Continuing Professional Development (CPD) regulations

Effective from 1 July 2005.

1. Members shall co-operate with ICAEW, 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 ICAEW 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 (whether included in the Annual Members' Profile or as otherwise directed by the Committee).

6. Where a member makes a complaint about the conduct of ICAEW 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.

7. The Committee may in exceptional cases accept Continuing Professional Development compliance with an approved overseas body as meeting the requirements of Principal Bye-law 56.

Interpretation

8. In these CPD 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.

Powers of variation

9. The Committee shall have the power to vary or waive the above regulations.

References

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.

ANNEX 10

PRACTICE ASSURANCE VISITS

Your Practice Assurance visit is designed to reassure you that your practice is meeting the requirements of the principles-based Practice Assurance standards, other relevant regulations and the Code of Ethics.

If you have a DPB licence, the visit will also cover how the firm meets the requirements of the *DPB Handbook.*

During the visit, you will also have the opportunity to discuss any other matters regarding your firm.

PRACTICE ASSURANCE
VISITS

BEFORE THE VISIT

We will phone you usually 7 to 14 days before the visit to answer any questions you may have, and to discuss practical arrangements.

You will need to have ready for review the documents and records listed opposite. Not every document or record listed will necessarily be relevant to your practice.

THE OPENING MEETING AND REVIEW

Our approach is open and friendly, starting with an opening meeting to gain a general picture of your firm.

Our review varies from firm to firm, but usually covers:

- a sample of client files;
- a sample of fee notes, commission statements, office and client bank account records;
- your professional indemnity insurance policy and proposal form; and
- other matters which might have arisen during the opening meeting.

We do not form judgements on your professional advice or examine your clients' affairs in depth. We concentrate on finding out how your firm demonstrates that it meets the principles-based Practice Assurance standards, other relevant regulations and the Code of Ethics. If you have a DPB licence, we will look at how the firm meets the requirements of the *DPB Handbook.* The standards can be applied in different ways and we consider whether your approach is appropriate for the size and nature of the firm and the work it undertakes.

THE CLOSING RECORD

After our review, we record our findings and discuss them with you.

The purpose is to discuss:

- any issues that have arisen; and
- your initial thoughts on any actions we may suggest to help your firm.

YOUR RESPONSE

We ask you to respond in writing to each of the findings within 15 business days. You need to explain what action you plan to take and by what date.

AFTER THE VISIT

When we receive your response, we complete our working papers which may include a quality control review.

If we have any questions or need additional information, we will give you a ring. We will only be able to close the process once we have received and reviewed your responses.

You will usually receive a letter from us to confirm that your visit has been completed satisfactorily, or to request additional information so that we can close the visit.

In some circumstances, we may need to report matters to the Practice Assurance Committee (PAC) or the Investment Business Committee (IBC). If this happens, we will keep you fully informed and send you a copy of our report for comment before it is considered by a committee.

COMPLAINTS

There is a formal process for handling complaints. Please write to the director, QAD, if you have any comments about the visit process.

If your comments are about the director, QAD, please write to the chief executive at:

ICAEW
Chartered Accountants' Hall
Moorgate Place
London EC2R 6EA UK

LIST OF DOCUMENTS AND RECORDS

This is what you need to prepare and have ready for the visit.

Not every document or record listed will necessarily be relevant to your practice.

FIRM INFORMATION

- PII policy (including policies for connected entities), most recent renewal/proposal documentation and details of claims history and of any current claims or notifiable events
- Fee protection insurance policy and examples of all documentation sent to clients
- Alternate agreement
- Copies of any promotional or marketing material (eg, newsletters, budget circulars, website)
- Sample of firm's letterhead, fax header and email template

PERSONNEL INFORMATION

- List of staff and their responsibilities
- CPD records for the current and previous year for principals and qualified staff
- Example of contract of employment
- Subcontractor and consultancy agreements

ACCOUNTING RECORDS

- List of practice bank accounts and of current mandated signatories
- Bank statements and cashbook (or access to electronic records) for the above accounts for the last six months
- Client bank account statements, cashbook (or access to electronic records) and reconciliations for the last 12 months; trust letter(s) from the bank, details of alternate, and compliance review
- Letters notifying clients of commission received in the last 12 months, and commission statements for the last 12 months
- Fee notes for the last 12 months

CLIENT RECORDS

- Access to client files

SELF-MONITORING

- Most recent annual review of compliance with the Clients' Money Regulations
- Most recent review of compliance with the Money Laundering Regulations 2007
- Most recent review of compliance with the Practice Assurance standards
- Most recent annual review of compliance with the *DPB Handbook* (if licensed)

SOURCES OF INFORMATION

icaew.com/practice
icaew.com/faculties
icaew.com/sigs
icaew.com/helpsheets
icaew.com/cpd
icaew.com/pii
icaew.com/qad
icaew.com/moneylaundering
icaew.com/support
icaew.com/membershandbook

ICAEW is a founder member of the Global Accounting Alliance, which represents around 775,000 of the world's leading professional accountants in over 165 countries around the globe, to promote quality services, share information and collaborate on important international issues.

As a world-class professional accountancy body, ICAEW provides leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry to maintain the highest standards.

Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. ICAEW ensures these skills are constantly developed, recognised and valued.

Because of us, people can do business with confidence.

ICAEW
Chartered Accountants' Hall
Moorgate Place
London EC2R 6EA UK

T +44 (0)1908 248 040
E info@icaew.com
icaew.com

TECPLN9185 06/2010

ANNEX 11

PRACTICE ASSURANCE, AUDIT AND DPB ANNUAL RETURN AS AT DD MM YYYY

Please return by <<Return date>>

Thank you for taking the time to complete this annual return.

Information in italics relates to documents at icaew.com.

Confirmations and undertakings

If you are unable to give one or more of the following confirmations and undertakings, please strike it through and enclose a full statement explaining the position.

I/We confirm that, if requested, the firm is willing to submit or make available to ICAEW and/or its agents, documents and records in support of answers given in this annual return.

I/We confirm that, to the best of my/our knowledge and belief, the information in this annual return is complete and accurate and where estimates are given, they are made on the best available information.

I/We confirm that, to the best of my/our knowledge and belief, all commission, fees or other benefits have been disclosed to clients and accounted for in accordance with the Code of Ethics, section 240, Fees and other types of remuneration.

I/We confirm that the firm complies with the requirements of relevant money laundering legislation and regulations (whether UK or overseas) and that the firm has a nominated officer to take responsibility for compliance. I/we also confirm that staff/principals are provided with appropriate training, that I/we have procedures to gather and retain evidence of the identification of all clients, that I/we undertake ongoing compliance monitoring and I/we report any suspicions of money laundering as required by law .

Audit registration

I/We confirm that the control of the firm is in accordance with the *Audit Regulations and Guidance*.

I/We confirm that the firm has made arrangements so that all principals and employees conducting audit work are, and continue to be, competent to carry out the audit work for which they are responsible or employed.

I/We confirm that the firm is a fit and proper firm to carry out audit work.

I/We confirm that the firm has notified ICAEW within 10 business days of all changes in circumstances, and will continue to do so, in accordance with audit regulations 2.11 and 2.12.

I/We undertake that the firm will at all times comply with the *Audit Regulations and Guidance*.

I/We confirm that, if training is provided to principals or employees to enable them to obtain the appropriate (audit) qualification, the audit work that underlies that training will comply with all relevant International Standards on Auditing (UK and Ireland).

Designated Professional Body (DPB) licence

I/We confirm that the main business of the firm is the practice of the profession of accountancy and any provision of DPB licensed activities is incidental.

I/We undertake that this firm will comply with the *DPB Handbook* at all times.

I/We confirm that the composition of the firm is in accordance with the *DPB Handbook*.

I/We confirm that the firm has notified ICAEW within 10 business days of all changes in circumstances, and will continue to do so, in accordance with clause 2.07(d) of the *DPB Handbook*.

Additional sheets

If you have provided additional information on separate sheets, please make sure that you have cross-referenced each piece of information to the relevant question.

I have attached ____ additional sheets.

Signatures - Sole practitioners only need to sign once

Signature of senior/managing partner, director, sole practitioner, Practice Assurance principal (delete as appropriate)	Name in capitals	Date

Signature of audit compliance principal	Name in capitals	Date

Signature of DPB contact principal	Name in capitals	Date

Using your personal information

We will treat your personal information in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. If required by law, we will share your information with other organisations.

We may transfer your information to one of our offices in countries outside the European Economic Area (EEA). These countries may not have similar data protection laws to the EEA so, if we do transfer your information, we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy please go to icaew.com/dataprotection.

Good practice points

Firms are free to follow whatever procedures they wish in order to act in accordance with the Practice Assurance standards. The Practice Assurance Committee actively encourages firms to consider the following areas.

Is your data protection registration up to date? Please see our helpsheet, Data Protection Act 1998 and the Accountancy Profession at icaew.com/helpsheets.

If you are a sole practitioner, have you considered whether you should appoint an alternate?

Would your firm benefit from a review of its compliance with the Practice Assurance standards? Visit icaew.com/helpsheets for a compliance helpsheet and checklist.

If any principals or employees hold sole or joint and several powers of attorney which are discharged through the firm, have all such powers been restricted to exclude buying or subscribing for listed securities (non-FSA authorised firms only)?

Does your firm have adequate procedures to ensure that it complies with all applicable disclosure requirements in financial statements which it prepares, including using proprietary software for accounts production? If so, please check that you are using the latest updated version and that you have contracted ongoing support for updates. You may also wish to refer to our helpsheet, Quality Control of Statutory Accounts, at icaew.com/helpsheets.

Does your firm provide all the information to clients/potential clients as required by the Provision of Services Regulations? Visit icaew.com/servicesdirective for a helpsheet.

Code of Ethics

A revised Code of Ethics is effective from 1 January 2011. The majority of the revisions do not introduce any change to the substance of the requirements compared with the previous code. There are two key changes for practitioners.

For non-assurance engagements, s280 previously included an absolute prohibition on loans and investments in respect of clients with whom practitioners undertake such engagements, regardless of the circumstances. This prohibition has now been replaced with a more flexible requirement to assess potential threats and, if those threats are significant, to apply safeguards.

The detailed independence requirements in s290 for audits and review engagements include additional prohibitions for public interest entity audits and reviews. However:

- For audits in the UK and Ireland, the APB's Ethical Standards will continue to apply instead.
- For review engagements (see examples in a new appendix to s290), the APB standards may be used instead, and may be more suitable for smaller engagements where the PASE provisions can be applied.

Further details are available at icaew.com/ethics.

Money Laundering Regulations 2007

Under the Money Laundering Regulations 2007 (MLR.07), effective from 15 December 2007, all practitioners offering trust and company formation services, as well as those providing accountancy services, are within the scope of the regulations.

MLR.07 requires the application of 'client due diligence' procedures to existing or ongoing clients as well as new clients. Many firms already keep sufficient evidence for existing or ongoing clients, which should satisfy the identification requirements of MLR.07 for low and medium risk clients (such as recent correspondence and tax reference data from HMRC). However, firms should ensure that the evidence they hold is current, reliable and relevant.

Firms must also consider if any of their existing or ongoing clients are high risk. If they are, more data may be required to establish clear evidence of identification. A client may be categorised as high risk depending on the nature of their activities, their location (eg, in a high risk country), because of the basis of their funding and control, or unexplained and dramatic changes in the level or nature of their activities. High risk clients also include 'Politically Exposed Persons' (by virtue of an official role they hold from an overseas authority or government) or where firms have not met the client in person.

Firms must also collect evidence of identification for investors who own 25% or more of a client. MLR.07 also requires firms to monitor clients in case they become higher risk as their circumstances change, and to establish internal monitoring systems covering all aspects of compliance under the MLR.07.

CCAB guidance on how to comply with MLR.07 can be found at icaew.com/moneylaundering.

Issue date: <<DATE>>

Please complete this form clearly using black ink.

Variable data

The data provided in these sections of the annual return should be completed as at <<as at date>>, except where otherwise stated.

Firm profile

D1.1 Total number of staff (including sole practitioners, principals and other fee-earning staff, administrative staff and sub-contractors) _____

D1.2 Total number of fee-earning staff including principals and sub-contractors _____

D1.3 Is your firm, or are individuals within your firm regulated/licensed for audit, FSA investment business, DPB or insolvency? Yes No

If 'Yes', please complete D1.4-D1.7 with the name of the applicable regulatory body, whether that body is ICAEW or another organisation.

D1.4 audit _____

D1.5 FSA authorised investment business _____

D1.6 DPB licensed activities _____

D1.7 insolvency (individuals) _____

D1.8 Is the firm eligible to use the ICAEW's group consumer credit licence? Yes No

Please refer to the Guidance Notes for more information.

Firm turnover (actual amount, not thousands - please state if estimated)

D2.1 Latest accounting reference date (DD MM YYYY) _____ / _____ / _____

D2.2 If the period is less/more than 12 months, please state number of months. _____ months

D2.3 Total firm turnover (actual amount) £ _____, _____, _____

Please state your firm's income for each of the following services:

D2.4 regulated audit work (actual amount) £ _____, _____, _____

D2.5 regulated investment business under FSA authorisation or DPB licence (actual amount) £ _____, _____, _____

D2.6 regulated insolvency work (actual amount) £ _____, _____, _____

Code of Ethics, Part A, General application of the code

D3.1 Does the firm have arrangements to ensure that all principals (including sole practitioners), employees and sub-contractors/consultants maintain the principles set out in the Code of Ethics, Part A, sections 100-150? Yes No

D3.2 Do all principals, employees and sub-contractors sign annual declarations covering confidentiality, independence and fit and proper issues? Yes No N/A

Sole practitioners with no staff please answer N/A.

D3.3 If you answered 'No' to D3.1 or D3.2, please explain how your firm employs the safeguards set out in the Code of Ethics in order to mitigate adequately any threats to integrity, objectivity, independence and/or confidentiality.

_____

_____

_____

Professional indemnity insurance (icaew.com/regulations)

D4.1 When was the overall adequacy of the firm's professional indemnity insurance (PII) last reviewed? (DD MM YYYY) _____ / _____ / _____

D4.2 Are your insurance arrangements met by another firm? Yes No

If 'Yes', please state in D4.3 and D4.4 the name and firm number of the main policy holder. If 'No', please go to D4.5.

D4.3 Firm name _____

D4.4 Firm number (if known) _____

D4.5 Firm policy number _____

D4.6 Most recent renewal date (DD MM YYYY) _____ / _____ / _____

D4.7 Sum insured (actual amount) £ _____, _____, _____

D4.8 Self-insured excess (actual amount) £ _____, _____, _____

D4.9 Name and address of insurer/underwriter (not broker)

_____

_____

D4.10 Do you recommend, arrange or undertake any work in respect of insurance contracts (including pensions) other than introducing clients to insurance brokers/insurers? Yes No

D4.11 If 'Yes', please confirm that you have minimum cover of €1,120,200 for each claim and €1,680,300 for all claims relating to these activities. Yes No

D4.12 Does your policy cover any other firms?

If 'Yes', please give details, including the firm number and name in D4.13 and D4.14. If you require more space, please attach a list. Yes No

D4.13 Connected entity or firm name _____

D4.14 Firm number (if known) _____

D4.15 This question is optional. Please give the actual amount of your latest premium (inclusive of IPT) as it may help us to assist firms with their PII arrangements. £ _____, _____, _____

Signing powers and clients' money (consult the Clients' Money Regulations at icaew.com/regulations)

D5.1 Does any individual within the firm have sole signing powers over any bank account of a client? Yes No

D5.2 For the period under review (see D2.1 and D2.2), did the firm handle clients' money? If 'No', please go to question D6.1. Yes No

D5.3 estimated total of clients' money received £ _____, _____, _____

D5.4 estimated maximum balance of clients' money held £ _____, _____, _____

D5.5 the total number of clients' money bank accounts _____

D5.6 Are all clients' bank accounts under the day-to-day control of a principal? Yes No

D5.7 Are all clients' bank accounts reconciled at least once every five weeks? Yes No

D5.8 Does the firm review compliance with the clients' money regulations annually? Yes No

D5.9 If required, have you made written arrangements with an alternate in respect of clients' money? Please see *Guidance Notes* for more information. Yes No N/A

If 'Yes', please check (or provide the details) in section A6.

D5.10 Amount of unclaimed clients' money paid to registered charities in the last 12 months. £ _____, _____, _____

Other information

D6.1 Does the firm operate effective procedures to record the terms of engagement for all its clients in accordance with Practice Assurance standard 2? Yes No

D6.2 If 'No', please state how the firm confirms with clients the services to be provided, the basis for invoicing (see the Code of Ethics, section 240, Fees and other types of remuneration) and their right to complain to ICAEW if the firm cannot address their concerns (icaew.com/regulations).

_____

_____

_____

D6.3 Do all principals, including sole practitioners and staff providing accountancy services, undertake CPD or other suitable training, and maintain appropriate training records, in order to fulfil their professional responsibilities and enable them to carry out their work competently? Yes No

D6.4 Has any principal or employee acted as a trustee or executor and discharged that duty, in whole or in part, through the firm?

If 'Yes', please answer D6.5 and D6.6. If 'No', please go to D6.7. Yes No

D6.5 How many trusts and estates were involved? _____

D6.6 Was there an outside trustee or did the trustee(s) have a discretionary or advisory agreement with an independent permitted third party in all cases? Yes No

D6.7 Is the practice (or any principal) the subject of an individual voluntary arrangement (IVA), a trust deed in Scotland or Ireland in favour of their creditors, a partnership voluntary arrangement (PVA), or a corporate voluntary arrangement (CVA)? Yes No

If 'Yes', please answer D6.8 and D6.9. If 'No' please go to section D6.10.

D6.8 Have they been notified to ICAEW? Yes No

D6.9 Are the terms of all IVAs/PVAs/trust deeds/CVAs being complied with? Yes No

For the period under review (see D2.1 and D2.2) please confirm:

D6.10 the number of clients registered, incorporated or resident outside the UK, Republic of Ireland, Channel Islands and Isle of Man for whom your firm or any connected entity is engaged to provide audit, assurance or accountant's reports. _____

D6.11 the total expenditure incurred on outsourced work performed outside the UK, Republic of Ireland, Channel Islands and Isle of Man. £ _____, _____, _____

D6.12 The number of accountant's reports signed under the Solicitors' Accounts Rules. _____

D6.13 The number of reports signed by the firm, or any connected entity, using the ICAEW Assurance Service in accordance with the recommendations of ICAEW Technical Release AAF 03/06. _____

Audit - variable data

The following sections relate to the firm's audit registration.

Control of firm

This section should be completed by all firms, including companies with one director, but not sole practitioners.

E1.1	Please give the aggregate % voting rights held by the principal(s)/shareholder(s) who are holders of an appropriate (audit) qualification, other registered auditors, EEA qualified auditors or EEA statutory auditors.	_____%
E1.2	Are the firm's policies set by, and implemented under the direction of, a management committee, board or other body?	Yes No
E1.3	If 'Yes', please give the aggregate % voting rights held by holders of an appropriate (audit) qualification, other registered auditors, EEA qualified auditors or EEA statutory auditors.	_____%
E1.4	Corporate firms only Are all shareholders either members of ICAEW or Institute affiliates? If 'No' please annotate, in section B3, the names of shareholders who are not members or affiliates.	Yes No

Number of regulated audit clients (or best estimate) as at [date of AR]

Please do not include entities taking advantage of any audit exemptions.

	Listed companies	Answer 0 if none
E2.1	Companies with a full listing on the London Stock Exchange	
E2.2	Companies quoted on the AIM (alternative investment market), PLUS markets, or any other recognised investment exchange	
E2.3	Companies with a listing on the Irish Stock Exchange	
E2.4	Sub-total of listed companies (E2.1 - E2.3)	
	Specialised audits (excluding listed company audits) where legislation requires an audit report on financial statements for:	
E2.5	banks and building societies	
E2.6	credit unions	
E2.7	insurance companies (but not insurance brokers)	
E2.8	entities authorised under legislation for investment, insurance or mortgage business (please include incorporated appointed representatives of authorised entities)	
E2.9	registered charities (please include charities audited under companies legislation)	
E2.10	friendly societies	
E2.11	industrial and provident societies	
E2.12	open ended investment companies	
E2.13	unit trusts	

E2.14 Lloyds syndicates _____

E2.15 mutual life offices _____

E2.16 pension schemes _____

E2.17 limited liability partnerships _____

E2.18 partnerships _____

E2.19 Sub-total for specialised audits (E2.5 - E.2.18) _____

E2.20 Other regulated audit clients _____

E2.21 Grand total (E2.4 + E2.19 + E2.20) _____

E2.22 Of the total in E2.21, how many are entities incorporated in the Republic of Ireland? _____

E2.23 Amount of the largest total of fees (for all services) receivable from an audit client and its subsidiaries.

Where this total will regularly exceed 10% of total firm turnover, the firm should refer to the Auditing Practices Board's ethical Standard 4 or call ICAEW's Ethics Advisory Services helpline on +44 (0)1908 248 025.

£ _____, _____, _____

Audit appointment cessations

E2.24 During the period covered by this return, have you informed the Professional Oversight Board of the cessation of any audit appointments of 'major' audits and their subsidiaries? Yes No N/A

If 'No', please inform the Professional Oversight Board immediately.

During the period covered by this return, have you informed ICAEW of the cessation of any other audit appointment where that cessation was before the normal end of your term of office? Yes No N/A

If 'No', please enclose with this return the notifications required under the law.

Major audit clients

During the period covered by this return have you informed the Audit Registration Committee, within 21 business days of the event, of any appointment as auditor to a 'major audit' client (or when an existing client becomes one), as required by audit regulation 3.15? If you have not, please inform the Audit Registration Committee immediately.

Audit procedures and compliance

E3.1 Please confirm if your firm uses an audit manual and accounts disclosure checklist which are commercially available and regularly updated via an updating service to which you subscribe. Yes No

E3.2 If the firm has any specialised audits in E2.19, is appropriate audit documentation used and training provided in relation to these clients? Yes No N/A

E3.3 If you have answered 'No' to E3.1 or E3.2, please explain how your firm ensures that its procedures are fully compliant with International Standards on Auditing (UK and Ireland) and the audit regulations and how they are regularly updated.

_____

_____

_____

E3.4 If your firm has no regulated audit clients (E2.21 is 0), please describe briefly the training for all responsible individuals and audit staff to maintain their audit competence.

_____

_____

_____

E3.5 Has the firm completed an audit compliance review (ACR) during the period covered by this return? See D2.1 and D2.2. Yes No

The audit regulations require registered firms to carry out an ACR annually.

E3.6 If 'No', please explain the circumstances below but do not complete the rest of this section.

_____

_____

_____

E3.7 If 'Yes', please give the date of the most recent ACR. (DD MM YYYY) _____ / _____ / _____

E3.8 Have you retained a record of the ACR showing the work done and the results? Yes No

E3.9 Did your ACR include:

a review of whole-firm procedures Yes No

cold file reviews Yes No

a thorough check on any follow-up actions arising from the previous ACR Yes No

a thorough check on any undertakings or confirmations previously given to the Audit Registration Committee or the Quality Assurance Department? Yes No N/A

E3.10 If you answered 'No' to any points in E3.8 or E3.9, please explain how your firm is addressing these requirements.

_____

_____

_____

E3.11 Did you use a commercially available ACR checklist? Yes No

DPB - variable data

The following sections relate to the firm's Designated Professional Body licence.

F1.1 For the period covered by this return (see D2.1 and D2.2), has the firm:

conducted any regulated investment business activities which fall outside the scope of a DPB licence and which may only be conducted by an FSA authorised firm — Yes No

conducted any DPB licensed activities that were not incidental to the firm as a whole, or were not arising out of, or complementary to, other services to individual clients — Yes No

approved any financial promotions, including investment advertisements — Yes No

managed investments for clients where decisions to buy or subscribe for investments have been taken without the advice of an independent permitted third party? — Yes No

F1.2 If you answered 'Yes' to any points in F1.1, please provide further information.

_____

_____

_____

F1.3 For the period covered by this return, please confirm that your firm has reviewed how effectively it is complying with the *DPB Handbook* and that appropriate and timely actions have been taken to address any matters of concern arising from the review. Yes No

The *DPB Handbook* requires licensed firms to perform an annual compliance review.

F1.4 If you answered 'No' to F1.3 or if any corrective actions are still outstanding, please provide further information.

_____

_____

_____

Standing data

We have completed most of this section using data held by ICAEW. Please check, update, amend or complete as necessary using black ink.

The *Audit Regulations and Guidance*, *DPB Handbook* and Practice Assurance Regulations state that you must tell ICAEW as soon as changes occur. You should not wait until you receive your next annual return.

Only those principals and employees designated under audit regulation 4.01 and approved by the Audit Registration Committee (audit regulation 4.05) can be responsible individuals and be responsible for audit work and sign audit reports. Your current responsible individuals are listed in sections A4.1, A5.1 and B1.1.

If you have any questions about the data printed in these sections please contact either:

Members Records on +44 (0)1908 248 054 for general queries; or

Regulatory Support on +44 (0)1908 546 302 for enquiries about audit registration and licensing for exempt regulated investment business (DPB licensing).

Firm information

A1.1	Firm name
A1.2	Does the firm describe itself as ‘Chartered Accountants’? (Visit icaew.com/regulations, Use of the description ‘chartered accountants’)
A1.2.1	If your firm is an ICAEW member firm (see the definition in the *Guidance Notes*), please enter ICAEW. Alternatively, please confirm the accountancy body of which your firm is a member, or answer ‘none’ if not a member firm of any accountancy body.
A1.3	Legal form of firm
A1.4	Firm number
A1.5	Office number
A1.6	Address of sole or main office
A1.7	Telephone
A1.8	Fax
A1.9	Firm’s website address
A1.10	Name of Practice Assurance contact principal
A1.11	Email address of Practice Assurance contact principal

A1.12	Name of your money laundering officer
A1.13	Name of Audit Compliance Principal
A1.14	Email address of Audit Compliance Principal (please note, this is the address that we will use to send you Audit News)
A1.15	Name of Designated Professional Body (DPB) Contact Partner
A1.16	Email address of DPB Contact Partner (please note, this is the address that we will use to send you DPB News)

Trading names

A2.1 Office number	A2.2 Trading name (if appropriate)	A2.3 Address	A2.4 Do you use this trading name to sign audit reports?

Other offices

A3.1 Office number	A3.2 Address	A3.3 Telephone	A3.4 Fax	A3.5 ICAEW authorised training employer	A3.6 Market day office

Principals who are members of ICAEW

Please add below details of any principals not already listed.

Only those principals who have been designated responsible individuals in accordance with audit regulation 4.01 are allowed to be responsible for audit work and sign audit reports. Such designations need the approval of the Audit Registration Committee (audit regulation 4.05).							Details of any other country in which the RI is registered and so entitled to audit entities incorporated in that country.				
A4.1 Name	A4.2 Year admitted to ICAEW	A4.3 Role in firm; note if also a responsible individual (RI)	A4.4 Year appointed principal	A4.5 Member number	A4.6 PC held	A4.7 Office number	A4.8 Country code	A4.9 Audit registration body	A4.10 Registration number	A4.11 Date of registration	A4.12 Date of cessation

All other principals

Please add below details of any principals not already listed.

Only those principals who have been designated responsible individuals in accordance with audit regulation 4.01 are allowed to be responsible for audit work and sign audit reports. Such designations need the approval of the Audit Registration Committee (audit regulation 4.05).						Details of any other country in which the RI is registered and so entitled to audit entities incorporated in that country.				
A5.1 Name	A5.2 Qualification (with name of accountancy body if applicable)	A5.3 Role in firm; note if also a responsible individual (RI)	A5.4 Year appointed principal	A5.5 Affiliate number or NIM	A5.6 Office number	A5.7 Country code	A5.8 Audit registration body	A5.9 Registration number	A5.10 Date of registration	A5.11 Date of cessation

Alternate contact information for single ICAEW members holding clients' money

A6.1 Name	A6.2 Address	A6.3 Telephone	A6.4 Email

Connected entities

Audit connected entities regulated by ICAEW

A7.1 Name of connected entity	A7.2 Firm number	A7.3 Main address

DPB connected entities regulated by ICAEW

A8.1 Name of connected entity	A8.2 Firm number	A8.3 Main address

Connected entities continued

FSA connected entities

A9.1 Name of connected entity	A9.2 Firm number	A9.3 Main address

Unregulated connected entities performing accounting services

A10.1 Name of connected entity	A10.2 Firm number	A10.3 Main address

Connected entities not included in A7, A8, A9 or A10

Please see definitions in the *Guidance Notes* before completing this section and provide additional information on separate sheets.

A11.1 Firm name

_____

A11.2 Firm number

_____

A11.3 Legal form of connected entity

_____

A11.4 Main address

_____

_____

_____

A11.5 Is the connected entity, or individuals within the connected entity regulated/licensed for Audit, FSA Investment business, DPB or Insolvency? Yes No

If 'Yes', please complete the section below with the name of the relevant regulatory body, whether that body is ICAEW or another organisation.

- Audit _____
- FSA authorised investment business _____
- DPB licensed activities _____
- Insolvency (individuals) _____

A11.6 Please provide details of how the entity is connected to your firm.

_____

_____

A11.7 Please list the directors/LLP members/partners in the connected entity.

Name	ICAEW member number	PC held	Voting rights (in an LLP or partnership)

A11.8 If the connected entity is a corporate entity (other than an LLP), please list the shareholders.

Name	ICAEW member number	PC held	Voting rights

A11.9 Please indicate the business activities performed by the firm

Accountancy service provider:

- audit ☐
- preparing accounts and/or business records ☐
- payroll services ☐
- tax compliance ☐
- tax advice ☐
- investment business advice ☐
- management consultancy ☐
- corporate finance ☐
- activities requiring a DPB licence ☐
- insolvency practice ☐
- other (please specify) _____

Trust services ☐

Company services ☐

Company formation ☐

Interim manager services ☐

Agency providing company directors/company secretaries ☐

Agency providing trustees ☐

Other trust or company services (please specify) _____

A11.10 Turnover of the connected entity (actual amount) £ _____, _____, _____

A11.11 Does this connected entity have separate PII cover? Yes No N/A

If this connected entity is named under the PII policy noted in D4.5, please answer N/A.

A11.12 If you have answered 'No' to A11.11, and if A11.9 indicates the connected entity provides accountancy services, please explain why no PII cover is in place.

_____

_____

_____

Employee responsible individuals (as notified to ICAEW)

Only those employees who have been designated responsible individuals in accordance with audit regulation 4.01 are allowed to be responsible for audit work and sign audit reports. Such designations need the approval of the Audit Registration Committee (audit regulation 4.05).						Details of any other country in which the RI is registered and so entitled to audit entities incorporated in that country.				
B1.1 Member number	B1.2 Full name	B1.3 Date of birth	B1.4 RSB or affiliate	B1.5 PC held	B1.6 Office number	B1.7 Country code	B1.8 Audit registration body	B1.9 Registration number	B1.10 Date of registration	B1.11 Date of cessation

Networks

The information in sections B2, B3, B4 and B5 is supplementary information required for the public audit register.

B2.1 Network name	B2.2 Address	B2.3 Display address	B2.4 Website address	B2.5 Display website address

Shareholders

B3.1 Name	B3.2 Address	B3.3 Status of shareholder	B3.4 % shareholding	B3.5 Date first became a shareholder	B3.6 Date shareholding ceased or changed

Management board members

B4.1 Name	B4.2 Address	B4.3 Date appointed to management board	B4.4 Date appointment ceased

Details of any other country in which the firm is registered for audit and so entitled to audit entities incorporated in that country

B5.1 Country code	B5.2 Audit registration body	B5.3 Registration number	B5.4 Date of registration	B5.5 Date registration ceased

PROBATE ANNUAL RETURN AS AT DD MM YYYY

Probate - variable data

1 Ownership and control of firm

Questions 1.1 and 1.2 relate only to accredited probate firms **authorised** for probate work in accordance with Probate Regulation 2.2.

If your firm is **licensed** to conduct probate work in accordance with Probate Regulation 2.3, please go to question 1.3.

1.1 If your firm is an authorised firm, are all principals and shareholders in the firm (whether individuals or bodies corporate) individually authorised to conduct probate work? Yes/No

1.2 If your firm is an authorised firm and another body is a principal in your firm, are non-authorised persons entitled to exercise, or control the exercise of, less than 10% of voting rights in that other body? Yes/No

If 'No', please provide details on a separate sheet.

Questions 1.3 and 1.4 relate only to accredited probate firms that are **licensed** for probate work in accordance with Probate Regulation 2.3.

If your firm is **authorised** in accordance with Probate Regulation 2.2, please go to question 2.4.

1.3 If your firm is a licensed firm, is at least one principal in the firm (other than a licensed firm) authorised to conduct probate work? Yes/No

1.4 Are all non-authorised persons (whether individuals or bodies corporate) who hold, together with their associates, a material interest in the firm or the firm's parent entity, individually approved in that capacity by ICAEW?

For a definition of what constitutes a 'material interest' and an 'associate' for the purposes of the Probate Regulations, please see Probate Regulations 6.2 and 6.3. Yes/No

If 'No' please provide details on a separate sheet.

2 Profile of probate and related work

Please answer the following questions with reference to the period covered by this return

2.1 Please indicate the business activities performed by the firm during the period covered by return:

- will-writing ☐
- advice to those drafting wills ☐

- advice on IHT and related matters before applying for a grant of probate or letters of administration ☐
- probate work (ie, applying for a grant of probate or letters of administration) ☐
- executorship activities ☐
- assistance to executors in administering estates ☐

2.2 Please state your firm's total income from all the activities.
(Actual amount, not thousands. Please state if estimated). £ _____

2.3 Please state your firm's total income from regulated authorised work (ie, probate and estate administration).
(Actual amount, not thousands. Please state if estimated). £ _____

2.4 How many probate clients has your firm had?
Answer 0 if none. _____

2.5 Has your firm acted as an executor in administering an estate?
If 'Yes' please complete questions 2.6 – 2.15. If 'No' please go to the next section. Yes/No

2.6 How many estates did you administer as an executor? _____

2.7 Were client or estate monies held? Yes/No

2.8 If client or estate monies were held, what was the total value of these estates? £ _____

2.9 If client or estate assets were held (other than client monies) what was the total value of these assets? £ _____

2.10 Please provide details of the assets held:

2.11 Has your firm provided assistance to executors in administering estates?
If 'Yes' please complete questions 2.12 to 2.15 below. Yes/No
If 'No' please go to the next section.

2.12 How many estates were involved? _____

2.13 Were client or estate monies held? Yes/No

2.14 If client or estate monies were held, what was the total value of these estates? £ _____

2.15 If client or estate assets were held (other than client monies) what was the total value of these assets? £ _____

2.16 Please provide details of the assets held:

---

3 Firm profile

3.1 Does the firm have at least one office in England and Wales from which it conducts probate work (unless it is a company or limited liability partnership whose registered office is in England and Wales)? Yes/No

3.2 Total number of authorised individuals (whether principals or employees) _____

3.3 Does each office from which probate work is conducted contain at least one authorised individual? Yes/No

If 'No' please explain on a separate sheet how your firm ensures that probate work is conducted in accordance with the Probate Regulations.

4 Compliance with the Probate Regulations

4.1 For the period covered by this return, has your firm conducted a compliance review to consider how effectively it is complying with the Probate Regulations? Yes/No

The Probate Regulations require accredited probate firms to perform an annual compliance review.

4.2 Has your firm retained a record of the review showing the work done and the results? Yes/No

4.3 Have all matters identified in previous compliance reviews now been addressed? Yes/No

If 'No', please provide details.

4.4 During the period covered by this return, has the firm informed ICAEW within 10 business days of any change of circumstances affecting the firm or its eligibility to be accredited, as required by Probate Regulations 2.7 – 2.9? Yes/No

If 'No' please provide details:

4.5 Does your firm have arrangements in place to ensure that all principals and employees engaged in authorised work (ie, probate and estate administration) are, and continue to be, competent to conduct this work? Yes/No

If 'No' please provide further information.

4.6 Does the firm hold PII of at least £500,000 per claim as required by the PII Regulations and Probate Regulation 2.10? Yes/No

4.7 Has your firm received any complaints about its activities in relation to authorised work (ie, probate and estate administration) during the period covered by the return? Yes/No

If 'Yes', please provide details of any investigations undertaken, the outcome and whether the client made a complaint to the Legal Ombudsman.

Probate - Standing data

We have completed most of this section using data held by ICAEW. Please check, update, amend or complete as necessary using black ink.

The Probate Regulations state that you must tell ICAEW as soon as changes occur. You should not wait until you receive your next annual return.

5 Firm information

5.1 Name of probate contact partner (this will be the head of legal practice in a licensed firm) _____

5.2 Email address of probate contact partner (please note, this is the address we will use to send you *Probate News*) _____

5.3 Name of the head of finance and administration (this applies only to licensed firms) _____

6 Authorised individuals - principals

Please add below details of any principals not already listed.

Only those principals who have been designated authorised individuals in accordance with Probate Regulation 4.1 are able to conduct, and supervise the conduct of, probate work.

Such designations need the approval of the Probate Committee (Probate Regulation 4.4).

Member number	Full name	Date of birth	Approved regulator	PC held	Office number	% voting rights	Affiliate number if applicable

7 Non-authorised principals and shareholders – licensed firms only

If your firm is **authorised** to conduct probate work, please go to the next question.

All principals and shareholders who hold (together with their associates) a material interest in a licensed firm or its parent undertaking must be approved by ICAEW if they are not authorised to conduct probate work.

Probate Regulations 6.2 and 6.3 define a ‘material interest’ and who is an ‘associate’ for the purposes of the regulations.

Member number	Full name	Date of birth	Approved regulator	PC held	Office number	% voting rights	Affiliate number if applicable

8 Authorised individuals - employees

Please add below details of any employees not already listed.

Only those employees who have been designated as authorised individuals in accordance with Probate Regulation 4.1 are able to conduct, and supervise the conduct of, probate work. Such designations need the approval of the Probate Committee (Probate Regulation 4.4).					
Member number	Full name	Date of birth	Approved regulator	PC held	Office number

9 Probate connected entities regulated by ICAEW

Name of connected entity	Firm number	Main address

10 Confirmations and undertakings

If you are unable to give one or more of the following confirmations and undertakings, please strike it through and enclose a full statement explaining the position.

- I/We undertake that the firm will comply with the Probate Regulations at all times.
- I/We confirm that the firm has made arrangements to ensure that only authorised individuals undertake, or control the undertaking of, probate work on behalf of the firm.
- I/We confirm the firm has made arrangements to prevent anyone who is not an authorised individual in the firm, or a person working under their supervision, from having any influence that would be likely to affect the independence or integrity of probate work.
- I/We confirm that the firm has made arrangements to ensure that all principals and employees undertaking authorised work (ie, probate and estate administration) are, and continue to be, competent to carry out the authorised work for which they are responsible.
- I/We confirm that the firm has notified ICAEW within 10 business days of all changes in circumstances, and will continue to do so, in accordance with Probate Regulations 2.7(j) – 2.7(l).
- I/We confirm that the firm is a fit and proper firm to carry out probate work.

11 Signature

Signature of the probate contact partner (this will be the head of legal practice in a licensed firm) _____

Name in capitals _____

Date _____

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 clients 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 branch in the United Kingdom or Ireland of:
  - the Bank of England;
  - the Central Bank of Ireland;
  - the Central Bank of another member State of the European Union;
  - a person who has permission under part 4 of the Financial Services and Markets Act to accept deposits; or
  - 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.
- a branch outside the United Kingdom or Ireland of:
  - a bank within the meaning of paragraph (a) above;
  - a bank which is a subsidiary or parent company of such a bank;
  - 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

-
    - a bank on the Island of Guernsey that is registered as a Deposit Taker under the Banking Supervision (Bailiwick of Guernsey) Law 1994;
    - a bank on the Island of Jersey including a registered person under the Banking Business (Jersey) Law 1991;
    - 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:

- it has adequate systems so that it can comply with the regulations and make the confirmations necessary in terms of regulation 27;
- it has complied with the Clients' Money Regulations as at the reporting date; and
- 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 2006 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.

- 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.
- On opening a Client Bank Account, a Firm must notify the Bank in writing that:
    - 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 Firms;
    - interest payable on the money in the account must be credited to that account;
    - 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
    - the Bank must acknowledge in writing that it accepts these terms.
- 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:
    - withdraw all money from the account;
    - close the account; and
    - deposit the money with another Bank in a Client Bank Account; or
    - as a last resort, return the money to the client.
- A Firm may only hold Clients' Money in a Bank outside the United Kingdom or Ireland if the client is informed in writing:
    - of the country or territory where the account will be held; and
    - 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
    - the client has agreed in writing to the money being paid into, or remaining in, that Bank.
- 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:
    - the client is informed in writing of the country or territory where the account will be held; and
    - the client has agreed in writing to the money being paid into, or remaining in, the institution where the money is held; and
    - 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:

- the Firm is required to make such payment under these regulations; or
- the money is the Firm's own money and:
    - 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
    - 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:

- place Clients' Money in an interest-bearing account unless the interest earned would not be material (see Explanatory Note 5 below); and
- ensure that a fair rate of interest (see Explanatory Note 5 below) on the money is earned; and
- 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 cient 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:

-
    - money, not being Clients' Money, paid into a Client Bank Account for the purpose of opening or maintaining the account; or
    - the element of Mixed Monies which are not Clients' Money;
- money paid into a Client Bank Account contrary to these regulations or which would have been so but for regulation 12;
- money required to be withdrawn under regulation 19;
- interest which the client has agreed in writing should not be paid to him (see regulation 16);
- money properly required for a payment to a client;
- 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;
- money withdrawn in accordance with regulation 22, for or towards payment of fees payable to the Firm by the client;
- money drawn on a clients written authority or in conformity with any written contract between the Firm and the client;
- 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).
- Money withdrawn and paid to a registered charity in accordance with regulation 32 or 33.

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.)

20A. Clients money must be returned to the client promptly as soon as there is no longer any reason to retain those funds.

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:
- the precise amount thereof has been agreed by the client or has been finally determined by a court or arbiter; or
- 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
- 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:
- details of all money paid into and out of all Client Bank Accounts;
- entries of all Clients' Money paid direct to the client, or, on the clients instructions, paid to a third party, identifying that person;
- entries of all cheques received and endorsed over by the Firm to the client or, on the clients instruction, endorsed over to a third party, identifying that person;
- entries of all electronic transfers received or made of money and transferred direct to the client or, on the clients instructions, transferred to a third party, identifying that person; and
- details of all transactions on each clients 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.
- details of all unclaimed monies withdrawn from the Client Bank Account in accordance with regulation 32 or 33, including the name and contact details of the recipient of those monies.

25. A Firm must:
- 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
- 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:

- 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
- ensure that their Firm conducts a review at least annually, to consider whether systems it has maintained have been adequate to enable it:
    - to comply with these regulations;
    - to carry out the reconciliations in accordance with regulation 25; and
    - 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:

- 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
- 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 term includes a sole practitioner) which is wholly owned and/or controlled, whether directly or indirectly, by a single member 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 member. Notification of such arrangements must be made in writing before or immediately following the first receipt of Clients' Money by the firm, or notified via the firm's next annual return to ICAEW and immediately following any change (including cancellation) in the arrangement. (See Explanatory Note 10 below.)

Unidentified and untraced clients

32. A Firm may cease to treat as client monies, any monies, when after taking reasonable steps to trace the client and return the monies, those monies remain unclaimed. (Guidance on 'reasonable steps' is included in explanatory note 13).Such monies must then be paid by the member to a registered charity, subject to the following conditions:

- The client must have remained untraced for 5 years.
- Sums of below £10,000 (per client) may be paid to any registered charity.
- For sums of £10,000 and above (per client), the registered charity must provide an

indemnity against any claim subsequently made by the client for the money.

33.

- Where a Firm is ceasing to practise, payment of any unclaimed clients' money to a registered charity must be on the following terms:
  - That the registered charity provides an indemnity for all sums paid whatever the amount.
  - There is no requirement for the client to have remained untraced for 5 years.
- On cessation the Firm must inform the Institute in writing of all sums paid to a registered charity in accordance with this regulation. The information to be provided must include:
  - the clients name and last known contact details, and
  - the sum paid, and
  - the name and contact details of the recipient registered charity.

For the purposes of this regulation, ceasing to practise does not include any arrangement whereby a Firm succeeds to the business of another.

34. Any sums not paid to a registered charity in accordance with regulation 32 or 33 must be retained on deposit for the benefit of the unidentified or untraced client.

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 clients 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 EUs 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 clients identity when a professional relationship is first established, rather than later when any clients' money may be first received. Guidance on suitable procedures to verify a clients identity can be found in 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 statement 9.5.
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 clients 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. Regulation 31 requires firms which are directly or indirectly wholly owned or controlled by a single member 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 that member. Such firms could be a limited company with a single director and no company secretary, or a LLP where one member is an individual and the other member is a company, and the individual is the sole director of that company. However, firms may adopt different structures but still be controlled by a single member and it is not possible for this guidance to outline every situation whereby an alternate will be required under regulation 31. A firm which is a partnership of individuals but which only has a single equity partner would not need to make arrangements under regulation 31 as other ‘partners’ are able to deal any client money held by the firm. The regulation details when these arrangements have to be in place. The arrangement could most easily be with another firm where there is already an alternate or consultation arrangement in place.
There is no requirement that this arrangement has to be with another chartered accountant, but when selecting an alternate, the member 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 member 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. Visit www.icaew.com/helpsheets and click on 'Practice helpsheets' for the helpsheet on alternate arrangements; click on 'Ethics helpsheets' for the helpsheet on clients' monies.
Details of the arrangements, and any changes, should be sent to the Professional Conduct Department, ICAEW, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ. Although there is no requirement to use it, there is a standard form on our website which forms part of the clients' money helpsheet and may be obtained as noted above.

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 firms 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 firms compliance with the Clients' Money Regulations, regardless of any delegation that may have been made.
Regulation 27 requires the principals to review the firms compliance with the regulations and this review should include the operation of any delegated powers.

13. Regulation 32 enables firms to pay unclaimed clients' money to a registered charity. There is no requirement to do so - funds not paid to a registered charity must be retained on deposit for the benefit of the unidentified or untraced client in accordance with regulation 34. Before any payment to a charity is made, reasonable steps to trace the client must have been taken. Any steps taken should be proportionate to the sums involved, but could include, writing to the client at their last known address, conducting searches of the electoral roll or at Companies House, advertising in a local newspaper and employing tracing agents.
Obviously, more effort should be made to trace a missing client if the sums involved are material. The firm will remain liable to repay any monies paid to a registered charity.
There is no requirement to take steps to trace the client when a firm is ceasing to trade - see regulation 33. The ICAEW Foundation www.icaew.com/foundation (a registered charity number 313983) has indicated that it will normally accept funds on an indemnity basis. The level of indemnity will depend on the sums paid and whether the firm has ceased to trade, see regulations 32 and 33.
To avoid such a situation arising, it may be appropriate before accepting funds from clients to make a written arrangement with them should such circumstances arise. For example, the firm either in its engagement letter or on acceptance of the funds, could detail the means by which monies which subsequently become unclaimed would be dealt with.

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

Technical Release

TECH 04/08

ANTI-MONEY LAUNDERING GUIDANCE FOR THE ACCOUNTANCY SECTOR

Guidance for those providing audit, accountancy, tax advisory, insolvency or related services in the United Kingdom (including such firms providing trust or company services) on the prevention of money laundering and the countering of terrorist financing. Issued by the Consultative Committee of Accountancy Bodies in August 2008.

INTRODUCTION

This technical release gives the text of the Anti-Money Laundering Guidance issued by the CCAB. Tech 04/08 replaces Tech 05/07 (and exposure draft of the Guidance) issued in October 2007 and Tech 07/07 (a post consultation and pre-approval version of this guidance) issued in December. It is also being issued as Handbook Statement 9.5.

The Guidance (excluding Appendix A – Supplementary guidance for the Tax Practitioner) has been approved by Treasury. This means that courts must take it into account when determining whether an accountant's conduct gives rise to an offence under either the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2007. It will also be taken into account in relevant professional disciplinary enquiries. Appendix A has been submitted for Treasury approval. The version submitted for Treasury consideration is included in this technical release.

The Guidance is addressed to all entities providing audit, accountancy, tax advisory, insolvency or related services in the United Kingdom by way of business, irrespective of membership of a recognised professional body. We hope this will promote consistency of compliance with requirements, both between competing firms and where work is sub-contracted from one firm to another. The Guidance should also be followed by any accountancy firm which also provides trust or company services within the meaning of the Money Laundering Regulations 2007.

This technical release differs from the previous releases in a number of minor ways. These changes reflect the comments and amendments made as a result of both the consultation and approval processes. Members are cross referred to technical release 05/08 which provides as "tracked changes" version of the text of this guidance.

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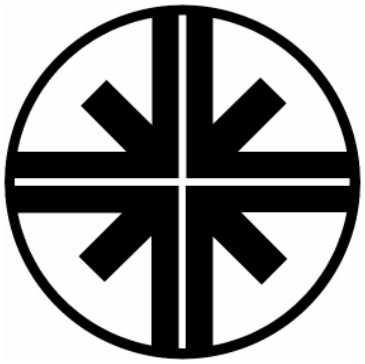

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The Chartered Institute of Public Finance and Accountancy

ANTI-MONEY LAUNDERING GUIDANCE FOR THE ACCOUNTANCY SECTOR

Guidance for those providing audit, accountancy, tax advisory, insolvency or related services in the United Kingdom, on the prevention of money laundering and the countering of terrorist financing. Issued by the Consultative Committee of Accountancy Bodies, in August 2008.

The Anti-Money Laundering Guidance for the Accountancy Sector has been approved by Treasury (excluding Appendix A - Supplementary guidance for the Tax Practitioner, which has been submitted for Treasury approval separately). Guidance which is approved by Treasury is 'relevant guidance' within the meaning of the Money Laundering Regulations 2007. Courts must consider relevant guidance when determining whether an accountant's conduct gives rise to certain offences under either the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2007. It is this guidance which practitioners should consider as authoritative when implementing and complying with anti-money laundering requirements.

The Guidance provides the accountancy sector with not only an interpretation of the requirements of the Money Laundering Regulations 2007 (which became effective from 15th December 2007) and primary legislation relating to money laundering and terrorist financing but also practical guidance on good practice for matters not prescribed in law.

This Guidance includes a number of minor changes made since the guidance was issued in December 2007 (following the publication of an exposure draft in October 2007).

The Guidance reflects not only law but the experience of practitioners. For more complex areas of customer due diligence, our guidance continues to be cross referred to the guidance notes issued by the Joint Money Laundering Steering

Group. However, it is intended that, at least for most smaller practitioners, the guidance will be self contained and the need to refer to additional external material will be minimal.

To aid easy access, use is made of defined terms explained in a glossary and each section is prefaced with key points for quick reference.

CONTENTS

GLOSSARY

SECTION 1 – ABOUT THIS *GUIDANCE*

KEY POINTS

- UK anti-*money laundering* regime requirements are set out in the Proceeds of Crime Act 2002 (*POCA)* (as amended by the Serious Organised Crime and Police Act 2005 (*SOCPA)),* the Money Laundering Regulations 2007 (*2007 Regulations)* and the Terrorism Act 2000 (*TA 2000)* (as amended by the Anti-Terrorism, Crime and Security Act 2001 (*ATCSA 2001)* and the Terrorism Act 2006 (*TA 2006)).*
- HM Treasury approval for this *Guidance* has been granted. As such the Courts must take it into account in deciding whether or not an offence has been committed under ss330-331, *POCA* or the *2007 Regulations* by an *individual* or *business* within its scope.
- *Businesses* and *individuals* should take account of this *Guidance* when acting in the course of business as auditors, *external accountants*, *insolvency practitioner*s and *tax adviser*s, and when acting in the course of business as trust and company service providers*.* Failure to do so could have serious legal, regulatory or professional disciplinary consequences.
- Where other professional or trade bodies have produced specialist *Guidance* concerning particular services or activities, *businesses* and *individuals* may need, to have regard to that *Guidance* as a supplement to this *Guidance*.

INTRODUCTION

1.1 Terms that appear in *italics* in this *Guidance* are explained in the Glossary.

1.2 This *Guidance* has been drafted to be consistent with the *Guidance* for the UK financial sector issued by the Joint Money Laundering Steering Group (*JMLSG*). Some of the material contained in this guide draws significantly on *JMLSG* wording, for which thanks are due to the *JMLSG*. The *JMLSG Guidance* is very comprehensive, and where *businesses* or *individuals* require further guidance, they may seek it from the *JMLSG Guidance*. *Businesses* and *individuals* carrying out *defined services* who follow the *JMLSG Guidance*, adapted for the circumstances in which they are practising, will be deemed to have followed this *Guidance*.

1.3 This *Guidance* has been prepared to assist accountants and related *businesses* and professionals in complying with their obligations, arising from United Kingdom legislation, in relation to the prevention, recognition and reporting of *money laundering*.

BUSINESSES AND *INDIVIDUALS* WITHIN THE SCOPE OF THIS *GUIDANCE*

1.4 The *Guidance* is addressed to *businesses* and *individuals* covered by Regulation 3 (1)(c) of the *2007 Regulations* ie, those who act in the course of a business carried on by them in the United Kingdom as an auditor, *external accountant*, *insolvency practitioner* or *tax adviser* (as defined in Regulation 3(4) to 3(8)), and those who act in the course of business as trust or company service providers under Regulation 3 (1)(e) of the *2007 Regulations* (as defined in Regulation 3(10)). These services are referred to together for the purpose of this *Guidance* as the *defined services.*

Businesses that provide both accountancy services and trust or company services and that are supervised by HMRC should generally follow the this *Guidance* but also

have regard to 'Appendix 10: Supplementary guidance for trust or company services providers' of the HMRC guide 'MLR 8 - Preventing money laundering and terrorist financing'.

1.5 This *Guidance* is not addressed to *independent legal professional*s, even where they are acting as *tax adviser*s, *insolvency practitioner*s or trust or company service providers. *Independent legal professional*s should refer to *Guidance* issued by their professional body or *anti-money laundering supervisory authority.* Where *businesses* have sub-contracted parts of their work for clients to other *individuals* or *businesses* situated outside of the United Kingdom, it is likely that those others will be subject to local anti-money laundering law and not to United Kingdom law in respect of the work undertaken by them. However, the responsibility of United Kingdom *businesses* and *individuals* for compliance with the 2007 Regulations and *POCA and TA* in respect of the conduct of their business, and in respect of information or other matters coming to them in the course of conducting that business, remains whether or not parts of the work are sub-contracted.

1.6 Regulation 3(7) defines *external accountant* as someone who provides *accountancy services* by way of business to other persons, when providing such services*. The 2007 Regulations* do not define the term *accountancy services*. For the purpose of this *Guidance, Accountancy services* includes, any service provided under a contract for services (ie, not a contract of employment) which pertains to the recording, review, analysis, calculation or reporting of financial information.

1.7 Employees of organisations which are not providing *defined services* are outside the scope of this *Guidance*. Those employed in other *regulated sectors* (financial services, law firms, estate agents, high value dealers or casinos) should have regard to *Guidance* issued by the employer's trade or professional body or *anti-money laundering supervisory authority*. Employees are not engaged in the *regulated sector* for the purposes of the anti-*money laundering* legislation, if their employer is not acting in the *regulated sector*. Nor are those providing services privately on an unremunerated and voluntary basis, since those services will not have been provided 'by way of business'. Services provided in the course of employment or business in *defined services* will however be included, even if provided to the *client* on a pro-bono or unremunerated basis.

1.8 All persons (including those outside the *regulated* sector) risk committing the *money laundering offences* and are required to report suspicions of *terrorist financing* formed in the course of their trade, profession or employment. However, those outside the *regulated sector* have no mandatory requirements for reporting knowledge or suspicions of non-terrorism related *money laundering* (although if they are themselves involved in the *money laundering,* reporting under s338, POCA (authorised disclosures) is required if the person is to benefit from the defence available in this regard under ss 327-329, POCA), or for maintaining anti-*money laundering* systems. Additional guidance on both the legal requirements and on the avoidance of *money laundering* risk, for accountants or tax advisers working outside the *regulated sector*, may be sought from an appropriate trade or professional body.

1.9 All *businesses* and *individuals* within the scope of this *Guidance* should have regard to its content, in respect of all *defined services.* Members and member firms of the *CCAB* member bodies and other professional bodies which adopt this *Guidance* should be aware that failure to take account of the provisions of this *Guidance* can give rise to a liability to disciplinary action. *Businesses* and *individuals* undertaking *defined services* who are supervised by HMRC should refer to the HMRC's web site to determine the likely effects of failure to take into account this *Guidance*.

1.10 It should also be noted that the way in which *businesses* and *individuals* apply the provisions of this *Guidance* will be likely to influence decisions by their professional bodies on whether they have complied with general ethical requirements, for example relating to integrity, the need to consider the public interest, or regulatory requirements.

1.11 *Businesses* and *individuals* may also need to have regard to *Guidance* issued by other standard setters, professional bodies or trade associations where this relates to particular specialist services. Additional *Guidance* should be read in conjunction with this *Guidance*. Such *Guidance* includes (but may not be limited to):

- Auditors – Auditing Practices Board Practice Note 12 'Money Laundering: Interim *Guidance* for Auditors in the UK'.
- *Tax advisers* - Supplementary Guidance for Tax Practitioners (Appendix A).

1.12 This *Guidance* does **not** deal with the specific requirements of the Financial Services Authority (*FSA*). Accordingly, those providing financial services and regulated by the *FSA* should additionally refer to *FSA* requirements, which incorporate anti-*money laundering Guidance* issued by the Joint Money Laundering Steering Group (*JMLSG*).

1.13 However, this *Guidance* **does** cover the requirements of firms providing services under the Designated Professional Body provisions of Part XX, section 326 of the Financial Services and Markets Act 2000, or otherwise providing financial services under the oversight of their professional body. Such activities for the purpose of this *Guidance* are included within the scope of *defined services.*

1.14 As well as *'business relationship',* the *2007 Regulations* refer to 'occasional transactions', ie, those outside the *business relationship* valued at over €15,000. 'Occasional transactions' is a cogent term in a banking context but is difficult to apply in the context of *accountancy services*. Therefore this *Guidance* uses only '*business relationship'*, a more natural term for *accountancy and related services*, throughout.

ROLE OF SUPERVISORY BODIES

1.15 The *2007 Regulations* require all *businesses* to be supervised by an appropriate *anti-money laundering supervisory authority*. For many *businesses* acting as *external accountants* and/or auditors, *tax advisers* or *insolvency practitioners* the supervisory authority will be the professional body to which they belong. A full list of approved supervisory authorities for the accountancy sector is set out in Schedule 3 to the *2007 Regulations,* including all six *CCAB* member bodies and certain other accountancy and tax bodies. Those *businesses* that are not members of, or otherwise regulated by, one of the approved bodies will be supervised by HMRC. Where a *business* or *individual* is subject to more than one *anti-money laundering supervisory authority* the relevant *anti-money laundering supervisory authorities* may (Regulation 23 (2)) agree that one shall act in respect of that *business* or *individual* but they are not obliged to do so. Accordingly some *businesses* and *individuals* will continue to have to respond to more than one *anti-money laundering supervisory authority*.

LEGAL REQUIREMENTS AND STATUS OF THIS *GUIDANCE*

1.16 The legislation which embodies the UK anti-*money laundering* regime is contained in:

- The Proceeds of Crime Act 2002 (*POCA*) as amended by The Serious Organised Crime and Police Act 2005 (*SOCPA*) and relevant statutory instruments;
- The Terrorism Act 2000 (*TA 2000*) (as amended by the Anti Terrorism Crime and Security Act 2001 (*ATCSA*) and the Terrorism Act 2006 (*TA 2006*)) and relevant statutory instruments; and
- The Money Laundering Regulations 2007 (*2007 Regulations*) and relevant statutory instruments.

POCA and *TA 2000* contain offences which may be committed by *individuals* or entities, whereas the *2007 Regulations* deal with the systems and controls which *businesses* are required to have and contain offences which may be committed by *businesses* as well as the key *individuals* within them.

1.17 Approval by HM Treasury has been granted in relation to this *Guidance*. This means the Courts must have regard to the *Guidance* in deciding whether *businesses* or *individuals* affected by it have committed an offence under the *2007 Regulations* or under ss330-331, *POCA*. Of course, this *Guidance* cannot be exhaustive. It may be necessary to seek advice either from trade or professional bodies, *anti-money laundering supervisory authorities* or other sources on issues and situations not covered by this *Guidance*.

1.18 This *Guidance* has been prepared on the basis that compliance with its requirements, and recommendations, will ensure compliance with relevant legislation and professional requirements. Within this *Guidance*, the term 'must' is used to indicate a legal or regulatory requirement and accordingly the use of this term indicates where following this *Guidance* is considered mandatory. *Businesses* and *individuals* may seek alternative interpretations of the UK *anti-money laundering* regime if they wish but they are recommended to consider the impact of any advice they receive on their obligations and be able to justify why they have preferred to implement an alternative interpretation. However, there are many instances where law and regulation does not prescribe the required actions. In such instances the term 'should' (and other terms suggesting possible ways in which *Businesses* and *Individuals* may approach matters subject to this *Guidance*) are used to indicate good practice methods that may be employed to meet statutory and regulatory requirements. *Businesses* and *individuals* need to consider the specific circumstances of their own situation in determining whether the suggested good practice methods are appropriate, or whether they consider alternative practices may be employed to achieve compliance with law and regulation. In all cases, *Businesses* and *individuals* need to be prepared to be able to explain to their anti-*money laundering supervisory authority* the rationale for their procedures and why they consider they are compliant with law and regulation.

1.19 Note that the UK anti-*money laundering* regime does not apply to some services that *businesses* may undertake and applying the regime's requirements to all their services may in these cases be unnecessarily costly. This *Guidance* assumes that many *businesses* will find it easier, and more effective, to apply the requirements to all their services. However, it is a decision for each *business* to take. Where *businesses* choose to outsource or subcontract work to non-regulated entities, they should bear in mind that they remain subject to the obligation to maintain appropriate risk management procedures to prevent *money laundering* activity. In that context, they should consider whether the subcontracting increases the risk that they will be involved in or used for money laundering, in which case appropriate controls to address that risk should be put in place.

1.20 Those 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 anti-*money laundering* regime to the extent they supply any of the *defined services* when acting under a contract for services in the course of business.

1.21 Throughout this *Guidance*, *businesses* and *individuals* subject to the provisions of the UK anti-*money laundering* regime through being covered in Regulation 3, *2007 Regulations* or Schedule 9 to *POCA* are referred to as being part of the *regulated sector.* Note that whilst *POCA* refers to those covered in Schedule 9 as 'regulated' persons and the *2007 Regulations* refer to those covered by Regulation 3 as 'relevant' persons, those included in the two categories are identical.

1.22 Throughout this *Guidance*, the *nominated officer* required to be appointed by a *business* under the *2007 Regulations* to receive disclosures in accordance with Part 7, *POCA* is referred to by the name commonly used in the *regulated sector* as a *Money Laundering Reporting Officer* or *MLRO*.

SECTION 2 – THE OFFENCES

KEY POINTS

- The three *money laundering offences* are those contained in ss327-329, the Proceeds of Crime Act 2002 (*POCA)*. The Terrorism Act 2000 (*TA 2000)* also creates similar offences relating to *terrorist financing*. In this *Guidance*, the term '*money laundering*' will encompass *terrorist financing* activities.
- Detailed *Guidance* as to the provisions of the *TA 2000* has not been provided as the requirements for the *regulated sector* are very similar to those contained in *POCA* which are described in detail. Reporting *of terrorist financing* suspicions is through the same channels *as money laundering* suspicions.
- The *money laundering* offences are framed very broadly and are designed to catch any activity in respect of *criminal property*, including possession of the proceeds of one's own *criminal conduct*.
- *Criminal conduct* is widely defined by s340, *POCA* to be conduct that is an offence in any part of the UK as well as conduct occurring elsewhere that would have been an offence if it had taken place in the UK. There are very limited exceptions to this for conduct which is both known to be legal in the country in which it is committed and which falls within the specific exceptions set out in orders made by the Secretary of State.
- *Criminal property* is defined by s340, *POCA* as being the benefit of *criminal conduct* where the alleged offender knows or suspects that the property in question represents such a benefit.
- *Terrorist property* is defined in s14, *TA 2000* as money or property likely to be used for terrorist purposes, or the proceeds of commissioning or carrying out terrorist acts.
- The *money laundering* offences and the similar offences under *TA 2000* can be committed by any person, whether or not they are part of the *regulated sector*. Defences available to any person charged with such offences include reporting to the appropriate authorities and obtaining consent. *Individuals* working in any *business* can commit, subject to limited exemptions, the offence of failing to disclose *terrorist financing.*
- There are three further types of *POCA* offences relevant to *individuals* to whom this *Guidance* relates*.* These are the failing to disclose offences in ss330-331, *POCA* (NB: s332 contains a similar offence relating to *MLRO's* outside of the *regulated sector*); *tipping off* (s333A, *POCA*); and *prejudicing an investigation* (s342, *POCA*). There are similar offences in ss19-21A,*TA 2000.*
- The offence of failing to make a *money laundering* disclosure (often referred to as failing to report) can be committed by any *individual* working in the *regulated sector* or by an *MLRO* working in other *business*. The offence of *tipping off* is set out in s333A, *POCA* which applies to those in the *regulated sector* only The *POCA* offence of *prejudicing an investigation* can be committed by anyone. There are similar failing to disclose and *tipping off* offences contained in *TA 2000*.
- It is a criminal offence for a *business* not to comply with the *2007 Regulations*, if that *business* is within their scope. It is also an offence for any partner, director or officer of the *business,* to consent to or connive at the non-compliance or by neglect to cause non-compliance.

WHAT IS MONEY LAUNDERING?

2.1 In UK law *money laundering* is defined very widely, and includes all forms of handling or possessing *criminal property*, including possessing the proceeds of one's own crime, and facilitating any handling or possession of *criminal property*. *Criminal property* may take any form, including in money or money's worth, securities, tangible

property and intangible property. *Money laundering* can be carried out in respect of the proceeds of conduct that is an offence in the UK as well as most conduct occurring elsewhere that would have been an offence if it had taken place in the UK. For the purpose of this *Guidance*, *money laundering* is also taken to encompass activities relating to *terrorist financing*, including handling or possessing funds to be used for terrorist purposes as well proceeds from terrorism. Terrorism is taken to be the use or threat of action designed to influence government, or to intimidate any section of the public, or to advance a political, religious or ideological cause where the action would involve violence, threats to health and safety, damage to property or disruption of electronic systems. Materiality or de minimis exceptions are not available in relation to either *money laundering* or *terrorist financing* offences.

2.2 *Money laundering* activity may range from a single act, eg, being in possession of the proceeds of one's own crime, to complex and sophisticated schemes involving multiple parties, and multiple methods of handling and transferring *criminal property* as well as concealing it and entering into arrangements to assist others to do so. *Businesses* and *individuals* need to be alert to the risks of *clients*, their counterparties and others laundering money in any of its possible forms. The *business* or its *client* does not have to be a party to *money laundering* for a reporting obligation to arise (see section 3). Where criminal proceeds have already arisen, s340(11), *POCA* includes within the definition of *money laundering* any attempt, conspiracy or incitement to commit an offence under ss327-329, *POCA* as well as aiding, abetting, counselling or procuring an offence under ss327-329, *POCA*. In the case of *terrorist financing*, it is an offence to attempt to commit an offence under ss15-18 ,*TA 2000* even if *terrorist property* has not come into being, eg, under s15(1), *TA 2000* where the invitation to provide money or other property for *terrorist financing* is in itself an offence. Further, the definition of *'terrorist property'* means that all dealings with funds or property which are likely to be used for the purposes of terrorism, even if the funds are "clean" in origin, is a *terrorist financing* offence.

MONEY LAUNDERING OFFENCES

2.3 Sections 327-329 in the Proceeds of Crime Act (*POCA*) (as amended by the Serious Organised Crime and Police Act 2005 (*SOCPA*)) define the *money laundering* offences. **Anyone** can commit one of these. Conviction of any of these offences is punishable by up to 14 years imprisonment and/or an unlimited fine. A person commits a *money laundering* offence if he:

- **Conceals,** disguises, converts or transfers *criminal property*, or removes *criminal property* from England and Wales, or from Scotland or from Northern Ireland (s327);
- Enters into or becomes concerned in an **arrangement** which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of *criminal property* by or on behalf of another person (s328); or
- **Acquires**, uses or has possession of *criminal property* except where adequate consideration was given for the property (s329).

2.4 None of these offences are committed if:

- the persons involved did not know or suspect that they were dealing with the proceeds of crime; or
- a report of the suspicious activity is made promptly to an *MLRO* (an *internal report)* or direct to *SOCA* (a *suspicious activity report*, or *SAR)* under the

provisions of s338, *POCA,* and (if the report is made before the act is committed) the appropriate consent is obtained before doing the act*; or*

- no report is made, there was a reasonable excuse for this failure (note that there is no *money laundering* case law on this issue and it is anticipated that only relatively extreme circumstances, such as duress, might be accepted); or
- the act is committed by someone carrying out a law enforcement or judicial function; or
- the conduct giving rise to the *criminal property* was reasonably believed to have taken place outside of the UK, and the conduct was in fact lawful under the criminal law of the place where it occurred, and the maximum sentence if the conduct had occurred in the UK would have been less than 12 months (except in the case of an act which would be an offence under the Gaming Act 1968, the Lotteries and Amusements Act 1976 or under ss23 or 25, *FSMA*, which will fall within the exemption even if the relevant sentence would be in excess of 12 months*).* In this *Guidance*, this is referred to as the *overseas conduct exemption.*

2.5 It should be noted that the tests relating to overseas conduct (set out in SI 2006 No1070 and in Section 2.4, final bullet, of this *Guidance*) are complex and onerous. These are very stringent tests, and as such *individuals* and *businesses* need to be cautious in their application.

2.6 There is a further exemption for deposit taking bodies (accountancy *businesses* holding clients' money cannot use this exemption) who may continue to run an account containing *criminal property* where the each transaction is less than the threshold amount (currently £250) set out in s339A, *POCA.*

2.7 Note that ss15-18, Terrorism Act 2000 (*the TA 2000*) also create similar offences (*terrorist* offences) to those contained in ss327-329, *POCA* but that there is no *overseas conduct exemption* or threshold amounts.

OFFENCES OF FAILING TO DISCLOSE

2.8 *Individuals* in the *regulated sector* commit an offence if they fail to make a disclosure in cases where they have knowledge or suspicion, or reasonable grounds for suspicion, that *money laundering* is occurring. Disclosure must be made to their *MLRO* or direct to *SOCA* under ss330, *POCA*. In this *Guidance*, disclosure to an *MLRO* is referred to as an *internal report* and to *SOCA* as a *suspicious activity report* or *SAR*. *MLROs* have a duty to make disclosures under s331, *POCA* if they have knowledge, suspicion or reasonable ground to suspect *money laundering* as a consequence of an *internal report*. The s332 failure to disclose offence is similar and would apply to an *MLRO* in a business outside of the *regulated sector*, including an *MLRO* appointed to deal with reports emanating from non-regulated business within a *business* that conducted both regulated, and non-regulated services, in respect of suspicions arising from *internal reports.* This is not further addressed in this *Guidance*. These offences are punishable by imprisonment of up to 5 years and/or an unlimited fine.

2.9 Similar provisions regarding failure to disclose are contained in s19, and 21A, *TA 2000*. The s19 failure to report offence is applicable to **anyone** in employment or business outside of the regulated sector, with s21A being applicable to all those in the *regulated sector*.

The failure to disclose offence under Sections 330 and 331 *POCA*

2.10 The failure to disclose offence in s330 is committed if an *individual* fails to make a report comprising the *required disclosure* as soon as is practicable either in the form of an *internal report* to his *MLRO* or in the form of a *SAR* to a person authorised by the Serious Organised Crime Agency *(SOCA)* to receive disclosures. The obligation to make the *required disclosure* arises when:

- a person knows or suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in *money laundering;*
- the information or other matter on which the above is based came to him in the course of business in the *regulated sector;*
- he either can identify that other person, or has information concerning the whereabouts of the laundered property or the information he has may assist in identifying the person or the whereabouts of the property (the laundered property is that which forms the subject of the matter of the known or suspected *money laundering*).

2.11 An *MLRO* is obliged to report if he is satisfied that the information received in *internal report*s meets the tests set out in 2.10. An *MLRO* may commit the s331, *POCA* offence if he fails to pass on reportable information in *internal report*s that he has received, as soon as is practicable, to *SOCA*.

Required Disclosure

2.12 *Individuals* need to take care to ensure that any information held by them which is part of the *required disclosure*, ie, the identity of the suspect (if known), the information or other matter on which the knowledge or suspicion of *money laundering* (or reasonable grounds for such) is based and the whereabouts of the laundered property (if known) is passed as soon as is practicable to the *MLRO*. Additional information held by the *individual* which identifies other parties involved in or connected to the matter should also be given to the *MLRO*.

2.13 Further *Guidance* on the making of *SARs,* including the appropriate form and manner of reporting, is given in sections 5 and 6 below.

Defences and exemptions

2.14 There are defences to and exemptions from the failing to disclose offences as follows:

- there is reasonable excuse for not making a report (note that there is no *money laundering* case law on this issue and it is anticipated that only relatively extreme circumstances, such as duress and threats to safety, might be accepted); or
- the *privilege reporting exemption* (see sections 7.26 to 7.46 below) applies; or
- the *individual* does not actually know or suspect *money laundering* has occurred and has not been provided by his employer with the training required by the *2007 Regulations* (Regulation 21). If the employer has failed to provide the training, this is an offence on the part of the employer. The effect for the individual who has not been provided with training is that the objective test (of being required to report if there are 'reasonable grounds' for knowledge or suspicion) is removed; or

- it is known, or believed on reasonable grounds, that the *money laundering* is occurring outside the UK, and is not unlawful under the criminal law of the country where it is occurring.

In determining whether an offence has been committed under ss330 and 331, the Courts must have regard to the content of this *Guidance* [Subject to HMT approval] when applied to an *individual* delivering *defined services* or to an *MLRO*.

2.15 Whilst an *individual* in the *regulated sector* has a duty to report, other persons may voluntarily report to *SOCA* and also receive the protections available both in terms of potentially creating a defence to a *money laundering* offence and also the protection against accusations of breach of confidentiality providing the report is properly made under the provisions of either of ss337 and 338, *POCA* (See section 6.10) as appropriate.

TIPPING OFF

2.16 The offence of *Tipping off* was previously set out in s333, *POCA*, but was removed by statutory instrument (effective from 26 December 2007) The s333, *POCA* offence meant anyone not acting in the course of a business in the *regulated sector* could commit this offence which consisted of:

- knowing or suspecting that a report has been made either to an *MLRO* or to *SOCA* (under either s337 or s338, *POCA*)*; and*
- making any disclosure which he knows or suspects is likely to prejudice any investigation that might follow that report.

There were limited exceptions relating to persons carrying out law enforcement or judicial functions, and to legal advisers acting in privileged circumstances provided the disclosure is not made with the intention of furthering a criminal purpose.

The penalty for this offence is a maximum of 5 years imprisonment, or an unlimited fine, or both.

2.17 Section 333, *POCA* is replaced by s333A *POCA* which applies only to the *regulated sector.* The criminal offence of *tipping off* in s333A, *POCA* arises where a person in the *regulated sector* discloses either:

- that a disclosure has been made by a person of information obtained in the course of a *regulated sector business* either to an *MLRO* or to *SOCA* (under either s337 or s338, *POCA*) or to any other person authorised by *SOCA* to receive disclosures, or to the police or HMRC and the disclosure is likely to *prejudice any investigation* that might be conducted following the disclosure referred to; or
- that an investigation into allegations that a *money laundering* offence has been committed, is being contemplated or is being carried out and the disclosure is likely to prejudice that investigation and the information disclosed came to the person in the course of a *business* in the *regulated sector.*

A *tipping off* offence will not be committed under s333A, *POCA* if the person did not know or suspect that the disclosure was likely to *prejudice any investigation* that followed.

The penalty for this offence on summary conviction is a maximum of three months imprisonment, or a fine on scale 5, or both and on conviction on indictment to

imprisonment for a term not exceeding two years, or a fine or both. There are a number of exceptions to this prohibition on revealing the existence of a report or an actual or contemplated investigation which are as follows:

- **Disclosures within an undertaking or group etc**, (s333B): a person does not commit an offence if he makes a disclosure to another person employed by the same undertaking as him, and nor does an *independent legal professional* or a *relevant professional adviser* commit an offence if the disclosure is made to another *independent legal professional* or a *relevant professional adviser* where both the person making the disclosure and the person to whom it is made are in either an EEA state or a state imposing equivalent anti-*money laundering* requirements and those persons perform their professional activities within different undertakings that shares common ownership, management or control.

- **Other permitted disclosures between institutions etc** (s333C): an *independent legal professional* or a *relevant professional adviser* does not commit an offence if he makes a disclosure to another person of the same kind from a different undertaking but of the same professional standing as himself (including as to duties of professional confidentiality and the protection of personal data) where the disclosure relates to the same *client* or former *client* of both advisers and involves a transaction or provisions of a service that involved them both, the disclosure is only made for the purpose of preventing a *money laundering* offence and the disclosure is made to a person in an EU Member State or a State imposing an equivalent money laundering requirements. This means that eg, an accountant may only disclose to another accountant, and not to a lawyer or another kind of *relevant professional adviser*.

- **Other permitted disclosures (general)** (s333D): an offence is not committed if a disclosure is made to a *anti-money laundering supervisory authority* by virtue of the Money Laundering Regulations 2007 or for the purpose of the prevention, investigation or prosecution of a criminal offence in the UK or elsewhere, an investigation under *POCA,* or enforcement of any order of a court under *POCA*. In addition, and of importance to those who are *relevant professional advisers*, an offence is not committed by a *relevant professional adviser* if he makes the disclosure to his *client* for the purpose of dissuading the *client* from engaging in conduct amounting to an offence.

2.18 Any of the *tipping off* offences contained in s333A,*POCA* will only occur in the circumstances described, but there may be circumstances where a money launderer may be alerted to the possibility that a report will be or has been made or an investigation conducted, other than by a disclosure of such fact eg, by unexpected delay caused by waiting on *consent*. These have been distinguished in this *Guidance* by use of the phrase '*alerting a launderer*'. *Businesses* will also need to take care to guard against *alerting a launderer,* as part of their policies and procedures aimed at preventing operations related to *money laundering*.

2.19 A *tipping off* disclosure may be made in writing or verbally, and either directly or indirectly – including through inclusion of relevant information in published information. Considerable care is required in carrying out any communications with *clients* or third parties following a report. Before any disclosure is made relating to matters referred to in an *internal report* or *SAR*, it is important to consider carefully whether or not it is likely to constitute offences of *tipping* off or prejudicing an investigation. It is suggested that *businesses* keep records of these deliberations and the conclusions reached (sections 7.10 and 7.11).

2.20 However, *individuals* and *businesses* in the *regulated sector* will frequently need to continue to deliver their professional services and a way needs to be found to achieve this without falling foul of the *tipping off* offence. Section 333D(2) is of assistance in this regard (disclosure to his *client* for the purpose of dissuading the *client* from engaging in conduct amounting to a *money laundering* offence). More *Guidance* on acting for a *client* after a *money laundering* suspicion has been formed is given in section 9.

PREJUDICING AN INVESTIGATION

2.21 This offence is set out in s342, *POCA.* This offence is committed where a person:

- knows or suspects that a *money laundering*, confiscation or civil recovery investigation is being conducted or is about to be conducted; and
- makes a disclosure which is likely to *prejudice the investigation*; or
- falsifies, conceals or destroys documents relevant to the investigation, or causes that to happen.

As with *tipping off* offences, the person making the disclosure does not have to intend to prejudice an investigation for this offence to apply. However, there is a defence available if the person making the disclosure did not know or suspect the disclosure would be prejudicial, did not know or suspect the documents were relevant, or did not intend to conceal any facts from the person carrying out the investigation.

2.22 There are limited exceptions relating to persons carrying out law enforcement or judicial functions, and to legal advisers acting in privileged circumstances provided the disclosure is not made with the intention of furthering a criminal purpose.

2.23 Considerations similar to those set out under *tipping off* above apply in terms of how the offence may be committed and of taking precautions to ensure any disclosure made does not prejudice an investigation. *Businesses* should ensure they have sufficient document retention policies in place (see Section 3.9 of this *Guidance* – Record Keeping) to meet the needs of this section of *POCA* and the *2007 Regulations*, as well as their legal and professional obligations more generally.

KNOWLEDGE AND SUSPICION

Knowledge or suspicion?

2.24 An offence is committed by an *individual* in the *regulated sector* if he fails to report where he has knowledge, suspicion or reasonable grounds for suspecting *money laundering* activity. There is no definition of knowledge or suspicion within *POCA* and so interpretation of their meaning will rely on judgements in past legal cases, as well as this *Guidance* and on the ordinary meaning of the words.

2.25 Having knowledge means actually knowing that something is the case.

2.26 Case law suggests that suspicion is a state of mind more definite than speculation, but falls short of knowledge based on evidence. It must be based on some evidence, even if that evidence is tentative – simple speculation that a *client* may be *money laundering* is not sufficient grounds to form a suspicion. Similarly, a general assumption that low levels of crime (eg, not declaring all cash takings) are endemic

in particular industry sectors does not amount to reasonable grounds for suspicion of particular *clients* operating in that sector.

2.27 A frequently used description is that '…A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a "slight opinion, but without sufficient evidence"' (*Queensland Bacon PTY Ltd v Rees [1966] 115 CLR 266 at 303, per Kitto J*). In another more recent case, *Da Silva [2006] EWCA Crim 1654,* 'It seems to us that the essential element in the word "suspect" and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

2.28 *Money laundering* occurs only when *criminal property* has accrued to someone from a criminal act. In addition, it must be borne in mind that for property to be *criminal property* not only must it constitute a person's benefit from *criminal conduct*, but the alleged offender (ie, the person alleged to be laundering *criminal property*) must know or suspect that the property constitutes such a benefit. This means, for instance, that if someone has made an innocent error, even if such an error resulted in benefit and constituted a strict liability criminal offence, then the proceeds are not *criminal property* for the purposes of *POCA* and no *money laundering* offence has arisen until and unless the offender becomes aware of the error (eg, s167(3), Customs and Excise Management Act 1979). *MLROs* need to consider carefully before reporting whether the information or other matter they intend to report meets these criteria. Examples of unlawful behaviour which may be observed, and may well result in advice to a *client* to correct an issue, but which are not reportable as *money laundering* are given below:

- offences where no proceeds or benefit results, such as the late filing of company accounts. However, *businesses and individuals* should be alert to the possibility that persistent failure to file accounts could represent part of a larger offence with proceeds, such as fraudulent trading or credit fraud involving the concealment of a poor financial position.
- misstatements in tax returns, for whatever cause, but which are corrected before the date when the tax becomes due.
- attempted frauds where the attempt has failed and so no benefit has accrued (although as this may still be a Fraud Act offence in England, Wales and Northern Ireland or the common law offence of fraud in Scotland, *individuals* and *businesses* may wish to consider reporting to their local police force or, once operational, the 'National Fraud Reporting Centre'). This includes '419' [1]letters and other attempted advanced fee frauds where there is no knowledge of benefit accruing. In the case of such letters, *individuals* and *businesses* may wish to consider following the guidance on the Metropolitan Police Fraud Alert internet pages (www.met.police.uk/fraudalert).

Where a *client* refuses to correct, or unreasonably delays in correcting, an innocent error that gave rise to proceeds and which was unlawful, *businesses* should consider what that indicates about the *client's* intent and whether the property has therefore now become *criminal property.*

Reasonable grounds for knowledge or suspicion

2.29 *Individuals* in the *regulated sector* must make an *internal report* or a *SAR*, as applicable, if there are 'reasonable grounds' for knowledge or suspicion, as well as

[1] Otherwise known as 'Nigerian scam' letters or equivalent

actual knowledge or suspicion. This 'reasonable grounds' test creates an objective test – persons in the *regulated sector* will not be able to rely on an assertion of ignorance or naivety where this would not be reasonable to expect of a person with their training and position. For example, a person might be considered to have reasonable grounds for knowledge of *money laundering* if he had actual knowledge of, or possessed information which would indicate to a reasonable person, that another person was committing or had committed a *money laundering* offence; or had deliberately ignored the obvious inference from information (ie,. wilfully shutting one's eyes) known to him that another person was committing or had committed a *money laundering* offence. Please note that the interpretation of 'reasonable grounds' has not, as yet, been tested by the courts for the purposes of *POCA.*

2.30 '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'.

2.31 Existence of higher than normal risk factors require increased attention to gathering and evaluation of 'know your *client*' 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. For 'reasonable grounds' to come into existence, there needs to be sufficient information to advance beyond speculation that it is merely possible someone is laundering money, or a higher than normal incidence of some types of crime in particular sectors.

2.32 It is important that *individuals* do not turn a blind eye to information, but make reasonable enquiries such as a professional with their qualifications, experience and expertise might be expected to make in such a situation within the normal scope of their assignment or client relationship, and draw a reasonable conclusion such as may be expected of a person of their standing. *Individuals* should exercise a healthy level of professional scepticism, and if unsure of the action that should be taken, consult with their *MLRO* or otherwise in accordance with their *businesses'* procedures. If in doubt, *individuals* should err on the side of caution and make a report to their *MLRO*.

NON-COMPLIANCE WITH THE MONEY LAUNDERING REGULATIONS

2.33 It is a criminal offence for a *business* not to comply with the *2007 Regulations*, if it is within their scope. An offence may also be committed by any partner, director or officer of the *business,* who has consented to or connived at the non-compliance or where the non-compliance is attributable to his neglect.

2.34 The relevant offences are referred to below. *Individuals* and *businesses* should appreciate that there are a wide range of requirements in respect of which failure to comply could be considered to be a criminal offence.

2.35 The offences are set out in Regulation 45 and those which are relevant to the provision of *defined services* relate to:

- Regulation 7 – failure to apply *customer due diligence* measures
- Regulation 8 – failure to apply ongoing monitoring of *business relationships* and *customer due diligence*

- Regulation 9 – failure to comply with the requirements on timing of verification of identity of *clients* and any beneficial owner
- Regulation 11 – continuing with transaction/*business relationship* where unable to apply *customer due diligence* measures
- Regulation 14 – failure to apply enhanced *customer due diligence* and ongoing monitoring where required
- Regulation 18 – failing to follow a direction made by HM Treasury under this regulation (directions where *FATF* applies counter-measures)
- Regulation 19 – failure to keep the required records
- Regulation 20 – failure to establish, maintain, monitor and manage the required policies and procedures
- Regulation 21 – failure to take appropriate measures to provide the required training
- Regulations 26, 27 – failures regarding certain registration procedures where the Commissioners (HMRC) are the supervisory body (not applicable to those supervised by a body listed in Schedule 3)
- Regulation 33 – failure to comply with registration requirements specified by the Commissioners (not applicable to those supervised by a body listed in Schedule 3)

2.36 Further *Guidance* on compliance with the *2007 Regulations* is given in sections 3 to 7 below. As Treasury approval has been obtained the Courts are obliged to take into account compliance with this *Guidance*, in deciding whether an offence has been committed.

SECTION 3 - ANTI MONEY LAUNDERING SYSTEMS AND CONTROLS

KEY POINTS

Under the Money Laundering Regulations 2007 (*2007 Regulations) businesses* are required to establish appropriate risk-sensitive policies and procedures in order to prevent activities related to *money laundering* and *terrorist financing* including those policies and procedures which provide for:

- identification and scrutiny of complex or unusually large transactions, unusual patterns of transactions with no apparent economic or lawful purpose and other activities regarded by the regulated person as likely to be of the nature of *money laundering* or *terrorist financing*;
- prevention of use of products favouring anonymity;
- determination of whether a *client* is a *PEP*;
- *customer due diligence*, ie, procedures designed to acquire knowledge about the firm's *clients* and prospective *clients* and to verify their identity as well as monitor *business relationships* and transactions;
- internal reporting including appointment of an *MLRO* to receive the *money laundering* reports required under the Proceeds of Crime Act 2002 (*POCA)* and the Terrorism Act *(TA 2000)* and a system for making those reports;
- record keeping, including details of *customer due diligence* and supporting evidence for *business relationships*, which need to be kept for five years after the end of a relationship and records of transactions, which also need to be kept for five years;
- internal control, risk assessment and management, compliance monitoring, management and communication; and
- in addition, *businesses* are required to take measures to make relevant employees aware of the law relating to *money laundering* and terrorist finance, and to train those employees in how to recognise and deal with transactions which may be related to *money laundering* or *terrorist financing*.

In order to ensure compliance is appropriately managed, *businesses* will need to ensure sufficient senior management oversight, appropriate analysis and assessment of the risks of *clients* and work/product types, systems for monitoring compliance with procedures and methods of communicating procedures and other information to personnel.

INTRODUCTION

3.1 *POCA* offences may be committed not only by *individuals* and *businesses* in the *regulated sector* but by any person. In contrast, the *2007 Regulations* impose obligations on *businesses* in the *regulated sector* as to the systems and controls they need to have in place to meet the requirements of the UK anti-*money laundering* regime. Under these regulations, not only must each *business* put anti-*money laundering* systems and controls in place but it also has a duty to ensure that relevant staff are aware of these systems and are appropriately trained. *Businesses* are explicitly required to monitor and manage their compliance with the *2007 Regulations,* to ensure continued observation of the requirements.

3.2 *Individuals* involved in the failure of *businesses* to meet their obligations under the *2007 Regulations* may be subject to criminal sanction, as may the *business* itself. Criminal sanctions for breach of the *2007 Regulations* only apply directly to the *individuals* working within a *business* when their neglect, connivance or consent has led to the failure to comply by the *business*.

THE REQUIREMENTS

3.3 The *2007 Regulations'* requirements of *businesses* are contained in the following Parts:

- *customer due diligence* (Part 2 of the *2007 Regulations*); and
- record-keeping, procedures and training (Part 3 of the *2007 Regulations*).

Systems

3.4 The *2007 Regulations* place requirements on *businesses* to have in place a wide range of systems in order to prevent operations related to *money laundering* or *terrorist financing*. The requirements cover the following issues. Where a separate section of this *Guidance* deals in detail with this matter, this is shown after the relevant heading, the other matters are dealt with in this section:

- *customer due diligence* and ongoing monitoring (see section 5 of this *Guidance*);
- reporting procedures (see sections 6 and 7 of this *Guidance*);
- record-keeping;
- internal control;
- risk assessment and management (see section 4 of this *Guidance*);
- compliance management; and
- communication.

3.5 The level of detail in the *2007 Regulations* as to what the requirements mean varies considerably, with *customer due diligence* being explained in some detail in Part 2 of the *2007 Regulations,* and with some detail being provided in respect of internal reporting procedures (Regulation 15) and record-keeping (Regulation 19). The *2007 Regulations* are less comprehensive on what is expected in respect of internal control, risk assessment and management, compliance management and communication.

3.6 *Businesses* need to establish systems that create an internal environment or culture in which people are aware of their responsibilities under the *UK* anti-*money laundering* regime and where they understand that they are expected to fulfil those responsibilities with appropriate diligence. In deciding what systems to install, a *business* will need to consider a range of matters including:

- the type, scale and complexity of its operations;
- the number of different business types it is involved in;
- the types of services it offers, and its *client* profiles;
- how it sells its services;
- the type of business transactions it becomes involved in or advises on; and
- the risks associated with each area of its *business* in terms of the risks of the *business* or its services being used for *money laundering* or terrorist operations, or the risks of its *clients* and their counterparties being involved in such operations.

3.7 *Businesses* should allocate responsibility for internal controls and effective risk management to a member of senior management, and should also ensure that the appointed *MLRO* has sufficient seniority and authority to carry out his task, whether or not these two functions are held by the same person. All *businesses* will need systems and controls, appropriate to the size and nature of their *business*, sufficient to achieve the following:

- determination and recording of the firm's systems for anti-*money laundering* awareness, *client* acceptance, *customer due diligence* and on-going monitoring requirements (including whether a customer is a *PEP*), consultation with and internal reporting to the *MLRO* (where applicable – sole practitioners with no staff and no associates are not required to have internal reporting procedures or an *MLRO*), and dissemination of such policies and procedures to all relevant staff;
- development and documentation of the firm's risk assessment of its *business*;
- training of all relevant staff, including systems and controls to ensure training is taken/attended and understood;
- methods for identification of topical update material and its dissemination as appropriate to senior management and other personnel;
- systems for periodic testing that policies and procedures comply with legislative and regulatory requirements;
- monitoring the compliance of the *business* with the policy and procedures including reporting to senior management on compliance and addressing any identified deficiencies.

3.8 In addition, *businesses* are recommended to maintain the following additional systems, for effective internal control and risk management:

- detailed documentation of policies and procedures in relation to matters not routinely a matter for *client* facing staff, such as *customer due diligence* for higher risk *clients*; information provision to senior management, training, awareness and compliance monitoring, and the role of the *MLRO*;
- provision in new product/service development processes for consideration of new services or business areas from an anti-*money laundering* perspective, and update of policy and procedure where appropriate;
- consideration at appropriate intervals of the *business* profile and whether the firm's risk assessment and/or policy and procedures require updating in response.

Appropriate systems might also include a policy of acceptance of new *clients* being reserved to partners or other senior personnel, who may wish to refer to the *MLRO* for advice, if it is proposed to accept *clients* from outside the usual and well understood *client* base of the firm.

Record-keeping

3.9 Records must be kept of *clients'* identity, the supporting evidence of verification of identity (in each case including the original and any updated records), the firm's *business relationships* with them (ie,. including any non-engagement related documents relating to the *client* relationship) and details of any occasional transactions and details of monitoring of the relationship. These records must be kept for five years after the end of the relevant *business relationships* or completion of the transactions. Care is needed to ensure retention of historic, as well as current records. *Businesses* are also recommended to store securely information relating to both *internal reports* and *SARs* for at least the same period, ie,. at least five years after receipt by the *MLRO*. Documentation of reports is dealt with in further detail in section 7 below. Shown below is a summary of record-keeping requirements specified in the *2007 Regulations* for *customer due diligence* and *business relationships*/occasional transactions and *Guidance* in respect of retention of internal reporting procedures and training records for which specific guidance is not given in the *2007 Regulations*.

Record	**Retention period**	**Comments**
Specified in the 2007 Regulations		
i) *Client* identification, including evidence of identity	**5 years** from end of *business relationship.*[2]	Care should be taken to ensure that records are not destroyed by one department, while another is still within the five year retention period or has undertaken new business with the *client*. Where a *business* is engaged with several different activities with a *client*, it may decide to keep details of *customer due diligence* within each part of the firm so engaged, or to maintain central files, depending on its internal organisation. Evidence of *client* identity can be held in a variety of forms, eg, in hard copy or in electronic form in accordance with the document retention policies employed within the *business*.
ii*) Business relationships*	**5 years** from the date when all activities in relation to the *business relationship* were completed - except in the case of particular transactions within that *business relationship* the retention period is 5 years from the date on which the transaction	Records of *business relationships* and occasional transactions (ie,. client assignment working papers and related documents) also need to be maintained for 5 years from the end of the relationship or transaction. For particular transactions within a *business relationship*, the records for the particular transaction need only be retained for 5 years from the completion of that transaction. In the context of provision of *defined services* it would be reasonable to treat each engagement or assignment as a 'particular transaction'. As *businesses* will need to maintain records for a wide range of purposes that comply with both legal and professional requirements for retention of documentation, it is not anticipated that any special system should be needed but that the general document retention systems employed within the

[2] As well 'business relationship', the *2007 Regulations* refer to 'occasional transactions', ie, those outside the *business relationship* valued at over €15,000. 'Occasional transactions' is a cogent term in a banking context but is difficult to apply in the context of *accountancy services*. Therefore this *Guidance* uses only '*business relationship'*, a more natural term for *accountancy and related services*, throughout.

	was completed	*business*, provided they meet these standards, should be sufficient.
Not specified in the 2007 Regulations		
iii) Suspicious activities	Not prescribed	Records of *internal reports*, the *MLRO's* consideration of them, any subsequent reporting decision and issues connected to consent, production of documents etc are a vital record as they may form the basis of a defence to accusations of *money laundering* and related offences. For this reason, it is recommended that such records are retained for at least 5 years after being made and possibly longer, at least whilst the *business relationship* continues. Records of *internal reports* are not considered to form part of *client* assignment working papers and so it is recommended that such records are kept, in a secure form separately from the *businesses'* normal methods for retaining *client* work documents. This is to guard against inadvertent disclosure to any party who may have or seek access to the *client* working paper files where the existence of otherwise of an *internal report* or *SAR* is not relevant to the purpose for which they are examining the files.
iv) Training	Not prescribed	We recommend that evidence of assessment of training needs and steps taken to meet such needs is retained. *Businesses* should determine a retention period in the light of their normal retention period for training and other internal records, but we recommend they be kept for at least 5 years in order to demonstrate a continuing compliance with current and previous regulations.

Reporting procedures

3.10 A *business's* internal procedures should clearly set out what is expected of *individuals* who form suspicions or obtain knowledge of possible *money laundering*. The reports can take any form specified by the *business* in internal procedures, eg, phone calls, emails, in writing, supplemented by copies of third party documents and working papers but *businesses* should ensure that, whatever forms the reporting takes, relevant personnel are aware of the procedures to be used. Consideration should be given to how to minimise the number of copies of reporting information held within a *business*. *Businesses* may wish to consider whether it is advisable to specify telephone or face to face contact with the *MLRO* as the preferred initial reporting step, with the reporting records being created by the *MLRO*, supplemented as necessary with copy information from *client* files.

3.11 It is recommended that all details of *internal reports* are held by the *MLRO* and excluded from *client* files. The duty to report is a matter which does not fall within the delivery of professional services to *clients* and accordingly reporting details are not required to be placed on *client* files. Exclusion of information from *client* files assists in avoiding inadvertent or inappropriate disclosure of information and provides some protection against the threat of *tipping off*. *Client* files should retain only that information relevant to, and required for, the professional work being undertaken. It should be noted that *anti-money laundering supervisory authorities* have an obligation under Regulation 24 (2) to make reports of suspicion. However, the law is

not clear as to the interaction of the *POCA privilege reporting exemption* (Section 7.26-7.46) and the 2007 *Regulations* and unless this is resolved, there remains the risk of an *anti-money laundering supervisory authority* reporting a matter that was properly the subject of the *privilege reporting exemption*. Keeping internal reporting papers separate from *client* files may assist in mitigating this risk but is not a complete solution.

3.12 Further *Guidance* is given for *individuals,* on forming suspicions and making *internal reports* is given in section 6 and *Guidance* for *MLROs* in checking and validating *internal reports* and making *SARs* to *SOCA* in section 7.

Communication and Training

3.13 The *2007 Regulations* provide that all 'relevant' employees are required to be 'made aware' of law relating to *money laundering* and *terrorist financing*, and regularly given training in how to recognise and deal with transactions which may be related to *money laundering* or *terrorist financing*. Though the *2007 Regulations* contain no express requirement, it is considered to be best practice for these provisions to be applied to all partners in firms and to sole practitioners and it is likely to be necessary to train all *client*-facing staff (see section 3.15 below).

3.14 In considering a training plan, *businesses* need to keep in mind the objectives they are trying to achieve, which is to create an environment effective in preventing *money laundering* and which thereby helps protect *individuals* and the *business*.

3.15 When considering which staff may be considered relevant, *businesses* should consider not only those who have involvement in *client* work, but also, where appropriate, those who deal with the *business* finances, and those who deal with procuring services on behalf of the *business* and who manage those services. Accordingly, it is likely that all *client*-facing staff will be considered relevant and at least the senior support staff. *Businesses* may decide to provide comprehensive training to all relevant staff members, or may chose to tailor its provision to match more closely the role of the employees concerned. In particular, *MLROs* may require supplementary training, and members of senior management may also benefit from a customised approach or some supplementary training.

3.16 A training programme for relevant staff needs to contain content on the law and content which puts this into the context in which the *business* operates, to enable recognition of suspected *money laundering* in that context, and which illustrates the 'red flags' which staff should be aware of in conducting business. The core elements of law making up the UK anti-*money laundering* and anti-terrorism regime, are set out in this *Guidance* (in particular in section 2). In addition, *businesses* may wish to include reference to other elements of law where criminal penalties may be applied and where these relate directly to the work of the *individual* or *business*, eg, an *FSA* approved person might be expected to have a reasonable working knowledge of the parts of *FSMA 2000* relevant to his work. Whilst it is not necessary for relevant personnel to develop specialist knowledge of criminal law in general, they may reasonably be expected to apply the general legal and business knowledge which might normally be held by a person of their role and experience in determining whether to make a report to the *MLRO*.

3.17 Training also needs to cover how to deal with transactions which might be related to *money laundering* and *terrorist financing*. This would include training on the *businesses'* internal consultation and advisory systems (to assist *individuals* in assessing whether they have a valid suspicion) internal reporting systems and the

businesses' expectations for confidentiality and the avoidance of *tipping off* and *alerting a money launderer*. Further *Guidance* on recognising *money laundering* by those undertaking *defined services* is given in section 6.

3.18 As regards the frequency of training, this is a matter for each *business* to consider. It may be influenced by changes in law, regulation or professional guidance, by new case law or national/international findings, or by a change in the profile and perceived risks of the *business.* Each *business* should consider the frequency of its training, possibly on an annual basis, and document its assessment as to whether the current training and state of awareness of employees is sufficient, or whether a supplement is needed. It may not be necessary to repeat the whole of a training programme on a regular basis, but it may be possible to provide concise update material which accomplishes the dual role of refreshing or expanding knowledge and generally reminding staff of the importance of effective anti-*money laundering* work.

3.19 Training methods may be selected to suit the size, complexity and culture of the *business*, and may be delivered in a variety of ways including face to face, self-study, e-learning and video, or a combination of methods. *Businesses* should keep records of attendance at, or completion of, training and are recommended to provide for some form of test or other confirmation of understanding of the training.

3.20 Should a *business* fail to make provision for the training of relevant employees, then under s330 (7), *POCA* a member of staff who does not know or suspect someone is engaged in *money laundering* gains a defence against the failure to disclose offence (ie, if there is only reasonable grounds for knowledge or suspicion and the staff member fails to make an *internal report*). However, such an omission is likely to open the *business* to the risk of prosecution for breach of the *2007 Regulations*. The significance of training records to both *individuals*, and *businesses* is reflected in the recommendation in section 3.9.

3.21 *Businesses* need to make arrangements to ensure new staff are trained as soon as possible after they join the *business*.

SECTION 4 – THE RISK BASED APPROACH

KEY POINTS

- A risk based approach allows *businesses* to target resource and effort where the risk is greatest and, conversely, reduce requirements where the risk is low.
- *Businesses* must establish adequate and appropriate policies and procedures relating to risk assessment and management in order to prevent operations related to *money laundering* or *terrorist financing*.
- *Businesses* must—
  (a) determine the extent of *customer due diligence* measures (section 5) on a risk-sensitive basis depending on the type of *client*, *business relationship*, or services to be provided;
  (b) be able to demonstrate to their *anti-money laundering supervisory authorities* that the extent of *customer due diligence* measures is appropriate in view of the risks of *money laundering* and *terrorist financing*.
- *Businesses* are required to take a risk-based approach and have adequate measures to verify the identity of beneficial owners so that they are satisfied that they know who the beneficial owner is and what the control structure is in respect of a *client* who is other than a natural person (Regulation 5(1)(b)).
- *Businesses* are required to undertake scrutiny of transactions and other activities throughout the course of a *business relationship* to ensure consistency with *businesses' and individuals'* knowledge of the *client*, his business and risk profile.
- *Businesses* must also keep up-to-date the information collected in applying *customer due diligence* measures.
- *Businesses* must apply *customer due diligence* measures at appropriate times to existing *clients* on a risk-sensitive basis.

RISK ASSESSMENT AND MANAGEMENT

Policies and Procedures

4.1 All *businesses* must have appropriate policies and procedures for assessment and management of the risk of the *business* being used for *money laundering*, of failing to recognise it where it occurs and report it when required. A risk-based approach to anti-*money laundering* incurs cost which is proportionate to this risk, focusing effort where it is needed and has most impact.

4.2 Professional firms are likely to already have in place policies and procedures to minimise professional, *client* and legal risk. Anti-*money laundering* procedures and policies may be integrated into existing risk management systems or be controlled separately. In either case, anti-*money laundering* policies and procedures should be valuable to *businesses*, in contributing to the control of risks to both *businesses* and *individuals* in this and other areas.

Risk profile

4.3 The development of a *money laundering* risk profile for the *business* enables a risk-based policy and approach to be developed, and thus to determine the most cost effective and proportionate way to manage and mitigate the *money laundering* and *terrorist financing* risks faced by the *business*. The risk profile of a *business* is determined by:

- identifying the *money laundering* and *terrorist financing* risks that are relevant to the *business*; and
- designing and implementing controls to manage and mitigate these risks, and record their operation.

Managing compliance

4.4 *Businesses* are required to monitor and manage their compliance with and internal communication of their policies and procedures and this includes their systems for risk assessment and management, as well as their other anti-*money laundering* policies and procedures (Regulation 20 (1)). All such systems should be managed through monitoring the operation of the controls, updating them where necessary and assessing whether they have been effective. *Businesses* may come into contact with activity in the *client's* business which they perceive as likely, by its nature, to be related to *money laundering* or *terrorist financing* (in particular, complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose). In those circumstances, *businesses* have a duty to pay special attention to such an activity.

4.5 *Businesses* can decide for themselves how to carry out their risk assessment, which may be simple or sophisticated depending on the nature of their practice. Where the practice is simple, involving few service lines, with most *clients* falling into similar categories, a simple approach may be appropriate for most *clients*, with the focus being on those *clients* that fall outside the norm.

4.6 A risk-based approach can never, by its nature, be an error–free system. However, it ensures the most cost effective results by directing the attention of *businesses* to the risks relating to different *clients* and services, in order to determine what level of knowledge and verification is required when establishing a *business relationship* and in conducting that relationship.

THE RISK-BASED APPROACH

4.7 Each *business* needs to make a reasoned decision as to how it intends to manage *money laundering* risk. A risk-based approach does, however, enable a *business* to target its effort on conducting *customer due diligence* more effectively with increased depth of work being conducted where the risks are perceived, on a rational basis, to be higher.

4.8 Senior management engagement and commitment is needed to produce and embed a successful risk-based approach, and it also needs effective communication to all staff members who need to use it.

4.9 *Businesses* may assess the *money laundering* risks of:

- different products and services,
- *client* types and sectors, and

- the jurisdictions of *client* origin, funding, investment and conduct of business.

and apply a simple risk categorisation of low/normal/high on the basis of these categories. Such an approach is valid, and should be capable of minimising complexity, but needs to retain an element of discretion and flexibility where risk ratings may be raised or lowered with appropriate management input in response to particular or exceptional circumstances.

4.10 *Businesses* may also wish to consider the different types of risk to which they are exposed. These risks may include

- being used in an active sense to launder money through the handling of cash or assets,
- becoming concerned in an arrangement which facilitates *money laundering*, through the provision of investment services or the provision of trust or company services.
- risks attaching to the *client* and/or those who trade with or otherwise interact with *clients* as regards their potential for involvement in *money laundering*.

4.11 A simple matrix prepared from a risk-assessment of the factors considered above may be prepared to provide a basic framework for the categorisation of *clients* and engagements, and to direct the depth and type of *customer due diligence* accordingly.

4.12 Chapter 4 of the *JMLSG Guidance* notes provides useful additional guidance on the risk-based approach

Developing and applying a risk based approach

4.13 In developing a risk-based approach, *businesses* need to ensure it is readily comprehensible and easy to use for all relevant staff. In cases of doubt or complexity, *businesses* may wish to consider putting in place procedures where queries may be referred to a senior and experienced person, eg, the *MLRO* for a risk-based decision which may vary from standard procedures.

4.14 To develop the approach it is necessary to review the *business* and consider what *money laundering* risks might attach to each service type, *client* type etc. One way to consider this in relation to the *defined services* is outlined below, but there are other approaches that may be equally or more valid depending on the type of *business.*

4.15 *Businesses* should consider first the type of risk presented:

- is the risk that the *business* might be used to launder money or provide the means to launder money? Examples might include handling *client* money, implementing company and trust structures, handling insolvent estates where assets are tainted by crime etc.
- is the risk that the *client* or its counterparties might be involved in *money laundering*? Examples might include *clients* who are *PEPs* (see section 5.27), or who are high profile and attract controversy or adverse comment in the public domain, or who are involved in higher risk sectors and jurisdictions (*eg,* those where corruption is known to be a higher risk), or who are known to be potentially involved in illegal activities, such as tax evaders seeking advice to resolve their affairs, and certain forensic work connected with fraud or other crime etc.

4.16 Consideration of these risk types should enable the *business* to draw up a simple matrix of characteristics of the *client* or service which are considered to present a higher than normal risk, and those which present a normal risk. Some may, by long acquaintance and detailed knowledge, or by their status (eg, listed, regulated and government entities as defined for the purpose of *simplified due diligence* in the *2007 Regulations*) be considered to present a lower than normal risk.

4.17 This matrix can then be incorporated into *client* acceptance procedures, and as step 1 of the *customer due diligence* process, allows a *money laundering* risk level to be assigned to ensure appropriate, but not excessive, *customer due diligence* work is carried out.

4.18 It is important for the approach adopted to incorporate a provision for raising the risk rating from low or normal to high if any information comes to light in conducting the *customer due diligence* that causes concern or suspicion.

4.19 In all cases, even where *clients* qualify for *simplified due diligence* under the terms of the *2007 Regulations*, or where they are considered low risk for other reasons, to assist in effective ongoing monitoring *businesses* should gather knowledge about the *client* to allow understanding of:

- who the *client* is
- where required, who owns it (including ultimate beneficial owners – see section 5.6)
- who controls it
- the purpose and intended nature of the *business relationship*
- the nature of the *client*
- the *client's* source of funds
- the *client's* business and economic purpose.

4.20 The information specified in the bullet points above are referred to in the remainder of this *Guidance* as 'know your client' or 'KYC' information which is one step in the *customer due diligence* process. However, *businesses* may avail themselves of the opportunity to conduct verification of identity on a simplified basis both under the terms of the *2007 Regulations*, where applicable, and otherwise where the accumulated knowledge of the *client* is considered sufficient to prove its identity on a risk-sensitive basis without collecting additional documents as might be required for a new *client* considered to present a normal risk (provided in both cases that any relevant requirements of the *2007 Regulations,* for example in relation to the identification of beneficial owners, are met).

4.21 *Businesses* need to set out clear requirements for collecting KYC information about the *client* and for conducting verification of identity, to a depth suitable to the assessment of risk. Set out in this *Guidance* are some high level guidelines as to how *businesses* might approach this. More detailed *Guidance* is contained in the *JMLSG Guidance* notes, Chapters 4 and 5.

SECTION 5 – CUSTOMER DUE DILIGENCE

KEY POINTS

- Effective '*customer due diligence'* measures are an essential part of any system designed to prevent *money laundering* and are a cornerstone requirement of the Money Laundering Regulations 2007 (*2007 Regulations)*.
- *Businesses* should take a **risk-based approach** to allow effort to be concentrated on higher risk areas (**also see section 4**). Risks must be assessed before the appropriate level of *customer due diligence* can be applied.
- *Customer due diligence* measures need to be carried out:

  * when establishing a *business relationship,*

  * when carrying out an occasional transaction,

  * where there is a suspicion of *money laundering* or *terrorist financing*; and

  * where there are doubts concerning the veracity of previous identification information.
- *Businesses* are required to ensure *customer due diligence* procedures are applied to all *clients*, both new and existing. *Customer due diligence* must be applied to existing *clients* (ie those existing prior to the *2007 Regulations* coming into force) at appropriate times on a risk-sensitive basis.
- **Before** entering a *business relationship*, *businesses* must:

  * identify and verify the *client's* identity using documents or information from reliable and independent sources.

  * identify the beneficial owner of the *client* (where there is one), including understanding

    the ownership and control structure of the *client* and verifying,

    according to risk, the identity of the beneficial owner(s).

  * obtain information on the purpose and intended nature of the *business relationship.*
- Verification of identity may in certain circumstances be conducted during the establishment of a *business relationship* if this is necessary not to interrupt the normal course of business and there is little risk of *money laundering* or *terrorist financing* occurring, provided the verification is completed as soon as practicable after contact is first established.
- **During** a *business relationship*, *businesses* must monitor activity on an ongoing basis. This includes scrutiny of transactions, source of funds and other elements of knowledge collected in the *customer due diligence* process, to ensure the new information is consistent with other knowledge of the *client* and keeping the documentation concerning the *client* and the relationship updated.
- *Businesses* can use a variety of tools and methods to conduct *customer due diligence*; the onus is on them to satisfy themselves and to be able to demonstrate to their *anti-money laundering supervisory authority* the appropriateness of their approach.

WHY IS THIS IMPORTANT?

5.1 *Customer due diligence* measures are a key part of the anti-*money laundering* requirements. They ensure that *businesses* know who their *clients* are, ensure that they do not accept *clients* unknowingly which are outside their normal risk tolerance, or whose business they will not understand with sufficient clarity to be able to form *money laundering* suspicions when appropriate. If a *business* does not understand its *client's* regular business pattern of activity it will be very difficult to identify any abnormal business patterns or activities. In addition *businesses* must be in a position to supply the *client's* identity to *SOCA* should that *client* become the subject of a *SAR*.

5.2 Many *businesses* will have other procedures for *client* acceptance, for example to ensure compliance with professional requirements for independence and to avoid conflicts of interest. The requirements of the *2007 Regulations* may either be integrated with those procedures or addressed separately. In either case, initial *customer due diligence* information not only assists in acceptance decisions, but also enables the *business* to form well-grounded expectations of the *client*'s behaviour which provides some assistance in detecting potentially suspicious behaviour during the *business relationship.*

5.3 The processes required for compliance with anti-*money laundering* initial *customer due diligence* requirements contribute vitally to the overall picture of potential *clients* and appropriate risk assessment of them. However, a lack of concern raised during *customer due diligence* does not automatically mean that the *client* and engagement will remain in their initial risk category. Continued alertness for changes in the nature or ownership of the *client*, its business model, or its susceptibility to *money laundering* – or actual evidence of the latter - must be maintained.

WHAT IS CUSTOMER DUE DILIGENCE?

5.4 The *2007 Regulations* provide an outline of the required components of *customer due diligence* which *businesses* need to ensure are integrated into *client* acceptance processes and the continuing conduct of the *business relationship.* The required components are:

- identifying the *client* (ie, knowing who the *client* is) and verifying the identity of the *client* (ie, confirming that identity is valid by obtaining documents or other information from sources which are independent and reliable);
- identifying the beneficial owner(s) (see section 5.6) of a *client*, if there is one, so that the identity of the individual(s) who is the ultimate owner or controller is known, the ownership and control structure is understood and also that their identities are verified, as required, on a risk-sensitive basis; and
- information on the purpose and intended nature of the *business relationship*.

5.5 Whilst the *2007 Regulations* do indicate some cases where either *simplified due diligence* may be employed or *enhanced due diligence* must be employed, they do not specify, comprehensively, how to apply a risk-based approach in conducting *customer due diligence*. Section 4 of this *Guidance* provides a high level outline of the key elements of a risk-based approach. If further detail is required it is recommended that reference is made to the *JMLSG Guidance* notes which cover the subject in depth and, as HM Treasury approved *Guidance* for the financial services industry, may be considered as a reliable additional source of information in supplement to this *Guidance*.

WHAT IS A BENEFICIAL OWNER?

5.6 The *2007 Regulations* set out in some detail the meaning of 'beneficial owner' in terms of bodies corporate, partnerships, trusts and other legal entities/arrangements not falling into the three categories listed above as well as special provisions regarding estates of deceased persons and a catch all provision that, where not otherwise specified, defines the beneficial owner as the person who ultimately owns or controls the *client* or on whose behalf a transaction is being conducted. The provisions regarding beneficial ownership are set out in Regulation 6 and are summarised below:

- **Bodies corporate** –beneficial owner means any individual who, in respect of any body other than a company whose securities are listed on a *regulated investment market*, owns or controls, directly or indirectly including through bearer share holdings, more than 25% of the shares or voting rights in the body or who otherwise exercises control over the management of the body.

- **Partnerships** (other than limited liability partnerships established under the Limited Liability Partnerships Act 2000) - beneficial owner means any individual who ultimately is entitled to or controls (directly or indirectly) more than 25% of the capital or profits of the partnership or more than 25% of the voting rights in the partnership or who otherwise exercises control over the management of the partnership.

- **Trusts** - beneficial owner means any individual who is entitled to a *specified interest* in at least 25% of the capital of the trust property, or where a trust is not set up entirely for the benefit of persons with a *specified interest*, the class of persons in whose main interest the trust is set up or operates or any individual who has control (*a trust controller*) over the trust. Where a class of persons is identified, it is not a requirement for all members of that class to be separately identified.

- **Other entities and arrangements** (meaning an entity or arrangement which administers and distributes funds) – where the individuals who benefit from the entity or arrangement have been determined, beneficial owner means any individual who benefits from at least 25% of the property of the entity or arrangements. Where those benefiting have yet to be determined, beneficial owner means the class of persons in whose main interest the entity or arrangement is set up or operates or an individual who exercises control over at least 25% of the property of the entity or arrangement. Where a class of persons is the beneficial owner, it is not a requirement for all members of that class to be separately identified. Note that where an individual is the beneficial owner of a body corporate which benefits from, or exercises control over, the property of an entity or arrangement, the individual is to be regarded as having that benefit or control and so is classed as the beneficial owner.

- **Estates of deceased persons** – the beneficial owner is considered to be the executor or administrator of the estate (full detail is shown in Regulation 6(8)).

5.7 The focus on identifying and, where appropriate, verifying the identity of beneficial owners is not only an important element of the required *customer due diligence* information, but is also an important factor in an effective risk-based approach to *client* acceptance. *Businesses* will need to be diligent in their enquiries in this field, taking into account that information may sometimes not be readily available from

public record sources. This will necessitate a flexible approach to information gathering which will often involve direct enquiry of *clients* and their other advisers and professional service providers as well as undertaking public record searches in the UK and overseas.

APPLICATION AND TIMING OF CUSTOMER DUE DILIGENCE MEASURES (WHEN)

5.8 Identification and verification of identity procedures (together termed as "ID procedures") should normally be completed **before** entering into a *business relationship*. This applies also to occasional transactions. ID procedures are also required at other times, for example, when there is a suspicion of *money laundering* or *terrorist financing* or where there are doubts about the sufficiency of identification information already held. If it is concluded the information held is insufficient, the *business* should remedy this as soon as is practicable. Should a suspicion be developed about the *client*, *businesses* will need to consider whether they are satisfied that the information already held is sufficient and up to date or whether any additional or updated information is required in respect of the *client(s)* in question in order that the information required by Regulation 5 (customer due diligence) is met. In particular, in any case where suspicion is developed, *simplified due diligence* may no be longer be applied. This means if *simplified due diligence* had been applied, additional information will need to be collected in accordance with *businesses'* risk-based procedures. *Businesses* must bear in mind in conducting this *customer due diligence* work the need to avoid disclosing that a *money laundering* report has been made, or that an investigation is underway, or may be commenced (see section 2.17-2.21 Tipping Off).

5.9 The *2007 Regulations* allow for completion of ID procedures 'during the establishment of a *business relationship*' rather than before if the measures are completed as soon as practicable after the initial contact **but only** when such a process is necessary not to interrupt the normal conduct of business and there is little risk of *money laundering* or *terrorist financing* occurring. *Guidance* on how this might reasonably be applied in the case of provision of the *defined services* is provided below, although this is not intended to be prescriptive, or exclusive. *Businesses* should not complete any assignment for a *client* (eg, including transfer of *client* monies or delivery of work product) before *customer due diligence* has been carried out in full in accordance with the *businesses'* procedures.

5.10 If procedures are not completed before entering a *business relationship*, *businesses* and their *clients* may suffer considerable cost and inconvenience in having to terminate a relationship if ID procedures either cannot be completed, or where the results are unsatisfactory.

5.11 *Customer due diligence* should also be completed before undertaking occasional services for the *client* that do not form part of an ongoing *business relationship*. *Businesses* must understand why the *client* requires the service, the identities of other parties that might be involved, and any potential for *money laundering* that may arise.

When delay may be acceptable

5.12 In forming new *business relationships*, there are some cases where delay **may** be acceptable, such as in urgent insolvency appointments, and urgent appointments that involve ascertaining the legal position of a *client* or defending the *client* in legal proceedings.

5.13 In such cases, *businesses* should still gather enough information to allow them to at least form a basic assessment of the identity of the *client* and *money laundering* risk and to complete other acceptance formalities such as considering the potential for conflicts of interest.

5.14 In other cases, where the majority of information required has been collected before entering a *business relationship*, short time extensions to complete collection of remaining information may be acceptable, provided this is caused only by administrative or logistical issues, and not by any reluctance of the *client* to provide the information and is necessary not to interrupt the normal course of business. Such extensions should be exceptional, rather than the norm. It is recommended that such extensions of time are considered and agreed by a member of senior management or the *MLRO* to ensure the reasons for the extension are valid and do not give rise to concern over the risk category of the *client* or the potential for *money laundering* suspicion.

5.15 If evidence is delayed (rather than refused), *businesses* should consider;

- the credibility of the *client's* explanation,
- the length of delay,
- whether the delay is in itself reasonable grounds for suspicion of *money laundering* requiring a report to *SOCA* and/or a factor indicating against acceptance of the *client* and engagement, and
- documenting the reasons for delay and steps taken.

Non-compliance through client refusal

5.16 If a prospective *client* refuses to provide evidence of identity or other information properly requested as part of *customer due diligence*, the *business relationship* or occasional transaction must not proceed any further and any existing relationship with the *client* must be terminated (but see sections 5.56 – 5.59 on insolvency cases). Consideration must be given as to whether a report needs to be made to *SOCA* under *POCA* or *TA 2000.*

5.17 Where the appointment is of either a lawyer or *relevant professional advisor* in the course of ascertaining the legal position for the *client*, or performing the task of defending or representing the *client* in or concerning legal proceedings (including advice on instigating or avoiding proceedings) the requirement to cease acting and consider reporting to *SOCA* does not apply although *customer due diligence* information will still need to be collected within the time constraints in Regulation 9. *Businesses* are advised to consider the position very carefully before applying this exception to ensure that the type of work and their professional status fall within the definitions set out in Regulations 11(2) and (3).

Continuing customer due diligence

5.18 In addition to considerations before entering a *business relationship*, *customer due diligence* must be exercised on an ongoing basis during the relationship, as part of regular monitoring of *money laundering* risks or occasioned by the *client* undergoing significant changes. *Businesses* may wish to consider reviewing *customer due diligence* and other *client* information on a periodic basis, as well as in response to perceived risks.

5.19 Changes such as the appointment of new senior managers or shareholders and/ or controlling parties, changes in the *client's* strategy or changes of business profile should prompt *businesses* to re-apply *customer due diligence* procedures. These may differ from those adopted for a new *client*, and although there may be a change in focus the objective remains the same: to have a sound understanding of the *client's* identity and activities in order to assess risks of *money laundering* and to have accurate underlying records.

THE RISK BASED APPROACH TO CLIENT DUE DILIGENCE

5.20 Regulation 7(3) requires *customer due diligence* measures to be carried out on a risk-sensitive basis. This means that *businesses* need to consider how their risk assessment and management procedures (see section 3 above) flow through into their *client* acceptance and ID procedures, to give sufficient information and evidence, in the way most appropriate to the *business* concerned.

5.21 In addition, there are certain circumstances where the *2007 Regulations* themselves lay down categories where *simplified due diligence* or *enhanced due diligence* is appropriate, according to national and international assessments of the risk of *money laundering*.

Simplified due diligence

5.22 '*Simplified due diligence'* is a phrase used in the *2007 Regulations* (Regulation 13) which means that a *business* is not required to apply the *customer due diligence* measures laid out in Regulation 7, as set out in section 5.20 above, where the *business* has reasonable grounds for believing that a *client* falls into the relevant categories. *Businesses who* may be permitted to apply the *simplified due diligence* exemptions but who perceive other than a low risk of *money laundering* in a specific case, should consider applying their standard or *enhanced due diligence* processes. In any case where a *client* or potential *client* has been subject to *simplified due diligence* and a suspicion or *money laundering* or *terrorist financing* arises in relation to that *client*, the *simplified due diligence* provisions must no longer be applied and the *customer due diligence* requirements of Regulation 7 must be applied, subject to any *tipping off* issues.

5.23 The main categories of relevance to those providing *defined services* are:

- *credit* or *financial institutions* subject to the provisions of the *money laundering directive* or equivalent overseas requirements,
- companies listed on a regulated EEA market or equivalent overseas requirements subject to *specified disclosure obligations*,
- UK public authorities and certain public authorities in the EU and EEA (see Schedule 2 paragraph 2).

Simplified due diligence is also available for some categories of products and transactions which may be provided by financial institutions.

5.24 *Businesses* should set out clearly in their internal procedures what is considered to constitute reasonable grounds for a belief that a *client* can be made subject to *simplified due diligence*. Evidence should be obtained either as to the regulated status of the *credit* or *financial institution* (such as a print out from the regulator's official web-site or listing), or the listed status of the company (such as a print out from the exchange's official web-site or listing, or details of the listing obtained from a

trusted, independent commercial provider of company information). With regard to public authorities, recourse to official government web-sites is recommended. In each case, where the body is not subject to UK, EC or EEA law, justification will also need to be recorded as to how the provisions and other conditions regarding *specified disclosure obligations* in respect of listed companies, and the check and balance procedures and other conditions in respect of public authorities outside the UK, have been met. Recourse to information provided from time to time by the *JLMSG* is recommended [ref to *JMLSG* source]. Where *simplified due diligence* applies, *businesses* are not required to apply standard *customer due diligence* measures. However, *businesses* must still carry out ongoing monitoring (see section 5.46) and appropriate KYC information should therefore still be obtained (see section 4.19).

Enhanced due diligence

5.25 A risk-based approach to *customer due diligence* will identify situations which by their nature can present a higher risk of *money laundering* or *terrorist financing*. Regulation 14 sets out a general provision that *enhanced due diligence* must be applied in such situations and means that the *business* must obtain additional *customer due diligence* information about the *client*.

5.26 The *2007 Regulations* also specify that *enhanced due diligence* must be applied in a number of situations, of which two are relevant to providers of *defined services* and are outlined below:

- if a *client* has not been physically present for identification purposes, and if so, one or more additional measures must be taken to *enhance due diligence,* for example by, inter alia, either gathering additional documents, data or information, or taking additional steps to verify documents or obtain a confirmatory certificate from a *credit or financial institution* subject to the *money laundering directive*; and
- if a *business relationship* or occasional transaction is to be undertaken with a *politically exposed person (PEP)* in which case the *business* must provide for senior management approval for the relationship to be established, must take adequate measures to establish the source of wealth and funds which are involved and must conduct enhanced monitoring of any relationship entered into.

Politically exposed persons (*PEPs*)

5.27 The *2007 Regulations* define a *PEP* as a person '…who is or has, at any time in the preceding year been entrusted with a prominent public function by a state other than the United Kingdom, a community institution or an international body' or a family member or known close associate of such a person. Details of what are considered to be prominent public functions are shown in Schedule 2, paragraph 4(1)(a). For risk management and reputational risk reasons, *businesses* may wish to treat as *PEPs* individuals who held such positions more than a year ago. As regards establishing whether someone is considered to be a family member or known close associate, regard need only be had to information in the public domain or in the possession of the *business*. 'International body' is not defined, and due consideration should be given to the type, reputation and constitution of the body before excluding it or its representatives from *enhanced due diligence*. However, bodies such as the United Nations, NATO and *FATF* may reasonably be included within the definition of an international body for this purpose.

5.28 Under the *2007 Regulations*, *clients* who are *PEPs* must always be subject to the *enhanced due diligence* measures referred to in section 5.26 above.

5.29 *Businesses* are required to have risk sensitive measures in place to recognise *PEPs*. This can be a simple check conducted by enquiring of the *client* and perhaps using an internet search engine. *Businesses* that are likely to regularly undertake services for *PEPs* may need to subscribe to a specialist database. To the extent possible, *businesses* should be aware of any news during a *business relationship* that could change a *client's* status to *PEP*.

Prohibited relationships

5.30 The *2007 Regulations* set out circumstances which constitute prohibited relationships. In Regulation 16, correspondent banking relationships with *shell banks*, or a bank known to permit use of its accounts by a *shell bank* are prohibited. In addition, set up of anonymous accounts in the UK is prohibited, and *customer due diligence* must be applied to any existing accounts continuing in existence after 15 December 2007 before such an account is used.

5.31 All *businesses* must pay special attention to services or, where relevant, products or transactions that might allow anonymity and take measures to prevent their use in *money laundering* or terrorist activity. *Businesses* must include any such product or transaction within those requiring *enhanced due diligence*.

5.32 In addition, *businesses* must comply with any prohibition issued by HM Treasury in respect of any person, or State to which the Financial Action Task Force has decided to apply counter-measures (see also section 5.44). Directions may be given not to enter into *business relationships*, carry out *occasional transactions* or proceed with any such arrangements already in progress. The Government also issues advisory notices, against countries with material deficiencies in their anti-*money laundering* and counter *terrorist financing* (AML/CTF) regimes, based on the *FATF* Non-Cooperative Countries or Territories (NCCTs) list (consisting of countries with extremely ineffective AML/CTF legislation and systems which prevent them from adequately cooperating internationally in combating *money laundering* and *terrorist financing*) and other *FATF* concerns. An advisory notice requires that *businesses* and *individuals* in the UK should exercise caution when entering into *business relationships* in such countries. Advisory notices are available from the HM Treasury website under "press notices". *Businesses* may subscribe to receive press notices on the HM Treasury website.

Reliance on third parties

5.33 *Businesses* may rely on third parties, subject to the third parties' consent, to complete all or part of *customer due diligence* as set out below but they should be cautious in relying on third parties as they will remain liable for any failure to comply notwithstanding their reliance on a third party (See Regulation 17). *Businesses* should consider requiring copies of relevant information and documentation from the third parties, in order that they may satisfy themselves the information is sufficient.

5.34 Reliance may be made on persons who are:

- regulated *credit* or *financial institutions* (excluding money service businesses);
- professional lawyers, auditors, *external* accountants, *insolvency practitioner*s or *tax adviser*s;

'professionals' in the second of these categories must be regulated by one of the *anti-money laundering authorities* listed in Part 1 of Schedule 3 to the *2007 Regulations*, or be subject to equivalent regulation in an EEA or non-EEA state

including mandatory professional registration recognised by law and supervision for compliance with requirements equivalent to the *money laundering directive*. *Businesses* may outsource their *customer due diligence* measures but remain liable for any failure in the *customer due diligence*.

5.35 Information on equivalence is very limited at present, but further information should [shortly be published by HM Treasury following an EU study].

5.36 Before reliance may be placed on one of those specified above, the other *individual* or *business* must agree to reliance being placed. If consent is obtained, the *individual* or *business* consenting to the reliance must take great care to ensure they have adequate systems in place to keep proper records and to respond to any request for these.

5.37 An *individual* or *business* consenting to be relied upon must, if requested, make available to the person relying as soon as is reasonably practicable:

- any information obtained about the *client* (and any beneficial owner) when applying *customer due diligence* measures; and/or
- copies of any identification and verification data and other documents on the identity of the *client* (and any beneficial owner) obtained when applying *customer due diligence* measures.

5.38 Before placing reliance, an *individual* or *business* seeking to rely must take steps to ensure the person being relied upon will provide the required information.

5.39 Any *individual* or *business* consenting to be relied upon must ensure the records of *customer due diligence* which become the subject of reliance are retained for 5 years from the date on which reliance commences.

5.40 Failure by a person who has been relied upon to comply with the requirements in relation to responding to requests for information, relying upon a person without having ensured they will provide the information required on request, or failing to keep the records required after reliance has been allowed are all criminal offences as set out in Regulation 45.

Where reliance is placed on a third party, *businesses* are not required to apply standard *customer due diligence* measures. However, *businesses* must still carry out ongoing monitoring (see section 5.46) and appropriate KYC information should therefore still be obtained (see section 4.19).

5.41 Whilst reliance may be a useful and efficient feature of a *customer due diligence* system between parties who are able to build a relationship of trust, it should not be entered into lightly. *Individuals* and *businesses* need to consider carefully whether they wish to be relied upon and before so consenting ensure:

- their *client* (and any other third party whose information would be disclosed) has no objection to their information being passed to the person seeking reliance; and
- that they have in place the necessary record-keeping systems.

CONDUCTING CUSTOMER DUE DILIGENCE

'Know your client' or 'KYC'

5.42 The resources used to undertake effective *customer due diligence* are not prescribed. Various sources may be used to enhance a *business'* knowledge of their *client*, including direct discussion with the *client*, information (*eg,* websites, brochures, reports etc) prepared by the *client* and review of public domain information.

5.43 *Businesses* need to consider whether there are any particular steps they wish to specify for use in higher risk cases to increase the depth of *customer due diligence*, such as seeking out wider information from extensive internet and press searches concerning the potential *client*, its key counterparties, its sector and jurisdiction, or possibly using subscription databases which provide a quick way of accessing public domain information and in many cases provide links to persons or companies known to be associated with the potential *client* (see sections 5.54 to 5.55 on electronic identification).

5.44 *Businesses* might, as appropriate to their risk assessment, wish to check the names of *clients* against lists of persons subject to asset-freezing restrictions, including under financial sanctions and terrorism *financial restrictions*. HM Treasury maintains a consolidated list of persons designated as being subject to *financial restrictions* in force in the UK but recourse may be had to further lists such as those issued by the UN and the US Treasury Office of Foreign Assets Control or OFAC). Some electronic resources also include an automated check against this information as part of the product.

Specific *customer due diligence* prompts

5.45 It may be helpful for a list of questions or prompts to be incorporated into *customer due diligence* procedures. Examples are given at the end of this section (section 5A) which should be amended to suit the particular *business' client* base and services.

Ongoing monitoring

5.46 Ongoing monitoring of the *business relationship* is required. This comprises scrutiny of activity during the relationship, including enquiry into source of funds if needed, to ensure all is consistent with expected behaviour based on accumulated *customer due diligence* information. In addition, it is required that the documentation concerning the relationship (including *customer due diligence*) is kept updated as laid out in Regulation 8, *2007 Regulations.* The need to update *customer due diligence* information should be considered at appropriate times, following a risk based approach, according to the firm's knowledge of the *client* and changes in its circumstances or the nature of services provided by the firm. A firm also may wish to consider this need, on a more routine basis, as appropriate opportunities arise. Examples of such opportunities are:

- at the start of new engagements and when planning for recurring engagements;
- when a previously stalled engagement restarts;
- whenever there is a change of control and/or ownership of the *client*;
- when there is a material change in the level, type or conduct of business; and
- where any cause for concern, or suspicion, has arisen (in such cases, care must be taken to avoid making any disclosure which could constitute *tipping off)*.

Risk-based verification

5.47 Application of a risk-based approach is of considerable importance in verification, both to ensure a good depth of knowledge in higher risk cases, but also to avoid

superfluous effort in lower or normal risk cases. Very extensive information is contained in the *JMLSG Guidance* notes. Reference to this is recommended, particularly for overseas *clients*, or those *clients* who have a legal form other than that of a UK private or public company, a UK partnership or LLP, or a UK government body.

5.48 With the more frequently encountered *client* types, ie individuals, UK private or public companies, UK partnerships or LLPs, a UK regulated *business*, or a UK government body, outline *Guidance* on a risk based approach to verification of identity is set out at the end of this section (section 5B).

Documentary evidence used in the verification of identity (How)

5.49 The purpose of verification of identity is to confirm and prove the information collected in so far as it relates to the identity of the *client*. Recourse to documents from independent sources is important. The amount of reliance that can be placed upon, and thus the strength of, particular forms of evidence varies.

5.50 The following are illustrative of a different of strength of various forms of documentary evidence starting with the highest:

- documents issued by a government department or agency or a Court (including documents filed at Companies House or overseas equivalent)
- documents issued by other public sector bodies or local authorities
- documents issued by *businesses* regulated by the Financial Services Authority or overseas equivalent
- documents issued by professionals regulated for anti-*money laundering* purposes by the bodies listed in Schedule 3 of the *2007 Regulations* or overseas equivalents
- documents issued by other bodies.

5. 51 In the case of individuals, documents from highly rated sources that contain photo identification as well as written details are a particularly strong source of verification of identity.

Certification and annotation

Certification

5.52 *Businesses* may wish to consider whether copies of original documents and copies of certified copies of original documents should be certified as true copies to demonstrate their provenance. *Businesses* may wish to create standard stamps or labels to apply to documents, which can then simply be filled in with name, signature and date. *Businesses* should have regard to the standing of the person certifying and may wish to consider specifying from whom certification may be accepted, for instance, *businesses* may decide to restrict acceptance to those documents certified by a person in the permitted categories for reliance (Regulation 17 of the *2007 Regulations*) which are broadly a credit or *financial institution* authorised by the *FSA*, a professionally qualified auditor, *external accountant, insolvency practitioner* or *tax adviser*, or *independent legal professional*, or their equivalent in EU countries and other countries which have equivalent law and provided in all cases that the person is subject to supervision as to his compliance with those requirements.

Annotation

5.53 This should be used when the document is as good as an original but is not the original itself. This particularly applies to printouts from the Internet, such as downloads from Companies House, regulator, stock exchange or government websites, or similar trustworthy business information sources. Each document so obtained should bear written evidence showing who printed it, when, from where and should be signed by the relevant person.

Electronic identification

5.54 There are now a number of subscription services that give access to databases of information on identity. Many of these services can be accessed on-line and are often used by *businesses* to replace or supplement paper verification checks. Subject to 5.55, this means *businesses* may use on-line verification as a substitute for paper verification checks for *clients* considered normal risk, supplemented by additional paper verification checks for higher risk *clients,* or vice versa.

5.55 Before using electronic databases, however, *businesses* should question whether the information supplied is sufficiently reliable, comprehensive and accurate. The following points should be considered before deciding to use an electronic source (either as part of a wider process or, where appropriate, on its own)[3]:

- **Does the system draw on multiple sources?** A single source, *eg,* the Electoral Roll, is usually not sufficient. A system which uses both negative and positive data sources is generally more robust than one that does not.[4]
- **Are the sources checked across a period of time?** Systems that do not regularly update their data are generally prone to more inaccuracies than those that do.
- **Are there control mechanisms to ensure the quality and reliability of data?** Systems should have built-in checks that ensure the integrity of data and should ideally be transparent enough to show the results of these checks and their bearing on the integrity of data.
- **Is the information accessible?** Systems need to allow a *business* either to download and store the results of searches in appropriate electronic form, or to print off a hardcopy record containing all necessary details as to name of provider, source, date etc.

Insolvency cases

5.56 In the context of insolvency work, the person or entity entering into the *business relationship* is considered to be the insolvent. *Insolvency practitioner*s are also referred to the *Guidance* provided by R3.[5]

5.57 An *Insolvency practitioner* should obtain verification of the identity of the person or entity over which he is appointed. Acceptable evidence of verification may include a court order, a court endorsed appointment, or an appointment made by a debenture

[3] The JMLSG *Guidance* (Section 2, paragraphs 5.3.11 – 5.3.18) also covers indicators of good electronic identification resources.

[4] 'Positive' data are those that prove an individual exists, e.g. name, current address, date of birth etc, whereas 'negative' data relate known incidents of fraud, including identity fraud, other known offences and registers of deceased persons.

[5] www.r3.org.uk The Association of Business Recovery Professionals, better known as 'R3' (rescue, recovery, renewal).

holder or creditors meeting supported by a company search or similar. It is not always possible or necessary to obtain identification evidence direct from individuals or individual shareholders or directors in an appointment in respect of a company as their co-operation may not be forthcoming.

5.58 It is important for an officeholder to be sure about the identity of the person or entity over which he is taking appointment given the urgency of the situation and the necessity not to delay when this might risk dissipation of assets and erosion of value. However, completion of other KYC elements of *customer due diligence* may not be possible prior to appointment and should be completed as soon as practicable after appointment (if possible, usually within 5 working days).

5.59 *Insolvency practitioner*s post appointment have a very different relationship with the insolvent *client* than that with a normal audit or advisory *client* and have access to a very wide range of information which alters the need for traditional pre-appointment KYC. However, particular focus is needed before, and immediately after, appointment on considering the way the business has been operated and assessing the risk of assets being tainted by crime in which case it may well be necessary, but not as a matter of routine in every case, to apply to *SOCA* for *consent* to perform the normal range of duties of collection, realisation and distribution of assets (see section 8).

SECTION 5 A – SPECIFIC PROMPTS FOR CLIENTS

These are suggested prompts only. In order to make the most use of these *businesses* should amend the text to suit their own *client* base and services offered.

A. For entities/businesses

1. What is its purpose in entering into any transaction forming the basis of the proposed engagement or its purpose in seeking services where not related to a specific transaction?
2. What are the entity's main trading and registered office addresses?
3. What are its business activities or purposes and sector?
4. Who controls and manages it (ie, has executive power over the entity – this may be directors, shadow directors or others depending on the circumstances)?
5. If the client is audited, were the accounts qualified and, if so, why?
6. Name and check that the person(s) purporting to represent the entity is/are who they say they are.
7. Who owns it - ultimate beneficial owner(s) and steps in between (at a minimum for companies provide details of any ultimate beneficial owners of more than 25% – for trusts, supply details of trustees and settlors and details of either beneficiaries with more than 25% interest, or the classes of beneficiary, and for collective investment funds or other similar arrangements provide details of the general partner and/or investment manager together with details of any person with more than 25% interest)?
8. What is its business model/intended business model (ie, the mechanism by which a business intends to generate revenue and profits and serve its customers – in terms of broad principles)?
9. What are the key sources of:
   - ♦ income (eg, trading, investment etc); and
   - ♦ capital (eg, public share offer, private investment etc)?
10. The history and current (also forecast if readily available) scale of the entity's:
    - ♦ earnings (eg, turnover and profits/losses); and
    - ♦ net assets.
11. The entity's geographical connections, so that you are in a position to ask such questions as "Why is it getting so much money from that place?" and "Why is it sending assets to that place?"
12. Has the entity been subject to insolvency proceedings, or is it in course of being dissolved/struck-off, or has it been dissolved/struck-off?

B. For individuals

- His or her purpose in entering into any transaction forming the basis of the engagement or purpose in seeking services where not related to a specific transaction.
- Home address and, if applicable/different, trading address.
- His or her purpose in entering into any transaction forming the basis of the engagement or purpose in seeking services where not related to a specific transaction.
- The scale and sources of the individual's capital (past and future).
- The scale and sources of the individual's income (past and future).
- The type and sector of the individual's business activities.
- The individual's geographical connections, so that you are in a position to ask such questions as "Why is he getting so much money from that place?" and "Why is she buying assets from that place?"
- Has the individual been subject to bankruptcy proceedings?

  If after enquiry of the individual it is considered that the individual has been subject to bankruptcy proceedings, information can be obtained:

  - for England and Wales, on: www.insolvency.gov.uk/eiir/
  - for Scotland – call The Accountant in Bankruptcy on 0131 473 4600 (Search Team).
  - for Northern Ireland - call The Insolvency Service on 02890 251441 (Insolvency Search Department)
- Has the individual been disqualified as a director?

  Consult Companies House: www.companieshouse.gov.uk/ddir/

SECTION 5 B – EXAMPLES OF RISK-BASED VERIFICATION

Set out below are examples of risk-based verification for some of the more common client types. For Guidance on other situations, reference should be had to the JMLSG Guidance Notes.

A. Individuals

Met face to face?

Yes and normal risk – obtain:
either: proof of identity – photo identity
or: proof of identity – non-photo identity and proof of address (Please note P.O. Boxes are not acceptable addresses) or date of birth (can be electronic)

No and/or higher risk – obtain:
either: proof of identity – photo identity and an additional piece of evidence
or: proof of identity – non-photo identity, proof of address (Please note P.O. Boxes are not acceptable addresses) or date of birth
Plus: an additional piece of evidence

Sources of evidence	
List 1: Evidence of identity Acceptable photo identity ● valid passport; or ● valid photocard driving licence (full or provisional); or ● national identity card (non-UK nationals issued by EEA member states and Switzerland); or ● firearms certificate or shotgun licence; or ● identity card issued by the Electoral Office for Northern Ireland Acceptable non-photo evidence of identity: Documents issued by a government department, incorporating the person's name and residential address or their date of birth, *eg,* ● a current UK full driving licence old version (**not** provisional licences); or ● evidence of entitlement to a state or local authority funded benefit (including housing benefit and council tax benefit), tax credit, pension, educational or other grant; or ● documents issued by HMRC, such as PAYE coding notices and statements of account (NB: employer issued documents such as P60s are not acceptable) ● end of year tax deduction certificates.	*List 2: Evidence of address or date of birth* • instrument of a court appointment (such as a grant of probate, bankruptcy); or • current council tax demand letter or statement; or • current (within the last 3 months) bank statements, or credit/debit card statements issued by a regulated financial sector firm in the UK, EU or JMSLG equivalent jurisdiction (but not those printed off the internet); or • a file note of a visit by a member of the firm to the address concerned ("home visit"); or • an electoral register search showing residence in the current or most recent electoral year (can be done via http://newcorp.192.com/search/index.cfm); or • a recent (last available) utility bill (gas, water, electricity, telephone – **not** mobile 'phone bills); it must be a bill or statement of account (**not** correspondence); or • valid photocard driving licence (full or provisional); or • a current UK full driving licence old version (**not** provisional licences); or • evidence of entitlement to a state or local authority funded benefit (including housing benefit and council tax benefit), tax credit, pension, educational or other grant; or • documents issued by HMRC, such as PAYE coding notices and statements of account (NB: employer issued documents such as P60s are not acceptable); or • a firearms/shotgun certificate; or • a solicitor's letter confirming recent house purchase or land registry confirmation (you must also verify the previous address).

B. Entities

i. Private company/LLP

Met a representative face to face?	**Yes and normal risk** – obtain: Full company search from a national companies registry (or equivalent information obtained through a commercial provider of registry information) *Or* Certified copies of taken from original documents evidencing details of incorporation or registration, registered office and list of directors and shareholders/members Identify any shareholder/member in the entity holding more than 25% of the equity (rights to either income, capital or voting), or if there is no holding over 25%, where considered appropriate on a risk sensitive basis, the largest holding. Repeat step above until appropriate ultimate beneficial owners have been identified.
	No and/or higher risk – obtain Select individual(s) and entities that is/are capable of exercising significant influence over this entity either as an appointed director, or as a shadow director or equivalent, **identify** it/them according to whether a legal or natural person Select any shareholder/member in the entity holding more than 25% of the equity (rights to either income, capital or voting), or where no holding over 25%, the largest holding **and identify** it/them according to whether a legal or natural person Repeat step above until appropriate ultimate beneficial owners have been verified. For all entities, if a money service business, verify HMR&C registered number (obtain certified copy of certificate or call HMR&C National Advice Service on 0845 0109000, Opt. 3)

ii. Listed or regulated entity

Obtain either a printout from the relevant regulator's or exchange's web-site (and annotate), or obtain direct written confirmation from the regulator or exchange, confirming the regulated or listed status of the entity (ensure basic details of name, address, any membership or registration details, and any disciplinary details where applicable are provided).

Additional verification steps are not generally considered necessary in such cases as these entities in the UK qualify for application of *simplified due diligence*.

iii. Government or similar bodies

Obtain and annotate evidence to confirm the body's:

- main place of operation; and
- the government or supra-national agency controlling it (government and supra-national agency web-sites are a useful source of information)
- for Housing Associations, the printout must contain its registered number, registered company number (where appropriate) and registered address

Useful, trusted sites include:

UK Government information portal - http://www.direct.gov.uk/Homepage/fs/en
Housing Association Register - http://www.housingcorp.gov.uk
EU official site - http://www.europa.eu.int/
United Nations list of main bodies - http://www.un.org/aboutun/mainbodies.htm
USA government information portal - http://www.firstgov.gov/Agencies/Federal/All_Agencies/index.shtml

Additional verification steps are not generally considered necessary in such cases as these entities in the UK qualify for application of *simplified due diligence*.

iv. Money Service business

Verify HMR&C registered number (obtain certified copy of certificate or call HMR&C National Advice Service on 0845 0109000, Opt. 3).

SECTION 6 - REPORTING

KEY POINTS

- *Suspicious activity reports* submitted by the *regulated sector* are an important source of information used by *SOCA* in meeting its harm reduction agenda, and by law enforcement more generally.
- *Businesses* are required to have procedures which provide for the nomination of a person *(*in this *Guidance* the *MLRO)* to receive disclosures (*internal reports*) under Part 7 of *POCA* and which require that everyone in the *business* complies with Part 7 of *POCA* in terms of reporting knowledge, suspicion or reasonable grounds for knowledge or suspicion of *money laundering*
- Failure to report in accordance with Part 7 of *POCA* where the relevant information or other matter has been obtained through the course of work in the *regulated sector* is a criminal offence which can be committed by any *individual* (s330, *POCA*), or by the *MLRO* (s331, *POCA*). There is a similar offence for *MLRO's* outside the *regulated sector* in s332, *POCA*.
- An *individual* other than the *MLRO* fulfils his reporting obligations by making an *internal report* to his *MLRO*.
- The *MLRO* is responsible for assessing *internal reports*, making further inquiries if need be (either within the *business* or using public domain information), and, if appropriate, filing *SARs* with *SOCA*.
- Where a *relevant professional advisor* forms knowledge or suspicion or reasonable grounds for such in 'privileged circumstances' no report should be made to *SOCA* unless this '*privilege reporting exemption'* is overridden by the crime/ fraud exception ie where the information or other matter is communicated to the *relevant professional advisor* with the intent of furthering a criminal purpose (Section 7.42 to 7.46).
- When reports are properly made they are 'protected' under s337, *POCA* in that nothing in them shall be taken to breach any restriction on the disclosure of information, however imposed.
- A person who considers he may have engaged or is about to engage in *money laundering*, should make an 'authorised' disclosure (s338, *POCA)*. Such a disclosure, provided it is made (and *SOCA's* consent to the act is obtained) before the act is carried out, or is made as soon as possible on the initiative of that person after the act is done and with good reason being shown for the delay, may provide a defence against charges of *money laundering*. When properly made such reports shall not be taken to breach any restriction on the disclosure of information, however imposed.
- *Consent* may be sought from *SOCA* under s335, *POCA* (and confirmed to the *business* by the *MLRO* under s336 *POCA*) to carry out activity that would otherwise be *money laundering* under ss327-329 *POCA.* If granted, the *consent* provides complete protection against charges of *money laundering* but only in respect of the activity covered by the *consent.*
- *TA 2000* provides for broadly equivalent provisions regarding the reporting of knowledge, suspicion or reasonable grounds for such of *terrorist financing*. The definition of *'terrorist property'* is set out in s14, *TA 2000* and the *terrorist offences* and provisions regarding reporting, *consent* and *tipping off* are set out in ss15-21A.

WHAT MUST BE REPORTED?

6.1 Under ss330-332, *POCA*, failing to report knowledge or suspicion, or reasonable grounds for such, of *money laundering* is a criminal offence (see section 2 of this *Guidance*, which outlines the offences and details of exemptions). The following must be reported, as soon as practicable. These are collectively known as 'the *required disclosure*':

- the identity of the suspect (if known);
- information or other matter on which the knowledge or suspicion of *money laundering* (or reasonable grounds for such) is based; and
- the whereabouts of the laundered property (if known)

6.2 Care is needed to ensure that any information held concerning identity (such as date of birth, passport number, address, registration numbers for companies and so on) is included within the report as well as details of the laundered property and its whereabouts, where known, and reasons for knowledge or suspicion.

6.3 Even if the name of a suspect is not known, any information available which may assist in identifying the suspect or the whereabouts of any of the laundered property must be included in the report, under the provisions of s330 (3A), *POCA*. For example, even if the *business* does not have the name of the suspect, if the *business* is aware the *client* holds the detail the report needs to reflect this as information which may assist in identifying the suspect.

6.4 In cases where the suspect is not known, another subject should be included in the report, whether this is the victim or another subject associated with the activity. The fact that in these cases the subject of the report is not a suspect should be made clear in the report.

6.5 The disclosure requirement relates to any information coming to a person in the course of business in the *regulated sector*, and not just information relating to *clients* and their affairs. This means that reports made may be required on the basis of information not only about *clients*, but about potential *clients*, associates and counterparties of *clients*, acquisition targets and even employees of *businesses* in the *regulated sector*.

TYPES OF REPORT

6.6 Reports made in accordance with the provisions of *POCA* are made under either s337 (protected disclosures) or s338 (authorised disclosures).

The Protected Disclosure

6.7 A protected disclosure is any report made by a person providing the *required disclosure,* based on information or other matter coming to their attention in the course of their trade, profession, business or employment, where this information has led to knowledge or suspicion (or reasonable grounds for such) that another person is engaged in *money laundering*.

6.8 A protected disclosure may be made by any person forming a *money laundering* suspicion, at work or carrying out professional activities, whether or not acting within the *regulated sector*. This means that any *individual* or *business,* or other organisation (such as a charity) meeting these conditions may make a voluntary

report to *SOCA* in the public interest and benefit from the protections contained in s337, *POCA* against allegations of breach of confidentiality. In the *regulated sector,* such reports are compulsory (save where an exemption such as the *privilege reporting exemption* applies).

The Authorised Disclosure

6.9 An authorised disclosure is a report made by a person who makes the disclosure:

- before he has carried out a prohibited act (ie, done something which would constitute a *money laundering* offence under ss327-329, *POCA*); or
- whilst he is doing the prohibited act, or after he has done such an act provided that when he started to do the act he didn't realise that it was *money laundering* (*ie,* did not realise that *criminal property* was involved) and made the report on his own initiative as soon as he knew or suspected *criminal property* was involved; or
- after he has done the prohibited act, provided that there was good reason for not reporting before he committed the act, and he made the report on his own initiative as soon as it was practicable to make it. There is no guidance in *POCA* as to what might constitute 'good reason', but this is likely to be applied narrowly.

Confidentiality protections

6.10 Any report properly made under the provisions of ss337 and 338, *POCA* cannot be taken to breach any restriction on disclosure of information, however this is imposed. This means considerations of *client* or other duties of confidentiality must not impede reporting, unless the *privilege reporting exemption* applies (see section 7 below) where different considerations apply. Such protection does not exist for reports which are made founded only on speculation or made defensively, founded on generalities or 'just in case'.

Non-*POCA* reporting

6.11 This *Guidance* deals only with obligations under the UK anti-*money laundering* regime – *businesses* and *individuals* should have regard to other obligations they may have, such as reporting responsibilities under the Statements of Auditing Standards, statutory regulatory returns, and reports of misconduct of fellow members of professional bodies. In all cases, the risk of *tipping off* must be considered and avoided. Further *Guidance* on acting for *clients* who are the subject of *SARs* is given in section 9.

RECOGNISING MONEY LAUNDERING

The key elements

6.12 The anti-*money laundering* requirements only relate to criminal matters, that is those which attract criminal penalties. Other acts may be unlawful, but not criminal. This distinction is particularly important in areas of work where an array of penalties on both civil and criminal levels exist. An example of this is in relation to infringement of the requirements of the Companies Act where there is a mixture of issues attracting civil penalties and those attracting criminal penalties.

6.13 In most cases of suspicion, the reporter will have in mind a particular type of underlying or predicate *criminal conduct*. However, on occasion a transaction or activity may so obviously lack any normal economic rationale or business purpose as

to lead to a suspicion that it may be linked to *money laundering* in the absence of any other credible explanation. *Individuals* should not hesitate to exercise professional scepticism and judgement and should report such matters if appropriate.

6.14 For a matter to be *money laundering*, there must not only be *criminal conduct*, but also proceeds or *criminal property*. These terms are described below.

Criminal conduct

6.15 *Criminal conduct* is that which constitutes an offence in any part of the UK or would do if it was committed in the UK. However, *businesses* and *individuals* should note that under the provisions of the *overseas conduct exception* (s330(7)(A) *POCA)* there are limited exceptions to the requirement to report conduct occurring overseas – see sections 2.4 and 2.5.

6.16 Since UK law defines *money laundering* so widely, any *criminal conduct* which has resulted in any form of *criminal property* will also constitute *money laundering*. It is not expected that *individuals* will become expert in the very wide range of underlying or predicate criminal offences which lead to *money laundering* but they will be expected to recognise those that fall within the professional competence of their role but should use professional scepticism, judgement and independence as appropriate to identify offences.

6.17 If a person knowingly engages in criminal activity but does not successfully benefit from it, he may have committed some other offence (often fraud) but not *money laundering*. If an activity does not result in *criminal property* it cannot constitute a *money laundering* offence. Consequently, there is no obligation to file a *money laundering* report. However, *businesses* and *individuals* may wish to report the matter to the Police, or may have other reporting duties (such as those referred to in section 6.11 above).

Criminal property

6.18 *Criminal property* is the benefit derived from a person's criminal activity. Note that *criminal property* (or 'proceeds') can take any form. For example, cost savings from ignoring mandatory health and safety regulations (amounting to a criminal offence) savings as a result of tax evasion, and other less obvious financial benefits can also constitute *criminal property*. Where *criminal* property is used to acquire further assets these further assets themselves become *criminal property.* It is important to note that there is no de minimis level and thus *criminal property* is not identified by its value.

6.19 *POCA* defines *criminal property* in s340(3)(b), *POCA* as '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'.

Intent

6.20 Except for certain strict liability offences, *criminal conduct* requires an element of criminal intent. S 340(3)(b) of *POCA* means that an offender must know or suspect that property is criminal. Conduct which is an innocent error or mistake may be criminal where it constitutes a strict liability offence but will not also be *money laundering*.

6.21 If an *individual* or *business* knows or believes that a *client* is acting in error, the *individual* may approach the *client* and explain the situation and legal risks to him.

However, once the criminality of the conduct is explained to the *client*, he must bring his conduct (including past conduct) promptly within the law to avoid a *money laundering* offence being committed. Where there is uncertainty about the legal issues, outside the competence of the *individual, clients* should be referred to an appropriate specialist or professional legal adviser.

6.22 Note that if there are reasonable grounds to suspect that a *client* knew or suspected that his/ its actions were criminal, a report must be made. Even if the *client* does not have the relevant intent, but *businesses* or *individuals* are aware that there is *criminal property*, consideration needs to be given to whether a report has to be made under s 338, POCA to avoid an offence under ss327-329, POCA (see also section 6.27 and section 8).

Determining whether and when to report

6.23 There can be no hard and fast rules on how to recognise *money laundering*. It is important for all *individuals* to be alert to this issue and to apply their professional judgement and experience.

6. 24 *Individuals* need to consider whether activity or conduct observed in the course of business has the characteristics of *money laundering* and, therefore, warrants a report. Most *businesses* will include in their standard anti-*money laundering* systems and procedures arrangements to allow *individuals* to discuss whether the information they hold amounts to a reportable knowledge or suspicion, and *individuals* should take advantage of these arrangements where necessary.

6.25 *Individuals* must report promptly to the *MLRO* (or exceptionally direct to *SOCA*) once the requisite knowledge or suspicion has been formed, or reasonable grounds for such have come into existence. There are no external requirements for the format of an *internal report* and *businesses* may design their systems for *internal reporting* as they wish. *Internal reports* may be made orally or in writing, and may refer to *client* files or contain all the requisite information in a standard form, provided that all the information in the *required disclosure* and other information which the *business* requires under its procedures for the reporting of *money laundering* are reliably provided and recorded.

6.26 To decide whether or not a matter is suspicious *individuals* may need to make further enquiries (within the normal scope of the assignment or *business relationship*) of the *client* or their records. The anti-*money laundering* legislation does not prevent normal commercial enquiries being made to fulfil duties to *clients*, and such enquiries may also assist in understanding a matter to determine whether or not it is suspicious. However, investigations into suspected *money laundering* should not be conducted unless this is within the scope of the engagement, and information is limited to that to which the *individual* would normally be entitled in the course of business. Normal business activities should be maintained and such information or other matter which flows from this will form the proper basis of *internal reports* and *SARs*. To carry out additional investigations is unnecessary and could risk *alerting a money launderer.*

6.27 *Individuals* should be cautious and report to their *MLRO* if in doubt, but may wish to consider the following questions to assist their decision:

- Am I suspicious, or do I know, that activity I have seen is criminal and has caused someone to benefit from it in some way?
- Am I suspicious of an activity which, whilst I can't identify a specific *predicate offence*, is so unusual or lacking in normal commercial rationale that it causes suspicion that money is being laundered?
- If so, do I suspect a particular person or persons of having been involved in criminal activity (or do I know who undertook criminal activity), or does another person that I can name have details of this person(s) or information that might assist in identifying this person(s)?
- Do I know who might have received, or still be holding, the benefit of the criminal activity or where the *criminal property* might be located or have I got any information which might allow the property to be located?
- Do I think that the person(s) involved in the activity knew or suspected that the activity was criminal or do I think the activity arose from innocent error?
- Can I explain coherently what and who I am suspicious of, and why, either in terms of knowledge or suspicion that a *predicate offence* has been committed, or in terms of abnormal activities which may constitute *money laundering*?

Consideration must also be given to whether *individuals* or *businesses* have engaged, or intend to engage, in conduct which could constitute a *money laundering* offence under ss327-329, POCA (eg, transferring *client* money that comprises *criminal property*). If so, this must also be reported to the *MLRO* as a report may be required under s 338, *POCA* and *consent* requested.

HOW TO REPORT

Internal reports to the *MLRO*

6.28 The *2007 Regulations* require *businesses* to maintain internal reporting procedures that allow any *individual* in the *business* to submit to the *MLRO* a report of knowledge or suspicion or reasonable grounds for such, of *money laundering*. Only by doing this can the *individual* fulfil his obligations under s330, *POCA* (or in exceptional circumstances, reporting direct to *SOCA)*. Of course, sole practitioners who do not employ any staff will simply make their own *SARs* directly to *SOCA*.

6.29 Under s330, *POCA*, the *internal report* must reach the *MLRO* – a report to a line manager or other colleagues is not enough to comply with the legislation.[6] An *individual* may discuss his suspicion with managers or other colleagues to assure himself of the reasonableness of his conclusions but, other than in group reporting circumstances, the responsibility for reporting to the *MLRO* remains with him. It cannot be transferred to anyone else, however junior or senior they are.

6.30 Where a group (more than one *individual*) arrives at knowledge or reasonable suspicion together by consolidating their thoughts, a single *internal report* may be submitted, in terms agreed by those forming the suspicion and in the names of them all. This may occur, for example, where an engagement team has a reason to be suspicious.

Reports to *SOCA*

6.31 The *MLRO* will be responsible for making decisions on whether the information contained in an *internal report* needs to be relayed to *SOCA* in the form of a *SAR*,

[6] Both the *2007 Regulations* and *POCA 2002* use the term 'nominated officer' for *MLRO*.

and compiling and despatching the *SAR* to *SOCA* (section 7). The *MLRO* will also be responsible for determining whether *consent* is required to continue with the engagement or any aspect of it, and will usually be responsible for decisions on how business should be conducted pending receipt of *consent* (section 8).

SECTION 7 – THE *MLRO* AND REPORTING TO *SOCA*

KEY POINTS

- The role of the *MLRO* carries significant responsibility and should be undertaken by a senior person within the *business* who has sufficient authority to take independent decisions, and who is properly equipped with sufficient knowledge, and resources, to undertake the role.
- The key role is that of receiving *internal reports*, and making *SARs* to *SOCA* as applicable, but *MLROs* may undertake other functions relating to the *businesses'* systems and controls in relation to its anti-*money laundering* activities.
- *Businesses* should make provision for delegates or deputies to cover any absence of the appointed *MLRO* and should ensure all relevant employees are aware of the reporting channels laid down by the *business.*
- It is for *businesses* to determine the format of *internal reports.*
- A *relevant professional adviser* who suspects or has reasonable grounds for knowing or suspecting that another person is engaged in *money laundering* is exempted from making a *money laundering* report where his knowledge or suspicion comes to him in privileged circumstances (the *privilege reporting exemption*).

THE ROLE

7.1 The role of the *Money Laundering Reporting Officer* (*MLRO*) carries significant responsibility and should be undertaken by an appropriately experienced *individual*. Although there is no prescribed level of seniority, one of the principals of an accounting firm, or similar in other *businesses*, is likely to be suitable, or another senior and skilled person with sufficient authority to enable decisions to be taken independently. *MLROs* are **required** to:

- consider *internal reports* of *money laundering*;
- decide if there are sufficient grounds for suspicion to pass those reports on to *SOCA* in the form of a *SAR*, and, if so, to make that *SAR*; and
- act as the key liaison point with *SOCA* and law enforcement agencies including dealing with *consent* and disclosure issues.

MLROs **may** also take responsibility for:

- training within the *business*;
- advising on how to proceed with work once an *internal report* and/or *SAR* has been made in order to guard against risks of *tipping off* or *prejudicing an investigation*; and
- the design and implementation of internal anti-*money laundering* systems and procedures.

If this role is not undertaken by the *MLRO*, these responsibilities should be taken on by another sufficiently senior and skilled person within the *business.* This person should work closely with the *MLRO*.

7.2 The functions of an *MLRO* can be delegated, although this does not relieve that *MLRO* of his responsibility, and *businesses* should have contingency arrangements for discharging the duties of an *MLRO* during periods of absence or unavailability. It is recommended that *businesses* appoint an alternate or deputy *MLRO* for these situations and ensure that the reporting channels are well known to all relevant employees.

7.3 Like all *individuals*, *MLROs* can commit the *money laundering* offences as well as the related offences of *failure to disclose*, *tipping off*, and *prejudicing an investigation*.

ASSESSING INTERNAL REPORTS

7.4 When first approached by a colleague with an *internal report*, there are two matters for immediate consideration. Rapid consideration is needed by the *MLRO* as to whether an application for *consent* is required (see section 8). In addition, the *MLRO* should first establish by discussion and review whether or not the *privilege reporting exemption* may apply, as this exemption significantly affects not only whether a *SAR* must be made under the legislation, but also whether it may be made. The *privilege reporting exemption* is limited to *relevant professional advisers*, and will not be available other than to members of well established professional bodies such as those listed in Schedule 3 to the *2007 Regulations* and who meet the requirements set out in s 330 (14), *POCA*. Further *Guidance* on the *privilege reporting exemption* is given in sections 7.26 to 7.46 below.

7.5 Once the *MLRO* receives an *internal report*, he must assess it and determine whether it meets the criteria laid down in s 331, *POCA* ie:

- does he know, suspect or have reasonable grounds to know or suspect that another person is engaged in *money laundering*; and
- did the information or other matter giving rise to the knowledge or suspicion come to him in a disclosure made under s 330, *POCA;* and
- does he know the name of the other person or the whereabouts of any laundered property from the s 330 disclosure; or
- can he identify the other person or the whereabouts of any laundered property from information or other matter contained in the s 330 disclosure; or
- does he believe, or is it reasonable for him to believe, that the information or other matter contained in the s 330 disclosure will or may assist in identifying the other person or the whereabouts of any laundered property.

7.6 In each case the *MLRO* should ensure the report contains all the relevant information known to the *individual(s)* making the report and records all necessary aspects as follows:

- who is making the report
- the date of the report
- who is suspected or information that may assist in ascertaining the identity of the suspect (which may simply be details of the victim and the fact that the victim knows the identity but this is not information to which the *business* is privy in the ordinary course of its work)
- who is otherwise involved in or associated with the matter and in what way
- what the facts are
- what is suspected and why
- information regarding the whereabouts of any *criminal property* or information that may assist in ascertaining it (which may simply be the details of the victim

who has further information but this is not information to which the *business* is privy in the ordinary course of its work)
- what involvement does the *business* have with the issue in order that requirements for *consent*, the need for consideration of *tipping off* issues, basis of continuance of work and any other necessary guidance for engagement staff may be considered.

7.8 The *MLRO* may also wish to make reasonable enquiries of other *individuals* and systems within the *business.* Such enquiries may either have the effect of confirming the knowledge or suspicion, or reasonable grounds for such, or may provide additional material which enables the cause of suspicion to be eliminated at which point the matter may be closed without a *SAR* being issued.

7.9 In conducting his assessment, the *MLRO* may well wish to consider the criteria set out in section 6 [determining whether to report]. If the *MLRO* considers the information or other matter he has received in an *internal report* meets these criteria then a *SAR* to *SOCA* will be required unless either the *privilege reporting exemption* has been applied on the reporter seeking advice from the *MLRO* and not overridden by the crime/fraud exception or, on analysis of the *internal report* received, the *MLRO* determines that the *overseas conduct exemption* applies (sections 2.4 and 2.5).

The Reporting Record

7.10 It is vital for the control of legal risk that adequate records of *internal reports* are maintained, usually by the *MLRO*. These would normally be details of all *internal reports* made including details of the *MLRO's* handling of the matter, his requests for further information, assessments of the information received, decisions as to whether to conclude immediately or to wait for further developments or information, whether to make a *SAR* or not and on what grounds, any advice given to engagement teams as regards continuation of work and any *consent* requests made.

7.11 Details of *internal reports* submitted as *SAR*s should also be retained. For efficiency, and ease of reference for the *MLRO*, it is recommended that some form of index of reports is kept and internal reference numbers given. The records may be simple, or sophisticated, depending on the size of the *business* and the volume of reporting, but all need to contain broadly the same information and be supported by appropriate working papers. These records are important as they may subsequently be required to justify and defend the actions of an *individual* or *MLRO.* There is no prescribed form specified in *POCA* or elsewhere for *internal reports* to an *MLRO*.

MAKING EXTERNAL REPORTS

7.12 Once an *MLRO* has concluded a report is required, it should be prepared and submitted promptly to *SOCA*.

7.13 The requirement set out in *POCA* as to timing of reports is that a report should be made 'as soon as is practicable' after the information required is received. In practical terms, the interval between receiving an *internal report* and making a *SAR* will vary quite widely. Some matters may be disposed of very rapidly where all the information required to make a *SAR* is received with the first contact, and where this occurs a quick turnaround should be achieved. It is particularly important to work rapidly in matters where *consent* is required, or where '*money laundering* in action' is suspected, ie*,* another is engaged in current criminal activity which may provide law enforcement with opportunities to intervene. In other cases, where not all the

required information is immediately to hand, or where there is material uncertainty as to whether the matter is reportable or not, the *MLRO* may reasonably chose to await further expected developments, and/or seek further information before making a reporting decision.

7.14 *MLROs* can use a variety of manners and methods of submission, to make reports such as:

- *SAR* on-line, using internet transfer
- Moneyweb, using extranet transfer
- Secure (encrypted email) using electronic file transfer by email
- Bulk reports in electronic form using CD etc for transfer
- Hard copy *SOCA* forms (obtainable on the internet or by post on request to *SOCA*) to be typed and submitted by post or fax

The manners most likely to be of relevance to those providing *defined services* are *SAR* on-line, Moneyweb and the hard copy forms, the other two manners and methods are normally only used by retail banks and others submitting very large quantities of reports. We recommend that *individuals* and *businesses* have regard to guidance on how to make reports published from time to time by *SOCA*. Details of *SOCA*'s preferred reporting methods are available from their web site at www.soca.gov.uk

7.15 Each of the manners contain compulsory fields which require information, where known, to be provided in accordance with the *required disclosure* provisions. These fields relate to the identity of the reporter, the details of subjects (to the extent known but at least one must be named whether as victim or suspect and the identity information known provided in the correct specified fields), and in the free text box (variously called 'reason for disclosure' or 'reason for suspicion') the whereabouts of the laundered property, where known, and the description of the reason for suspicion or knowledge.

7.16 Please note that currently there are no prescribed forms which *MLROs* must use. An offence for failing to use the prescribed manner and form for making a *SAR* is contained in s339(1A), *POCA* but this section is not effective unless or until an order by the Secretary of State. We are not aware of any plans to prescribed manner and form in the immediate future.

7.17 In preparing *SARs*, *MLROs* should seek to present information in a way that is clear and succinct. In particular:

- the full name of the reporting *business* must be provided and the internal reference for the report should be provided in each case;
- identification information held by the *business* (name, address, date of birth, registration numbers etc) must be presented in the appropriate subject fields, and not simply incorporated into the 'reason for suspicion' text;
- where it assists in explaining the matter being reported, it may be appropriate to include a number of subjects in the report, providing such identification information as is known in the manner above for each of them;
- for each subject their role, as far as it is known, in the matter should be made clear and the options of flagging each subject as suspect/victim/unknown used as appropriate;
- where bank account/transaction details are available and relevant, these should be included in the appropriate fields;

- the activity observed should be explained clearly in the reasons for suspicion field, without using jargon or terms which might not be readily understood by non-accountants and, as far as known, giving details of when events occurred;
- features of the activity which are unusual or are considered to denote either a *predicate offence* to *money laundering*, or *money laundering*, should be highlighted as such;
- such information held as to the whereabouts of any laundered property should be given;
- the information given in the reasons for suspicion field should be succinct; and
- the report should be submitted without any supporting documents and accordingly should be able to stand alone to explain the suspicion through provision of the information comprising the *required disclosure*.

7.18 If the *MLRO* so wishes, he may make use of the *SAR Glossary of Terms* provided by *SOCA* and incorporate the relevant terms in his report.

7.19 An important role for the *MLRO* on receipt of an *internal report* and on making a *SAR* is to advise engagement teams on how to continue their work and interact with the *client* to balance professional responsibilities, risk to the *business* and responsibilities under *POCA*. This area of work is examined in section 9.

Guarding confidentiality

7.20 If *clients* or third parties become aware that an *individual* or *business* has made a *SAR*, this can have adverse effects on *client* relationships and may ultimately endanger the security of staff members. Maintaining the confidentiality of *SARs* is important to *SOCA*[7]. Access to *SAR* information is now provided to end-users in law enforcement and similar agencies by *SOCA* only on condition that undertakings are taken as to compliance with Home Office guidance on preserving the confidentiality of *SARs*. (Home Office Circular 53 / 2005 'Money Laundering: The Confidentiality And Sensitivity Of Suspicious Activity Reports (*SARs*) And The Identity Of Those Who Make Them').

7.21 *SOCA* has provided a reporting line for concerns over breach of confidentiality by end-users of reports and details may be found on http://www.soca.gov.uk/financialIntel/sarBreachLine.html.

7.22 Whilst it is reasonable for the *regulated sector* to expect *SOCA* to make strenuous efforts to protect the confidentiality of those who make *SARs*, reporters should also take such steps as are available to them to protect the confidentiality of *individuals* and *businesses* and the information reported.

7.23 In making reports, *MLROs* should disclose information relevant to the suspicion or knowledge of *money laundering* and information necessary to allow the reader to gain a proper understanding of the matters reported. It is recommended that reporters:

- refrain from including other confidential information where this is not required for compliance with obligations under *POCA*
- show the name of the *business*, *individual*, or *MLRO* submitting the report only once in the source ID field but nowhere else in the report;
- do not include names of personnel who made *internal reports* to the *MLRO*;

[7] The review into the future of the SAR regime, known as the Sir Stephen Lander Review, included recommendations regarding the importance of maintaining and improving confidentiality in the SAR regime.

- only include parties as subjects where this information is necessary for an understanding of the report, or to meet the standards of the *required disclosure*; and
- highlight clearly in the reasons for suspicion/disclosure field any particular concern the reporter has about safety (in physical, reputational or other terms).

7.24 Whilst it is reasonable for an *MLRO* to answer questions from a *SOCA* officer or a law enforcement officer aimed simply at clarifying the content of a *SAR*, any further disclosure to *SOCA* or law enforcement or prosecuting agencies should normally only be undertaken in response to the exercise of a power to obtain information contained in relevant legislation, or in compliance with professional guidance on the balance of confidentiality and making disclosures in the public interest. This provides protection for the *MLRO* and the *business* against any allegation of breach of confidentiality.

7.25 A facility exists for any person to make voluntary disclosures to *SOCA* under s34, *SOCPA* provided that:

- the disclosure is made for the purposes of the exercise by *SOCA* of any of its functions (ss2-4, *SOCPA*);
- it is not a disclosure of personal data in contravention of the Data Protection Act 1998 where that personal data is not exempt from its provisions;
- it is not a disclosure prohibited by Part 1, Regulation of Investigatory Powers Act 2000 (relating to unlawful interception of communications).

If a disclosure meets these requirements, the person making the disclosure does not breach any duty of confidentiality or other restriction on the disclosure of information, however imposed. We recommend a cautious approach to disclosure under this section, as it is important to be sure that all the required conditions are met.

THE PRIVILEGE REPORTING EXEMPTION

7.26 With effect from 21 February 2006, a *relevant professional adviser* who suspects or has reasonable grounds for knowing or suspecting that another person is engaged in *money laundering* is exempted from making a *money laundering* report where his knowledge or suspicion comes to him in privileged circumstances (the *privilege reporting exemption*). In such circumstances, provided that the information is not given to him with the intention (by his *client* or another person) of furthering a criminal purpose ('the crime/fraud exception' – see sections 7.42 to 7.46 below), s330(6) affords the adviser a complete defence against a charge of failure to disclose (ie, to make a *SAR*). By implication, the exemption also means that in these circumstances a *business* should not make a *SAR*, as they are expected to be bound by the same standards of behaviour as is the case for legal professional advisers subject to legal professional privilege.

7.27 Discussions with the *MLRO* to seek advice about making a report under s 330, *POCA* shall not be taken to be an *internal report* when it was not intended as such, eg, if the person initiating the discussion believes the matter falls within the *privilege reporting exemption* and contacts the *MLRO* to confirm this. On receipt of such an approach, it is recommended the *MLRO* still collects the information which would otherwise be included in the *required disclosure* to enable careful consideration with the reporter of whether or not the matter falls within the *privilege reporting exemption* and, if it does, whether this is overridden by the crime/fraud exception. It is

recommended that the *MLRO* documents the decision reached in this regard and the reasons for reaching that decision.

7.28 A *relevant professional adviser* is defined in the legislation as:

- an accountant, auditor or *tax adviser* who is a member of a professional body which is established for accountants, auditors or *tax adviser*s (as the case may be); and which makes provision for;
  (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
  (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

The *privilege reporting exemption* also extends to persons in partnership with (or equivalent), or employed by, the *relevant professional adviser* to provide them with assistance or support. The information must come to these partners or employees in connection with this assistance or support and to the *relevant professional adviser* in privileged circumstances.

7.29 The legislation does not list which professional bodies meet the criteria listed in s 330 (14), but the *CCAB* member bodies meet those criteria and, accordingly, *individuals* who are members of a *CCAB* member body, those in partnership with such *individuals* in *businesses* regulated by the *CCAB* and the employees of such *businesses* and *individuals* are within the scope of the exemptions. If *businesses* or *individuals* are in any doubt as to whether these provisions apply to them, it is recommended that they seek legal advice.

7.30 However, the amendments referred to above affect only the duty to make *money laundering* reports and related disclosures under *POCA.* They do not in any way extend legal professional privilege to advice given by *relevant professional advisers* in any other circumstances. However, *businesses* and *individuals* need to be aware, when responding to requests for further information (sections 9.11 to 9.17), documents subject to a *client's* privilege are not disclosable.

7.31 If a *relevant professional adviser* considers that the information or other matter on which his knowledge or suspicion is based came to him in privileged circumstances, he is obliged to apply the *privilege reporting exemption* in s330(6), *POCA* (unless the crime/fraud exception applies) and so has no discretion to make a *money laundering* report. This means that the *relevant professional adviser* could find himself in a situation where he might wish to make a report but is prevented from doing so. In such circumstances, he should consider whether he may continue to act, but in carrying out his decision will need to bear in mind the provisions of *POCA* relating to *prejudicing an investigation* (s342, *POCA*).

7.32 Whether or not the *privilege reporting exemption* applies needs to be considered carefully, including a consideration as to whether the *relevant professional adviser* was working in privileged circumstances when the particular information or other matter came to him. This is an important consideration, as a *relevant professional adviser* may be providing a variety of services to a *client*, not all of which may create privileged circumstances for this purpose. Accordingly, it is strongly recommended

that a careful record is maintained of the provenance of information considered when a decision is made on the applicability or otherwise of the *privilege reporting exemption*.

7.33 Set out below is a description of the two types of privileged circumstances and some examples of work which may fall within or outside of them.

Legal advice

7.34 For the privileged circumstances set out in s330(10)(a) and (b), *POCA* to apply, the following conditions need to exist:

- there needs to be a confidential communication (written or oral) between the *relevant professional adviser* and his *client*, or a representative of the *client*, in which the *client* seeks or the *relevant professional adviser* gives legal advice;
- that communication must take place within the confines of a professional relationship between them, including an initial meeting which does not progress to a *business relationship*; and
- the communication must relate to legal advice (ie, advice concerning the rights, liabilities and obligations or remedies of the *client* under the law).

Litigation

7.35 For the privileged circumstance set out in s330(10)(c), *POCA* to apply, the following conditions need to exist:

- there must be a confidential communication (written or oral) between the relevant professional advisor and the *client* or third party;
- the confidential communication must be made for the dominant purpose (ie, the overriding purpose) of being used in connection with actual, pending or contemplated litigation.

Defining contemplated litigation is difficult. In summary, it is usually necessary to be able to identify some act that gives rise to a cause of action in relation to which some threat of legal action has either been clearly intimated or is more than reasonably likely to follow. The party seeking to claim the benefit of litigation privilege must show that he was aware of circumstances that rendered litigation between himself and a particular person or class of persons a real likelihood rather than a mere possibility.

Examples of privileged circumstances

7.36 Examples where *relevant professional advisers* might frequently fall within privileged circumstances as regards legal advice privilege include, where this advice is delivered as part of the provision of a *defined service*:

- advice on taxation matters, where the *tax adviser* is giving advice on the interpretation or application of any element of tax law and in the process is assisting a *client* to understand his tax position;
- advice on the legal aspects of a take-over bid, for example on points under the Companies Act legislation;
- advice on duties of directors under the Companies Act;

- advice to directors on legal issues relating to the Insolvency Act 1986, *eg,* on the legal aspects of wrongful trading; and
- advice on employment law

7.37 Examples where *relevant professional advisers* might fall within privileged circumstances as regards litigation privilege include:

- assisting a *client* by taking witness statements from him or from third parties in respect of litigation;
- representing a *client*, as permitted, at a tax tribunal; and
- when instructed as an expert witness by a solicitor on behalf of a *client* in respect of litigation.

7.38 It should be noted that conducting audit work does not of itself give rise to privileged circumstances for this purpose, as the *relevant professional adviser* is neither providing legal advice, nor is he instructed in respect of litigation. Nor do routine book-keeping, accounts preparation or tax compliance assignments, though privileged circumstances may arise if the *client* requests or the adviser gives, legal advice on an informal basis, during the course of such an assignment

7.39 It is recommended that the reasons for the conclusion reached as to whether the *privilege reporting exemption* applies are carefully documented. If the *relevant professional adviser* decides it does apply, he must act in accordance with the *privileged reporting exemption* unless the crime/fraud exception applies. If in doubt, it is recommended that *businesses* and *individuals* seek professional or legal advice.

Recording and discussion with the *MLRO*

7.40 Even where the *client* service team believe that the *privilege reporting exemption* applies, *businesses* should consider whether all matters involving knowledge or suspicion of *money laundering* should still be referred to the *MLRO* for advice or to another appropriate person (see section 7.41 of this *Guidance*). Discussion of a matter with the *MLRO*, where the purpose of the discussion is the obtaining of advice about making a disclosure under s330, does not alter the applicability of the *privilege reporting exemption*. Given the complexity of these matters, and the need for considered and consistent treatment with adequate documentation of decisions made, a referral to and discussion with the *MLRO* is likely to be beneficial and is recommended. The *MLRO* may decide, with the reporter, to seek further appropriate advice.

7.41 Likewise reporters within a *business* are entitled to seek advice from an appropriate specialist (either a person within the *business* who would fall into the category specified in s330(7B) or an external adviser who himself is able to apply the *privilege reporting exemption*) without altering the applicability of the *privilege reporting exemption.*

The Crime/Fraud Exception

7.42 Before determining whether the *privilege reporting exemption* must be applied, consideration needs to be given to whether the exemption is lost through application

of the crime/fraud exception. This exception, as set out in s330(11), *POCA*, overrides the *privilege reporting exemption* which:

> 'does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose'.

This means that communications that would otherwise qualify under one or other of the above two types of privilege are not covered by the *privilege reporting exemption* where the communication was intended to facilitate or to guide someone (usually the *client* but possibly a third party) in the commission, or furtherance, of any crime or fraud. An example of this might be where tax advice was sought ostensibly to enable the affairs of a tax evader to be regularised but in reality was sought to aid continued evasion by improving the evader's understanding of the relevant issues.

7.43 The crime/fraud exception also applies where communication takes place between a *client* and his adviser in circumstances where the *client* is the innocent tool of a third party's criminal or fraudulent purpose. An example of this might be where a money launderer gives money to a family member, who is unaware of the source of that money, to purchase a property, for which purpose he communicates with his adviser.

7.44 The crime/fraud exception does not apply where the adviser is approached to advise on the consequences of a crime or fraud or similar conduct that has already taken place and where the *client* has no intention, in seeking advice, to further that crime or fraud. This means that a person who is concerned that he may be guilty of tax evasion can approach a *tax adviser* for legal advice in this regard without fear of the exception being invoked. This remains the case even if the potential *client* declines a *client* relationship having received the advice, and the adviser does not know whether the person will proceed to rectify his affairs. However, if the person behaves in a way that makes the adviser suspicious that he intends to use the advice to further his evasion, then a *money laundering* report could be required.

7.45 The crime/fraud exception is a difficult area and the Courts will not usually allow the exception to be invoked unless there is reasonably compelling circumstantial evidence available that demonstrates that the communications have in some way been intended to further the crime or the fraud. A mere speculation may not be sufficient as a basis to invoke it. It is strongly recommended that professional or legal advice is sought in all cases of doubt.

7.46 In summary, the following issues need to be considered before deciding whether to apply the *privileged reporting exemption*:

(a) Are those who received the information or other matter which gave rise to knowledge or suspicion of *money laundering relevant professional advisers* (s330(14) and s330(6)(b))?
(b) Was the *relevant professional adviser* acting in privileged circumstances (s330(10))?
(c) Was the information or other matter which gave rise to knowledge or suspicion of *money laundering* actually received in privileged circumstances (s330(10)) and not in some other communication or situation?

(d) Was the information or other matter received or communicated with the intention of furthering a criminal purpose (*ie,* does the crime/fraud exception apply (s330(10))?

If the answers to (a), (b), and (c) are yes, and the answer to (d) is no, the *privileged reporting exemption* must be applied. If the answer to (a), (b), and (c) are yes and the answer to (d) is yes, the crime fraud exception applies and a *money laundering* report must be made. Further advice should be sought from the relevant professional body or a lawyer in cases of doubt. This issue may be vital in balancing legal and professional requirements for confidentiality and for serving the public interest and the interests of *clients*. If doubts cannot be resolved through internal discussion, through access to normal sources of professional advice, *businesses* are strongly recommended to seek advice from a professional legal adviser with experience of these matters.

SECTION 8 – CONSENT

KEY POINTS

- If a *business* or an *individual* believes an activity they are going to undertake would constitute a *money laundering* offence under ss327-329 *POCA* then they must make an authorised disclosure under s338, *POCA* (or have a reasonable excuse for not having made such a report); and
- If the authorised report was made before the *money laundering* activity took place, the reporter must receive an appropriate *consent* (s335, *POCA*) before proceeding with the activity or an offence will be committed
- On receipt of the appropriate *consent* under s335, *POCA,* an *MLRO* may then provide this *consent* to the *business* under the provisions of s336, *POCA*
- Once a *consent* request is made, this may be granted by *SOCA* or given by default once 7 working days starting the working day after submission of the *consent* request (the 'notice period') has elapsed, or *consent* may be refused
- If *consent* is refused during the 7 working day notice period, a moratorium period of 31 days starts on the day notice of refusal is received during which the activity may not be undertaken unless and until the moratorium period expires.
- Once the moratorium has expired, then if no restraining action has been taken by law enforcement, the activity in question may be continued.

MATTERS FOR CONSENT

8.1 The *MLRO* needs to consider carefully when preparing to make a *SAR* whether continuation of activity by the *business* in respect of the subject matter of the *SAR* may potentially involve the *business* in carrying out an act which would constitute a *money laundering* offence.

8.2 Whilst this, on the face of it, appears relatively unlikely in the context of the *defined services* there are situations where *consent* issues do arise and careful consideration should be given to this possibility.

8.3 Before applying for *consent* it is important to consider whether the proposed activity is a matter to which *SOCA* is empowered to *consent. SOCA*'s power is strictly limited to being able to *consent* to activity that would otherwise be an offence under any of ss327-329, *POCA*. In particular, it should be noted that *consent* may not be sought or given for offences under s333A, *POCA* (*tipping off*) or s342, *POCA* (*prejudicing an investigation*) or for any other *POCA* offence except those under ss327-329, *POCA.* As well as having only restricted powers to consent to *POCA* offences, it does not have the power to *consent* to an act which would otherwise constitute the commission of any other criminal offence. Accordingly, it cannot give *consent* to *eg,* an adviser knowingly submitting a false VAT return on behalf of a *client* as this would be a separate criminal offence on the part of the adviser as well as an offence under s328, *POCA*.

8.4 If in doubt as to whether a matter requires (or is eligible for) *consent* or not, either legal advice should be sought, or recourse had to helplines provided by the relevant supervisory bodies. Advice should not be sought from *SOCA* as they are not in a position to advise, although it will make clear if a matter falls outside of its powers.

8.5 Some of the more common instances where a *consent* may be required include:

- acting as an insolvency officeholder where there is knowledge or suspicion either that the assets may in whole or in part represent *criminal property*, or where the insolvent entity may enter into or become concerned in an arrangement under s328, *POCA*
- designing and implementing trust and company structures for *clients*, including acting as trustees or company officers, where there is knowledge or suspicion that these structures are being, or may be about to be, used to launder money;
- acting on behalf of the *client* in the negotiation and implementation of transactions where these involve an element of *criminal property* being either bought or sold by a *client,* for example corporate acquisitions;
- handling money in *client* accounts which is suspected to be of criminal origin; and
- providing outsourced business processing for *clients* where money is suspected to be of criminal origin.

8.6 There will be some cases where *businesses* consider they no longer wish to act for the *client* in question and will decline to conduct the requested activity and possibly terminate the relationship. This is a matter for the *business* and not a matter for *consent*. However, this is unlikely to be the case in terms of insolvency appointments, or when acting for the innocent purchaser of assets of suspicious origin. *Businesses* may on occasion decide that undertaking an activity which might otherwise constitute an offence under ss327-329, *POCA* may, at least in the short term, provided there is *consent,* be the most practical option even if there is no intention to continue acting for the *client* in the longer term. In particular, this might apply when monies are already held in *client* account and need to be returned to or paid away on the instructions of a known or suspected criminal and either a *consent* is required to enable transfer of monies away, or law enforcement confiscation activity is required to resolve the matter.

8.7 *Consent* requests must be clear as to the nature of the knowledge or suspicion of *money laundering* and specific as to the type and extent of the activity for which consent is requested, including how that activity would otherwise constitute an offence under ss327-329, *POCA,* or the *consent* request will not be accepted as a valid request by *SOCA* and no protection will be obtained.

8.8 *SOCA*'s priority in terms of dealing with *consent* issues are understandably focussed on those where there is an opportunity for law enforcement intervention either to confiscate assets or to prevent the commission of crime or acts of terrorism. Clearly, these may not entirely match with the priorities of the person requesting *consent*, who will be driven by *client* and transaction related considerations. To give the best chance of having a *consent* request processed rapidly, it is important to tick the *consent* box provided on the forms and it is recommended that any critical timescale attaching to the activity is explained clearly, and if the report is complex, a summary of key facts and the request is given at the beginning of the report, before explaining the supporting detail.

8.9 In terms of insolvency, *SOCA* are accustomed to dealing with *consent* requests from officeholders and, in general, officeholders should request *consent* to carry out their duties as an officeholder rather than attempting to request *consent* for specific transactions or activities. *SOCA* will try and provide a very rapid turnaround to such requests, as they recognise the unique position of a licensed officeholder acting as such. In order that *SOCA* can rapidly identify requests for *consent* from an insolvency officeholder, this should be made clear at the beginning of the report requesting

consent, specifying the type of insolvency appointment as well as providing all the other required detail.

CONSTRUCTIVE TRUST

8.10 Where *client* assets or monies are held, and in forming knowledge or suspicion of *money laundering businesses* become concerned about potential third party claims to the assets or monies, appropriately qualified legal or professional advice should be sought. This is a complex area of law and any *SOCA consent* will not protect a *business* against the claims of a third party, but only against any accusation of *money laundering*. However, *SOCA* are aware of the need to avoid any unwarranted disadvantage accruing to the *regulated sector*, arising from issues of constructive trusts. Where constructive trusts could be an issue, *businesses* are strongly advised to draw this to the attention of *SOCA* when making a *SAR*, so that this can be taken into account in the way *SOCA* deals with the application for *consent.*

SUSPENSION OF ACTIVITY

8.11 Once a *consent* request has been made, the process must be adhered to and the activity that would otherwise be a *money laundering offence* refrained from unless and until *consent* has been received (or the notice period expired), or in the event *consent* has been refused, until the moratorium period has expired. Failure to do so risks prosecution either for a *money laundering* offence and/or, in the case of an *MLRO* giving *consent* for an activity to continue before he is entitled to do so, an offence under s336 (5) punishable by imprisonment and/or a fine.

8.12 It is appreciated that it is extremely difficult, in some cases, to explain to *clients* and other parties why activity has ceased in an unexpected fashion. Whilst *SOCA* will make every reasonable effort to deliver a rapid *consent*, in some cases the full 7 working days will be taken before a decision is reached whilst the matter is considered with law enforcement, and the potential for intervention in terms of confiscation, arrest etc is considered.

8.13 There is nothing in the legislation which provides for how a *business* may/may not deal with the issues arising from delay. There is nothing which requires a *business* to lie to *clients* or other parties, and clearly to lie would be unacceptable conduct for a professional, but *businesses* must take into account the provisions of the offences concerning *tipping off* and *prejudicing an investigation* when informing parties of delays. If the delay is such as to cause the *client* or other parties to question the *business* as to the reasons for delay, *businesses* may be well advised simply and persistently to refuse to enter into any discussion of the matter and explain that, with regret, they are unable at this point to discuss the matter further. Clearly, this is not a form of behaviour or communication with *clients* that would normally be engaged in, but the period after a request for *consent* has been made is an exceptional period, although frequently of very short duration and manageable in the normal course of business.

8.14 In exceptional circumstances, where an unexpected delay in carrying out a service for a *client* is likely to *alert a money launderer,* in a way that could bring harm to an *individual* or the *business* or could materially undermine a criminal investigation, *MLROs* are recommended to ask *SOCA* to be put in touch with the Law Enforcement Authority dealing with the situation, to discuss the circumstances.

APPLYING FOR AND RECEIVING CONSENT

8.15 *Consent* may only be requested on the basis of a properly submitted *SAR*, made under the provisions of s338, *POCA* (authorised disclosures). The '*consent* required' option should be selected on all methods of submission to alert *SOCA* to the request and enable them to prioritise appropriately. In cases of real urgency, a telephone call may also be made to alert *SOCA* to any special circumstances.

8.16 The *consent* request should be clear as to the reasons for knowledge or suspicion, the intended activity, and the nature of the consent requested. Great care is needed when requesting consent to cover the extent of the intended activity in a way that makes it clear to *SOCA* exactly what is being requested. Too narrow a *consent* request may mean repeated requests will be required causing issues of cost and efficiency to the *business* and possibly unnecessary *client* service impact. Too broad or ill-defined a *consent* may well result in *SOCA* having to refuse *consent* or possibly even determining the request is not validly made as it does not show clearly the act or acts to be undertaken which would otherwise be an offence under ss327-329, *POCA.*

8.17 *Consent* will frequently be received initially over the telephone from *SOCA*, and the name and contact number of the officer, and the *consent* reference should be noted on the *MLRO* records with the date and time of the call. Written confirmation ordinarily follows in due course but this may take several days and *MLROs* may rely on the telephone *consent*.

8.18 Once *consent* has been received by the *MLRO* under the provisions of s335 *POCA*, he should then (under the provisions of s336, *POCA*) promptly inform the engagement team affected and give them clearance to continue their work, and any other guidance they might require as regards *money laundering* matters.

8.19 If a period of 7 working days, starting the first working day after the *consent* request is made (the notice period), has elapsed with no refusal having been received, consent is deemed to have been given and the activity may be allowed to continue.

Refusal of consent

8.20 If *consent* is refused during the notice period, then a further 31 days must elapse, starting with the day on which the consent is refused, before the activity may continue (the moratorium period). It may be that during either the notice period, or the moratorium period, that action is taken by law enforcement which means that the activity may no longer be able to be continued (eg, confiscation or other enforcement action may occur).

8.21 If no action has been taken to restrain the activity during the moratorium period, the activity may continue as planned.

EXEMPTIONS FOR BANKS AND DEPOSIT TAKERS

8.22 The Serious Organised Crime and Police Act 2005 put in place a threshold provision in *POCA* (ss327-329) that allows banks and deposit takers to continue to operate an account with an activity which potentially constitutes *money laundering* provided this relates to transactions worth £250 or less or as laid down from time to time in statutory instruments. Note that this change does not affect the requirement to report

suspicions, does not constitute a 'de-minimis' provision, and is **not** available to providers of *defined services*.[8]

[8] See JMLSG *Guidance* for details on the change in thresholds for banks and deposit taking institutions.

SECTION 9 – POST SAR ACTIONS

KEY POINTS

- Once a *SAR* has been submitted, the *business* needs to consider whether or not the content of the *SAR* requires any change to, or even cessation in, any related *client* relationship.
- In addition, careful consideration needs to be given to reconciling the need to fulfil professional duties, whilst avoiding the risks of *tipping off*.
- A *SAR* may be followed by requests for further information from law enforcement or prosecuting agencies, both informal and by means of relevant orders. *Businesses* need to have in place procedures for checking the validity of requests, and for ensuring a proper response is made.

CONTINUING WORK IN CONNECTION WITH A REPORTED MATTER

Client relationships

9.1 *Businesses* do not have to stop working after submission of a *SAR* unless a *consent* has been requested, in which case all or part of *client* work may well require to be suspended until consent is received. In cases where *consent* has been requested and refused, the work which was the subject of the request will need to be suspended.

9.2 However, even where consent was not required, where a *SAR* involves a *client* as a suspect, *businesses* may wish to consider whether the behaviour observed is such that for professional reasons the *business* no longer wishes to act.

9.3 Generally, if following a report of suspicion a *business* wishes for its own commercial or ethical reasons to exit a relationship, there is nothing to prevent this provided the way the exit is communicated does not constitute *tipping off*. This also applies to the *prejudicing an investigation* offence outlined below.

9.4 If a decision is made to terminate a *client* relationship, a *business* should follow its normal procedures in this regard, whilst always bearing in mind the need to avoid *tipping off*.

Balancing professional work and *POCA* requirements

9.5 Normal commercial enquiries to understand a transaction carried out in the course of an engagement will not generally lead to *tipping off*, although care should be exercised to avoid either making a disclosure prohibited under ss333A-333D, *POCA* (see section 2.19 of this *Guidance*) or making accusations or suggesting that any person is guilty of an offence. It is important to confine enquiries to those required in the ordinary course of business and not attempt to investigate a matter unless that is within the scope of the professional work commissioned.

9.6 Continuation of work may require discussion with *client* senior management of matters relating to suspicions formed. This may be of particular importance in audit relationships. Care must be taken to select appropriate, and non-complicit, members of senior management for such discussion whilst always bearing in mind the need to avoid *tipping off*.

9.7 In more complex circumstances, consultation with law enforcement may be necessary before enquiries are continued, but in most cases a common sense approach will resolve the issue. Note that neither *SOCA* nor law enforcement may give consent to *tipping off*, but discussions with them are still valuable.

9.8 *Businesses* may wish to consult the *MLRO* or other suitable specialist (for example a solicitor) regularly if there are *tipping off* concerns, and in particular it is important that before any document referring to the subject matter of a report is released to a third party the *MLRO* is consulted and, in extreme cases, law enforcement. Some typical examples of documents released to third parties are shown below as an aide memoire:

- public audit or other attest reports;
- public record reports to regulators;
- confidential reports to regulators (eg to the *FSA* under relevant auditing standards);
- provision of information to sponsors or other statements in connection with Rule 2.12 of the UK Stock Exchange Listing Rules;
- reports under the Companies Directors Disqualification Act 1986;
- reports under s218 of the Insolvency Act 1986;
- Companies Act statements on resignation as auditors;
- professional clearance/etiquette letters;
- communications to *clients* of intention to resign.

9.9 In particular, audit resignations require statements to be filed at Companies House and the contents of such statements require careful consideration to ensure that statutory and professional duties are met, without including such information as may constitute *tipping off*. There is no legal mechanism for obtaining clearance from *SOCA* for the contents of such statements or other documents relating to resignation. However, *businesses* may well wish in cases of complexity to discuss the matter with *SOCA* or the relevant law enforcement agency in order to understand their perspective and document such discussion.

9.10 *MLROs* may on occasion need advice to assist them in formulating their instructions to the *business.* Legal advice may be sought from a suitably skilled and knowledgeable professional legal adviser, and recourse may also be had to helplines and support services provided by professional bodies. Discussion with *SOCA* and law enforcement may well be valuable, but *MLROs* should bear in mind these authorities are not able to advise, and nor are they entitled to dictate how professional relationships should be conducted.

REQUESTS FOR FURTHER INFORMATION

Requests from *SOCA* or Law Enforcement Agencies

9.11 *SOCA* or a Law Enforcement Authority may contact a *business* (usually the *MLRO*) or an *individual* to ask for further information about a *SAR* it/he has submitted. Before responding, it is recommended that a verification process is undertaken to ensure the person making contact is a bona fide member of *SOCA*/law enforcement. This may be most simply achieved by taking a caller's name and agency/force details, and then calling the main switchboard of the agency/force to be put through to the person.

9.12 To the extent that the request is simply aimed at clarifying the content of a *SAR*, *businesses/individuals* may respond without the need for any further process.

9.13 However, if the request is for production of documents, or provision of information additional to the *SAR*, it is recommended that *businesses/individuals* require the relevant agency to use its powers of compulsion before they respond. This is not intended to be non co-operative, and indeed *businesses/individuals* are recommended to engage in constructive dialogue with *SOCA*/law enforcement, including as to the content and drafting of the request, but is intended to protect *businesses/individuals* from allegations that they breached confidentiality. *Client* or other third party consent is not required in cases of compulsion, and nor should it be sought due to the risk of *tipping off.*

9.14 Before responding to orders for production of information, *businesses/individuals* should ensure they understand:

- the authority under which the request is made;
- the extent of the information requested;
- the required timing and manner of the production of information; and
- what information should be excluded *eg,* that subject to legal privilege,

If in any doubt, *businesses/individuals* should seek legal advice. *Businesses* should document their consideration of the issues.

9.15 None of the notices or orders will require the production of information that is subject to legal privilege or legal professional privilege. Terms used in the various relevant Acts of Parliament and the way the terms are defined vary slightly and it may be appropriate to take legal advice if unsure. The interaction of the *privilege reporting exemption* with the carve-outs for privileged material in the notices and orders outlined below is not clear, and has yet to be tested. This is a complex area of law. If *individuals* or *businesses* are unsure as to whether certain documents fall within the privileged category or not, they should not include these documents in initial disclosure and, before the expiry of the time allowed for disclosure, should inform the person to whom the information is to be provided that they believe they have material subject to privilege and request that, if they think it necessary to gain access to this material, the relevant agency appoint independent counsel to opine as to whether the material is disclosable, or not. The opinion of counsel may then be complied with.

9.16 Before passing across information to an officer, *businesses* should require the person identify themselves by eg showing a warrant card and a copy of the relevant order, or *businesses* may attend the premises of the relevant agency to hand over the information.

9.17 Orders for production of information may be received under a variety of legislation. In each case, production may be required in hard copy even where stored on a computer, or in electronic form where stored as such. Those which most commonly flow from *SARs* include the following:

- Production Orders under the provisions of *POCA*

  Production Orders are made under s354, *POCA*, and are made only by a judge in respect of a confiscation investigation, or a *money laundering* investigation. The maximum period for compliance will be 7 days starting with the day on which the order is made unless the judge thinks a shorter period should be applied. Failure to comply is treated as breach of a Court Order and penalties will be applied as

such. There is no requirement to produce documents which are privileged, being material which a person would be entitled to refuse to produce on grounds of privilege in the High Court. For the interaction of this provision with the *privilege reporting exemption*, see section 9.15 of this *Guidance*.

- Disclosure Notices under the provisions of *SOCPA*

  A disclosure notice may be issued by an investigating authority (the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Lord Advocate or their permitted delegates under s60, *SOCPA*) in respect of certain offences only. These are broadly those listed in Schedule 2 (Schedule 4 in Scotland) to *POCA,* offences under ss15-18, *TA 2000*, certain duty offences, false accounting (s17, Theft Act 1968 in England and Wales) and certain matters concerning attempts at/conspiracy to commit certain offences. S61, *SOCPA* should be referred to in the case of any such notice being received to check it is in respect of a qualifying offence. ss62-65, *SOCPA* then set out the procedures in respect of the issue of the notice, and the response to it. The provisions of the notice will govern the extent of the information to be provided, and the timing, place and manner of disclosure. There is no requirement to produce documents or answer questions where the matter is subject to legal professional privilege, or legal privilege (as defined in s412, *POCA*. For the interaction of this provision with the *privilege reporting exemption*, see section 9.15. Failure, without reasonable excuse, to comply is a criminal offence and penalties of up to two years imprisonment and/or an unlimited fine may be levied.

- S2 notices issued by the Serious Fraud Office under the provisions of the Criminal Justice Act 1987.

  Under s2, Criminal Justice Act 1987, staff authorised by the Director of the Serious Fraud Office have powers to require a person to answer questions, provide information or produce documents for the purposes of an investigation. Written notice is given where the Serious Fraud Office exercise these powers. In urgent cases, the Serious Fraud Office may require immediate compliance with a notice, but frequently will give a period of time for compliance. There is no requirement to produce documents which are privileged, being material which a person would be entitled to refuse to produce on grounds of privilege in the High Court. Failure to comply is a criminal offence punishable with imprisonment for up to 6 months and/or a fine not exceeding level 5 on the standard scale. For the interaction of this provision with the *privilege reporting exemption*, see section 9.15 of this *Guidance*.

Requests arising from a change of professional advisor (professional enquiries)

Requests regarding identification information

9.18 In such a case the disclosure request may be made under the provisions of Regulation 17, reliance, or the new adviser may simply want copies of identification evidence, in order to assist it in satisfying its own identification procedures. *Businesses* should not release confidential information without the *client's* consent. If reliance is being placed on the *business*, it should follow the guidance in section 5.36 above in relation to record keeping.

Requests for information regarding suspicious activity

9.19 In general, it is recommended that such requests are declined as the *tipping off* offence in the *regulated sector* greatly restricts the ability to make such disclosures. However, to the extent that the request is within the provisions of s333C, *POCA* (section 2.19 of this *Guidance*) information may be provided (but there is no obligation to do so).

Data Protection Act - Subject Access Requests

9.20 Under the Data Protection Act 1998 *businesses* are exempted from disclosure under a subject access request where disclosure would be or is likely to be prejudicial to the prevention or detection of crime or the capture or conviction of offenders. Where personal data is held on a subject and relates to knowledge or suspicion of *money laundering* (ie, it has been processed for the purpose of the prevention or detection of crime) it is not required to be disclosed under a subject access request if disclosure may constitute a *tipping off* offence. This exception should be applied to internal **and** *SAR* reporting records.

9.21 Guidance has been issued by HM Treasury (www.hm-treasury.gov.uk/media/D/F/money_laundering.pdf) supporting the position that where granting access would amount to '*tipping off*' then the s29 Data Protection Act exemption would apply.

9.22 It is recommended that *businesses* document any considerations surrounding the decision to grant or refuse access to information requested in such circumstances (known as a 'subject access request').

GLOSSARY

2007 Regulations	Statutory Instrument 2007 no 2157 - Financial Services "The Money Laundering Regulations 2007"
Alerting a money launderer	Disclosures that do not constitute *tipping off* but which nonetheless alert the money launderer to the suspicion regarding their activities.
Accountancy Services	*Accountancy services* includes for the purpose of this *Guidance* any service provided under a contract for services (ie, not a contract of employment) which pertains to the recording, review, analysis, calculation or reporting of financial information.
Anti-Money Laundering Supervisory Authority	Bodies identified by Regulation 23, *2007 Regulations* as being empowered to supervise the compliance of *individuals* and *businesses* with the *2007 Regulations.* The professional bodies designated as *anti-money laundering supervisory authorities* are listed in Schedule 3 to the *2007 Regulations.*
Businesses	A company, partnership or other organisation undertaking *defined services*. This includes accountancy practices, whether structured as partnerships, sole practitioners or corporate practices.
Business relationship	A business, professional or commercial relationship between a relevant person (ie someone to whom the Regulations 2007 apply) and a customer, which is expected by the relevant person, at the time when the contact is established, to have an element of duration.
CCAB	Consultative Committee of Accountancy Bodies: body representing the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants of Scotland; the Institute of Chartered Accountants in Ireland; the Association of Chartered Certified Accountants; the Chartered Institute of Management Accountants; and the Chartered Institute of Public and Finance and Accountancy.
Client	A person in a *business relationship*, or carrying out an occasional transaction, with a *business*.
Consent	Permission given, generally by *SOCA*, 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 s335, *POCA,* which also deals with the passing of the consent from the *MLRO* to the *individual* concerned (s336).
Credit institution	Has the meaning given by Regulation 3(2), *2007 Regulations.*
Criminal Conduct	Conduct that is an offence in any part of the UK as well as conduct occurring elsewhere that would have been an offence if it had taken place in the UK. There are very limited exceptions to this for conduct which is both known to be legal in the country in which it is committed and which falls within the specific exceptions set out in orders made by the Secretary of State.
Criminal Property	The benefit of *criminal conduct* where the alleged offender knows or suspects that the property in question represents such a benefit (s340, *POCA)*
Customer due diligence	The process by which KYC information is gathered, and the identity of a *client* is established and verified, for both new and existing clients.

Defined services	Activities carried on, in the course of business by *businesses* or *individuals* as an auditor, *external accountant*, *insolvency practitioner* or *tax adviser* (Regulation 3(c), *2007 Regulations)*, or as trust and company service providers (Regulation 3(e), *2007 Regulations*). It also includes persons providing services under the Designated Professional Body provisions of Part XX, s326 *FSMA 2000* or otherwise providing financial services under the oversight of their professional body.
EEA	European Economic Area countries, which are the European Union member states plus EFTA (European Free Trade Association) member states.
Enhanced due diligence	Additional due diligence steps that must be applied in situations where there is a higher risk of *money laundering* or *terrorist financing* and in a number of specific situations (Regulation 14), of which two are relevant to providers of *defined services;* where the *client* has not been physically present for identification purposes, if a *business relationship* or occasional transaction is to be undertaken with a politically exposed person *(PEP).*
External accountant	Means a firm or sole practitioner who by way of business provides *accountancy services* to other persons, when providing such services (Regulation 3(7), *2007 Regulations*).
FATF	Financial Action Task Force, created by G7 nations to fight money laundering.
Financial institution	Has the meaning given by Regulation 3(3), *2007 Regulations*
Financial restrictions	See Glossary annex B
FSA	Financial Services Authority: statutory regulator of most financial services providers under the Financial Services and Markets Act 2000.
FSMA 2000	Financial Services and Markets Act 2000
Guidance	*Guidance* which is (a) issued by a supervisory authority or any other appropriate body; (b) approved by the Treasury; and (c) published in a manner approved by the Treasury as suitable in their opinion to bring the *Guidance* to the attention of persons likely to be affected by it. In this *Guidance,* the term has been used for *Guidance* for which Treasury approval has been applied, and is expected to be obtained, as well as that which already has Treasury approval. The circumstances in which Courts and others are required to take the *Guidance* into account in determining whether an offence has been committed are set out in *POCA* and the *2007 Regulations.* Any use of the term “guidance” outside this definition, has not been italicised in this *Guidance.*
Individuals	Includes sole practitioners and the partners, directors, subcontractors, consultants and employees of *businesses*.
Independent legal professional	Provider of legal or notarial services as defined in Regulation 3(9) in the 2007 Regulations.
Internal Report	A report made to the *MLRO* in a *business.*

Insolvency practitioner	Means any person who acts as an *insolvency practitioner* within the meaning of s 388 Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989 (Regulation 3(6), *2007 Regulations*).
JMLSG	Joint Money Laundering Steering Group: body representing UK Trade Associations in the Financial Services Industry and aiming to promote good anti-*money laundering* practices and give relevant practical *Guidance*.
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 *money laundering offences* as defined in *POCA*.
Money laundering directive	References in this *Guidance* are to the 3rd Money Laundering Directive (DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) available from: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf
MLRO	Money Laundering Reporting Officer. This term is used to describe the *nominated officer* appointed under Regulation 20(2)(d), *2007 Regulations* and as referred to in s331, *POCA.*
Money Laundering Reporting Officer	see *MLRO* above
Money laundering offences	One of the three *money laundering offences* defined under ss327-329, *POCA*. In summary the offences comprise the following activities, where a person: • **conceals,** disguises, converts or transfers *criminal property*, or removes *criminal property* from England and Wales, or from Scotland or from Northern Ireland (s327); • enters into or becomes concerned in an **arrangement** which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of *criminal property* by or on behalf of another person (s328); or • **acquires**, uses or has possession of *criminal property* except where adequate consideration was given for the property (s329).
Nominated Officer	Office required to be appointed by *businesses* carrying on business in the *regulated sector*. See *MLRO* above.
Overseas conduct exemption	Exemption from reporting requirement where an act is reasonably believed to have taken place outside of the UK, and the act was known to be lawful when committed under the criminal law of the place where the act was committed, and the maximum sentence if the act had been committed in the UK would have been less than 12 months (except in the case of an act which would be an offence under the Gaming Act 1968, the Lotteries and Amusements Act 1976 or under ss23 or 25, *FSMA).*
PEPs	Politically exposed persons, as defined in the *2007 Regulations* paragraph 14(5) and paragraph 4(1)(a) of Schedule 2. See also sections 5.27 to 5.29 above.
POCA	Proceeds of Crime Act 2002
Prejudicing an	A ‘related’ *money laundering* offence, defined under s342, *POCA*. In summary, it captures the making of any disclosure that is likely to prejudice an

investigation	investigation or falsifying, concealing, or destroying, any documents that are relevant to a *money laundering* investigation, or being complicit in such behaviour.
Predicate offence	Means the underlying offence or any offence as a result of which *criminal property* has been generated.
Privilege reporting exemption	An exemption from reporting suspicions formed on the basis of information received in privileged circumstances (see Sections 7.26-7.46 of this *Guidance*).
Regulated investment market	Within the EEA, has the meaning given by point 14 of Article 4(1) of the Markets in Financial Instruments Directive (MiFID); and outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations.
Regulated Sector	Defined in Proceeds of Crime Act Schedule 9 Part 1 (includes those who provide the *defined services*.
Relevant professional adviser	An accountant, auditor or *tax adviser* who is a member of a professional body which is established for accountants, auditors or *tax adviser*s (as the case may be); and which makes provision for (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.
Required Disclosure	The identity of the suspect (if known), the information or other matter on which the knowledge or suspicion of *money laundering* (or reasonable grounds for such) is based and the whereabouts of the laundered property (if known).
SAR	Suspicious activity report made to *SOCA*
SAR Glossary of Terms	Glossary of terms used by *SOCA* to assist in relating/providing a theme to different SARs to increase effective mining of data by SOCA and Law Enforcement. The use of the terms is not mandatory.
Shell bank	means a *credit institution*, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is unaffiliated with a regulated financial group
Simplified due diligence	The phrase used in the *2007 Regulations* (Regulation 13) which means that a *business* is not required to apply the *customer due diligence* measures set out in Regulation 7 where the *business* has reasonable grounds for believing that a *client* falls into the relevant categories.
SOCA	Serious Organised Crime Agency. *SOCA* is an intelligence-led agency with law enforcement powers, responsible for reducing the social and individual harm of serious organised crime. Reports of known or suspected *money laundering* must be made to *SOCA*.
SOCPA	Serious Organised Crime and Police Act 2005
Specified disclosure obligations	See Annex A to the Glossary
Specified interest	A vested interest which is:

- in possession or in remainder or reversion (or, in Scotland, in fee); and
- defeasible or indefeasible.

A 'vested interest' is an interest which to which an entitlement already exists (whether immediately - 'in possession'; or in the future, following the ending of another interest - 'in remainder' or 'in reversion'). It is in contrast to an interest which is merely 'contingent'; a contingent interest is an interest which will only arise on the happening of a particular event, such as surviving to a particular date or surviving a particular person. Determining whether an interest is vested or contingent requires careful analysis. For example, if a trust provides that A has a life interest, and that B has an interest which takes effect on A's death, both A and B will have vested interests and, if B does not survive A, B's interest will devolve as part of B's estate; however, if B's interest is expressed to take effect on A's death only if he (B) is then living, B's interest (which will fail if he predeceases A) is merely contingent.

A defeasible interest is one which may be defeated, generally by the exercise of a power under the trust deed; an indefeasible interest is one which cannot be defeated. In the examples given above, A and B both have indefeasible interests. It is important that a defeasible vested interest is not mistaken for a contingent interest. A defeasible vested interest will take effect unless and until it is defeated; a contingent interest on the other hand will not take effect unless and until the event on which it is contingent arises.

Suspicious Activity Report — Otherwise known as a *SAR. See SAR above*

TA 2000 — The Terrorism Act 2000 (as amended by the Anti-Terrorism, Crime and Security Act 2001 and the Terrorism Act 2006)

TA 2006 — The Terrorism Act 2006

Tax adviser — Means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services (Regulation 3(8), *2007 Regulations*). Tax compliance services, eg, assisting in the completion and submission of tax returns is, for the purpose of this *Guidance*, included within the term “advice about the tax affairs of other persons”.

Terrorist financing — Means an offence under (Regulation 2 *2007 Regulations*):

(a) s15 (fund raising), 16 (use and possession, 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction), *TA 2000*;

(b) para 7(2) or (3), Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001(a) (freezing orders);

(c) article 7, 8 or 10 of the Terrorism (United Nations Measures) Order 2006(b); or

(d) article 7, 8 or 10 of the Al-Qaida and Taliban (United Nations Measures) Order 2006(c).

Terrorist offences — The terrorist offences relate to fundraising (inviting another to provide money or other property with the intention or reasonable cause to suspect it is intended to be used for the purposes of terrorism), using or possessing terrorist funds (receiving or possessing money or other property with the intention or reasonable cause to suspect it is intended to be used for the purposes of terrorism), entering into funding arrangements (making arrangements as a result of which money or other property is or may be made available for the

	purposes of terrorism with the intention or reasonable cause to suspect it is intended to be used for the purposes of terrorism), money laundering, disclosing information relating to the commission of an offence (similar to *tipping off*), or failing to make a disclosure in the regulated sector. (ss19 and 21A *TA 2000 (*as amended*))*
Terrorist property	Means: (a) money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation), (b) proceeds of the commission of acts of terrorism, and (c) proceeds of acts carried out for the purposes of terrorism.
Tipping off	A 'related' *money laundering* offence for the regulated sector, defined under s 333A-D, *POCA*
Transaction	The provision of any advice by a *business* or *individual* to a *client* by way of business, or the handling of the *client's* finances by way of business.

Glossary Annex A – The Specified Disclosure Obligations

DETAILS OF THE "SPECIFIED DISCLOSURE OBLIGATIONS" REFERRED TO IN REGULATION 13 (3) MLR2007 RE SIMPLIFIED DUE DILIGENCE

DIRECTIVE 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 28 January 2003 on insider dealing and market manipulation (market abuse)

Article 6
1. Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers.
Without prejudice to any measures taken to comply with the provisions of the first subparagraph, Member States shall ensure that issuers, for an appropriate period, post on their Internet sites all inside information that they are required to disclose publicly.
2. An issuer may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information. Member States may require that an issuer shall without delay inform the competent authority of the decision to delay the public disclosure of inside information.
3. Member States shall require that, whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in Article 3(a), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.
The provisions of the first subparagraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract.
Member States shall require that issuers, or persons acting on their behalf or for their account, draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it.
4. Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them. Member States shall ensure that public access to information concerning such transactions, on at least an individual basis, is readily available as soon as possible.

DIRECTIVE 2003/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

Article 3
Obligation to publish a prospectus
1. Member States shall not allow any offer of securities to be made to the public within their territories without prior publication of a prospectus.
2. The obligation to publish a prospectus shall not apply to the following types of offer:
(a) an offer of securities addressed solely to qualified investors; and/or
(b) an offer of securities addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors; and/or
(c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50000 per investor, for each separate offer; and/or

(d) an offer of securities whose denomination per unit amounts to at least EUR 50000; and/or
(e) an offer of securities with a total consideration of less than EUR 100000, which limit shall be calculated over a period of 12 months.
However, any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in this paragraph shall be regarded as a separate offer and the definition set out in Article 2(1)(d) shall apply for the purpose of deciding whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus if none of the conditions (a) to (e) are met for the final placement.
3. Member States shall ensure that any admission of securities to trading on a regulated market situated or operating within their territories is subject to the publication of a prospectus.
Article 5
The prospectus
1. Without prejudice to Article 8(2), the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.
2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary. The summary shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The summary shall also contain a warning that:
(a) it should be read as an introduction to the prospectus;
(b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
(c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
(d) civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.
Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50000, there shall be no requirement to provide a summary except when requested by a Member State as provided for in Article 19(4).
3. Subject to paragraph 4, the issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.
4. For the following types of securities, the prospectus can, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market:
(a) non-equity securities, including warrants in any form, issued under an offering programme;
(b) non-equity securities issued in a continuous or repeated manner by credit institutions,

(i) where the sums deriving from the issue of the said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;
(ii) where, in the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions(14).
The information given in the base prospectus shall be supplemented, if necessary, in accordance with Article 16, with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market.
If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the competent authority when each public offer is made as soon as practicable and if possible in advance of the beginning of the offer. The provisions of Article 8(1)(a) shall be applicable in any such case.
5. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the format of the prospectus or base prospectus and supplements.
Article 7
Minimum information
1. Detailed implementing measures regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2). The first set of implementing measures shall be adopted by 1 July 2004.
2. In particular, for the elaboration of the various models of prospectuses, account shall be taken of the following:
(a) the various types of information needed by investors relating to equity securities as compared with non-equity securities; a consistent approach shall be taken with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;
(b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities. The information required in a prospectus shall be appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 50000;
(c) the format used and the information required in prospectuses relating to non-equity securities, including warrants in any form, issued under an offering programme;
(d) the format used and the information required in prospectuses relating to non-equity securities, in so far as these securities are not subordinated, convertible, exchangeable, subject to subscription or acquisition rights or linked to derivative instruments, issued in a continuous or repeated manner by entities authorised or regulated to operate in the financial markets within the European Economic Area;
(e) the various activities and size of the issuer, in particular SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record;
(f) if applicable, the public nature of the issuer.
3. The implementing measures referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO and on the indicative Annexes to this Directive.
Article 8
Omission of information
1. Member States shall ensure that where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus:

(a) the criteria, and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price, are disclosed in the prospectus; or
(b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and amount of securities which will be offered to the public have been filed.
The final offer price and amount of securities shall be filed with the competent authority of the home Member State and published in accordance with the arrangements provided for in Article 14(2).
2. The competent authority of the home Member State may authorise the omission from the prospectus of certain information provided for in this Directive or in the implementing measures referred to in Article 7(1), if it considers that:
(a) disclosure of such information would be contrary to the public interest; or
(b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or
(c) such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.
3. Without prejudice to the adequate information of investors, where, exceptionally, certain information required by implementing measures referred to in Article 7(1) to be included in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, this requirement shall not apply.
4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 2.
Article 10
Information
1. Issuers whose securities are admitted to trading on a regulated market shall at least annually provide a document that contains or refers to all information that they have published or made available to the public over the preceding 12 months in one or more Member States and in third countries in compliance with their obligations under Community and national laws and rules dealing with the regulation of securities, issuers of securities and securities markets. Issuers shall refer at least to the information required pursuant to company law directives, Directive 2001/34/EC and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards(15).
2. The document shall be filed with the competent authority of the home Member State after the publication of the financial statement. Where the document refers to information, it shall be stated where the information can be obtained.
3. The obligation set out in paragraph 1 shall not apply to issuers of non-equity securities whose denomination per unit amounts to at least EUR 50000.
4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 1. These measures will relate only to the method of publication of the disclosure requirements mentioned in paragraph 1 and will not entail new disclosure requirements. The first set of implementing measures shall be adopted by 1 July 2004.
Article 14
Publication of the prospectus
1. Once approved, the prospectus shall be filed with the competent authority of the home Member State and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any

case, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.
2. The prospectus shall be deemed available to the public when published either:
(a) by insertion in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the offer to the public is made or the admission to trading is sought; or
(b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
(c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or
(d) in an electronic form on the website of the regulated market where the admission to trading is sought; or
(e) in electronic form on the website of the competent authority of the home Member State if the said authority has decided to offer this service.
A home Member State may require issuers which publish their prospectus in accordance with (a) or (b) also to publish their prospectus in an electronic form in accordance with (c).
3. In addition, a home Member State may require publication of a notice stating how the prospectus has been made available and where it can be obtained by the public.
4. The competent authority of the home Member State shall publish on its website over a period of 12 months, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.
5. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information making up the prospectus may be published and circulated separately provided that the said documents are made available, free of charge, to the public, in accordance with the arrangements established in paragraph 2. Each document shall indicate where the other constituent documents of the full prospectus may be obtained.
6. The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, shall at all times be identical to the original version approved by the competent authority of the home Member State.
7. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.
8. In order to take account of technical developments on financial markets and to ensure uniform application of the Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1, 2, 3 and 4. The first set of implementing measures shall be adopted by 1 July 2004.
Article 16
Supplements to the prospectus
1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be

supplemented, if necessary to take into account the new information included in the supplement.
2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.

DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

Article 4
Annual financial reports
1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least five years.
2. The annual financial report shall comprise:
(a) the audited financial statements;
(b) the management report; and
(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.
3. Where the issuer is required to prepare consolidated accounts according to the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts [15], the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) No 1606/2002 and the annual accounts of the parent company drawn up in accordance with the national law of the Member State in which the parent company is incorporated.
Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the national law of the Member State in which the company is incorporated.
4. The financial statements shall be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies [16] and, if the issuer is required to prepare consolidated accounts, in accordance with Article 37 of Directive 83/349/EEC.
The audit report, signed by the person or persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.
5. The management report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC.
6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. The Commission shall in particular specify the technical conditions under which a published annual financial report, including the audit report, is to remain available to the public. Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.
Article 5
Half-yearly financial reports

1. The issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest two months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.
2. The half-yearly financial report shall comprise:
(a) the condensed set of financial statements;
(b) an interim management report; and
(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under paragraph 3, and that the interim management report includes a fair review of the information required under paragraph 4.
3. Where the issuer is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002.
Where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.
4. The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions.
5. If the half-yearly financial report has been audited, the audit report shall be reproduced in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.
6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 5 of this Article.
The Commission shall, in particular:
(a) specify the technical conditions under which a published half-yearly financial report, including the auditors' review, is to remain available to the public;
(b) clarify the nature of the auditors' review;
(c) specify the minimum content of the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts, where they are not prepared in accordance with the international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002.
Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.
Article 6
Interim management statements
1. Without prejudice to Article 6 of Directive 2003/6/EC, an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year. Such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. It shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement. Such a statement shall provide:

- an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and
- a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.
2. Issuers which, under either national legislation or the rules of the regulated market or of their own initiative, publish quarterly financial reports in accordance with such legislation or rules shall not be required to make public statements by the management provided for in paragraph 1.
3. The Commission shall provide a report to the European Parliament and the Council by 20 January 2010 on the transparency of quarterly financial reporting and statements by the management of issuers to examine whether the information provided meets the objective of allowing investors to make an informed assessment of the financial position of the issuer. Such a report shall include an impact assessment on areas where the Commission considers proposing amendments to this Article.
Article 14
1. Where an issuer of shares admitted to trading on a regulated market acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the home Member State shall ensure that the issuer makes public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.
2. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1.
Article 16
Additional information
1. The issuer of shares admitted to trading on a regulated market shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.
2. The issuer of securities, other than shares admitted to trading on a regulated market, shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.
3. The issuer of securities admitted to trading on a regulated market shall make public without delay of new loan issues and in particular of any guarantee or security in respect thereof. Without prejudice to Directive 2003/6/EC, this paragraph shall not apply to a public international body of which at least one Member State is member.
Article 17
Information requirements for issuers whose shares are admitted to trading on a regulated market
1. The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.
2. The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the issuer is incorporated. In particular, the issuer shall:
(a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;

(b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;
(c) designate as its agent a financial institution through which shareholders may exercise their financial rights; and
(d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.
3. For the purposes of conveying information to shareholders, the home Member State shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:
(a) the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in Article 10(a) to (h), of the natural persons or legal entities;
(b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;
(c) shareholders, or in the cases referred to in Article 10(a) to (e) the natural persons or legal entities entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing, and
(d) any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.
4. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).
Article 18
Information requirements for issuers whose debt securities are admitted to trading on a regulated market
1. The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking pari passu are given equal treatment in respect of all the rights attaching to those debt securities.
2. The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of country in which the issuer is incorporated. In particular, the issuer shall:
(a) publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;
(b) make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting; and
(c) designate as its agent a financial institution through which debt securities holders may exercise their financial rights.
3. If only holders of debt securities whose denomination per unit amounts to at least EUR 50000 or, in the case of debt securities denominated in a currency other than Euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50000, are to be

invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.
4. For the purposes of conveying information to debt securities holders, the home Member State, or the Member State chosen by the issuer pursuant to paragraph 3, shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:
(a) the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;
(b) identification arrangements shall be put in place so that debt securities holders are effectively informed;
(c) debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and
(d) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.
5. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).
Article 19
Home Member State control
1. Whenever the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the competent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site.
Where an issuer proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the competent authority of the home Member State and to the regulated market to which its securities have been admitted to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.
2. The home Member State may exempt an issuer from the requirement under paragraph 1 in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 12(6) of this Directive.
3. Information to be notified to the issuer in accordance with Articles 9, 10, 12 and 13 shall at the same time be filed with the competent authority of the home Member State.
4. In order to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures. The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraphs 1 or 3, respectively, in order to:
(a) enable filing by electronic means in the home Member State;
(b) coordinate the filing of the annual financial report referred to in Article 4 of this Directive with the filing of the annual information referred to in Article 10 of Directive 2003/71/EC.
Article 30
Transitional provisions
1. By way of derogation from Article 5(3) of this Directive, the home Member State may exempt from disclosing financial statements in accordance with Regulation (EC) No

1606/2002 issuers referred to in Article 9 of that Regulation for the financial year starting on or after 1 January 2006.
2. Notwithstanding Article 12(2), a shareholder shall notify the issuer at the latest two months after the date in Article 31(1) of the proportion of voting rights and capital it holds, in accordance with Articles 9, 10 and 13, with issuers at that date, unless it has already made a notification containing equivalent information before that date.
Notwithstanding Article 12(6), an issuer shall in turn disclose the information received in those notifications no later than three months after the date in Article 31(1).
3. Where an issuer is incorporated in a third country, the home Member State may exempt such issuer only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from drawing up its financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) as long as
(a) the competent authority of the home Member State acknowledges that annual financial statements prepared by issuers from such a third country give a true and fair view of the issuer's assets and liabilities, financial position and results;
(b) the third country where the issuer is incorporated has not made mandatory the application of international accounting standards referred to in Article 2 of Regulation (EC) No 1606/2002; and
(c) the Commission has not taken any decision in accordance with Article 23(4)(ii) as to whether there is an equivalence between the abovementioned accounting standards and
- the accounting standards laid down in the law, regulations or administrative provisions of the third country where the issuer is incorporated, or
- the accounting standards of a third country such an issuer has elected to comply with.
4. The home Member State may exempt issuers only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC at the point of admission of those debt securities.

Glossary Annex B

HM Treasury consolidated list of persons designated as being subject to financial restrictions.

This includes targets listed by the United Nations, European Union and United Kingdom under legislation relating to current financial restrictions regimes. The purpose of the HM Treasury list is to draw together in one place all the names of designated persons for the various financial restrictions regimes effective in the UK.

General legal requirements

The UK imposes financial restrictions on persons and entities following their designation at the United Nations and/or European Union. The UK also operates a domestic counter-terrorism regime, where the Government decides to impose financial restrictions on certain persons and entities.

Financial restrictions in the UK are governed by various pieces of legislation. In all circumstances, where an asset freeze is imposed, it is unlawful to deal with the funds or other assets of the designated person or make payments to them or for their benefit

A list of all financial restrictions currently in force in the UK is maintained by the Treasury's Asset Freezing Unit. The Consolidated List of persons designated as being subject to financial restrictions can be found on the HM Treasury web site at: http://www.hm-treasury.gov.uk/financialsanctions

Further information on financial restrictions can also be found via this website.

There are specific financial restrictions targeted at the Al-Qaida network and Terrorism

Under the relevant legislation it is a criminal offence for any natural or legal person to:

a) Deal with the funds of designated persons
b) Make funds and economic resources, and in the case of Terrorism financial services, available, directly or indirectly to or for the benefit of designated persons, or
c) Knowingly and intentionally participate in activities that would directly or indirectly circumvent the financial restrictions or enable or facilitate the commission of an offence relating to a) and b) above.

"Deal with" means:

(a) In respect of funds -
- Use, alter, move, allow access to or transfer
- Deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
- Make any other change that would enable use, including portfolio management and

(b) In respect of economic resources -
- Use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources.

The purpose of this legislation imposing financial restrictions is primarily to prevent the diversion of funds to terrorism and terrorist purposes.

HM Treasury has the power to grant licenses exempting certain transactions from the financial restrictions. Requests to disapply the financial restrictions in relation to a

designated person are considered by the Treasury on a case-by-case basis to ensure that there is no risk of funds being diverted to terrorism. To apply for a licence, please contact the Asset Freezing Unit at HM Treasury using the contact details below.

Businesses

Businesses need to have appropriate policies and procedures in place to monitor payments in order to prevent breaches of the financial restrictions legislation.

For manual checking, businesses can register with the HM Treasury Asset Freezing Unit update service (directly or via a third party).
If checking is automated, businesses will need to ensure that the relevant software includes checks against the latest consolidated list.

The Asset Freezing Unit may also be contacted to provide guidance and to assist with any concerns regarding financial restrictions at:
Asset Freezing Unit
Tel: 020 7270 5664/5454
Fax: 020 7451 7677
E mail: assetfreezingunit@hm-treasury.gov.uk

In the event that a customer or a payee is identified as a designated person payments must not proceed unless a licence is granted by the Treasury, as this would be a breach of the financial restrictions. The Treasury should be informed immediately and the transaction suspended pending their advice. No funds should be returned to the designated person. The firm may also need to consider whether there is an obligation also to report to SOCA under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

Written reports can be made to the Asset Freezing Unit at:
The Asset Freezing Unit
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

APPENDIX A

SUPPLEMENTARY ANTI-MONEY LAUNDERING GUIDANCE FOR THE TAX PRACTITIONER

Draft guidance for those providing tax services in the United Kingdom, on the prevention of money laundering and the countering of terrorist financing.

This Guidance is issued by

- ***the Institute of Chartered Accountants in England and Wales,***
- ***the Chartered Institute of Taxation,***
- ***the Association of Taxation Technicians,***
- ***the Association of Chartered Certified Accountants,***
- ***the Chartered Institute of Management Accountants; and***
- ***HM Revenue and Customs***

as an Appendix to the anti-money laundering guidance released by the Consultative Committee of Accountancy Bodies (CCAB).

This supplementary Guidance is not stand alone Guidance; it must be read in conjunction with the CCAB's anti money laundering guidance to which this Guidance is an appendix. It focuses on the interaction between anti money laundering compliance and tax offences and covers the issues that a tax practitioner is most likely to encounter in practice.

The comments received on the exposure draft of this guidance have been considered and incorporated where appropriate. HM Treasury approval of this guidance is being sought. This will mean, if granted, that the Courts must consider the content of the Guidance when determining whether an accountant's or tax practitioner's conduct gives rise to an offence under either the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2007.

SUPPLEMENTARY
ANTI MONEY LAUNDERING GUIDANCE
FOR THE TAX PRACTITIONER

Contents

Glossary and interpretation

1.

CCAB	**The Consultative Committee of Accountancy Bodies**
CDD	**Customer Due Diligence**
CEMA	**Customs and Excise Management Act 1979**
HMRC	**Her Majesty's Revenue and Customs**
ICTA	**Income and Corporation Taxes Act 1988**
JMLSG	**Joint Money Laundering Steering Group**
MLR 2007	**Money Laundering Regulations 2007**
MLRO	**Money Laundering Reporting Officer**
POCA	**Proceeds of Crime Act 2002**
SAR	**Suspicious Activity Report**
SOCA	**The Serious Organised Crime Agency**
TMA	**The Taxes Management Act 1970**
UK	**United Kingdom**
VATA	**Value Added Tax Act 1994**

2. Words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular.

Note:This guidance is incomplete on its own. It must be read in conjunction with the CCAB's Anti Money Laundering guidance.

1. ABOUT THIS SUPPLEMENTARY GUIDANCE

1.1 This supplementary guidance has been developed by the Institute of Chartered Accountants in England and Wales, the Chartered Institute of Taxation, the Association of Taxation Technicians, the Association of Chartered Certified Accountants, the Chartered Institute of Management Accountants and HMRC for professionals providing tax services.

1.2 This supplementary guidance uses the descriptive term 'tax practitioner' for someone in business offering tax services. The MLR 2007 uses the term 'tax adviser' and defines a tax adviser as

> 'a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services'.

The meaning of 'advice' is widely interpreted. For the purpose of this and the CCAB guidance, tax compliance services, ie assisting in the completion and submission of tax returns, is included within the term. It was considered that, for the purposes of this supplementary guidance, the term 'tax practitioner' minimises the risk of someone assuming that MLR 2007 does not apply to their business because they provide tax compliance services.

1.3 It is intended that approval for this supplementary guidance will be sought from the Treasury in due course. As noted in the CCAB's guidance approval means that the Courts must have regard to the guidance in deciding whether businesses or individuals affected by it have committed an offence under the MLR 2007 or ss 330-331 POCA.

2. HOW TO USE THIS SUPPLEMENTARY GUIDANCE

2.1 This supplementary guidance is for professionals providing tax services. It focuses on the interaction between anti money laundering compliance and tax offences and those issues that the tax practitioner is most likely to encounter. It is not intended to be a comprehensive guide to tax offences. It is not stand alone guidance – it must be read in conjunction with the CCAB AML guidance. The broad interpretation of 'tax adviser' means that this guidance cannot cover every aspect of tax work but the principles set out in the CCAB guidance and in this guidance apply to all taxes and duties.

2.2 A tax practitioner must have a clear understanding of his obligations under the anti Money Laundering legislation. Detailed guidance is given in the CCAB guidance as follows:

Section1	About this guidance
Section 2	The offences
Section 3	Anti money laundering systems and controls
Section 4	The risk based approach to Customer Due Diligence

Section 5 Customer Due Diligence

Section 6 Internal reporting

Section 7 Role of MLRO and SAR reporting

Section 8 Consent

Section 9 Post SAR actions

2.3 Where a tax practitioner is uncertain of his obligations under the anti-money laundering legislation he should seek specialist help.

3. TAX PRACTITIONERS, MLR 2007 AND POCA

3.1 The obligations placed on a tax practitioner under MLR 2007 and POCA are covered in the CCAB guidance.

3.2 Paragraph 1.14 of that guidance sets out the role of the supervisory authorities and advises tax practitioners who are in business of the requirement to be supervised by a supervisory authority.

3.3 A tax practitioner should be aware of HMRC's responsibility under MLR 2007 to regulate trust and company service providers, which may impinge upon the work they undertake for their clients. However if the tax practitioner is supervised by another supervisory authority for other tax and accounting services, that supervisory authority can act as supervisor for the trust and company service work.

3.4 Whilst this supplementary guidance focuses on tax offences, a tax practitioner should be aware of the potential need to report to SOCA (or to his firm's MLRO where he is not a sole practitioner) knowledge or suspicion of proceeds derived from any crime which he encounters in the course of his work as a tax practitioner.

3.5 In particular, a tax practitioner should also take proper care, under Section 328 POCA, to ensure he does not become concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person when assisting clients.

4. OVERVIEW OF THE TAX SECTOR

4.1 Tax work covers a broad range of activities from routine compliance work to complex tax planning.

4.2 Tax compliance includes the processing and submission of returns to the tax authorities.

4.3 Tax planning looks at advising on and structuring tax affairs in a tax efficient manner. This can sometimes involve the use of trusts, offshore entities and tax favourable regimes.

5. WHAT ARE THE MONEY LAUNDERING RISKS IN THE TAX SECTOR?

5.1 The money laundering risk areas that a tax practitioner may encounter in practice include the following:

(a) Where a client's actions in respect of his tax affairs create proceeds of crime, for example:

- a client's refusal to correct errors (both for the past and on an ongoing basis); or
- a client's deliberate under declaration of profits/income/gain or deliberate overstatement of expenses/losses.

(b) Where during the course of dealing with a client's tax affairs it becomes apparent that the client is holding proceeds of crime derived from criminal activity which may or may not be tax related.

5.2 The tax practitioner needs to be alert to the risk of assisting or facilitating the laundering of proceeds of crime whether through the evasion of taxes or otherwise. For example, where a client puts significant importance on maintaining the anonymity of beneficiaries or owners or in keeping confidential the structure of a complex plan ostensibly intended to minimise legally a tax liability, then the possibility that the funds involved are derived from the proceeds of crime should be kept in mind.

6. TAX OFFENCES

6.1 Introduction

6.1.1 There are a number of tax offences which can give rise to the proceeds of crime and SARs. These are discussed further below. When a tax practitioner has identified proceeds of crime, he (or his firm's MLRO where he is not a sole practitioner) should consider carefully whether the privilege reporting exemption applies before submitting a SAR. See section 12 below and section 7 of the CCAB guidance.

6.1.2 A tax practitioner is not required to be an expert in criminal law but he would be expected to be aware of the boundaries between deliberate understatement or other tax evasion and simple cases of error or genuine differences in the interpretation of tax law and be able to identify conduct in relation to direct and indirect tax which is punishable by the criminal law. There will be no question of criminality where the client has adopted in good faith, honestly and without mis-statement a technical position with which HMRC disagrees.

6.1.3 The main areas where offences may arise in direct tax are:

- tax evasion, including making false returns (including supporting documents), accounts or financial statements or deliberate failure to submit returns;

- deliberate refusal to correct known errors; and less commonly

- failure to obtain consent under s765 ICTA

6.2 Taxes Management Act 1970 ('TMA') tax 'offences'

6.2.1 The TMA provides a civil penalty regime covering both fraudulent and negligent conduct. It is only fraudulent or dishonest conduct which is reportable under POCA. The money laundering legislation is only concerned with the proceeds of criminal conduct. Therefore, it is only that conduct which the law treats as criminal offences which can lead to money laundering issues.

6.2.2 Where conduct may attract a civil penalty under the TMA but may also, on the particular facts, amount to criminal conduct then the conduct is criminal. By way of example only, knowingly assisting in the preparation of an incorrect return etc could give rise to a civil penalty under s99 TMA, but the conduct concerned would typically amount to a criminal offence (such as false accounting or cheating HMRC) as well. Any case where fraudulent conduct is suspected should be reported unless the privilege reporting exemption applies. See section 12 below and section 7 of CCAB guidance

6.3 Prosecution policy – the need to report

6.3.1 In the tax environment, there are many circumstances in which the tax authorities have a long and established practice of dealing with matters on a civil basis. A policy view is taken that this is a more cost effective approach and that the interest and penalties that can be charged on a civil basis constitute sufficient restitution and deterrent.

6.3.2 This is the case across direct tax and VAT where criminal prosecutions are very much the exception.

6.3.3 However, the practices or anticipated practices of HMRC are irrelevant to the reporting obligations under POCA. If a tax practitioner suspects that a criminal offence may have been committed, and that there may be or may have been proceeds, whether actual or prospective proceeds, then unless the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance), he is obliged to report to SOCA (or to his firm's MLRO where he is not a sole practitioner) irrespective of the fact that a criminal prosecution may in the member's view be highly unlikely in practice.

7. RELUCTANCE TO CORRECT PAST ERRORS

7.1 Innocent or negligent error – direct tax

7.1.1 It is not uncommon for tax practitioners to become aware of errors in or omissions in current or in past years from clients' tax returns or any calculations or statements appertaining to any liability or an underpayment of tax, for example because a payment date has been missed. If the tax practitioner has no cause to doubt that these came about as a result of innocent mistake or negligence then he will not have

formed a suspicion. However, in some cases, the tax practitioner may form a suspicion that the original irregularity was criminal in nature and should make a report unless the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance).

7.2 Innocent or negligent error – indirect tax

7.2.1 In the case of indirect tax, see section 11 below on handling the original error.

7.3 Unwillingness or refusal to disclose to the tax authorities

7.3.1 Where a client indicates that he is unwilling or refuses to disclose the matter to HMRC in order to avoid paying the tax due, the client appears to have formed criminal intent and hence the reporting obligation arises unless the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance). A tax practitioner will need to be careful in applying the privilege exemption when the client has expressed clear intention to evade taxes and needs to consider whether the crime/fraud exception applies. The tax practitioner should also consider whether he can continue to act and consult his professional body's guidance on such matters. This paragraph applies equally to potential clients for whom the tax practitioner has declined to act.

7.4 Adjusting subsequent returns

7.4.1 Where the law permits the correction of small errors by subsequent tax adjustments, and the original error was not attributable to any criminal conduct, then the adjustment itself will not give rise to the need to report, since no crime will have been committed. However, it should be noted that the legislation does apply to any conduct which constitutes the laundering of the proceeds of any criminal offence however small the amount involved.

8. Intention to underpay tax

8.1.1 A client may suggest that he will in the future underpay tax which would be tax evasion and a money laundering offence when it occurs.

8.1.2 A tax practitioner can and should apply his professional body's normal ethical guidance to persuade the client to comply with the law. Should the client's intention in this regard still remain in doubt, the tax practitioner should consider carefully whether he can commence or continue to act.

8.1.3 A SAR may well be required in such cases once there are proceeds of crime, depending upon the facts and circumstances and whether the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance). As

in 7.3.1 above a tax practitioner will need to be careful in applying the privilege exemption when the client has expressed clear intention to evade taxes.

9. TAX EVASION

9.1 General

9.1.1 Where a tax practitioner knows or suspects, or has reasonable grounds for knowing or suspecting, that a client or other party is engaged in tax evasion in the UK or overseas, this will clearly amount to one or more of a number of possible criminal offences, such as theft, obtaining pecuniary advantage by fraud, false accounting, cheating HMRC, the offence of fraudulent evasion of income tax under s 144 Finance Act 2000 or a range of specific indirect tax offences (see section 11 below). Unless the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance) a tax practitioner should report the matter to SOCA (or to his firm's MLRO where he is not a sole practitioner) immediately.

9.1.2 If the suspected evasion is of taxes outside the UK, in circumstances which would be a criminal offence if the conduct occurred in the UK, this should also be reported immediately unless it is known to be lawful under the criminal law applying in that country and that conduct, if carried out in the UK, would attract a maximum sentence in the UK of less than twelve months, except as prescribed by order.

As in other cases, this is unless the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance). There are other very limited exceptions regarding the reporting of overseas criminal conduct; see 2.4 and 2.5 of CCAB guidance.

9.1.3 A tax practitioner can and should apply the principles set out in his professional body's normal ethical guidance to persuade the client to act properly. A tax practitioner will need to consider carefully whether he can continue to act if the client refuses to make a full disclosure to HMRC.

9.2 Civil Investigation of Fraud (CIF) Procedures

9.2.1 In circumstances where a potential or current client asks a member to act in the making of a CIF disclosure to HMRC a suspicion of tax evasion will often, but not always, arise.

9.2.2 A tax practitioner should be aware that notification to HMRC is not a substitute for a report to SOCA. Where appropriate a report must also be made to SOCA as soon as the tax practitioner has knowledge or suspicion or reasonable grounds for knowledge or suspicion that tax has intentionally not been paid when due. The tax practitioner (or his firm's MLRO where he is not a sole practitioner) should consider carefully whether the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance) before submitting a SAR.

9.2.3 There may be occasions where the tax practitioner does not hold sufficient information to make a detailed disclosure of his client's tax evasion to HMRC at the same time as he (or his firm's MLRO where he is not a sole practitioner) submits a SAR to SOCA. However the tax practitioner will be keen to protect his client's position by notifying HMRC of the tax evasion before SOCA does so that the case may be regarded as a voluntary disclosure. The practicalities of this situation are covered in a Question and Answer note agreed with HMRC attached as Appendix 1.

10. FAILURE TO OBTAIN TREASURY CONSENT – S765 ICTA

10.1.1 This section is relevant to members who deal with transactions by companies with international aspects - those transactions that may require consent relate to the creation or issuing or transferring of shares or debentures.

10.1.2 Under s766 ICTA 1988 companies, their officers and advisers may be guilty of criminal offences if a transaction requiring special consent under s765(1) takes place without such consent. The person needs to know that the actions were unlawful under s765(1) in order to be guilty of a criminal offence (s766(1)). In practice this is of limited assistance in cases of innocent oversight because s766(2) puts the burden of proof as to the person's state of knowledge on to the individual in the case of directors.

10.1.3 The next question is whether there are proceeds. If a client has undertaken a tax planning transaction for which Treasury consent was needed and would have been unlikely to have been granted, the tax not paid as a result of the planning would constitute proceeds from the crime. In other circumstances there may be no proceeds, but this will need to be considered on the facts. Where there are proceeds, the tax practitioner should finally consider whether the alleged offender knew or suspected that the proceeds arose from criminal conduct. The tax practitioner would usually advise the client that a criminal offence may have occurred, so that the client would then have the requisite knowledge.

10.1.4 When a tax practitioner realises that there has or may have been a breach of s765 ICTA, he (or his firm's MLRO where he is not a sole practitioner) will need to consider making a SAR based on the factors discussed above. He should also bear in mind whether the privilege reporting exemption applies (see section 12 below and section 7 of the CCAB guidance). The tax practitioner should also consider what other action is appropriate, for example, advising the client to notify HMRC.

11. INDIRECT TAX

11.1 Overview

11.1.1 Where indirect tax is concerned, innocent or negligent errors may be criminal offences as strict liability is imposed by such as167 (3) CEMA which provides:

'If any person –

(a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Commissioners or any officer, any declaration, notice, certificate or other document whatsoever; or

(b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

being a document or statement produced or made for any purpose of any assigned matter, which is untrue in any material particular, then, without prejudice to subsection (4) below, he shall be liable on summary conviction to a penalty of level 4 on the standard scale'.

'Assigned matter' is defined in section 1 of CEMA as meaning 'any matter in relation to which the Commissioners are for the time being required in pursuance of any enactment to perform any duties'.

11.1.2 This broadly makes most errors, however innocent, criminal offences in VAT and all other indirect taxes. The fact that VAT matters are in practice handled under the civil penalties regime in most circumstances is irrelevant (see section 6.3 above) to the fact that there is an offence under s167(3) CEMA. However an innocent or negligent error will not fall to be classed as money laundering where the person making the error was not aware/did not suspect that they had committed a criminal offence.

11.1.3 Property is only criminal property for the purposes of POCA if it not only constitutes or represents benefit from criminal conduct, but the 'alleged offender knows or suspects that it constitutes or represents such a benefit' (s340(3)POCA).
A client who has knowledge of s167 CEMA will 'know or suspect' that they are in receipt of funds once they become aware of the error or mistake so the normal SAR regime applies. There is no presumption that the client is aware of the strict liability offence in s167(3) and a practitioner does not have to investigate the client's knowledge, but should make a judgement based on his knowledge of the client. If a practitioner believes a report is necessary but that the client made an error or innocent mistake they should consider making reference to this opinion in any SAR they make.

11.1.4 Where the practitioner suspects that the irregularity may have amounted to tax evasion or tax fraud, the need to make a SAR should be considered on the usual basis and in the same way as for direct tax. There are large numbers of specific criminal offences in the indirect taxes legislation and these are outlined in paragraphs 11.2 and 11.3 below. However in essence they all amount to variations on tax evasion and involve some intent to avoid paying the correct amount of tax.

11.1.5 Unwillingness or refusal to correct indirect tax errors should be treated as set out in 7.3 above.

11.2 Other offences applicable across indirect tax

11.2.1 There is a range of crimes in the Customs and Excise legislation, covering such areas as:

- the bribing of a Commissioner, officer or appointed or authorised person;
- the obstructing of an officer performing any duty, or similar conduct;
- production, signing etc of untrue documents and statements;
- the counterfeiting or falsifying of documents;
- obstructing, or failing to assist in, the inspection of a computer;
- the breaching of conditions applied in respect of relief from VAT conferred on specified classes of persons, such as members of visiting forces; and
- the failure to furnish a supplementary declaration under the Intrastat procedure.

In addition there is the common law offence of Cheating the Public Revenue.

11.2.2 There are a number of other offences relating to particular indirect taxes and excise duties, such as stamp duty and stamp duty land tax, alcohol, tobacco products and mineral oil duties, betting and gaming duty, aggregates levy etc. The legislation in respect of these duties, taxes and levies provides the offences specific to them.

11.2.3 As VAT is the indirect tax most commonly advised upon by tax practitioners further details about specific offences applicable to VAT is given in 11.3 below.

11.3 Specific offences applicable in VAT

11.3.1 ***Fraudulent evasion of VAT (s 72(1) VATA)***
A person who is knowingly concerned in, or is taking steps with a view to, the fraudulent evasion of VAT by him or any other person is liable under this offence. A person's conduct may amount to fraudulent evasion under this provision if he understates payments due to the Commissioners for a prescribed accounting period. In certain circumstances the over claiming of VAT (eg a refund in respect of bad debts) may also result in fraudulent evasion. If proceeds arose from such conduct, this would also constitute money laundering.

11.3.2 ***Production, furnishing or sending of false documents and statements (s72 (3) VATA)***
This involves the production, furnishing or sending of a false document with the intent to deceive. In addition, it includes knowingly or recklessly making a false statement. If proceeds arose from such conduct, this would also constitute money laundering.

11.3.3 ***Conduct which must have involved an offence (s72(8) VATA)***
Where a person's conduct during any specified period must have involved the commission by him of one or more of the offences listed above, then, regardless of whether the specifics of the offence(s) are known, he is guilty of an offence. The purpose of this provision is to cover cases where it can be proved that an offence has

been committed during a period spanning a number of prescribed accounting periods, but it is not clear to what extent it was committed in any particular prescribed accounting period within the total period concerned. It is only one offence, even if it covers more than one period. If proceeds arose from such conduct, this would also constitute money laundering.

11.3.4 ***The possession and dealing in goods on which VAT has been evaded (s72(10) VATA)***
A person commits an offence, and is liable to penalties, if, having reason to believe that tax has been or will be evaded on them, he either acquires possession of any goods; deals with any goods; or accepts the supply of any services. If proceeds arose from such conduct, this would also constitute money laundering.

11.3.5 ***Supplying of goods or service without providing security (s72(11) VATA)***
A person who is required, under VAT Act 1994 Schedule 11 para 4(2), to give security for the further payment of VAT as a prerequisite for making taxable supplies and who makes those supplies without the provision of security, has committed an offence. If proceeds arose from such conduct, this would also constitute money laundering.

12. THE PRIVILEGE REPORTING EXEMPTION

12.1.1 A tax practitioner should be aware that the privilege reporting exemption does not apply to 'information or other matter which is communicated or given with the intention of furthering a criminal purpose'.

12.1.2 A tax practitioner should read this section in conjunction with paragraphs 7.26 – 7.46 of the CCAB guidance which covers the privilege reporting exemption and the crime/fraud exception in detail.

12.1.3 In summary a tax practitioner who is a professional legal adviser or a 'relevant professional adviser' who suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering is prohibited from making a money laundering report where the knowledge or suspicion comes to him in 'privileged circumstances'.

12.1.4 Relevant professional adviser is defined in s330(14) POCA as

'an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for

(a) testing of competence of those seeking admission to membership of such a body as a condition for such admission; and

(b) imposing and maintaining professional and ethical standards for its members as well as imposing sanctions for non-compliance with those standards.'

12.1.5 The legislation does not list the professional bodies which meet the criteria but the CCAB bodies, the Chartered Institute of Taxation and the Association of Taxation Technicians meet the criteria and hence their members may be considered to be 'relevant professional advisers'

12.1.6 Privileged circumstances is defined at s330(10) POCA as

'Information or other matter comes to a professional legal adviser or other relevant professional adviser in privileged circumstances if it is communicated or given to him:

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client;

(b) by (or by a representative of) a person seeking legal advice from the adviser; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.'

12.1.7 The CCAB gives guidance on when the privilege reporting exemption might apply. The CIOT and ATT took Counsel's opinion on the privilege reporting exemption and how it might affect their members. This advice included examples of when the privilege reporting exemption might apply and is unlikely to apply. Those examples together with the CCAB's are attached as Appendices 2 and 3.

13. CUSTOMER DUE DILIGENCE (CDD)

13.1.1 Customer due diligence and beneficial ownership is considered in detail in Section 5 of the CCAB guidance and a tax practitioner should refer to that guidance in the first instance. A tax practitioner may be called upon to advise another professional firm. Unless there is a clear agreement between the firms that the advising firm is intended to form a client relationship with the other firm's client, or unless the advising firm comes into contact with and/or enters into a dialogue with the other firm's client, the other firm is the client of the advising firm and accordingly must be made subject to CDD.

13.1.2 In cases where the advising firm's involvement is also with the other firm's client, then the other firm's client must also be made subject to CDD. It may be possible for the advising firm to rely on the other firm's CDD of the client but there are strict criteria which must be met; see paragraphs 5.33 – 5.41 of the CCAB guidance.

Appendix 1i.

Money Laundering and disclosures to HMRC:
A Questions and Answers guidance note

This note is an updated version of a note originally agreed between HMRC, the Association of Taxation Technicians and the Chartered Institute of Taxation

Object of note

To provide guidance about the practical effect of the money laundering legislation on disclosures of tax evasion by tax practitioners.

Questions and answers

1. **Will the money laundering requirements make any difference to HMRC's willingness to use Code of Practice 9 or in local offices their willingness to come to a settlement without prosecution?**

   HMRC have confirmed that the money laundering requirements will not affect enquiries under Code of Practice 9 or local office procedures.

2. **Which government departments should I as a tax practitioner inform when I am approached by an individual who tells me that he wants to make a full disclosure of undeclared taxable income and/or gains?**

   Traditionally, you as a tax practitioner, having taken instructions and collected all necessary information from your client, will have informed the relevant office within HMRC, depending on the circumstances.

   But if you have reasonable grounds for knowing or suspecting that your client has intentionally evaded tax then the money laundering laws will also apply. You, or your Money Laundering Reporting Officer (MLRO) if you have one, will be obliged also to make a report to SOCA in the specified form unless the privilege reporting exemption applies. Where you have a MLRO, you must notify him or her and they will in turn consider whether a report should be made to SOCA. See Section 7 of the CCAB anti money laundering guidance regarding the need to appoint a MLRO where you do not have one.

3. **Should I make a report to SOCA when I receive a CoP 9 enquiry letter from HMRC?**

   It is your knowledge or suspicion that counts rather than HMRC's suspicion. You should make up your own mind whether such a letter gives you grounds for making a report applying the criteria in Section 330 POCA 2002, ie do you know or suspect, or have reasonable grounds for knowing or suspecting, that the client is engaged in money laundering as defined at Chapter 2 of the CCAB anti money laundering guidance.

4. **When should I make a report to SOCA?**

   The money laundering legislation says that SOCA must be told 'as soon as is practicable after the information or other matter' that gave rise to the knowledge or suspicion was received.

5. **It is possible that the potential client may not instruct me at all. Will HMRC monitor me as the tax practitioner named in the SOCA report to see if a disclosure emerges, and if so for how long?**

   HMRC recognize that the potential client may go elsewhere (or nowhere) for advice. They have said they have no intention of monitoring reputable practitioners after SOCA reports have been submitted.

6. **Once I have told SOCA, what happens next assuming no other agency is involved?**

   SOCA will pass reports to a special intelligence unit within HMRC in the first instance. The unit will consider whether it is suitable for investigation towards criminal prosecution. If it is not, the case will either be considered for enquiry under a Civil Code of Practice or be referred to HMRC's Centre for Research and Intelligence in Llanishen, Cardiff. Where it is considered appropriate to pass intelligence on to relevant staff in taxpayer-facing offices neither the fact that the intelligence has come from SOCA, nor the identity of the original source of the intelligence, is disclosed.

7. **Does the need to report to SOCA before I am ready to tell HMRC affect the timing of my providing information to HMRC about my client's undeclared income and or gains? Although I have made a report to SOCA when approached by a potential client with a tax disclosure to make, I may not immediately be able to approach HMRC because I will have to be formally instructed and the approach to HMRC approved by the client. Collecting and collating the information will inevitably take time especially where several individuals or entities are involved. How long will HMRC regard as a reasonable period before the approach is made while leaving the option of using CoP 9 open?**

   HMRC have confirmed that a delay would not jeopardise the CoP 9 approach where it would otherwise be available provided that the taxpayer is taking active steps to regularise their affairs. Doing nothing involves the risk that a CoP 9 enquiry may not be available and that prosecution may follow; or at least that penalty abatements are at risk.

   One option, having obtained the client's permission, is to put down a marker by writing to HMRC, saying you have been instructed by a named client to act for them in coming to a settlement about undeclared income or gains. You would also provide a date by which you expect to be able to let HMRC have these details.

8. **To which HMRC office should I send the marker letter?**

   Under these circumstances all letters should be sent to the Centre for Research and Intelligence, Ty Glas Road, Llanishen, Cardiff, CF4 5YF.

9. **How long a time period for providing the information would HMRC consider reasonable in my 'marker' notification?**

   It will depend on the circumstances of each case but HMRC have indicated that they will take a reasonable approach.

   Your estimated timetable will obviously depend on your assessment of the likely complexity of your client's affairs.

10. What happens if I miss my self-imposed deadline set out in my marker letter?

HMRC appreciate that the information may be difficult to obtain. You should obviously inform HMRC if you wish to extend your self-imposed deadline. You will need to update HMRC from time to time to reassure them that the client is taking active steps to help you move matters forward.

11. What is the position where HMRC already had concerns about a taxpayer and the money laundering notification is the trigger for the raid or the launch of an investigation? HMRC may not be prepared to wait, possibly due to concerns that documents might be destroyed. Would a CoP 9 enquiry still be a possibility for my client if the normal conditions are met (for example if the raid does not indicate that my client is unsuitable for a CoP 9 enquiry)?

HMRC have informed us that receipt of a report from SOCA or your 'marker' notification will not necessarily make them deviate from their proposed course of action. HMRC will look at the SOCA report in context of all other information available to them regarding a case when prioritizing the cases for investigation.

12. Will HMRC wait for a reasonable period of time before launching an enquiry on receipt of a report from SOCA?

In the majority of cases, given the time it would take for SOCA to pass information to HMRC and for HMRC to consider what action to take, the time lag between the report to SOCA and the making of a voluntary disclosure to HMRC may not be an issue in practice. You should monitor the receipt of acknowledgements to track progress. If you are concerned you could consider the use of a marker letter as discussed above.

Appendix 1ii

Examples of when the privilege reporting exemption might apply

For the privilege reporting exemption to apply the information must come to a legal professional adviser or a relevant professional adviser in privileged circumstances. Whether the privilege reporting exemption applies will depend on the specific facts of the case. These examples are intended as general guidance only and are not a substitute for seeking legal advice in cases of doubt.

Examples included in the CCAB guidance

- advice on taxation matters, where the tax adviser is giving advice on the interpretation or application of any element of tax law and in the process is assisting a client to understand his tax position;
- advice on the legal aspects of a take-over bid, for example on points under the Companies Act legislation;
- advice on duties of directors under the Companies Act;
- advice to directors on legal issues relating to the Insolvency Act 1986, eg, on the legal aspects of wrongful trading; and
- advice on employment law.

Further examples based on advice given to the CIOT and ATT

- advice on how to order or structure a client's tax affairs in a tax efficient manner;
- advice on disclosure obligations to the tax authorities, including advice given in the context of compliance work on reporting requirements and situations where previously there may have been failure to disclose.
- Suspicions derived from pre-existing documents may be covered by the reporting exemption where those documents come to the tax practitioner in privileged circumstances. For example, if a client asked for tax advice on settling past tax under declarations and provided copies of bank statements or invoices or past tax returns in order that the tax adviser could advise, that information could be regarded as having come to the adviser in privileged circumstances.

Examples where relevant professional advisers might fall within privileged circumstances as regards litigation privilege include:

- assisting a client by taking witness statements from him or from third parties in respect of litigation;
- representing a client, as permitted, at a tax tribunal; and
- when instructed as an expert witness by a solicitor on behalf of a client in respect of litigation.

Appendix 1iii

Examples of when the privilege reporting exemption is unlikely to apply

Examples included in the CCAB guidance

It should be noted that conducting audit work does not of itself give rise to privileged circumstances for this purpose, as the relevant professional adviser is neither providing legal advice, nor is he instructed in respect of litigation. Nor do routine book-keeping, accounts preparation or tax compliance assignments, though privileged circumstances may arise if the client requests or the adviser gives legal advice on an informal basis during the course of such an assignment

Further examples based on advice given to the CIOT and ATT

- Information uncovered during tax compliance work, for example spotting that personal expenditure had been claimed as a business expense in a previous year.

- Information uncovered during a tax due diligence assignment or other agreed upon procedures exercise which is for the purposes of producing an evaluation report or an assurance based opinion (other than an audit) to the client or a third party.

- Information provided by or communications received direct from any third party particularly if no advice has been sought in respect of the underlying detailed content by the client. For example, receipt of information or communications when acting as the client's tax agent.

- Information received about the client's or a third party's affairs which is outside the scope of the tax services in respect of which the adviser has been engaged.

GUIDANCE ON SENTENCING

icaew.com/publichearings

Version: 10 August 2011

Contents

1 Who is this guidance for?

This guidance is for members of:

Disciplinary Committees	• The Investigation Committee (IC) • The Disciplinary Committee (DC) works in tribunals, this guidance applies when a complaint is found proved either in whole or in part • The Appeal Committee (AC) works in panels; this guidance applies when a panel makes its own decision on a sentencing order.
Regulatory Committees	• The Audit Registration Committee (ARC) • The Investment Business Committee (IBC) and • The Insolvency Licensing Committee (ILC).

It explains the key decisions in the sentencing process and sets out, step-by-step, the approach these ICAEW committees must take whenever they make a sentencing order against a member, firm, affiliate or provisional member.

2 Purpose

This guidance provides a structured approach for committee members who make decisions on sentencing. ICAEW wants committee members to make their decisions and orders through a fair and reasoned process. It also wants the approach to sentencing and the sentences imposed to be consistent and proportionate. Members who are the subject of complaints and those who represent them can see the range of penalties and orders likely to be imposed and know that the same approach will be used in each case.

The penalties available to the IC, DC and AC are set out in Disciplinary Bye-laws 16, 22, and *2*3 but the IC and regulatory committees do not have a full range of powers. In particular, the IC cannot exclude members from membership and the regulatory committees can only impose financial penalties.

Although this guidance is used by all committees that can impose penalties, it has been written as if it is directed to tribunals of the DC, members and defendants.

3 Sentencing policy

When a tribunal considers:

- whether to impose a penalty; and
- what penalty to impose

it should consider a number of factors, in particular the principles which underpin sentencing policy.

ICAEW's sentencing policy is closely linked to its general objectives to:

- uphold the good name of the profession, ICAEW and the title 'chartered accountant'; and
- maintain, in the public interest, the high standards required of members of the profession.

The key principles which apply to sentencing relate to:

- maintaining the reputation of the profession;
- correcting and deterring misconduct;
- upholding the proper standards of conduct in the profession; and
- protecting the public.

3.1 Maintaining the reputation of the profession

In the case of Bolton-v the Law Society (1994), Lord Bingham, emphasised that maintenance of the reputation of the profession was the primary justification for sanction and said:

> 'To maintain this reputation and sustain public confidence in the integrity of the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission……Otherwise, the whole profession and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires…'

He concluded:

> 'The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.'

3.2 Correction, deterrence and upholding the proper standards of conduct in the profession

ICAEW demonstrates its commitment to high standards and to maintaining those standards through the disciplinary process and by publishing details of the orders made. Although punishment is not, in itself, a purpose, a punishment **can** act as a deterrent. Not only must the individual be deterred by the imposition of a disciplinary order, but other people must see that a particular wrong-doing will not be tolerated. In Chohan v the Law Society (2004), Lord Justice Morris stated that, in some circumstances it would be appropriate to use a sanction to send out a message. In this context, the sentencing order is more about deterrence than punishment.

3.3 Protecting the public

When a tribunal acts to protect the public, it should consider both members' clients and the wider public who may be at risk. In cases where the competence of the member is also an issue, when the tribunal considers sentence, it needs to consider whether the public can be properly protected.

4 The process of determining a sentencing order

When a tribunal decides that a complaint has been proved or when a defendant admits a complaint, the tribunal must then decide what to include in its sentencing order. This list summarises the sequence of events.

The IC representative:

- outlines the relevant facts (when a defendant admits a complaint).
- tells the tribunal about any previous disciplinary record.
- makes an application for costs to be paid by the defendant.

The defendant or their representative explains any mitigating factors, relating to the facts of the complaint and to personal circumstances.

The tribunal

- considers any request that the defendant's name is not included in publicity.
- leaves the room and considers its decision in private.

4.1 Key decisions in the sentencing process

When the tribunal decides what to include in its sentencing order, it is entitled to form its view based on the particular facts of each case. This guidance provides a step-by-step approach to help the tribunal reach a decision which is consistent, proportionate and fair.

If a tribunal decides a penalty (for example, a fine, exclusion or reprimand) is necessary, it identifies the relevant category of complaint (from those listed on pages 11-29) and the behaviour that most closely corresponds to the complaint. Although the list of complaints and behaviour is not exhaustive, we do add new details whenever they are identified.

For each type of complaint, there is a suggested starting point. The starting point is not 'the going rate' for that particular complaint. It simply indicates where a tribunal might start when it looks at all the factors relevant to deciding the penalty. Once the tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding, if appropriate, to reduce or increase the penalty. For each category of complaint, there are examples of mitigating and aggravating factors.

The tribunal works through the steps outlined in the tables and may decide on a more or less severe penalty than the one given as a starting point.

This structured approach is designed to help tribunals arrive at a penalty which is demonstrably proportionate to the facts of the case. The penalty should fit the underlying facts of the complaint and it should be possible to explain the rationale for choosing it. The written record of decision (which we provide to the member and make public) sets out the tribunal's reasons.

The tribunal considers the following key points in its decision-making process.

The nature and seriousness of the conduct	Where the defendant's conduct sits on the scale of seriousness
The range of penalties available	These are set out in DBL22 (page 34) and in table of disciplinary orders on page 36.
ICAEW's obligation to protect the public	
The need to decide on a penalty that is demonstrably proportionate and which takes into account both the interests of the public and those of the member	
Any facts which aggravate or mitigate the seriousness of the conduct	For example, whether it was deliberate and/or repeated over a period of time; whether a client or a group of clients was adversely affected by the conduct; whether the conduct was inadvertent; and whether it led to adverse consequences.
Whether another regulatory body has taken disciplinary proceedings	If it has, a tribunal must fully take into account any penalties that may have been imposed and any other consequences that may have resulted. This will not prevent a tribunal from making a further order but it must be satisfied that, in all the circumstances, it is appropriate and just for it to do so.
Whether there is a previous disciplinary record and whether any past disciplinary record is relevant	The previous misconduct may have happened so long ago or may have been unrelated to the defendant's professional work and should either be discounted or given little weight by the tribunal

Any mitigating factors which are personal to the defendant	Did they report the conduct or events in question to ICAEW? Any corrective action taken by the defendant; prompt admission; expression of regret and the likely impact of any proposed penalty on a member/firm. A tribunal may consider any information about a member's personal circumstances which it believes may have a bearing on the level of penalty to be imposed. All defendants are advised to bring details of their financial means to the hearing. Mitigating factors may include events which have affected a member's ability to work, such as ill health or family tragedy.

These key tribunal questions are summarised on page 10 to help tribunals arrive at their *sentencing order.*

5 The sentencing order

The penalty (for example, a fine, reprimand or exclusion) is only one part of the sentencing order. Once the tribunal has decided on the penalty, it considers a number of ancillary orders which it may include in its sentencing order. Ancillary orders are explained in more detail in paragraphs 5.1-5.7 below.

5.1 A requirement to take advice

In appropriate cases (for example poor work, or failure to deal with a client's affairs in good time), a tribunal may consider making an order that the defendant member seek advice from a specified source, at their own cost, and implement the advice obtained.

5.2 A waiver or return of fees

A tribunal may also consider making an order that fees charged by a defendant be waived, or that fees already paid be returned.

5.3 The repayment of commission

A tribunal may also consider making an order that the member or firm pay to the complainant or client, a sum related to any commission the defendant has received or will receive. Such an order is likely to be appropriate in cases where the member or firm has been paid commission by agencies for work referred to them or for investment business advice or services that have been provided.

5.4 The complainant's expenses

If a complainant has given notice that they want to recover expenses, the tribunal may consider the request if it finds the complaint proven. However, a complainant may only recover those expenses incurred in either making the complaint in the first place, or in making representations to be considered by the IC. The maximum amount a tribunal can order a defendant to pay is £1,000. It is unlikely that a complainant will actually have incurred expenses in order to make a complaint.

5.5 Publicity

Members may ask that their name be not included in the published record of decision. Page 33 gives detailed guidance on the circumstances in which a tribunal might be prepared to make such an order.

5.6 Costs

Tribunals have the power to order that the costs incurred in investigating and considering a complaint be paid by a member or firm. The requirement to pay such costs is based on the principle that the majority of ICAEW members should not subsidise the minority who, through their own failings, find themselves within the disciplinary process. A summary of the costs incurred is sent to a member before the hearing and the covering letter explains that, if the complaint is found proven, an application will be made to the tribunal for an order for the costs to be paid. Orders for costs to be paid by a member or firm must reflect the costs reasonably incurred and must never be imposed as a penalty. The tribunal will only consider the costs element after it has reached its decision on the appropriate penalty for the complaint.

Members should always come to a hearing with some documentary proof of their financial circumstances. If members do not provide proof of financial means, a tribunal will assume that they are able to meet any financial penalty and/or costs that it orders. A tribunal may, in any case (including where the order is for exclusion), specify a time scale for paying fines and costs, but this will normally be limited to a maximum of one year.

5.7 Costs against ICAEW

Tribunals also have power to require ICAEW to contribute a specified sum towards a defendant's costs if there is a finding of 'not proved' or 'proved in part only'. This power must be exercised in accordance with the DC regulations. Unlike litigation (where an award of costs normally follows the event), a finding of 'not proved in whole or part' will not automatically trigger an award of costs.

When it decides whether to make an award of costs, a tribunal will consider all the relevant facts including the conduct of ICAEW and the defendant throughout the proceedings including the investigation. The case law relating to costs against a regulator is consistent with this approach. The Court of Appeal has agreed that normal costs rules do not apply and, unless there is dishonesty or lack of good faith, a costs order should not be made against a regulator unless there is good reason to do so.

This guidance is available at icaew.com/publichearings and we are happy to provide a hard copy to members, member firms and their representatives on request. We review the guidance each year, in the light of experience and developments. The chairmen of the IC, DC, and AC agree revisions.

This guidance first became effective on 1 March 2000. It was revised and re-issued on 1 October 2002, 16 February 2004, 1 January 2005, 2 May 2006 and 7 September 2007. It applies to all complaints considered after 20 September 2007 unless powers of penalty have been limited (see page 34).

6 Glossary

Affiliate	A person who is not a member but who has been granted affiliate status under clause 12A of the Supplemental Charter of 21 December 1948; or granted audit affiliate status in accordance with the Audit Regulations 2008; or insolvency affiliate status in accordance with the Insolvency Licensing Regulations 2004
Aggravating factors	Any matter which, in the opinion of the tribunal, justifies increasing the suggested level of penalty
Appeal Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Consent Order	The sentencing order made by the IC with a member's agreement where liability is admitted
Disciplinary action	An adverse finding, plus a penalty and other order
Disciplinary Bye-laws	ICAEW's Disciplinary Bye-laws
Disciplinary Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
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
Investigation Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Mitigating factors	Any matter which, in the opinion of the tribunal, justifies reducing the suggested level of penalty
Panel	Appointed under bye-law 27(1) to hear an appeal
Penalty	An order made in accordance with Disciplinary Bye-law 22
Provisional members	A person: • who is training under a training contract; or • who has trained under such contract and is eligible either to sit for ICAEW's professional examinations; or, having successfully sat those examinations, to apply for membership For the purposes of this definition only, an order under bye-law 22(7)(d) of the Disciplinary Bye-laws (concerning eligibility to sit examinations) shall be disregarded.
Regulatory committee	Either the Audit Registration Committee, Insolvency Licensing Committee, or Investment Business Committee

Regulatory penalty	A fine ordered by the Audit Registration Committee, Insolvency Licensing Committee or Investment Business Committee for breach of regulation by an authorised or licensed firm, or licensed insolvency practitioner
Regulated firm	A DPB licensed firm or a registered auditor
Sentencing order	The order made by the IC (by a consent order) or a DC tribunal comprising, as appropriate, any or all of the matters set out in Disciplinary Bye-laws 22, 23, 24A (expenses), 33 (costs), or 35 (publicity)
Starting point	An indication of where a tribunal will start when it considers its decision on penalty
Tribunal	Appointed under bye-law 19(1) to hear a formal complaint
Unpublicised caution	On order made by the IC in accordance with Disciplinary Bye-law 16A

7 Categories of complaint

7.1 Tribunal questions

The tribunal will use the following questions to help it make a decision on a sentencing order.

- Which category and type of behaviour corresponds to the complaint (see category index below)?
- Where does the behaviour fall on the scale of seriousness?
- What are the penalties available?
- Are there factors that aggravate or mitigate the seriousness of the behaviour?
- The tribunal will then form a preliminary view on the appropriate penalty and then consider any factors personal to the defendant that should alter the penalty.
- Are there any orders in addition to penalty to be dealt with (obtain advice, waiver or return of fees publicity, costs)?

7.2 Categories of complaint and types of behaviour

Pages 11-29 set out the starting points for determining an appropriate penalty if the case involves any of the following complaints or types of behaviour.

8 Acts of dishonesty/criminal convictions

There is separate guidance on page 12 for convictions if behaviour occurred outside a professional context or if another regulatory body has made an adverse finding.

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point	
a	Act(s) of dishonesty/breach of trust/money laundering	**a**	Exclusion (except where followed by absolute discharge) and a fine
b	An offence other than **a** followed by a prison sentence (suspended or not) or community penalty	**b**	Exclusion and a fine
c	An offence other than **a** or **b** committed in a professional capacity even though not followed by a prison sentence or community penalty	**c**	Exclusion and a fine
d	An offence other than **a**, **b** or **c** not committed in a professional capacity or followed by a prison sentence or community penalty	**d**	Reprimand. If conduct occurs outside professional work, see separate guidance on approach to sentencing.
e	Adverse findings by other regulatory bodies where the underlying conduct involves dishonesty	**e**	Exclusion

+ Aggravating factors

Very serious dishonesty; eg, systematic over long periods of time, for own gain

Fraud

Amount involved

Defendant in a position of trust; eg, as employee

Direct involvement in dishonesty, planned and calculated

- Mitigating factors

Offence not committed in a professional capacity

Admission of guilt; insight into wrong doing; cooperation with prosecution authorities; restitution to victim.

The starting point is not a tariff

8.1 Criminal convictions where the behaviour occurs outside professional work

Conduct — not in a professional context but in a member's private life — which results in a conviction, presents issues which require a particular approach to sentencing.

When dealing with such cases, the tribunal will be aware that the defendant member has been dealt with for the offence and the criminal court has imposed its sentence. The severity of the sentence imposed by the court will not, however, be the only factor relevant to seriousness. Conversely a lenient sentence will not necessarily lead the tribunal to view the matter less severely. On the contrary, it may well have been contemplated by the court that the member was bound to be dealt with by his or her professional body at a later date. The tribunal has to deal with the complaint because the member is in breach of the Disciplinary Bye-laws. The role of the tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a chartered accountant; the need to protect the public and the good reputation of the profession against the need to impose further penalty and its consequential impact on the ability of the member to practise his or her profession.

When considering its decision on whether to impose a penalty and, if so, what, the tribunal will take into account the following questions.

- Does the offence and conviction affect the member's professional work or ability to practise as a chartered accountant in the future?
- Are future clients likely to be at risk of harm?
- Is the member's judgement sound?
- Has the member's type of work previously played a part in the conduct which led to the conviction?
- Does the public need to be protected from this member?
- Does the offence and conviction of the member diminish the good standing and reputation of ICAEW and the profession?
- Does the offence and the conviction give rise to a real probability that, if the member remains a chartered accountant, public confidence in the profession's ability and integrity to regulate itself will be undermined? If not, will an alternative, lesser penalty be appropriate?

8.2 The nature of the offence; for what offence has the member been convicted?

- theft
- offence against the person
- criminal damage
- sexual
- road traffic
- miscellaneous:
  - affray
  - possession/supply of drugs
  - firearms (possession of)
  - perverting the course of justice.

8.3 The gravity of the offence

- How serious?
- Is it gross?
- Is it shocking?
- Does it cause offence?

8.4 The circumstances surrounding the offence

- Was it planned?
- Was it committed over an extended period of time, repeated?
- Was there a victim?
- Was the victim vulnerable?
  - a child
  - sick
- Has the victim suffered; are there any short-term or lasting consequences?
- What was the member's initial response to the offence at the time?
- What was the member's response to the prosecution for the offence?
- What sentence was imposed by the criminal court?
- Were there any particular aggravating factors before the court before sentencing?
- Is there a history of offending and a likelihood of further offences?
- In the light of all the circumstances, what is the proportional, appropriate penalty?

A financial penalty will rarely be appropriate, particularly if the court has imposed a fine. Similarly, if action has been taken under the Proceeds of Crime Act for recovery and confiscation, this should be taken into account when deciding whether to impose a fine as part of the sentencing order. The tribunal's discretion in relation to costs applies as in any other case.

9 Audit

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Acting as auditor when not registered	**a**	Exclusion plus a fine of £10,000(if it is sole practitioner or responsible individual (RI))
b	Audit work of a seriously defective nature	**b**	**Firm** Severe reprimand and a fine equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed. RI/second review partner Exclusion and a fine of £5,000-£10,000
c	Lesser forms of bad audit work	**c**	**Firm** Reprimand and a fine equal to half audit fee. RI/second review partner. Reprimand and a fine of £2,000-£5,000.
d	Failure to prevent firm taking audit appointment - when firm not registered	**d**	Severe reprimand and 1.5 x audit fee or £5,000
e	Audit reports signed by a non-RI	**e**	
i	Deliberate/knowing not authorised or reckless	i	Severe reprimand and fine of £5,000 or 1.5 x the audit fee
ii	Uncertain/signs without making proper enquiries	ii	Reprimand and fine of £2,500 or fine equal to half the audit fee
iii	Some technical irregularity	iii	Reprimand and fine of £1,500
f	Wrong, unqualified auditor's report:	**f**	
i	Serious/defective audit work	i	Severe reprimand and a fine equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed.
ii	Less serious defective audit work	ii	Reprimand and half the audit fee
g	Annual return incorrect/mis-statement	**g**	
	Individual		**Individual**
i	Deliberate	i	Exclusion
ii	Reckless/serious negligence	ii	Severe reprimand and a fine of £2,500.
iii	Inadvertent	iii	Reprimand and a fine of £1,000.
	Firm		**Firm**
i	Deliberate	i	Severe reprimand and a fine of £10,000.
ii	Reckless/serious negligence	ii	Severe reprimand and a fine of £5,000.
iii	Inadvertent	iii	Reprimand and a fine of £2,500.

h	Refusing/failing to cooperate with or accept a QAD visit	**h** Severe reprimand and a fine of £5,000 (£5,000 to be used as a multiplier for each partner in the firm)
i	Failure to comply with restrictions/conditions	**i**
	Individual	**Individual**
i	deliberate	i Exclusion and a fine of £10,000
ii	reckless/serious negligence	ii Severe reprimand and a fine of £5,000
iii	inadvertent	iii Reprimand and a fine of £2,500
	Firm	**Firm**
i	deliberate	i Severe reprimand and a fine of £10,000
ii	reckless/serious negligence	ii Severe reprimand and a fine of £5,000
iii	inadvertent	iii Reprimand and a fine of £2,500
j	Breach of eligibility requirements	**j** **Firm** Reprimand and a fine based on fees saved by failure to comply x by number of years.

Lack of audit independence, **see Ethical**

+ Aggravating factors	**- Mitigating factors**
Audit of plc	Inadvertent/breach of requirements which has no consequences
Multiple accounts audited over extensive period of time	Steps taken to put matters right
Intention to mislead	Subsequent audits found to comply with the requirements
Whether anyone lost money	
Failure to follow recommendations after a QAD inspection	

Refusal or failure to cooperate with the QAD and the Audit Registration Committee is likely to lead to regulatory action including withdrawal of audit registration.

The starting point is not a tariff

10 Breach of bye-laws and/or regulations

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Engaging in public practice without a practising certificate	**a**	Exclusion and a fine of £5,000
i	Deliberate or reckless	i	Exclusion and a fine of £5,000
ii	Inadvertent	ii	Severe reprimand and a fine of £2,000
b	Failure to hold PII	**b**	Exclusion and a fine of £5,000
i	Deliberate or reckless	i	Exclusion and a fine of £5,000
ii	Inadvertent	ii	Severe reprimand and a fine of £2,000
c	Failure to return or complete annual return	**c**	Severe reprimand and fine of £3,000
d	Failure to declare CPD	**d**	Reprimand and a fine of £1,500
e	Breach of the Money Laundering Regulations (not falling under category for dishonesty or criminal convictions; nb, the regulations are not made under the DBLs)	**e**	
i	Failure to report	i	Severe reprimand and a fine of £5,000
ii	Tipping off	ii	Severe reprimand and a fine of £5,000
iii	Failure to follow procedures, eg, maintain records	iii	Severe reprimand and a fine of £5,000
f	Practice Assurance	**f**	
i	Failure to cooperate with arranging or following a PA visit	i	Severe reprimand and a fine of £5,000 Consider withdrawal of practising certificate
ii	Failure to complete annual return	ii	Reprimand and a fine of £2,500
iii	Errors in annual return	iii	Reprimand and a fine of £1,000

+ Aggravating factors	**- Mitigating factors**
Extensive practice (repeated and on numerous occasions)	Minimal work carried out, no fees charged/very short period of time
Over significant period of time	Relied on another to ensure in place
Continued offence after became aware	Steps taken after became aware, retroactive cover obtained
Wilful failure	

The starting point is not a tariff

11 Clients' money offences

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Money held in firm account which was in credit or not held in designated client account:	**a**	
i	Small sums for short period	i	Reprimand and a fine of £1,000
ii	Small sums for long periods or repeated holding of small sums or large sum held for a short period	ii	Reprimand and a fine of £1,500
iii	Large sum for long period	iii	Reprimand and a fine of £5,000
iv	Very large sum for short period	iv	Severe reprimand and a fine of £7,000
v	Very large sum for long period	v	Severe reprimand and a fine of £10,000
b	Client money held in overdrawn firm account:	**b**	
i	Small sums for short period	i	Severe reprimand and a fine of £2,000
ii	Small sums for long periods or repeated holding of small sums or large sum for a short period	ii	Severe reprimand and a fine of £3,000
iii	Large sum for long period	iii	Severe reprimand and a fine of £10,000
iv	Very large sum for a short period	iv	Severe reprimand and a fine of £15,000
v	Very large sum for long period	v	Severe reprimand and a fine of £20,000

+ Aggravating factors	**- Mitigating factors**
Large numbers of clients involved	Matters put right immediately following complaint
Failure to deal promptly with the matter following notification of the complaint	Procedures introduced to avoid recurrence
Significant benefit to the defendant resulting from improper retention of funds	Clients compensated for lost interest

Key

Small sums	£5,000 or less
Short period	One month or less
Large sums	£5,001 to £19,999
Long period	One month or more
Very large sums	£20,000 or more

The starting point is not a tariff

12 Ethical

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Lack of independence due to personal/family relationship/previous material professional relationship/pecuniary interest:	**a**	
i	Very serious – blatant	i	Exclusion and a fine of £25,000. Withdraw registration of firm. (Exclude engagement partner, if separately charged, where there was collusion. Otherwise, consider withdrawal of practising certificate)
ii	Serious	ii	Severe reprimand and fine £12,500
iii	Less serious (tenuous link technical breach)	iii	Reprimand and fine £5,000
b	Conflict of interest	**b**	
i	Very serious/blatant	i	As in **a**i above
ii	Serious	ii	Severe reprimand and fine of £12,500
iii	Less serious; eg, inadvertent	iii	Reprimand and fine £5,000
c	Providing false or misleading information	**c**	Exclusion and a fine of £5,000
d		**d**	
i	Failure to communicate/cooperate with existing appointment holder/failure to provide handover information, lien wrongly exercised	i	Severe reprimand and fine £3,000
ii	Other departure from fundamental principles, Code of Ethics without justification	ii	Reprimand and fine £2,000
e	Breach of fiduciary duty (not otherwise covered):	**e**	
i	Very serious	i	Exclusion and a fine of £25,000
ii	Serious	ii	Severe reprimand and a fine of £12,500
iii	Inadvertent	iii	Reprimand and a fine of £5,000
f	Breach of confidentiality	**f**	
i	Misuse of confidential information	i	Exclusion and fine
ii	Wrongful disclosure	ii	Exclusion and fine
iii	Any other disclosure/misuse, inadvertent	iii	Reprimand and fine £5,000
g	Persistent or repeated aggressive course of conduct and/or the use of obscene and grossly offensive language/similar	**g**	Severe reprimand and a fine of £2,000
h	Unethical promotion practices	**h**	Reprimand and a fine of £1,000

+ Aggravating factors

Lack of independence where public interest issues are involved or associated with collapse of company

Significant level of public attention or high public importance

Business – occurred in the course of

Deliberate

Fraud

Amount involved substantial

Defendant in a position of trust, eg, as employee

Deliberate act to gain personal advantage

Whether any loss suffered as a result

- Mitigating factors

No loss suffered

Information provided accidentally rather than deliberately

Reprehensible conduct/correspondence on the part of the client

Action taken at request of client/took professional advice

Compensation paid to the client

The starting point is not a tariff

13 Failure to comply with an order of the IC, DC or AC

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point	
a	Failure to take advice, for example from Practice Support Services	**a**	Severe reprimand and a fine of £5,000
b	Failure to comply with an order made for waiver or repayment of fees	**b**	Severe reprimand and a fine of £5,000
c	Failure to comply with a remedial order	**c**	Severe reprimand and a fine of £5,000
d	Other cases where a member has failed to act or acted belatedly to obligations upon him	**d**	Reprimand and a fine of £1,000

+ Aggravating factors

Blatant disregard, total absence of effort made to comply

Nature of inefficiency and effect on clients

Any other similar complaints in last five years

- Mitigating factors

Improvements made in the practice

No client disadvantaged

The starting point is not a tariff

14 Failure to cooperate generally and to comply with DBL13 requirement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Failure to respond at all or promptly to client letters, telephone calls, emails	**a**	Reprimand and a fine of £1,000
b	Delay/failure to pass information to succeeding accountant (see also Ethical)	**b**	Reprimand and a fine of £1,000
c	Refusal to provide information (blatant obstruction) without good cause	**c**	Exclusion and a fine of £5,000
d	Failure to reply to a letter sent in accordance with Disciplinary Bye-law 13 where:	**d**	
ia	the response has been difficult and tedious rather than calculated to obstruct and the information has been provided between the date of the IC preferring the complaint and the date of the hearing	ia	Reprimand and a fine of £1,000
ib	there has been a response but not all the information has been provided	ib	Severe reprimand and a fine of £2,000
ic	there has been a response that the information will be provided but it is not	ic	Severe reprimand and a fine of £2,500
id	there has been no response at all	id	Severe reprimand and a fine of £3,000
ii	Second such complaint within five years but	ii	
iia	the information has been produced between the date of the IC preferring the complaint and the hearing	iia	Severe reprimand and a fine of £3,000
iib	there has been a response but not all the information is provided and	iib	Severe reprimand and a fine of £3,500
iic	there has been a response that the information will be provided but it has not	iic	Severe reprimand and a fine of £4,000
iid	no response at all	iid	Severe reprimand and a fine of £5,000
iii	Third such complaint within five years	iii	
iiia	The information has been produced between the date of the IC preferring the complaint and the hearing	iiia	Severe reprimand and a fine of £5,000
iiib	A response but not all the information is provided	iiib	Exclusion and a fine of £7,500
iiic	there has been a response that the information will be provided but it has not	iiic	Exclusion and a fine of £7,500
iiiid	No response at all	iiiid	Exclusion and a fine of £7,500

+ Aggravating factors

The information is produced at the last possible moment.

The investigation of a serious complaint; eg, fraud is frustrated and no adequate explanation is given.

- Mitigating factors

Difficulty accessing information, dependent on another, efforts made in attempt to provide information or respond.

The starting point is not a tariff

15 Financial mismanagement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point
a	Non-payment of judgment debt or dishonoured cheque	**a** Reprimand and a fine of £2,000 (if solvent)
b	Multiple acts of financial mismanagement or second complaint in three years	**b** Exclusion and a fine of £5,000
c	Failing to comply with terms of voluntary arrangements with creditors or other matters charged against a defendant in an individual voluntary arrangement	**c** Exclusion and a fine of £5,000
d	Failing to account for VAT/income tax	**d** Exclusion and a fine of £5,000
e	Firm enters insolvency procedure, for example, CVA or PVA	**e**
i	as a result of member's gross financial mismanagement	i Severe reprimand
ii	as a result of misfortune	ii Reprimand

+ Aggravating factors

Personal assets/income available

Failure to disclose/or to disclose accurately assets to supervisor

Making unfairly small contribution to IVA when substantial personal assets available

Making substantial drawings in excess of profits in period prior to entry into IVA

Preferring personal creditors to business creditors

Preferring creditors of one business rather than another

Disposing of assets at an under value with the object of personal gain

Lack of integrity in business dealings

- Mitigating factors

Effective arrangements made to make good deficiency

Problem resulted from deliberate act by properly supervised/trusted member of staff

The starting point is not a tariff

16 General accountancy failings

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Poor work on accounts	**a**	
i	Serious	i	Severe reprimand, fine £5,000 or 1.5 x fee if greater than £5,000. Consider PRS referral
ii	Other cases less serious	ii	Reprimand, fine £2,500 or 0.5 x fee if greater than £2,500
b	Accounts not in statutory format	**b**	
i	Serious	i	Severe reprimand, fine £2,000 or 1.5 x fee charged – if successive years fee x by number of years
ii	Less serious	ii	Reprimand, fine £1,000
c	Wrongly signed report/inaccurate report, accounts do not comply with Solicitor's Accounts Rules or similar	**c**	Severe reprimand, fine £2,000. Consider fees charged if greater for fine and/or return or waiver
d	Second offence **a**, **b**, or **c** within two years	**d**	Severe reprimand, fine £10,000. Consider withdrawal of practising certificate and consider fees charged if greater for fine and/or return or waiver
e	General neglect of client affairs	**e**	
i	Single/first instance	i	Severe reprimand and a fine of £2,000. Consider fee waiver/return
ii	Multiple clients or lengthy neglect	ii	Severe reprimand and fine of £5,000
iii	Second finding of guilt in relation to i and/or ii above in three years	iii	Exclusion or severe reprimand, fine of £10,000. Consider fee waiver/return. Consider withdrawal of practising certificate or referral to Practice Support Services (PSS). Consider using fee charged as multiplier in all above
f	Lack of attention/delay on client's affairs	**f**	Reprimand, fine £1,000 or fee charged if greater. Consider waiver/return of fees
g	Bad advice on client's affairs/tax	**g**	Reprimand, fine £1,000 or fee charged if greater. Waiver return of fees, withdrawal of practising certificate, referral to PRS
h	Failing to respond properly to professional enquiry or handover (also see Ethical)	**h**	Severe reprimand, fine of £3,000

+ Aggravating factors	**- Mitigating factors**
Nature of inefficient or incompetent work, eg, failure to reconcile client ledger balances with funds available to meet them	Client deceived the defendant
Collusion to cover up deficiencies	Turnover on client account and proportion and size of deficiencies
The client has lost money	Client unhelpful in providing records or information; gave misleading information.
Effect on client, eg, subject to penalties, loss of business opportunity	Files lost through natural catastrophe, eg, fire, flood

The starting point is not a tariff

17 Insolvency

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Acting as insolvency practitioner without licence	**a**	Exclusion and a fine of £10,000
	In each case listed below consider fine equal to or 1.5 x fee charged		
b		**b**	
i	Unauthorised diversion of funds to own account, other estates or third parties	i	Exclusion and a fine of £15,000
ii	Drawing unauthorised remuneration:	ii	
iia	not subsequently authorised, and	iia	Severe reprimand and a fine of fee so drawn or
iib	subsequently authorised	iib	Severe reprimand and a fine of 50% of fee so drawn
c	Refusing to cooperate with or accept a QAD visit	**c**	Severe reprimand and a fine of £5,000
d	Failure to comply with an order of the Insolvency Licensing Committee	**d**	Severe reprimand and a fine of £7,500
e	Failure to comply with the requirements of the Insolvency Act, rules and regulations and best practice (SIPS)/ethical guidance	**e**	
i	Major, eg, total failure to submit returns (eg, CDDA returns). Failure to convene key creditor meetings (e.g. S 23 IA 86)	i	Severe reprimand and a fine of £5,000
ii	Minor, eg, small delay in submitting returns. Delay in convening annual meetings	ii	Reprimand and a fine of £500
f	Failure to perform duties as Nominee or Supervisor of an IVA, PVA or CVA, Trustee in Bankruptcy, Liquidator, Receiver or Administrator		Reprimand and a fine of £5,000
g	Delay re IVA, PVA or CVA as nominee or supervisor, trustee in bankruptcy, liquidator, receiver or administrator		Reprimand and a fine of £2,500
h	Delay/failure to pay money into Insolvency Services Account		Delay – reprimand and a fine of £1,000 Failure – severe reprimand and a fine of £2,500
i	Lack of independence Failure to comply with ethical guidance – See **Ethical**		
j	Entry into an IVA (no aggravating features)		No order but a contribution to costs – maximum £500

+ Aggravating factors	- Mitigating factors
Persistent course of conduct	Prompt application for licence
Evidence that creditors have suffered additional loss as a result of defendant's actions	Prompt completion of outstanding work
Extent of any personal benefit to defendant	Isolated incident
Defendant still unlicensed	Sum involved small
Poor record keeping, for example minutes of creditors meetings	
Failings over long period of time	

Refusal or failure to cooperate with the QAD and Insolvency Licensing Committee is likely to lead to regulatory action, including withdrawal of licence.

The starting point is not a tariff

18 Investment business/licensed firms under DPB arrangement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

	Complaint		Starting point
a	Carrying on investment business without authorisation	**a**	Exclusion and a fine of £10,000
b	Breach or breaches of Investment Business Regulations or Designated Professional Body Handbook Regulations	**b**	Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration
c	Conduct of investment business outside authorisation category or licence	**c**	Severe reprimand and a fine of £5,000
d	Holding investment business clients monies in excess of £50,000 without bonding	**d**	Severe reprimand and a fine of £5,000
e i	Pension advice without taking required steps	**e** i	Severe reprimand and a fine of £5,000
e ii	Failure to complete pension transfer and opt-outs review	**e** ii	Severe reprimand and a fine of £2,500
f	Refusal to cooperate with or accept a QAD visit	**f**	Severe reprimand and a fine of £5,000 (with £5,000 as a multiplier for each partner in the firm)
g	Failure to rectify faults discovered on QAD inspection	**g**	Severe reprimand and a fine of £5,000
h	Failure to comply with an order of the Investment Business Committee	**h**	Severe reprimand and a fine of £7,500
i	Failure by firm to investigate complaint concerning investment business	**i**	Reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
j	Failure to disclose IB commission	**j**	Severe reprimand and a fine of £5,000 and consider order for waiver of remuneration and/or commission
k	Charging excessive fees/commission	**k**	Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
l	Seriously negligent/reckless investment advice	**l**	Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
m	Annual return failure to submit, incorrect mis-statement	**m**	
	Individual		**Individual**
i	Deliberate	i	Exclusion
ii	Reckless/serious negligence	ii	Severe reprimand and a fine of £2,500
iii	Inadvertent	iii	Reprimand and a fine of £1,000
	Firm		**Firm**
i	Deliberate	i	Severe reprimand and a fine of £10,000
ii	Reckless/serious negligence	ii	Severe reprimand and a fine of £5,000
iii	Inadvertent	iii	Reprimand and a fine of £2,500
n	**Breach of eligibility requirements**	**n**	
	Firm		**Firm**
			Reprimand and a fine based on annual fees saved x by number of years

+ Aggravating factors

Advised numerous clients/conducted numerous transactions without authorisation

Failure to make client aware of risks

Failure to pass on risk warnings in product literature

Failure to document/record justification for advice/recommendation

High value of commission earned

Breach repeated/continued over time

- Mitigating factors

Steps taken on behalf of client to recover loss

Steps taken to tighten up/improve office procedures

QAD recommendations since implemented

Technical breach, no clients involved

Refusal or failure to cooperate with the QAD or the Investment Business Committee is likely to lead to regulatory action including withdrawal of DPB licence.

The starting point is not a tariff

19 Misconduct as a company director

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point	
a	Disqualification including by undertaking as company director	**a**	
i	Disqualification 11-15 years	i	Exclusion and a fine of £5,000
ii	Disqualification 6-10 years	ii	Exclusion and a fine of £2,000
iii	Disqualification 2-5 years	iii	Exclusion/severe reprimand and a fine of £1,000
b	Misuse of company funds	**b**	Exclusion and a fine of £5,000
c	Issue of post-dated cheques, dishonoured when presented	**c**	Exclusion and a fine of £3,000
d	Approving defective accounts	**d**	
i	Deliberate	i	Exclusion and a fine of £10,000
ii	Reckless or serious negligence	ii	Severe reprimand and a fine of £5,000
iii	Inadvertent	iii	Reprimand and a fine of £2,000

+ Aggravating factors	**- Mitigating factors**
Misuse of company funds deliberate/for personal gain	Length of disqualification
Nature of conduct rendering member unfit to be concerned in the management of the company	Existence of dominant other director or proprietor of company
Carrying on business with intent to defraud creditors	
Making fraudulent preferences	
Amount of deficiency of the insolvent company	
Systematic failure to submit returns	
Conduct during the insolvency, eg, giving false explanations, concealment of assets	
Length of disqualification imposed by the court	

Periods of disqualification are divided into three levels:

1. Disqualification for periods over 10 years; reserved for particularly serious cases.
2. The middle level, 6-10 years, is applied to serious cases which do not merit the top level.
3. The lowest level, 2-5 years, is applied if a case is not very serious based on the decision in the case re Sevenoaks Stationers (Retail) Limited.

The starting point is not a tariff

20 Misconduct as trustee and other positions of trust

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point	
a	Misappropriation of funds from trust or employer	**a**	Exclusion and a fine of £25,000
b	Trustee acts contrary to beneficiaries' interests	**b**	Severe reprimand and a fine of £5,000
c	Serious failings/errors in administration of a trust	**c**	Severe reprimand and a fine of £5,000
d	Delay/lack of attention as executor	**d**	Severe reprimand and a fine of £5,000

+ Aggravating factors

Distress caused to beneficiaries over a long period of time.

- Mitigating factors

Contribution to delay by others or lack of attention.

Errors corrected.

No cost to estate/trust.

The starting point is not a tariff

21 Guidance to disciplinary tribunals – fine and/or reprimand or severe reprimand

21.1 Fines

Where a fine is considered by a tribunal to be appropriate, the first consideration will be seriousness of the misconduct and aggravating and mitigating factors. The second consideration will be the circumstances of the defendant and his/her means to pay a fine. There are a number of specific matters which influence general approach and will be taken into account by a tribunal when deciding on the level of fine:

- The extent to which the conduct has fallen below the required standard.
- The existence and amount of any economic gain resulting from the conduct.
- If the defendant is a corporate entity, all aspects of means to pay are relevant including profitability and liquidity.
- If no, or inadequate, information is produced to demonstrate financial circumstances, a tribunal can assume the defendant can pay whatever fine is ordered.
- If a fine is imposed with an order for exclusion and a request is made for time to pay, a tribunal can direct that the fine be paid by instalments. Ideally an instalment plan should not extend beyond 12 months.

21.2 Reprimand or severe reprimand

A reprimand is equated by some other regulatory bodies to a warning or a ticking off (Brian Harris, Disciplinary and Regulatory Proceedings 2006). A severe reprimand is viewed very much as a final warning.

The GMC (Indicative Sanctions Guidance) suggests that if fitness to practice is found not to be impaired, a warning may be given. The following are relevant considerations when deciding whether to give a warning:

- Evidence that behaviour would not have caused direct or indirect harm.
- Insight into failings.
- Isolated incident that was not deliberate.
- Genuine expression of regret/apologies.
- Evidence of duress.
- Previous good record.
- No repetition of behaviour since incident.
- Rehabilitative/corrective steps taken.
- Relevant and appropriate references.

Equally, the absence of such considerations may influence a decision to impose a severe reprimand or exclusion.

22 Guidance to disciplinary tribunals – withdrawal of practising certificates

In addition to penalty, tribunals may specify as part of its order, the time for which a member should remain without a practising certificate.

22.1 Practising certificates

The Disciplinary Bye-laws give tribunals the power to order:

22(3)(b) that his practising certificate be withdrawn either permanently or for a specified period

22(3)(e) that he be ineligible for a practising certificate, either permanently or for a specified period.

The Learning and Professional Development Board has responsibility for deciding whether or not a member should be given a practising certificate. In reaching their decision on an application where a practising certificate has been withdrawn, the board would find it helpful to have the minimum period for withdrawal specified. If a practising certificate is withdrawn for less than four years (unless the tribunal orders that the member be ineligible), it will be returned when a member signs a declaration that he has maintained competence in his area of practice, has PII cover and that he understands ICAEW's ethical code, in particular Fundamental Principle 3. If a practising certificate is withdrawn for more than four years, a member will have to satisfy the Board as to his competence before it can be returned.

If the tribunal withdraws a practising certificate for less than four years and are of the view that the member's competence should also be re-assessed before a practising certificate is issued, they should order that the member be ineligible for the same period fixed for withdrawal.

23 Guidance on exclusion

Disciplinary Bye-law 22(8) provides that where a member is excluded, the order may include a **recommendation** that no application for his readmission be entertained before the end of a specified period.

In order to avoid former members making premature applications for readmission, it would assist the Investigation Readmissions Sub-Committee if the tribunal made a recommendation on when it believes it might be appropriate for an application to be considered. It should be noted that tribunals will only be recommending the period which in its opinion, taking into account all the circumstances surrounding the behaviour which is the subject of the complaint, is the appropriate period within which an application for readmission should not be considered.

It does not follow that an application after the specified period will be approved. A tribunal does not have power under the Disciplinary Bye-laws to make an order for exclusion for a specified period. Accordingly it must be made clear to a defendant when announcing an order and in the tribunal's written record of decision that an application for readmission after the specified period will not necessarily be approved and will be considered by the Readmissions Sub-Committee on all its merits. In order to avoid creating any misunderstanding, a tribunal should also make clear to a defendant in the most serious cases involving dishonesty that save in the most exceptional circumstances he/she is unlikely to be re-admitted.

Against this background, tribunals should normally make the following recommendations, without prejudice to an adjustment either way in the light of the facts of a particular case:

Complaint	**Recommended period/No application for readmission**
Dishonesty (whether or not prosecuted and whether or not followed by an immediate custodial sentence)	Ten years
Criminal offence followed by an immediate custodial sentence	Five years
Other exclusion orders	Two years

Where an order for exclusion is made on a complaint that a member has been disqualified from acting as a company director, the period recommended should match the length of disqualification. In all cases, a tribunal will take account of the date of the disqualification and the expiration of the period of disqualification.

A tribunal does have the power to impose more than one penalty for the same offence. A fine may be imposed in addition to an order for exclusion in appropriate circumstances, for example, where the defendant has clearly benefited financially as a result of the misconduct.
A fine with exclusion will only be appropriate in the most exceptional cases where the misconduct is very serious so that in addition to loss of membership a financial penalty is necessary. In this narrow context a fine is part of the punishment which in turn should be a deterrent. Before ordering a fine with exclusion, a tribunal will need to consider not only whether a member has benefited financially from the wrong doing but whether he or she has the means to pay not only at the time of the hearing but following loss of membership. Where there have been criminal proceedings, a tribunal should enquire as to whether there have been confiscation and compensation orders made.

24 Publicity

When a tribunal makes an adverse finding and order the record of its decision will be published in such manner as it thinks fit. This means there will be publicity in all cases where a finding and order is made (Disciplinary Bye-law 35(1)).

Where a tribunal dismisses a complaint a record of that decision will be published only if the member requests (Disciplinary Bye-law 35(2)).

Publicity involves a press release which is made up of the detail from the record of decision (with third party names and addresses removed), which is circulated to ICAEW's Council. The press release is also sent to Accountancy magazine and it is then a matter of editorial discretion as to whether or not the case is actually published.

In all cases of exclusion, or withdrawal of practising certificate the press release is sent to a newspaper local to the member, and the local District Society is informed. The District Society is also informed if membership ceases for non-payment of disciplinary fines and costs.

Unless a tribunal otherwise directs, a record of decision (which forms the basis of the press release) must state the name of the defendant and describe the finding and order or orders (if any) made against him. There is a power available to the tribunal to direct the omission of the defendant's name (Disciplinary Bye-law 35(3)). The discretion not to publish the name of a defendant is rarely exercised.

There are a number of reasons why the name of the defendant will normally be included, namely:

- ICAEW members should be aware of the decision of the disciplinary tribunal
- it is desirable that the public should have confidence in the disciplinary procedures employed by ICAEW
- such confidence is best promoted by openness in respect of the findings and orders made by disciplinary tribunals.

Since the year 2000, (leaving aside consent orders made in respect of entry into an IVA), out of all relevant cases considered by tribunals, an order directing the omission of a defendant's name has been made only on six occasions. By reference to those six cases, it is possible to identify features which influenced the decision to treat them as exceptional, in particular:

- the conduct in question was not serious misconduct and
- there may have been an adverse impact on innocent third parties or
- the effect of publication on the defendant himself would have had an adverse impact on his health or safety such that publication would have been unduly harsh.

These features will be relevant to consideration of whether a hearing should be held in private. Where a hearing or part of a hearing is held in private, it will not automatically follow that the defendant's name will not be published. This will always be considered as a separate matter by the tribunal if a request is made by a defendant for his name not to be published.

25 Disciplinary Bye-law 22

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.

22(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.

22(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.

22(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.

22(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 ICAEW pursuant to the Financial Services Act 1986 be withdrawn or

(a)(ii) that it shall cease to be authorised by ICAEW 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.

22(6) If the defendant is a registered auditor, the orders available against it are:

(a) that its registration granted at the instance of ICAEW 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.

22(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 ICAEW'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 ICAEW'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 ICAEW before the date of the order

(f) that he be severely reprimanded

(g) that he be reprimanded.

22(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.

22(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.

22(10) In this bye-law 'specified', in relation to any order or direction under this bye-law, means specified in the order or direction.

26 Table of disciplinary orders – powers of tribunals

Complaint relates to conduct before 19 December 1990	Exclusion Censure Reprimand Admonishment Fine limited to £1,000 Costs limited to £1,000
Complaint relates to conduct from 19 December 1990 to 18 December 1991	Exclusion Censure Reprimand Admonishment Fine unlimited Costs unlimited
Complaint relates to conduct from 19 December 1991	Exclusion Severe reprimand Reprimand Fine unlimited Costs unlimited

Date of PC allowance	**Bye-law**	**Change**
19 December 1990	Bye-law 83(a)(A)(x)	£1,000 limit on fine changed to unlimited
19 December 1990	Bye-law 88(a)	£1,000 limit on costs changed to unlimited
19 December 1991	Bye-law 83(a)(A)(vi), Bye-law 83(a)(A)(vii), Bye-law 83(a)(A)(ix)	Removal of censure and admonishment substituted by severe reprimand, reprimand (members & students)

Since 8 February 1994, ICAEW has been able to discipline member firms as well as members.

27 Unpublicised cautions

Unpublicised cautions are only available to the IC.

When the IC finds that there is a prima facie case for disciplinary action it may, if it considers it appropriate in all the circumstances, offer to the member as a penalty, an unpublicised caution. If the offer is not accepted, and the IC is not prepared to alter its finding, the complaint will be preferred to the DC. The DC does not have power to impose an unpublicised caution.

The caution is intended to be a more serious step than ‘no further action’ but less serious than a consent order or referral to the DC. The IC may include in the order a requirement to pay a sum towards costs. This will be a figure for the actual costs incurred up to a maximum of £2,000.

A caution will constitute part of a member’s record and result in cessation of eligibility to be a member of council. ICAEW will not pass details of the caution to the press for publication but it will be entitled to inform a complainant, other regulators and those making a specific request.

The procedure and form of notice relating to unpublicised cautions is set out in Disciplinary Bye-law 16(1)(A) and Investigation Committee Regulations 19, 20 and 21.

APPLICATION TO BECOME AN ACCREDITED PROBATE FIRM

Firms may apply to become **accredited probate firms** under the Legal Services Act 2007 (the Act) either:

- as an **authorised firm**; all the principals (and shareholders in the case of a company) have to be individually authorised to undertake probate work; or
- as a **licensed firm**; all the principals (and shareholders in the case of a company) are **not** individually authorised to undertake probate work; additional requirements apply.

How to complete this application form:

Where necessary, we give guidance before the question. Please read the guidance before you complete the question.

Please complete the form in BLOCK CAPITALS. If you run out of space, please attach additional sheets.

You will need to submit an application form for each individual to be authorised to conduct probate work on the firm's behalf. You can download these application forms from icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

If you are applying to become a licensed firm, you will need to complete an application form for a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA), and for any non-authorised person who is a principal or shareholder and holds a material interest in the firm. You can download these application forms from icaew.com/probate

If your firm includes principals who are not members of ICAEW, the Institute of Chartered Accountants of Scotland (ICAS), Chartered Accountants Ireland (CAI) or another approved regulator, or are not already accredited probate firms, registered auditors, DPB-licensed firms or affiliates under other ICAEW regulations, these principals will need also to apply for probate affiliate status. You can download an application from icaew.com/probate

To be eligible for accreditation, a firm must have in place professional indemnity insurance (PII) as required by the PII and Probate Regulations. Please enclose a copy of the firm's PII policy schedule and your insurer's details with this application.

To complete section 21 on diversity, you will need to conduct an initial diversity monitoring exercise.

The entity making this application may not hold itself out as an accredited probate firm until we have confirmed in writing that your application has been successful.

If you have any questions as you fill in this form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

1 Application type

Does your firm wish to apply for authorisation or a licence? Please tick the relevant box.

An authorised firm is one in which all the principals (and shareholders in the case of a company) are individually authorised to conduct probate work.	Authorised firm	☐
A licensed firm is one in which **not** all principals (and shareholders in the case of a company) are individually authorised to conduct probate work (although at least one principal must be).	Licensed firm	☐

2 Firm details

Name of firm applying to become an accredited probate firm		
Firm number (if known)	C00 ☐☐☐☐☐☐☐	
Is the firm a member of a group?	Yes ☐	No ☐
If 'Yes', please provide details of the group.		

3 Type of practice

Is it a sole practice?	Yes ☐	No ☐
Is it a partnership?	Yes ☐	No ☐
Is it a limited liability partnership?	Yes ☐	No ☐
Is it a corporate practice?	Yes ☐	No ☐

4 Principal office

Principal office: the office to which ICAEW will send all communications regarding a firm's probate accreditation.

Address			ICAEW use L00_ _ _ _ _ _ _	
Postcode				
Phone				
Fax				
Company/LLP number (if applicable)		Is the registered office situated in England or Wales	Yes ☐	No ☐
Firm's website address				
Do you intend to conduct probate work from this office?			Yes ☐	No ☐
Firms use trading names when they trade under more than one name but with the same owners.				
Trading name (if applicable)				
Do you intend to use the trading name when conducting probate work?			Yes ☐	No ☐
Name and position in the firm of the probate contact partner. In the case of a licensed firm, this will be the Head of Legal Practice.	Name		ICAEW use L00_ _ _ _ _ _ _	
	Position in firm			
If the probate contact partner does not work from the principal office of the firm, please give their office address.				
Address				
Postcode				
Phone				
Fax				
Email address				

5 Other offices and trading names

Include all offices and trading names of the firm, excluding market day offices. Please continue on a separate sheet if necessary.

Address 1		ICAEW use L00_ _ _ _ _ _ _
Postcode		
Phone		
Fax		
Do you intend to conduct probate work from this office?	Yes ☐	No ☐

Firms use trading names when they trade under more than one name but with the same owners.

Trading name (if applicable)		
Do you intend to use the trading name when conducting probate work?	Yes ☐	No ☐

Address 2		ICAEW use L00_ _ _ _ _ _ _
Postcode		
Phone		
Fax		
Do you intend to conduct probate work from this office?	Yes ☐	No ☐

Firms use trading names when they trade under more than one name but with the same owners.

Trading name (if applicable)		
Do you intend to use the trading name when conducting probate work?	Yes ☐	No ☐

6 Principals – sole practitioners, partners, directors, LLP members

In this section please list all the **principals** of the firm, indicating those whom the firm wishes to designate as authorised individuals.

Authorised individuals: the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only principals and employees who hold a probate qualification are eligible to apply to become authorised individuals, not consultants or sub-contractors. Each individual will need to complete a separate 'individual' application form which you can download from icaew.com/probate

Membership number: if an individual is a member of ICAEW or another professional body, please give this number if known.

Office: the location of the office from which the principal or employee normally practises.

Approved regulator: the name of the approved regulator that has authorised the individual to conduct probate work.

Member no.	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Authorised individual Yes/No	Approved regulator	% of voting rights held

Please continue on a separate sheet if necessary.

7 Employee authorised individuals

Please list all the **employees** that the firm wishes to designate as authorised individuals and continue on a separate sheet if necessary.

Authorised individuals: the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only principals and employees who hold a probate qualification are eligible to apply to become authorised individuals, not consultants or sub-contractors. Each individual will need to complete a separate 'individual' application form which you can download from icaew.com/probate

Membership number: if an individual is a member of ICAEW or another professional body, please give this number if known.

Office: the location of the office from which the principal or employee normally practises.

Approved regulator: the name of the approved regulator that has authorised the individual to conduct probate work.

Member no.	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Approved regulator

Please continue on a separate sheet if necessary.

8 Head of Legal Practice and Head of Finance and Administration

This section is only for firms applying to become licensed firms. If your firm wishes to become an authorised firm, please go to the next section.

Please provide details of the individuals your firm wishes to designate as Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA).

The HoLP must be an authorised individual. The same person can be both a HoLP and a HoFA.

	Member no. if known	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Authorised individual Yes/No	Principal Yes/No	% of voting rights held (if relevant)
HOLP									
HOFA									

9 Authorised individuals, Heads of Legal Practice, Head of Finance and Administration

All individuals who are to be designated as authorised individuals, Heads of Legal Practice or Heads of Finance and Administration must complete a separate application form for individuals. You can download this application form from icaew.com/probate. Please give the number of individual application forms you have enclosed with this application.

I have enclosed ☐ application forms for individuals with this application.

10 Management board

If the firm has a management board, please supply the following details and continue on a separate sheet if necessary.

Member no. if known	Surname	First names	Office location (e.g. York)	Principal Yes/No	% voting rights in board	Authorised individual Yes/No	Approved regulator

11 Shareholders of a corporate practice

This section is for listing all the shareholders of the corporate practice with voting rights. If your firm is not a corporate practice, go to the next section.

Member/firm number if known	Full name and address of shareholder	% of total voting rights	Director, employee or other	Authorised individual Yes/No	Approved regulator

12 Licensed firms: non-authorised owners and material interests

Under the Act there are special requirements for non-authorised owners who hold a material interest in a licensed firm. Such persons must complete a separate application form for non-authorised principals and shareholders because ICAEW needs specifically to approve these persons.

In this section please list all the non-authorised owners who hold a material interest in the firm and continue on a separate sheet if necessary.

The definition of what constitutes a material interest is set out in Probate Regulation 6.2. In determining whether the threshold for a material interest has been reached, the interests of the person's associates need also to be taken into account. The definition of 'associate' is set out in Probate Regulation 6.3.

Member no.	Surname	First names	Date of birth	% interest in firm

Please give the number of non-authorised principal and shareholder application forms you have enclosed with this application.

I have enclosed ☐ non-authorised principal or shareholder application forms with this application.

13 Probate connected entities

A Connections – Please list any connected firm(s) accredited for probate with ICAEW or another approved regulator.	
Connected firm - any practising firm which has one or more principals of your firm among its principals.	
Firm name	
Relationship with applicant firm	
Address	
Registered with	
Postcode	
Firm number (if known)	

14 Regulation and supervision

Is the firm currently authorised for probate work, or has it (or any former entities) previously applied to be authorised for probate work by another regulatory body in England and Wales?				Yes ☐	No ☐
If 'Yes', which body?	Solicitors Regulation Authority	☐	ICAS	☐	
	Council of Licensed Conveyancers	☐	ACCA	☐	
	Other (please specify)				
Please provide details of the application.					

15 Staff in each office

The total number of principals and the total number of authorised individuals should agree with the totals in sections and 6 and 7.
Sub-contractors and consultants should be included as staff in the appropriate column. These individuals cannot be authorised individuals.

Office number or location.	Principals		Other staff			Total staff
	Authorised individuals	Non-authorised individuals	Authorised individuals	Professional staff	Admin staff	
L00						
L00						
L00						
L00						
L00						
L00						
L00						
L00						
Total						

16 Practice income

For this purpose, fee income excludes the re-charge of out-of-pocket expenses and VAT. If the firm has not started trading, please give a forecast of the first year's trading figures.

Total fee income from all sources	£
Financial year ending	☐☐ ☐☐ ☐☐☐☐
Estimated annual fee income from probate and probate-related services (see section 17)	£

17 Nature of probate-related work

Please give details of the probate-related services your firm wishes to deliver.

Will-writing services	Yes ☐	No ☐
Provision of advice in connection with the drafting of wills (eg, on IHT and trust planning)	Yes ☐	No ☐
Activities carried out before the application for a grant of probate or letters of administration (eg, IHT calculations)	Yes ☐	No ☐

Assistance to an executor with estate administration	Yes ☐	No ☐
Estate administration as an executor	Yes ☐	No ☐
Is the firm likely to hold clients' and/or estate monies in connection with the above activities?	Yes ☐	No ☐

18 Statement on access to justice

Please explain how your firm's application to become an accredited probate firm will promote **access to justice**.

For example, access to justice may be promoted through improved access to services geographically or through technology. It may also be improved by making services cheaper for consumers or by delivering services in new ways. Please continue on a separate sheet if necessary.

19 Statement on the regulatory objectives

For a list of the regulatory objectives and professional principles, please refer to section 1 of the Act, www.legislation.gov.uk/ukpga/2007/29/contents

Are you aware of any issues affecting your firm that might compromise the regulatory objectives if this application is successful and you begin to undertake probate work?	Yes ☐	No ☐
Is anyone in your firm (including any owner or shareholder) subject to duties that might conflict with the firm's ability to carry out probate work in accordance with the probate regulations and the professional principles contained in the Act?	Yes ☐	No ☐
If 'Yes', please outline the steps your firm will take to mitigate the risk of conflict and/or to address this issue.		

20 Statement on improper influence

Firms are under an obligation to ensure that non-authorised persons (whether principals, employees or shareholders) do not influence improperly the conduct of probate work.

Please outline the steps your firm will take to ensure that authorised individuals can conduct probate work independently and free from influence that might compromise their ability to adhere to the probate regulations and the professional principles set down in the Act.		
Does the firm have any contractual or other arrangements with another entity that may allow that other entity to have any influence that might affect, or could be perceived as affecting, how probate work is carried out?	Yes ☐	No ☐
If 'Yes', please attach details of any safeguards designed to prevent such influence.		

21 Diversity

One of the Act's regulatory objectives (www.legislation.gov.uk/ukpga/2007/29/contents) is to encourage an independent, strong, diverse and effective legal profession. The Legal Services Board (LSB) has published guidance stating that firms should have arrangements in place for monitoring periodically the diversity of individuals in their firm. Firms will need to publish this data and supply this information to ICAEW in summary form for submission to the LSB. Only summary information will be provided to the LSB; your firm will not be identified.

Please outline the steps your firm will take periodically to monitor the diversity of the individuals in the firm. There is a model questionnaire at icaew.com/probate

Please summarise the results of your initial diversity monitoring below. On a periodic basis, we will request updates to this information.

Diversity

22 Professional indemnity insurance

Please enclose a copy of your firm's PII policy schedule with this application.

Cover arranged with (name of participating insurer)	
Period of cover	from ☐☐ ☐☐ ☐☐ to ☐☐ ☐☐ ☐☐

23 Offices without an authorised individual

Will probate work be carried out from any office listed in section 5 where there is no resident authorised individual?	Yes ☐	No ☐
If 'Yes', please attach details of the probate supervision arrangements at each of these offices.		

24 Fit and proper

The Act requires authorised persons to be fit and proper to carry out probate work. Under the Probate Regulations, any firm seeking accreditation must satisfy ICAEW that it is fit and proper. It is for each firm to ensure that all its principals, and those employees involved directly or indirectly with probate work, are fit and proper. The fit and proper requirement does not normally extend to administrative or secretarial staff but does cover practice support staff such as computer specialists.

If a firm has any doubts about the fit and proper status of any of its principals or employees, it should contact Regulatory Support on +44 (0)1908 546 302.

If a firm has merged in the last 10 years, the questions relate to every constituent part of the merged firm.

A 'Yes' answer to any of the questions in this section will not automatically result in a firm being refused accreditation. The Probate Committee may, however, wish to make further enquiries before reaching a decision.

If the Probate Committee finds out about any matters which a firm does not disclose, this will be viewed very seriously. It could jeopardise the firm's application or continuing accreditation.

If you are a sole practitioner, or a sole director or sole shareholder of a corporate practice, these questions apply to you personally as well as to the firm.

The questions relate to all principals, authorised individuals and previous practices.

The answers will be 'Yes' or 'No', but a 'Yes' answer will need further explanation.

The word 'firm' indicates all principals and previous practices.

Financial integrity and reliability In the last 10 years, has the firm made any compromise or arrangement with its creditors, or otherwise failed to satisfy creditors in full?	Yes ☐	No ☐
In the last 10 years, has the firm been the subject of any insolvency proceedings?	Yes ☐	No ☐
Civil liabilities In the last five years, has the firm been the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes ☐	No ☐
Good reputation and character There is no need to mention offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974 or, in the case of a firm which is a sole practice, offences committed by any individual before the age of 17 (unless committed within the last 10 years) or road traffic offences that did not lead to a prison sentence). In the last 10 years, has the firm been:		
• convicted by a court of any criminal offence;	Yes ☐	No ☐
• refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required;	Yes ☐	No ☐
• refused entry to any professional body or trade association; or did it decide not to continue with an application;	Yes ☐	No ☐

• reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body;	Yes ☐	No ☐
• made the subject of a court order at the instigation of any professional or regulatory body; or	Yes ☐	No ☐
• investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes ☐	No ☐
Is the firm currently undergoing any investigation or disciplinary procedures as described above?	Yes ☐	No ☐
Is there any other information relevant to any of the above questions which the firm wishes to disclose to ICAEW? If 'Yes', please specify details on a separate sheet.	Yes ☐	No ☐

25 Maintaining competence

Please tick the CPD activities which authorised individuals and others use regularly to maintain competence and keep up to date with probate legislation, regulations and related matters.

	Authorised individuals	Employees engaged in probate work under supervision	Other
Online learning/e-learning			
DVD subscriptions			
Update services			
In-house courses			
In-house technical discussion groups			
Training consortium or another firm's in-house courses			
ICAEW or district society courses			
Other commercial courses			
Local discussion groups			
Private reading: technical papers, accountancy, journals, articles, newsletters			
Access to a technical library			
Focused discussion with more experienced colleagues			
Other (please give further details)			

Will individual training records be maintained for all authorised individuals and employees involved in probate work?	Yes ☐	No ☐
Name of the principal responsible for assessing the competence of staff engaged in probate work		
Name of the principal responsible for ensuring that probate principals and staff receive relevant training		
Does the firm intend to use a probate manual and/or probate documentation?	Yes ☐	No ☐
If 'Yes', is this commercially available?	Yes ☐	No ☐
If 'Yes', please name the manual.		
Does the firm intend to subscribe to an updating service for the probate manual?	Yes ☐	No ☐

26 Control of probate work

Will the firm ensure that it has appropriate arrangements to deal with:					
fit and proper considerations	Yes ☐	No ☐	recruitment	Yes ☐	No ☐
independence and integrity	Yes ☐	No ☐	staff appraisal	Yes ☐	No ☐
confidentiality	Yes ☐	No ☐	training standards	Yes ☐	No ☐
conduct of probate work (including acting in the best interests of clients)	Yes ☐	No ☐	discipline	Yes ☐	No ☐
recording of work done	Yes ☐	No ☐	reporting and supervisory responsibilities in the firm	Yes ☐	No ☐
review procedures	Yes ☐	No ☐	complaints-handling	Yes ☐	No ☐
			clients' money (if held)	Yes ☐	No ☐
Does the firm have a subscription to an updating service or training provider?				Yes ☐	No ☐

The next question is for sole practitioners or corporate practices with only one shareholder or director.

Do you have arrangements in place for the appointment of an alternate in the case of death or incapacity:	Yes ☐	No ☐

27 Signature and confirmations

I certify that, to the best of my knowledge and belief, the information in, or provided with, this application is a true and accurate statement of the firm's circumstances.

I confirm that:

- the control of this firm is in accordance with the Probate Regulations;
- I have taken steps to ensure that all principals and employees involved in probate work are fit and proper persons;
- I will notify the ICAEW immediately of any matter which indicates the firm has, or may in the future, cease to comply with the Probate Regulations; and
- this firm has professional indemnity insurance in place as required by the PII and Probate Regulations.

If this application is approved, I confirm that:

- this firm will comply with the Probate Regulations at all times;
- this firm will deal with ICAEW in an open and cooperative manner and will inform ICAEW promptly of anything concerning the firm as required by the Probate Regulations
- this firm will inform all principals, employees and shareholders of the duties contained in sections 90 and 176 of the Act;
- this firm acknowledges that ICAEW may make enquiries of, or about the firm, as it deems necessary;
- the firm acknowledges that ICAEW may publish, in such manner as it may determine, any information about the firm's status under the regulations;
- the firm acknowledges that ICAEW may disclose information about it to other bodies as set out in probate regulation 2.26.
- the firm will establish and maintain internal processes for handling complaints about probate work, and will deal cooperatively with the Legal Ombudsman and comply with his office's decisions as necessary;
- none of ICAEW, its officers, staff, members of its council or the committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith; and
- this firm will not accept probate work or hold itself out to be an accredited probate firm unless I have received confirmation in writing that this application has been successful.

Signature of sole practitioner or probate contact partner with overall responsibility for making sure the firm complies with the Probate Regulations and who has provided confirmations in section 27 above. In the case of a licensed firm, the probate contact partner will be the Head of Legal Practice.

Name in block capitals _____

Date ☐☐ ☐☐ ☐☐☐☐

I have attached a total of ☐ additional sheets.

28 Application and registration fee (if applicable)

If this application is being made as a result of a merger of existing accredited probate firms, or an incorporation of an existing accredited probate firm, and all fees have already been paid, the balance will be transferred to the new firm's account once accreditation has been approved.

Firms that are not the result of a merger or incorporation of existing accredited firms need to enclose a cheque for the relevant fee.

I enclose a cheque for £ ☐☐☐☐☐.☐☐ (payable to Chartac) as payment for the application fee. Please see fee scale at icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

I enclose a cheque for £ ☐☐☐☐☐.☐☐ (payable to Chartac) as payment for this year's registration fee. Please see fee scale at icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

You must send the applicable application fee and registration fees with this application form. The fees are calculated by reference to the number of principals, authorised individuals and offices as described in the fee scale. Your firm will receive a receipted invoice for these fees if the firm is accepted as eligible to be an accredited probate firm. If the application is not successful, we will refund the fees.

29 Completion checklist

Before you return the completed application form, please:	
• make sure you have completed all questions;	☐
• enclose a cheque for the registration fee;	☐
• enclose a copy of the firm's PII policy schedule and your insurer's details;	☐
• include any additional sheets with the form;	☐
• sign and date the form;	☐
• keep a copy of this form for your records; and	☐
• send it to the address below.	☐
We will send you an acknowledgement when we receive your application.	

Please send this form to:

Regulatory Support, ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected. For more information about our data protection policy, please go to icaew.com/dataprotection.

PROBATE APPLICATION FORM

APPLICATION TO APPOINT: AUTHORISED INDIVIDUAL
HEAD OF LEGAL PRACTICE; OR
HEAD OF FINANCE AND ADMINISTRATION

Introduction

This form is for accredited probate firms that seek to appoint a new authorised individual. An authorised individual is an individual who is authorised to conduct, or control the undertaking of, probate work on behalf of an accredited probate firm.

The form is also for licensed firms seeking to appoint a Head of Legal Practice (HoLP) or a Head of Finance and Administration (HoFA).

An application is needed even if the individual was previously approved as an authorised individual in another accredited probate firm, or if the individual was previously appointed as HoLP or HoFA in a firm licensed to carry on reserved legal activities under the Legal Services Act 2007 (the Act).

An accredited probate firm is either:

a. an **authorised firm**: all principals and shareholders need to be individually authorised to conduct probate work; or
b. a **licensed firm**: not all principals or shareholders of the firm are authorised, although at least one principal must be.

An accredited probate firm must appoint a contact partner. If that accredited probate firm is a licensed firm, this will be the HoLP. A licensed firm must also appoint a HoFA.

The duties and responsibilities of an authorised individual, a HoLP or a HoFA are set out in the Probate Regulations.

Before an individual can act as an authorised individual, HoLP or HoFA, they must apply to ICAEW. The individual may not act as an authorised individual, HoLP or HoFA until the firm has received formal notification from ICAEW that their application has been approved.

How to complete this application form

The firm's contact partner (who will be the HoLP in a licensed firm)	should complete sections 1 – 4 on the firm's behalf and sign section 9. If a firm is applying to become accredited for probate for the first time, the individual who is proposed to act as the contact partner or HoLP should complete these sections.
The individual to be appointed	should complete sections 5 – 8 and sign section 10

Where necessary, we give guidance before the question. Please read this before you complete the question.

Please complete the application form in BLOCK CAPITALS. If you need more space for an answer, please attach additional sheets.

If you have any questions as you fill in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

1 Firm details

Firm name	
Firm number	C00
Firm's address	

2 Individual to be appointed

Authorised individuals (AIs): the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only principals and employees can be AIs, not consultants or sub-contractors.

In relation to licensed firms, the Act requires the HoLP to be an authorised individual. There is no requirement for the HoFA to be an authorised individual, although it is generally expected that they will hold an appropriate accountancy or finance qualification.

For applications for designation as an authorised individual or HoLP, please give details of training or qualifications the individual has received in wills, probate and estate administration. As a minimum, any training course should have covered the content set out in regulation 4.1 of the Probate Regulations.

Please give details of the experience the individual has had in relation to wills, probate and estate administration (if any) over the last 24 months.

Which status is this application for?	Authorised individual	☐
	Head of Legal Practice	☐
	Head of Finance and Administration	☐
Name		
Member number (if known)		
Individual's email address		
Individual's address		
Date of birth		
Is this individual	a principal in the firm?	☐
	an employee?	☐
If an employee, who do they report to?		

Does this individual hold a practising certificate?	Yes	☐	No	☐

3 Qualifications

Please give details of the probate qualification held by an applicant for designation as an authorised individual or HoLP; or the accountancy or financial qualification held for designation as a HoFA.

Qualification	
Qualification granted by	

Date qualification granted	

Applications for designation as an authorised individual or HoLP only

Please give details of course content and length.

4 Maintaining competence

Please tick those activities which are, or will be, used by the individual to maintain competence and keep up to date on probate legislation, regulation and related matters.				
Online/e-learning				☐
DVD subscription				☐
Update services				☐
In-house courses				☐
In-house technical discussion groups				☐
Training consortium or another firm's in-house courses				☐
ICAEW or district society courses				☐
Other commercial courses				☐
Local discussion groups				☐
Private reading: technical papers, accountancy journals, articles, newsletters				☐
Access to technical library				☐
Focused discussion with more experienced colleagues				☐
Other (please give details)				☐
Will individual training records be maintained for the applicant?	Yes	☐	No	☐

The individual to be appointed should complete sections 5 to 8.

5 Previous status (authorised individual and HoLP only)

Have you previously been approved as an authorised individual or HoLP:	Yes	☐	No	☐

If 'No', please provide on a separate sheet a brief summary of your experience (if any) in wills, probate and estate administration the last 24 months. This should include brief details of the type and amount of probate-related work you have undertaken in the last 24 months and your level of seniority (eg, reporting directly to the probate principal).

How many additional sheets have you attached? ☐

If 'Yes', please fill in one row for every firm in which you were authorised and indicate which body regulated the firm. If you ceased to be an authorised individual and/or HoLP more than six months ago please give, on a separate sheet, a brief summary of the work you have undertaken in the intervening period (if any) and how you will ensure your probate knowledge is up to date.

Firm name	Firm number (if known)	Firm's regulatory body	Period as authorised individual or HoLP		Reason for ceasing as authorised individual or HoLP
			From (mm/yy)	To (mm/yy)	

6 Previous status (HoFA only)

Have you previously been approved as a HoFA?	Yes	☐	No	☐

If 'Yes', please fill in one row for every firm in which you were the HoFA and indicate which body regulated the firm.

Firm name	Firm number (if known)	Firm's regulatorybody	Period as HoFA		Reason for ceasing as HoFA
			From (mm/yy)	To (mm/yy)	

7 Disqualification

Have you previously been disqualified from being a principal, employee, HoLP or HoFA of a firm eligible to be licensed under the Act?	Yes	☐	No	☐
If 'Yes', please give details of the dates you were disqualified; the reasons for disqualification and whether you are still disqualified.				

8 Fit and proper

The Act requires individuals to be fit and proper to carry out probate work. An individual who is to appointed as a HoLP, HoFA or authorised individual must satisfy ICAEW that they are fit and proper.

If you have any doubts about your fit and proper status, please call +44 (0)1908 546 279 for advice.

If you answer 'Yes' to any question in section 8, you will not automatically be refused approved status. The Probate Committee may, however, wish to make further enquiries before reaching a decision.

If the Probate Committee subsequently finds out about any matters which you did not disclose, this will be viewed very seriously. It could jeopardise your approved status.

If you answer 'Yes', you will need to give further details on a separate sheet.

Questions 1 – 8 apply to the individual to be appointed as an authorised individual, HoLP or HoFA.

Applicants for authorised individual status only **do not** need to mention cautions or offences that are spent for the purposes of the Rehabilitation of Offenders Act 1974 or offences committed before the age of 17 (unless committed within the last 10 years). There is no need to mention road traffic offences that did not lead to a prison sentence.

Financial integrity and reliability				
1. Have you ever made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	☐	No	☐
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	☐	No	☐
3. If 'Yes', has this order been discharged?	Yes	☐	No	☐
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	☐	No	☐
Civil liabilities				
5. Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	☐	No	☐

Good reputation and character				
6. Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	☐	No	☐
7. If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction. (Please attach additional sheet if necessary.)				
8. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?	Yes	☐	No	☐
9. Have you ever been:				
a. refused (or been the principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	☐	No	☐
b. investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	☐	No	☐
c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	☐	No	☐
d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	☐	No	☐
e. refused entry to or excluded from membership of any profession or vocation?	Yes	☐	No	☐
f. dismissed from any office or employment or requested to resign from any office, employment or firm?	Yes	☐	No	☐
g. reprimanded, warned about future conduct, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	☐	No	☐
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	☐	No	☐
10. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	☐	No	☐

Questions 11 – 15 apply to previous firms (including sole practices) in which the individual to be appointed was a principal at the time any of the listed events occurred.

Financial integrity and reliability				
11. In the last 10 years, did any such previous firm make any compromise or arrangement with its creditors, or otherwise failed to satisfy creditors in full?	Yes	☐	No	☐
12. In the last 10 years, was any such previous firm the subject of any insolvency proceedings?	Yes	☐	No	☐

Civil liabilities				
13. In the last five years was any such previous firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	☐	No	☐
Good reputation and character				
14. In the last ten years, was any such previous firm:				
a. convicted by a court of any criminal offence?	Yes	☐	No	☐
b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	☐	No	☐
c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	☐	No	☐
d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	☐	No	☐
e. made the subject of a court order at the instigation of any professional or regulatory body?	Yes	☐	No	☐
f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes	☐	No	☐
15. Is any such previous firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	☐	No	☐
16. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Yes	☐	No	☐

9 Signature and confirmation of the contact partner or Head of Legal Practice

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the individual's circumstances.

I confirm that the individual named in this application:

- has been proposed as an authorised individual or HoLP or HoFA by me in my capacity as the contact partner of the firm whose name is given in section 1.
- is fit and proper to be a HoLP, HoFA or authorised individual (as appropriate); and
- is not able to act as a HoLP, HoFA or authorised individual until the firm has received formal notification from ICAEW that this application has been approved.

If the application is for the appointment of an authorised individual, I confirm that the named individual:

- is competent to conduct, and control the undertaking of, probate work;
- is required by the firm to plan and control any probate work undertaken at the firm; and
- is allowed to sign probate papers in the name of the firm.

If the application is for the appointment of a HoLP or HoFA, I confirm that the named individual:

- is competent to undertake this role;
- is of sufficient seniority to ensure that their instructions are acted upon by the firm's principals and employees;
- will have the freedom to report any breach of the Probate Regulations to ICAEW.

If this application is approved, I confirm that the individual will, at all times, be required to comply with the Probate Regulations.

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with accreditation under the Act or under the Probate Regulations, or enforcing the terms of either, or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of the contact partner or Head of Legal Practice	
Name in BLOCK CAPITALS	
Date	

10 Signature and confirmation of the individual to be appointed

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of my circumstances.

If this application is approved, I undertake that I will, at all times, comply with the Probate Regulations.

I understand that if I leave this firm, my status will cease. If I join another firm and intend to carry out work as a HoLP, HoFA or authorised individual, I will need to submit a fresh application.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with accreditation under the Act or under the Probate Regulations, or enforcing the terms of either, or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of individual to be appointed	
Name in BLOCK CAPITALS	
Date	

11 Checklist

Before you return the completed application form, please check you have:	
• answered every question;	☐
• checked that sections 9 and 10 have been signed;	☐
• made a copy of the completed form for your records; and	☐
• attached all additional sheets.	☐

Now return your signed and completed form with any additional sheets to:

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

We will send you an acknowledgement as soon as we receive your application.

Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy please go to icaew.com/dataprotection.

PROBATE APPLICATION FORM

APPLICATION TO APPROVE A NON-AUTHORISED PRINCIPAL OR SHAREHOLDER OF A LICENSED FIRM

Please use this form to apply to ICAEW for approval of a person (either an entity or an individual) as a non-authorised principal or shareholder with a material interest in a licensed firm.

In accordance with the Legal Services Act 2007 (the Act) and the Probate Regulations, ICAEW is required to approve all principals or shareholders of a licensed firm who are not authorised to undertake probate work. This only applies in cases where the person (either on their own or together with their associates) holds, or intends to hold, a material interest in the firm or the parent undertaking of the firm. Such persons, together with their associates, need to be approved as 'fit to own' a material interest in a licensed firm.

A firm wishing to apply to ICAEW to become a licensed firm must be satisfied, and confirm to the ICAEW, that each person with an interest of 10% or more (together with their associates) is fit to own.

In addition, a firm that is already licensed must seek approval in respect of any person who intends to hold a material interest in the firm.

A non-authorised principal is:

- a person who is a partner (including both salaried and equity partners);
- a member of a limited liability partnership;
- a director;
- a member of the governing body; or
- any individual or person who is held out as being a director, partner or member or member of the governing body;

who is not individually authorised to undertake probate work.

A person (either a non-authorised principal or a shareholder) holds a material interest in the licensed probate firm (the firm) if the person (together with any associates):

- holds at least 10% of the shares in the firm;
- is able to exercise significant influence over the firm's management by virtue of the person's shareholding in the firm;
- holds at least 10% of the shares in a parent undertaking (P) of the firm;
- is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in the firm which, if it consists of voting rights, constitutes at least 10% of the voting rights in the firm;
- is able to exercise significant influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;
- is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

The above are all separate kinds of material interests. If a person holds more than one type of material interest, or subsequently acquires a different kind of interest, each type of material interest must be approved.

In determining if an interest is material, the interest held by a person in a firm will consist of the total of the interest held by that person and the interest held by any of his associates. 'Associate' is defined as:

- the person's spouse or civil partner;
- the person's child or stepchild if aged under 18;
- the trustee of any settlement under which the person has a life interest in possession;
- an undertaking of which the person is a director;

- any employee of the person;
- any partner in a firm (other than the licensed firm) of which the person is a partner;
- if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
- any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in the definition of material interest above; or
- any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in the definition of material interest above.

If ICAEW has approved a non-authorised person to hold a specific type of material interest and that person then acquires a different kind of material interest, this needs to be approved by making a further application. No **approval** is needed if an existing material interest is increased or decreased but, under Probate Regulation 2.7l, **notification** is required.

An application is needed even if the person was previously approved as a non-authorised principal or shareholder of another licensed probate firm.

The firm may not conduct probate work until it has received formal notification from ICAEW that this application has been approved.

If the firm is already licensed and a person intends to hold a material interest in the firm, that person must be approved before the interest is acquired.

1 How to complete this application form

The Head of Legal Practice	should complete sections 2, 9 and 10 on behalf of the firm and sign section 11.
The person to be approved	should complete sections 3 to 7 and sign section 12.
Each associate of the person to be approved	should complete section 8 and sign section 13.

Where necessary, we give guidance before the question. Please read the guidance before you complete the question.

Please complete the application form in BLOCK CAPITALS.

If you need more space for an answer, please attach additional sheets.

In these notes, the ‘Act’ refers to the Legal Services Act 2007.

If you have any questions as you fill in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

2 Firm details

Firm name	
Firm number	C00

3 Person to be approved

Please give details of the person to be approved as a non-authorised principal or shareholder of a licensed firm.

Name						
Member number (if known)						
Legal status of applicant	individual	☐	a corporate body	☐	a partnership	☐
Applicant's email address						
Applicant's address						
Date of birth						
Is the applicant	a principal in the firm?	☐	a shareholder?	☐		
	a principal in a parent undertaking of the firm?	☐	a shareholder in a parent undertaking of the firm?	☐		

What kind of material interest does the applicant hold, or intend to hold, in the firm?

	Tick all that apply	% of shares held:	% of voting rights held:
• holds at least 10% of the shares in the firm;	☐		
• is able to exercise significant influence over the firm's management by virtue of the person's shareholding in the firm;	☐		
• holds at least 10% of the shares in a parent undertaking (P) of the firm;	☐		
• is able to exercise significant influence over P's management by virtue of the person's shareholding in P;	☐		
• is entitled to exercise, or control the exercise of, voting power in the firm which, if it consists of voting rights, constitutes at least 10% of the voting rights in the firm;	☐		
• is able to exercise significant influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;	☐		
• is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P;	☐		
• is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.	☐		

Has the person already been approved as a non-authorised principal or shareholder in this firm?	Yes	☐	No	☐
If 'Yes', what kind of existing material interest does the applicant have in the firm? See the list in the table above.				

4 Associates

For the definition of 'associate', see guidance at the beginning of this application form.

Does the person referred to in section 3 have any associates?	Yes	☐	No	☐

If 'Yes', please give full details of each associate below.

Types of interest that can be held by an associate in firm:

- holds shares in the firm;
- is able to exercise influence over the firm's management by virtue of the person's shareholding in the firm;
- holds shares in a parent undertaking ('P') of the firm;
- is able to exercise influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in the firm;
- is able to exercise influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;
- is entitled to exercise, or control the exercise of, voting power in P; or
- is able to exercise influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

The associate will need to sign the confirmation at the end of this application.

Name	Address	Associate status (eg, applicant's spouse, child, or partner in another firm)	Type of interest held in the firm by the associate.	% of shares held	% of voting rights held

5 Other licensed firms

Has the applicant (or any associate) previously been a principal or a shareholder in another licensed firm?	Yes	☐	No	☐

If 'Yes', please fill in one row for every licensed firm in which the applicant (or any associate) was or is a principal or shareholder.

Firm name	Firm number (if known)	Firm's supervisory body	Period as a principal or shareholder	
			From (mm/yy)	To (mm/yy)

6 Disqualification

The applicant to be approved must answer the following questions.

Have you (or any associate listed in section 4) previously been disqualified from being a principal, employee, Head of Legal Practice or Head of Finance and Administration in a licensed firm?	Yes	☐	No	☐
Has a licensing authority ever objected to you (or any associate listed in section 4) holding a material interest in a licensed firm?	Yes	☐	No	☐
Has a licensing authority ever imposed conditions on you (or any associate listed in section 4) holding an interest in a licensed firm?	Yes	☐	No	☐
Have you (or any associate listed in section 4) ever acquired a material interest in a licensed firm that exceeds a limit specified in the licensing rules of a licensing authority?	Yes	☐	No	☐
If 'Yes', please give details of the dates of the licensing authority's decision(s); the reasons for the decision(s) and whether these restrictions are still in place.				

Please continue on a separate sheet if necessary.

7 Fitness to own an interest in a licensed firm (applicant)

The applicant to be approved must answer the following questions.

The Act requires persons with an interest in accredited probate firms to be fit to own. A person who holds a material interest in a licensed firm must satisfy ICAEW that they are fit to own.

If you have any doubts about your fit and proper status, please call +44 (0)1908 546 279 for advice.

If you answer 'Yes' to any of the questions in this section, you will not automatically be refused authorised status. However, the Probate Committee may wish to make further enquiries before reaching a decision.

If the Probate Committee subsequently finds out about any matters which you did not disclose this will be viewed very seriously.

If you answer 'Yes', you will need to give further details on a separate sheet.

Questions 1 – 10 apply to the person to be approved as a non-authorised principal or shareholder.				
Financial integrity and reliability				
1. Have you ever made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	☐	No	☐
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	☐	No	☐
3. If 'Yes', has this order been discharged?	Yes	☐	No	☐
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	☐	No	☐
Civil liabilities				
5. Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	☐	No	☐
Good reputation and character				
There is no need to mention road traffic offences that did not lead to a prison sentence.				
6. Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	☐	No	☐
7. If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction and attach additional sheet if necessary.				
8. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?	Yes	☐	No	☐
9. Have you ever been:				
a. refused (or been a principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	☐	No	☐
b. investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	☐	No	☐

c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	☐	No	☐
d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	☐	No	☐
e. refused entry to or excluded from membership of any profession or vocation?	Yes	☐	No	☐
f. dismissed from any office or employment or requested to resign from any office, employment or firm?	Yes	☐	No	☐
g. reprimanded, warned about future conduct, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	☐	No	☐
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	☐	No	☐
10. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	☐	No	☐

Questions 11 – 15 apply to previous firms (including sole practices) in which the individual to be approved was a principal, director or shareholder at the time any of the events occurred, regardless of whether those firms were licensed firms.

Financial integrity and reliability				
11. In the last 10 years, did any such previous firm make any compromise or arrangement with its creditors, or otherwise fail to satisfy creditors in full?	Yes	☐	No	☐
12. In the last 10 years, was any such previous firm the subject of any insolvency proceedings?	Yes	☐	No	☐
Civil liabilities				
13. In the last five years, was any such previous firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	☐	No	☐
Good reputation and character				
14. In the last 10 years, was any such previous firm:				
a. convicted by a court of any criminal offence?	Yes	☐	No	☐
b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	☐	No	☐
c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	☐	No	☐
d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	☐	No	☐
e. made the subject of a court order at the instigation of any professional or regulatory body?	Yes	☐	No	☐

f.	investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes	☐	No	☐
15.	Is any other firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	☐	No	☐
16.	Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Yes	☐	No	☐

8 Fitness to own an interest in a licensed firm (associates)

All associates must also complete a declaration that they are fit to own an interest in a licensed firm. Please complete and submit copies of this section for each associate listed in section 4 with the name of the associate at the top of the form.

Questions 1 – 10 apply to the person who is an associate.					
Financial integrity and reliability					
1.	Have you ever made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	☐	No	☐
2.	Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	☐	No	☐
3.	If 'Yes', has this order been discharged?	Yes	☐	No	☐
4.	Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	☐	No	☐
Civil liabilities					
5.	Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	☐	No	☐
Good reputation and character					
There is no need to mention road traffic offences that did not lead to a prison sentence.					
6.	Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	☐	No	☐
7.	If 'Yes', give details of the court which convicted you, the offence, the penalty imposed and date of conviction. Please attach additional sheet if necessary.				
8.	Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?	Yes	☐	No	☐
9.	Have you ever been:				
a.	refused (or been a principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	☐	No	☐
b.	investigated about allegations of misconduct or malpractice in connection	Yes	☐	No	☐

with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?				
c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	☐	No	☐
d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	☐	No	☐
e. refused entry to or excluded from membership of any profession or vocation?	Yes	☐	No	☐
f. dismissed from any office or employment or requested to resign from any office, employment or firm?	Yes	☐	No	☐
g. reprimanded, warned about future conduct, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	☐	No	☐
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	☐	No	☐
10. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	☐	No	☐

Questions 11 – 15 apply to previous firms (including sole practices) in which the associate was a principal, director or shareholder at the time any of the listed events occurred, regardless of whether those firms were licensed firms.

Financial integrity and reliability				
11. In the last 10 years, did any such previous firm make any compromise or arrangement with its creditors, or otherwise fail to satisfy creditors in full?	Yes	☐	No	☐
12. In the last 10 years, was any such previous firm the subject of any insolvency proceedings?	Yes	☐	No	☐
Civil liabilities				
13. In the last five years, was any such previous firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	☐	No	☐
Good reputation and character				
14. In the last 10 years, was any such previous firm:				
• convicted by a court of any criminal offence?	Yes	☐	No	☐
• refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	☐	No	☐
• refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	☐	No	☐
• reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	☐	No	☐

• made the subject of a court order at the instigation of any professional or regulatory body?	Yes	☐	No	☐
• investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being provided but no disciplinary order being made?	Yes	☐	No	☐
15. Is any such previous firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	☐	No	☐
16. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If yes, please supply details on a separate sheet).	Yes	☐	No	☐

Please give the number of 'fitness to own' forms for associates included with this application. ☐

9 The regulatory objectives

This section should be completed by the firm's Head of Legal Practice.

The Act's regulatory objectives are contained in section 1. (www.legislation.gov.uk/ukpga/2007/29/section/1)

Are you aware of any issues that may compromise the regulatory objectives set out in the Act if this application is approved? For example, is the applicant to be approved subject to any other duties that may conflict with the Act's regulatory objectives?	Yes	☐	No	☐
If 'Yes', please give details of the possible issue and the steps that you have or will take to address this.				

Please continue on a separate sheet if necessary.

10 Regulated persons

This section should be completed by the firm's Head of Legal Practice.

The Act requires non-authorised persons (whether principals, employees or shareholders) to comply with the duties set out in section 90. Visit: www.legislation.gov.uk/ukpga/2007/29/section/90

Essentially, this requires firms to ensure that non-authorised persons do not do anything which may lead the firm or any authorised individual to breach the Probate Regulations or their regulatory responsibilities under the Act.

Are you aware of any issues that may compromise the ability of the firm or any authorised individuals to comply with the Probate Regulations if this application is approved?	Yes	☐	No	☐

If 'Yes', please give details of the possible issue and the steps that you have or will take to address this.

Please continue on a separate sheet if necessary.

11 Signature and confirmation of the Head of Legal Practice

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the person's circumstances.

I confirm that:

- the person named in section 3 as an non-authorised principal or shareholder holds or intends to hold, together with any associates, a material interest in the firm whose name is given in section 2;
- the person's holding of the interest in the firm will not compromise the regulatory objectives set out in section 1 of the Act;
- the person's holding of the interest will not compromise the ability of the firm's principals and employees to comply at all times with the Probate Regulations and the professional principles contained in section 1 of the Act; and
- the person, together with any associates, is otherwise fit and proper to hold a material interest in this firm.

If this application is approved, I confirm that the person will be required to comply at all times with the Probate Regulations.

I confirm that (please delete the bullet that does not apply):

- until this application and the firm's application to be licensed is approved, the firm will not conduct probate work; or
- as a licensed firm, the person named in section 3 will not acquire a material interest until this application is approved.

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations, or enforcing the terms of either, or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of the Head of Legal Practice	
Name in BLOCK CAPITALS	
Date	

12 Signature and confirmation of the person to be approved

I certify that, to the best of my knowledge and belief, the information in or provided with this application that is relevant to me is a true and accurate statement of my circumstances.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

I acknowledge that ICAEW may require me to provide documents/information in connection with my application or continued status as a non-authorised principal or shareholder and that any failure to provide this information is a criminal offence.

I acknowledge that ICAEW may disclose this information about me to other bodies as set out in Probate Regulation 2.26. If this application is approved, I undertake to comply with the Probate Regulations at all times.

I confirm that section 4 includes all my associates as defined at the beginning of this form, and I confirm that, to the best of my knowledge and belief, they are fit and proper persons.

I will not do anything that might compromise the integrity of probate work carried out by the firm.

I understand that if my interest in the firm ends, then approval as a non-authorised principal or shareholder will cease. I understand that if I acquire a material interest in another accredited probate firm, or if I acquire another kind of material interest in the firm, I will need to submit a fresh application.

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of person to be approved	
Name in BLOCK CAPITALS	
Date	

13 Signature and confirmation of associates

Each associate listed in section 4 should sign below.

I certify that, to the best of my knowledge and belief, the information in or provided with this application that is relevant to me is a true and accurate statement of my circumstances.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

I acknowledge that ICAEW may require me to provide documents/information in connection with this application.

I acknowledge that ICAEW may disclose this information about me to other bodies as set out in Probate Regulation 2.26. If this application is approved, I undertake to comply with the Probate Regulations at all times.

I will not do anything that might compromise the integrity of probate work carried out by the firm.

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Name	Signature of associate	Date

14 Checklist

Before you return the completed application form, please check you have:	
• answered every question;	☐
• checked that sections 11, 12 and 13 have been signed;	☐
• made a copy of the completed form for your records;	☐
• attached all additional sheets; and	☐
• attached separate fitness to own declarations for each associate.	☐

Now return your signed and completed form with any additional sheets to:

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

We will send you an acknowledgement as soon as we receive your application.

Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy please go to icaew.com/dataprotection.

PROBATE APPLICATION FORM

PROBATE – APPLICATION FOR AFFILIATE STATUS

Individual applicants

All principals in a firm accredited for probate by ICAEW must be either:

- members of ICAEW
- members of the Institute of Chartered Accountants of Scotland (ICAS);
- members of Chartered Accountants Ireland (CAI);
- members of another approved regulator under the Legal Services Act 2007 (the Act);
- accredited probate firms;
- registered auditors;
- DPB-licensed firms; or
- affiliates of ICAEW.

Please submit an application form for each principal who is to become a probate affiliate.

Fill in this form electronically, using the TAB key to move from one answer to the next.

If you have any questions as you are filling in the form, please call +44 (0)1908 546 279.

1 Firm details

Firm name	
Firm number	C00
Address	
Postcode	
Phone	

2 Details of principal (or body) applying for affiliate status

ICAEW use A/			
Principal applying		**Corporate body applying**	
Title (eg, Mr, Mrs, Ms, Dr)		Name of firm	
Surname of principal		Firm address	
First names of principal			
Date of birth of principal			
Address			
Home phone number		Firm phone number	
Email (this will give you access to icaew.com)		Companies House registration number	

Corporate applicants

Please set out on a separate sheet, the following details relating to the corporate applicant:

• In the case of a limited company,	please provide: - the names and addresses of the directors - the names and addresses of the shareholders and their percentage share of the company's shareholding.
• For a limited liability partnership,	please provide the names and addresses of the members and their percentage voting rights.
• In all cases,	please indicate which directors, shareholders or members are ICAEW members.

3 Previous affiliate status

Has ICAEW granted affiliate status to this person or body on a previous occasion, eg, audit registration?	Select Y/N from list
If 'Yes', please give details of the firm in which they were a principal and the dates they were an affiliate.	
Name of previous firm	
Number of previous firm (if known)	C00
Affiliate number (if known)	
from	(dd/mm/yyyy)
to	(dd/mm/yyyy)

4 Fit and proper

Applicants for affiliate status are required to demonstrate that they are fit and proper.

Please answer the following questions and, if necessary, provide additional information in a covering letter or on a separate sheet. In the case of a corporate applicant, the answers should be in respect of each shareholder, director or member.

Financial integrity and reliability		
1	Have you, within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, or made any compromise arrangement with your creditors?	Select from list
2	Have you been the subject of a bankruptcy order by a court in the United Kingdom or elsewhere or has a bankruptcy order petition ever been served on you?	Select from list
	If 'Yes', please give details.	
3	Have you ever made an assignment for the benefit of creditors or made any arrangement for the payment of a composition to creditors?	Select from list
	If 'Yes', please give details.	
Convictions or civil liabilities		
4	Have you at any time pleaded guilty to or been found guilty of any offences?	Select from list
	If 'Yes', please give details.	
5	Have you, within the last 5 years in the United Kingdom or elsewhere, been party to any civil action which has resulted in a finding against you by a court, or a settlement being agreed, in respect of any matter relating to your professional or business activities?	Select from list
	If 'Yes', please give details.	

6	Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?	Select from list
	If 'Yes', please give details.	

Good reputation and character

7	Have you, in the United Kingdom or elsewhere, ever been refused the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	If 'Yes', please give details.	
8	Have you, in the United Kingdom or elsewhere, ever been the subject of an investigation into allegations of misconduct or malpractice in connection with your professional activities, which resulted in a formal complaint being proved but no disciplinary order being made?	Select from list
	If 'Yes', please give details.	
9	Have you, in the United Kingdom or elsewhere, ever been the subject of disciplinary procedures against you resulting in a finding by a professional body or employer?	Select from list
	If 'Yes', please give details.	
10	Have you, in the United Kingdom or elsewhere, ever been reprimanded, excluded, otherwise disciplined or publicly criticised by any professional body to which you belong or have belonged?	Select from list
	If 'Yes', please give details.	
11	Have you, in the United Kingdom or elsewhere, ever been refused entry to or excluded from membership of any profession or vocation?	Select from list
	If 'Yes', please give details.	
12	Have you, in the United Kingdom or elsewhere, ever been dismissed or asked to resign from any office or employment or asked to resign from a firm?	Select from list
	If 'Yes', please give details.	
13	Have you, in the United Kingdom or elsewhere, ever been censured, disciplined, or publicly criticised by, or made the subject of a court order at the instigation of any regulatory authority, or any officially appointed enquiry, or any other body concerned with the regulation of a financial, professional or other business activity?	Select from list
	If 'Yes', please give details.	
14	Are you currently undergoing investigation or disciplinary procedures as described in 8, 9 or 10?	Select from list
	If 'Yes', please give details.	

Questions 15-19 apply to corporate body applicants only

15	Has the corporate entity ever 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 a winding-up order made against it on grounds of insolvency?	Select from list
	If 'Yes', please give details.	
16	Has the corporate entity ever has an administration order made against it on grounds of insolvency?	Select from list
	If 'Yes', please give details.	

17	Has the corporate entity ever had a receiver appointed by a creditor or by a court on the application of a creditor?	Select from list
	If 'Yes', please give details.	
18	Has the corporate entity, in the United Kingdom or elsewhere, ever been refused the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	If 'Yes', please give details.	
19	Is the corporate entity currently undergoing investigation or disciplinary procedure as described in 8, 9 or 10?	Select from list
	If 'Yes', please give details.	

5 Declaration by two chartered accountants

This declaration should be signed by the two most senior chartered accountant principals in the firm.

If there are only two principals in an applicant's firm, of whom one is the applicant, the chartered accountant principal and a member of ICAEW who is **not** an employee of the firm should sign the declaration and confirmation.

If the applicant is a corporate body, two independent chartered accountants will need to sign the declaration below rather than a principal within the company.

First referee

I confirm that, in my opinion, the applicant is a fit and proper person to be granted probate affiliate status with ICAEW.	
Name	
Firm name	
Member body	Select from list
Membership number	
Date of qualification (dd/mm/yyyy)	
I have known the applicant for	years
Signature	
Date	

Second referee

I confirm that, in my opinion, the applicant is a fit and proper person to be granted probate affiliate status with ICAEW.	
Name	
Firm name	
Member body	Select from list
Membership number	
Date of qualification (dd/mm/yyyy)	
I have known the applicant for	years
Signature	
Date	

6 Affiliate fees

We have enclosed a copy of this year's affiliate fee scale (icaew.com/affiliates) and you must pay your affiliate fee when you submit your application. We are unable to process applications without the appropriate fee. We will send you a receipted invoice for the first annual fee once your application has been approved. If your application is not successful, we will refund the affiliate fee.

7 Signature and confirmations of the applicant for affiliate status

I hereby apply to the council to be accepted as an affiliate of ICAEW under ICAEW's Probate Regulations.

I certify that the details provided in this application are correct.

I know of no reason why there should be any doubts regarding my being a fit and proper person to be an affiliate of ICAEW.

I undertake, if accepted as an affiliate, to comply with the Royal Charter, bye-laws and regulations which, at the time of acceptance and thereafter, are in force.

In particular, I will:

- observe and uphold the ethical and professional standards of ICAEW;
- perform faithfully and promptly any service that I am retained or employed to undertake in my professional capacity;
- provide promptly and willingly all such information and assistance as I am able, if asked to do so by ICAEW in pursuance of its duties; and
- pay the appropriate annual affiliate fee when due.

I understand that I shall not be entitled to call myself a chartered accountant and that affiliate status does not confer any rights, acknowledgements, status or designatory letters on an affiliate or entitle an affiliate to be publicly represented as having such.

I acknowledge that, if accepted as an affiliate, I shall be subject to the disciplinary processes of ICAEW for any failure to comply with its bye-laws or regulations, or the undertakings in this application.

Signature _____

Print full name of applicant _____

Date _____

8 Signature and confirmations of the firm's contact partner or Head of Legal Practice (HoLP)

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the individual's circumstances.

Signature _____

Print full name of the firm's contact partner or HoLP _____

Date _____

9 Additional notes

The Royal Charter, bye-laws, Probate Regulations and Guidance and Code of Ethics are published at icaew.com/regulations. The probate contact partner or HoLP in your firm should keep a copy of the Probate Regulations and Guidance.

10 Submit your form

Save your completed form to your computer. Print a copy, sign it and send your application, together with a cheque payable to CHARTAC, to:

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information for administration, communication and research, so we will sometimes share it with our business partners. We will also use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy, please go to icaew.com/dataprotection

PROPOSED COURSE IN WILLS, PROBATE AND ESTATE ADMINISTRATION

Day 1

09:30 – 11:00

Overview of Legal Services Act 2007, as it applies to probate work
Overview of the administration of an estate after death
The jurisdiction of the 'probate courts', including territorial limits
Meaning of 'testamentary documents'
Validity of wills
The meaning of testate (probate or administration with the will annexed) and intestate (simple administration)
Overview of the intestacy rules
The law of property for succession purposes
Equity and trusts overview

11:30 – 13:00

Immediate post-death steps
Administering property immediately after death
The need for a grant of representation
When is a grant required?
When is a grant not required?
Capacity to take a grant of representation; who cannot take a grant?
The effect of a grant of representation
Number of personal representatives
Overview of the different types of grant of representation

14:00 – 15:15

Grant of probate
Grant of letters of administration with the will annexed
Grant of letters of administration
Limited grants grant of administration de bonis non
Cessate grants
Double probate
Renunciation
Passing over
Revocation of grants of representation (in non-contentious cases)
Overview of the procedure for obtaining a grant of representation

15:30 – 17:00

An overview of the inheritance tax regime

Day 2

09:30 – 11:00

Obtaining details about the assets and liabilities of the estate
The different types of inheritance tax accounts
Payment of inheritance tax

11:30 – 13:00

How to complete the different types of inheritance tax accounts
Corrective accounts

14:00 – 15:15

The different forms of oaths
How to complete the relevant oath
Making the application for the grant of representation - practical steps

15:30 – 17:00

Affidavit evidence
Caveats and citations
Standing searches
Powers and duties of personal representatives

Day 3

09:30 - 11:00

Protecting the personal representatives from personal liability
Collecting in the deceased's assets

11:30 - 13:00

Dealing with the estate's tax liability: income tax and capital gains tax
Payment of debts
Applying for a clearance certificate

14:00 – 15:15

Identifying beneficiaries
Paying legacies
Ascertaining and distributing residue

15:30 – 17:00

Problems that can arise (eg, 1975 Act claims, insolvent estates, etc)
Consideration of resources for practitioners

Day 4

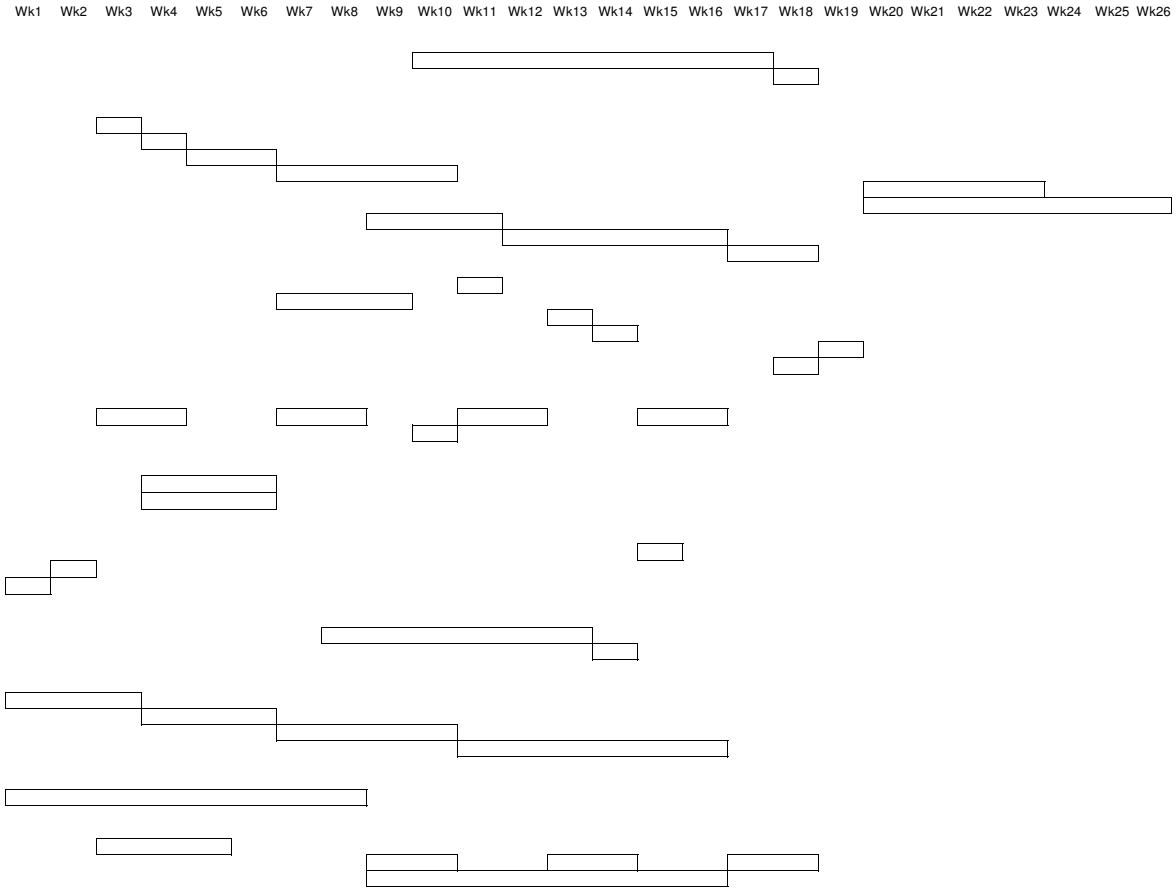
Objective testing assessment

ICAEW PROBATE BUSINESS PLAN 2012

Business Plan Detailed Steps and Owners

Establishing a Probate Committee				**Owner**
The appointment of members, including lay members, will follow the standard ICAEW governance approach to establishing committees.				Head of Governance
Funding is required to support the recruitment, start up and training.				
Regulatory approvals and quality assurance visit methodology				
Those practitioners or firms wishing to provide probate services will need to seek authorisation to do so.				
They will need to complete an application which meets the regulatory requirements in full.				
The ICAEW technical support team, part of the ICAEW enquiry centre, will confidentially support applicants.				Head of Enquiry Centre
The ICAEW regulatory support team will administer the application process, and support both the practitioner and firm and the Probate Committee.				Regulatory and Practice Manager
The ICAEW annual returns team will undertake an annual data validation process, in addition to the annual renewal process and data change management regulatory requirements.				Annual Returns Supervisor
The ICAEW quality assurance department will action monitoring, risk management and monitoring visits.				QAD Director
The costs of the regulatory process (based on agreed visit cycle) will be met by subscription fees and a compensation levy in line with the ICAEW self financing mechanism.				Professional Standards Head of Finance
Should ICAEW receive very high volumes of probate applications the regulatory support and QAD team will be expanded to meet demand.				QAD Director
Application forms and guidance notes		1 week		Head of Regulation
Regulatory support training on applications and guidance	Training	1 week		Head of Regulation/Regulatory and Practice Mgr
Develop online helpsheets and process flow diagrams		2 weeks		Head of Regulation
In-house technical support and process/procedure training	Training	3 weeks		Head of Enquiry Centre
Updating website and online functionality		4 weeks		Digicomms Manager
Regulatory support training of online materials	Training	1 week		Digicomms Manager/Regulatory and Practice Mgr
Process application (in line with current service standards) - no referral required to committee		4 weeks		Regulatory and Practice Manager
Process application (in line with current service standards) - referral required to committee		7 weeks		Regulatory and Practice Manager/Committee Secretary
Enhance annual return process		3 weeks		Annual Returns Supervisor
Annual returns team training on enhancements	Training	1 week		Annual Returns Supervisor
Enhance Pentana Audit Work System (PAWS) quality assurance process		5 weeks		QAD Director
QAD reviewers trained on PAWS system process	Training	1 week		QAD Director
QAD reviewers' technical training on probate and estate administration	Training	1 week		QAD Director
Monitoring reports and committee referral process		2 weeks	48 weeks	QAD Director/Committee Secretary
Complaints				
Liaison with Legal Ombudsman		3 weeks		Head of Regulation
Development of shared IT processes		3 weeks		Head of Regulation/Regulatory and Practice Mgr
Enforcement				
In-house training for Professional Conduct staff	Training	1 week		Head of Regulation/Director, Professional Conduct
Guidance on sentencing update		1 week		Head of Regulation
Review Committee regulations update		1 week		Head of Regulation
Professional indemnity insurance				
Practitioners and firms will need to ensure that they have in place the appropriate professional indemnity insurance.				
ICAEW has already commenced discussions on its proposals with the lead insurers.				
Finalise amendments to the PII arrangements and communicate changes to members		6 weeks		Head of Regulation
Annual Returns team training on enhancements	Training	1 week	14 weeks	Head of Regulation/Annual Return Supervisor
Probate Compensation Scheme				
ICAEW will set up a probate compensation scheme				
Further negotiation with insurer		3 weeks		Finance Director
Set up account		3 weeks		Executive Director of Finance
Confirm level and mechanism of member contributions (see also fee calculation)		4 weeks		Executive Director Professional Standards
Finalise administrative arrangements (including training)	Training	6 weeks	16 weeks	Head of Regulation
Communications				
Develop scheme promotional literature and case study		3 weeks		Head of Marketing/Head of Regulation
Place articles in ICAEW publications		6 weeks		Share Service Mgr/PCP
Development of roadshows and other promotional activities		8 weeks		Corporate Communications/Head of Regulation

Proposed timeline for activity



Establishing the Probate Committee		
Recruitment of committee members		8 weeks
Committee member training		1 week
Regulatory approvals and quality assurance visit methodology		
Application forms and guidance notes		1 week
Development of compliance review helpsheets		1 week
Develop online helpsheets and process flow diagrams		2 weeks
Updating website and online functionality		4 weeks
Process application (in line with current service standards) - no referral required to committee		4 weeks
Process application (in line with current service standards) - referral required to committee		7 weeks
Enhance annual return process		3 weeks
Enhance Pentana Audit Work System (PAWS) quality assurance review process		5 weeks
Monitoring reports and committee referral process		2 weeks
Regulatory support training on applications and guidance	Training	1 week
In-house technical support and process/procedure training	Training	3 weeks
Regulatory support training of online materials	Training	1 week
Annual Returns team training on enhancements	Training	1 week
QAD reviewers trained on PAWS system process	Training	1 week
QAD reviewers' technical training on probate and estate administration	Training	1 week
Data verification and information sharing processes		
Setting up arrangements with other approved regulators and professional bodies		8 weeks
Arrangements for CRB checks		1 week
Complaints		
Liaison with Legal Ombudsman		3 weeks
Development of shared IT processes		3 weeks
Enforcement		
In-house training for Professional Conduct staff	Training	1 week
Guidance on sentencing update		1 week
Review Committee regulations update		1 week
Professional indemnity insurance		
Finalise amendments to the PII arrangements and communicate changes to members		6 weeks
Annual Returns team training on enhancements	Training	1 week
Probate Compensation Scheme		
Further negotiation with insurer		3 weeks
Set up account		3 weeks
Confirm level and mechanism of member contributions (see also fee calculation)		4 weeks
Finalise administrative arrangements (including training)	Training	6 weeks
Appeals		
Further liaison with Ministry of Justice and the Tribunal Procedure Committee		8 weeks
Communications		
Develop scheme promotional literature and case study		3 weeks
Place articles in ICAEW publications		6 weeks
Development of roadshows and other promotional activities		8 weeks

	Notes	£k	2012 /2013 Start up*	Low	2013 Medium*	High
Income						
Volume			250	100	250	500
Average annual fee (small)		£		£ 705	£ 705	£ 705
Average annual fee (medium)		£		£ 1,055	£ 1,055	£ 1,055
Average annual fee (large)		£		£ 2,040	£ 2,040	£ 2,040
Application/certificate fee		£				
Total income		£k	**0.0**	**84.1**	**202.9**	**400.9**
Direct (external) cost						
Probate Committee						
Appointment of lay members			10.0			
Start up meeting			2.5			
Training			1.0			
Quarterly meetings						
Member attendance/expenses				5.6	5.6	5.6
Room hire				4.5	4.5	4.5
Regulations						
Legal advice			15.0	2.0	2.0	2.0
Registration			4.0			
Training			2.0	1.0	1.0	1.0
Cash processing			0.1	1.3	3.0	6.0
Annual churn in membership				0.5	1.3	2.5
Office costs				0.5	1.0	2.0
System development						
Pro practitioner/firm system			5.0	1.0	5.0	20.0
VisualFiles workflow			5.0	1.0	1.0	1.0
Website			2.5	1.0	1.0	1.0
PAWS			2.5	1.0	1.0	1.0
Start-up amortisation (3 years)				44.2	44.2	44.2
Levy start up amortisation (5 years)				20.0	20.0	20.0
Total external cost		£k	**49.6**	**83.6**	**90.6**	**110.8**
Contribution			**-49.6**	**0.6**	**112.3**	**290.1**
Contribution %				1%	55%	72%
Internal resource						
Regulatory Policy			50.0			
Regulatory Support/Annual Returns (backfill)			21.0	10.0	20.0	30.0
Quality Assurance				30.0	75.0	150.0
Committee and Committee Secretary				15.0	15.0	15.0
Conduct follow-up				10.0	25.0	50.0
Training			7.0	2.0	2.0	2.0
Delivery mgt			5.0	5.0	5.0	5.0
Total internal costs			**83.0**	**72.0**	**142.0**	**252.0**
Net income			-132.6	-71.4	-29.7	38.1
NI %				-85%	-15%	10%

Spread of AI volumes

Volume	Low AI	Mid ABS	Lg ABS
100	75	20	5
250	188	58	5
500	375	120	5
Basis of spread	75%	Balance	5

Income generated across spread based on fee scale average

At volume	Low AI	Mid ABS	Lg ABS	Income
100	£ 52,838	£ 21,093	£ 10,200	£ 84,131
250	£ 132,094	£ 60,643	£ 10,200	£ 202,937
500	£ 264,188	£ 126,560	£ 10,200	£ 400,948

Notes

Assumptions

1. All volumes and charges are illustration estimates only and subject to review against competitor pricing

As volumes are not secured initial start-up will make use of current processes before critical mass justifies further investment.

*medium volume assumed at start-up

Pricing

See feescale

Volume spread per analysis table (levy calculation based on medium level volumes)

Costs

Start-up costs to be re-couped over first 3 years (annual subscription increases to take this longer term view into account)

An initial £100k payment will be made into the compensation scheme and recovered over time in addition to an annual and separate levy charge.

Authorised individual and ABS feescale

The feescale is based on:
The number of principals plus authorised individuals (AI) plus Head of Legal Practice plus Head of Finance and Admin volumes without duplication = Principals + AI
The number of offices = Offices (plus 1 for trading name)
Charges in bands of the above

Offices -->	1	2 to 10	10+
Number of principals and AIs			
1	**£ 599.00**	£ 810.00	£ 1,090.00
2 to 5	£ 810.00	£ 1,090.00	£ 1,470.00
6 to 9	£ 1,090.00	£ 1,470.00	£ 1,980.00
10+	£ 1,470.00	£ 1,980.00	£ 2,670.00

1.35 scale incremental factor

£ 705	Assume majority lowest level fee band	
£ 1,055	Average reduced by 20% contingency	
£ 2,040	Average reduced by 20% contingency	

	Low	Medium	High
P&L	(71)	(30)	38

Compensation scheme levyscale

Objectives:
Create compensation fund of £1m over 10 years net of start up £100k
Cover the annual premiums of "fund of last resort"

Offices -->	1	2 to 10	10+
Number of principals and AIs			
1	**£ 399.00**	£ 540.00	£ 730.00
2 to 5	£ 540.00	£ 730.00	£ 990.00
6 to 9	£ 730.00	£ 990.00	£ 1,340.00
10+	£ 990.00	£ 1,340.00	£ 1,810.00

1.35 scale incremental factor

£ 470	Assume majority lowest level fee band	
£ 709	Average reduced by 20% contingency	
£ 1,380	Average reduced by 20% contingency	

	Low AI	Mid	Large
Medium volumes	188	58	5
Average band pa	£ 470	£ 709	£ 1,380
Annual fund	£ 88,031	£ 40,787	£ 6,900
10 years			
10 year target			

£ 135,718
£ 1,357,179
£ 1,400,000

Methodology

The feescale is built based on a range of registration volume projections and sensitivity analysis focused primarily on the spread of firm size. Firm size is categorised by number of principals and AIs and number of offices.

The rationale for a proportional and fair indicative fee scale:
1. Low entry fees to minimise barriers
2. Recognises that firm size has an impact on scale of regulatory operations
3. A simple and practical scale to understand avoiding continuos measurement through a registration year (also keeps admin costs low)
4. The strcuture of the feescale aids targeting self financing at a reasonable volume level

ANNEX 18

ICAEW – PROBATE COMPENSATION SCHEME REGULATIONS

BUSINESS WITH CONFIDENCE

icaew.com

1 General

Authority and commencement

1.1. These *regulations* are made by the Council of *ICAEW*, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They come into force on [date].

1.2. Any notice or document may be served on *ICAEW* by sending it to:

Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

1.3. Subject as herein provided, any notice, decision, order or other document which needs to be served on any *applicant*, *firm* or *accredited probate firm* under these *regulations* will be delivered by hand, or sent by email, fax or post:

a. if it is delivered by hand to the addressee, service will take effect immediately;

b. if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;

c. if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or

d. if sent by post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting.

1.4. Any requirement of the *Probate Committee* under these *regulations* will be communicated in writing.

Interpretation

1.5. The words listed below shall have the meanings given:

Accreditation	The process by which *ICAEW* authorises or licenses persons to undertake *probate work* in accordance with the Probate Regulations.
Accredited probate firm	A *firm* authorised or licensed under *ICAEW*'s Probate Regulations to conduct *probate work*.
Act	Legal Services Act 2007
Applicant	A person (including an individual or a body corporate) who, being eligible under *regulation* 3.2, makes an *application* for a *grant* of compensation in accordance with these *regulations*.
Application	A claim for the *grant* of compensation made in accordance with *regulation* 7.1.
Authorised work	• *Probate work* • Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
Employee	Anyone who carries out *authorised work* for an *accredited probate firm* but excluding a *principal*.

Firm	A *firm* includes a: • sole practice; • partnership; • limited liability partnership; or • body corporate.
Grant	The payment to an *applicant* in accordance with a decision of the *Probate Committee* under *regulation* 3.
ICAEW	The Institute of Chartered Accountants in England and Wales
Principal	• an individual in sole practice (where the *firm* is a sole practice); • a person who is a partner (including both salaried and equity partners) (where the *firm* is a partnership); • a member of a limited liability partnership (where the *firm* is a limited liability partnership); • a director (where the *firm* is a company); • a member of the governing body (where the *firm* is an unincorporated body, other than a partnership); or • any individual or person who is held out as being a director, partner, member, or member of the governing body.
Probate Committee	The committee established under chapter 9 of the Probate Regulations.
Probate Compensation Scheme	The *scheme* for the payment of *grants* made in accordance with these *regulations*.
Probate work	The preparation of papers to apply for a grant of probate or letters of administration.
Regulations	These *Probate Compensation Scheme Regulations*, as modified or amended from time to time.

1.6. In these *regulations*, headings are for convenience only, and shall not affect interpretation.

1.7. In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

Administration of the scheme

1.8. The *Probate Committee* is responsible for administering the *Probate Compensation Scheme* and for determining *applications* for compensation made under these *regulations*.

2 The Probate Compensation Scheme

2.1. These *regulations* apply to:

a. *accredited probate firms*;

b. *firms* that were previously *accredited* in accordance with the Probate Regulations and any reference to *accredited probate firm*s shall include such *firms*; and

c. *applicants*.

2.2. An *accredited probate firm* must pay any levy for *ICAEW*'s *Probate Compensation Scheme* (whether a periodic contribution or special levy) as *ICAEW* may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.

2.3. *ICAEW* may invest any money which forms part of the *Probate Compensation Scheme* in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).

2.4. *ICAEW* may insure, in relation to the *Probate Compensation Scheme*, for such purposes and on such terms as it considers appropriate.

2.5. *ICAEW* may borrow for the purposes of the *Probate Compensation Scheme* and charge investments which form part of the *Scheme* as security for borrowing by *ICAEW* for the purposes of the *Scheme*.

2.6. The *Probate Compensation Scheme* may be applied by *ICAEW* for the following purposes (in addition to the making of *grants* in respect of *applications* for compensation):

a. payment of premiums on insurance policies effected under *regulation* 2.4;

b. repayment of money borrowed by *ICAEW* for the purposes of the *Probate Compensation Scheme* and payment of interest on any money so borrowed under *regulation* 2.5;

c. payment of any other costs, charges or expenses incurred by *ICAEW* in establishing, investing, maintaining, protecting, administering or applying the *Probate Compensation Scheme*;

d. payment of any costs, charges or expenses incurred by the *ICAEW* in exercising its powers under Schedule 14 to the *Act* (intervention powers) or any intervention powers which it may have as an approved regulator under the *Act*;

e. payment of any costs or damages incurred by *ICAEW* or its employees, agents any member, officer, and any member of the *Probate Committee*, as a result of proceedings against any of them for any act or omission made in good faith and in the exercise or purported exercise of any of their functions under these *regulations*.

3 Grants from the Probate Compensation Scheme

3.1. A *grant* from the *Probate Compensation Scheme* is made wholly at the discretion of the *Probate Committee* and on such terms as the *Committee* deems appropriate. No person has a right to a *grant* enforceable at law.

3.2. The *Probate Committee* will not make a *grant* in favour of an *applicant* which, if a body corporate or a registered charity, had an annual turnover in the last accounting year equal to, or exceeding, £1 million.

3.3. For a *grant* to be made from the *Probate Compensation Scheme*, an *applicant* must satisfy the *Probate Committee* that:

a. he has suffered loss in consequence of fraud or other dishonesty on the part of an *accredited probate firm* or of any *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*; or

b. he has suffered loss in consequence of a failure to account for money which was received by an *accredited probate firm*, or the *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*.

3.4. A *grant* may be made, at the sole discretion of the *Probate Committee*, as an interim measure and on such terms as the *Probate Committee* deems appropriate.

4 Grants in respect of persons in default of regulatory requirements

4.1. At the absolute discretion of the *Probate Committee* a *grant* may be made even if at the time of the relevant act or default by the *accredited probate firm* or its *principal* or *employee*:

a. the *accreditation* of the *accredited probate firm* had ceased under regulation 2.22 of the Probate Regulations; or

b. the *accreditation* of the *accredited probate firm* was suspended under chapter 10 of the Probate Regulations; or

c. the *principal* or *employee* of the *accredited probate firm* was disqualified under chapter 5 of the Probate Regulations,

provided that the *Probate Committee* is reasonably satisfied that the *applicant* at that time was unaware of the cessation, suspension or disqualification.

5 Cases not covered by the Probate Compensation Scheme

5.1. For the avoidance of doubt, a *grant* will not be made in respect of losses which:

a. are the personal debts of an *accredited probate firm* or a *principal* or *employee* of such a *firm* and where the facts would not otherwise give rise to an *application* to the *Probate Compensation Scheme*;

b. result from, but do not form part of, any misappropriation of, or failure to account for, money or money's worth;

c. result from the trading debts or liabilities of the *accredited probate firm*;

d. amount to a claim for contractually agreed interest between the *applicant* and the *accredited probate firm*;

e. were not notified to the *Probate Committee* in accordance with *regulation* 7.1;

f. result from activities of the *accredited probate firm* other than in its performance of *authorised work*;

g. arise solely by reason of professional negligence by an *accredited probate firm* or a *principal* or *employee* of such a *firm*; or

h. arose at any time when the *firm* was not *accredited*, save for the circumstances set out in *regulation* 4.1.

6 Multi-party and multi-profession issues

6.1. Where the loss has been sustained as a result of the combined activities of more than one party (eg, an *accredited probate firm* conspires with a solicitor or is assisted by a negligent solicitor), the *Probate Committee* will consider the role of each contributing factor in causing the *applicant*'s loss. The *Probate Committee* will base any *grant* on its assessment of that portion of the loss primarily attributable to the acts of the *accredited probate firm*. The *Probate Committee* may decide to make a *grant* on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an *application* in its entirety if it is of the opinion that the loss was primarily due to factors other than the fraud or dishonesty of the *accredited probate firm*, or its *principal(s)* or *employee*(*s*), or their failure to account for money which was received in connection with activities in the course of *authorised work*.

6.2. When an individual authorised by another approved regulator (as set out in Schedule 4 of the *Act*) is practising as the *principal* or *employee* of an *ICAEW accredited probate firm*,

ICAEW may, in its absolute discretion, consider an *application* in respect of that individual's act or default.

7 Applications: form and time limit

7.1. Every *application* must be delivered to *ICAEW*, in such form as may from time to time be prescribed by *ICAEW*, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the *applicant*. The *Probate Committee* may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

8 Documentation in support

8.1. An *applicant* must provide such documentation as may be required by the *Probate Committee* including, when requested, a statement of truth. Failure to provide such documentation or to cooperate with the *Probate Committee* will be taken into account when determining the merits of the *application* and may be treated as a reason for withholding or reducing a *grant*.

9 Exhausting other remedies

9.1. A *grant* will be refused or reduced where the loss or part of the loss is an insured risk or where, in the reasonable opinion of the *Probate Committee*, the loss is capable of being made good by some other means.

9.2. In particular the *Probate Committee* may, before deciding whether to make a *grant* or the amount of a *grant*, require the *applicant* to:

a. pursue any civil remedy which may be available to the *applicant* in respect of the loss;

b. commence insolvency proceedings;

c. make a formal complaint to the Police in respect of any dishonesty on the part of the *accredited probate firm* or its *principal(s)* or *employee(s)*; or

d. assist in the taking of any action against the *accredited probate firm* or its *principal(s)* or *employee(s)*.

9.3. If a *grant* is made (whether under *regulation* 3.4 or otherwise) before requiring the *applicant* to resort to other means of recovery, such *grant* will be made repayable to *ICAEW* in the event (and to the extent) that losses are recovered by such other means.

10 Notice to accredited firm

10.1. The *Probate Committee* shall not make a *grant* unless:

a. a communication has been sent to the *accredited probate firm* at its last known correspondence address, as set out in *regulation* 1.3, or to its representative informing the *accredited probate firm* of the nature of the *application*; and

b. not less than eight days have elapsed since the date of receipt of such communication which, notwithstanding *regulation* 1.3, shall be regarded as the day following the date of the communication.

10.2. If it appears to the *Probate Committee* that any communication sent under *regulation* 10.1 will not come to the attention of the *accredited probate firm* or its representative, then the *Probate Committee* may make a *grant* notwithstanding failure to comply with the provisions of this *regulation*.

11 Costs

Litigation costs

11.1. Where an *applicant* intends to institute or has already instituted civil proceedings for recovery of his loss and wishes to apply for a *grant* in respect of the costs of the proceedings, the *Probate Committee* will not consider making or increasing a *grant* in respect of such costs unless:

a. they can be shown to be proportionate to the loss and the amount likely to be recovered; or

b. the proceedings are/were necessary for the making of the *application* for a *grant*.

Application costs

11.2. Where a *grant* is made, the *Probate Committee* may, in its absolute discretion, consider an *application* for a further *grant* in respect of any reasonable fees payable by the *applicant* to any professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the *application*.

12 Maximum payment

12.1. Subject to *regulation* 12.2 the maximum total amount that may be granted pursuant to *application*s under this *scheme* in respect of *authorised work* in connection with any single estate is limited to £500,000 (exclusive of any interest payable under *regulation* 17.1).

12.2. The maximum amount which the *Probate Committee* may determine shall be paid out of the *Probate Compensation Scheme* in any financial year of *ICAEW* shall be:

a. the amount determined by the *Probate Committee* which may be expected not to cause the *grants* payable in that year to exceed £5,000,000; plus

b. the amount of any money recovered in that year by the *Probate Compensation Scheme*, net of VAT (if applicable), pursuant to the provisions of *regulation* 13.1 and available for payment in that year; plus

c. the amount of any sums so recovered in previous years and not disbursed and which are available for payment in the relevant year, net of VAT (if applicable).

Accordingly if, in the course of any such financial year, it appears to the *Probate Committee*, in its absolute discretion, that the total of such amounts is otherwise likely to be exceeded in that financial year, then in the remainder of that financial year it shall not determine that the full amount shall be paid in respect of any *application*, but shall secure, as far as it reasonably can, that all *grants* it thereafter determines shall be made, taking into consideration any *grant* on account, are abated rateably one with another.

12.3. Where the *Probate Committee* has abated a *grant* under 12.2 it may, in its absolute discretion, at the end of the financial year of *ICAEW* in which the initial *grant* was made (the Grant Year) determine whether or not:

a. the balance of the amount stated in the *application* or a part thereof; and

b. interest on such balance;

should be paid in the next following year of *ICAEW* (the Following Year) and any such further *grant* shall be made out of funds available to the *Probate Committee* for the Following Year as provided in *regulation* 12.2.

13 Recovery and subrogation

13.1. Where a *grant* is made otherwise than by way of loan, or where a *grant* is made by way of a loan and repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, *ICAEW* shall be subrogated to the rights and remedies of the person to whom or on whose behalf the *grant* is made (the recipient) to the extent of the amount of the *grant*. In such event the recipient shall if required by *ICAEW* whether before or after the making of a *grant* and upon *ICAEW* giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the *accredited probate firm* and/or sue for recovery of the loss in the name of the recipient but on behalf of *ICAEW*. The recipient shall also comply with all proper and reasonable requirements of *ICAEW* for the purpose of giving effect to *ICAEW*'s rights and shall permit *ICAEW* to have conduct of such proceedings.

14 Reduction in grants

14.1. Where an *applicant* or the *applicant*'s servant or agent has contributed to the loss as a result of his activities, omissions or behaviour whether before, during or after the event giving rise to the *application*, the *Probate Committee* may, in the exercise of its absolute discretion and to the extent that it considers that such activity, omission or behaviour has contributed to the loss, reduce the amount of any *grant* or reject the *application* in its entirety.

15 Deduction from grants

15.1. The *Probate Committee* may deduct from any *grant* the fees that would have been payable by the *applicant* to the *accredited probate firm* so that the *applicant* will not be in a better position by reason of a *grant* than he would otherwise have been in had the loss not occurred.

15.2. The *Probate Committee* may deduct from any *grant* all monies already recovered by an *applicant* and monies which in its reasonable opinion either will be or should have been recovered.

16 Refusal of an application

16.1. If the *Probate Committee* refuses to make a *grant* of either the whole or part of the amount applied for, the *applicant* will be informed in writing of the reasons for the decision.

16.2. If an *application* is refused in whole or in part, a further *application* for the same loss (or loss which includes the same loss) may not be made unless, in the reasonable opinion of the *Probate Committee*, it is supported by substantial new relevant evidence, information or submissions in which case *ICAEW* may, in its absolute discretion, consider a renewed *application*.

17 Interest

17.1. The *Probate Committee* may in its absolute discretion pay interest to an *applicant* on a *grant* of compensation. Any interest shall accrue from a date three calendar months after the date on which all information necessary to determine the *application* was provided by the *applicant* to the *Probate Committee*.

17.2. Any interest payable under *regulation* 17.1 shall be simple interest paid at a rate which is applied by HMRC in respect of Income Tax repayments.

18 Appeals

18.1. If an *application* is refused in whole or in part, the *applicant* may appeal to the General Regulatory Chamber of the First-tier Tribunal in accordance with the rules governing the Tribunal as amended from time to time.[1]

19 Waivers

19.1. The *Probate Committee* may, in its absolute discretion, waive any of the provisions of *regulations* 1.4, 6 – 11, 16 or 17 above.

[1] The rules that currently govern the Tribunal are The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

PROBATE COMMITTEE TERMS OF REFERENCE

Accountability

1. Although ICAEW has been designated as an approved regulator under the Legal Services Act 2007 (the Act) it has agreed that the Probate Committee will carry out its regulatory functions in relation to probate independently of ICAEW. The ICAEW Council and other boards and committees of ICAEW may not intervene directly into the work of the Committee. However, as the approved regulator, ICAEW will retain the right to request that the Legal Services Board (LSB) intervene into the Committee's arrangements if it is considered that the Committee is failing to discharge its functions in accordance with the Probate Regulations or the Act's regulatory objectives.

2. Before determining matters of policy, or making or amending regulations concerning the regulation of probate practitioners, the Committee is required to consult with the Professional Standards Board (PSB) and other interested parties as appropriate.

Membership

3. The Committee is made up of 10 members of whom half are lay members.

4. The chair of the Committee is a lay member and will have a casting vote where required.

5. A lay member is defined as a person who has never qualified or practised as a professional accountant. Solicitors and persons with legal training may not be lay members.

6. Half the members of the committee will be practitioners with expertise in the regulated areas.

7. ICAEW office-holders are disqualified from membership of the Committee in accordance with Principal Bye-law 44. ICAEW Council and Board members may not serve on the Committee.

Powers and authorities

8. Council has delegated responsibility for the following activities to the Committee:

    a) ICAEW's functions as an approved regulator and licensing authority as set out more fully in the Probate Regulations, which include:

        - considering and determining applications for probate accreditation;

- considering and determining applications for authorised individual, Head of Legal Practice, Head of Finance and Administration, non-authorised owner or probate affiliate status;
- monitoring compliance with the Probate Regulations;
- taking regulatory action as required to secure compliance with the Probate Regulations;
- referring matters to ICAEW's disciplinary committees as required;
- compiling and maintaining a register of licensed firms and supplying this information to the Legal Services Board as required.

b) ICAEW's functions under the Probate Compensation Scheme Regulations in determining applications for grants;

c) the development of ICAEW policy in relation to probate practitioners, in consultation with the PSB and other key stakeholders;

d) rule-setting and any amendments to the Probate Regulations and Probate Compensation Scheme Regulations in consultation with the LSB, the PSB and other stakeholders;

e) budget and fee-setting in relation to accredited probate firms, in consultation with the LSB, the PSB (and ICAEW Board where any proposed increase is above the rate of wage inflation); and

f) liaising freely with the LSB and other stakeholders on matters concerning probate practitioners and responding to requests for information from the LSB.

Modus operandi

9. The Committee will operate in accordance with the Probate Regulations and Probate Compensation Scheme Regulations.

10. In discharging its functions the Committee will have regard at all times to the public interest, and the regulatory objectives and requirements of the Legal Services Act 2007.

11. The Committee will have a quorum of five members, the majority of whom will be lay members.

12. There will be a review of the Committee's membership and function within 3 years.

Framework Memorandum of Understanding

Licensed Bodies as Multi-Disciplinary Practices Constituted as Alternative Business Structures

Introduction

1. The Legal Services Act 2007 (LSA 2007) provides a licensing framework that permits licensed bodies (LBs) to provide reserved legal services alongside non-reserved and non-legal services. This facilitates the creation of alternative business structures (ABS) which can provide a potentially wide range of services. This may lead to the establishment of firms (including individuals within them) that are subject to the oversight of one or more regulators or professional bodies. This memorandum of understanding seeks to clarify so far as is practicable the roles of the regulators and professional bodies. One of the purposes of this memorandum of understanding is to contribute to the requirements of section 54 LSA 2007 (set out in full in Annex 2) to "make such provision as is reasonably practicable and, in all the circumstances, appropriate—

   (a) to prevent external regulatory conflicts;

   (b) to provide for the resolution of any external regulatory conflicts which arise; and

   (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body".

2. This memorandum of understanding also takes into account the Guidance (relevant extracts of which are set out in Annex 3) issued by the Legal Services Board requiring a single framework memorandum of understanding to be implemented by all relevant bodies and provide a mechanism to resolve overlaps in ways which:

   (a) provide the best form of consumer protection and redress;

   (b) minimise confusion for market participants; and

   (c) reduce/remove conflict in the future.

3. This memorandum of understanding recognises that regulators and professional bodies have duties to exercise various functions (sometimes deriving from statute) autonomously and in the public interest or with the public interest in mind. Co-operation and appropriate information sharing should provide clarity for consumers

and regulated businesses and should also reduce regulatory cost by minimising duplication of effort by all concerned.

4. The parties to this memorandum of understanding ("the Regulators") are:

4.1 approved regulators as defined in the LSA 2007 (and which, for the avoidance of doubt, means entities which exercise the regulatory functions of bodies specified as approved regulators in the LSA 2007);

4.2 licensing authorities as defined in the LSA 2007; and

4.3 other regulators or professional bodies which do not come within 4.1 or 4.2 but which oversee the conduct of their members or of other persons within their jurisdiction and who, for the purposes of this memorandum of understanding, are involved in LBs.

5. This memorandum of understanding records non-binding arrangements between the Regulators, which are bodies that regulate, inspect, or oversee the carrying on of various activities by individuals and LBs. This memorandum also records a mutual understanding of the public interest in proper co-operation and co-ordination, particularly in the light of the obligation on approved regulators and licensing authorities to act in a way which is compatible with the regulatory objectives set out in section 1 of the LSA 2007 (see Annex 1). It provides a framework for co-operation, co-ordination and exchange of information in order to facilitate effective public protection and working relationships. It does not create legal rights or liabilities, but is a statement of intent, comprising principles to which the signatories will adhere so far as they practicably and lawfully can.

6. Approved regulators are required to act compatibly with the regulatory objectives set out in section 1 of the LSA 2007. Approved regulators acknowledge that other regulators have their own statutory or non-statutory objectives.

Principles

7. The regulatory objectives in the LSA 2007 establish the key guiding principles of this memorandum of understanding. Further agreed principles are set out below to assist in a fuller understanding of how the Regulators will communicate and cooperate to facilitate the proper exercise of their functions, avoid duplication, avoid conflict between differing regulatory arrangements, and seek to ensure that consumers and others do not suffer detriment as a result of failure to co-operate or co-ordinate.

Sharing of information

8. Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a signatory to this memorandum of understanding as provided in Annex 4. It is acknowledged that the FSA may only disclose confidential information where such disclosure is permitted under the Financial Services and Markets Act 2000 or the Financial Services and Markets Act 2000 (Disclosure of Confidential Information Regulations) 2001.

Co-ordinated oversight: minimising duplication so far as is reasonably practicable

9. The Regulators will co-operate where appropriate in co-ordinating oversight and investigation (and related matters such as consequential action) so that:

9.1 action is effective in protecting the public;

9.2 investigations are not prejudiced; and

9.3 regulatory cost is proportionate.

10. Investigations will usually be undertaken or led by the regulator of the entity rather than any particular individual within it.

11. When one of the Regulators identifies that an investigation of an LB or a person within it is desirable, it will endeavour to identify whether any other of the Regulators has a proper interest in the issues or persons to be investigated and, if so, discuss the proposed investigation with a view to agreeing whether one of the Regulators or both should pursue an investigation.

12. It is desirable to minimise the risk of duplicative and potentially inconsistent acts and decisions on the same facts by the Regulators and tribunals or committees before which they bring cases. The risks include:

12.1 the same or similar issues of fact are subject to dispute in more than one forum;

12.2 witnesses and respondents are engaged in parallel or sequential proceedings on the same facts;

12.3 cost is unnecessarily imposed on respondents and the Regulators; and

12.4 decisions are inconsistent.

13. While acknowledging that there are legal and practical difficulties (such as differences between the rules of independent tribunals), the following working principles are agreed as outcomes which the Regulators would wish to achieve (acknowledging also the differing structures of Regulators' investigation and disciplinary processes):

13.1 the evidence obtained by one of the Regulators should be admissible in action by others:

13.1.1 the Regulators' rules should permit the admission of such evidence;

13.1.2 the Regulators should make submissions at an appropriate time to any independent tribunal or committee to the effect that its rules should permit the admission of such evidence; and

13.1.3 the Regulators should make submissions and applications in individual cases, so far as is appropriate and lawful, to support the principle that such evidence be admitted.

13.2 The formal findings of other Regulators or of any court or tribunal in matters conducted by another of the Regulators should be admissible in the proceedings of, or conducted by, recipient Regulators as evidence of the facts found.

14. Any of the Regulators who provide evidence or findings to another of the Regulators will co-operate so far as is reasonably practicable in making that evidence formally available for the purposes of proceedings by or involving the recipient Regulator, such as by the provision of live witnesses and/or written evidence.

15. Regulators will notify other Regulators of findings against the latter's members or those they regulate.

Protecting the financial interests of consumers

16. It is agreed that:

16.1 client money held by an LB should be held separately from other money it holds, and client money held in relation to the provision of legal services should be held in accordance with the requirements of the relevant/appropriate regulating authority ; and

16.2 the overarching principle is that clients' money must be protected at all times.

17. The Regulators will work together to reduce differences in respect of the treatment of clients' money by those they regulate. Standards and definitions should be as similar as possible and guidance should be agreed so far as possible to assist LBs to deal with complex situations.

18. The Regulators will work together to assist consumers to understand what activities of an LB are, and are not, subject to regulatory protections and in particular indemnity insurance and compensation arrangements.

19. Where there is loss to clients or others that may be covered by indemnity insurance or other compensation arrangements (such as a compensation fund or scheme), the Regulators will so far as reasonably practicable, and, subject to matters in the control of independent statutory compensation schemes, endeavour:

19.1 to signpost consumers to the appropriate insurance or compensation scheme systematically and in response to individual queries;

19.2 to minimise complexity and delay for consumers and others involved in any claim or application for compensation;

19.3 to promptly resolve any uncertainty as to liability, jurisdiction or coverage of insurance or compensation schemes and provide clear guidance to the consumer as to how to pursue recovery, and (if such uncertainty cannot be promptly and conclusively resolved), to seek to ensure that consumers' claims or applications are dealt with by one insurer or compensation scheme, on the basis that ultimate responsibility for such claims or applications is subsequently resolved between the insurer or compensation scheme and such other applicable insurer or compensation scheme; and

19.4 to work towards insurance and compensation schemes that formalise the approach described above, perhaps by powers vested in the Regulator to direct particular insurers or schemes initially to deal with claims or applications on the basis that responsibility will be resolved subsequently.

Resolution of regulatory conflicts

20. The Regulators will work together to seek to establish appropriate arrangements to prevent and where necessary to resolve regulatory conflicts. This may include:

20.1 further memoranda of understanding dealing with particular subjects in more detail;

20.2 the establishment or continuation of working groups to reduce inconsistency or uncertainty in regulatory obligations where appropriate;

20.3 informal resolution mechanisms for procedural issues such as prompt resolution of disagreement about how investigations should be sequenced or co-ordinated; and

20.4 formal resolution mechanisms for issues that create risk to consumers such as those that might otherwise cause delay in the processing or payment of compensation.

Transparency

21. The Regulators will work together to agree common standards as to:

21.1 information to be provided to consumers about the status of the person acting for them, who regulates them and how to complain;

21.2 signposting of consumers to the correct complaints or redress scheme;

21.3 transparency in the publication of regulatory decisions; and

21.4 clarity and transparency for regulated businesses in understanding how they are regulated.

General

22. The Regulators will provide each other with points of contact to ensure prompt co-operation and communication on practical and other issues arising.

23. This memorandum of understanding may be reviewed at any time at the request of one of the Regulators but will in any event be reviewed within 3 years of its date.

24. This memorandum is a public document and may be published by any Regulator.

The date of this memorandum of understanding is 1 December 2011

Signatories:

A. Approved regulators:

	Signed on behalf of the Regulator:
Solicitors Regulation Authority	…….. Name: Position:
Bar Standards Board, part of the Bar Council	…….. Name: Position:
Council for Licensed Conveyancers	…….. Name: Position:
ILEX Professional Standards Limited, part of the Institute of Legal Executives group	…….. Name: Position:
The Patent Regulation Board (established by The Chartered Institute of Patent Attorneys) and the Trade Mark Regulation Board (established by The Institute of Trade Mark Attorneys) (together The Intellectual Property Regulation	…….. Name: Position:

Board) each signing pursuant to Clause 5 of the Delegation Agreement dated [2nd] December 2009	

B. External regulatory/professional bodies:

	Signed on behalf of the Regulator:
Financial Services Authority	…….. Name: Position:
The Law Society of Scotland	…….. Name: Position:
Royal Institution of Chartered Surveyors	…….. Name: Position:
National Federation of Property Professionals	…….. Name: Position:
Institute of Chartered Accountants of Scotland	…….. Name: Position:

Institute of Chartered Accountants of England and Wales	…….. Name: Position:
Ministry of Justice acting as Claims Management Regulator	…….. Name: Position:

Annex 1

1 The regulatory objectives

(1) In this Act a reference to "the regulatory objectives" is a reference to the objectives of—

(a) protecting and promoting the public interest;

(b) supporting the constitutional principle of the rule of law;

(c) improving access to justice;

(d) protecting and promoting the interests of consumers;

(e) promoting competition in the provision of services within subsection (2);

(f) encouraging an independent, strong, diverse and effective legal profession;

(g) increasing public understanding of the citizen's legal rights and duties; and

(h) promoting and maintaining adherence to the professional principles.

(2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).

(3) The "professional principles" are—

(a) that authorised persons should act with independence and integrity;

(b) that authorised persons should maintain proper standards of work;

(c) that authorised persons should act in the best interests of their clients,

(d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and

(e) that the affairs of clients should be kept confidential.

(4) In this section “authorised persons” means authorised persons in relation to activities which are reserved legal activities.

Annex 2

54 Regulatory conflict with other regulatory regimes

(1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable and, in all the circumstances, appropriate—

(a) to prevent external regulatory conflicts;

(b) to provide for the resolution of any external regulatory conflicts which arise; and

(c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body.

(2) For the purposes of this section, an external regulatory conflict is a conflict between—

(a) a requirement of the regulatory arrangements of the approved regulator; and

(b) a requirement of any regulatory provision made by an external regulatory body.

(3) For this purpose "external regulatory body" means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons.

(4) Regulatory arrangements made for the purposes of subsection (1)(b) may, with the consent of the Board, provide for the Board to exercise functions in connection with the resolution of conflicts.

Annex 3

Extract from "Alternative business structures: approaches to licensing Guidance to licensing authorities on the content of licensing rules" (Legal Services Board, [date])

Regulatory overlaps

29. A single framework Memorandum of Understanding ("MoU") is implemented by all relevant bodies and provides a mechanism to resolve overlaps in ways which:

provide the best form of consumer protection and redress;

minimise confusion for market participants; and

reduce/remove conflict in future.

Requirement:

Licensing rules of a Licensing Authority must contain the provision required by Sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by Section 103) (section 83(5)(f))

Guidance:

58. LAs must set out the details of how they comply with this requirement. This includes how they will interact with other regulators (including any Memoranda of Understanding). We also expect LAs to identify any conflicts with other regulators" arrangements and the steps they have taken to try to resolve them.

Annex 4

Information Sharing

1. Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a signatory to this memorandum of understanding:

1.1 to enable the assessment of risk to the public such as to:

1.1.1 minimise the risk of financial default;
1.1.2 minimise the risk of fraud;
1.1.3 identify the risk of financial failure; and
1.1.4 identify increasing complaints or other concerns about the LB or persons within it.

1.2 so that alleged misconduct or other failures are properly investigated and decided upon;

1.3 to enable the proper processing of claims or applications for redress or compensation of any description; and

1.4 for the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not;

provided that the recipient is reasonably considered able to take regulatory action upon the information.

2. Any Regulator that receives or holds information received from another of the Regulators must:

2.1 comply at all times with the Data Protection Act 1998 and any related or analogous legislation;

2.2 keep the information secure;

2.3 use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and

2.4 not unreasonably take action that prejudices or may prejudice an investigation by another party or person.

3. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police, HM Revenue and Customs, the Serious Organised Crime Agency (or any body that in future carries out the functions of such bodies).

4. So far as they can lawfully and practically do so, Regulators, with the exception of the FSA, will require the LBs they regulate or oversee to consent to the sharing of information with others who have a proper interest in receiving it (such as the parties to this memorandum of understanding) by the use of licence conditions or analogous mechanisms.

[ends]

PROPOSED AMENDMENTS TO ICAEW'S SUPPLEMENTAL CHARTER FOR PROBATE AND ABS

In a Special Meeting on 12 June 2012, ICAEW members voted in favour of a Resolution to amend the Supplemental Charter of 1948 on the following basis:

THAT the principal objects in clause 1 of the Supplemental Charter of 1948 (see opposite) be amended as follows: **Firstly** insert a new principal object immediately after clause 1(a)(ii) to read – 'to promote and safeguard the rights and interests of its members in all matters affecting the profession;' and renumber accordingly. **Secondly** in clause 1(a)(v) insert after 'in relation to' and before 'public practice' - 'all or any professional services which may be provided by its members or by persons or bodies comprised wholly or partly of members, whether in' and substitute – 'or' for 'and' before the words 'the public service'.	Clause 1 of the Supplemental Charter of 1948 currently reads: 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: … (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; … (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 Privy Council Office has been informed of the proposed Charter amendments, which are now awaiting HM Privy Council allowance.

ANNEX 22

ICAEW'S CONSULTATION ON ITS DRAFT PROBATE APPLICATION

ICAEW consulted on its draft application for probate between 29 June and 7 September 2012. The following stakeholders were contacted by email on 29 June to alert them to the consultation:

The Legal Services Board

Legal Services Consumer Panel

Office of Fair Trading

Judicial Office for England and Wales

Ministry of Justice

Legal Ombudsman

The Law Society

Solicitors Regulation Authority

The Bar Council

Bar Standards Board

The Master of the Faculties

The Institute of Legal Executives

ILEX Professional Standards Ltd

The Council for Licensed Conveyancers

The Chartered Institute of Patent Attorneys

The Insitute of Trade Mark Attorneys

The Association of Law Costs Draftsmen

Institute of Chartered Accountants of Scotland (ICAS)

The Association of Chartered Certified Accountants (ACCA)

Financial Services Authority

Financial Reporting Council

The Insolvency Service

Which?

The Intellectual Property Regulation Board (IPReg)

Law Society of Scotland

Royal Institution of Chartered Surveyors (RICS)

National Federation of Property Professionals (NofPP)

Irish Auditing and Accounting Supervisory Authority (IAASA)

Chartered Accountants Ireland

Chartered Accountants Regulatory Board (CARB) - Ireland

Ombudsman Services

Financial Ombudsman Service

RESPONSES FROM ICAEW MEMBERS TO THE PROBATE CONSULTATION

Member 1:

Probate work is really quite straightforward, and entirely within the competence of a normally experienced [chartered accountant] working in practice. It is not significantly different from accounting and tax work carried out in practice, and there is no justification for creating another layer of unnecessary bureaucracy. Indeed, any private individual, holding no qualification, experience or aptitude is allowed to carry out probate work in person provided they do not charge for it. If specific supervision is being forced on us from outside, it should at least be made a simple as possible, with the member being approved for probate work rather than the firm, and keeping issues with ABS as a separate matter."

Member 2:

I am concerned that, while there is very proper formality about obtaining Probate when someone dies, there is no checking of the distribution of the estate by an independent authority. This means that, with most executors knowing very little about Executorship and therefore relying on solicitors, or other agents, to administer the estate for them, it must be possible for a disreputable agent to mismanage an estate to their own advantage, with the beneficiaries being quite unaware that they had done so.

Member 3:

Excellent application which I fully support.

Member 4:

I have nothing to comment on in relation to the probate application. Specifically, I see no reason why the appeals should not be routed through the GRC although no 'alternative' route has been suggested so there is nothing to compare.

Member 5:

I note that there is a minimum PII level of £500,000 proposed. Why is this different from (and substantially higher than) the minimum level of PII cover normally required of members? Unless there is a good reason for this, then surely it would be preferable for the draft probate regulations to follow the current ICAEW requirements.

Member 6:

My only comment if allowed after a brief review, was that the ICAEW forms seemed to require substantial information to be written on them about me if applying when that information was already held under my membership number.

LEGAL SERVICES CONSUMER PANEL

Consultation response

ICAEW: Probate application

Overview

1. **The Panel welcomes this application, which supports our aim of competition between diverse providers within a regulated market place. We particularly support the proposal that ICAEW will authorise any competent provider, not just accountancy firms, although this also alters the nature of the risks and the consumer protections needed.**

2. **It is very disappointing that ICAEW is not proposing to have a majority of lay members on the Probate Committee or Disciplinary Committee. This is needed to ensure public confidence and delivers better quality regulation. We understand that ICAEW is not bound by the detailed Internal Governance Rules set by the Legal Services Board, but must follow the spirit of those rules – in our view the lay majority principle embodies the spirit of these rules and we strongly urge ICAEW to rethink these proposals.**

3. **The financial protection arrangements seem comprehensive overall, although we seek assurances that nothing will fall through the gaps between professional indemnity insurance and the proposed compensation scheme. We would also prefer that licensed firms be required to purchase a minimum of six years run off cover, as solicitors currently must do. The Panel has concerns about some more detailed requirements, for example allowing client money to be placed in accounts outside of the UK could mean weaker depositor protection for clients and exposure to currency fluctuations. It is possible that disclosure requirements could help mitigate some of these risks.**

4. **We recommend that ICAEW carries out Criminal Record Bureau and/or other checks on non-accountants seeking authorisation. This reflects the inherent risks of fraud in probate work and cases where individuals prosecuted for fraud have previously been in trouble with the authorities yet were able to become members of trade associations.**

5. **It is good that firms will fall within the Legal Ombudsman's jurisdiction, but we are concerned that rules in relation to informing insurers about all first-tier complaints and offers of redress are onerous and could lead to a defensive mindset as found among many lawyers.**

6. **Whilst we agree that a purely inputs based approach to CPD is ineffective, we do consider that practitioners should be required to complete an element of CPD related to probate work. We hope that ICAEW will review its arrangements in the short-term and learn from current reviews underway in this sector.**

The proposals

7. The Institute for Chartered Accountants in England and Wales (ICAEW) plans to apply to become an approved regulator and licensing authority for probate activities.

8. ICAEW has developed a single regulatory framework that will apply for the most part equally to firms wishing to become accredited for probate as either:

   - Authorised firms in which all principals and owners are individually authorised to conduct probate work; or
   - Licensed firms in which not all principals and owners are authorised for probate (ABS firms).

9. The scope of the application is restricted to non-contentious probate work; ICAEW is not seeking authority to accredit firms wishing to oppose a grant of probate or letters of administration. Licensed firms conducting estate administration work will be covered by the arrangements. However, will-writing and other legal activities will not be part of the regulatory framework.

The Panel's response

10. The Panel will assume the status of a mandatory consultee under the Legal Services Act at the stage when the Legal Services Board receives the final licensing authority application. However, we are pleased to comment at this stage of the process when there is perhaps greater scope for ICAEW to amend its proposals.

11. This is the first time that a body from outside the legal sector has applied to become a licensing authority. This is welcome as our view is that anyone who can demonstrate their competence should be able to deliver legal services. The Panel wishes to see competition between diverse providers within a regulated market place and the application supports this aim. Building on this, we are pleased that the proposals foresee ICAEW authorising non-accountancy firms for probate work.

12. However, ICAEW's status as a professional body primarily focused on another sector presents some unique challenges for this application. Of course, it would not be reasonable to expect ICAEW to overhaul its existing arrangements for accountancy services when probate will represent a small proportion of its total activities. Despite this, legal services consumers are entitled to a minimum set of protections whoever they deal with and ICAEW must satisfy these expectations before being granted authorisation rights. This includes meeting practices around how regulation is delivered – for example, independent governance – that may not fit neatly with ICAEW's experience in an industry used to self-regulation, but which is vital to public confidence in the legal services sector.

13. The Panel supports the large majority of the draft application. The comments below focus on areas of disagreement or which we consider need further development. We were pleased to have met with ICAEW representatives on numerous occasions as it has developed this application and look forward to continuing good relations.

Governance

14. A Probate Committee will be responsible for overseeing ICAEW's supervisory framework for probate. The committee will comprise at least nine members, of whom one third will be probate practitioners and one third will be lay (i.e. non-chartered accountants). The chair of the committee will be a lay person.

15. The Panel welcomes the requirement that the chair will be a lay person. The chair sets the strategic direction and tone and it is important that consumer-focused regulation is led from the top. The influence of the chair on defining the commitment of the approved regulators to consumer interests has been a feature of legal services.

16. It is very disappointing that ICAEW has not specified a lay majority membership for the Probate Committee. This is a new committee which ICAEW has established specifically for this area of work. The LSB has indicated that ICAEW must follow the spirit of the Internal Governance Rules (IGRs) but it is not bound by the detailed rules which include a lay majority requirement. However, the composition of the Probate Committee goes to the very heart of the spirit of the IGRs. The Panel considers that it is vital for ensuring public confidence that regulation is seen to be conducted in the interests of the public, rather than lawyers. For us, it is the litmus test of ICAEW's commitment to public interest regulation.

17. We note that the backgrounds of only six of the minimum nine members are specified. We would agree that having professional input is necessary and suggest that three probate practitioners is a suitable threshold. There is nothing in the rules to prevent the other three members from being lay, although in practice this is unlikely to transpire. Other professional sectors have moved to lay majorities and are reaping the benefits including better decision-making and gaining from the fresh perspectives and expertise brought from other environments. ICAEW is swimming against the tide and we urge it to reconsider these proposals.

18. The make-up of the Disciplinary Committee faces similar issues as at least only one quarter of members must be lay. Findings in disciplinary proceedings are as visible sign of independent regulation as wider governance structures and there must be no impression of accountants or lawyers judging their own. Again, other disciplinary bodies have moved to a lay majority and ICAEW needs to move with the times.

19. As ICAEW defines lay as non-chartered accountants it is conceivable that the lay members could have a legal background. It would clearly be unacceptable if this was to happen and can be expected to severely undermine public confidence. The Legal Services Act gave an unambiguous signal that lay meant never having practised as a lawyer. We consider this principle should apply equally to ICAEW's arrangements.

Financial protection

20. ICAEW recognises that holding monies following a grant of probate may be relatively high risk from the perspective of consumers. The Panel welcomes this recognition and the steps ICAEW is taking to minimise risks. We consider that the

financial protection arrangements are comprehensive; they include provisions for holding client money in separate accounts, professional indemnity insurance, an assigned risks pool of last resort and a probate compensation scheme.

Client money

21. The consultation document and client money regulations set out that client money must be held separately and thoroughly documented, and contains provisions such as specifying that banks may not combine such accounts or exercise any right of set off against such accounts. Accounts should be interest bearing, with the interest returned to the client. The Panel welcomes all of these provisions.

22. However, an area of concern in the client money regulations is that currently client money can be placed in accounts outside the UK. The regulations state that the client must be informed of this in writing. We are concerned about two separate risks. Firstly, money placed in accounts outside the UK, and particularly outside the EU, may not have the same depositor protections as those in the UK. Although clients may be informed of this, they are unlikely to be aware of what these risks could mean in practice or take steps to mitigate the risks. Secondly, there is no information on how currency fluctuations should be handled – this is a factor which could place client money at risk and the implications of which may not be understood by individual clients.

Professional indemnity insurance (PII)

23. PII is mandatory, and members have to complete and return a certificate of compliance. The maximum required indemnity level (for all firms) is £1.5 million. Firms can choose to take out higher cover if they wish to, and if they do the insurance above the required level does not need to comply with the approved wording or be from qualifying insurers. For accountancy firms the minimum level of cover varies but can never be less than £100,000. In the case of licensed probate firms the minimum level of indemnity is £500,000 per claim.

24. There may be times when the value of an estate is higher than the level of insurance. We consider that in all instances where the value of an estate exceeds the level of insurance, the firm should be required to inform the client that their indemnity insurance is capped and the level of the cap. ICAEW has carried out research on average estate values which suggests that such an information requirement would likely only apply in a minority of cases.

25. Two years run off cover is required but we consider that six years is the optimal amount of time and would mirror solicitors' requirements. It is not clear if consumers are covered by PII or by the compensation fund if run off cover has not been purchased, or if the claim falls outside the two year limit and the firm has not extended the run off cover. It would be helpful if these points were clarified.

Compensation scheme

26. ICAEW intends to set up a probate compensation scheme, which will provide extra protections for consumers. The Panel welcomes this. However, compensation may be restricted to very particular cases, so not all consumers will be able to benefit even if something has genuinely gone wrong – there is, for example, a relatively short time limit of 6 months to make a claim.

27. Cases not covered by the scheme are listed in Chapter 5. There are wide exclusions, such as losses arising from professional negligence, claims for interest which should have been paid and losses resulting from misappropriation or failure to account. This would not be an issue if PII dealt with all these situations and we have sought assurances from ICAEW that there will not be circumstances which slip through the net between PII cover and the compensation scheme. This is something which we will urge the Legal Services Board to satisfy itself about as these arrangements of last resort provide a critical safety net.

28. There is a cap of £5 million in total in grants which can be paid out in a given year. If claims in excess of this are received then all remaining grants for the year will be reduced. These reductions may be made good in the next financial year but this is at the discretion of the Probate Committee. However, we do not believe consumers should be penalised simply because they are 'last in the queue'.

29. Accredited probate firms have to inform clients of compensation arrangements at the start of an engagement. We strongly agree that informing consumers of such arrangements is beneficial. We consider the wording suggested in the consultation could include more information (such as flagging up time limits for example). At this point it could also be helpful to direct consumers to further information about the compensation scheme, for example on ICAEW's website. We suggest that providing this information should be made mandatory.

Checking the suitability of applicants

30. The prospect of fraud is one of the main reasons why the Panel has recommended the regulation of probate and estate administration activities. Our work has identified a series of inherent features of the market that leave consumers at higher risk of being defrauded, including the close knowledge gained of the testator's affairs, the potentially large value of estates, the prospect of non-discovery by victims or the potential long time lag before discovery, the highly personal nature of writing a will, the targeting of vulnerable people and the difficulty in proving some types of fraud. The sums involved can be substantial, although there is also low-level fraud which has a large cumulative total.

31. Our understanding is that ICAEW does not propose to conduct Criminal Record Bureau (CRB) or other checks on the integrity of individuals wishing to be authorised for probate work, relying on self-declarations to this effect. This may be proportionate for accountants from the UK and qualifying overseas jurisdictions who have undergone a lengthy suitability process as part of their training regime, but in our view this is insufficient for other types of applicant. This

is a concern as some individuals recently prosecuted for probate fraud have previously been in trouble with the authorities yet become members of a trade association and benefited from the credibility which comes with that status. Although conducting some checks is an administrative burden and cost, we consider it is worthwhile to protect consumers. Indeed, this would be a sensible precaution for ICAEW to take given the reputational damage that might result should someone slip through the net.

Complaints resolution

32. We strongly welcome the proposal that accredited firms will be subject to the same complaints rules and Legal Ombudsman as do other law firms. ICAEW currently has a complaints function but lacks powers to award redress. This is vital given the high potential consumer detriment that can occur from poor service in probate work.

33. The application requires all complaints to be notified to professional indemnity insurers and to notify their insurers in advance before making any offers to resolve the complaint. These measures sound overly cautious and risk breeding a defensive mindset which inhibits the quick resolution of service complaints. The Panel and the Legal Ombudsman have jointly commissioned research on the consumer experience of complaining to law firms. The findings, due for publication shortly, identify a need for a cultural change in the way in which lawyers deal with complaints. ICAEW should be mindful of the unintended effects of excessive regulation in this area.

Continuing professional development

34. ICAEW does not specify the form that continuing professional development (CPD) should take nor specify the number of hours or points that must be obtained. Rather members must undergo whatever development activity is required for them to remain competent in their roles. Members must make an annual CPD declaration, which ICAEW audits on a sample basis. Failure to make a CPD declaration may be treated as a disciplinary issue.

35. This is an area where ICAEW's existing arrangements for accountants are copied across for licensed probate firms. Like ICAEW, the Panel does not favour a purely 'inputs' based CPD model, for example based on a minimum hours requirement, which has proven not to be effective in legal services. However, we do consider that practitioners should be required to complete an element of their CPD related to probate work as a failure to keep up-to-date with changes to, for example tax laws, could have serious consequences for consumers.

36. We would hope ICAEW will wish to review its CPD arrangements in the short term. The Legal Education and Training Review process, and the proposals which ILEX Professional Standards are currently consulting on, should provide useful ideas as ICAEW develops this work.

September 2012

ANNEX 22B

The Law Society

Our ref:
Your ref:

12 September 2012

Ms C Phillips
ICAEW
Professional Standards
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

Dear Ms Phillips

Re: Consultation on ICAEW Probate Application

We note ICAEW's recent publication of a consultation on an application to become a probate regulator and licensing authority of Alternative Business Structures (ABS). We would like to thank you for the opportunity to comment on the application. However, on this occasion we will reserve our comments until the application is finalised and formally submitted to the Legal Services Board.

Yours Sincerely

Elliott Vigar
Head of Regulation

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Elliott.vigar@lawsociety.org.uk

113 Chancery Lane London WC2A 1PL **Dx** 56 Lon/Chancery Ln
t: 020 7242 1222 f: 020 7831 0344 **www.lawsociety.org.uk**

LEGAL SERVICES CONSUMER PANEL'S RESPONSE TO THE CONSULATION ON THE DRAFT PROBATE APPLICATION

Topic	**Proposal in draft application**	**Consumer Panel's comments (summary / paraphrased)**	**ICAEW's proposed response**
Authorisation	ICAEW will verify the information it receives about applicants against its disciplinary records, the records of other approved regulators, and the FSA's Shared Intelligence Service (SIS). Enhanced CRB checks will be carried out on applicants for Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA) status, and any non-authorised persons (NAPs) who seek approval to hold a material interest in a licensed firm.	CRB and other checks should be carried out on applicants for authorised individual status who are not members of the ICAEW or other qualifying international chartered accountancy bodies, or other approved regulators.	In line with the Panel's recommendation, ICAEW's application has been amended to include a requirement for **basic CRB checks** for applicants for "authorised individual" status under regulation 4.1(c). This will require applicants to obtain checks confirming that they have no current convictions. Unlike standard or enhanced CRB checks, it will not disclose spent convictions, cautions or reprimands. Since the consultation, the application has also been amended to require **standard CRB checks** for applicants for HoLP and HoFA status, and for non-authorised persons holding a material interest in a licensed firm. Unlike enhanced CRB checks, these do not involve checks of local police records and access to the Independent Safeguarding Authority's (ISA) list of persons who are barred from working with children and/or vulnerable adults.
CPD	Accredited probate firms will be required to ensure that all principals and employees undertaking authorised work (ie, probate and estate administration) are, and continue to be, competent to carry out the authorised work for which they are responsible. (Probate regulation 3.4)	Although the Panel does not favour a purely "inputs" CPD model (ie, based on a minimum number of hours) practitioners should be required to complete an element of their CPD related to probate work as a failure to keep up-to-date with changes to, for example tax laws, could have serious consequences for consumers.	Currently the probate regulations place a duty on firms to ensure competence and that authorised individuals keep up to date with changes in law and practice. This is underpinned by the requirement for competence in the Code of Ethics and consistent with ICAEW's principles-based approach to CPD. While we will not prescribe what CPD should be carried out, we will issue guidance on areas which probate

Topic	Proposal in draft application	Consumer Panel's comments (summary / paraphrased)	ICAEW's proposed response
			practitioners need to consider in forming their CPD plans.
Clients' money	Monies received in connection with authorised work (ie, probate and estate administration) must be held in accordance with ICAEW's clients' money regulations. In addition, estate monies must not be combined with other clients' monies (Probate regulation 3.8)	Monies placed in accounts outside the UK, and particularly the EU, may not be subject to the same depositor protections as in the UK. Although the clients' money regulations require firms to inform clients in writing where monies are held outside the UK, they are unlikely to be aware of the risks this may involve or take steps to mitigate those risks.	ICAEW has elected not to amend its proposals on this point. Regulation 9 of the clients' money regulations already places an obligation on firms to inform their clients in writing when monies will be placed in bank accounts outside the UK/RoI. If monies are held in the EU and firms cannot obtain acknowledgement from the bank that, among other matters, the monies will not be combined with other accounts, the firm will be required to inform its client that the money may not be subject to the same protections as in the UK, and obtain the client's consent to the arrangement in writing. In the case of monies held outside the EU, the client's consent to the arrangement will always be required in writing.
		Monies held in accounts outside the UK may also be at risk of currency fluctuations. The clients' money regulations are silent on this issue. Disclosure requirements could help mitigate some of these risks, and the Panel's manager has suggested that this could be addressed in guidance.	Again, ICAEW has elected not to follow this proposal. As above, ICAEW's clients' money regulations place an obligation on firms to inform their clients in writing of the intention to place monies in accounts outside the UK. Clients' consent to the arrangement is required in writing.

Topic	Proposal in draft application	Consumer Panel's comments (summary / paraphrased)	ICAEW's proposed response
PII	Accredited probate firms will be required to comply with the PII regulations and hold a minimum level of cover of £500k per claim.	There may be times when the value of an estate may be higher than the level of PII. Firms should be required to inform the client that their PII is capped and the level of the cap in these circumstances.	Guidance to this effect has been inserted into the draft probate regulations (reg 2.10). It is also is also reflected in the application at paragraph 4.104.
	Under the probate regulations members who cease practice are required to use their best endeavours to maintain run-off cover for 2 years. Members in firms that cease to practice are then required to use their best endeavours to arrange run-off cover for a further four years.	Two years run-off cover is required, but the Panel considers that 6 years is the optimal amount of time and would mirror solicitors' requirements. It is not clear if consumers are covered by PII or the compensation fund if run-off has not been purchased, or if the claim falls outside the two year limit and the firm has not extended the run-off cover. The Panel suggested that it would be helpful if these points could be clarified.	ICAEW has commenced discussions with insurers about the possibility of requiring all firms engaged in public practice to hold 6 years' run-off cover, not just accredited probate firms. In the meantime, accredited probate firms will be required to comply with ICAEW's usual requirements for run-off cover under PII regulations 2.7 and 2.8. ICAEW has also sought to explore with its insurer whether the Probate Compensation Scheme could be extended to cover cases of negligence where firms fail to hold PII and/or appropriate run-off cover in accordance with the Probate and PII regulations. Regrettably, ICAEW's insurer has been unwilling to extend cover on this basis. Over time, it is hoped that, if a fund is able to be built up through the compensation levy, the Probate Compensation Scheme will be able to grow in scope to encompass, for example, claims in negligence where a firm has ceased or has failed to hold PII and/or run-off cover in accordance with ICAEW's regulatory arrangements.

Topic	Proposal in draft application	Consumer Panel's comments (summary / paraphrased)	ICAEW's proposed response
Compensation	Grants for compensation will be governed by the draft Probate Compensation Scheme regulations. The scheme is intended to act as a "fund of last resort", which will compensate applicants for losses arising out of fraud or dishonesty or where there has been a failure to account and the firm's own PII cover is invalidated. There is a £5 million cap on grants that can be paid out in a given year, and if it is likely that this limit is to be reached, any remaining grants for the year will be reduced. However, the Probate Committee will have the discretion to order that any reductions be made good in the following financial year.	Compensation is restricted to very particular cases; the regulations governing the scheme contain wide exclusions covering circumstances in which a grant will not be made (eg, negligence, claims for interest and losses resulting from a misappropriation of funds or a failure to account). This is not an issue if PII dealt with all these situations.	The circumstances in which a grant may be made are set out in Probate Compensation Scheme regulation 3.2. These cover: • Losses that the applicant has suffered as a consequence of fraud or other dishonesty on the part of the accredited probate firm, or any principal or employee, in connection with their activities in the course of authorised work (ie, probate and estate administration); or • Losses that the applicant has suffered as a consequence of the firm's failure to account for monies received during the course of authorised work. As set out in Probate Compensation Scheme regulation 3.2, grants will only be made in respect of applicants who are individuals, or body corporates or registered charities with an annual turnover in the last accounting year of less than £1 million. ICAEW has sought confirmation from its broker that the policy underpinning the scheme will respond in cases of bankruptcy or fraud where the firm's own PII is invalidated (ie, fraud by a sole practitioner or two or more principals acting in collusion). As set out above, regrettably ICAEW's insurer has been unwilling to extend cover to cases of negligence where a firm has failed to maintain appropriate PII and/or run-off cover in accordance with ICAEW's PII and Probate regulations. The scheme is intended to operate as a fund of last resort only. As is reflected in chapter 9 of the Probate

Topic	Proposal in draft application	Consumer Panel's comments (summary / paraphrased)	ICAEW's proposed response
			Compensation Scheme regulations, a grant will be refused or reduced where, in the reasonable opinion of the Probate Committee, the loss is capable of being made good by some other means, or if it is already covered by PII.
		Consumers should not be penalised by the annual cap on grants simply because they are "last in queue".	ICAEW has elected not to amend its proposals regarding quantum. ICAEW have previously explored the impact on premium if the annual aggregate limit was increased. This would lead to an increased premium that would be passed on to applicants through an increased annual compensation levy. This may act as a barrier to market entry and impact negatively the regulatory objective of increased competition.
		There is a relatively short time limit to make a claim – 6 months.	In accordance with the Panel's recommendations, the time limit for making an application to the Probate Compensation Scheme has been extended to 12 months (reg 7.1)
		Although accredited probate firms are required to inform clients of the availability of the compensation arrangements at the start of the engagement, more information should be provided (eg alerting clients to the time limits for making a claim and referring them, for example, to further information on ICAEW's website).	The draft application and regulations have been amended to reflect this point (see Probate regulation 3.7 and paragraph 4.114).

Topic	Proposal in draft application	Consumer Panel's comments (summary / paraphrased)	ICAEW's proposed response
Complaints	Accredited probate firms will be required to maintain an internal complaints process and cooperate with, and comply with any decisions of, the Legal Ombudsman.	The draft regulations require all complaints to be notified to PII insurers and to notify insurers in advance before making any offers to resolve complaints. These measures sound overly cautious and risk breading a defensive mindset that inhibits the quick resolution of service complaints.	The draft regulations contain guidance reminding firms that a complaint could be a prelude to a claim and that they should be mindful of their duties and obligations to notify matters to insurers if their PII is not to be invalidated. This is a requirement of ICAEW's minimum approved wording. However, at the request of the Panel, the tone of this guidance has been softened but not removed completely.
Governance	The Probate Committee will comprise at least 9 members, of whom one third will be probate practitioners and one third will be lay (ie, non-chartered accountants). The chair of the committee will be a lay person.	The Panel welcomes the requirement for a lay person as chair, but considers that there should be a lay majority on both the Probate and Disciplinary Committees. The Panel considers that 3 probate practitioners is a suitable threshold, but the requirements for "lay" members should be increased. On the existing definition, a "lay" member could have a legal background, which would not be acceptable and would undermine public confidence.	In light of the Panel's comments, ICAEW has now amended its proposals for this committee. As discussed in chapter 8 of the application, it is now proposed that: • the committee should comprise ten members, with a 50:50 split between lay and non-lay members. • the chair of the committee will be a lay person and will have a casting vote where necessary. • A lay member will be defined as someone who has never qualified or practised as a professional accountant, and solicitors and persons with legal training will also be excluded. • The balance of the committee will be made up of practitioners in the regulated areas (ie, initially only probate practitioners who are likely to be ICAEW authorised individuals and/or solicitors). . • The quorum for the committee will be 5 members, the majority of whom will be lay.

Topic	Proposal in draft application	Consumer Panel's comments (summary / paraphrased)	ICAEW's proposed response
			The Committee's draft terms of reference have been included in the application at **annex 19.** The role and membership of the committee will be reviewed within 3 years. At present ICAEW does not propose to alter the membership of the Disciplinary Committee (DC). If its application is successful, it is likely that cases involving probate practitioners will form a small minority of cases heard each year by the DC. To date, ICAEW's existing oversight regulators have been content with its regulatory governance arrangements and have not identified any issue with the membership of this committee. ICAEW considers, therefore, that it would be disproportionate to require the membership of this committee to change now, given its role in determining disciplinary matters across the wider ICAEW membership of some 138,000 members when the likely number of accredited probate firms will be low in the initial years. However, ICAEW is undertaking a full-scale review of its regulatory governance arrangements, and any changes that may result from this review are expected to take effect in 2014. Accordingly, the membership of the DC and other regulatory committees, including the proportion of lay members, will be matters that will be kept under review.

ICAEW application for approved regulator status for probate

Part 1 - Administrative information needed to enable processing of an application for approved regulator designation

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
1.	Background information	N/A	Contact details in relation to the person(s) the Board should contact in relation to the application, including job title, email address and phone number, a physical address for communication and the applicant's registered office address (if different from communication address) and company registration number if applicable	**See Part 13**
2.	A statement of the reserved legal activity or activities to which the application relates and/or whether the application relates to immigration advice and services	Sch. 4, paragraph 3(3)(a) Sch. 18 paragraph 3(4)(b)	Specification of: Which of the reserved legal activities set out in section 12 and schedule 2 to the Act the applicant proposes to regulate The context within which the applicant proposes to regulate such activities (i.e. will the applicant only be providing authorisation to provide the reserved legal activities or immigration advice and services in limited circumstances?)	ICAEW wishes to apply to regulate the provision of non-contentious probate activities only. **See paragraphs 1.1 – 1.3.**
3.	Details of the applicant's proposed regulatory arrangements	Sch. 4, paragraph 3(3)(b)	Relevant documentation on how the applicant proposes to establish and discharge its regulatory arrangements, as defined in section 21 of the 2007 Act i.e.:	Authorisation processes: **see paragraphs 4.15 – 4.57; chapters 2 and 4 of draft regulations.**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
		Sch. 18, paragraph 3(4)(a)	Authorisation processes Qualification arrangements Practice rules Code of conduct Disciplinary arrangements Indemnification arrangements Compensation arrangements Licensing rules Other related rules A clear explanation of how the applicant's regulatory arrangements actively contribute to the achievement of the regulatory objectives and remove risks to their delivery.	Qualification arrangements: **see paragraphs 4.19 – 4.28; draft regulations 4.1 and 4.4.** Practice rules: **see paragraphs 4.59 – 4.115; chapters 2 and 3 of the draft probate regulations, and the ICAEW Code of Ethics (annex 8).** Code of conduct: **see paragraphs 4.60 – 4.63 and regulation 3.1 (professional principles); ICAEW Code of Ethics.** Disciplinary arrangements: **see paragraphs 4.115 – 4.134; chapters 10 and 12 of the draft probate regulations; ICAEW's Disciplinary Byelaws (annex 2).** Indemnification arrangements: **see paragraphs 4.100 – 4.104; draft regulation 2.10; ICAEW's PII regulations (annex 7).** Compensation arrangements: **see paragraphs 4.105 – 4.114; draft Probate regulations 2.11, 2.16 and 3.7; draft Probate Compensation Scheme regulations (annex 18).** Licensing rules and related rules: **see Part 4 and draft probate regulations and the Probate Compensation Scheme regulations generally.**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
				Statement on how the proposed regulatory arrangements contribute to the achievement of the regulatory objectives: **See Part 6**.
4.	Such explanatory material (including material about the applicant's constitution and activities) as the applicant considers is likely to be needed for the purposes of part 2 of schedule 4 and for applications under Part 1 of schedule 18 if relevant	Sch. 4, paragraph 3(3)(c) Sch. 18, Paragraph 3(4)(b)	Memorandum and articles of association or equivalent constitutional documentation Current details of legal entity structure, ownership, list of directors. Statement of the non-regulatory activities the applicant intends to carry out and how these will be managed in accordance with the requirements of the 2007 Act and such rules as the Board shall make from time to time. A business plan for the activity to be regulated, demonstrating the proposed governance and funding arrangements and sensitivity analysis showing how it relates to different forecasts	Constitutional documentation: **see Royal and Supplemental Charters and the Principal and Disciplinary Byelaws (annex 2**); **also the proposed amendments to the Supplemental Charter for probate and ABS (annex 21).** Current details of legal entity structure / directors etc: **see ICAEW office holders, executive management team, ICAEW structure chart and reporting lines (annex 3**) Non-regulatory activities: **see ICAEW Practice Assurance scheme, paragraphs 3.26 – 3.27, 4.82 and annex 10.** Probate business plan: **see Part 7 and annex 17.**
5.	Details of the authority which the applicant proposes to give persons to carry on activities which are reserved legal activities	Sch. 4, paragraph 3(5)(a)	See Item 3	Scope of authorisation limited to non-contentious probate activities: **see paragraphs 1.1 – 1.3.**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
6.	Details of the nature of the persons to whom *each aspect of* the authority is to be given	Sch. 4, paragraph 3(5)(a)	See Item 3	Authorisation is likely to be of entities that are predominantly accountancy-led: **see paragraphs 4.13 – 4.14 and draft regulations 2.1 – 2.4.** Authorisation of individuals limited to: • members of ICAEW and a select number of other international chartered accountancy bodies; • individuals authorised for probate by other approved regulators; and • individuals who can demonstrate that they are otherwise qualified to conduct probate work. **See paragraphs 4.19 – 4.22; draft regulations 4.1, 4.4 – 4.6.**
7.	Regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised	Sch. 4, paragraph 3(5)(b) Sch. 18 paragraph 5(2)(d)	Details might include: Split between general principles (i.e. duty to the Supreme Court) and specific activity (i.e. staff training, client money handling etc) Split between mandatory elements and guidance Explanation of any variation with the practices adopted by others currently regulating the activity	Qualification requirements: **see paragraphs 4.21 – 4.28; draft regulations 4.1, 4.4 – 4.6.**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
8.	Rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority	Sch. 4, paragraph 3(5)(c)Sch. 18 paragraph 5(2)(d)	Details of the activities within each relevant reserved legal activity and, where relevant, immigration advice and services, (e.g. conducting CPD eligible training, handling client money, supervising trainees, supervising lawyers or other disciplines)	Conduct and practice rules: **see paragraphs 4.59 – 4.76; chapters 2 and 3 of probate draft regulations; ICAEW's Code of Ethics (annex 8); CPD regulations (annex 9); clients' money regulations (annex 12); AML Guidance for the Accountancy Sector (annex 12).**
9.	In deciding what advice to give, the **OFT** must, in particular, have regard to whether an order would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services for qualifying regulator applications) to any significant extent	Sch. 4, paragraph 6(2) Sch. 18, paragraph 4(b)	The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice	During the consultation period, the OFT indicated that, as yet, it had not identified any significant competition issues arising from the application. Nevertheless, ICAEW has had regard to the OFT's letter of 10 April 2012 alerting it to guidance on the OFT's general approach to carrying out its role under the Act. In that letter, the OFT indicated that its default position is that applications for approved regulator and licensing authority designation are unlikely to raise any substantive concerns unless there is compelling evidence to show significant detriment to competition through foreclosure and/or a substantial degradation of consumer protection. The OFT then provided examples of the types of issues that may cause it to have concern (in summary): • if there are unnecessary barriers on service providers to becoming regulated by an approved regulator or licensing authority; • if the proposed regulator precludes unnecessarily the carrying on of reserved or unreserved activities; • if the proposed arrangements would raise entry barriers (eg, unduly restrictive

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
				qualification and training criteria); • if non-lawyer ownership of an entity is unnecessarily restricted; • if there is an unnecessary regulatory burden on firms; • if the arrangements will decrease competition or incentives for firms to compete; and • whether the proposed arrangements provide consumers with certainty over who regulates the entity and who regulates the individual service provider within that entity (particularly in relation to complaints). Having had regard to this guidance, ICAEW considers that its application will promote the regulatory objective of increased competition in the market for probate services. ICAEW has not identified any competition issues arising out of the application, and would highlight, in particular, that: • the regulations have been framed widely to enable a wide variety of firms and individuals to apply for probate accreditation. Although initially it is anticipated that firms will be accountancy-led, this is not a requirement of the regulations (**see probate regulations 2.1 and 4.1**); • ICAEW does not propose to impose conditions on the carrying on of unreserved legal activities by accredited probate firms (**see paragraphs 5.141 to 5.142**); • no additional restrictions are placed on owners of ABS beyond those set out in the Act **(see**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
				paragraphs 5.116 to 5.126); • ICAEW-accredited probate firms will be required to notify clients in writing at the beginning of the engagement of who to contact if they have a complaint **(see chapter 7 of the probate regulations).** ICAEW is also a member of the MDP working party that has been set up to address issues of potential regulatory conflict in relation to ABS **(see Part 9)**; and • as is discussed in **Part 6** of the application, our regulatory arrangements (including our qualification requirements and approach to fees) have been devised generally with a view to safeguarding the interests of consumers while not unduly restricting access to the market and increasing cost.
10.	In deciding what advice to give, the **Consumer Panel** must, in particular, have regard to the likely impact on consumers of the making of an order	Sch. 4, paragraph 7(2) Sch. 18, paragraph 4(a)	Explanation of how the regulatory arrangements will: • Protect and promote the interests of consumers generally • Meet the specific requirements in terms of indemnification and complaint handling	Protect and promote the interests of consumers: **see paragraphs 6.3 to 6.12.** Indemnification arrangements: **see paragraphs 4.100 – 4.104; draft regulation 2.10; ICAEW's PII regulations (annex 7).** Compensation arrangements: **see paragraphs 4.105 – 4.114; draft regulations 2.11, 2.16 and 3.7; Probate Compensation Regulations (annex 18).** Complaints-handling arrangements: **see paragraphs 4.90 – 4.99; chapter 7 of the draft probate**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
				regulations. Generally: **ICAEW's response to the Consumer Panel's consultation response (annex 22).**
11.	A **selected consultee** may give the Board such advice as the selected consultee thinks fit in respect of the Application	Sch. 4, paragraph 8 Sch. 18, paragraph 4	Information on any matters specified by a selected consultee	N/A
12.	The **Lord Chief Justice** must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order	Sch. 4, paragraph 9(3) Sch. 18, paragraph 4(a)	Information on any matters specified by the LCJ	N/A – the LCJ has not requested information on specific matters to date.
13.	The Board may grant an application only if it is satisfied that, if the relevant order were to be made, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect	Sch.4, paragraph 13(2)(a) Sch. 18, paragraph 5(2) (a)	See Item 4	Discussion on ICAEW's internal governance arrangements: **see chapter 8.**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
14.	The Board may grant an application only if it is satisfied that, if the relevant order were to be made, the applicant would be competent, and have sufficient resources, to perform the role of approved regulator in relation to the reserved legal activity at that time or the role of designated qualifying regulator within the meaning of section 86A of the 1999 Act.	Sch. 4, paragraph 13(2)(b) Sch.18, paragraph 5(2)(b)	Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how this has been assessed Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit Business plan for coming year and 3 year forward look Risk management strategy Staff development and retention strategies	Statement of resources and business plan: **see Part 7 of the application and annex 17.** ICAEW's annual report and accounts (2009 – 2011) (**annex 4**) ICAEW risk management strategy: **annex 5.** ICAEW staff development policies: **annex 5.**
15.	The Board may grant an application only if it is satisfied that, the applicant's proposed regulatory arrangements make appropriate provision	Sch. 4, paragraph 13(2)(c) Sch. 18, paragraph 5(2)(d)	Assessment of how the proposed regulatory arrangements are consistent with better regulation principles	Statement on how the proposed regulatory arrangements are consistent with better regulation principles: **see paragraphs 6.27 to 6.42.**
16.	Compliance with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict)	Sch. 4, paragraph 13(2)(d)	A statement identifying regulators with whom conflict might arise and the work undertaken to date and proposed to avoid this, in particular in relation to the interaction between an individual regulated by one approved regulator and an employing entity regulated by another	Statement on regulatory conflict and the ABS Framework MoU: **see Part 9 of application; Framework MoU (annex 20)**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
			approved regulator	
17.	Compliance with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints)	Sch. 4, paragraph 13(2)(e) Sch. 18, paragraph 5(2)(e)	Current or draft policies showing compliance with any rules made under sections 112 and 145 of the 2007 Act and any OLC guidance	Complaints-handling arrangements: **see paragraphs 4.90 – 4.99; chapter 7 of the draft probate regulations.**
18.	The rules made for the purposes of sub-paragraph 2 and 4 of these Rules must in particular require the Board to be satisfied that the exercise of the applicant's regulatory functions would not be prejudiced by any of its representative functions	Sch. 4, paragraph 13(3)(a) Sch. 18, paragraph 5(3)(a)	Statement on how the arrangements comply with the principles of the 2007 Act and such rules as the Board may make from time to time	Discussion on ICAEW's internal governance arrangements: **see Part 8.**
19.	The rules made for the purposes of paragraphs 2 and 4 of these Rules must in particular require the Board to be satisfied that decisions relating to the exercise of the applicant's regulatory functions would so far as reasonably practicable be taken	Sch. 4, paragraph 13(3)(b) Sch.18, paragraph 5(3)(b)	See Item 18	Discussion on ICAEW's internal governance arrangements: **see Part 8.**

	What is required	Section of 2007 Act	Possible evidence	ICAEW response
	independently from decisions relating to the exercise of the applicant's representative functions			
20.	For qualifying regulator applications the Board must additionally be satisfied that the arrangements made by the applicant for authorising persons to provide immigration advice and services provide that persons may not be so authorised unless they are also authorised by the applicant to carry on activities which are reserved legal activities	Sch. 18 paragraph 5(2)(c)	Relevant documentation, such as a Code of Conduct.	N/A – the ICAEW is not applying for designation as a qualifying regulator in relation to the provision of immigration services.

Part 2 – Evidence in relation to regulatory arrangements

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator	ICAEW response
Clients money must be protected	Clients money is misused by regulated person or unprotected from entity failure	(d), (f), (h)	(h)	Approved regulators must ensure that authorised persons must keep clients money separate from own Approved regulators must be able to compensate clients as per section 21(2) May involve client account rules; insurance requirements; compensation fund or insurance *or alternatives*	In accordance with proposed probate regulation 3.8, where clients' or estate monies are held, accredited probate firms will be required to comply with ICAEW's clients' money regulations **(see annex 12)** In accordance with regulation 2.10, accredited probate firms will also be required to comply with the ICAEW's PII regulations **(annex 7)** and hold a minimum level of indemnity of £500k per claim. Lastly, ICAEW's compensation arrangements will provide redress for clients in the event of practitioner fraud or entity failure. **See paragraphs 4.105 – 4.114; draft Probate Compensation Scheme regulations (annex 18) and proposed Probate Regulations 2.11, 2.16 and 3.7 (annex 1).**

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator	ICAEW response
Authorised persons must act in clients' interests subject to duty to court	Authorised persons do not or are unable to act in the clients interest	(a), (b), (d), (e), (h)	(g), (d)	Approved regulators must demonstrate how regulated persons and entities are indemnified against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons or entities Approved regulators must have a code of conduct that enshrines the primacy of acting in the client interest and subjugates other pressures, be they commercial or otherwise to that principle	Individuals/firms that the ICAEW accredits for probate will be required to comply with the professional principles set out in **regulation 3.1** (including the duty to act in their clients' best interests). They will also be obliged to comply at all times with the five fundamental principles underpinning the Code of Ethics, which require firms/ practitioners to undertake work with independence, integrity and objectivity. To safeguard against the risk of clients suffering loss as a consequence of negligence, accredited probate firms will be required to comply with the ICAEW's PII regulations and hold a minimum level of indemnity of £500k per claim. **See regulation 2.10.**
Reserved legal services and immigration advice and services should only be delivered by	Reserved legal services and/or immigration advice and services are not	(c), (d), (e), (h)	(a), (b), (c)	Approved regulators must ensure that definitions of appropriate skill and competence are	Our qualification requirements are contained in the proposed probate **regulations 4.1, 4.4 – 4.6** and discussed in **paragraphs 4.19 – 4.28** of the application.

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator	ICAEW response
regulated persons of appropriate skill and competence	of the appropriate quality			proportionate in order to ensure both value and professionalism Easily accessible redress should be in place	In addition those we accredit for probate must make sure that all principals and employees undertaking authorised work (ie, probate and estate administration) are, and continue to be, competent to do so: **regulation 3.4.**
Compliance with professional principles should be enshrined in regulation	Reserved legal services and/or immigration advice and services are not delivered in accordance with professional principles	(a), (d), (h)	(d), (f)	Approved regulators must have a code of conduct that defines the professional principles that are compulsory for regulated community	In accordance with **regulation 3.1,** accredited probate firms will need to make arrangements to ensure that the firm, its principals and its employees comply with the probate regulations and the professional principles set out in the Act. Accredited probate firms will also need to comply with the Code of Ethics **(annex 8).**
Ditto above	Authorised persons and entities do not comply with regulation	(a), (b), (c), (d), (e), (f), (g), (h)	(e)	Approved regulators must have a disciplinary remit and processes that allow for setting standards and managing compliance of authorised persons and entities, efficient investigatory systems and disciplinary powers in the event of	In the event that firms/individuals we accredit for probate fail to comply with the ICAEW's regulatory arrangements, we will take regulatory and/or disciplinary action in accordance with chapters 10 and 12 of the proposed probate regulations **(annex 1)** and the Disciplinary Byelaws **(annex 2).**

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator	ICAEW response
				breaches of the regulatory framework	
Responsibilities for front line complaints handling and interactions with the OLC should be clear	Consumers do not receive timely complaint investigation or redress when justified	(a), (b), (c), (d), (h)	(c), (d), (h)	Approved regulators must have rules specifying how rights to complain and redress can be accessed, including the right of access to the OLC at an appropriate stage	**See chapter 7 of the proposed probate regulations and paragraphs 4.90 – 4.99.**
Regulatory arrangements should advance the objective of supporting competition	Regulatory requirements act as a barrier to competition by restricting legitimate entry	(d), (e)	(c), (d)	Approved regulators should be able to demonstrate that their rules are the minimum necessary to address the full set of objectives and do not have unintended	**See paragraphs 6.17 – 6.20** which set out how our proposed regulatory arrangements support and promote the Act's regulatory objective of increased competition.

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator	ICAEW response
				consequences in terms of restricted entry	
Representative and regulatory functions should be discharged and decisions made, so far as reasonably practicable, independently of each other	Decisions lack credibility and independence because of actual or perceived influence from the representative arm of an approved regulator	(a), (d), (f)	(c), (d)	Approved regulators should have arrangements which implement the 2007 Act and such rules as the LSB make on the issue in relation to regulatory strategy, decisions and resourcing of the regulatory arm	Discussion on ICAEW's internal governance arrangements: **see Part 8.**
Regulation should clearly support the rule of law	Commercial considerations undermine duty to the court	(b), (c), (d), (f)	(a), (c), (d)	Approved regulators' rules and processes should unequivocally give priority to this duty	Accredited probate firms will be required to comply with the Code of Ethics, which requires individuals and firms to conduct work at all times with independence, integrity and objectivity. They will also be required to comply with the professional principles set out at **regulation 3.1**.
The legal profession's make up should reflect the population it serves	Public confidence is lost if the profession appears to be a "closed shop"	(c), (d), (f)	(a), (b), (f)	Approved regulators should be able to demonstrate processes which address diversity concerns	Accredited probate firms will be required to comply with the LSB's guidance on diversity monitoring. See paragraphs **5.48 to 5.51; 6.21.**

Principles (each principle may relate to more than one risk)	**Risks**	**Relates to Regulatory Objectives (see section 1(1))**	**Relates to Regulatory Arrangement (see section 21(1))**	**Evidence to underpin approval of designation as an Approved Regulator**	**ICAEW response**
Consumers should be actively involved in decision making throughout their dealings with the profession	Consumers poor understanding restricts their ability to access justice	(a), (c), (d), (g)	(a), (d), (h)	Approved regulators can demonstrate how their processes address public legal education	**See paragraph 6.24 and guidance to regulation 3.6.**

ICAEW application for licensing authority status for probate

Part 1 - Administrative information needed to enable processing of an application for licensing authority designation

	What is required	Section of Act	Possible Evidence	ICAEW response
1.	Background information	N/A	Contact details in relation to the person(s) the Board should contact in relation to the application, including job title, email address and phone number, a physical address for communication and the applicant's registered office address (if different from communication address) and company registration number if applicable	**See Part 13**
2.	A statement of the reserved legal activity or activities to which the application relates	Sch.10, paragraph 1(4) (a)	Specification of which of the reserved legal activities set out in section 12 and Schedule 2 of the Act the application applies to	ICAEW wishes to apply to regulate the provision of non-contentious probate activities only. **See Part 1, paragraphs 1.1 – 1.3.**
3.	Details of the applicant's proposed licensing rules	Sch. 10, paragraph 1(4) (b)	An explanation of how the proposed licensing rules comply with section 83(5), Schedule 11 to the Act (see Part 2 of this Schedule for further details) and the LSB's guidance on licensing rules.	**See paragraphs 5.6 – 5.146**
4.	Such explanatory material as the applicant considers is likely to be needed for the purposes of Part 1 of Schedule 10	Sch. 10, paragraph 1(4) (c)	An applicant must be able to demonstrate how it has prepared properly and thoroughly for its role as a LA and has appropriate arrangements in place to license competently ABS, in particular it must:	Statement on compliance with the regulatory objectives and better regulation principles: **see Part 6.**

	What is required	Section of Act	Possible Evidence	ICAEW response
			- show that it has appropriate regulatory arrangements to ensure that it can act, so far as reasonably practicable, in a way which is compatible with the regulatory objectives, and have regard to standards of openness, accountability and transparency and best regulatory practice; - demonstrate an understanding of the types of ABS it will be regulating and the services provided by those ABS. In particular it must show that it has suitable processes and systems in place to identify and dealing with the complexity, risk and volume of expected ABS; - demonstrate that it is a solid, stable, well structured, adequately financed and professionally operated body with the governance and institutional stability to discharge its functions on a proper basis. This includes (but is not limited to) sufficient and appropriate staffing and staffing arrangements to ensure good quality regulation and a sufficiently robust and flexible business plan, including appropriate contingency arrangements that is able to adapt to:	Assessment of likely entities the ICAEW will be licensing and regulating: see **paragraphs 4.5 – 4.14; 5.2 – 5.5.** Competence and history as a regulator: **see Parts 2 and 3;** Governance and institutional stability**: see ICAEW's annual reviews and accounts (2009 – 2011) (annex 4)** **Risk management strategies and staff development policies (annex 5)** Preparation for designation as an LA and progress against our implementation plan to become an LA: **see probate business plan including timeline for implementation, sensitivity analysis and statement of resources (Part 7 and annex 17).**

	What is required	Section of Act	Possible Evidence	ICAEW response
			- changes in demand for licences; - changes in complexity of ABS models; - new threats to the regulatory objectives; and - changes in the operating and/or regulatory environment. An applicant must also provide an assessment of its progress against its implementation plan to become an LA	
5.	In deciding what advice to give, the **OFT** must, in particular, have regard to whether an order ... would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent	Sch. 10, paragraph 4(2)	The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice	During the consultation period, the OFT indicated that, as yet, it had not identified any significant competition issues arising from the application. Nevertheless, ICAEW has had regard to the OFT's letter of 10 April 2012 alerting it to guidance on the OFT's general approach to carrying out its role under the Act. In that letter the OFT indicated that its default position is that applications for approved regulator and licensing authority designation are unlikely to raise any substantive concerns unless there is compelling evidence to show significant detriment to competition through foreclosure and/or a substantial degradation of consumer protection. The OFT then provided examples of the types of issues that may cause it to have concern (in summary):

	What is required	Section of Act	Possible Evidence	ICAEW response
				• if there are unnecessary barriers on service providers to becoming regulated by an approved regulator or licensing authority; • if the proposed regulator precludes unnecessarily the carrying on of reserved or unreserved activities; • if the proposed arrangements would raise entry barriers (eg, unduly restrictive qualification and training criteria); • if non-lawyer ownership of an entity is unnecessarily restricted; • if there is an unnecessary regulatory burden on firms; • if the arrangements will decrease competition or incentives for firms to compete; and • whether the proposed arrangements provide consumers with certainty over who regulates the entity and who regulates the individual service provider within that entity (particularly in relation to complaints). Having had regard to this guidance, ICAEW considers that its application will promote the regulatory objective of increased competition in the market for probate services. ICAEW has not identified any competition issues arising out of the application, and would highlight, in

	What is required	Section of Act	Possible Evidence	ICAEW response
				particular, that: • the regulations have been framed widely to enable a wide variety of firms and individuals to apply for probate accreditation. Although initially it is anticipated that firms will be accountancy-led, this is not a requirement of the regulations (**see probate regulations 2.1 and 4.1**); • ICAEW does not propose to place conditions on the carrying on of unreserved legal activities by accredited probate firms (**see paragraphs 5.141 to 5.142**); • no additional restrictions are placed on owners of ABS beyond those set out in the Act **(see paragraphs 5.116 to 5.126);** • ICAEW-accredited probate firms will be required to notify clients in writing at the beginning of the engagement of who to contact if they have a complaint **(see chapter 7 of the probate regulations).** ICAEW is also a member of the MDP working party that has been set up to address issues of potential regulatory conflict in relation to ABS **(see Part 9)**; and • as is discussed in **Part 6** of the application, our regulatory arrangements

	What is required	Section of Act	Possible Evidence	ICAEW response
				(including our qualification requirements and approach to fees) have been devised generally with a view to safeguarding the interests of consumers while not unduly restricting access to the market and increasing cost.
6.	In deciding what advice to give, the **Consumer Panel** must, in particular, have regard to the likely impact on consumers of the making of an order	Sch. 10, paragraph 5(2)	Explanation of how the proposed Licensing Rules will: • Protect and promote the interests of consumers generally • Meet the specific requirements in terms of indemnification and complaint handling	Protect and promote the interests of consumers: **see paragraphs 6.3 to 6.12.** Indemnification arrangements: **see paragraphs 5.32 – 5.34; draft probate regulation 2.10; ICAEW's PII regulations (annex 7).** Compensation arrangements: **see paragraphs 5.35 – 5.36; draft probate regulations 2.11 and 2.16; Probate Compensation Scheme regulations (annex 18)** Complaints-handling arrangements: **see paragraphs 5.41 – 5.44; chapter 7 of the draft probate regulations.** Generally: **ICAEW's response to the Consumer Panel's consultation response (annex 22).**

	What is required	Section of Act	Possible Evidence	ICAEW response
7.	A **selected consultee** may give the Board such advice as the selected consultee thinks fit in respect of the application	Sch. 10, paragraph 8	Information on any matters specified by a selected consultee	N/A
8.	The **Lord Chief Justice** must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order	Sch. 10, paragraph 7(3)	Information on any matters specified by the LCJ	N/A – the LCJ has not requested information on specific matters to date.
9.	The Board may grant an application in relation to a particular reserved legal activity only if it is satisfied that, the applicant's proposed licensing rules in relation to the reserved legal activity comply with the requirements of Section 83 of the Act	Sch.10, paragraph 11(2)(a)	See Item 3	**See paragraphs 5.6 – 5.44**.
10.	The Board may grant an application in relation to a particular reserved legal activity	Sch. 10, paragraph 11(2)(b)	The applicant must include a statement about the appellate body that the Applicant proposes to use for appeals against financial penalties and	**See paragraphs 5.133 to 5.138.**

	What is required	Section of Act	Possible Evidence	ICAEW response
	only if it is satisfied that, if an order were to be made designating the applicant in relation to the reserved legal activity, there would be a body with power to hear and determine appeals which, under Part 5 of the Act or under the applicant's proposed licensing rules, may be made against decisions of the applicant		conditions imposed on a licensable body. The applicant should also include a statement for the appellate body that it agrees to hear those appeals	
11.	The Board may grant an application in relation to a particular reserved legal activity only if it is satisfied that, if an order were to be made designating the applicant in relation to the reserved legal activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect	Sch. 10, paragraph 11(2)(c)	Such explanatory material (including material about the applicant's constitution and activities) as the applicant considers is likely to be needed to show how its internal governance arrangements comply with the Board's most recently published policy on internal governance	Discussion on ICAEW's internal governance: **see Part 8.** Constitutional documentation: **see Royal and Supplemental Charter and Principal and Disciplinary Byelaws (annex 2**) Current details of legal entity structure / directors etc: **see ICAEW office holders and executive management team, ICAEW structure chart and reporting lines (annex 3)**

	What is required	Section of Act	Possible Evidence	ICAEW response
12.	The Board may grant an application in relation to a particular reserved legal activity only if it is satisfied that, if an order were to be made designating the applicant in relation to the reserved legal activity, the applicant would be competent, and have sufficient resources, to perform the role of licensing authority in relation to the reserved legal activity at the time the order takes effect	Sch. 10, paragraph 11(2)(d)	Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how this has been assessed Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit Business plan for coming year and 3 year forward look Risk management strategy Staff development and retention strategies	Statement of resources: **see probate business plan, Part 7 of application.** ICAEW's annual reviews and accounts (2009 – 2011) **annex 4** ICAEW risk management strategy: **annex 5** ICAEW staff development policies: **annex 5**
13.	The rules made for the purposes of sub-paragraph 2(c) must in particular require the Board to be satisfied that the exercise of the applicant's regulatory functions would not be prejudiced by any of its representative functions	Sch. 10, paragraph 11(3)(a)	Statement on how the arrangements comply with the principles of the Act and such rules as the Board may make from time to time.	Discussion on ICAEW's internal governance: **see Part 8.**

	What is required	Section of Act	Possible Evidence	ICAEW response
14.	The rules made for the purposes of sub-paragraph 2(c) must in particular require the Board to be satisfied that decisions relating to the exercise of the applicant's regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of the applicant's representative functions	Sch. 10, paragraph 11(3)(b)	See Item 13	Discussion on ICAEW's internal governance: **see Part 8.**

Part 2 – Licensing rules requirements

	What is required	Section of Act	Guidance	ICAEW response
SECTION 83 requirements For all these points, Applicants must explain how their licensing rules are likely to achieve the outcomes and other requirements that may be specified in any Guidance issued by the LSB. If the LA's rules are inconsistent with the Guidance, there should be an Explanation together with evidence to explain why.				
1.	Licensing rules of a licensing authority **MUST** contain appropriate qualification regulations in respect of licensable bodies to which the licensing authority proposes to issue licences	Section 83(5)(a)		**Paragraphs 5.6 to 5.115 address the criteria of Part 2 (numbers 1 to 42).**
2.	Licensing rules of a licensing authority **MUST** contain provision as to how the licensing authority, when considering the regulatory objectives (in compliance with its duties under section 3(2) or 28(2)) in connection with an application for a licence, should take account of the	Section 83 (5)(b)		

	What is required	Section of Act	Guidance	ICAEW response
	objective of improving access to justice			
3.	Licensing rules of a licensing authority **MUST** contain appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the licensing authority will be able to regulate the conduct of bodies licensed to it, and their managers and employees	Section 83(5)(c)		
4.	Licensing rules of a licensing authority **MUST** contain appropriate indemnification arrangements	Section 83(5)(d)		
5.	Licensing rules of a licensing authority **MUST** contain appropriate compensation arrangements	Section 83(5)(e)		
6.	Licensing rules of a licensing authority **MUST** contain the provision required by sections 52 and 54 (resolution of regulatory	Section 83(5)(f)		

	What is required	Section of Act	Guidance	ICAEW response
	conflict) (including those provisions as applied by section 103)			
7.	Licensing rules of a licensing authority **MUST** contain the provision required by sections 112 and (145) (requirements imposed in relation to the handling of complaints)	Section 83(5)(g)		
8.	Licensing rules of a licensing authority **MUST** contain any other provision required to be contained in licensing rules by the Act	Section 83(5)(h)		
SCHEDULE 11 REQUIREMENTS				
Applications for licences				
9.	Licensing rules **MUST** make provision about the form and manner in which applications for licences are to be made, and the fee (if any)	Sch.11, paragraph1 (1)		

	What is required	Section of Act	Guidance	ICAEW response
	which is to be accompany any application			
10.	Licensing rules **MAY** make provision about: the information which applications must contain; and the documents which must accompany applications	Sch. 11, paragraph 1(2)		
Determination of applications				
11.	Licensing rules **MUST** make provision for those items set out in Schedule 11, paragraph 2	Sch. 11, paragraph 2(1)		
Review of determination				
12.	Licensing rules **MUST** make provision for review by the licensing authority of:	Sch. 11, paragraph 3		

	What is required	Section of Act	Guidance	ICAEW response
	a decision to refuse an application for a licence; if a licence is granted, the terms of the licence			
Period of licence and renewal				
13.	The licensing rules **MAY** make provision: limiting the period for which any licence is (subject to the provision of Part 1 of Schedule 11 and of the licensing rules) to remain in force; about the renewal of licences, including provision about the form and manner in which an application for renewal is to be made, and the fee (if any) which is to accompany an application	Sch. 11, paragraph 4(1)		

	What is required	Section of Act	Guidance	ICAEW response
14.	The licensing rules **MAY** make provision about: the information which applicants for renewal must contain; and the documents which must accompany applications.	Sch. 11, paragraph 4(2)		
15.	Licensing rules **MUST** provide that a licence issued to a licensed body by the licensing authority ceases to have effect if the licensed body is issued with a licence by another licensing authority	Sch. 11, paragraph 4(3)		
Continuity of licences				
16.	Licensing rules **MAY** make provision about the effect, on a licence issued to a partnership or other unincorporated body ("the existing body"), of any change in the membership of the existing body	Sch. 11, paragraph 5(1)		

	What is required	Section of Act	Guidance	ICAEW response
17.	Such provision referred to above includes provision for the existing body's licence to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business.	Sch. 11, paragraph 5(2)		
Modification of licences				
18.	Licensing rules **MUST** make provision about the form and manner in which applications are to be made for modifications of the terms of a licence under section 86, and the fee (if any) which is to accompany the application	Sch.11, paragraph 6(1)		
19.	Licensing rules **MAY** make provision as to the circumstances in which the licensing authority	Sch. 11, paragraph 6(2)		

	What is required	Section of Act	Guidance	ICAEW response
	may modify the terms of a licence under section 86 without an application being made			
20.	Licensing rules **MUST** make provision for review by the licensing authority of: a decision to refuse an application for modification of the terms of a licence; if the licensing authority makes licensing rules under sub-paragraph 6(2), a decision under those rules to modify the terms of a licence	Sch. 11, paragraph6 (3)		
Modifications under section 106 – the LSB has proposed in its consultation on guidance licensing rules that the transitional arrangements for Special Bodies should remain in place for 12 months after other ABS have been permitted. We do not, therefore, expect LAs' licensing rules to incorporate consideration of special Bodies. We will consult separately on this issue, depending on the outcome of the consultation on our guidance.				

	What is required	Section of Act	Guidance	ICAEW response
Management				
21.	Licensing rules **MUST** require a licensed body to comply with the requirements set out in Schedule 11, paragraph 9	Sch.11, paragraph 9(1)		
22.	Licensing rules **MAY** make further provision as to: the managers of licensed bodies; and the arrangements for the management by them of the licensed body and its activities	Sch. 11, paragraph 10(1)		
23.	Licensing rules **MUST** NOT require all managers of a licensed body to be authorised persons in relation to reserved legal activity	Sch. 11, paragraph 10(2)		

	What is required	Section of Act	Guidance	ICAEW response
Head of Legal Practice				
24.	Licensing rules **MUST** include the requirements set out in Schedule 11, paragraph 11	Sch. 11, paragraph 11(1)		
25.	Licensing rules **MUST** make provision: about the procedures and criteria that will be applied by the licensing authority when determining under Schedule 11, paragraph 11(4) whether an individual is a fit a proper person; for a review by the licensing authority of a determination under Schedule 11, paragraph 11(4) that an individual is not a fit and proper person;	Sch. 11, paragraphs 12(1) and (2)		

	What is required	Section of Act	Guidance	ICAEW response
	about the procedures and criteria that will be applied by the licensing authority under Schedule 11, paragraph 11(6) whether to withdraw its approval; for a review by the licensing authority of a determination under Schedule 11. paragraph 11(6) to withdraw its approval; about the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of Schedule 11, paragraph 11(2). Rules made MAY in particular provide that the requirement imposed by virtue of Schedule 11, paragraph 11(2) is			

	What is required	Section of Act	Guidance	ICAEW response
	suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules			
Head of Finance and Administration				
26.	Licensing rules **MUST** include the requirements set out in Schedule 11, paragraph13	Sch. 11, paragraph13(1)		
27.	Licensing rules **MUST** make provision: about the procedures and criteria that will be applied by the licensing authority when determining under Schedule 11, paragraph13(4) whether an individual is a fit and proper	Sch. 11, paragraph14(1)		

	What is required	Section of Act	Guidance	ICAEW response
	person; for a review by the licensing authority of a determination under Schedule 11, paragraph13(4) that an individual is not a fit and proper person; about the procedures and criteria that will be applied by the licensing authority in determining under Schedule 11, paragraph13(6) whether to withdraw its approval; for a review by the licensing authority of a determination under Schedule 11, paragraph13(6) to withdraw its approval; about the procedure			

	What is required	Section of Act	Guidance	ICAEW response
	which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of Schedule 11, paragraph13(2). Rules made MAY in particular provide that the requirement imposed by virtue of Schedule 11, paragraph13(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules			
Practising address				
28.	Licensing rules **MUST** require a licensed body at all times to have a practising address in England and Wales.	Sch. 11, paragraph 15(1)		

	What is required	Section of Act	Guidance	ICAEW response
	The above does not apply to a licensed body: which is a company or limited liability partnership; and the registered office of which is situated in England and Wales (or in Wales)			
Licensed activities				
29.	Licensing rules **MUST** provide that a licensed body may carry on a licensed activity only through a person who is entitled to carry on the activity	Sch. 11, paragraph 16		

	What is required	Section of Act	Guidance	ICAEW response
Compliance with regulatory arrangements etc				
30.	Licensing rules **MUST** include the requirements set out in Schedule 11, paragraph 17	Sch. 11, paragraph 17(1)		
Disqualified employees				
31.	Licensing rules **MUST** include the requirement that a licensed body may not employee a person who under Part 3 of Schedule 11 is disqualified from being an employee of a licensed body	Sch. 11, paragraphs 18(1) and (2)		
Indemnification arrangements and compensation arrangements				
32.	For the purpose of giving effect to indemnification arrangements and compensation arrangements, licensing rules **MAY**:	Sch. 11, paragraph 19(1)		

	What is required	Section of Act	Guidance	ICAEW response
	authorise or require the licensing authority to establish and maintain a fund or funds; authorise or require the licensing authority to take out and maintain insurance with authorised insurers; require licensed bodies or licensed bodies or any specific description to take out and maintain insurance with authorised insurers.			
Accounts				
33.	The Licensing rules **MUST** make provision: as to the treatment of money (including money held on trust) which is received, held or dealt with by	Sch. 11, paragraph 20(1)		

	What is required	Section of Act	Guidance	ICAEW response
	the licensed body, its managers and employees for clients or other persons; and . the keeping of accounts in respect of such money.			
Fees				
34.	The licensing rules **MUST** require licensed bodies to pay periodical fees to the licensing authority	Sch. 11, paragraph 21(1)		
35.	The licensing rules **MAY** provide for the payment of different fees by different descriptions of licensed body.	Sch. 11, paragraph 21(2)		

	What is required	Section of Act	Guidance	ICAEW response
Financial penalties				
36.	The licensing rules **MUST** make provision as to: the acts and omissions in respect of which the licensing authority may impose a penalty under section 95; the criteria and procedure to be applied by the licensing authority in determining whether to impose a penalty under that section, and the amount of any penalty			
Disqualifications				
37.	Licensing rules **MUST** make provision as to the criteria and procedure to be applied by the licensing authority in	Sch. 11, paragraph 23(1)		

	What is required	Section of Act	Guidance	ICAEW response
	determining whether a person should be disqualified under section 99			
38.	Licensing rules **MUST** make provision: for a review by the licensing authority of a determination by the licensing authority that a person should be disqualified; as to the criteria and procedure to be applied by the licensing authority in determining whether a person's disqualification should cease to be in force; and requiring the licensing authority to notify the Board of any determination by the licensing authority that a person should be disqualified, of the result of any review of that determination, and of any decision by the licensing authority that a person's	Sch. 11, paragraph 23(2)		

	What is required	Section of Act	Guidance	ICAEW response
	disqualification should cease to be in force.			
Supervision or revocation of licence under section 101				
39.	Licensing rules **MUST** make provision for the items set out in Schedule 11, paragraph. 24	Sch. 11, paragraph 24(1)		
40.	Licensing rules **MAY** make provision about other circumstances in which the licensing authority may exercise its powers under section 101 to suspend or revoke a licence	Sch. 11, paragraph 25		
41.	Licensing rules **MUST** make provision about the criteria and procedure the licensing authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence, under section 101	Sch. 11, paragraph 26(1)		

	What is required	Section of Act	Guidance	ICAEW response
42.	Licensing rules **MUST** make provision for a review by the licensing authority of a decision by the licensing authority to suspend or revoke a licence.	Sch. 11, paragraph 26 (2)		