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Mike Marcus, the Technical Partner, can be contacted on 0870 850 6007 or mdm@bondpartners.co.uk if you have any queries on any of the topics covered or for a range of technical services.

ICAEW Guidance on Access to Information by Successor Auditors

Technical Fact Sheet 23 explained the rights of an auditor accepting appointment on or after 6 April 2008 to review the audit files of his immediate predecessor.

The Audit & Assurance Faculty of the ICAEW have now issued Technical Release AAF 01/08 "Access to Information by Successor Auditors".

The Companies Act 2006 and the Audit Regulations require the outgoing auditor to make available to his immediate successor all relevant information they hold in relation to being auditor, if requested to do so.

AAF 01/08 provides guidance on

- What is meant by "all relevant information"
- Procedures to be followed including example letters
- Practicalities of access
- Confidentiality issues

The Requirements apply to all statutory audits including Companies, Building Societies, Scottish Partnerships and, from 1 October 2008, LLPs. They will also apply, where for example, a firm has been appointed in the following specific circumstances:

- Re-registration of a company as a plc
- Company making a payment out of capital for the redemption or purchase of its own shares.

In the case of groups, the Requirements only apply to the entities to which the auditor is appointed. Thus they cannot require information, other than in relation to the consolidation, from an auditor of a subsidiary who continues in office. Also the Requirements will only apply to UK group members. The access to working papers of subsidiaries in other countries will have to be in accordance with the law applicable in those countries.

An example pro-forma request from a successor is contained in Appendix B of AAF 01/08. An example of a pro-forma letter from the predecessor setting out the basis on which the information is to be provided (including extracts from the ICAEW guidance, a reminder of the restrictions on the use of the information and a disclaimer of liability) is contained in Appendix C. This letter should be copied to the client and is written in such a way that it does not need to be countersigned by the successor.

In the case of an audit of financial statements under the Companies Act, ISAs will indicate the audit working papers to be prepared. It is likely that the successor will request access to some or all of those working papers.

Where files contain, for example, tax papers that relate to tax work rather than audit work then there is no obligation to provide access to those tax papers.

Information which is subject to legal professional privilege should not be disclosed without permission from the client.

Where working papers are held electronically the predecessor will need to consider how to provide access to the relevant audit documentation without putting at risk the confidentiality of the firm's audit methodologies or confidential information of other clients.

It is reasonable for the successor to make notes of the review but there is no obligation to allow copying of audit working papers. AAF 01/08 states that it would be reasonable to allow, as a minimum, the copying of extracts of the books and records of the client. It would also be reasonable and helpful to allow copying of papers such as analyses of financial statement figures and documentation of the client's systems and processes.

If the successor does ask to copy documents, then it would be sensible to check them and to keep a record of which items were copied.

Access can only be requested after the appointment of the successor. The predecessor should grant access within a reasonable time following receipt of the request. The location where access is to be provided is determined by the predecessor.

AAF 01/08 considers the recovery of costs from the ex-client (since there is no obligation on the successor to make any payment) and suggests that the costs should exclude any element of profit. AAF 01/08 also suggests that it might be appropriate, as a matter of policy, to amend engagement letters so as to provide for the recovery of costs of providing access to an eventual successor.

The final section of AAF 01/08 deals with confidentiality issues. Because the auditor is complying with a mandatory requirement, providing access to relevant information will not breach professional confidentiality or data protection laws.

However, because of the danger of tipping-off, any money laundering report and papers recording the predecessor's related consideration of apparently suspicious activities should not be provided by the predecessor to any person (including the successor) unless the predecessor has clear advice that to do so would be lawful.

Hold Harmless Letters for Investigating Accountants

There has been some confusion about the status of Audit 04/03 in relation to access to working papers by Investigating Accountants following the right of access to information by successor auditors.

The basic principles in relation to providing access to audit working papers to Investigating Accountants for investing and lending transactions remain the same and there is no obligation to provide access. If access is granted, the guidance in Audit 04/03 should be followed and the hold harmless letters contained in it should continue to be used.

It should be noted that, in circumstances where the Investigating Accountants are part of the same firm acting as a successor auditor to the client, the Investigating Accountants do not have the authority to use the information obtained by their firm under the access to information by successor auditors as that information was obtained for a different purpose. Hence the use of the information by the Investigating Accountants can be subject to a hold harmless letter.

Liability Limitation Agreements (“LLA”) under the Companies Act 2006

The ICAEW have obtained a Counsels Opinion from Mark Haggood QC on the apparent conflict between directors’ duties and LLAs. The Opinion is available from the LLA Section of the ICAEW website.

The Opinion is that directors do not expose themselves to increased risk for proposing an LLA. However the directors should inform the shareholders of the factors which they have considered and their reasons for seeking authorisation to enter an LLA.

Notification to ICAEW/ACCA of Change of Auditor

Sections 522 to 525 of the Companies Act 2006 require auditors and companies to notify the “appropriate audit authority” when an auditor has ceased to hold office. Guidance was given in Technical Factsheet 23.

For an audit that is not a ‘major audit’, if an auditor ceases to hold office before the end of their term of office, the outgoing auditor and the company must notify the appropriate audit authority – which for this purpose is the auditor’s Recognised Supervisory Body (RSB).

The ICAEW/ACCA have issued guidance on this subject. Notification should be made to the following addresses:

Change of Auditor Notifications
Quality Assurance Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ
e-mail: auditorchange@icaew.com

Ethics & Regulation Department
ACCA
29 Lincoln’s Inn Fields
London WC2A 3EE
email: auditorchange@accaglobal.com

There is no statutory format for notifying a change of auditor to the ICAEW/ACCA. However, it should be clear, whether this is sent electronically or by post, who has signed the notification, and in what capacity, giving contact details in case of a query. ICAEW/ACCA say that it would be useful if the notification could include the year end of the company’s last audited accounts, the company number and the address of the registered office.

If the notification is by e-mail this should be in the form of an electronic copy of a letter.

ICAEW/ACCA state that they assume that the auditors will want to notify them at the same time they deposit the S519 statement at the company’s registered office, so that the matter is dealt with. However, notification can be made at any time up to the date of the annual return covering the period in which the cessation took place.

By contrast, the company must notify the auditor’s RSB within 14 days after the date on which the auditor’s statement has been deposited at the company’s registered office.

In the case of a group of companies, where the auditor of the parent company and of subsidiary companies are the same and cease their appointment at the same time, the auditors and the company

can meet their obligations by a single statement accompanied by a list of the companies to which it applies, which should also, if appropriate, set out different reasons for the cessation in respect of the different companies in the group.

ASB issues Amendment to FRS 25 'Financial Instruments: Presentation'

The ASB has issued an amendment to FRS 25 (IAS 32) 'Financial Instruments: Presentation', to change the classification from liabilities to equity of certain financial instruments.

The amendment relates to the liability-equity classification requirements of FRS 25 for puttable financial instruments. The amendments require equity classification for certain puttable financial instruments and for certain financial instruments that impose on the entity an obligation to deliver to another party a pro rata share of the net assets of the entity only on liquidation. These changes are in line with those made to IAS 32 by the IASB in February 2008 and, upon implementation, would ensure that no divergence between FRS 25 and IAS 32 occurs.

The amendment contained in this document will be effective for accounting periods beginning on or after 1 January 2010. Early adoption is only permitted for accounting periods beginning on or after 1 January 2009, the earliest date on which EU adoption is expected.

Engagement letters for Tax Practitioners

The main tax and accounting bodies have issued new guidance on letters of engagement for tax practitioners, following a major redrafting exercise.

A three-step approach has been adopted:

- The letter of engagement which identifies the client and whose instructions will be accepted when, for example, acting for a couple, a family, a group or a partnership. It also summarises the basis on which fees will be charged including any estimate or fee quote and who is responsible for fees.
- A schedule which sets out the practitioner's standard terms and conditions.
- Further schedules which detail the nature and scope of the services to be carried out and the responsibilities of each party. The schedules of service cover the most common recurring compliance work carried out, namely: personal tax for individuals, sole traders and couples; trusts and estates: partnerships; limited liability partnerships, corporation tax; payroll services; benefits in kind returns and payments of Class 1A, NIC; VAT and other indirect taxes. A schedule for tax credit work will follow. There are also two schedules for non-recurring services: HMRC enquiries and ad hoc tax advice.

Practitioners should not need to replace their existing engagement letters immediately. However they are encouraged to review them annually and update as appropriate. Where practitioners use the engagement letter and schedules developed by the joint bodies they should adapt them to suit their practice.

The guidance and engagement letters are available in TAX GUIDE 6/08 in pdf and word formats from the ICAEW, ACCA or CIOT websites.

Employer's Liability Insurance

From 1 October 2008 employers will no longer be required to retain their employers' liability insurance certificate for 40 years.

Also, rather than displaying physical copies of the current certificate on notice boards, employers can now make the certificate available electronically provided it is reasonably accessible to relevant employees.

Display of Company Name

From 1 October 2008 companies will have to display their registered name wherever they do business, but will no longer have to put it on the outside of buildings or display it at a location which is used primarily for living accommodation.

The name must be displayed continuously in a place that is visible to the naked eye and may be easily seen by any visitor to the premises.

Where one location is shared by six companies or more, the name can be displayed in a non-continuous way provided it is visible for at least 15 seconds every 3 minutes. Thus a rotating display can be used that complies with this. Since the maximum number of 15 second slots in 3 minutes is 12, shared buildings housing more than 12 companies would have to have more than 1 rotating display.

Gift Aid Transitional Relief

Under transitional relief, charities will be able to claim gift aid relief at 2% over the basic rate of income tax for qualifying donations made between 6 April 2008 and 5 April 2011.

Whilst this retains the status-quo for charities to be able to claim at 22% for this year, if the basic rate falls in future years, so will the gift aid.

A claim must be made by charities to receive this transitional relief using Form R68 and the claim must be filed within 2 years of the end of:

- the tax year for which the claim relates for charitable trusts
- the accounting period to which the claim relates for charitable companies.

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