ISA 240'): 'The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements' – see* http://www.frc.org.uk/images/uploaded/documents/ACFAA4.pdf.)

4.6 If there is doubt as to whether or not an irregularity has occurred, the member should consider protecting his position by obtaining advice from a specialist in this field. Furthermore, if the member has any doubt about his competence to provide advice to his client in these circumstances he should seek specialist help.

Money laundering

4.7 Where appropriate, members should bear in mind the legislation on money laundering and the duties which this places upon them (see paragraphs 2.43–2.47).

Human rights

4.8 Wherever appropriate, in particular if there is a risk of prosecution or tax-geared penalties, the provisions of the HRA 1998, in particular the protection given by Articles 6 and 8 of the European Convention on Human Rights, should be considered, and in obtaining advice on behalf of their clients members should ensure that the Act is taken into account.

Materiality

4.9 In considering the action which he should take in the circumstances outlined in this Chapter, the member may take account of materiality (save in relation to money laundering issues) but reference should be made to paragraphs 2.40–2.42.

Advice to be given where an irregularity is admitted

4.10 A member whose client has admitted an irregularity should advise the client in writing to disclose it to the Revenue. One of the factors the member must take into account is whether his client will have the benefit of LPP in relation to confidential discussions between the client and the adviser concerning the client's knowledge of the irregularity. As indicated in paragraphs 2.32–2.38 above, the present position at common law is that communications for the purpose of the obtaining legal advice from non-lawyers do not qualify for LPP unless the dominant purpose behind such communications is to assist in litigation which is either pending or contemplated. In many circumstances, the dominant purpose in seeking such advice will be to ascertain the extent of the tax liability, rather than to assist in contemplated litigation. If legal advice is not appropriate, the member should advise the client to disclose the irregularity to the Revenue and make an internal note of having given such advice. The member should explain the consequences of not making a disclosure, in particular that:

(a) should the Revenue discover the irregularity later there might be no defence against the imposition of penalties;
(b) having knowledge of the irregularity but suppressing it may be construed as a criminal offence or a civil fraud;
(c) disclosure and cooperation will generally lead to discounted penalties being imposed; and
(d) it would be improper to allow the Revenue to agree a settlement without putting them in possession of all the facts.

When the Revenue are not aware of an irregularity

4.11 Where there is an irregularity which the Revenue have not discovered, voluntary disclosure and full cooperation will usually reduce the level of a penalty, although interest will remain due. The Revenue do not regard interest as penal, but merely commercial restitution for use of the money that was in fact due to the Exchequer. Prompt disclosure of an error may avoid suspicion by the Revenue that it was deliberate, thus reducing the risk of a civil fraud penalty.

When the Revenue allege that irregularities may have occurred

4.12 When the Revenue allege that an irregularity may have occurred, but it has not been identified by the member or his client, the member should establish from the Revenue such details as he can of the alleged irregularity and the circumstances in which it occurred. This should take place at a meeting between the member and the Revenue officer or in the course of correspondence, depending on the circumstances.

4.13 The member should then discuss the position with his client and establish with him the full facts relating to the alleged irregularity. The member should evaluate the Revenue allegations in the light of the facts as they have been explained by the client. Where appropriate he should advise his client to make a full disclosure to the Revenue and to offer them all facilities for investigation. In the course of his evaluation the member should consider

whether to recommend to his client to take specialist advice prior to making a disclosure. In particular, where there is a real possibility that the tax authorities may still bring criminal proceedings against the client even if he provided full disclosure, the client needs to have legal advice concerning his right to silence and the privilege against self-incrimination before deciding which course to take: see paragraph 4.18 below.

4.14 It may be appropriate for the member, having agreed this with his client, to offer that a full report of the facts behind and surrounding the alleged irregularity be prepared by the member on behalf of the client with a view to making a full disclosure to the Revenue. In so doing the member should bear in mind the advice in paragraphs 2.32–2.38 about LPP, which would probably apply to the drafts of the report, although not to the report itself once delivered.

When the Revenue are aware of an irregularity

4.15 In cases where Special Compliance Office ('SCO') is involved, the adviser should establish whether Code of Practice ('CoP') 8 or 9 will be used. CoP 9 deals with cases of suspected serious fraud, while CoP 8 deals with all other cases. (*Note: SCO has been renamed Special Civil Investigations Office and CoP 9 (2005) has replaced CoP 9 for inquiries commencing on or after 1 September 2005; see* http://www.hmrc.gov.uk/practitioners/civil-investigations.htm. *The following explanation of HMRC's procedures refers to the pre-1 September 2005 position*.)

4.16 When the Revenue is aware that an irregularity has occurred, an interview under caution may be conducted. If the member is made aware of such an interview, he should notify his client of the seriousness of the proposed Revenue action and advise him to take advice from an appropriate specialist. It must be apparent to all that an interview under caution is an indication of the possibility of a criminal prosecution.

4.17 Interviews conducted by members of the SCO are frequently carried out within the terms of the revised Hansard practice as set out in CoP 9. Following *Regina v Gill & Gill* [2003] STC 1229, CoP 9 enquiry interviews are being conducted under PACE 1984 Code C. The Hansard statement makes it clear that provided the taxpayer makes a full disclosure he can be assured that the Revenue will not pursue a criminal prosecution. Nevertheless, TMA 1970 s. 105 provides that statements made or documents produced by a taxpayer in response to a Hansard warning remain admissible in criminal or penalty proceedings. There is no express saving for situations where the taxpayer has cooperated fully or where the statements or documents are relied upon as being accurate, and so as evidence of wrongdoing by the taxpayer. It is doubtful whether reliance by the Revenue on s. 105 in those circumstances would be consistent with the taxpayer's privilege against self-incrimination under Article 6 of the European Convention on Human Rights. Subject to the above points and to paragraph 4.18 below, a member should advise his client to make a full disclosure to the Revenue and ensure that at each meeting with the Revenue, the client is represented by a professional adviser experienced in that type of investigation.

4.18 Until it has become clear that criminal proceedings are not being considered, the member should bear in mind that the client has a right to silence. Even in cases where criminal proceedings are not in point but tax-geared penalties are likely to be imposed, the taxpayer may have a right to silence under the HRA 1998, although whether the client should seek to rely upon that will depend on the circumstances. The member should exercise careful judgement in giving his advice and, if appropriate, tell the client to obtain specialist advice, which may include specialist legal advice.

4.19 SCO have been instructed not to hold 'neutral' interviews (namely ones where neither the Hansard statement nor a CoP is quoted). Accordingly, in any case in which neither the Hansard statement nor a CoP is offered, it should be assumed that criminal proceedings are being contemplated, and specialist advice, including if appropriate specialist legal advice, should be sought as soon as possible.

4.20 Equal care must be exercised in cases handled by the local district. An assurance that any disclosure will be dealt with along civil procedures before any admissions are made is unlikely to be obtained and districts are not authorised to administer Hansard or CoP 9. However, before advising on a disclosure to a local inspector, the member should seek to establish whether any of the following circumstances apply:

(a) false accounts have been deliberately compiled;
(b) documents affecting the accounts or the tax liability (for example invoices) have been materially altered or falsified;
(c) there are grounds for doubting the honesty of a solicitor, accountant or any tax adviser;
(d) the taxpayer or directors have conspired with a third party to defraud the Revenue;
(e) a certificate of disclosure or statement of assets signed during the current or earlier investigations turns out to be false;
(f) further offences have occurred immediately or shortly after the conclusion of an investigation;
(g) the potentially fraudulent taxpayer is a member of either House of Parliament or has a special status in the administration of justice or tax;
(h) there is suspected fraud or evasion using the vehicle of an off-shore company or other foreign entity, for example involving false invoices or monies diverted off-shore;
(i) informers have valuable information about a suspected fraud or substantial evasion;
(j) it is a case of phoenixism;
(k) it is a case of failure to notify chargeability or very late filing; or
(l) it is a case of serious PAYE irregularities.

If any of the above applies, then the member should consider carefully whether he is competent to deal with the matter or whether it might be sensible to obtain specialist advice.

The importance of confirming admissions of irregularities by clients

4.21 Misunderstandings can arise, especially when the client is under investigation by the Revenue. Before a member makes any disclosure to the Revenue on behalf of a client, he must be absolutely clear that an irregularity has occurred and that he has the client's agreement to the manner of disclosure.

Instructions to disclose

4.22 If the client accepts the member's advice and instructs him to make a full and immediate disclosure, the member should write to the Revenue (in terms approved by the client) and either give full details or explain the position in general terms and say that the client has directed that a complete disclosure will be made as soon as possible. This letter should be provided to the Revenue as soon as possible. It would be improper to allow the Revenue to agree a settlement without putting them in possession of the full facts. The Revenue usually require a certificate of full disclosure to be signed by the client and it is vital that the client appreciates the importance of such a certificate.

Disclosure to other tax authorities of an admitted irregularity

4.23 The member should also consider the need to make a similar disclosure to Customs.

Unwillingness or refusal to disclose an admitted irregularity

4.24 'Unwillingness' in this context includes such procrastination or prevarication as effectively amounts to a 'refusal', albeit not expressed. A member should allow a reasonable period for the client to make a decision. Thereafter, the member must decide whether continuing 'unwillingness' is in fact 'refusal' for this purpose.

4.25 If the client refuses to accept the member's advice to make a full and prompt disclosure to the Revenue, the member should ensure that his conduct and advice are such as to prevent his own probity being called into question. It is essential therefore, to advise the client in writing properly and fully of the consequences of the failure to disclose.

4.26 The member should explain to the client the Revenue's wide-ranging powers to obtain information from taxpayers and their agents. The client should be told that there is a considerably greater likelihood of a criminal prosecution (with the likelihood of imprisonment) where the Revenue 'discover' a fraud than where the client makes a voluntary disclosure and offers a suitable monetary settlement, and that voluntary disclosure normally results in a lower scale of penalty.

4.27 If the client refuses to accept the member's advice to make a full and prompt disclosure to the Revenue, the member should take such steps as are necessary to disassociate himself from the client's conduct. The member should write to the client setting out the facts understood by the member or agreed, and advising the client of his advice to disclose. He should also make it clear

that he, the member, may have an obligation formally to disassociate himself from any work done, should disclosure not be made.

4.28 If the client refuses to disclose or to take other steps (for example, seeking Counsel's opinion on the member's view) to regularise the situation, the member should consider taking steps formally to disassociate himself from the relevant work taking account of all relevant issues. In certain cases it may be necessary to cease to act in relation to the client's direct tax affairs, or indeed all his affairs.

4.29 If the Revenue realised that the member had continued to act after becoming aware of such undisclosed errors, they might consider the member to be 'knowingly concerned' in the commission of an offence. At the very least the Revenue might cease to trust the member. Furthermore, the relationship of trust which must exist between member and client will have been impaired.

Where the member has acted in relation to the irregularity

4.30 A member who has acted in relation to the irregularity should make it plain that if the client refuses to authorise disclosure, the member must cease to act for the client in all matters, not just those related to direct tax, save that the member is entitled to take the view that he is not obliged to cease to act where the amounts are not material. The member should also explain that if the client refuses to disclose, the member must act in accordance with paragraph 4.32. The client should be left in no doubt that this step could result in the Revenue commencing enquiries which might lead to the discovery of the non-disclosure and possible offence.

4.31 The member should explain the practical implications relating to the appointment of a new adviser in that it is the duty of professional advisers before accepting professional work to communicate with the person who previously acted in connection with that work.

4.32 If, despite fully advising the client of the consequences, the client still refuses to disclose to the Revenue, the member should forthwith:

(a) cease to act for the client in all respects and inform the client in writing accordingly; and
(b) inform the Revenue that he has ceased to act for the client.

If the matters in question affect accounts or statements which carry a report signed by the member as to their accuracy, he should inform the Revenue that he has information indicating that the accounts or statements cannot be relied upon, provided that the member has included in his engagement letter with the client wording such as that set out at paragraph 2.7. If he has not, and does not have his client's consent to the disclosure of errors generally, he should take specialist advice as to what action he should take.

4.33 A member has no legal obligation to provide the Revenue with an explanation as to the reasons for ceasing to act. Whether the member has a duty to correct a report carrying his opinion as to the accuracy of the accounts

will, in Counsel's opinion, depend upon its terms. Where it is qualified as being based on information supplied then ceasing to act for the client should suffice. If the member is uncertain as to how to proceed he should consider taking legal advice.

4.34 A member who follows paragraphs 4.30–4.33 is under no legal duty to explain to the Revenue the reasons why the returns, accounts, etc. are defective, and should do so only with the former client's permission. See also paragraphs 2.43–2.47.

Where the member has not acted in relation to the irregularity but has acted in relation to other tax matters

4.35 The member may discover a material irregularity which occurred either before the engagement began or in relation to matters dealt with by another adviser or by the client himself, for example PAYE, NIC and returns on forms P11D. In such cases, the member should advise the client to make full disclosure to the Revenue. If the client refuses to disclose, the member should cease to act because the relationship of trust which must exist between a member and the client would have been impaired and, just as important, the member's relationship with the Revenue would be prejudiced.

4.36 However, as the member has not acted in those tax matters to which the irregularities relate, the member's duty is merely to inform the Revenue that he has ceased to act.

Where the member has not acted in relation to tax matters

4.37 A member who has not acted in relation to tax matters, but discovers or suspects that a client has committed a tax irregularity, should discuss the position with the client. If the client confirms the discovery or suspicion, the member should ask the client to discuss the situation with the tax adviser with a view to making full disclosure to the Revenue. If the client refuses, paragraph 4.25 applies.

4.38 The member's duty is limited to encouraging disclosure to the Revenue. Thereafter, it is for the client to decide how to proceed. The member is not required to take the steps referred to in paragraphs 4.30–4.33. However, in the event that the client fails to make the disclosure, the member should consider whether the relationship with the client, which is based on trust, has been impaired and, if it has, whether it is proper to continue to act for the client. A member who decides to continue to act should not thereafter give any advice in relation to any tax matters (other than the matter of disclosure) unless and until the client agrees to disclosure to the Revenue.

Where the client refuses to admit an irregularity

4.39 Where the client denies any irregularity to the satisfaction of the member, the member is free to continue to act for that client. The member should protect himself by ensuring that his files fully document the discussions with the client and the reasons why the member is satisfied with the explanations given. It may be appropriate also to send a copy of the file note to the client.

4.40 Where the client denies any irregularity and the member rejects outright that denial, the member must cease to act for the client, at least in relation to his direct tax affairs, and very possibly in relation to all his affairs. The member should inform the Revenue that he is no longer acting on behalf of the client and should consider whether the course of action outlined in paragraphs 4.30–4.33 should be followed. He should also make it clear to the client that he may have an obligation formally to disassociate himself from the work done.

4.41 Where, despite the client's denial of any irregularity, the member still has reservations, but does not consider that he is justified in rejecting the denial outright the member must give careful consideration as to whether he can continue to act on behalf of the client. If the member decides to continue to act his file notes should set out clearly the client's explanation and/or assurance that there have been no such irregularities.

Suspicious circumstances

4.42 A member who acts in relation to tax matters and has good grounds to suspect that a client has committed a material tax irregularity should discuss the position with the client to confirm or remove the suspicion. This applies whether or not the member has acted in relation to the actual matter concerned. If the suspicion is confirmed, the member would then have actual knowledge of the irregularity and these guidelines should be followed. The member should also bear in mind the guidance on money laundering (see paragraphs 2.43–2.47) and his possible obligations.

4.43 If the member finds no confirmation but remains suspicious such that the relationship of trust which must exist between the member and the client may have been impaired, the member should consider whether he should continue to act. If a new adviser then approaches the member, the member should consider his position in the light of paragraphs 4.45 and 4.46.

Request for information from a new adviser

4.44 On changes in a professional appointment, the initiative to request information lies with the new adviser who should obtain the proposed client's authorisation to communicate with the member. The member should not volunteer information to a new adviser in the absence of any such request from the new adviser or his former client.

4.45 When the member receives a request for information from a new adviser, he should:

(a) seek authorisation from the former client to disclose all relevant information to the new adviser;
(b) on receipt of such authorisation, disclose all the information needed and reasonably requested by the new adviser to enable him to decide whether to accept the work; and
(c) to the extent that he is authorised to do so, discuss freely with the new adviser all matters of which he should be aware.

4.46 If the former client refuses permission, the member cannot disclose information to the new adviser. However, the member can refer the latter to the fact that there is correspondence between the member and the former client without disclosing what it says. The new adviser will then ask the client for copies of that correspondence.

4.47 The new adviser will therefore become aware of the non-disclosure and possible offence. Since the former adviser will have resigned on the grounds of the client's unwillingness or refusal to disclose, it should follow logically that if the client continues to be unwilling or refuses to disclose, or refuses permission for the former adviser to communicate with the new adviser, the new adviser should decline to act. However, the new adviser is entitled to consider whether or not he comes to the same conclusion as the former adviser. *See also Members' Handbook Section 3.3 'Code of Ethics' Part B, paragraph 210 'Professional Appointment' at* www.icaew.co.uk/membershandbook.

Interaction with indirect taxes

4.48 A member who prepares accounts should ensure that they reflect all material liabilities for indirect taxes whether or not they have been declared. If a material liability for indirect taxes is omitted an auditor cannot, without qualification, report on the accounts as showing a true and fair view. Customs often request the accounts in the course of a control visit in an attempt to reconcile turnover with the VAT returns.

4.49 If an assessment based upon alleged undisclosed takings is accepted by the client or a settlement at a reduced figure is agreed with Customs, and the member has already submitted accounts information for the period in question to the Revenue, the member must consider whether the accounts show a true and fair view and, if not, follow the guidelines set out above.

4.50 In such circumstances it may be wise to inform the Revenue before a final settlement is agreed with Customs in order that the self-assessment for direct tax purposes can be amended as well. This may help to avoid a second investigation.

5 INLAND REVENUE ERRORS

Notes:

1. The Revenue have explained that this Chapter presents them with major difficulties and in particular they do not see how 'special circumstances' as in paragraph 5.5 could exist. They ask that members should take all possible steps to ensure that their clients pay the correct amount of tax due in law, even where following an error by the Revenue insufficient tax is demanded.
2. Members should be aware that the law in Scotland differs.

Generally

5.1 Throughout this Chapter references to Revenue errors are to the position which may arise from the raising of an inadequate assessment, an under collection of tax or interest or an over repayment of tax or interest, in circumstances where it is apparent to the member that a mistake has been made by the Revenue. The mistake may be one of law or may be a calculation error or a clerical error; equally it may arise from a misunderstanding on the part of the Revenue of the facts as presented. Reference should also be made to the Revenue publication Code of Practice 1: 'Mistakes by the Inland Revenue' (see http://www.hmrc.gov.uk/leaflets/cop1.htm).

5.2 The Revenue position is that any error, however trivial, ought strictly to be corrected. In practice they do not insist upon this where the amount involved is de minimis, but they do not give any guidance in this area. It is reasonable for members to weigh the cost to the client of correcting minor errors against the amount of tax at stake. See also paragraphs 2.40–2.42.

5.3 As noted in paragraph 2.7, members are advised to include in their letters of engagement authority to advise the Revenue of errors, so that reference to the client is not needed. Where no such authority has been obtained, the procedure in paragraph 5.8 should be followed.

5.4 When advising clients of possible action in the light of an error made by the Revenue, members should in the first instance consider whether in making his return, the taxpayer adequately disclosed information bearing on his tax liability, and in particular on the aspects which gave rise to the error.

5.5 Where the member becomes aware that the Revenue, in full possession of the facts, have made an error in dealing with the affairs of a client, the member should seek the client's authority to advise the Revenue of the error. If the client refuses to give that authority, the member should consider whether there are any special circumstances which might render the refusal reasonable. If there are not, then, unless the amount of tax or interest at stake is de minimis, he should consider whether he should continue to act. In determining whether any such refusal would be reasonable, the member should consider whether TMA 1970 s. 97 would apply if the error subsequently came to light. If it would, it is highly unlikely that the client's refusal could be considered reasonable for this purpose. If the client is under a duty (see paragraphs 5.10 et seq) to bring innocent errors to the attention of the Revenue but refuses to do so notwithstanding the member's advice to the contrary, there is a substantial risk that if the member continued to act whilst remaining silent, he would be assisting the client in a breach of the client's duty.

5.6 If, however, a member is specifically asked by the Revenue to agree a figure, he must agree what he believes to be the correct figure; this may be a figure negotiated in the course of discussions following full disclosure of the facts and circumstances. He is not at liberty to accept a figure he knows to be incorrect, and he does not need to seek his client's authority to disclose to the Revenue their errors.

5.7 Counsel has advised that, in all other cases of excessive repayment or inadequate demand, unless the tax at stake is de minimis, the member should take the client's instructions. The client should be asked to authorise the member to advise the Revenue of the error, and warned of the possible legal consequences if he is reluctant to give the authority sought; such consequences might additionally include interest and penalties.

5.8 Because the member may himself commit a criminal offence (see paragraph 5.11) through his involvement in obtaining an excessive refund, he should seek his client's authority to inform the Revenue of the error. If this is not forthcoming he should consider taking independent legal advice with a view to:

(a) notifying the Revenue in any event, and notifying the client of his action; and
(b) ceasing to act for the client.

5.9 A member should ensure that a written record is kept of all advice given to clients in connection with Revenue errors, and of any reassessment of his relationship with his clients. The member should also consider taking independent legal advice where he has any doubts as to the proper course of conduct to be followed. Revenue errors may cause expense to members, and thereby to their clients. Members should bear in mind that in some circumstances clients may be able to claim compensation. (*See HMRC Code of Practice 1: 'Putting things right – how to complain' at http://www.hmrc.gov.uk/leaflets/cop1.htm*)

Legal considerations

Offences under the Theft Act 1968 (not applicable in Scotland)
5.10 Theft Act offences might apply when a repayment results from the error. The most likely offence is that of theft contrary to the Theft Act 1968 s. 1. Such an offence is committed when a person dishonestly retains, intending to keep or use, money which he knows does not belong to him. Dishonesty is the core of this offence. If the defendant were to raise the defence that he did not consider what he was doing to be dishonest, the prosecution would have to prove:

(a) that what was done was dishonest by the ordinary standards of reasonable and honest people; and
(b) that the defendant himself must have realised (or would have, had he stopped to think about the matter) that what he was doing was by those standards dishonest.

It is no defence that the defendant did not himself regard his conduct as dishonest.

5.11 If, before a client receives an excessive repayment, a member knows that it is to be made and that it is excessive, where the member was in any way concerned, however innocently, in obtaining it (for example, by submitting the repayment claim) but does nothing to draw the Revenue's attention to the error, the member is at risk of prosecution. This is a very difficult area

for the member. If he was unaware at the time he did the act he committed (for example, sign accounts or submit a repayment claim) that the claim was excessive, and he only obtained that knowledge later, and if he does not himself receive the repayment, as a matter of law he is not guilty of any offence. The problem that the member faces, however, is the risk of it being alleged against him that his knowledge of the client's dishonesty was earlier than in fact it was. Hence he would be vulnerable to prosecution either alone or together with the client.

5.12 If the Revenue send the excessive repayment to the member, and if he is aware that it is excessive, he should simply return it to the Revenue and inform the client that he has done so.

5.13 The offences for which the member would be at risk of prosecution are:

(a) obtaining a money transfer by deception;
(b) procuring the execution of a valuable security (for example, the repayment warrant) by deception;
(c) dishonestly retaining a wrongful credit; and
(d) conspiracy to commit any of those offences.

5.14 Members should also bear in mind that it is a serious criminal offence to tell the Revenue an untruth (whether oral or in writing) if this is done with intent to 'prejudice' the Revenue, that is to deceive an officer into not doing his duty, namely further to investigate the taxpayer's affairs and raise any tax assessments that might be appropriate, whether or not any additional tax is in fact due from the taxpayer.

The offence of cheat (not applicable in Scotland)
5.15 Revenue prosecutions for the common law offence of cheat are not uncommon. This is an ancient offence which requires proof of an intent to defraud or to prejudice the Revenue. The Revenue need to prove dishonesty, the test of which is effectively the same as that set out above.

5.16 The offence of cheat is certainly applicable to the dishonest obtaining or retention of over-repayments of tax.

5.17 Counsel has advised that mere failure to advise the Revenue that they have demanded insufficient tax, particularly if the amount is significant, may in strict law be sufficient grounds for a successful prosecution. Members are therefore warned that their clients have no valid defence to a charge of cheating in cases where they refuse to authorise the member to disclose to the Revenue an error of fact which results in such an underpayment.

5.18 The reality of the risk of such a prosecution being instituted, of course, depends on the facts of each case.

Other matters
5.19 Counsel has also advised that there is no legal obligation on a taxpayer, or a member, to press the Revenue to issue an assessment, even if by reason of

the delay the Revenue's ability to start an enquiry or raise an assessment goes out of time, provided that the full facts and information have been supplied.

Offences under Scots law
5.20 TMA 1970 s. 107 applies only in Scotland. It carries a maximum sentence of six months on summary conviction. It applies to any person knowingly making a false statement or false representation in any return or claim.

5.21 Under common law theft is committed by taking the goods or property of another. In this context 'taking' means the 'taking away'. Proving the intention to steal is sometimes a difficult matter in cases of theft; but the question comes down to the inference which may properly be drawn from the acts proved. It may be theft for someone to appropriate to his own use funds which are in his possession. Thus a taxpayer who retains a tax repayment which he knows is not due to him might be guilty of theft.

Money laundering
5.22 Where appropriate, members should bear in mind the legislation on money laundering and the duties which this places upon them (see paragraphs 2.43–2.47).

6. INVESTIGATION OF TAX ACCOUNTANTS

Background
6.1 The Revenue have specialist units, part of whose brief is to monitor and investigate the standards of practising accountants and tax practitioners. The Revenue employ accountants to advise officers on GAAP and the concept of 'True and Fair'.

6.2 Generally the investigator will seek a meeting with the member perhaps following a series of instances in which accounts or returns have been found to be incorrect. In the first instance, it may be that the investigator only outlines to the member the reasons for seeking a meeting. There is no legal obligation on a member to acquiesce. In order to enable the member to consider whether to agree to the request, he should request full details of the matters giving rise to the investigator's concerns. If a meeting is held, it is likely that the investigator will ask to examine one or more sets of working papers relating to clients of the member either immediately or shortly after the meeting. There is no legal obligation on the member to comply at that stage.

6.3 On the evidence available before, during, or after a meeting with the member the investigator will consider whether:

(a) the member may have committed a criminal offence such as false accounting, or conspiring with a client to defraud the Revenue; or
(b) the member may have committed an offence within TMA 1970 s.99 or s.107 or FA 2000 s.144; or

(c) the member's standards may be otherwise unsatisfactory in that he has been negligent or incompetent in preparing accounts and returns for submission to the Revenue.

6.4 Any approach to a member by an investigator should be regarded as a serious matter, as should any request for access to working papers. A member who receives such an approach should consider taking the advice of a suitably-experienced specialist in tax investigations at an early stage. A member who believes at any stage that criminal proceedings may be taken against him and who is not entirely confident of the legal position should take legal advice, especially in view of the conflict between refusal to cooperate and his obligation of confidentiality.

6.5 The Revenue have extensive powers to obtain information. It should be noted that TMA 1970 s.20A enables a Revenue investigator to obtain access to a member's working papers, and that its operation is clearly restricted to those circumstances where a 'tax accountant' has been convicted of a tax offence by a UK court or had a penalty imposed under TMA 1970 s.99. The Revenue can also obtain access to working papers for specific clients under TMA 1970 s.20(3) subject to the override in TMA 1970 s.20B(11), and a warrant for entry and seizure under TMA 1970 s. 20C would in practice give access to the working papers of all clients. Both statutory powers are subject to an implied exception in favour of documents or communications which qualify for LPP. See paragraphs 2.32–2.38.

6.6 A negotiated civil settlement resulting in no penalty actually being imposed on the member does not enable the Revenue to use TMA 1970 s. 20A.

6.7 Before the Revenue are able to impose a penalty on any person under TMA 1970 s.99 they have to prove that the person:

(a) had assisted in or induced the preparation or delivery of any information, return, accounts or documents; and
(b) knew, at the time of the preparation or delivery, that the items would be, or would be likely to be, used for some purpose of tax, and knew that they were incorrect.

The Revenue have confirmed that auditors who correctly ignored small errors because they were not material would not fall within TMA 1970 s.99.

6.8 Following the case of *Inland Revenue v Ruffle* [1979] STC 371 and observations made by the Revenue in 1989, it is clear that because TMA 1970 s.99 is a penalty section a very high standard of proof is imposed on the Revenue. In relation to TMA 1970 s.99 'Assisting in preparation of incorrect return, etc.', the changes then proposed by clause 161 of the Finance Bill 1989 were discussed at a meeting with the Revenue, the agreed notes of which were issued by the Institute of Chartered Accountants in England and Wales as TR759. These notes include the following:

(a) 'The Institute of Chartered Accountants in England and Wales considered that the provisions should be qualified to make it clear that auditors who

correctly ignored small errors because they were not material did not fall within the ambit of s.99.'

(b) 'The Revenue explained that the revised wording corrected two lacunas in the wording of the present section, so that it applied generally to persons involved in the preparation of returns, accounts or other information to be used for tax purposes. These had come to light in the case of *Inland Revenue v Ruffle* [1979] STC 371 and the amended wording was as recommended by Lord Jauncey in that case and endorsed by the Keith Committee. They added that, unlike other penalty provisions in the tax code where there were comparatively weak tests of culpability, s.99 applied only where a person had assisted in the preparation of a return or accounts which he "knew" to be incorrect. This requirement of "guilty knowledge" was the equivalent of "civil fraud" and required a correspondingly high level of proof. It followed that there could be no question of the situations which were of concern to the Institute of Chartered Accountants in England and Wales – an auditor who noticed a small error but decided it was not material, or a person whose responsibility for an error was small – being caught by s.99.'

6.9 The Revenue normally act against an individual practitioner, and not against a firm as a whole. It is questionable whether there is any power to proceed under TMA 1970 s.20A in respect of a firm's working papers where the individual penalised under TMA 1970 s.99 no longer has the firm's papers in his power or possession (see TMA 1970 s.20A(1)). If therefore, a partner in the firm is at risk of being convicted of a tax offence or having a s.99 penalty imposed, it may be prudent for the other partners in the firm, in the interests of other clients, to take steps to limit the documents over which that partner has possession or power.

6.10 SP5/90 'Accountants' working papers' explains how the Revenue in practice use the powers available to them. (See http://www.hmrc.gov.uk/practitioners/sop.pdf)

6.11 Even without reliance on any legal powers, a Revenue official can simply request a member to give access to a wide range of working papers. Members should consider the matters referred to below before agreeing to do so.

Confidentiality and freedom to disclose

6.12 There should be no disclosure of confidential client information without the prior consent of the client unless there is a legal right or duty to disclose. See also paragraphs 2.22–2.31.

Further considerations

6.13 Members should bear in mind that:

(a) the papers to which access is given may contain prima facie evidence of criminal offences by the member or a client, which may lead to prosecution;

(b) the papers may contain prima facie evidence of an offence within TMA

1970 s.99, leading to an award of penalties under which the Revenue could legally seek access to the member's working papers for all clients;

(c) if the member gives access to client working papers without the prior knowledge and consent of the client, he may be liable for breach of at least an implied term of the contract between the member and the client;

(d) other factors may deter the member from disclosing client working papers, such as a possible restriction on access included in the terms of professional indemnity insurance contracts;

(e) if access on a voluntary basis is refused the Revenue may exercise their statutory powers. Alternatively, tax districts may be advised that the investigator has misgivings as to the member's standards, and that clients' returns and accounts submitted by the member should be viewed in that light; and

(f) the imposition of a TMA 1970 s.99 penalty, or an agreement to enter into a civil settlement with the Revenue, may prejudice the status of the member as a fit and proper person for audit and other regulatory purposes.

Advice in practice

6.14 As stated in paragraph 6.4, a member who believes at any stage that criminal proceedings may be taken against him should take legal advice.

6.15 In particular, where the Revenue have alleged that the member may have committed an offence within TMA 1970 s.99, and it is clear that formal proceedings under TMA 1970 s.99 may be taken against him, the member should consider disclosure of working papers in the light of paragraphs 2.22–2.31.

6.16 It may be appropriate, after discussions with the investigator, to suggest the appointment of an independent practitioner to review and report on a sample of the member's working papers; this still represents disclosure of confidential information. It is, however, likely that the investigator will still wish to have direct access to a sample of the member's working papers.

6.17 An independent practitioner may be able to negotiate a settlement on behalf of the member. A member is not always the best advocate in his own cause.

6.18 Where it is alleged by the Revenue investigator that the member's standards are unsatisfactory, but in circumstances falling short of the possibility of criminal proceedings or a penalty being imposed under TMA 1970 s.99, then generally the member should not give access to client working papers without the prior knowledge and consent of the client. Any member contemplating giving access to a Revenue investigator where paragraph 6.14 is not in point should consider the matters at paragraphs 6.12 and 6.13. The advisability of appointing an independent practitioner to represent the member, as discussed at 6.17, should be considered.

6.19 Although the investigation may be instigated by the Revenue it may, in practice, be conducted jointly with Customs who have powers to obtain

information and documents (VATA 1994 Sch.11, paragraph 7). In addition the VAT and Duties Tribunals have extensive powers to obtain information and documents under VATA 1994 Sch.12, paragraph 9.

6.20 In Scotland any person knowingly making a false statement may be prosecuted and on conviction may be imprisoned for a term of up to six months (TMA 1970 s.107).

6.21 The member may also wish to seek guidance from the Institute's Advisory Services in any of the above circumstances.

VALUE ADDED TAX

Chapters 7 and 8 deal with Value Added Tax but apply mutatis mutandis to other indirect taxes. They should be read in conjunction with Chapters 1 and 2.

7. Disclosure

Relevant responsibilities in preparing VAT returns

7.1 The client has the primary responsibility to submit a true and complete VAT return to Customs. It follows that the final decision as to whether to disclose is the client's. A member who prepares a return on behalf of a client is responsible to the client for the accuracy of the return based on the information provided.

7.2 Where a member is acting as a 'tax representative' for an overseas principal, the obligations and liabilities of the VAT legislation are imposed jointly and severally on the client and the member. A member who acts in this way as a tax representative should seek indemnity from the client against failure by the client to provide information required. The member should also make clear in writing his obligation to disclose any irregularity to Customs (see Chapter 8).

7.3 A member is not required to audit the figures in the books and records provided by the client but should exercise normal care and judgement in preparing the return and should record detailed figures in working papers.

Disclosure of specific transactions to Customs

7.4 Normally, specific transactions need not be disclosed to Customs. Nevertheless, a member may recommend to a client that a particular matter be disclosed in order to avoid uncertainty.

7.5 In such a case the full facts concerning it, including the reasons for doubt, should be disclosed to Customs. The client can then generally rely on any unequivocal ruling in writing received from them on the point.

7.6 If a transaction is found to have been treated incorrectly but it can

be shown that full information about it was disclosed to Customs, the client will be able to claim the benefit of the concession concerning misdirection given in the Ministerial undertaking known as the 'Sheldon Statement' and reproduced as VAT Extra-statutory concession 3.5 in Notice 48 (March 2002): 'Extra Statutory Concessions' (see http://customs.hmrc.gov.uk/channels PortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_PROD_011540). The undertaking says 'If a Customs and Excise officer, with the full facts before him, has given a clear and unequivocal ruling on VAT in writing or, knowing the full facts, has misled a registered person to his detriment, any assessment of VAT due will be based on the correct ruling from the date the error was brought to the registered person's attention.'

7.7 The meaning of full disclosure was considered in *Matrix Securities Limited v IRC* [1994] STC 272 albeit in the context of direct tax. Customs have stated that the Sheldon statement will not be honoured in cases where Customs have been misled to obtain a specific ruling.

7.8 When disclosing transactions on which the member has previously advised, extra care may be needed to ensure that the full facts are disclosed. The advice given must not be allowed to affect the member's objectivity.

7.9 Customs consider that they are entitled to override their general guidance by a specific ruling relating to the affairs of a particular taxpayer. Whether a specific ruling is applied retrospectively will depend on whether the general guidance could reasonably have been read as covering the particular case.

Known Customs' practices

7.10 Particular care is needed if Customs have published their interpretation or have indicated their practice on a point and the client proposes to take a different view. Disclosure will probably be prudent in the interests of the client. Even where a taxpayer has Counsel's opinion that Customs' interpretation is wrong, it is advisable to disclose the facts in writing to Customs' Written Enquiries Team making it clear that Customs' interpretation is not accepted. However, the final decision on what, if any, disclosure is to be made rests with the client.

Requests for rulings from Customs

7.11 Once the member is satisfied that it is appropriate to apply for a ruling he should ensure that the client understands the issues and implications of the proposed course of action. This advice to the client should normally be confirmed in writing.

7.12 Customs Notice 700/6 of August 2003 (see http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_CL_000874) provides guidance on how rulings

should be sought. Rulings should normally be confirmed by Customs in writing. If necessary the client, or the member, should write to Customs confirming the facts and the ruling that is understood to have been given.

7.13 If a written ruling appears to the member to be incorrect, he should consider whether it is clear that full facts were disclosed (the amount of VAT involved may be a material fact) and whether it is clear from the wording of the ruling that the officer of Customs has understood the question.

Effect of rulings and official practice

7.14 Members are entitled to rely on official Customs' practices and rulings where these are favourable to their clients.

7.15 However, there are limits to the extent to which Customs are bound by undertakings and statements of policy which they have given or issued. Examples of restrictions on a taxpayer's entitlement to rely on Customs' rulings are:

(a) the VAT and Duties Tribunals will have regard to the strict terms of the law in their decisions and may ignore any Customs' advice or extra-statutory concessions which the taxpayer may have relied on even if they have been published in an official Customs' Notice or leaflet; and
(b) failure by Customs to comply with the Sheldon Statement cannot, of itself, constitute a ground for appealing to the tribunals.

7.16 If Customs refuse to stand by a ruling given, whether generally or specifically to the client, there may be a remedy in judicial review before the High Court, and, in Scotland, the Court of Session. In this event, the member should seek legal advice as soon as possible as to the applicable time limits for such procedures. An application may also be made to the Adjudicator or to the Ombudsman.

7.17 If an error was obvious in the records available when a control officer visited, this should prevent any suggestion of fraudulent evasion or recklessly negligent conduct entailing a criminal penalty; and may also obviate the risk of an accusation of conduct involving dishonesty which could lead to a civil penalty. However, the concession on misdirection explained in paragraph 7.6 will not apply unless it can be shown that the officer saw the specific records in question and failed to point out the error. By its very nature, this is difficult to prove.

7.18 If a member obtains a ruling with which he disagrees, he may advise the client to consider an appeal to the VAT and Duties Tribunal (having regard to the applicable time limits). The member should be aware that an appeal can only be made against a ruling which has been given in respect of an actual transaction. It is not possible to appeal against a ruling given in respect of a proposed transaction.

Demands by Customs for information

7.19 Customs' powers to demand information and their policy on access to working papers etc. are outlined in Leaflet 700/47/93: 'Confidentiality in VAT matters (tax advisers) – Statement of Practice' dated February 1993 (see http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_CL_000100). However, Notice 700/47/93 was published before the decisions in *R (on the application of Morgan Grenfell & Co Limited) v Special Commissioners* [2002] STC 786 and *R v Customs and Excise Commissioners, ex parte Popely and Harris* [1999] STC 1016 and members should be aware of the possible implications of these decisions. In particular, Counsel advises that Customs have no statutory powers to compel the disclosure of LPP material. Furthermore, the information powers must be interpreted by the Courts and applied by the Customs' officers in a manner which is consistent with the client's and the member's rights under Article 8 of the European Convention on Human Rights.

7.20 Enquiries from Customs are often unexpected and informal and usually arise from a visit to the client. The member should consider whether authorisation to reveal the information requested is needed from the client. The nature of the enquiry may not be immediately apparent and the position may need reviewing as it progresses.

7.21 A member who is in doubt about the implications of a question should consider asking for it to be put in writing so that a response may be agreed with the client.

7.22 Although there are no equivalent provisions of TMA 1970, ss. 20–20D in the Customs and Excise management legislation, Customs' powers to require disclosure of documents and information are contained in various statutes, including, in the context of VAT, VATA 1994, Sch.11, paragraphs 7(2) and (3).

7.23 These provisions permit Customs to require production of documentation by every person concerned in the supply of goods and services or the acquisition or importation of goods, or from any other person 'who appears to the authorised person to be in possession of them.'. This provision may be wide enough to entitle Customs to demand recovery of documents from a tax adviser. Although the Statement of Practice in Notice 700/47 recognises the client's common law privilege, both in relation to legal professional privilege and litigation privilege, disputes may arise as to whether or not a particular document is protected by privilege.

8. ACQUIRING KNOWLEDGE OF VAT ERRORS AND IRREGULARITIES

For the purposes of this Chapter, 'irregularity' means conduct which could give rise to prosecution or an evasion penalty. Some errors may constitute or become irregularities.

Generally

8.1 A member must do nothing to assist a client to plan or commit any offence or to conceal any offence which has been committed. A member must exercise great care to avoid commission of an offence by knowingly or recklessly making false statements or false representations when assisting a client whom the member suspects may have defrauded the Crown of tax or of having been negligent in regard to VAT matters.

8.2 Subject to the terms of his engagement, a member who assists a client to prepare any return or advises a client on a VAT matter has no responsibility to carry out an audit of the client's accounts or to investigate any matter not directly affecting the assignment he has agreed to undertake or to seek or to detect any error or irregularity. In general, his duty is limited to carrying out the assigned work, and he need only deal with errors or irregularities in respect of that assignment which came to his attention in performing it.

8.3 A member who, as a result of any work undertaken on behalf of a client, has reason to believe that a VAT error or irregularity has occurred should discuss with the client the matter which gave rise to that belief and consider whether in the circumstances it is appropriate for him to act. Where the member has not acted in relation to that question, he should take into account the fact that he may not be party to all the facts and circumstances and may not therefore be able to reach a conclusion on the issue. It is not the duty of a member to pursue to a conclusion a matter in respect of which he has not been engaged, unless it affects work in respect of which he has been engaged.

8.4 If there is a VAT error, the member should normally advise the client to follow the procedure set out in Customs Notice 700/45/02: 'How to correct VAT errors and make adjustments or claims' (see http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns=1&id=HMCE_CL_000077).

8.5 If there is doubt as to whether or not an irregularity has occurred, the member should consider protecting his position by obtaining advice from a specialist in this field. Furthermore, if the member has any doubt about his competence to provide advice to his client in these circumstances he should seek to obtain specialist help as appropriate.

Money laundering

8.6 Where appropriate, members should bear in mind the legislation on money laundering and the duties which this places upon them (see paragraphs 2.43–2.47).

Human rights

8.7 Wherever appropriate, in particular if there is a risk of prosecution or tax-geared penalties, the provisions of the HRA 1998, in particular the protection given by Articles 6 and 8 of the European Convention on Human

Rights, should be considered, and in obtaining advice on behalf of their clients members should ensure that the Act is taken into account.

Materiality

8.8 In considering the action which he should take in the circumstances outlined in this Section, the member may take account of materiality but reference should be made to paragraphs 2.40–2.42. However, Customs' position is that any error ought to be corrected.

VAT errors

8.9 Correction of errors up to a prescribed amount can be made on the current VAT return as part of the entries for that period. If this is done, neither penalties nor interest is due. If the net value of the errors is greater than the specified level this procedure is not available, and separate disclosure of the error must be made. Form VAT 652 is provided for the purpose of making a voluntary disclosure separate from the VAT return, although its use is not mandatory and in most circumstances it may be more appropriate to make the disclosure by letter.

8.10 Customs have stated that disclosure of errors after a visit date has been arranged will be rejected where there is reason to believe that:

(a) the errors were disclosed only because of the visit; or
(b) disclosure made during or after a visit was prompted only by Customs' enquiries.

Other voluntary disclosures made after the visit date has been arranged may, however, be accepted by Customs.

Advice to be given where an irregularity is admitted

8.11 A member whose client has admitted an irregularity should consider whether to recommend to his client to take legal advice. One of the factors the member must take into account is whether his client will have the benefit of LPP in relation to confidential discussions between the client and the adviser concerning the client's knowledge of the irregularity. As indicated in paragraphs 2.32–2.38 above, the present position at common law is that communications for the purpose of obtaining legal advice from non-lawyers do not qualify for LPP unless the dominant purpose behind such communication is to assist in litigation which is either pending or contemplated. In many circumstances, the dominant purpose in seeking such advice will be to ascertain the extent of the tax liability, rather than to assist in contemplated litigation. If legal advice is not appropriate the member should advise the client to disclose the irregularity to Customs and make an internal note of having given such advice. The member should explain the consequences of not making a disclosure, in particular that:

(a) should Customs discover the irregularity later there might be no defence against a misdeclaration penalty;
(b) having knowledge of the irregularity without acting upon it may be construed as a criminal offence or a civil fraud;

(c) interest may accrue up to the time the VAT is paid: the policy of Customs not to assess interest in 'no loss to the Revenue' cases may not be relevant; and
(d) it would be improper to allow Customs to agree a settlement without putting them in possession of all the facts.

If the client declines to disclose the irregularity, the member should confirm his earlier advice in writing and consider whether it is appropriate to carry on acting.

When Customs are not aware of an irregularity

8.12 Where there is an irregularity which Customs have not discovered, voluntary disclosure and payment of the under-declared or over-reclaimed tax will usually remove the risk of a penalty, although interest may remain due. Prompt disclosure of an error may avoid suspicion by Customs that it was deliberate thus reducing the risk of a civil fraud penalty.

When Customs allege that irregularities may have occurred

8.13 When Customs allege that an irregularity may have occurred, but it has not been identified by the member or his client, the member should establish from Customs such details as he can of the alleged irregularity and the circumstances in which it occurred. This should take place at a meeting between the member and the Customs officer or in the course of correspondence, depending on the circumstances.

8.14 The member should then discuss the position with his client and establish with him the full facts relating to the alleged irregularity. The member should evaluate Customs' allegations in the light of the facts as they have been explained by the client. Where appropriate, he should advise his client to make a full disclosure to Customs and to offer them all facilities for investigation. In the course of his evaluation the member should consider whether to recommend to his client to take legal advice prior to making a disclosure. In particular, where there is a real possibility that the tax authorities may still bring criminal proceedings against the client even if he provided full disclosure, the client needs to have proper legal advice concerning his right to silence and the privilege against self-incrimination before deciding which course to take.

8.15 It may be appropriate for the member, having agreed this with his client, to offer that a full report of the facts behind and surrounding the alleged irregularity be prepared by the member on behalf of the client with a view to making a full disclosure to Customs.

When Customs are aware of an irregularity

8.16 If Customs intend to prosecute a person for evading tax, they should administer a caution to that person. Therefore, when Customs are aware that a serious irregularity has occurred, an interview under caution may be sought. If the member is made aware of such an interview, he should attempt to ascertain Customs' reasons for the interview and then notify his client of the

seriousness and the potential implications of the allegations. If the interview under caution is already taking place, and no legal advice has been sought, the member should repeat the need to take legal advice which Customs should in any case have indicated at the outset as the client's legal right. The member should also advise the client of his right to silence and his privilege against self-incrimination. If the member does not feel competent to advise on these matters, he should seek to arrange legal advice on these matters for the client as soon as possible.

8.17 A tax adviser who is not a lawyer has no right to attend his client's interview under caution. Customs have indicated that when a client is being interviewed in a criminal investigation, that client may already be under arrest and there is no obligation to allow a tax adviser to be present during such an interview unless that adviser is also a lawyer. It is therefore unlikely, in most instances, that tax advisers will have access to their clients in such circumstances.

8.18 The benefit of full cooperation and complete disclosure in civil fraud cases is set out in Customs' 'Civil evasion penalty investigations: Statement of Practice' (VAT Notice 730 – see http://www.hmce.gov.uk/forms/notices/730.htm – which should be read together with the addendum thereto issued in April 2002 – http://www.hmce.gov.uk/forms/notices/730add.htm) and VAT Information Sheet 1/02 (http://www.hmce.gov.uk/forms/notices/info0102.htm). (*Note: CoP 9 (2005) applies for inquiries commencing on or after 1 September 2005; see http://www.hmrc.gov.uk/practitioners/civil-investigations.htm. The following explanation of HMRC's procedures refers to the pre-1 September 2005 position*). The Addendum and the Information Sheet explain Customs' equivalent procedure to Hansard effective from April 2002. If this approach is offered, they will prosecute only if a fraud is likely to continue or the trader refuses to answer four standard questions. In criminal cases cooperation can facilitate the agreement of offers to compound criminal offences (under CEMA 1979 s. 152) and the mitigation of penalties, although it will not always prevent prosecution. If Customs seek to rely in criminal or tax-geared penalty proceedings upon statements or documents produced by the client following such procedure as comprising accurate evidence of the client's involvement in the irregularity, then it is possible that such reliance would be a breach of the client's privilege against self-incrimination under Article 6 of the European Convention on Human Rights. It should be noted that tax-geared penalty proceedings will normally be regarded as criminal proceedings for the purposes of Article 6 of the European Convention. Again, this is a matter on which specialist legal advice should be sought as soon as possible.

8.19 An interview under caution is an early indication of the possibility of a criminal prosecution. If it appears likely that criminal charges will be brought, the member should advise the client to take advice from a criminal law specialist. Even if Customs are prepared to compound proceedings it may still be appropriate to take legal advice.

8.20 If the advice is to cooperate, the member should advise his client to make a full disclosure to Customs and, when under investigation for civil evasion, cooperate within the terms of VAT Notice 730 or the Statement of Practice in VAT Information Sheet 1/02. In the case of a criminal investigation under caution, the advice of a specialist professional should be taken throughout in respect of full disclosure and production of documents etc.

8.21 Customs will advise the client at the outset if they are considering an investigation under the civil regime by issuing VAT Notice 730 or the statement of practice in VAT Information Sheet 1/02: this is not a caution. In the event of a criminal investigation a caution will be issued. In most cases, full cooperation under the civil regime affords a maximum discounted penalty of 25 per cent of the tax concerned.

8.22 Members should be aware that Customs' policy is not to offer the civil regime to professional advisers in respect of their own affairs.

The importance of confirming admissions of irregularities by clients

8.23 Misunderstandings can arise, especially when the client is under investigation by Customs. Before a member makes any disclosure to Customs on behalf of a client he must be absolutely clear that an irregularity has occurred and that he has the client's agreement to the manner of disclosure.

Instructions to disclose

8.24 Provided the member has the client's written permission (or a note of oral instructions which he has confirmed in writing to the client) to disclose an error too large to be corrected on the next return, he should write to Customs giving as much detail of the inaccuracy in the return(s) as is available.

8.25 It may be more appropriate for the letter of disclosure to be sent by the client. In this case the member may either draft the letter for the client or review the client's draft to ensure that adequate disclosure has been made.

8.26 The disclosure should be made to Customs as soon as possible in order to minimise the risk of them becoming aware of the problem before they are told. Care should be taken to ensure that the disclosure is as full as practicable concerning the number and the amount of irregularities which have been detected.

Disclosure to other tax authorities of an admitted irregularity

8.27 The member should also consider the need to make a similar disclosure to the Revenue.

Unwillingness or refusal to disclose an admitted irregularity

8.28 'Unwillingness' in this context includes such procrastination or prevarication as effectively amounts to a 'refusal', albeit not expressed. A member should allow a reasonable period for the client to make a decision. Thereafter,

the member must decide whether continuing 'unwillingness' is in fact 'refusal' for these purposes.

8.29 If the client refuses to accept the member's advice to make a full and prompt disclosure to Customs, the member should ensure that his conduct and advice are such to prevent his own probity being called into question. It is essential therefore to advise the client in writing properly and fully of the consequences of the failure to disclose.

8.30 The member should take such steps as are necessary to disassociate himself from the client's conduct. The member should write to the client setting out the facts understood by the member or agreed, and advising the client of the latter's duty to disclose. He should also make it clear that he, the member, may have an obligation formally to disassociate himself from any work done, should disclosure not be made.

8.31 If the client refuses to disclose or to take other steps (for example, seeking Counsel's opinion on the member's view) to regularise the situation, the member should consider taking steps formally to disassociate himself from the relevant work taking account of all relevant issues. In certain cases it may be necessary to cease to act in relation to the client's VAT affairs, or indeed all his affairs.

8.32 If Customs realised that the member had continued to act after becoming aware of such undisclosed errors, they might consider the member to be 'knowingly concerned' in the commission of an offence. At the very least Customs might cease to trust the member. Furthermore, the relationship of trust which must exist between member and client will have been impaired.

The member prepares or assists in the preparation of the VAT return

8.33 Where the member either prepares or assists in the preparation of VAT returns, and the client refuses to disclose errors which occurred during or before the period in respect of which the member has acted, it may be necessary to cease to act in relation to the client's VAT affairs, or indeed all his affairs.

8.34 If Customs are aware that the member has been acting for a particular client, the member should, when appropriate, notify them that he has ceased to act for that client.

The member prepares or assists in the production of accounts

8.35 A member may prepare or assist in the production of accounts, without advising on VAT. If the client refuses to disclose a VAT error, the member should consider whether the relationship with the client, which is based on trust, has been impaired and, if it has, whether it is proper to continue to act for the client. A member who decides to continue to act should not thereafter give any advice in relation to any tax matters (other than the matter of disclosure) unless and until the client agrees to full disclosure.

The member is engaged to provide VAT advice

8.36 If required to deal with Customs on the client's behalf, the member might not be in a position to do so in good faith whilst aware of an undisclosed error and the member should consider ceasing to act. This does not apply where the member has advised on VAT matters, or otherwise, without dealing with Customs, but the member should consider his position carefully.

Where the client refuses to admit an irregularity

8.37 Where the client denies any irregularity to the satisfaction of the member, the member is free to continue to act for that client. The member should protect himself by ensuring that his files fully document the discussions with the client and the reasons why the member is satisfied with the explanations given. It may be appropriate also to send a copy of the file note to the client.

8.38 Where the client denies any irregularity and the member rejects outright that denial, the member must cease to act for the client at least in relation to his VAT affairs, and very possibly in relation to all his affairs. The decision depends on the nature and scope of the member's relationship with the client having regard to the various circumstances. See also paragraphs 2.43–2.47.

8.39 Where, despite the client's denial of any irregularity, the member still has reservations, but does not consider that he is justified in rejecting the denial outright, the member must give careful consideration as to whether he can continue to act on behalf of the client. If the member decides to continue to act, his file notes should set out clearly the client's explanation and/or assurances that there have been no such irregularities.

Consequences of ceasing to act

8.40 The member need not inform Customs of the termination of his instructions unless the member is at the time dealing with Customs on the client's behalf.

Suspicious circumstances

8.41 A member who acts in relation to VAT matters and has good grounds to suspect that a client has committed a material tax irregularity should discuss the position with the client to confirm or remove the suspicion. This applies whether or not the member has acted in relation to the actual matter concerned. If the suspicion is confirmed, the member would then have actual knowledge of the irregularity and these guidelines should be followed.

8.42 If the member finds no confirmation but remains suspicious such that the relationship of trust which must exist between the member and the client may have been impaired, the member should consider whether he should continue to act. If a new adviser then approaches the member, the member should consider his position in the light of paragraphs 8.45 and 8.46.

Request for information from a new adviser

8.43 On changes in a professional appointment, the initiative to request information lies with the new adviser who should obtain the proposed client's authorisation to communicate with the member. The member should not volunteer information to a new adviser in the absence of any such request by the new adviser or his former client.

8.44 When the member receives a request for information from a new adviser, he should:

(a) seek authorization from the former client to disclose all relevant information to the new adviser;
(b) on receipt of such authorization, disclose all the information needed and reasonably requested by the new adviser to enable him to decide whether to accept the work; and
(c) to the extent that he is authorised to do so, discuss freely with the new adviser all matters of which he should be aware.

8.45 If the former client refuses permission, the member cannot disclose information to the new adviser. However, the member can refer the latter to the fact that there is correspondence between the member and the former client without disclosing what it says. The new adviser will then ask the client for copies of that correspondence.

8.46 The new adviser will therefore become aware of the non-disclosure and possible offence. Since the former adviser would have resigned on the grounds of the client's unwillingness or refusal to disclose, it should follow logically that if the client continues to be unwilling or refuses to disclose, or refuses permission for the former adviser to communicate with the new adviser, the new adviser should decline to act. However, the new adviser is entitled to consider whether or not he comes to the same conclusion as the former adviser. See also Section 3.3 'Code of Ethics' Part B, paragraph 210 'Professional appointment' at http://www.icaew.co.uk/membershandbook/.

Accountants and Legal Services

This Handbook Section was issued on 1 September 2006, and reflects the legal position at that date. In this Section, the masculine gender imports the feminine gender throughout. This Section is not intended to be an exhaustive guide to all areas of law in which accountants might offer services. The following aims to be a guide to the principles that members (and in particular practitioners) need to consider before acting in respect of matters of law commonly encountered by accountants.

The Section applies to law in England and Wales. Members should be aware that the provision of legal services is subject to reform. Members in other jurisdictions will need to take into consideration local laws and regulations (including any local restrictions that may govern who can provide legal services) but might find the general principles, set out in this statement, useful.

1. Introduction

1.1 It is part of the ordinary function of the services a Chartered Accountant provides for their clients that advice is given on business issues. Such business advice may extend to advising the client on their legal rights and obligations. This is particularly true when advising, for example, on corporate reporting requirements, contractual requirements impacting on corporate accounting and other general obligations in relation to employees or trading partners, as well as advice on obligations under tax law. Members will need to identify those areas within their competence in respect of which they can responsibly give advice and those areas which require specialist input (for example from a lawyer). The following guidance sets out those areas which may, by legislation, require a lawyer to be engaged, and points out a member's ethical obligations when seeking to provide services which may extend to legal matters. Members are reminded to ensure that the work they undertake is both within their competence and covered by professional indemnity insurance.

1.2 Legal services fall into two categories: those that can be undertaken by non-lawyers (known as non-reserved legal services) and those which may only be provided by a specific group of authorised individuals due to legislative restrictions (known as reserved legal services).

1.3 Reserved legal services are:

- Appearing as an advocate before a court (see '7. Tax advice' below).
- The conduct of litigation.[1]

[1] Section 20, Solicitors Act 1974, prohibits anyone from acting as a solicitor, or as such issuing any writ or process, or commencing, prosecuting or defending any action, suit or other proceeding, in his own name or in the name of any other person, in any court of civil or criminal jurisdiction; or acting as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any justice or justices or any commissioners of Her Majesty's Revenue and Customs.

- Reserved instrument activities, that is work relating to various types of legal documents in respect of real and personal property and legal proceedings (see '5. Property, trusts and court documents' below).
- Probate activities (see '4. Probate/acting as an executor' below).
- Notarial activities.
- The administration of oaths.
- Providing advice or services relating to immigration.

1.4 Members should be aware that performing reserved legal services (without the specified qualifications) can constitute a criminal offence.

1.5 Non-reserved legal services include any other advice or assistance which includes the provision of advice on the resolution of legal disputes or which provides advice in relation to legal rights, duties or responsibilities.

1.6 This Section contains guidance on and summarises aspects of the law (in particular the Solicitors Act 1974) but it should not be treated as an exhaustive explanation of relevant provisions.

2. Fundamental principle of professional competence and due care[2]

2.1 Members have 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 and legislation. Members should also act diligently and in accordance with applicable technical and professional standards when providing professional services. Thus a member should not undertake work simply because he is not prohibited from doing so but rather he should only undertake work which he is both entitled to carry out and sufficiently competent so to do.

2.2 Members are reminded that some non-legal services are reserved to individuals or firms holding specific authority to act (such as insolvency work requiring a licence and authorised investment business activities). Members should always seek advice if unsure as to whether the work intended to be undertaken is restricted, regulated or licensed.

2.3 Where appropriate, a member should make clients, employers or other users of the professional services aware of limitations inherent in the services provided to avoid the misinterpretation of an expression of opinion as an assertion of fact. Furthermore members should be aware that holding oneself out as authorised, where one is not, can constitute a criminal offence (for example pretending or implying that one is a solicitor).

2.4 Members should be aware that if they provide advice that would normally be given by a solicitor they may increase the scope of the duty of care they owe to their clients Accordingly, if a member falls short in the service provided, and the client suffers loss, the courts may judge the conduct of that

[2] See section 3, 'Code of Ethics'.

member against the standard expected of a solicitor rather than that of an accountant.

2.5 Members may have an entitlement to undertake work, which is otherwise the preserve of lawyers, by virtue of other qualifications, for example members who are dual qualified as barristers or registered patent agents. Such activities may be subject to practising restrictions and members holding dual qualifications should ensure they hold the relevant authorities from the relevant professional body.

3. Formation of companies

3.1 Members are entitled to prepare memorandum and articles of association including clauses relating to accounts. Members should ensure that sufficient expert input to the drafting process has been obtained before such documents are settled.

4. Probate/acting as executor

4.1 Under the Solicitors Act 1974 ('the Act')[3] it is an offence for anyone without the specified qualifications to, directly or indirectly, draw or prepare any papers on which to 'found or oppose a grant of probate or letters of administration', unless he proves that the act was not done for or in expectation of any fee, gain or reward.

4.2 With regard to the expression 'papers on which to found or oppose a grant of probate' such papers consist of writs, notices of and cases on motion, pleadings and affidavits and their exhibits.

4.3 Members may be employed to undertake such work by someone entitled to provide these services under the Act. Therefore accountants employed by solicitors can, for reward, be involved in such work.

4.4 Work for no fee, gain or reward in a personal capacity would be permissible. Members should not seek to recover the cost of such work in other fees and are reminded that reward can be widely interpreted. A practising accountant who is appointed as executor with power to charge can, whether instructing a solicitor or applying in person, charge for the accountancy work entailed in the collection of material for the purposes of obtaining probate. However, members are reminded that they cannot charge, notwithstanding a charging clause, for actually drawing or preparing any of the documents necessary to the grant irrespective of whether they consider the appointment to be personal rather than professional.

[3] Section 23 as amended.

4.5 Where there is no power to charge, the executor must not charge. It is immaterial whether the work done falls within his professional competence, or not, or whether a solicitor is instructed.

5. Property, trusts and court documents

5.1 Under the Solicitors Act 1974, section 22 (as amended), it is an offence for a member, who is not also a solicitor, to:

- draft documents intended to transfer or create a charge in relation to the Land Registration Act 2002;
- make any application or lodge any document for registration under that Act at the Land Registry;
- draw or prepare any other instrument relating to real or personal estate including the contract, conveyance and mortgage in a land transaction; or
- draw or prepare instruments relating to legal proceedings

unless either he can prove the work was not undertaken for or in expectation of any fee, gain or reward or else that it was at the direction and under the supervision of a solicitor or other legally qualified employer or fellow employee who is authorised to perform such services. In the latter case, the instructing solicitor or legally qualified individual will be able to give reassurances. Members in any doubt should seek advice.

5.2 A member, who is not also a solicitor, cannot draft a trust deed for fee, gain, or reward. However, a member can draft a document which gives rise to a trust as part of a testamentary instrument, for example as part of a will or codicil to a will.[4] Members are reminded to undertake only work if they are sufficiently competent.

5.3 The Act also includes various other exceptions to the rule which allow non-solicitors to draft stock transfer forms (where there is no trust), powers of attorney and general agreements (to the extent that they are not specifically excluded). Details are not provided in this statement and members should refer to the Act and seek advice as appropriate.

6. Will writing

6.1 Will writing is not a reserved activity. It is therefore permissible for members to offer will writing services and to charge for them. However, members are reminded that drafting wills can be a complicated and specialised area and should therefore only be undertaken where the member has sufficient knowledge and competence. Members should also establish whether such work is covered by their professional indemnity insurance.

[4] Section 22 of the Solicitors Act 1974 excludes from the definition of 'instrument' a will or other testamentary instrument and an agreement not intended to be executed as a deed.

7. Tax advice

7.1 The provision of advice relating to compliance with taxation law is a normal part of the practice of accountancy for those with the necessary competence. Representing clients in relation to appeals to tax tribunals is permissible at the General/Special Commissioners and the VAT & Duties Tribunal. However, members should bear in mind that the processes involved in listing appeal hearings and the manner in which appeals are conducted could be outside of the member's area of competence (see also paragraph 2.3 above). Members should consider whether the client's best interests would be served by appointing someone who has appropriate legal training and the necessary experience of appearing before tax tribunals. Members in any doubt as to their position should seek advice. Furthermore, members should be aware that no costs in respect of anything done by a person, who does not hold the relevant qualification, acting as a solicitor are recoverable in any court proceedings[5] (see also 9.3 below).

8 Working with solicitors

8.1 Members are entitled to accept instructions from solicitors and to provide assistance to lawyers in relation to litigation or to provide advice on matters within their competence. Members should ensure that instructions received are clear and seek clarity if in any doubt as to their entitlement to undertake specific engagements.

8.2 Acting as a forensic accountant is a specialised area and members are reminded to provide services only in matters in which they have sufficient competence. Members may be interested in the Institute's Forensic Accounting Special Interest Group.

8.3 Under current Law Society rules members are prohibited from becoming partners in solicitors' practices.

8.4 Institute regulations allow solicitors to become principals in accountancy practices. However, such principals cannot, under current Law Society rules, offer legal services to clients, whether they are reserved or unreserved, in the capacity of a solicitor.

9. Direct access to the bar

9.1 Members are entitled to instruct Counsel direct, rather than via a solicitor, under the 'Licensed Access Scheme'. Further information on the operation of this scheme is available from the Bar Council's website (www.barcouncil.org.uk).

[5] Section 28, Solicitors Act 1974

9.2 In addition, the Tax Faculty has made special arrangements under which their members can obtain advice and advocacy direct from barristers with a recognised specialism in tax law, for a fixed fee, in certain cases. Further information is available on these schemes from the Tax Faculty web-site.

9.3 Prior to incurring costs for engagement under the Licensed Access Scheme, members are advised to consider their ability to recover such costs at law and seek legal advice where appropriate.[6]

10. General

10.1 Members offering services which require an element of or total independence from the client should consider the impact of providing other services to that client. For example, representing an audit client before a tax tribunal creates an advocacy threat which guidance for auditors, contained in the APB ethical standard 5, may prohibit. Members who are concerned as to matters of independence may seek advice from the Institute's Ethics Advisory Services (01908 248258).

[6] The Court of Appeal has ruled that a litigant whose tax case had been conducted by tax advisers (and not by solicitors) was not entitled to recover the costs incurred by those advisers in respect of work which would normally have been done by a solicitor who had been instructed to conduct the case. That means that fees for the cost of providing general assistance to counsel in the conduct of litigation are likely to be irrecoverable. However, it might be appropriate to recover at least part of a tax adviser's fees in such cases as a disbursement on the basis that their specialist services are those of an expert. See *Agassi* v *Robinson* [2005] EWCA Civ 1507.

MEMBERS' HANDBOOK

Section 8

Guidance Principally for Members in Business

Financial and Accounting Responsibilities of Directors

(Issued November 1996; updated November 2000)

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This statement (formerly statement 1.401) was originally issued in November 1996 by the Council of the Institute of Chartered Accountants in England and Wales concerning the main duties and responsibilities of a financial or

accounting nature owed by directors to their company and its shareholders and others. It sets out, where appropriate, what is considered to be best practice rather than what may be acceptable as the legal minimum required. It is hoped that the statement will be useful to members acting as directors and to members generally in conveying to directors the extent of these responsibilities. It is stressed, however, that the statement is not intended to cover other aspects, however important, of a director's position.

The statement is concerned with companies in England and Wales subject to the provisions of the Companies Act 1985 as amended prior to November 2000, and is an updated version of that originally issued in April 1970 and revised most recently in November 2000. The contents of the original statement had counsel's approval.

Members should note that the statement has not been updated to take account of more recent changes in law, regulation and practice. This statement will be revised once the Companies Bill has been passed by Parliament and an updated version will be available on the website at *www.icaew.co.ukl membershandbook*.

Scope and purpose

1 Directors of companies, whether public or private, have various responsibilities towards their companies, breach of which may not only be detrimental to those companies and their shareholders, but also may lead to civil and criminal liability of the individual director concerned. The aim of this statement is to provide guidance to members who are directors as to their responsibilities in relation to financial and accounting matters.

2 In discussing these responsibilities, companies which are subject to the Companies Act are considered, differentiating between public and private companies as appropriate. Special categories of companies such as those incorporated by Royal Charter, special Act or pursuant to other legislation, for example, building societies or friendly societies, are not dealt with in detail but the responsibilities discussed may usefully be borne in mind in the context of incorporated entities not within the Companies Act.

3 It is to be stressed that the aim is to guide directors and not to provide them with a detailed analysis of the law on the topic under discussion. Interpretation of the law often depends upon the particular circumstances and if directors are in difficulty over interpretation of their duties they should seek independent legal or other professional advice, or contact the Institute's Technical Enquiries helpline or Ethics helpline services. Reference to Section 7.1 'Professional conduct and disclosure in relation to defaults or unlawful acts' and to Code of Ethics 3.4 Part C 'Professional accountants in business' may also be useful.

Directors' status, powers and duties

Who is a director?

4 A director, by whatever title, is one who is in practice responsible for the management of a company's affairs. There is no comprehensive definition of a director in statute, the only guidance given being that the term 'director' includes any person occupying the position of director, by whatever name called (Companies Act 1985, section 741). For example, in some companies management may be entrusted to 'Governors' or 'Council Members'. They will be directors. Further, and separately, the word director in some statutory provisions includes a de facto director, that is a person who acts as a director without having been appointed: see *Re Lo-Line Ltd* [1988] 1 Ch. 477; *Re Richborough Furniture Ltd* [1996] BCC 155. A definition of 'director' for certain taxation purposes is given in the Income and Corporation Taxes Act 1988, section 168(8) and (9).

5 A company must have a minimum of two directors if public, and a minimum of one if private (Companies Act 1985, section 282). The method of appointment of directors will generally be governed by the company's articles of association. Normally the first directors are chosen by the subscribers of the company's memorandum and thereafter by the annual general meeting (Companies (Tables A–F) Regulations 1985, Table A, regulations 73 to 80).[1] At a general meeting of a public company, the appointment of each director must be voted on individually, unless a resolution that a single resolution will suffice has first been agreed by the meeting without opposition (Companies Act 1985, section 292(1)).

Shadow directors

6 Certain legislative provisions concerning directors extend to 'shadow directors'. A 'shadow director' is defined as 'a person in accordance with whose directions or instructions the directors of a company are accustomed to act' (Companies Act 1985, section 741, Company Directors Disqualification Act 1986, section 22 and Insolvency Act 1986, section 251), although it is provided that 'a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity'. Depending on the facts, it is possible for a bank or a 'company doctor' to be a shadow director: see, respectively, *Re M.C. Bacon Ltd* (1988) 4 BCC 425 and [1990] BCC 78, and *Re Tasbian Ltd (No. 3)* [1992] BCC 358. The 'company doctor' in the latter case was a chartered accountant. Further analysis of the term shadow director is to be found in *Re Hydrodan (Corby) Ltd* [1994] BCC 161.

[1] Throughout this statement where it is considered appropriate to refer to articles of association, reference is made to the relevant articles of the current version of Table A. It by no means follows that the articles of association of any particular company will be in the same form.

Non-executive directors
7 Other than as indicated at paragraph 23(b) below, 'executive' and 'non-executive' directors have the same responsibilities in law. An 'executive director' is merely a director who has separate responsibilities within the company, as an executive. The role of the non-executive director is discussed further in paragraphs 12 and 13 below.

Who cannot be a director?
8 Normally, the company's articles of association will deal with the appointment of the directors (Companies (Tables A–F) Regulations 1985, Table A, regulations 73 to 80), but there are certain statutory restrictions:

- a person cannot be a company's sole director and its secretary at the same time (Companies Act 1985, section 283);
- with certain exceptions, a person who has reached the age of 70 may not be appointed or continue to serve as a director of a public company or of its subsidiary (Companies Act 1985, section 293);
- an undischarged bankrupt may not, without leave of the court, act as a director (Company Directors Disqualification Act 1986, section 11);
- a person subject to a disqualification order from the court may not act as a director (Company Directors Disqualification Act 1986, section 1);
- a person cannot be a company's auditor, or its reporting accountant (see A47 below), and a director at the same time (Companies Act 1989, sections 27 and 28 and Companies Act 1985, section 249D).

Status of directors
9 A director is an officer of the company but is not necessarily an employee. The status of an employee is governed by the contract under which he serves the company. As indicated above, an executive director is both a director and an employee.

10 A director is entrusted with powers by the Articles of Association. He is in some sense an agent of his company and in some sense a trustee of its assets, but he is neither precisely one nor precisely the other.

11 A director owes to his company fiduciary duties of loyalty and good faith, analogous to those owed by a trustee, and duties of care and skill, differing fundamentally from those owed by a trustee (see paragraphs 18 to 23 below).

12 A director may have executive status or operate in a non-executive capacity. The non-executive director has a positive contribution to make in ensuring that the board fulfils its main objectives. He can exercise an impartial influence and bring to bear experience gained from other fields; executive directors would therefore be well advised to consider the appointment of such directors to serve alongside them. The Combined Code issued in 1998 and appended to the Listing Rules emphasises the importance of non-executive directors.

13 Members are well qualified for appointment as non-executive directors

because of the special skills and experience which they have to offer. It is important that, before accepting a board appointment, prospective non-executive directors should be aware that, other than as indicated in paragraph 23(b) below, their responsibilities in law are no different from those of directors holding executive status. They should also ensure that, in applying their skills, they do not act as professional advisers to the board, and should satisfy themselves that the company has access to and gets all the outside professional advice that it needs.

14 The Combined Code provides that a board of directors should establish an audit committee of at least 3 non-executive directors, the majority of whom should be independent non-executive directors.

Powers of directors

15 Directors derive their power from the articles of association and they should study carefully the articles of their particular company. Directors also should have regard to the powers given to the company, which are to be found in the memorandum of association, in particular the objects clause. If the company acts outside these powers the act may be ultra vires and void. The Companies Act 1989, introducing sections 35 to 35B, Companies Act 1985, made fundamental changes in this area intended to give broad relief from the ultra vires rule, while retaining it as a limit on the powers of the directors.

16 The company in general meeting may in certain circumstances exercise powers normally vested in directors, for example where there is deadlock on the board (*Barron v. Potter* [1914] 1 CH.895) or where there are no directors (*Alexander Ward & Co v. Samyang-Navigation Co* [1975] 1 W.L.R.673), but these circumstances will be rare.

17 Directors must exercise their powers collectively and the majority decision will prevail. The articles of association will govern how the directors are to proceed (Companies (Tables A–F) Regulations 1985, Table A, regulations 88 to 98) and will often authorise directors to delegate the exercise of their powers to a committee consisting of one or more directors, or to a managing, or other executive, director (Table A, regulation 72).

Duties of directors

18 The duties of directors are owed to the company as a whole. Their duties and responsibilities arise both out of common law and out of statute and can be classified as follows:

- fiduciary duty to act honestly and in good faith;
- duty to exercise skill and care; and
- statutory duty.

19 Directors and shadow directors should bear in mind that breach of these duties, inter alia, may result in them being judged unfit to be concerned in the management of a company (Company Directors Disqualification Act 1986, section 9) and lead to disqualification (Company Directors Disqualification Act 1986, sections 6 and 8).

Fiduciary duty

20 Four separate rules have emerged.

(a) Directors must act in good faith in what they believe to be the best interests of the company. Generally speaking, the interests of the company are to be equated with the interests of its members as a whole. As between different groups of shareholders, the directors must act fairly. Where there is a possibility that the company will not be able to meet its obligations to its creditors, the interests of the company will include those of its creditors. In any case, the directors must also have regard to the interest of the company's employees (see paragraph 25 below).
(b) Directors must exercise their powers only for the purposes for which they were granted. (*Howard Smith Ltd* v *Ampol Ltd* [1974] AC 821.)
(c) Directors must not place themselves in a position in which there is a conflict between their duties to the company and their personal interests or duties to others. Aspects of this rule include the following:
    (i) They must not, except as authorised by the articles of association, be interested in any contract with the company. If they are, the contract will be avoidable by the company and they will be accountable to the company for any profit. For relevant articles of association see Companies (Tables A–F) Regulations 1985, Table A, regulations 85 and 86. A relevant statutory provision (Companies Act 1985, section 317) is examined later (see paragraph 38 below).
    (ii) They must not, without the informed consent of the shareholders, use the company's assets, opportunities or information for their own profit. If they do, they will be accountable to the company for such profit.
(d) Directors must not fetter their discretion by agreeing, either with one another or with third parties, how to vote at future board meetings. However, that does not prevent them from committing the company to a contract which requires further action at subsequent board meetings.

Duty of skill and care

21 Responsibilities of directors include taking reasonable steps to ensure that the company's assets are properly collected, safeguarded, insured and invested, all as appropriate, and that all payments are supported by proper documentation. In no sense though, are these the only responsibilities of directors.

22 A director is required in the performance of his duties:

(a) to exhibit such a degree of skill as may reasonably be expected from a person with his knowledge and experience, and
(b) to take such care as an ordinary man might be expected to take on his own behalf.

In applying these standards no distinction is to be drawn between executive and non-executive directors. (*Dorchester Finance Co Ltd* v *Stebbing* [1989] BCLC 498, decided in 1977.)

23 The following guidelines can be laid down:

(a) Executive directors should devote their time and energies to company matters in accordance with the terms of their contract. In most cases this will require them to devote all their working time. If they are to act as non-executive directors of other companies, with the corresponding responsibilities which such appointments bring (see paragraphs 7, 12 and 13 above), they should ensure that the contract does not prevent that and allows them the necessary time to do so.
(b) Non-executive directors are not required to give continuous attention to company affairs. However, they should familiarise themselves with the company's affairs, including its financial position, and should attend meetings of the board, and of any committee of the board of which they are members, whenever they are reasonably able to do so. (*Re City Equitable Fire Insurance Co Ltd* [1925] Ch. 407.)
(c) If a director, whether executive or non-executive, has a particular skill, for example he is a qualified accountant, he should exhibit the skill or ability reasonably expected from a person of his experience in that profession. A chartered accountant may face conflict between his duties in that capacity and his commercial position within the company and should at all times have regard to Section 3 'Code of ethics'.
(d) Having regard to the articles of association and the demands of the business, directors may normally entrust many duties to other officials of the company. Where that is so then, in the absence of grounds for suspicion, the directors are justified in trusting those officials to perform those duties honestly. (*Re City Equitable Fire Insurance Co Ltd.*)

Statutory duty
24 Company law imposes a number of duties on directors, such as the preparation of annual accounts, and these are dealt with in the following sections, under subject title. However, two specific duties are examined in the following paragraphs, namely, duties towards employees and duties in relation to auditors.

Duty to employees
25 As an employer, the company must comply with the requirements of employment law. The directors, being charged with the management of the company's affairs, should have this in mind when dealing with employment matters. Consideration of the duties of employers is outside the scope of this text but company law specifically imposes a duty on directors to 'have regard in the performance of their functions [to] the interests of the company's employees in general, as well as the interests of its members' (Companies Act 1985, section 309).

Duties in relation to auditors
26 With the exception of companies exempt from audit (see A47 below), it is the duty of the company in general meeting to appoint its auditors for each financial year (Companies Act 1985, sections 384 and 388A). At any time before a company's first relevant general meeting, the directors may appoint the company's first auditors. Auditors of a private company are deemed to be reappointed each year if an elective resolution not to reappoint auditors annually is in force (Companies Act 1985, section 386).

27 Auditors have a statutory right of access, at all times, to the company's books, accounts and vouchers and to require from officers of the company such information as the auditors think necessary for the performance of their duties. Directors must therefore ensure that the auditors have adequate information for the performance of their duties. Further, the auditors of a holding company may require information and explanations from subsidiary companies and their auditors. Any officer who knowingly or recklessly makes a statement to the auditors in the course of their audit which is misleading, false or deceptive in a material particular is guilty of a criminal offence. (Companies Act 1985, section 389A.)

28 The statutory rights of auditors cannot be restricted in any way. (*Newton* v *Birmingham Small Arms Co* [1906] 2 Ch. 378.)

29 Directors may be asked by the company's auditors to make written representations to confirm information on which the auditors have placed reliance in forming an opinion. Such confirmations are sought as part of the auditors' duty to obtain audit evidence, typically when knowledge of the facts is confined to management or where the matter is principally one of judgement and opinion, and no independent corroborative evidence is available.

30 It is common practice for auditors to report to directors or management after an audit, drawing attention to any weakness in the company's systems that has come to the auditors' attention and making suggestions for possible improvements. While there are no specific legal requirements relating to management reports, directors should consider them with care, since such a report may contain information which should put the directors on enquiry as to inadequacies in systems or personnel. The auditors may request a reply to the points raised in the management report and, in certain cases, may request that the directors' discussion of the report be recorded in the board minutes.

31 There are also occasions when directors need auditors' reports on matters other than the annual accounts, for example when a private company is making a payment out of capital in respect of the purchase of its own shares (Companies Act 1985, section 173) or when a private company is giving financial assistance for the purpose of the acquisition of its own shares (Companies Act 1985, section 156).

Directors' relationship with company

32 A director stands in a fiduciary relationship to his company. He should not therefore place himself in a position where his personal interest or his duty to others could conflict with his duty to the company (see paragraph 20(c) above). If such a conflict does arise, the director will be personally liable to the company for any loss suffered by the company or will have to account for any benefit which has accrued to him. This rule is strictly applied by English courts. (*Regal (Hastings) Ltd* v *Gulliver* [1942] 1 All E.R. 378.)

33 Further, at common law, in the event of a director having an interest in a contract to which his company is a party, the company may in certain circumstances avoid the contract. If, however, the director discloses his interest in the contract to the board of directors and their approval of his involvement is given, the contract will cease to be voidable and the director may retain any profit he has received by virtue of his interest if so authorised by the articles.

34 The articles of association will usually contain provisions concerning contracts between the company and its directors (e.g. Companies (Tables A–F) Regulations 1985, Table A, regulations 85 and 86) and lay down the procedure to be followed. Directors should therefore study the particular provisions of their company's articles of association.

35 Where there is a contract of service with a director, apart from the rights and duties imposed by employment law, company law requires that the contract or a written memorandum of its terms must be kept by the company and be open to inspection by its members. A company must also have available for inspection its directors' contracts with its subsidiaries, or written memoranda (Companies Act 1985, section 318). Directors' contracts of service or for services must have prior approval in general meeting if they may continue for more than five years without being terminable by the company (Companies Act 1985, section 319). Both these requirements also extend to shadow directors.

36 Members carrying out executive functions would be well advised to ensure that they have a written contract with the company. A specimen form of a contract is available from the Institute of Directors. A contract should address duties, pay, holidays, sickness, pension, notice and dismissal procedures, confidentiality, proportion of time spent on company duties and competition. Best practice in the area of remuneration and contracts is addressed in the Combined Code and the Listing Rules of the Financial Services Authority (FSA).

37 Statute has increasingly intervened to lay down rules relating to various types of contracts. These can be divided into:

- contracts in which a director is interested;
- substantial property transactions;
- arrangements of a financial nature;
- directors' emoluments and compensation for loss of office;
- share transactions.

Contracts in which a director is interested

38 Where a director is directly or indirectly interested in a contract or a proposed contract with the company, he must declare his interest at a meeting of directors at the first opportunity (Companies Act 1985, section 317). His duty is to declare the nature of his interest, but a general notice that a director is a member of a specified company or firm and is to be regarded as interested

in any contract which may be made with that company or firm, or that he is to be regarded as being interested in any contract made with a specified person who is connected with him, is deemed by section 317(3) to be sufficient (for a definition of 'connected', see Companies Act 1985, section 346). This provision will not save a contract which is voidable under common law; therefore the contract should also be authorised by the articles of association or by the company in general meeting.

39 Where a director is materially interested in a contract, either directly or indirectly, disclosure must be made in the accounts, whether individual accounts or group accounts. This provision operates to catch not only contracts in the strict sense but also any transactions or arrangements. The Companies Act 1985, section 232 and Schedule 6 should be consulted for the details.

40 Certain contracts are excluded from the above. Examples are, transactions which are purely intra-group and contracts of service between a company and one if its directors. There are also financial limits below which disclosure need not be made in the accounts (Companies Act 1985, section 232 and Schedule 6). In relation to directors' contracts of service see paragraph 35 above.

41 If a contract is one in which a director is materially interested, the principal terms including the following particulars must be disclosed (Companies Act 1985, Schedule 6, paragraph 22):

(a) whether the contract was made or subsisted during the financial year in question;
(b) the name of the person for whom it was made and, if that person was connected with a director, the name of that director;
(c) the name of the director with the material interest and the nature of that interest; and
(d) the value of the contract.

Further requirements in relation to transactions with related parties including directors are contained in the Financial Reporting Standard 'Related party transactions' (FRS 8).

Substantial property transactions

42 An arrangement under which a director of a company or its holding company or a person connected with such a director acquires or disposes of a non-cash asset from or to a company is voidable at the instance of the company unless it is first approved by the company in general meeting. Non-cash assets of less than £2,000 are excluded. Subject to that, non-cash assets exceeding £100,000 or 10% of the amount of the company's net assets (whichever is the less) are included. The Companies Act 1985, sections 320 and 321 should be consulted for the details of this and other exclusions.

Arrangements of a financial nature

43 With certain exceptions, no company may make a loan to any of its directors or the directors of its holding company, or guarantee or provide

security for any loan made by any person to any such director (Companies Act 1985, section 330). The section includes 'anti-avoidance' provisions. In this paragraph and paragraphs 44 to 47 below director includes shadow director.

44 Various transactions are excepted, for example loans up to an aggregate amount of £5,000 and funds provided to meet a director's expenditure in relation to the company, within an aggregate limit of £20,000 in the case of a 'relevant company' (Companies Act 1985, sections 334, 336 to 340).

45 A 'relevant company' is, briefly, either a public company or a company within a group which includes a public company. In addition to the prohibition referred to at paragraph 43 above, a 'relevant company' may not make a loan or quasi-loan to, or enter into a credit transaction for, any such director or any person connected with any such director, or guarantee or provide security for any loan, quasi-loan or credit transaction made by any person to or for any such director or connected person (Companies Act 1985, sections 330 and 331). Again, there are 'anti-avoidance' provisions.

46 Various transactions are excepted (Companies Act 1985, sections 332 to 340). Examples of excepted transactions are:

(a) short-term quasi-loans up to an aggregate of £5,000;
(b) purely intra-group loans or quasi-loans;
(c) loans up to an aggregate of £5,000;
(d) credit transactions up to an aggregate of £10,000;
(e) the provision of funds to meet a director's expenditure in relation to the 'relevant company' up to an aggregate of £20,000;
(f) loans or quasi-loans made by a money-lending company in the ordinary course of its business and on commercial terms, but subject to an aggregate limit of £100,000 for a 'relevant company' unless the 'relevant company' is a company authorised under the Banking Act 1987.

47 Particulars of all loans, quasi-loans, credit transactions, guarantees and security of the kind described in section 330, Companies Act 1985, whether or not they are prohibited, must be declared in a company's accounts. The particulars required include the details of the transaction itself and the name of the person for whom it was made and any director with whom that person was connected (Companies Act 1985, section 232 and Schedule 6).

Directors' emoluments and compensation for loss of office

48 Company law does not establish a director's right to remuneration although section 311 of the Companies Act 1985 prohibits tax-free payments to directors. A director's right to remuneration comes from the company's articles and the director's service contract. Some large companies have established remuneration committees to act in setting directors' remuneration. The Listing Rules of the FSA now include (as an annex) best practice provisions addressing remuneration committees and also remuneration policy, service contracts and compensation. A director may be removed by the members under section 303, and possibly by the board if the articles permit. Particulars of any payment proposed to be made by way of

compensation for loss of office, or as consideration for or in connection with his retirement from office, must be disclosed to the members and approved by them (Companies Act 1985, section 312).

However, a payment of damages for breach of contract is not treated as compensation for this purpose (Companies Act 1985, section 316(3)). Schedule 6 to the Companies Act 1985 specifies the disclosure to be made in a company's accounts in respect of directors' remuneration and compensation for loss of office. In addition, UK listed companies are required by the Listing Rules to make additional disclosures (see A53 below).

Share transactions

49 There is nothing to prevent a director, his spouse or minor child entering into a transaction relating to his company's shares if:

(a) the transaction is duly disclosed by the director (Companies Act 1985, sections 324 and 328);
(b) the transaction does not amount to buying options to buy or sell listed shares in, or listed debentures of, his company or associated companies (Companies Act 1985, sections 323 and 327);
(c) the transaction does not contravene the insider dealing provisions of the Criminal Justice Act 1993; and
(d) for a company traded on the London Stock Exchange or traded on the Alternative Investment Market, the transaction does not contravene the conditions laid down in the Model Code for transactions in securities by directors, certain employees and persons connected with them published by the FSA as an Appendix to chapter 16 of its Listing Rules, or any more rigorous code adopted by the company. A code must be adopted by all such companies in a form no less exacting than that set down in the Model Code.

50 The articles of association of a company may specify a share qualification for directors. A director not already qualified is required to obtain his holding within 2 months of his appointment, or such shorter time as may be fixed by the articles (Companies Act 1985, section 291).

Disclosure

51 On appointment, a director must notify the company of any interest in its shares or debentures or those of its holding and subsidiary companies, and must also notify the company of any subsequent changes in those interests. The Companies Act 1985, section 324 and Schedule 13 should be consulted for the details to be disclosed and the time for notification.

52 The company is obliged to keep a register of the interests notified to it by its directors. The register is to be open for inspection by members and non-members and must usually be kept at the company's registered office (Companies Act 1985, Schedule 13, Part IV). In the case of a listed company, details of a director's interests must be passed to the Stock Exchange when notification is received from the director (Companies Act 1985, section 329).

Insider dealing

53 Under the Criminal Justice Act 1993, an offence is committed if an individual, who has information as an insider, deals in securities which are price-affected in relation to that information. A person who has information as an insider is also guilty of insider dealing if he:

(a) encourages another person to deal in securities which are price-affected in relation to that information, knowing or having reasonable cause to believe that the dealing would take place; or
(b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

Dealing is only caught if it is on a regulated market, or by a professional intermediary, or the person dealing relies upon on a professional intermediary.

54 A person has information as an insider if:

(a) it is, and he knows that it is, inside information;
(b) he has it, and knows that he has it, from an inside source.

A person has information from an inside source if:

(c) he has it through being a director, employee or shareholder of an issuer of securities, or through having access to the information by virtue of his employment, office or profession; or
(d) the direct or indirect source of the information is a person within (c).

Directors are therefore automatically regarded as insiders.

55 The Financial Services Act 1986, Part VII empowers the Secretary of State to appoint inspectors to investigate suspected insider dealing offences and provides sanctions against those who refuse to assist such inspectors.

Directors' responsibilities

Fraudulent trading

56 Directors, as persons involved in the carrying on of the company's business, will be responsible should the company trade with intent to defraud creditors if they are knowingly a party to such conduct, and may be liable to a fine, imprisonment or both (Companies Act 1985, section 458). Responsibility for fraudulent trading will arise whether or not the company is in the course of winding up (Companies Act 1985, section 458). In a winding up, however, the court may impose additional penalties on those guilty of fraudulent trading; it may order them to make such contributions to the company's assets as it thinks proper (Insolvency Act 1986, section 213), and may also make a disqualification order (Company Directors Disqualification Act 1986, section 4).

Wrongful trading

57 Where the company is in the course of winding up, the provisions of section 214 of the Insolvency Act 1986 regarding wrongful trading may also apply. An action for wrongful trading may be brought against a director (or a

former director) if at some time before the commencement of the winding up of the company that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into an insolvent liquidation. In section 214 of the Insolvency Act, director includes shadow director. Although an action cannot be commenced until a company is in insolvent liquidation, it is based on events and conclusions drawn prior to the commencement of the winding up. Directors should have regard to the implications of section 214, and ensure that the accounting records kept by the company are sufficient to enable them to draw their own conclusions about the position of the company. The penalty for wrongful trading is a personal one, and a director or former director may be directed to make such contribution to the company's assets as is felt proper by the court (Insolvency Act 1986, section 214), and is also liable to disqualification (Company Directors Disqualification Act 1986, section 10).

58 The only defence available to the director is that, from the time when he first knew or should have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he took every step that he should have taken towards minimising potential losses to creditors. In assessing the conduct of the director, the court must assume that the facts which the director ought to know or ascertain, the conclusions he ought to reach and the steps he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person with both (a) the general knowledge, skill and experience which the director actually has, and (b) the general knowledge, skill and experience which could reasonably be expected of a person carrying out the same functions as the director carries out in relation to the company (Insolvency Act 1986, section 214). The requirement to have regard to the functions carried out by the director in relation to the company involves having regard to the particular company and its business. However, even in the case of a small company, certain minimum standards are to be assumed to be attained. (*Re Produce Marketing Consortium Ltd* (1989) 5 BCC 569.) That decision also confirms that knowledge imputed to a director is not limited to facts which he ought to know but includes facts which he ought to ascertain.

59 Where there is a real possibility of insolvent liquidation the directors may wish to consult a licensed insolvency practitioner and/or to take legal advice. Further, it should be remembered that directors are required to maintain minutes of all proceedings at meetings (Companies Act 1985, section 382). In circumstances where insolvent liquidation is a real possibility, it is particularly important that a full record is kept of all decisions taken and the reasons for them. If the directors disagree on material questions the dissentients should ensure that their views are clearly recorded too, and they may need to consider taking independent legal advice about their position.

Responsibilities of directors of holding or subsidiary companies

60 A subsidiary company's directors should not act in accordance with the instructions of the directors of the holding company unless they are satisfied that the act required to be done is prudent and in the interests of the

subsidiary: to act blindly in accordance with instructions will expose those directors to liability in respect of breach of duty as well as wrongful trading. In addition, the directors of the holding company, and indeed the holding company itself, may be deemed to be shadow directors of the subsidiary and thus may also be liable to an action for wrongful trading if the subsidiary goes into insolvent liquidation. Again, it is important that all instructions given by holding company directors are fully minuted and that legal advice is sought where appropriate.

Theft Acts

61 Under the Theft Acts 1968 and 1978, criminal liability is imposed for obtaining property or pecuniary advantage by deception and for false accounting. Where such an offence is committed by a company with the consent or connivance of a director or other officer, that person will be liable as well as the company. Also, an offence will be committed by an officer of a company who, with the intention of deceiving members or creditors of the company, publishes, or concurs in publishing, any written statement or account which he knows is or may be misleading, false or deceptive in a material particular. (Theft Act 1968, sections 15 to 19 and Theft Act 1978.)

Accounting records

Contents

62 A company is required to keep accounting records, which are sufficient to show and explain the company's transactions (Companies Act 1985, section 221).[2] More specifically they must:

(a) disclose with reasonable accuracy, at any time, the financial position of the company at that time;
(b) enable the directors to ensure that the balance sheet and profit and loss account comply with the requirements of the Companies Act as to the form and content of company accounts and otherwise;
(c) contain entries from day-to-day of all sums of money received and expended by the company and the matters to which the sums relate; and
(d) contain a record of company assets and liabilities.

In the case of a company dealing in goods, the accounting records must also:

(e) contain statements of stock held by the company at the end of each financial year;
(f) contain statements of stocktakings from which any statement prepared under (e) above is made; and
(g) except when the sale is an ordinary retail sale, contain statements of all goods sold and purchased showing the goods and the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

[2] The technical release 'Accounting records' (FRAG 5/92) gives further guidance on the requirement to keep accounting records.

63 A parent company which has a subsidiary undertaking in relation to which the above does not apply, must take reasonable steps to ensure that the undertaking keeps such records as are needed to enable the parent company to produce group and individual accounts in accordance with the Companies Act 1985.

64 Failure to keep accounting records in accordance with the above requirements may render every officer of the company liable to a fine, imprisonment or both (Companies Act 1985, section 221).

65 In addition to the statutory requirement to keep proper accounting records, the directors have an overriding responsibility to ensure that they have adequate information to enable them to discharge their duty to manage the company's business.

66 The duty to manage the company's business will involve ensuring that adequate control is kept over its records and transactions, for example:

(a) cash;
(b) debtors and creditors;
(c) stock and work in progress;
(d) capital expenditure; and
(e) major contracts.

67 The nature and extent of the accounting and management information needed to exercise this control will depend upon the nature and extent of the company's business.

68 To restrict the possibility of actions for wrongful trading, directors will need constantly to be aware of the company's financial position and progress, and the accounting records should be sufficient to enable them to be provided with the information required for drawing conclusions on these matters. The directors should also be satisfied that proper systems to provide them with regular and prompt information are in place.

69 Directors must also be aware of a company's prospects. It may therefore be prudent to prepare a plan against which the subsequent performance of the business can be measured. Periodic management accounts assist in enabling the actual operating results and cash position to be compared with the plan. Once again, the need for, extent and frequency of the preparation of such accounts and the level of management to which they are presented will depend upon the size, scope and nature of the business. However, the directors' report on the financial statements must contain an indication of the likely future developments in the business of the company and its subsidiary undertakings (Companies Act 1985, Schedule 7), and a plan is likely to be helpful in this context.[3]

[3] Small companies are exempt from this disclosure requirement. See A46.

Retention of records

70 Accounting records are required to be kept at the company's registered office or at such other place as the directors think fit and such records must be open at all times to inspection by the company's officers. Special provisions apply where the records are kept outside Great Britain (Companies Act 1985, section 222).

71 Subject to any directions in respect of the disposal of records in a winding up, the records must be preserved in the case of a private company, for 3 years from the date on which they were made, and in the case of a public company, for 6 years from the date on which they were made (Companies Act 1985, section 222).

72 However, directors may feel that it is wise to keep documents for longer in view of the periods which the law allows for legal actions to be brought. The main minimum limitation periods are:

(a) in the case of simple (i.e. non-specialty) contracts, 6 years from the date on which the cause of action arose (Limitation Act 1980, section 5);
(b) in the case of specialty contracts (i.e. contracts under seal), 12 years from the date on which the cause of action arose (Limitation Act 1980, section 8);
(c) in cases of personal injury, 3 years from the date the cause of action became apparent (Limitation Act 1980, section 11);
(d) in cases of negligence (excluding personal injuries), the time limit for an action for latent damage will be the later of: (Limitation Act 1980, section 14A).
    (i) six years from the date on which the cause of action accrued; and
    (ii) where the facts are not known at the date the cause of action accrued, three years from the earliest date on which the plaintiff, or any person in whom the cause of action was vested before him, had the knowledge required to bring an action and a right to bring such action;
(e) an overriding time limit for actions for negligence (excluding personal injuries) of 15 years is imposed from the date on which there occurred any act or omission:
    (i) which is alleged to constitute negligence;
    (ii) to which the damage in respect of which damages are claimed is alleged to be attributable; (Limitation Act 1980, section 14B).

73 Also to be considered are the various tax and related requirements:

(a) For corporation tax purposes, a company must keep and preserve its records for a period of six years from the end of the period for which a tax return may be required. Records for these purposes includes records of all receipts and expenses and sales and purchases together with any supporting documents which includes accounts, books, deeds, contracts, vouchers and receipts. If a company fails to keep and preserve its records, it is liable to a fine of up to £3,000. The Inland Revenue has the power to require a company to produce documents relating to its tax liability. (Finance Act 1998, Schedule 18, paragraphs 21, 23 and 27.)

(b) For VAT purposes, every taxable person must keep records, including accounts and all related documents, for 6 years (Value Added Tax Act 1994, Schedule 11, paragraph 6(3) and section 58 and paragraph 31 of the Value Added Tax Regulations 1995 (SI 1995/2518)).
(c) For PAYE purposes, employers are under a duty to retain documents and records relating to the calculation or payment of their employees' emoluments for not less than 3 years after the end of the year to which they relate (Regulation 55 of the Income Tax (Employments) Regulations 1993 (SI 1993/744)).
(d) For Tax Credits purposes, employers must keep copies of all wage sheets, deduction working sheets and other documents and records relating to the calculation and payment of Tax Credits to employees. These should be retained for at least three years after the end of the tax year to which they relate.
(e) For National Minimum Wage purposes, employers must keep records to establish that an employee is receiving at least the National Minimum Wage. These records must be kept for a minimum period of three years from the end of the pay reference period (Regulation 38 of the National Minimum Wage Regulations 1999 (SI 1999/584).
(f) For Student Loan purposes, employers must keep a record of all wages sheets, deductions working sheets and other documents and records relating to the calculation and deduction of Student Loan repayments for a period of at least three years after the end of the tax year to which they relate.

74 While original records will naturally be the best evidence of the information they contain, copies will be admissible in court, so long as the copies can be regarded as trustworthy. A judge has power to admit copies in evidence and to specify the method of authentication (Civil Evidence Act 1968, section 6). Therefore, if original company documents are to be copied or microfilmed, directors should ascertain that the procedures adopted not only ensure that all records are copied but also that they are legible, stored safely and capable of being properly authenticated. If accounting records are in a non-legible form any software, etc. necessary to retrieve the information in a usable form should also be retained.

Directors' and officers' insurance

75 Generally a company cannot indemnify a director or any other officer against a liability arising from an act of negligence, default or breach of duty or breach of trust in relation to the company. However, this statutory rule does not prevent a company from buying and maintaining insurance against such a liability for its directors and other officers (Companies Act 1985, section 310). Obviously the existence of such insurance does not exonerate members from their obligations.

Annual Accounts

76 Directors have a number of responsibilities in relation to the preparation and filing of annual accounts and returns. A statement of the directors'

responsibilities should be included in the financial statements of all companies (see A18 below).

Shares and dividends

Share issues

77 Shares cannot be allotted by directors unless they are authorised to do so either by the company in general meeting or by the articles of association. The authorisation can normally only last for 5 years from the resolution or the date of incorporation if the authorisation is in the articles of association. It may, however, be renewed by the company in general meeting. Private companies can extend the authority for a fixed period beyond five years or for an infinite period by elective resolution. If it is proposed to make a new issue of shares for cash the existing shareholders will have certain statutory rights of pre-emption, but these rights can be excluded or disapplied (Companies Act 1985, sections 80, 80A, 89 to 96).

78 Payment for shares may be in money or money's worth but a public company may not accept in payment for its shares an undertaking by a person to do work or perform services for the company or any other person (Companies Act 1985, section 99). Where a public company accepts non-cash consideration, an expert must value the consideration and report on it (Companies Act 1985, sections 103 and 108). Further, there is a total prohibition in relation to all companies on the allotment of shares at a discount (Companies Act 1985, section 100). Shares of a public company may not be allotted except as paid up to at least one quarter of the nominal value and the whole of the premium (Companies Act 1985, section 101).

Financial assistance

79 The general rule is that it is not lawful for a company or its subsidiary to give financial assistance directly or indirectly for the purpose of the acquisition of shares in the company or for the purpose of reducing or discharging a liability incurred by any person for the purpose of such an acquisition. Reducing or discharging such a liability is defined to include wholly or partly restoring the person's financial position to what it was before the acquisition took place. Thus the prohibition is on the provision of financial assistance before, at the same time as, or after the acquisition takes place. Financial assistance is widely defined and includes such things as gifts, guarantees and loans (Companies Act 1985, sections 151 and 152).

80 There are exceptions to the general prohibition on providing financial assistance. For example: distributions by way of dividend lawfully made; financial assistance for the purposes of an employees' share scheme; loans to employees other than directors for the purpose of acquiring shares in the company; and money lending where this is in the ordinary course of business of the company (Companies Act 1985, sections 153 and 154). Any company, acting in good faith, may give financial assistance if its principal purpose is not to give financial assistance for the purpose of the acquisition of its own or a holding company's shares or to reduce or discharge such a liability, or if the

giving of the financial assistance for that purpose or the reduction or discharge of such liability is only an incidental part of a larger purpose of the company (Companies Act 1985, section 153). However, note the relatively restrictive interpretation of this provision by the House of Lords in *Brady* v *Brady* [1989] 1 A.C. 755.

81 In addition, a private company may give financial assistance if it does so out of distributable profits, or if it has net assets which are not thereby reduced. If a private company wishes to take advantage of this relaxation, it must adhere to the detailed procedures, including a statutory declaration by the directors, laid down by statute, which are designed to protect the interests of shareholders and creditors (Companies Act 1985, sections 155 to 158).

Acquisition of own shares

82 Companies may acquire their own shares provided that they meet certain conditions. The conditions relate to procedure and to the funds out of which the acquisition can be made. A company may acquire its own shares either by redemption or purchase and in both cases the authority to acquire must be contained in its articles of association (Companies Act 1985, sections 159 and 162).

83 When a company is considering acquiring its own shares, it must follow a detailed timetable of action which depends, in general, on whether or not the shares are to be acquired on The Stock Exchange (Companies Act 1985, sections 163 to 166). The aim of the rules is to ensure that the interests of shareholders and creditors are protected.

84 The funds available for the acquisition must be from distributable profits or the proceeds of a fresh issue of shares made for the purposes of the acquisition. Special rules designed to protect the company's capital relate to the acquisition of shares at a premium (Companies Act 1985, sections 160 and 162).

85 A private company may acquire its own shares out of capital if it is so authorised by its articles of association (Companies Act 1985, sections 171 to 177). The provisions are designed to ensure that publicity is given to the payment and that the interests of creditors and shareholders are protected.

86 When a company acquires its own shares it is obliged to cancel them. Cancellation does not, however, affect the amount of the company's authorised share capital, only that of its issued share capital (Companies Act 1985, sections 160 and 162).

87 A company may reduce its share capital in any way by special resolution and with the confirmation of the court (Companies Act 1985, sections 135 to 139).

Capital requirements

88 In order to register as a public company, a company must satisfy various

conditions, one of which is that its authorised share capital must be at least £50,000 (Companies Act 1985, sections 117 and 118). If the nominal value of the company's allotted share capital falls below that minimum amount, the company will have to re-register as private (Companies Act 1985, sections 139 and 146).

89 If a public company's net assets fall to half or less of the amount of its called-up share capital, its directors are under a duty to convene an extraordinary general meeting of the company. The directors have 28 days, from the earliest day on which the fact is known to one of their number, in which to convene the meeting and the meeting must take place within 56 days of that day (Companies Act 1985, section 142).

90 There are no provisions as to what action should be taken by the meeting; this will be for the directors to recommend. They should, however, bear in mind the provisions of the Insolvency Act 1986 and the Companies Act 1985 with regard to fraudulent and wrongful trading (Insolvency Act 1986, sections 213 and 214, Companies Act 1985, section 458) (see paragraphs 56 to 59 above).

Dividends
91 Under normal articles of association it is for the directors to recommend to the annual general meeting the amount of dividend, if any, to be paid and this amount will be shown in the directors' report. Interim dividends may, however, be resolved to be paid by the directors (Companies (Tables A–F) Regulations 1985, Table A, regulations 102 and 103). In paying a dividend, or making any other distribution, only profits available for the purpose may be used. The profits of a company so available are defined as 'its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or re-organisation of capital duly made'. In addition, public companies must ensure that a distribution does not cause their net assets to fall below their share capital plus undistributable reserves (Companies Act 1985, sections 263 and 264).

92 Section 281 of the Companies Act 1985 preserves existing enactments or rules of law restricting the making of distributions. Thus in recommending or paying a dividend directors must take note of their common law duties (see paragraph 20 above) which would generally preclude payment of an imprudent dividend as not being in the best interests of the company. There is also a long-standing rule that dividends may not be paid out of capital which would require directors to consider whether losses incurred since the 'relevant accounts' had eroded the distributable profits.

Public issues, takeovers and mergers

Public issues
93 When a company wishes to make a public issue of shares for the first time or to make a subsequent issue, there are several methods of doing so. The

purpose of this statement is, however, to examine the duties placed upon directors with regard to the issue of prospectuses and similar documents, rather than to provide guidance on the available methods of issue. It is important that professional advice be taken as soon as an issue is envisaged and to remember that it is a criminal offence for a private company to offer shares or debentures to the public or to allot shares with a view to their subsequent sale to the public; these provisions are applicable whether or not the issue is for cash (Companies Act 1985, section 81). It should also be noted that it is an offence to issue an investment advertisement in the UK (Financial Services Act 1986, section 57) unless it is issued by or has the approval of a person authorised under Chapter III of Part I of the Financial Services Act 1986 (see paragraph 103 below). The term 'investment advertisement' is broadly defined and includes any advertisement containing information calculated directly or indirectly to lead persons to enter into an investment transaction.

94 A prospectus must comply strictly with the requirements relating to content. In the case of shares for which an official listing is sought, the requirements of the Financial Services Act 1986, Part IV apply, together with additional requirements imposed by the FSA, as embodied in the Listing Rules. In the case of all other public issues, including those on the Alternative Investment Market, the requirements of the Public Offers of Securities Regulations 1995 will apply.

95 Both the Public Offers of Securities Regulations 1995 and the Listing Rules require a prospectus to contain a declaration by the directors of the issuer that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and does not omit anything likely to affect the import of such information.

96 There are stringent provisions relating to civil and criminal liability for mis-statements in a prospectus (Financial Services Act 1986, section 150 and the Public Offers of Securities Regulations 1995, regulation 14). The Misrepresentation Act 1967 provides civil remedies for misrepresentation and there is a common law right to sue for negligent mis-statements where there has been a breach of a duty of care to the plaintiff. In addition, any person who makes a false or misleading statement for the purpose of inducing another person to enter into an investment transaction or refrain from doing so, commits an offence (Financial Services Act 1986, section 47).

97 When applying for listing, certain information, known as 'listing particulars', is required by the FSA, and a general duty of disclosure is imposed by the Financial Services Act 1986, section 146.

98 Once listing has been granted, the company is required to prepare a half-yearly report which sets out specific information relating to the company's activities and profit and loss during the relevant 6-month period. The half-yearly report must be either sent to shareholders or advertised within 4 months of the end of the period to which it relates (the Listing Rules, paragraphs 12.46 and 12.48 to 12.50).

99 Companies that do not require a full listing may apply to have their securities traded on the Alternative Investment Market. Offers of securities to be admitted to the Alternative Investment Market are regulated by the Public Offers of Securities Regulations 1995. Chapter 16 of the rules of the London Stock Exchange (which should not be confused with the Listing Rules) sets out the requirements for annual reports and accounts and half-yearly reports for companies traded on the Alternative Investment Market.

Takeovers and mergers

100 Statute does not deal specifically with takeovers and mergers. It does, however, deal with the relationship between a successful bidder and dissenting minority shareholders and other aspects of a successful offer (Companies Act 1985, Part XIIIA).

101 Takeovers and mergers involving public companies and some classes of private company are governed by the City Code on Takeovers and Mergers. The City Code lays down rules of conduct which form a general guide to the principles and practices which should be followed. As an adjunct to the City Code, the Takeover Panel has issued rules governing substantial acquisitions of shares. Directors are expected to observe the spirit as well as the letter of these rules.

102 Chapter 10 of the Listing Rules contains specific provisions relating to acquisitions, disposals and takeovers and mergers. Different requirements are imposed in different situations, depending on the size of the transaction and the identity of the parties involved; in particular circumstances shareholder approval is a prerequisite.

Investment business

103 The conduct of investment businesses is regulated by the Financial Services Act 1986 which makes it an offence for any person to carry on, or purport to carry on, investment business unless he is authorised under Chapter III or exempt under Chapter IV of Part I of the Act (Financial Services Act 1986, section 3). Investment business is extremely widely defined (Financial Services Act 1986, Schedule 1). Any transaction entered into by an unauthorised person is unenforceable, and investors who suffer losses may be able to obtain restitution from him (Financial Services Act 1986, sections 5 and 6).

Taxation

104 The directors are responsible for the maintenance and retention of the company's tax records (see paragraph 73 above). Normally the tasks of computing tax and making the proper returns will be delegated. The fact that a task may be delegated will not relieve a director of all responsibility. If it is delegated, a director must ensure that the person concerned is suitable for the job and the director should reasonably monitor the work. In any event, a director may, depending on all the circumstances, rely on co-directors and the officers of the company but such reliance should not be totally unquestioning (*Re City Equitable Fire Insurance Co*).

105 The principal taxes with which directors will be concerned are the company's corporation tax, its liability to VAT if it is a registered trader and its employees' income tax under PAYE. Of particular importance in relation to directors and employees earning £8,500 per annum or more is the proper completion of form P11D as regards expenses payments and benefits in kind (Income Tax (Employments) Regulations 1993, regulation 46).

Department of Trade and Industry inspections

Inspection of a company's documents
106 The Secretary of State may at any time, if he thinks there is good reason to do so, order the production of a company's documents. This power includes the right to take copies of any such documents and require an explanation of them from any past or present officer or employee of the company. Any company or person who fails to comply with a requirement to produce documents or to provide an explanation of them is liable to criminal penalties (Companies Act 1985, section 447). Where there are reasonable grounds for believing that documents not produced are on any premises, the Secretary of State may obtain a warrant for the entry and search of those premises (Companies Act 1985, section 448).

Investigation of a company's affairs
107 The Secretary of State must appoint inspectors when ordered to do so by the court and may make such an appointment in a number of situations (Companies Act 1985, sections 431 and 432). The situations of particular relevance to directors are, if it appears that:

(a) the business of the company is being or has been conducted with the intent of defrauding its own creditors, the creditors of any other person or for another fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members;
(b) the company was formed for a fraudulent or unlawful purpose;
(c) the promoters or officers of the company have been guilty of fraud, misfeasance or other misconduct towards the company or its members; or
(d) the company's members have not been given all the information which they might reasonably expect.

108 It is the duty of all officers and agents of the company to give inspectors all assistance which they are reasonably able to give, including the production of documents of or relating to the company, and they may be examined on oath by the inspectors. An inspector may also require any person to produce documents relating to a matter relevant to the investigation. Any officer or agent of the company who fails to assist an inspector may be reported to the High Court and punished as if he had been in contempt of court (Companies Act 1985, sections 434 and 436).

Investigation into membership and share dealings
109 The Secretary of State has wide powers to investigate the ownership of a company whenever he thinks there is good reason to do so for the purpose of determining the true persons who are or have been financially interested in the

success or failure (real or apparent) of the company or able to control or materially influence its policy (Companies Act 1985, section 442).

110 If it appears to the Secretary of State that there have been breaches of the requirements concerning directors' share dealings or of the duty of directors to notify interests in shares and debentures (see paragraphs 49 and 51 above), he may investigate in order to establish whether or not such breaches have occurred (Companies Act 1985, section 446).

Insolvency and winding up

111 A director has a general duty to cooperate with the administrator, administrative receiver, liquidator or provisional liquidator of a company (Insolvency Act 1986, section 235).

Reports on directors

112 Any liquidator, administrator or administrative receiver appointed to an insolvent company has a duty to report to the Secretary of State on the conduct of all directors and particularly if he is of the opinion that the conduct of a past or present director or shadow director is such that it makes him unfit to be concerned in the management of a company. An application to the court for a disqualification order may follow (Company Directors Disqualification Act 1986, sections 6 to 9 and the Insolvent Companies (Reports on Conduct of Directors) No.2 Rules 1986). In making such an order, the court will have regard to the matters listed in Schedule 1 of the Company Directors Disqualification Act 1986.

113 If it appears that any past or present officer of the company has been guilty of any criminal offence in relation to the company, the liquidator is under a duty to report the matter, in the case of a winding up by the court, to the official receiver and, in the case of a voluntary winding up, to the Director of Public Prosecutions (Insolvency Act 1986, section 218). A director is under an obligation to provide any information required during an investigation under the above provision (Companies Act 1985, section 434 and Insolvency Act 1986, section 219).

Personal liability

114 Where a liquidator has been appointed, he will take over full control of the running of the company from the directors until it is struck off. However, directors should bear in mind that they can be held personally liable for a variety of circumstances occurring both prior to and after the commencement of winding up proceedings, including:

(a) trading with intent to defraud creditors;
(b) wrongful trading;
(c) misapplication of company money or property or other breach of duty or trust;
(d) concealing company property and falsifying its books;
(e) failing to keep proper accounting records;
(f) acting as a director or being involved in any way in the promotion,

formation or management of any company or business carried on under a prohibited name; or

(g) failing to provide a statement of affairs.

These are discussed in paragraphs 115 to 121 below.

Trading with intent to defraud creditors

115 In addition to the criminal offence created by the Companies Act 1985 section 458, in the case of a company in the course of winding up, the liquidator can apply to the court for a declaration that persons knowingly party to trading with intent to defraud creditors be liable to make a contribution to the company's assets (Insolvency Act 1986, section 213) (see paragraph 56 above).

Wrongful trading

116 Any past or present director (including a shadow director) of a company in insolvent liquidation who knew or ought to have known that there was no reasonable prospect of the company's avoiding insolvent liquidation may, in certain circumstances, be ordered by the court to contribute to the company's assets (Insolvency Act 1986, section 214) (see paragraphs 57 and 58 above).

Misapplication of company money or property or other breach of duty or trust

117 The liquidator, official receiver or any creditor or contributory may apply to the court for the examination of a director, officer or other person concerned in the management of the company, past or present, if it appears that he has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any duty in relation to the company. The court may then order a delinquent director to repay or restore company money or property or make other reparations (Insolvency Act 1986, section 212).

Concealing or disposing of company property and falsifying its books

118 When a company is in voluntary or compulsory liquidation, any past or present officer of the company (including a shadow director), commits an offence and will be liable to a fine, imprisonment or both, if he:

a. has committed fraud in anticipation of winding up or commits fraud during the winding up (Insolvency Act 1986, section 206);
b. has been involved in any transaction in fraud of creditors (Insolvency Act 1986, section 207);
c. commits misconduct in the course of winding up (Insolvency Act 1986, section 208);
d. falsifies company books (Insolvency Act 1986, section 209);
e. has made, or makes, material omissions from any statement relating to the company's affairs (Insolvency Act 1986, section 210); or
f. has made, or makes, false representations to creditors (Insolvency Act 1986, section 211).

Failing to keep proper accounting records and file accounts

119 The requirements to keep accounting records and to file accounts and

related statutory returns and the consequences of failure to meet those requirements are summarised in paragraphs 62 to 64 above and paragraphs A31 and A32 of the Appendix to this statement.

Carrying on a business under a prohibited name

120 Any person who was a director or shadow director during the period of 12 months prior to commencement of its insolvent liquidation is prohibited, for a period of 5 years from the date of that commencement, from being involved in any way with any company or business carried on with the same name as that by which the company in liquidation was known within that 12-month period, or one so similar as to suggest an association (Insolvency Act 1986, section 216). Contravention of this provision will lead to personal liability for the debts of the new company incurred during the period of involvement (Insolvency Act 1986, section 217) unless leave is granted by the Court under Chapter 22 of Part 4 of the Insolvency Rules 1986.

Failing to provide a statement of affairs

121 In a creditors' voluntary liquidation, the directors are required to prepare and verify by affidavit a statement as to the affairs of the company in a prescribed form, and to lay it before a meeting of creditors (Insolvency Act 1986, section 99). Where an administrative receiver is appointed to the company he may give notice requiring directors and others to provide him with a sworn statement of affairs within 21 days of that notice (Insolvency Act 1986, section 47). Similar provisions apply to directors of a company in compulsory liquidation (Insolvency Act 1986, section 131) or subject to an administration order (Insolvency Act 1986, section 22). Directors failing to comply with their obligations under the above sections will be liable to a fine and, for continued contravention, except of section 99, to a daily default fine.

APPENDIX

Annual Accounts

Preparing accounts

A1 A company's 'annual accounts' comprise the individual accounts (see A5 below) and any group accounts (see A19 below) (Companies Act 1985, section 262). If group accounts are prepared, special provisions apply to the profit and loss account of the parent company (see A20 below). To the annual accounts must also be attached the directors' report and the auditors' report (Companies Act 1985, sections 238, 239, 241 and 242). The preparation of the accounts is the responsibility of the directors and is governed by statute.

A2 Directors of companies, other than small or medium-sized companies (see A34 below), are required to disclose whether or not the accounts comply with applicable accounting standards and to give details of any non-compliance (Companies Act 1985, section 246 and Schedule 4, paragraph 36A). In normal cases, a departure from accounting standards will result in the issue of a qualified or adverse opinion on the view given by the financial statements. The Accounting Standards Board (ASB) is a body authorised to issue accounting standards for the purposes of section 256 of the Act. The ASB adopted as accounting standards the Statements of Standard Accounting Practice (SSAPs) extant at 1 August 1990. The SSAPs were developed by the Accounting Standards Committee, now replaced by the ASB, and issued by the accountancy bodies.

A3 The form of the annual accounts will vary according to the type of company. Most companies will be required to prepare their accounts in accordance with Schedule 4 to the Companies Act 1985 (Companies Act 1985, section 226). Paragraphs A5 to A20 below deal with the requirements which are of general application and A21 to A25 below refer to the two exceptions, banking and insurance companies.

A4 The annual accounts must be approved by the board and the balance sheet must be signed on their behalf by a director (Companies Act 1985, section 233). The wording of the section requires a director to sign, that is, a director in office at the time of signing, rather than those in office during the year to which the accounts relate.

Schedule 4 accounts

A5 The 'individual accounts' required by law are a profit and loss account and a balance sheet (Companies Act 1985, section 226). Unless a company is a 'special category' company (see A21 to A23 below), its accounts must comply with Schedule 4, which lays down rules as to the form and content of the balance sheet and profit and loss account as well as in respect of additional information which has been provided by way of notes to the accounts. These rules are subject to the overriding requirement that the balance sheet must give a true and fair view of the state of affairs of the

company at its year end and the profit and loss account must give a true and fair view of the company's profit or loss for the financial year. This may mean supplying information in addition to that specified or, in special circumstances, even departing from the requirements. However, the need to make such departures will be rare, and while it is for the directors to decide, the question should be discussed with the company's auditors. In the event of any departure, particulars of it, the reasons for it and its effect must be given in a note to the accounts (Companies Act 1985, section 226). The UITF (see A27 below) has issued Abstract 7 on true and fair override disclosures which interprets this requirement.

A6 The responsibility for preparing the annual accounts rests upon the company's directors (Companies Act 1985, section 226 and Schedule 4). As Schedule 4 is crucial to their preparation, it should be studied by each of the directors. The following text does not attempt to analyse the Schedule in detail (a number of helpful guides and model accounts are available) but highlights some of the key points.

A7 In preparing the annual accounts, statute requires that certain accounting principles must be used (Companies Act 1985, Schedule 4, paragraphs 10 to 14), namely that:

(a) the company is presumed to be carrying on business as a going concern;
(b) accounting policies are applied consistently within the same accounts as from one financial year to the next;
(c) the amount of any item is determined on a prudent basis – and in particular only realised profits at the balance sheet date may be included in the profit and loss account, and all liabilities and losses which have arisen or are likely to arise in respect of the financial year to which the accounts relate or a previous financial year shall be taken into account, including those which only become apparent between the balance sheet date and the date on which it is signed on behalf of the board of directors;
(d) the accruals concept is used; and
(e) the amount of each asset or liability to be included in any balance sheet is determined separately.

A8 If, however, the directors believe that there are special reasons for departing from any of these principles, they may do so, as long as particulars of the departure, the reasons for it and its effects are set out in the notes to the accounts (Companies Act 1985, Schedule 4, paragraph 15). It is advisable that any proposed departure should be discussed with the company's auditors.

A9 In the presentation of the balance sheet, Schedule 4 provides a choice between two formats, one 'vertical', the other 'horizontal'. The basic disclosure requirements are similar for each format.

A10 In the case of the profit and loss account, there are four formats from which to choose. Formats 1 and 3 are perhaps more suitable to a trading company: Format 1 presents the information in a vertical form, Format 3 in a horizontal manner; while Formats 2 and 4 may be more suitable for a

manufacturing company, again with the option between vertical (Format 2) and horizontal (Format 4) presentations.

A11 The balance sheet and profit and loss account formats are set out in the Schedule with the individual items being allocated letters, Roman numerals and Arabic numerals. These designations do not have to be reproduced but are important because the order of those headings distinguished by letters and Roman numerals must be adhered to while the items under the sub-headings, which have been allocated Arabic numerals, can be re-arranged or adapted in certain circumstances (Companies Act 1985, Schedule 4, paragraphs 1 and 3).

A12 Once the choice of formats has been made for the balance sheet and profit and loss account, the same formats must be used for subsequent financial years, unless, in the directors' opinion, there are special reasons for a change, in which case particulars of the change and the reasons for it must be disclosed in a note to the accounts (Companies Act 1985, Schedule 4, paragraph 2).

A13 Any item shown in the formats may be given in greater detail than required by the format adopted and must be so if it is necessary to present a true and fair view. If no amount is shown against any heading or sub-heading for the financial year in question and the preceding financial year that particular item need not be shown. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure or vice versa (Companies Act 1985, Schedule 4, paragraphs 3 to 5).

A14 Corresponding amounts for the financial year immediately preceding the financial year in question must be shown. Where the former are not comparable with the latter, they must be adjusted and the adjustments explained in a note to the accounts (Companies Act 1985, Schedule 4, paragraph 4).

A15 Paragraphs 8 and 35 to 58 of Schedule 4 also prescribe information which must be shown in notes to the balance sheet and to the profit and loss account.

A16 Schedule 4, Part II, Section B sets out the rules which must be followed when preparing historical cost accounts and covers matters such as the treatment of fixed and current assets. Schedule 4, Part II, Section C provides alternative accounting rules, which permit intangible and tangible fixed assets, fixed asset investments and current asset investments and stock to be shown at current cost or market value.

Directors' report

A17 The directors' report attached to the annual accounts must include the following information, where applicable (Companies Act 1985, section 234, Schedule 7):

(a) a fair review of the development of the business of the company and its subsidiaries;
(b) recommended dividend;
(c) names of directors;
(d) principal activities of the company and its subsidiaries and any significant changes therein;
(e) directors' share and debenture interests in the company or subsidiary and holding companies;
(f) directors' interests in share and debenture options granted by the company or subsidiary and holding companies and whether any such options were exercised;
(g) important post balance sheet events of the company and its subsidiaries;
(h) likely future developments in the business of the company and of its subsidiaries;
(i) research and development in the business of the company and of its subsidiaries;
(j) in cases where the number of employees exceeds 250, specified information relating to the company's policy relating to the employment of disabled persons and employee involvement;
(k) particulars of acquisition of own shares;
(l) political or charitable contributions;
(m) substantial differences between market values and balance sheet values of land;
(n) indication of the existence of branches outside the UK; and
(o) in cases where the company was a public company or a subsidiary of a public company not qualifying as small or medium-sized on the grounds of size, the company's policy on the payment of creditors and its creditors' days calculated as specified.

Statement of directors' responsibilities

A18 The Combined Code (see A52 below) requires that the directors of listed companies should explain their responsibility for preparing the accounts next to a report by the auditors about their reporting responsibilities. An example wording is given in the Statement of Auditing Standards *Auditors' Reports on Financial Statements* (SAS 600, Appendix 3) as follows:

'Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements, the directors are required to

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act 1985. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.'

Auditors' professional standards require that, if the financial statements or accompanying information (for example, the directors' report) do not include an adequate description of directors' relevant responsibilities, the auditors' report should include a description of those responsibilities.

Group accounts

A19 Where a company has subsidiary undertakings there is an obligation to prepare group accounts in the form of consolidated accounts (Companies Act 1985, section 227). Small and medium-sized groups are exempt from this requirement (see A44 below). A parent company which is not listed on an EC stock exchange, which is a subsidiary of an EC parent and which complies with certain other conditions is not required to produce group accounts (Companies Act 1985, section 228). A subsidiary undertaking may be excluded from the group accounts in certain circumstances, for example, where the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay (Companies Act 1985, section 229).

A20 Unless a group is a 'special category' group (see A21 to A25 below), its accounts must comply with Schedule 4A. They must also comply with Schedule 4 as far as practicable (Companies Act 1985, Schedule 4A, paragraph 1). These requirements are subject to the overriding requirement that the group accounts give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns the members of the parent company (Companies Act 1985, section 227). The parent company must draw up an individual profit and loss account and the board of directors must approve it, but it need not be published or filed provided that the notes to the company's individual balance sheet show the company's profit or loss for the financial year and that it is disclosed in the company's accounts that this exemption applies (Companies Act 1985, section 230).

Banking and insurance companies and groups

A21 A banking company must produce its individual accounts in accordance with section 255 and Schedule 9 to the Companies Act 1985. The parent of a banking group shall prepare group accounts in accordance with section 255A of and Schedule 9 to the Companies Act 1985.

A22 An insurance company must produce its individual accounts in accordance with section 255 and Schedule 9A to the Companies Act 1985. The parent of an insurance group shall prepare group accounts in accordance with section 255A of and Schedule 9A to the Companies Act 1985.

A23 A banking company is a company authorised under the Banking Act 1987; an insurance company means the same as in the Insurance Companies Act 1982 (Companies Act 1985, section 744).

A24 A group is a banking group if the parent company is a banking company; or:

(a) the parent company's principal subsidiary undertakings are wholly or mainly credit institutions; and
(b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings (Companies Act 1985, section 255A).

A25 A group is an insurance group if the parent company is an insurance company; or:

(a) the parent company's principal subsidiary undertakings are wholly or mainly insurance companies, and
(b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings (Companies Act 1985, section 255A).

Financial Reporting Standards

A26 Accounting standards are issued by the Accounting Standards Board (see A2 above) as Financial Reporting Standards.

A27 The ASB has set up an Urgent Issues Task Force (UITF) to assist in areas where an accounting standard or Companies Act provision exists, but where unsatisfactory or conflicting interpretations have developed or seem likely to develop. The UITF will seek to obtain a consensus on the issue in question. While a consensus will not have the status of an accounting standard, the Financial Reporting Review Panel may take it into account in considering whether financial statements require revision (see A59 below).

Accounting reference periods

A28 The period covered by the annual accounts (the financial year) must coincide with the company's accounting reference period or be within 7 days of that period (Companies Act 1985, section 223). The accounting reference period would normally cover 12 months and the company's accounting reference date will be the date on which, in each successive year, its accounting reference period ends.

A29 A company's first accounting reference date will normally be the last day of the month in which the anniversary of incorporation falls (Companies Act 1985, section 224).

A30 A company may alter its accounting reference period if certain conditions are met (Companies Act 1985, section 225):

(a) Adequate notice must be given. A notice to alter a previous accounting

reference period may not be given if the period allowed for laying and delivering accounts and reports in relation to that period has already expired.

(b) If the result of the change is that the accounting period is extended, it may not be extended beyond 18 months unless the company is in administration.

(c) A company may only extend its accounting reference period a second or subsequent time if it complies with the following rules:
  (i) there must be a gap of at least 5 years between the end of the earlier extended accounting period and the subsequent notice; or
  (ii) the change is to bring the company's accounting reference period into line with that of a parent or subsidiary undertaking, though reference should be made to the precise terms of section 225(4)(a); or
  (iii) the company is in administration; or
  (iv) the consent of the Secretary of State for Trade and Industry has been given.

Laying and delivering accounts

A31 The directors are responsible for laying the company's annual accounts, the directors' report and the auditors' report before the company in general meeting (Companies Act 1985, section 241). This will normally take place at the company's annual general meeting. The annual accounts, the directors' report and the auditors' report must also be delivered to the Registrar of Companies (Companies Act 1985, section 242). A disqualification order may be made against any person persistently in default in filing accounts and other statutory returns, or convicted in consequence of a failure to comply with legislation requiring the filing of accounts and other returns (Company Directors Disqualification Act 1986, sections 3 and 5).

A32 The annual accounts, directors' report and auditors' report must be laid and delivered within a specified time. If a company is private, the period is 10 months after the end of the accounting reference period, and 7 months in the case of a public company. These periods may be extended by 3 months where a company carries on business, or has interests, overseas and notifies the Registrar of Companies accordingly. Where the annual accounts are for the company's first accounting reference period after incorporation and that period exceeds 12 months, the time allowed for laying and delivering the accounts and reports is reduced by the excess over 12 months, but not to less than 3 months. (Companies Act 1985, section 244). Failure to deliver the accounts and reports within the required period renders the company liable to an automatic penalty (Companies Act 1985, section 242A). In addition every person who was a director immediately before the end of that period is liable to a fine and, for continued contravention, to a daily default fine (Companies Act 1985, section 242).

A33 At least 21 days before the general meeting at which the accounts are laid, a copy of the annual accounts and reports must be sent to the company's members and debenture holders. There are exceptions to this requirement: for

example, a company need not send copies to those members and debenture holders who are not entitled to receive notices of general meetings and of whose address the company is unaware (Companies Act 1985, section 238). Members who are not entitled to receive copies of the accounts and reports as of right may, however, require a copy from the company (Companies Act 1985, section 239).

Abbreviated accounts

A34 The standard accounts delivered to the Registrar of Companies are full accounts. Small and medium-sized companies may, however, deliver abbreviated accounts. In addition, a small company is entitled to certain exemptions from the disclosure requirements of the Companies Act 1985 in respect of the annual accounts and directors' report sent to members and certain small companies are exempt from the statutory requirement for audit (see A46 to A49 below). The exemptions applicable to small and medium-sized companies are not available to public companies, banking and insurance companies and authorised persons under the Financial Services Act 1986, regardless of their size; nor to any company which is a member of a group which includes any such company. (Companies Act 1985, sections 246 and 247A.)

A35 A company qualifies as a small company in a financial year if for that year it satisfies two or more of the following conditions:

(a) its turnover does not exceed £2,800,000;
(b) its balance sheet total does not exceed £1,400,000;
(c) the average number of its employees does not exceed 50.
(Companies Act 1985, section 247.)

A36 A company qualifies as a medium-sized company in a financial year if for that year two or more of the following conditions are satisfied:

(a) its turnover does not exceed £11,200,000;
(b) its balance sheet total does not exceed £5,600,000;
(c) the average number of its employees does not exceed 250.
(Companies Act 1985, section 247.)

A37 A company qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met:

(a) in the case of the company's first financial year, in that year; and
(b) in the case of any subsequent financial year, in that year and the preceding year.

A38 A company shall be treated as qualifying as small or medium-sized in relation to a financial year:

(a) if it so qualified in relation to the previous financial year under paragraph A.37 above or was treated as so qualifying under (b) below; or
(b) if it was treated as so qualifying in relation to the previous year by virtue of (a) above and the qualifying conditions are met in the year in question.

A39 A small company delivering abbreviated accounts delivers only an abbreviated balance sheet and notes to the accounts. A medium-sized company delivering abbreviated accounts delivers a full balance sheet, an abbreviated profit and loss account and a full director's report. The Companies Act 1985, sections 256 and 246A, and Schedule 8A should be consulted for details of the permissible modifications.

A40 Where abbreviated accounts are delivered, the balance sheet must contain a statement in a prominent position that the accounts are prepared in accordance with the special provisions of Part VII of the Act relating to small or medium-sized companies.

A41 A parent company can only qualify as a small company in relation to a financial year if the group headed by it qualifies as a small group, and can only qualify as a medium-sized company in a financial year if the group qualifies as a medium-sized group (Companies Act 1985, section 247A).

A42 A small group is one which satisfies two or more of the following conditions:

(a) its turnover does not exceed £2,800,000 net or £3,360,000 gross;
(b) its balance sheet total does not exceed £1,400,000 net or £1,680,000 gross;
(c) the average number of its employees does not exceed 50.
(Companies Act 1985, section 249.)

A43 A medium-sized group is a group that satisfies two or more of the following conditions:

(a) its turnover does not exceed £11,200,000 net or £13,440,000 gross;
(b) its balance sheet total does not exceed £5,600,000 net or £6,720,000 gross;
(c) the average number of its employees does not exceed 250.
(Companies Act 1985, section 249.)

A44 In the group figures, 'net' means with set-offs and other adjustments required by Schedule 4A (i.e. elimination of intra-group turnover, balances and profit or losses), and 'gross' means without those set offs and other adjustments. A group may satisfy the relevant requirements on the basis of either the net or the gross figure. Abbreviated group accounts do not have to be prepared as small or medium-sized groups are exempt from the requirement to prepare group accounts (Companies Act 1985, sections 248 and 249).

A45 Where abbreviated accounts may be delivered to the Registrar of Companies this does not affect the obligation to prepare and have audited a full set of accounts for the shareholders, although as noted below small companies are entitled to omit certain disclosures and, in some instances, may exempt themselves from a statutory audit.

Small companies

A46 As noted above, there are a number of exemptions in relation to the statutory disclosures required in the annual accounts of small companies.

These exemptions provide for a reduction in the disclosures required in the directors' report, a simplified balance sheet with a number of sub-headings being aggregated, and a reduced level of disclosure in the notes to the accounts. These exemptions were introduced in 1992 by the Companies Act 1985 (Accounts of Small and Medium-Sized Enterprises and Publication of Accounts in ECUs) Regulations 1992 (SI 1992/2452) and amended by both the Companies Act 1985 (Miscellaneous Accounting Amendments) Regulations (SI 1996/189) and the Companies Act 1985 (Accounts of Small and Medium-sized Companies and Minor Accounting Amendments) Regulations (SI 1997/220). These Regulations amended section 246 of and Schedule 8 to, the Act and inserted Schedule 8A to the Act. Unless the company is dormant, the accounts, directors' report and the accounts delivered to the registrar must contain a statement in a prominent position above the signatures that they are prepared in accordance with the special provisions of Part VII of the Act relating to small companies (Companies Act 1985, section 246(7) and (8)). Schedules 8 and 8A should be consulted for further details.

A47 The Companies Act 1985 (Audit Exemption) Regulations 1994 (SI 1994/1935) inserted sections 249A to 249E of the Companies Act 1985. These sections were later modified by the Companies Act 1985 (Audit Exemption) Regulations 2000 which abolish completely the statutory audit requirements for eligible companies with a turnover below £1 million[4] in respect of companies with financial years ending on or after 26 July 2000. (For financial years ending before that date, the Companies Act 1985 (Audit Exemption) Regulations 1997 had abolished completely the statutory audit requirement for eligible companies with a turnover below £350,000.) Charitable companies with gross income between £90,000 and £250,000 require a reporting accountants' report to be exempt from the statutory audit requirement and those with gross income in excess of £250,000 must be audited. A company which is exempt from the statutory audit requirement is also exempt from the obligation to appoint auditors (Companies Act 1985, section 388A).

A48 Besides the turnover criteria referred to above, there are other qualifying conditions to be met which include:

- the company must be able to qualify as a small company for the purposes of filing abbreviated accounts, although full accounts may still be filed (see A35, A37 and A38 above);
- the balance sheet total (total assets) must not be more than £1,400,000; and
- no objection to exemption is made by members holding in total more than 10% of the issued share capital or 10% of a particular class of share by depositing a written notice at the company's registered office not later than one month before the year end.

A company is not eligible for this relaxation of the audit requirement if it is:

[4] If the company is a charity, 'gross income' is substituted for 'turnover' and the upper limit is reduced from £1 million to £90,000.

- a public company;
- a banking or insurance company;
- enrolled in the list maintained by the Insurance Brokers Registration Council under s 4 of the Insurance Brokers (Registration) Act 1977;
- an authorised person or an appointed representative under the Financial Services Act 1986;
- a special register body as defined in s 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 or an employers' association as defined in s 122 of that Act.

A parent company or a subsidiary undertaking for any part of a financial year cannot take advantage of audit exemption unless either it was a subsidiary undertaking that was dormant for any period in the financial year in which it was a subsidiary undertaking or it is a member of a group meeting the conditions set out below throughout that period:

- the group qualifies as a small group, in relation to the financial year in which the period falls and is not, and was not at any time within that year, an ineligible group within the meaning of section 248(2);
- the group's aggregate turnover is not more than £1 million net (or £1.2 million gross); and
- the group's aggregate balance sheet total for that year is not more than £1.4 million net (or £1.68 million gross). (Companies Act 1985, sections 249A and 249B.)

A49 If a company takes advantage of the audit exemptions the directors are required to make a statement on the balance sheet:

- that the company was entitled to the exemption;
- that holders of 10% or more of the issued share capital (or any class) have not deposited a notice in the allotted period requiring an audit;
- acknowledging their responsibility for maintaining proper accounting records and preparing true and fair accounts that comply with the Act.

This statement is required whether or not the company is required to obtain a statutory reporting accountants' report (i.e. whether or not it is a charitable company with gross income between £90,000 and £250,000).

A50 If applicable, a copy of the reporting accountants' report on the annual accounts will need to be filed with the abbreviated accounts (Companies Act 1985, section 249E). The Statement of Standards for Reporting Accountants *Audit Exemption Reports* issued by the Auditing Practices Board suggests that to avoid confusion, the directors may choose to add to the copy of the report that is to be delivered some explanatory words such as follows:

'The following reproduces the text of the report prepared for the purposes of section 249A(2) Companies Act 1985 in respect of the company's annual accounts, from which the abbreviated accounts (set out on pages . . . to . . .) have been prepared.'

Stock Exchange requirements

A51 Listed companies and those traded on the Alternative Investment Market are under additional obligations to the Financial Services Authority and the London Stock Exchange respectively as regards their accounts. Directors of such companies should therefore be familiar with the obligations set out in the Listing Rules and those for companies traded on the Alternative Investment Market set out in chapter 16 of the rules of the London Stock Exchange (these rules should not be confused with the Listing Rules).

The Combined Code

A52 Disclosures on corporate governance in annual reports and accounts originally prompted in 1992 by the recommendations of the Committee on the Financial Aspects of Corporate Governance (the Cadbury Committee) now fall under the Combined Code ('the Code') published by the Stock Exchange in June 1998. The Code, which is appended to the Listing Rules, is derived from the final report of the Committee on Corporate Governance (the Hampel Committee) and from the Cadbury and Greenbury Reports. The Turnbull Report issued in September 1999 provides additional guidance on the Principle and Provisions relating to internal control within the Code. The Greenbury Report, issued in July 1995, built on the requirements of Cadbury in respect of directors' emoluments. The report's requirements were incorporated into the Combined Code issued in 1998. The Code specifically requires directors to report on the company's system of internal control, and that the business is a going concern. Additional guidance for directors on 'Going concern and financial reporting' and 'Internal control' (Turnbull) was issued in November 1994 and September 1999 respectively. Both documents are available from the Technical Department of the Institute. Reference should be made to the Listing Rules and the Turnbull Report for details of the relevant disclosure requirements. Transitional arrangements for disclosures on internal control apply for periods ended on or after 23 December 1999, and details are contained in a letter to all listed companies from the London Stock Exchange dated 27 September 1999. Both the Turnbull Report and the letter from the Stock Exchange can be found on the ICAEW website.

Summary financial statements

A53 A company listed on the London Stock Exchange may send copies of a summary financial statement to shareholders, debenture holders and other persons entitled to receive notice of general meetings ('entitled persons') if it has duly consulted the entitled person and provided the company's Articles or debenture trust deed or governing instrument do not require the full accounts and reports to be sent to entitled persons (Companies Act 1985, section 251). The Companies (Summary Financial Statements) Regulations 1995 (SI 1995/2092) should be referred to on the method of due consultation and the details of the form and content of the summary financial statement. An entitled person retains the right to request a copy of the full accounts and report even if he has given his consent to receive a copy of the summary financial statement.

Publication of accounts

A54 Where a company publishes any balance sheet or profit and loss account in respect of a financial year otherwise than as part of the statutory accounts, it must state that they are not statutory accounts. The statement must also say whether statutory accounts have been delivered to the Registrar of Companies, whether the auditors have reported on the statutory accounts and, if so, whether their report was qualified or contained any reservations about accounting records or obtaining necessary information. Statutory accounts comprise individual or group accounts, or abbreviated accounts. (Companies Act 1985, section 240 and Companies Act 1985, Schedule 8, paragraph 26).

Dormant companies

A55 A company is dormant during any period in which it has no significant accounting transaction, not including certain fees to the registrar as set out in section 249AA of the Companies Act 1985. A dormant company is exempt from the requirements of Part VII of the Companies Act 1985 relating to the audit of accounts and from the obligation to appoint auditors if:

(a) the company has been dormant since its formation; or
(b) the company has been dormant since the end of the previous financial year and meets all of the following criteria:
- it qualifies as small in relation to that year (see A35, A37 and A38 above) or would do save for being a member of an ineligible group (see A41 above);
- it is not required to prepare group accounts for that year;
- it is not a banking or insurance company or an authorised person for the purposes of the Financial Services Act 1986;
- no objection to exemption is made by members holding in total more than 10 per cent of the issued share capital or 10 per cent of a particular class of share by depositing a written notice at the company's registered office not later than one month before the year end.

If a dormant company takes advantage of the audit exemptions, the directors are required to make a statement on the balance sheet as set out in A49. The Companies Act 1985, sections 249AA and 388A should be consulted for further details. In addition, where the directors of a dormant company that has acted as an agent for any person during the financial year take advantage of audit exemption, they must state that fact in the notes to the accounts and in the abbreviated accounts if such accounts are produced. For year ends prior to 26 July 2000, a special resolution was required before a company that had not been dormant since its incorporation could take advantage of audit exemption. The Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000 removed this requirement by repealing section 250.

Annual return

A56 All companies are required to deliver to the Registrar of Companies an annual return signed by a director or the company secretary (Companies Act 1985, section 363). The return must be delivered within 28 days of the

'return date' and must contain the prescribed information. A company's 'return date' is the anniversary of the company's incorporation or, if the company's last return was made up to a different date, the anniversary of that date. Failure to observe these provisions will make the company liable to fines, and every director and secretary too unless he shows that he took all reasonable steps to avoid the offence.

Defective accounts

A57 Annual accounts or the directors' report are defective if they do not comply with the requirements of the Companies Act 1985. In summary, the Act provides for:

- the directors voluntarily to revise the annual accounts or directors' report (section 245);
- the Secretary of State to request directors either to revise the annual accounts or directors' report or to explain the apparent non-compliance (section 245A); and
- the Secretary of State, or another person authorised for the purpose, to apply for a court order requiring directors to revise the annual accounts or directors' report (section 245B and 245C).

A58 The Companies (Revision of Defective Accounts and Report) Regulations 1990 (SI 1990/2570 as amended by SI 1996/315) set out how the provisions of the Act are to be applied to annual accounts or directors' reports that are being voluntarily revised because the originals do not comply with statutory requirements. The Act and the Regulations should be consulted on the detailed procedures relating to the revision of the annual accounts or directors' report.

A59 The Financial Reporting Review Panel has been authorised under section 245B(1) of the Companies Act 1985 for the purposes of challenging accounts as defective in the courts. If the court finds that the accounts are defective, it may order that all or part of the costs of the application and any reasonable expenses incurred in connection with or in consequence of the preparation of revised accounts shall be borne by the directors who were party to the approval of the defective accounts. For this purpose, every director of the company at the time the accounts were approved is taken to have been a party to their approval unless he can show that he took all reasonable steps to prevent them being approved.

MEMBERS' HANDBOOK

Section 9

Guidance Principally for Members in Practice

Managing the Professional Liability of Accountants

This Section has not been updated, save for cross references, since it was first issued in October 1994. In particular, the Section does not incorporate guidance on the implications of the introduction of corporate practice, limited liability partnerships and other developments. Members in practice may find the information provided by the Audit and Assurance Faculty, Technical Strategy Directorate technical releases and the Members Services Directorate helpful. Please refer to the Institute's website to access helpsheets, technical releases and other publications and to access details of the various helplines which may assist members seeking information in this area.

Text of Section

(Issued October 1994)

The Council of the Institute of Chartered Accountants in England and Wales draws the attention of members to the principal areas in which actions for negligence may be brought against them by clients or third parties and suggests steps which they may properly be able to take to reduce the risk of such claims. A discussion of the legal considerations applicable to this subject is included in the Appendix. The expressions of law included in this Section and its Appendix have the approval of Counsel and are stated as at 1 September 1994. This Section does not deal with the position under the law of the Republic of Ireland.

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Introduction

1 In recent years, the incidence of cases where substantial sums have been claimed as damages for negligence against members has increased significantly. Members therefore need to ensure that they manage the extent of their liability when providing professional services. Sometimes claims arise not because of any inherent defect in the professional work performed but due to misunderstandings regarding the scope of or responsibility for that work or parts of it. The purpose of this Section is therefore in part to advise members on ways to reduce misunderstandings as to the extent of the liability which they assume in giving advice or expressing an opinion. It is also aimed at assisting them to identify the nature of their liability in respect of professional work and to give guidance on managing this liability.

2 This Section is concerned only with the potential liability for professional negligence which a member may incur because of an alleged act or default by him or by one of his employees or associates which results in financial loss to a person 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, breaches of statutory duty or breaches of contract other than the negligent performance of its terms).

3 Negligence in this Section therefore means some act or omission which occurs because the member concerned has failed to exercise that degree of reasonable skill and care which is reasonably to be expected in circumstances of the case. The defences to an action for negligence are set out in paragraph 1 of the Appendix.

4 There is a contractual relationship between a member and his client even if the contract is not in writing or is evidenced in writing but has not been signed. The standard of work required by that contract is set out in paragraphs 2 to 3 of the Appendix.

5 A member may and usually will be liable to his client for negligence not only in contract, but also in tort. He will also be liable for negligence to a third party to whom he owed a duty of care and who has suffered loss as a result of the member's negligence. Liability to third parties is dealt with in more detail in paragraphs 4 to 9 of the Appendix.

Summary

6 It is not possible either in law or in fact to guard against every circumstance in which a member may risk incurring liability for professional negligence. However, as discussed below, there are a number of opportunities available to members to assist them in managing their liability.

7 This Section recommends that members should consider adopting the following measures:

(a) defining the scope and responsibilities of the engagement:
- (i) **to the client**, by agreeing an engagement letter:
  - identifying the terms of the engagement (paragraph 8);
  - **defining the specific tasks to be undertaken** and excluding those which are not to be undertaken (paragraphs 9 and 10);
  - **defining the responsibilities to be undertaken by the client** and making clear the extent to which reliance is to be placed on the client or others (paragraphs 11 and 12);
  - **specifying any limitations on the work to be undertaken** (paragraphs 13 to 16);
- (ii) **to third parties**, by setting out in any report the precise work which has been carried out and, as far as possible, the work which has not been carried out, together with any limitations on the work undertaken (paragraph 17);

(b) defining the purpose of reports:
- (i) by stating in the engagement letter the purpose for which the report has been prepared and that the client may not use it for any other purpose (paragraph 18);
- (ii) by stating in any report which may be seen by a third party the purpose for which it has been prepared and that it may not be relied on for any other purpose (paragraphs 19 and 20);

(c) restricting the use of the member's name:
- (i) by advising clients in the engagement letter of the need to obtain permission to use his name (paragraph 21);
- (ii) by withholding permission to use his name, where appropriate (paragraph 22);

(d) identifying the authorised recipients of reports:
- (i) by a term in the engagement letter; and
- (ii) by a caveat in the report (paragraphs 23 to 25);

(e) limiting or excluding liability:
- (i) **to the client**, by a term in the engagement letter (paragraphs 26 to 28);
- (ii) **to a third party**, by a disclaimer in a report (paragraphs 29 to 34);

(f) obtaining an indemnity:
- (i) **from the client or a third party** (paragraphs 25 to 37);
- (ii) in connection with **receiverships, trust and secretarial work** (paragraphs 38 and 39);

(g) defining scope of professional competence to include only matters within the member's competence (paragraphs 40 and 41).

The references above identify the paragraphs where each of these measures is discussed in more detail in the rest of this Section.

Defining the scope and responsibilities of the engagement

(i) To the client

Identifying the terms of the engagement

8 A member should ensure that at the time he agrees to perform work for the client the terms of his contract with his client are properly defined, preferably in writing. An engagement letter should be prepared setting out in sufficient

detail the terms of the engagement, including the actual services to be performed, the sources and nature of any information to be provided and to whom any report should be addressed and supplied. These terms should be accepted by the client by signing and returning a copy of the engagement letter, so as to minimise the risk of disputes regarding the duties assumed (see Auditing Guideline 406 Engagement Letters). Where the appointment has been the result of a successful proposal, unless a separate contract is agreed with the client, the proposal will normally form the contract. Where a separate engagement letter is prepared, it should address any specific services or other contractual terms which have been agreed at the proposal stage. If the client subsequently asks a member to carry out any additional duties, or in any other way varies the terms of the engagement, the changes should also be defined and recorded in writing and ideally agreed in writing by the member and the client.

Defining the specific tasks to be undertaken

9 Besides reporting under the Companies Act 1985 and other statutes, members are called upon to give opinion and advice, including financial advice, in connection with many other matters, for example, profit forecasts, investigation or consultancy assignments, the preparation or audit of the accounts of sole traders, partnerships and charities and in the field of taxation. A member undertaking to carry out work of this nature should make clear in his engagement letter the extent of the responsibilities he agrees to undertake, making particular reference to any information supplied to him and relied on as a basis for his work for which the client or others are responsible, setting out in detail the specific tasks to be undertaken and, where appropriate, excluding those tasks which are not to be undertaken.

10 Members should guard against the situation where they undertake to perform particular tasks, then during the course of the work find that it is impossible or unnecessary to perform all the tasks originally envisaged but do not agree with the client the change in scope of the work. If a member undertakes to perform tasks which he does not then perform, he is prima facie in breach of contract and to be safe from action he should obtain a variation of the contract (evidenced in writing) to cover the change in scope before submitting his report. In any event, he should make clear in his report precisely which tasks have and have not been undertaken. Members should also ensure that the description of work done in any bills sent to clients is consistent with the terms of the engagement letter, any subsequent variation of those terms and the report.

Defining the responsibilities to be undertaken by the client

11 A member should make it clear in the engagement letter where responsibilities are to be undertaken by the client. For example, a report or statement may be prepared by a member for issue by his client in circumstances where he can reasonably expect his client to check it for completeness or accuracy before any use is made of it involving third parties. Accounts prepared for the purpose of being submitted to Inland Revenue for the assessment of taxation will frequently, although not invariably, fall within this category. Ensuring that

the client is aware of his responsibilities should help protect the member from any subsequent dispute with the client. In such cases, the effective cause of any loss suffered by a third party may be reliance on a document which is the responsibility of the person in whose name it was issued and who ought to have checked the document, and not that of the member. If, however, the member considers that some matter particularly requires to be checked by the client he should make this clear.

12 Where the client has directly or indirectly determined the nature and scope of the member's procedures to be undertaken in an engagement ('agreed-upon procedures') the engagement letter should include a statement that the client is assuming responsibility for the sufficiency of the procedures for the client's purposes. If, however, the member considers that the procedures are or are likely to be insufficient for the client's purposes he should make this clear.

Specifying any limitations on the work to be undertaken

13 It may be appropriate to alert the client to limitations in or restrictions on the scope of the member's work in response to risks unique to a particular engagement. The most common example is where the client requires an immediate answer to a complicated problem. In such circumstances, the member should consider whether it is appropriate to accept the engagement at the outset, having regard to the value to the client of the work which it is feasible for the member to carry out. If he does accept the engagement, the member would be well advised to make it clear in the engagement letter (or at the very least in his report) that the problem is a complex one, that he has been given a very limited time in which to study it, that further time is required in order to consider it in depth and that the opinion or advice tendered might well be revised if further time were available to him. He should also state that the client is responsible for the accuracy and completeness of the information supplied to him. In all cases, the client should be warned about the risk of acting on the advice tendered before further investigation has been carried out.

14 Members are sometimes requested to report on information relating not to past (and therefore ascertainable) results but to the expected results of future periods. The specific considerations which arise in one such type of engagement are set out in Handbook Section 3.908 Accountants' Reports on Profit Forecasts[1] to which reference should be made. However, there are many other forms of forecast and projection on which a member may be requested to report. Because of the significant risk inherent in reporting on any prospective financial information, members should exercise particular care in determining whether, and under what terms, to accept such engagements. The following are examples of warnings which might be included in engagement letters and reports as appropriate:

[1]3.908 is still available from the Institute Library. Members are also referred to SIR 3000 Investment Reporting Standards Applicable to Public Reporting Engagements on Profit Forecasts (available from www.frc.org.uk/apb/publications).

- *'The directors of [the company] are solely responsible for the projections and assumptions on which they are based. The projections have been prepared to illustrate the consequences of [the project]. Since the projections relate to an extended future period, actual results could be different because events and circumstances frequently do not occur as expected and do not therefore match the assumptions. The financial projections are by their nature not susceptible to audit and we are unable to express an opinion as to the possibility that they will be achieved.'*
- *'The directors of [the company] are solely responsible for the projections and assumptions on which they are based. The financial projections cover an extended future period for a company with no previous history and are based upon the directors' assumptions and estimates. The financial projections do not constitute a forecast and they could be materially affected by changes in economic and other circumstances. For this reason the actual [profits and cash flows] may vary considerably from those shown. The financial projections are by their nature not susceptible to audit and we are unable to express an opinion as to the possibility that they will be achieved.'*

15 The following are further examples of situations in which it may be appropriate to alert the client to limitations or restrictions:

- an engagement undertaken in connection with a financing transaction where additional procedures may be necessary to enable the report user to reach a conclusion;
- a report based on the performance of agreed-upon procedures, not governed by professional standards, particularly when the parties who are acknowledging their responsibility for the sufficiency of the procedures for the purposes may not fully comprehend the limited nature of the work which they have requested;
- a report on financial information in which there are significant uncertainties likely to be resolved in the near future, where it would be appropriate to point out that the member has no responsibility to update his report for subsequent events;
- an engagement to report on a presentation prepared in conformity with the requirements of a contractual agreement or a regulatory provision, particularly when there are indications that third parties may have differing views, where it would be appropriate to state that no representations are being provided with regard to legal interpretation.

16 Properly worded statements and warnings of the kind considered in paragraphs 13 to 15 above are not exclusions or restrictions of liability but definitions of the work undertaken and statements as to the extent to which the client can rely on it. They will help to protect a member from a claim from his client for negligence based on the contention that his enquiries should have been different from or more extensive than those so defined, provided that they are clearly included in the report and, preferably, incorporated into the contract with the client by being set out in the engagement letter or otherwise agreed (ideally in writing) by the client.

(ii) To third parties

17 Definitions of scope of work or limitations on that work contained in an engagement letter will not be binding on any third party unless he has sight of the engagement letter or they are repeated in any report. Members should therefore ensure that they set out in their report, possibly by including a copy of the engagement letter, details of the precise work which has been carried out and its purpose and, as far as possible, the work which has not been carried out, together with any limitations on the work undertaken. If such matters are clearly set out in any report to which a third party might have access, members will be afforded some protection in relation to both the existence and scope of any duty of care owed to third parties who claim to have relied on the report. Where members are aware that specific third parties will have access to their report, they should also consider requesting them to sign a copy of the engagement letter to indicate acceptance of the terms, or if this is not possible, members should make it clear that they make no representations to third parties as to the sufficiency of the procedures adopted.

Defining the purpose of reports

18 A member may be able to restrict his liability to his client by clearly restricting the use to which a report may be put. The restriction should be included in the engagement letter and should identify the purpose for which the work has been requested. Appropriate wording and its efficacy will depend on the circumstances of each individual case. The following is an example only:

'This report/statement is intended solely for the information and use of the boards and managements of X Limited and Y Limited in connection with the proposed sale of Y Limited to A Limited and should not be used for any other purpose.'

19 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, this fact should be made clear so as to prevent persons from placing undue reliance upon it. This may be done by making clear that the document is only a draft. But if it is in fact intended to be relied upon or no final form is prepared, little or no protection will be afforded. A member should introduce a term into the engagement letter and restate it in the transmittal letter to make it clear to the client that he cannot rely on any document so marked, except with the member's consent. Similarly, where oral reports are likely to be provided prior to delivery of a final written report, members should make it clear in the engagement letter, and at the time of making the oral report, that such an oral report does not constitute the member's definitive opinions and conclusions and that these will be contained solely in the final written report.

20 Where financial material is prepared or reported on by a member for some particular purpose, he will not usually be liable to an unknown third

party who relies on it for any other purpose for which it is or may be unsuitable. In such cases, the member would usually have no reason to suppose that such reliance would be placed on it. Members would, however, be well-advised to make the position clear by including in the document itself a statement of the purpose for which it was prepared, along the lines of the example in paragraph 18 above.

Restricting the use of the member's name

21 Members should endeavour to ensure that no statement or document issued by their client (other than financial statements in the form in which they have been reported on by the member as auditor) bears their name unless their prior consent has been obtained. It is often desirable for a suitable paragraph to be included in the engagement letter.

22 There have been occasions when the use of a member's name in a document has been interpreted by third parties as implying that the company is financially sound and well conducted, whether or not this is in fact the case. If a member is aware that a client proposes to cite his name, he should inform the client that his permission must first be obtained and in appropriate cases he should withhold his permission.

Identifying the authorised recipients of reports

23 The implications of the duty of care to third parties are important for all members who produce or report upon financial statements or provide reports of various other kinds (whether for a fee or not) which may be relied upon by persons other than those for whom they were originally prepared. Some documents which by their nature will inevitably be subject to general publication, such as auditors' reports under the Companies Act or accountants' reports for listing particulars, may not by their nature be capable of being restricted as to their use. In other cases, however, it may be possible for a member to reduce his exposure to the claims of third parties by restricting the use of the report to named parties.

24 It can be made a term of the contract between the member and his client that the member's report or statement may not be circulated to third parties without the member's prior written consent. If the client does then circulate the document he will be in breach of contract.

25 In addition the reports or statements may appropriately contain a rubric specifically restricting circulation. For example:

'Confidential: This report (statement) has been prepared for private use of X (the client) only.'

When a document is so marked but is nevertheless relied upon by a third party without the member's consent, the member may still be able to resist liability on the basis that the third party was not a person whom he should have had in mind as being likely to suffer loss by his negligence. Such a rubric should be introduced only where the circumstances warrant it, as it would tend to be

devalued by indiscriminate use in connection with documents which by their nature must receive a wide distribution.

Limiting or excluding liability

To the client

26 In many cases a member may limit or occasionally even exclude liability in an agreement with a client, but this will not always be effective at law. The main relevant considerations are set out in paragraph 10 of the Appendix. Appropriate reference should be made in the letter of engagement to any exclusion or restriction of liability. If an attempt is made to introduce such a provision into an existing relationship or in relation to a transaction for which instructions have already been accepted, difficulty may be experienced in showing that there is any legal consideration for the client's agreement to submit to the exemption provisions.

27 It may be appropriate to exclude liability in respect of certain claims by the client where there has been fraud, misrepresentation or wilful default by the client or his employees. Such clauses cannot be introduced into engagement letters for certain statutory audits because of the general prohibition on any limitation of liability in section 310 of the Companies Act 1985 and corresponding provisions in some other statutes. They may, however, be appropriate in non-statutory audit work and in non-audit engagements. Members who are undertaking statutory audits which are not governed by the Companies Act 1985 should familiarise themselves with the relevant statutory provisions relating to liability to determine whether it is possible to limit their liability in respect of their audit work.

28 For all engagements (other than certain statutory audits as discussed above) and particularly where the risks associated with a non-audit engagement are unacceptably high, members should consider the need to negotiate a limitation on the monetary amount of any liability to the client. The purpose of such a clause in the engagement letter is to put a monetary limit on the claims that a client can make for breach of the member's contractual obligations or negligence. The efficacy of such a clause will depend on whether it is reasonable, judged under the Unfair Contract Terms Act 1977, and some of the factors to be taken into account are set out in paragraph 10(b) of the Appendix. Members should ensure that any monetary limitation imposed under a contract is reasonable in amount and is agreed by means of a genuine negotiation with the client.

To a third party

29 An exclusion or restriction of a member's liability will not generally avail him against a third party unless that third party has notice of the exclusion or restriction. Section 2 of the Unfair Contract Terms Act 1977 also applies to an attempt to exclude or restrict liability to third parties for negligence. It provides that where a person is in principle liable for negligence, he cannot exclude or restrict that liability by reference to a notice, except where the notice is reasonable. The same criteria for reasonableness are applied as to

contractual terms (see paragraph 10(b) of the Appendix), but reasonableness is considered as at the time when the liability arose rather than at the time when the contract was made. In each case it will be for the member to prove the reasonableness of the term or notice on which he relies.

30 Where a member prepares for his client a report which may be seen and relied upon by third parties, the member is recommended to include in his report a definition of the responsibilities of the engagement, the purpose of the report and its use, as discussed in paragraph 18 above. In addition to this, the member may also wish to exclude liability to third parties. Where the identity of the third party is known to the member, in view of the terms of the Unfair Contract Terms Act 1977, the member may well be in a better position if he were to enter into a separate contract with the third party, incorporating a fully negotiated exclusion or limitation of liability clause. This will prevent the third party from arguing that he had no notice of the exclusions. Alternatively, and in any case, the member may include a disclaimer in the report to the effect that he accepts no responsibility to any third party who may rely on the report. This may be effective, subject to the reasonableness test in the Unfair Contract Terms Act 1977. Care should be taken to ensure that third parties do not attempt to establish contractual status, for example by paying the member an unsolicited nominal sum, without obtaining the member's express agreement to the change in status or becoming party to the engagement letter.

31 Where a member (necessarily with the authority of his client) passes information directly to a third party, the effectiveness of a disclaimer will depend upon the nature of the information. For example, when giving references or making statements regarding creditworthiness or similar matters, the normal commercial practice is to state that, although the reference or statement is given or made in good faith, the member accepts no financial responsibility for the opinion he expresses. Such disclaimers will generally be effective where the references or statements can be seen not to be information of a kind which is expected to be the result of extensive knowledge or research by the member.

32 Sometimes, however, a member may supply directly to a third party information of a kind which the third party (unless he is told otherwise) can reasonably expect to be the result of research of a more or less extensive kind. An example of this is provided in technical release AUDIT 4/00 (TECH 29/00)[2] *Firms' reports and duties to lenders in connection with loans and other facilities to clients and related convenants*, which incorporates proposed disclaimers of responsibility for auditors who receive requests from banks to rely on audited accounts, either before or after the audit opinion has been signed.

33 Where potential acquirers, investors or lenders request access to the working papers of the auditors of a target company or group, the auditors should only permit access on the basis of an agreed disclaimer of any duty or

[2]See also AUDIT 1/01, Reporting for Third Parties.

liability as a result of providing access or information. This disclaimer should be obtained both from those to whom the access is granted (usually another firm of auditors) and from the potential acquirers, investors or lenders who make the request.

34 A disclaimer may be appropriate in a document which is prepared neither in response to the instructions of a particular client nor for any statutory or public purpose, e.g., a textbook or a newsletter. In such cases, substantial reliance upon it for a particular purpose would usually not be reasonable. A member can reinforce his legal position in relation to documents of this kind by including a disclaimer of liability in the document itself. The form of the disclaimer will depend upon the nature of the document. In many cases a disclaimer along the following lines is appropriate:

'No responsibility for loss to any person acting or refraining from acting as a result of any material in this publication can be accepted by Y [the member, the author or publisher]. Professional advice should be taken before applying the contents of this publication to your particular circumstances.'

Obtaining an indemnity

From the client or a third party

35 It may be appropriate to obtain indemnities from clients in respect of claims from third parties arising from the contents of a report or directly from third parties. These indemnities, known as 'hold harmless' clauses, obligate the client or third party to indemnify the member from third-party claims but do not limit the third parties' ability to assert their claims.

36 Indemnities may not be practical in situations where a report can be expected to receive wide circulation, such as in the case of accountants' reports in listing particulars or in an acquisition circular. Where use of the report is restricted, however, or where (as in the case of preliminary announcements of results by listed companies) there is no requirement for a public statement about the auditor's involvement to be made, it may be reasonable to include an indemnity against any claims or other losses which the auditor may suffer from actions by third parties, including the costs of defending any such action.

37 It must be remembered that an indemnity does not prevent a claim from being brought against the indemnified party, it merely gives him a right to pass on his liability to the indemnifier. It follows therefore that if the indemnity is in some way ineffective or the indemnifier does not have adequate resources to meet the liability, the indemnified party will be left unprotected.

Receiverships, trust and secretarial work

38 A member acting as a receiver incurs personal liability for his acts and may, in particular, incur liability under commercial contracts irrespective of negligence on his part. Accordingly, if a member appointed by a debenture holder to act in this capacity has to manage a business, he should endeavour to

ensure that he is fully indemnified by the person who appoints him against all loss and damage arising from his management. If such an indemnity cannot be obtained, he should endeavour to ensure that contracts into which he enters on behalf of that business include a clause to the effect that he assumes no personal liability thereunder.

39 It is often prudent for a member who is appointed to act as a trustee or asked to carry out certain secretarial work, such as cheque signing, to obtain an appropriate indemnity. In the former case, an instrument creating a trust can give a wide form of indemnity if the settlor is willing to approve its inclusion in the deed; in the latter, the member should arrange for an indemnity to be obtained from his client.

Defining scope of professional competence

40 In expressing an opinion or giving advice on difficult and complicated matters (for example in the field of taxation), members should bear in mind the magnitude of the financial and other consequences should the advice tendered be incorrect or misconceived. Although a member in general practice is deemed by the law only to undertake to bring a fair and reasonable degree of skill and competence to the problem on which he is required to advise, in appropriate circumstances this may include recognising the need to obtain the approval of his client to consult another person with specialist experience of the matter in question. Occasions may also arise when a member may wish to consider declining a particular assignment because, for example, he is of the opinion that the matter on which his advice is sought does not fall within the normal scope of his accountancy practice. Members are reminded that one of the fundamental principles established in Section 3, Code of Ethics, 3.2, General Application (Part A), is that a member should not accept or perform work which he is not competent to undertake unless he obtains such advice and assistance as will enable him competently to carry out the work.

41 Where the engagement arises as a result of a commercial agreement between other parties, the member will not be able to vary the terms of his engagement without a variation of the terms of the agreement by the parties to it. The member should therefore ensure that the terms of the engagement, as defined in the agreement, are acceptable and he should decline to accept any engagement where he is unable to fulfil the terms of the agreement or where he considers that the risks of the engagement are too high. Problems which a member may wish to avoid include: owing a duty of care to a party known to be litigious; owing a duty of care to both sides of a transaction; and being required to perform limited procedures or merely a preparation only engagement without any limitation clauses.

Conclusion

42 Members are reminded that, even if they use their best endeavours to ensure that they adopt all the relevant measures discussed above, they may still be exposed to legal claims from clients or third parties. Whether or not these claims have merit, members should ensure that they have established proper

procedures to deal with all claims promptly, to notify their insurers and to seek appropriate legal advice.

Appendix – Legal Considerations

Defences to an action for negligence

1 It would be a defence to an action for negligence to show:

a. that no duty of care had been owed to the plaintiff in the circumstances; or
b. that there had been no negligence; or
c. that the negligent act or omission had not been an effective cause of the plaintiff's loss; or
d. in the case of actions in tort that no financial loss had been suffered by the plaintiff; or
e. that the action was statute-barred.

The fourth defence would not be available to a claim in contract, but only nominal damages would be recoverable and in those circumstances it is unlikely that such an action would be brought.

Standard of work

2 Where there is a contractual relationship, unless an express agreement is made between the accountant and his client to the contrary, the standard of work required of an accountant is defined by section 13 of the Supply of Goods and Services Act 1982, whereby there is an implied term that the supplier (i.e., accountant) will carry out the service with reasonable skill and care. The same standard is applied by common law where there is a duty of care in tort.

3 The skill and care required will be judged principally on the nature of the work agreed to be undertaken. An accountant who undertakes work of an unusually specialised nature, or work of a kind whose negligent performance is particularly liable to cause substantial loss, will usually be taken to have assumed a duty to exercise the higher degree of skill and care reasonably to be expected of any accountant undertaking such demanding work. This will, especially, be the case if he holds himself out as being experienced in the kind of work in question. In no case, however, is the duty likely to be absolute. Opinions expressed or advice given will not give rise to liability merely because in the light of later events they prove to have been wrong, even if they amounted to an error of judgement, provided that they were arrived at using the skill and care which was reasonable for an accountant undertaking such work.

Liability to third parties

4 Liability to third parties may arise where there is a duty of care owed by the member in tort. Whilst an accountant will also almost always owe a duty of care to his own client, that duty is likely to be coextensive with his contractual duty.

5 Following *Caparo Industries plc v. Dickman* (1990) 2 AC 605 HL, (see in particular the speeches of Lord Bridge at pages 620H to 621A and Lord Oliver at page 638 C to E), a duty of care to a particular third party may be owed by accountants where there are all of the following ingredients: foreseeability of damage to the third party, a relationship of proximity or neighbourhood with that third party, and a situation where it would be fair, just and reasonable to impose a duty of a given scope on the accountants. Although the courts have attempted to limit the circumstances in which a duty will be held to exist, it would be prudent to assume that it will exist in a situation where the accountant knows of the existence of a third party whom he reasonably expects to receive and rely on the accountant's work for a particular transaction or purpose and to whom damage will be caused if the work has been done negligently. The danger of a duty being imposed will be increased where that third party has no other source of advice and where the purpose of the accountant's work is to induce the third party to take the particular action that he has taken.

6 While it must be emphasised that each case will depend on its particular circumstances the courts have recognised a number of circumstances in which a liability to third parties in tort will not generally arise and indicated some of the material factors in addressing that issue:

Liability to shareholders/investors:

a. The House of Lords decided in *Caparo Industries plc v. Dickman* (supra) that the auditors did not owe a duty of care to individual shareholders, whether or not they were existing shareholders, who purchased shares in the company in reliance on the audited accounts.
b. In *Al-Nakib Investments v. Longcroft* (The Times, 4 May 1990) it was decided that a duty of care was owed to subscribers who relied on a prospectus but not to anyone else who bought shares in the market in reliance on the prospectus. However, there may be liability under section 152 of the Financial Services Act 1986 to investors where advisers' opinions or reports are contained in listing particulars.
c. The Court of Appeal decided in *James McNaughton Group v. Hicks Anderson and Co* (1991) 1 All ER 135 that the auditors of a target company did not owe a duty of care to an identified takeover bidder who relied on draft accounts. The accounts were produced for the target and not for the bidder, they were in draft and not final and it was not foreseeable that the bidder would not take independent advice. On the other hand, the same court held in *Morgan Crucible v. Hill Samuel* (1991) Ch. 295 that it was plainly arguable that a duty of care was owed to an identified bidder by auditors where extracts from financial statements were included in the defence document which were intended to lead to an increased bid.

Liability to lenders:

d. In *Al Saudi Banque* v *Clark Pixley* (1989) 3 All ER 361 it was decided that auditors owed no duty of care to a bank lending money to a company in reliance on accounts, whether the bank was an existing creditor or not,

where the auditors were not aware of the bank's existence nor of the fact that lenders were relying on the accounts.

7 The implications of tortious liability are important for all accountants who produce reports or statements of various kinds (whether for a fee or not) which are liable to be relied upon by persons other than those for whom they were originally prepared.

8 An accountant may sometimes be informed, before he carries out certain work, that a third party will rely upon the results. An example likely to be encountered in practice is a report upon the business of a client which the accountant has been instructed to prepare for the purpose of being shown to a potential purchaser or potential creditor of that business. In such a case, it would be prudent for an accountant to assume that he will be held to owe the same duty to the third party as to his client, unless he has taken steps to disclaim liability as discussed in paragraphs 27 to 32 of Section 9.1, Managing the professional liability of accountants, in which case his liability may be reduced.

9 It is, however, important that members should appreciate that the precise ambit of the test in *Caparo Industries plc* v *Dickman* (supra) remains uncertain and, for example, a duty of care to a third party may also arise when an accountant does not know that his work will in fact be relied upon by a particular third party, but only knows that it is work of a kind which is liable in the ordinary course of events to be relied upon by a third party, although it will be more difficult for an unidentified third party to show a sufficient degree of proximity to meet the test.

Excluding or limiting liability to a client

10 The following are the main relevant considerations.

Auditors under the Companies Acts and certain other statutes:

a. Section 310 of the Companies Act 1985 makes void any provision in a company's articles or any contractual arrangement purporting to exempt the auditor from or to indemnify him against any liability for negligence, default, breach of duty or breach of trust. Whilst it is believed that this section only covers audit work as distinct from other work carried out by the auditor for the audit client, this question has not yet been decided by the court. Although section 727 of the Companies Act 1985 empowers the court in certain circumstances to grant relief either wholly or in part from any of such liabilities, it appears that these powers have seldom been exercised and it is very unlikely that an auditor would be relieved of liability. There are similar provisions in respect of audits under some other statutes.

The Unfair Contract Terms Act 1977:

b. This Act introduces extensive restrictions upon the enforceability of exclusions and limitations of liability for negligence and breaches of contract (where a party contracts with an individual consumer or contracts on standard terms of business). Section 2 of the Act, which applies in

England, Wales and Northern Ireland, makes void any exclusion or limitation of liability for negligence, even in a case where the other party has agreed to it unless the party seeking to rely on that exclusion or restriction can show that it was a fair and reasonable one in the circumstances which were or ought reasonably to have been known to or in the contemplation of the parties when the contract was made, or, where a non-contractual notice is relied on, in all the circumstances when the liability arose. Part II of the Act contains a somewhat similar provision applying as part of the law of Scotland. If a clause is held to be unreasonable, it is struck out in its entirety, leaving liability completely unlimited. Because the courts look at each individual case on its own facts, there is little general guidance as to what exclusions or restrictions of liability for negligence will be regarded as reasonable. There are, however, a number of specific factors which the courts may take into account when considering reasonableness.

These include:

i. whether the client knew or ought to have known of the term – it must have been brought to the client's attention before entering into the contract rather than buried in the small print on the back of a standard form;
ii. the nature and bargaining powers of the parties – the more sophisticated the client and the greater his bargaining power, the more likely it is that the term will be held to be reasonable;
iii. the resources of the accountant and the availability to him of insurance cover – the greater his resources, the higher any limit on the extent of liability should be;
iv. the nature of the transaction and the size of the likely loss – the larger the transaction and any potential loss, the higher the limit should be;
v. the availability of similar services from another provider without the client having to accept a similar exclusion or limitation – if there are other providers of similar services in the market who do not impose similar limitations then the client may not be able to argue that he was forced to accept the term;
vi. the size of the fees payable – the higher the fees, the higher the limit should be;
vii. whether any inducement was received by the client to agree to the term – an inducement to accept the term would make it easier to argue that the term was reasonable.

A total exclusion of liability is most unlikely to be considered reasonable other than in exceptional circumstances.

Arrangements to cover the Incapacity or Death of a Sole Practitioner

The Institute is regularly made aware of problems which have arisen where a sole practitioner has become physically or mentally incapacitated and consequently unable to continue to manage his practice, or has died without making adequate arrangements for the carrying on of his practice by his personal representatives. The following guidance is intended to be of assistance to sole practitioners in identifying the solutions to the problems which will inevitably arise in the event of their incapacity or death. These may affect clients, other members and firms who may be involved in the continuation of the practice, and the member's personal representatives, their advisors and any other persons who may be concerned.

General considerations

1 All practitioners have a duty to ensure that their practices are at all times properly supervised and conducted, including implementing arrangements to cover holidays and sickness of the practitioner. The problems which will inevitably arise where a sole practitioner ceases to be able to conduct his practice because of continuing incapacity or death are much more serious. The interruption of services resulting in particular from mental incapacity or death will cause considerable difficulty and inconvenience to the practitioner's clients, additional anxiety for his or her family and reduction in the value of the practice or even its disintegration.

2 It is therefore vital for a sole practitioner to confront these problems and difficulties, preferably when he or she first enters into practice, and to make arrangements appropriate to each of the following circumstances to enable the practice to be carried on with a minimum of dislocation:

(a) short-term absence due to holiday or sickness;
(b) continuing physical incapacity;
(c) mental incapacity;
(d) death.

The arrangements in respect of (b), (c) and (d) should provide, as far as is possible, for the practice to be continued as a going concern by the member's 'alternate' (see below) until such time as the sole practitioner recovers or a decision is made to dispose of the practice. Where the office has been authorised under the Bye-Laws as a Training Organisation these arrangements should include provision for notification of death or anticipated prolonged absence of the sole practitioner to the Learning and Professional Development Directorate of the Institute so that provision can be made to ensure that Approved Training and Approved Practical Experience is not placed in jeopardy.

3 The arrangements may be made with another sole practitioner, with a firm, or through support arrangements set up by the member's District Society. According to legal advice obtained by the Institute, any effective

arrangements will require very specific legal measures, such as those described in detail below. It is, however, first necessary to consider the specific legal problems associated with the provision of services in the reserved areas of practice, if incapacity or death of a sole practitioner should occur.

Legal considerations arising in reserved areas

(i) Audit

4 An Audit appointment is of a firm (in the case of a sole practitioner an individual) by the audited company. As such it would be contrary to the company's intention if some other party whom it had not appointed were to sign an audit report. However, it may be possible for an alternate to conclude an audit report where the sole-practitioner has become physically (but not mentally) ill, and has completed the audit work save for the final review and signing of the audit report. In this instance, an alternate who had been properly appointed by a power of attorney (see paragraph 7a. below) could, if satisfied with the audit work, carry out the review and sign the report on the authority of the practitioner. Temporary incapacity, mental or physical, would not necessarily determine the appointment.

Where a sole practitioner auditor dies, a casual vacancy arises and there is no facility for an alternate, even if properly appointed as a special executor under the practitioner's will (see paragraph 7b.), to sign the audit report.

(ii) Insolvency

5 Insolvency is a personal appointment. Although during the course of an insolvency appointment a practitioner frequently employs managers and other staff to carry out certain work on his behalf, it would not be possible for an alternate or other 'substitute' to be appointed to act, save by the court or other relevant entity empowered by the Insolvency Act 1986. An alternate could, however, be appointed to deal with a sole practitioner's resignation or vacation of office, if the latter became incapacitated, physically or mentally. If an insolvency appointee dies, the appointment is automatically vacated.

(iii) Investment business

6 A Designated Professional Body licence is of a firm. An alternate could undertake work that requires a licence on behalf of a licenced firm provided they were competent to do so. In the event of the death of the sole practitioner the firm no longer meets the eligibility requirements of a licence. There are provisions for a temporary dispensation and the firm should contact the Professional Standards Office of the Institute immediately.

Effective arrangements

7 A 'package' of legal measures is available to assist firms in making appropriate arrangements. *Implementation of these legal arrangements can provide effective legal continuity of a sole practitioner's practice in the case of his incapacity, mental or physical, or death.* In essence the 'package' consists of the following:

(a) a Form of Enduring Power of Attorney[1] (to deal with incapacity), plus
(b) a 'Special Executor' provision, for inclusion in the sole-practitioner's will or a codicil thereto, to cover the possibility of the practitioner's death.

The Institute is advised by its lawyers that *this is probably the only combination of arrangements which is entirely effective*.

8 For details of the Alternate package, please contact the Information Centre 01908 248186. Members will, given the complexity and variety of testamentary situations, in addition require assistance from their own solicitors. Full details are included in the package.

[1] To be amended during 2007 when the provisions of the Mental Capacity Act 2005 come into effect and a new instrument, a Lasting Power, will be introduced taking the place of an Enduring Power.

The Names and Letterheads of Practising Firms

(Revised with effect from 1 August 2001)

This guidance applies to all members in practice including affiliates, member firms and employees of member firms. Member firms are reminded that they are responsible for the professional conduct of non-members. The guidance should be read in conjunction with Section 3.2 General application (Part A) of the Code of Ethics in the Members' Handbook (www.icaew.co.uk/membershandbook).

1.0 For the purposes of this guidance the term 'letterhead' means any part of the *member's* or *member firm's* notepaper and documents used by the *member* or *member firm* for communicating with clients or other parties.

1.1 Subject to the Bye-laws and the following guidance, a *member* or *member firm* may practice under whatever name or title it sees fit.

1.2 A practice name should be consistent with the dignity of the profession in the sense that it should not project an image inconsistent with that of a professional practice bound to high ethical and technical standards.

1.3 A practice name should not be misleading.

1.4 It would be misleading for a *member firm* with very few offices to describe itself as 'international' merely on the grounds that one of them was overseas. Similarly it would be misleading for a sole practitioner to add the suffix 'and Associates' to the name of his practice unless formal arrangements were agreed with two or more consultants or firms.

1.5 A practice name would be misleading 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.

1.6 It has been the custom of the profession for *members* to practice 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.

1.7 There is no objection to membership of a trading group being indicated on the *member's* or *member firm's* notepaper or elsewhere in proximity to the practice name. However, the name of such a firm should be clearly distinguishable from the name of an *associated firm* or group. Thus, it would be misleading for a member of a trading group to bear the same name as the group, but there could be no objection to a *member* or *member firm* practising under its own name 'as a member of (a named accountancy group)'.

Use of the Description 'Chartered Accountant'

2.0 Use of the description 'Chartered Accountant' is governed by Bye-law 55 and the regulations made thereunder, in particular the Regulations Governing the Use of the Description 'Chartered Accountants', and also this guidance.

2.1 The description 'Chartered Accountants' should not form part of the name of a firm.

2.2 *Member firms* which meet the requirement of Bye-law 55 and the Regulations made thereunder are encouraged to use the description 'Chartered Accountants'. A firm which describes itself as 'Chartered Accountants' may list the services it wishes to offer on its stationery.

2.3 *Member firms* which use the description 'Chartered Accountants' may couple that description (i.e. 'Chartered Accountants and . . .') with all or any of the following if these are areas of professional business in which they have expertise:

(i) 'Management Consultants'
(ii) 'Business Advisers'
(iii) 'Tax Consultants'

Where one or more of these descriptions is used, *member firms* should be able, if called upon, to demonstrate that they hold the relevant expertise.

2.4 *Member firms* which use the description 'Chartered Accountants' may also couple that description with any other Chartered Description (for example 'Chartered Accountants and Chartered Tax Advisers').

2.5 A *member firm* should carry out a review of the descriptions it uses from time-to-time, to ensure the use of those description can be justified. (Note: claims to authority to work in reserved areas such as audit and investment business are governed by the appropriate regulations and in the case of insolvency work by the relevant legislation.

2.6 *Principals* in a *member firm* describing itself as 'Chartered Accountants' who are also *principals* in other firms, should ensure there is a clear distinction between the firms entitled to use the description and those which are not so entitled.

Legal Requirements

3.0 A practice letterhead must comply with partnership and company law as appropriate, and with the Business Names Act 1985.

Overseas Firms

4.0 Overseas *member firms* are required to comply with any local laws as to practice names so far as overseas are concerned. Subject thereto, they may describe themselves in any manner conformable to the practice of the

profession locally provided that the principles set out in paragraphs 1.0 to 1.3 above are observed.

New and Changed Names

5.0 Save where the name of a *member firm* is based on the names of past or present members of the *member firm* itself or of a firm with which it has merged or amalgamated, when a new *member firm* is to be set up and when it is desired to change the name of an existing *member firm, members* are recommended, as a means of ensuring compliance with this guidance, to consult the Institute, as to the propriety of the proposed name.

Persons Named on Letterheads of Member Firms

6.0 It should be clear from the letterhead of a practice whether any person named thereon, other than persons named only in the name of the *member firm*, is a partner of the practice, a sole practitioner or, in the case of a corporate practice, a director.

6.1 *Member firms* which use the description 'Chartered Accountants' should distinguish Chartered Accountants mentioned on the letterhead of a practice from persons not entitled to be so described by the use of designatory letters or otherwise.

6.2 In the case of a corporate practice which uses the description 'Chartered Accountants' but which does not list its directors on the letterhead, the *member firm* should maintain a list of the directors which distinguishes Chartered Accountants from persons not entitled to be so described, and should refer to the existence of the list on its letterhead.

6.3 No person named on the letterhead of a practice should be described by a title, description or designatory letters to which he is not entitled.

Regulated firms and members

7.0 Members working in the regulated areas of audit, insolvency and investment business (whether licensed by the Institute or authorised by the Financial Services Authority) should comply with any relevant requirements to disclose their regulated status.

Sources of Advice

8.0 A member who is in doubt as to their ethical position may seek advice from the Institute's Ethics Advisory Services by e-mail *ethics@icaew.co.uk* or phone 01908 248258. The Ethics Advisory Services is available to all members and is a confidential service free from the duty to report professional misconduct within the Institute. Further information on the Ethics Advisory Services can be found on *http://www.icaew.co.uk/ethicsadvice*.

Documents and Records: Ownership, Lien and Rights of Access

(Issued 1 September 2006 replacing the previous Section (Handbook Statement '1.302') of the same name.)

Further less formal guidance is available to members of the Institute, in a number of areas covered by this Section, including Technical Releases and the Helpsheets from the members' services section of the website at www.icaew.co.uk/members. In this section the masculine gender imports the feminine gender throughout.

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Introduction

1 This Section has been issued to give guidance to members in practice on four matters.

Which documents does the member own?
1.1 Consideration under the heading 'Ownership' below is given to what documents or records are or are not owned by members. The question of ownership will be a matter of both law and fact and can often be a complex question to decide. This Section does not, and cannot, seek to determine ownership; rather it highlights the sorts of issues of which members need to be aware when seeking to determine ownership.

How long should the member retain documents?
1.2 Consideration under the heading 'Document Retention' below is given to those issues which a member is advised to consider concerning the adoption of a document retention policy.

If the client owns the documents does the member always have to hand them over?
1.3 Consideration under the heading 'Lien' below is given to what rights by way of lien a member has over documents and records not owned by him (including the exercise of lien in fee disputes).

What obligations does a member have to allow others access to documents which the member holds?
1.4 Consideration under the heading 'Rights of access by clients and third parties' below is given to the rights of clients and third parties to demand access to documents held by members (both those owned by a member and those owned by the client) and the related issue of allowing access to third parties.

1.5 The guidance reflects the law in England and Wales as at July 2006. It is also assumed that the member provides his services in a professional relationship governed by the laws of England and Wales. There may, however, be cases in which either by express agreement or by implication from the circumstances, a foreign law[1] will apply. In these circumstances a member is advised to consider taking legal advice from a lawyer qualified to practise in the jurisdiction in question.

1.6 Many of the issues which give rise to the need to consult this Section could be avoided (or the effects minimised) through the careful drafting of engagement letters. In this regard, members are referred to Section 9.1, 'Managing the professional liability of accountants', for more details.

[1] 'Foreign law' in this context should be read to include the law of Scotland and Northern Ireland as well as jurisdictions outside the UK which may differ from the law of England and Wales.

Documents and Records

2 In this statement, the term 'documents' is not confined merely to documents stored on paper, but extends to any information which can be understood by the senses or is capable of being made intelligible by the use of equipment. The term therefore covers information that is stored on microfilm or electronically, for example on hard disks, CDs and other media, including messages sent by e-mail and online sources.

3 Similarly, sections 221 and 222 of the Companies Act 1985 and the Companies (Registers and other Records) Regulations 1985 do not require the accounting records of a company to be stored on paper and, accordingly, members may be in possession of records of a client which may be stored on computer or some other non-paper format. The Companies Law Reform Bill currently contains similar provisions. This guidance will be updated if and when any changes come into effect.

Ownership

Determination of ownership

4 Determination of ownership is generally a mixed question of law and fact and can often be a complex question to resolve. Where particular documents and records are not owned by the member they generally belong to the client. In order to determine whether documents and records belong to the member it may be necessary to consider:

a. the capacity in which the member acts in relation to his client;
b. the contract between the member and his client usually as evidenced in an engagement letter; and
c. the purpose for which the documents and records exist or are brought into being.

The capacity

5 A member may act for a client either as principal or as agent depending on the nature of the work covered by the engagement. Examples of these are given below. The distinction is significant in relation to the ownership of documents created by the member during the engagement. As a general rule, where the relationship between the member and his client is that of principal and principal, documents prepared, acquired or brought into being by the member solely for his own purpose as principal belong to the member and only those documents brought into being by the member on the specific instructions of the client belong to the client. Where the relationship between a client and the member is that of principal and agent, documents brought into being by the member pursuant to the retainer normally belong to the client. In either case, documents and records provided initially by the client to the member will remain the property of the client.

The contract

6 It is recommended that members consider dealing with the issue of ownership of documents in the engagement letter with their clients. Any specific agreement reached between the member and his client relating to the ownership of documents produced by the member will override the principles referred to above. Although such an agreement does not have to be in writing, in the interests of certainty, it is recommended that any express agreement with the client is documented.

7 The table below comprises a non-exhaustive list of the capacities in which a member may act for a client. It is assumed in the table that the terms of the contract between the member and his client are silent on the question of ownership and therefore the principles referred to in paragraphs 4 to 6 above are implied. This table is intended to be indicative and helpful and is not intended to compromise a member's legal rights. If a member, without consent of the client, takes a contrary view to the position shown in the table he is recommended to seek legal advice.

Nature of work

8 The question of ownership will depend on the nature of the work to be done. For example:

Nature of work	**Type of document**	**Who has ownership?**
Auditing		
Preparation of audit report whether carried out under statutory provisions or not	Any documents prepared by member solely for purpose of carrying out his duties as auditor Audit Report	Member Client
Accountancy		
Preparation of accounting records	Accounting Records	Client
Preparation of financial statements from client's records	Financial statements Draft/office copy of financial statements[2] Correspondence with third parties	Client Member Member[3]

[2] If, however, the client has specifically asked for drafts to be prepared for him, they will belong to the client because then the drafts are the 'product' which is required by the client.

[3] Provided that the client has not required the member to produce these documents for him (*Chantrey Martin & Co v. Martin* [1953] 2 QB 286).

Preparation of financial statements from incomplete records where not instructed by client to work from those records	Schedules	Member[4]
Analysis of banking accounts prepared by member	Reports, memoranda or notes Drafts of the above	Client Member[5]
Other accountancy	Records prepared by the member which are required by law to be kept by the client	Client
Other accountancy	File copies of any documents including drafts	Member
Tax assistance and advice		
Preparation and submission of accounts, returns and computations to the Inland Revenue or VAT returns to HM Revenue & Customs ('HMRC') and other tax compliance work	Accounts, schedules and computations, correspondence between the member and HMRC in relation to the same	Client[6]
Agreement of the client's tax liabilities including those following an enquiry or investigation	Any documents	Client

[4] However, in the case of a body incorporated under statutory provisions, the position is different. For example, section 221 of the Companies Act 1985 sets out the accounting records which a company must keep. Where schedules have not been kept by the client company but such schedules were prepared for the client company in order that it should comply with section 221 they would belong to the company.

[5] See footnote 3 above.

[6] *Chantrey Martin & Co v. Martin* [1953] 2 QB 286.

Nature of work	Type of document	Who has ownership?
Preparation of a report for a client to submit to HMRC in connection with an enquiry or investigation	The report and supporting schedules Papers used in preparing the report	Client Client
Provision of advice to a client on tax liabilities arising out of an enquiry or investigation	The report and supporting schedules Papers used in preparing the report	Client Member
Tax consulting, advice or planning	Drafts, internal memoranda, etc. Letters, reports or documents of advice	Member Client
Consulting and advisory work		
Corporate advisory services	Reports and other deliverables Other papers produced as part of the engagement but not provided to the client	Client Member
Insolvency		
Appointments as administrators, administrative receivers or liquidators	Any documents	Please refer to the footnote[7]

[7] As administrators, administrative receivers or liquidators, the fundamental duties of an insolvency practitioner are regulated by Insolvency Act 1986 and Insolvency Rules 1986. In that capacity, members may therefore wish to seek legal advice.

Appointment as a receiver	Any documents created as agent for the company which owns the assets to which the debenture relates[8] All other documents[9]	Company Member

The purpose for which documents and records exist

9 The table below comprises a non-exhaustive list of the purposes for which documents exist which in turn may affect the question of ownership. Again, this table is intended to be indicative and helpful and is not intended to compromise a member's legal rights. If a member, without consent of the client, takes a contrary view to the position shown in the table he is recommended to seek legal advice.

Purpose	**Type of document**	**Who has ownership?**
Communications between a member and his client	Letter received by the member from the client File copy of letter sent by the member to the client	Member Member
Communications between members and third parties	Correspondence to and from a member acting as agent for the client Correspondence to and from a member for purpose of obtaining specialist advice for the client Correspondence to and from a member acting as principal[10]	Client Client Member

[8] The overwhelming majority of modern debentures provide that the receiver is the agent of the company and s 44 Insolvency Act 1986 deems any administrative receiver to be an agent of the company until the company goes into liquidation. However, there will be rare cases where neither of these conditions applies such that the receiver will be the agent of the debenture holder in which case documentation may be created as agent for, and be the property of, the debenture holder.

[9] Members are reminded that the majority, if not all, documentation produced as receiver will be in the capacity of agent either of the company or the debenture holder (see footnote 8 above). Therefore, a member seeking to rely on a lien in such circumstances may wish to seek legal advice.

[10] This would include documents which are not the end product of the member's work, for example: (i) documents confirming or otherwise the balance of an account between a third party and the client, such as those in respect of bank balances or custody of securities; and (ii) other documents which the member has obtained solely for his own use in carrying out his duties as principal. These will normally include correspondence between the member and the client's solicitors in which the member is giving or receiving information (as opposed to advice).

Purpose	Type of Document	Who has ownership?
Internal file notes	Files notes made where member acting as agent (i.e., tax compliance work) and preparation of file notes reflected in the fees charged to client	Client
	File notes made where member acting as principal	Member
	File notes prepared other than in relation to work done for the client	Member

Document Retention

10 For additional guidance, members are recommended to consider obtaining further professional or legal advice when drafting a document retention policy.

Members' policy

11 Members are recommended to have and implement a document retention policy in respect of their files and other documents.[11] Some problems or misunderstandings may be avoided if a member's document retention policy is communicated to clients although members should be aware that such communication may give rise to contractual commitments. Members are therefore recommended to make it clear to clients whether the document retention policy is a contractual obligation on the part of the member or not.

12 Members are also reminded that there are certain statutory and regulatory obligations which would govern the periods for retention such as rules regarding documents relating to a client's tax affairs or documents relating to regulated business such as financial services. Members are recommended to seek further professional or legal advice when formulating a document retention policy.

Lien

13 Members may be advised to seek further professional and legal advice when exercising liens.

[11] Ethics Advisory Services have a helpsheet on document retention policies which can be obtained from the Institute's website: www.icaew.co.uk/members.

'General liens' and 'particular liens'

14 A lien is a right of a person to retain possession of the owner's property until the owner pays what he owes to the person in possession. At law there are both general and particular liens. Only a particular lien is likely to be relevant to a member.[12] A particular lien is a lien over property which can be retained only until payment of a particular debt due in respect of that property is paid. An accountant has a particular lien over documents belonging to his client in respect of which the accountant has performed work for which he has not been paid the fee due.[13]

Conditions for the exercise of a particular lien

15 A right of particular lien (in the absence of any agreement to the contrary) will exist only where all of the following circumstances apply:

(i) *The documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client*.
Accordingly, where a member carries our work for both a company and its directors in their private capacities and where fees remain outstanding in respect of the work done for the directors personally, no right of lien will exist over the company's documents.

(ii) *The documents must have come into the possession of the member by proper means*.
Accordingly, if a member receives documents belonging to a client from a third party in error, the member would not be entitled to exercise a lien over them.

(iii) *Work must have been done by the member in respect of the documents.*
A member may exercise a lien over documents where he has done work in respect of them. Case law indicates that a member's lien would be undermined if a fee note is not submitted or an oral demand not made within a reasonable period of time.[14] The Institute's ethical principles, in particular the fundamental principle of integrity, oblige that a member acts not only with honesty but also with fair dealing. As such, a member who has not already issued an invoice in relation to such work or communicated to the client that there are fees due (and the amount thereof) must do so as soon as is practicable to ensure that both his legal position is maintained and that he complies with the Institute's high ethical standards.

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[12] General liens are those liens which allow the creditor to retain possession of any property belonging to the debtor in respect of any debt; not necessarily a debt which relates directly to the retained property itself. Members are advised that it is not likely to be worthwhile to assert a general lien in law against a client unless they are expressly given the right in their contract with the client.

[13] In *Woodworth v. Conroy* [1976] QB 884 at 890, Lawton LJ said '*accountants . . . have at least a particular lien over any books of account, files and papers . . .*'

[14] *Albemarle Supply Co v. Hind* [1928] 1 KB 307, *Woodworth v. Conroy* [1976] QB 884.

(iv) *The fees for which the lien is exercised must be outstanding in respect of such work and not in respect of other unrelated work*.
Where documents belonging to, or created for, a client relate to an earlier or different engagement for which no fees are outstanding, no right of lien can be exercised over those documents in respect of other engagements for which fees are outstanding. For example, where a member is holding documents which relate to the preparations of a client's financial statements, the member may not exercise a lien over those documents in respect of unpaid fees which relate to tax advice provided to the same client.

Special cases

16 There are various special cases where the normal position regarding the existence and enforcement of liens does not apply. Special cases may arise as a result of the provisions of a particular statute, or from considerations of general public policy and include the following.

Statutory books of companies

17 An established line of authority exists in which the courts have held that no lien can exist over books or documents of a registered company which, 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 to be dealt with in any special way.[15] Accordingly, documents such as the register of members and directors' minute books cannot become the subject of a lien.

Accounting records of companies

18 *NB. The guidance set out in this Section reflects the law as at July 2006. However, the question of what constitutes accounting records is currently the subject of significant debate with changes proposed in the Company Law Reform Bill. The guidance will be updated in due course to reflect any developments.*

19 A lien cannot be asserted over accounting records as defined in section 221 Companies Act 1985 ('Accounting Records') because such records are required[16] to be kept at the company's registered office or at such other place as the directors think fit, and must at all times be open to inspection by the company's officers.[17]

20 Accounting Records cover a wide range of documents and are not limited, say, to double entry ledgers and journals.[18] Examples of what might constitute Accounting Records are as follows:

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[15] *Re Capital Fire Insurance Association* [1883] 24 Ch.D 408 and *Re The Anglo-Maltese Hydraulic Dock Co Limited* [1885] 54 LJ Ch. 730. These cases concerned solicitors' liens; however, the same principles apply to accountants.

[16] By s 222(1) Companies Act 1985.

[17] *DTC (CNC) Ltd* v *Gary Sargeant & Co* [1996] 1 BCLC 529.

[18] Technical Release *Accounting records* (FRAG 5/92) contains guidance on the interpretation of s 221 Companies Act 1985.

- sales invoices;
- purchase invoices;
- cheque books;
- paying-in books; and
- bank statements.[19]

21 Whilst it might, from the above list, appear to a member that practically all documents which constitute accounting records (in its widest possible sense) will be Accounting Records, the statutory requirement is only that the company should keep accounting records (i) which are sufficient to show and explain the company's transactions and (ii) which are such as to disclose with reasonable accuracy the financial position of the company at any time and to enable the directors to ensure that any balance sheet and profit and loss account prepared under the Companies Act 1985 complies with the requirements of that Act. Accordingly, where, for example, a company keeps a purchase ledger, the underlying invoices are unlikely to be Accounting Records.

Administrative receiverships and receiverships

22 Where a member has a lien over the books of account or other documents of a company, the appointment of a receiver does not affect the lien.

23 Although a debenture may prevent a company from creating any mortgage or charge in priority to the debenture, a member's lien is not a mortgage or charge created by the company. Debenture holders cannot therefore prevent a member from acquiring a lien. Such a lien would be untouched by debenture holders taking possession and appointing a receiver.[20] Even where a receiver is appointed by the court, the lien will be unaffected unless the court orders otherwise.

Administrations and liquidations

24 Where a company is the subject of an administration order, or is in liquidation or has a provisional liquidator appointed, a member cannot exercise a lien over any records of the company where the administrator or liquidator has no other way of obtaining possession of such records and so must hand them over.[21] There is one exception, however, where the documents held by a member give title to property (for example, title deeds, share certificates or bills of lading), have been pledged or are held as security for some liability of the company and are held on that basis. This, however, is a difficult area and members may wish to take legal advice on the operation of the exception in any particular case.

Bankruptcy

25 As in liquidations, a member cannot exercise a lien over any records of the bankrupt, except where the lien relates to documents which give title to

[19] *DTC (CNC) Ltd v. Gary Sargeant & Co* [1996] 1 BCLC 529.
[20] *Brunton v. Electrical Engineering Corporation* [1892] 1 Ch. 434.
[21] Section 246 Insolvency Act 1986.

property and are held on that basis.[22] Again, the exception is a difficult area and members may wish to take legal advice.

Fee disputes

26 If a client offers a smaller sum in satisfaction of a greater debt a member is not obliged to accept that amount in full settlement. If, however, a member wishes to accept such sum in part payment, the member is advised to make the client aware of this fact (preferably in writing) at the time of acceptance to avoid adversely affecting the member's legal rights.

27 Members are expected to take reasonable steps promptly to resolve any dispute relating to fees.[23] Reasonable steps might include seeking to negotiate, communication with the client, alternative dispute resolution, serious documented consideration of the client's representations or legal action.

28 Nevertheless, where a legal right of lien exists, the Council supports the exercise of that lien in appropriate circumstances. Institute guidance on how to handle or avoid complaints[24] indicates the right exists to persuade an otherwise reluctant client to pay an outstanding bill. Thus the continued exercise of a lien in circumstances where a dispute is to be resolved by formal means (e.g., arbitration or litigation) may be inappropriate. If a member wishes to continue to exercise a lien in such circumstances the member is strongly advised to seek legal advice on the position.

29 Before seeking to exercise a lien, a member is advised to consider whether it falls into any of the special cases outlined in this statement. In all but the most straightforward situations a member is recommended to consider whether legal advice is appropriate. Where a member takes legal advice which supports the decision to exercise a lien or where a member's circumstances fall clearly within the situations set out in this statement the member will ordinarily have met the standards required by the Institute but may need at the same time to consider whether any of the circumstances affect the ethical position. In this regard, members may wish to consult the Ethics Advisory Services helpline or a support member.

Data Protection

30 The Data Protection Act 1998 applies to 'personal data'.[25] Members who decide how and why personal data is processed, must comply with the rules set

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[22] Section 349 Insolvency Act 1986.

[23] Section 3.3, Professional accountants in practice, Part B, paragraph 240.4F.

[24] Section 2.8, '*The Duty on Firms to Investigate Complaints – Guidance on How to Handle or Avoid Them*'.

[25] In other words, data which relate to a living individual who can be identified from those data (or a combination of those data and data which is or is likely to come into the possession of the person processing the data). Members are reminded that personal data may also be 'sensitive personal data' and are referred to the Act if in doubt as to the requirements.

out in that Act regarding fair and lawful data processing. These rules are more commonly known as the data protection 'Principles'. These 'Eight Principles' form the backbone of the Act and apply to all forms of processing. All members who decide how and why personal data is processed have a personal responsibility under the Act to comply with the Eight Principles. Members are therefore advised to consider the Act in the context of any requests for documents or information which may result in the transfer of personal data without the consent of those to whom the personal data relates. For specific guidance, members are referred to Technical Release *Data Protection Act 1998 and its Application to the Major Practice Streams of Accountancy Practices* (Tech 07/04).

Rights of Access

Duties of members to their clients and the powers of third parties to require access: the basic principles

31 Members are reminded that, regardless of whether particular documents are owned by a member or his client, confidentiality is an implied term of every client engagement. In consequence, voluntary access to information or documents should be given only:

- after obtaining the client's consent; or
- where the member's duty of confidentiality to his client is overridden by the powers of third parties to require access to, or compel production of, documents; or
- where the member has a legal right or duty to disclose the information; or
- where the member feels obliged to volunteer information in the circumstances discussed in Section 7.1, 'Professional conduct in relation to defaults or unlawful acts'.

32 Members are reminded of the overriding nature of statutory and other provisions when considering confidentiality. Where public bodies, office holders and regulators (including European institutions) seek access to, or production of, information or documentation in a member's possession under the relevant statutory or regulatory powers, a member is under an obligation to his client to take reasonable steps to satisfy himself that any power is being exercised correctly. Members are reminded that such powers may not extend to requiring members to produce documents which are subject to legal professional privilege. In circumstances where a member believes he may hold documents which are subject to such privilege and where he is being required to produce or give access to such documentation, the member is recommended to take legal advice.

33 It is recommended therefore that members ask the entity requesting the information or documentation to state the source of its power and any statutory or regulatory limitations on those powers before releasing any documentation or providing information. If the documentation sought belongs to a client and the member is unsure of the requesting body's power, it

will usually be open for the member to seek the client's consent to disclose. However, provided that the request is made pursuant to a legitimate power, the member's duty of confidentiality will be overridden. Members are reminded that it may not be appropriate to seek the client's consent in all circumstances. This is particularly true in matters subject to the money laundering reporting regime.[26] If in any doubt as to whether it is appropriate to seek a client's consent, members should seek advice from the Ethics Advisory Services or legal advice as appropriate.

34 In certain circumstances, where the power being exercised or the obligation on the member is not clear, the member may wish to take legal or professional advice.

Requests for access from clients

Access for the client himself

35 If a client requests access to documents which belong to him then, subject to any lien, access ought normally to be given. Where the documents requested belong to the member, the member's response to such request is more difficult to determine as a member's willingness to assist will depend on the circumstances in which access is being sought. Giving access may increase the risk of litigation against the member, even where no obvious likelihood exists. However, there are circumstances where allowing access would result in the client being better informed, thereby reducing such risks.

36 Where a director or directors of a client company seek access to documents which either belong to the client company or contain confidential information relating to the client company in connection with the personal affairs or interests of those directors rather than in furtherance of the company's interests, members should obtain authorisation from the board of directors or, where appropriate, from outside shareholders, before permitting access.

37 A client who is an individual also has certain rights under the Data Protection Act 1998 to be provided with a copy in permanent form of all personal information that is held by a member about them whether contained on client files or otherwise. Copies are obtained by the client making a Subject Access Request. The Institute has issued further guidance on the requirements of the Data Protection Act in the form of Technical Release *Data Protection Act 1998 and its Application to the Major Practice Streams of Accountancy Practices* (Tech 07/04) which is available to members. Where the documents to

[26] See Section 7.2, 'Anti money laundering (proceeds of crime and terrorism); second interim guidance for accountants', Tech 49/05 'Money Laundering: The Proceeds of Crime Act 2002 as amended by the Serious and Organised Crime and Police Act', and Tech 02/06 'Guidance on changes to the Money Laundering reporting requirements: the exemption from reporting knowledge or suspicion of money laundering formed in privileged circumstances'. See also Section 7.1, 'Professional conduct and disclosure in relation to defaults or unlawful acts'.

which the data subject has requested access are subject to a lien, the data subject is generally entitled to have communicated to him a description of the data held by the member and the type of information held in those data.[27] Members seeking to exercise a lien in respect of an individual's documents who receive a Subject Access Request from that individual are warned that there is a balance to strike between compliance with data protection legislation and their legal right of lien. Members may wish to seek legal advice in such circumstances.

Access for the benefit of a third party

38 Sometimes investigating accountants are engaged by a third party to review aspects of the affairs of a company for the purpose of disposals, acquisitions or investments. Access to the working papers of the auditors or the tax advisers of such a company will frequently assist the investigating accountants to perform this task. However, in recent years, auditors and tax advisers have been reluctant to permit such access due to the risk of unintentionally creating duties of care to third parties. The audit or the tax advice will not have been planned and performed in contemplation of any particular commercial transaction and it is for the relevant third party to arrange for appropriate due diligence work to be performed.

39 As discussed above, an auditor's working papers belong to the auditor and so an auditor is not obliged to give access to them in this situation. The position may be the same for the tax adviser depending on the nature of the work performed and the terms of any engagement letter. However, refusing access is unhelpful to the client company who is normally a willing participant in the transaction. An alternative way forward is for members to have a developed policy regarding access to working papers, providing certain conditions are met.

40 The reluctance to permit access can be largely overcome by the use of client authorisation and 'release' letters. The purpose of these letters is to deal with any confidentiality issues and to provide a framework within which members can make their papers available and provide explanations while limiting as far as possible any additional risks. For specific guidance, members are referred to further guidance issued by the Institute. At the time of issue of this Statement, this is contained in Technical Release *Access to Working Papers by Investigating Accountants* (Audit 04/03) which contains templates for the necessary letters.

Requests for documents by Her Majesty's Revenue and Customs (HMRC)

41 It is likely, as a result of merger between Her Majesty's Inland Revenue and Her Majesty's Customs and Excise, that the powers of access to information will change to some extent.

42 The VAT provisions are addressed to 'every person who is concerned (in

[27] Section 7 of the Data Protection Act 1998.

whatever capacity)' in a supply of goods and services including a customer. Such persons may be required to furnish information to the Commissioners.[28] However, it is questionable whether it includes an accountant in possession of the books and records because he is not concerned in any way with actual supplies of goods and services made by his client and so a court order could be necessary to compel an accountant to release such documents.[29] Members in doubt should seek legal or professional advice.

43 In respect of direct tax HMRC have wide powers to require information of both the taxpayer and 'others' which can include the member. Members should consider the authority cited by the authority seeking access and if in any doubt should seek legal or professional advice.

Requests for documents by regulators

44 In the event that a member receives a request for documents or information from a regulator, including but not limited to the Financial Reporting Council (FRC), the Securities and Exchange Commission (SEC) or the Public Company Accounting Oversight Board (PCAOB), the member is strongly recommended to take legal advice.

Freedom of Information Act 2000

45 Members are referred to further guidance issued by the Institute. At the time of issue of this Statement, this is contained in Technical Release *Guidance on the Implications of the Freedom of Information Act 2000* (Audit 02/05).

46 The Freedom of Information Act 2000 ('FOIA') gives individuals and businesses a general right of access to information held by public authorities in England and Wales, whether obtained before or after the Act came into force on 1 January 2005. A wide range of bodies are listed as being public authorities[30] for the purposes of FOIA including: Government Departments, the Financial Services Authority, the Inland Revenue and the Bank of England.

47 In addition, the Secretary of State may by order designate as a public authority for the purposes of the FOIA an entity that is providing, under a contract made with a public authority, a service whose provision is a function of that authority.[31] This may have implications where a public authority outsources the performance of one of its functions to a third party such as internal audit services to a member, in which case that member could become subject to FOIA in respect of the outsourced services only.

48 FOIA provides a right of access to all recorded information held by

[28] See para 7 of VAT Act 1994, Schedule 11.
[29] See in particular the cases relating to *AE Hamlin* [1983] STC 780 and *EMI Records* [1986] STC 374.
[30] The ICAEW is not a public authority under the Act.
[31] Section 5 Freedom of Information Act 2000.

public authorities or on their behalf, which could include information relating to a member or a member's business (where, for example, the member has provided services to a particular public authority), subject to certain exemptions. Any person making a request to a public authority for identified information is entitled to be informed in writing by the authority whether it holds information of the description specified in the request and, if so, to have that information communicated to him. No reason need be given for the request. The public authority generally has 20 working days to respond and can charge a fee. In general, any information held by the public authority can be requested under the Act. However, there are several exemptions to the general right to information which public authorities can use to refuse disclosure. Some exemptions are absolute while others are qualified. Public authorities can only invoke qualified exemptions where the public interest in disclosing the information is outweighed by the public or private interest in invoking the relevant exemption. Exemptions to note are (i) a qualified exemption for personal data if to disclose the information would breach the Data Protection Act; (ii) an absolute exemption if the requested information was provided to the public authority in confidence (i.e., if the information was disclosed it would be an actionable breach of confidence);[32] and (iii) a qualified exemption for commercially sensitive information and trade secrets. It should be noted that third parties, such as members, do not have the right to prevent disclosure, as it is up to the public authorities to determine if the exemption applies. However, it is expected that public authorities will consult third parties when appropriate.

[32] Although this itself would be subject to a public interest test under the common law relating to confidence.