

Control and Description Requirements



Firms that wish to be authorised by ACCA to act as Registered Auditors or that wish to conduct investment business must comply with ACCA's regulations on the control of authorised businesses by appropriate persons.

This factsheet has no regulatory status. It is issued for guidance purposes only, and in the event of any conflict between the content of this factsheet and the content of the *ACCA Rulebook*, the latter shall at all times take precedence. Therefore, this factsheet should not be regarded by a member as a substitute for familiarising himself or herself with the appropriate regulations or, where necessary, obtaining specific advice concerning a specific situation.

Introduction

Firms that have, as principals, holders of ACCA practising certificates are also subject to regulatory requirements. This factsheet describes the relevant provisions of ACCA's regulations and, in addition, provides guidance on the related issues of practice descriptions and partnership agreements/articles of association. (The terms "firm" and "practice", when used in this section, include partnerships, limited liability partnerships, corporations and sole practitioners.)

Auditing certificates

An auditing certificate requires audit appointments to be held in the name of a firm rather than in the name of an individual, as provided for in the Companies Act 1989, Companies (Northern Ireland) Order 1990 and Irish Companies Act 1990. (Auditing certificates cannot be held by incorporated firms in Ireland.) The detailed requirements are contained in the Chartered Certified

Accountants' Global Practising Regulations 2003 (GPRs). The GPRs are published in the *ACCA Rulebook*.

All ACCA members who take responsibility for audit work must be in possession of a current practising certificate and audit qualification in their personal name, and an auditing certificate in the name of their firm. The practising certificate and audit qualification does not, on its own, authorise the holder to hold audit appointments or sign audit reports. Sole practitioners are, however, not required to pay an additional fee for auditing certificates. Similarly, there is no additional charge for firms comprising solely ACCA member partners.

An ACCA member who holds a practising certificate and audit qualification, and who is a partner or director in a firm or firms which have auditing certificates, should note that if he/she wishes to hold personal audit appointments (separate from the partnership or company), he/she must obtain a separate auditing certificate to cover these personal audit appointments.

To be eligible for an auditing certificate, a firm must demonstrate that it complies with the control requirements set out in regulation 8 of the UK Annex to the GPRs and/or regulation 8 of the Irish Annex to the GPRs.

The firm must be controlled by qualified persons (ie the qualified persons must hold the majority of the voting rights within the firm on all, or substantially all, matters). Additionally, each person who is to be responsible for a firm's audit work must be a qualified person. Non-members of ACCA who wish to be classed as qualified persons must hold certificates which are at least equivalent in status to the practising certificate and audit

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qualification, and which authorise them to undertake audits in the relevant country.

Where a firm is managed by a management board or committee, the qualified persons must have the majority of the votes on the board or committee and be able to direct the firm's overall policy and to change its constitution. Additionally, the qualified persons must spend a material amount of their time working in the firm.

A firm that seeks an auditing certificate will be permitted to have as its principals a combination of holders of practising certificates who have an audit qualification and holders of practising certificates who do *not* have an audit qualification. However, those members who hold practising certificates and who do *not* have an audit qualification will not meet the definition of a qualified person for the purpose of assessing control of the firm.

Control is assessed on the allocation of the voting rights and not just the ownership of the capital or the distribution of profits. This means that, for an incorporated firm, it is possible to issue more than one class of share, so that unqualified individuals may own shares without exercising control.

All firms which carry out audit work within the United Kingdom and Ireland must ensure that procedures are established which prevent individuals who do not hold appropriate qualifications from being able to exert influence over the way in which an audit is conducted. This restriction on participation in the control and influence of audit matters applies to holders of the ACCA practising certificate who do not have an audit qualification as well as to all other persons not qualified to conduct audit work. The firm's procedures and policies (as well as its control) should seek to prevent the independence or integrity of the audit from being compromised.

UK investment business registration

In the UK, ACCA is able to register firms, which enables them to conduct exempt regulated activities within the terms of the Financial Services and Markets Act 2000, provided they are appropriately controlled. Eligibility requirements are contained within the Chartered Certified Accountants' Designated Professional Body Regulations 2001 (DPBRs). The Chartered Certified Accountants' Investment Business Regulations 1996 (IBRs) were replaced with the DPBRs on 1 December 2001. The DPBRs are published in the *ACCA Rulebook*.

Sole practitioners may be authorised by ACCA to conduct exempt regulated activities, provided they meet the conditions set out in DPBR 3. A sole practitioner must be an ACCA member who has been issued with a UK practising certificate; the main business of his/her practice must be the public practice of accountancy.

Partnerships wishing to obtain investment business registration from ACCA are required to meet the conditions set out in DPBR 3. A partnership whose main business is the public practice of accountancy is eligible to conduct exempt regulated activities if its partners are either members of ACCA, members of other DPBs (eg the Institute of Chartered Accountants in England and Wales) or otherwise entitled to practise accountancy. All partners who are not members of ACCA must give undertakings to abide by ACCA's regulations, and at least one of the partners in the firm *must* be an ACCA member. In addition, those partners who are members of ACCA or of another DPB should manage or control the firm. All partners who are members of ACCA must hold a UK practising certificate, and each partner who is not a member must hold such other qualification as is deemed adequate by the Admissions and Licensing Committee.

Incorporated firms wishing to obtain investment business registration from ACCA are required to meet the conditions set out in DPBR 3. A company that has as its main

business the public practice of accountancy will be eligible to conduct exempt regulated activities if its directors are either members of ACCA, members of other DPBs or otherwise entitled to practise accountancy. All directors who are not members of ACCA must give undertakings to abide by ACCA's regulations, and at least one director and controller in the company must be an ACCA member. Each director who is a member of ACCA *must* hold a UK practising certificate, and each director who is not a member of ACCA must hold such other qualification as is deemed adequate by the Admissions and Licensing Committee. Those directors who are members of ACCA or of another DPB should manage or control the firm.

(A controller is a person who either alone, or with any associates, controls 10% or more of the rights to vote on the majority of matters at general meetings.)

Irish investment business authorisation

In Ireland, ACCA is able to authorise firms to conduct investment business within the terms of the Investment Intermediaries Act 1995, provided they are appropriately controlled. Eligibility requirements are contained within the Chartered Certified Accountants' Irish Investment Business Regulations 1999 (IIBRs). The IIBRs are published in the *ACCA Rulebook*.

A sole practitioner will be eligible for an investment business certificate (Ireland) if he/she is a member of ACCA, holds a practising certificate (Ireland), and his/her main business is the public practice of accountancy. The practice must hold minimum net business assets of €10,000 for category A authorisation or business assets at least equal to its liabilities for category B authorisation.

A partnership whose main business is the public practice of accountancy is eligible for an investment business certificate (Ireland) if its partners are either members of ACCA, members of other Approved Professional Bodies (such as the Institute of Chartered Accountants in Ireland)

or otherwise entitled to practise accountancy and regulated by another professional body. At least one of the partners in the firm must be an ACCA member, and all partners who are not members of ACCA must give undertakings to abide by ACCA's regulations. In addition, those partners who are not members of ACCA or of another Approved Professional Body should not form a majority of the partners of the firm. Each partner who is an ACCA member must hold a practising certificate (Ireland), and each partner who is not an ACCA member must hold such other qualification as is deemed adequate by the Admissions and Licensing Committee. The partnership must meet the same requirements for net business assets as a sole practitioner.

A company which has as its main business the public practice of accountancy will be eligible for an investment business certificate (Ireland) if its directors and controllers are either members of ACCA, members of other APBs or otherwise entitled to practise accountancy and regulated by another professional body. At least one of the directors in the company must be an ACCA member, and all directors and controllers who are not members of ACCA must give undertakings to abide by ACCA's regulations. In addition, those directors who are not members of ACCA or of another Approved Professional Body should not form a majority of the board of directors. Each director who is an ACCA member must hold a practising certificate (Ireland), and each director who is not an ACCA member must hold such other qualification as is deemed adequate by the Admissions and Licensing Committee. The company must meet the same requirements for net business assets as a sole practitioner or partnership.

(Note that, for these purposes, a controller is a person who, either alone or with any associates, controls 15% or more of the rights to vote on the majority of matters at general meetings.)

Control requirements relating to practice descriptions/other description issues

Section 3.11 of the Code of Ethics and Conduct in the *ACCA Rulebook* deals with practice descriptions and, among other things, the circumstances in which a firm is entitled to use the descriptions “Registered Auditors” and “Chartered Certified Accountants”, “Certified Accountants” or “an ACCA Practice”.

A firm containing, as principals, ACCA members who are holders of practising certificates or insolvency licences may describe itself as a firm of “Chartered Certified Accountants”, “Certified Accountants” or “an ACCA Practice”, provided at least half of the firm’s principals are ACCA members and these same persons, among them, control 51% or more of the voting rights in the firm. A firm in which *all* principals are Chartered Certified Accountants is also entitled to use the following description at the foot of its business stationery:

“Members of the Association of Chartered Certified Accountants”.

Holders of ACCA practising certificates who are based outside the UK may only use such designations and in such form as they are entitled/required to use by virtue of membership of a recognised professional body, or registration granted by any appropriate authority, in the country in which they practise. Where ACCA’s descriptions guidance and local requirements conflict or differ, the stricter of the two positions should be applied. Generally, unless the legislation of the country in which the practitioner is based overrides this requirement, the designation of any overseas body should not be used in combination with “Chartered Certified Accountant(s)”, other than as follows:

“The partners {or directors} of this firm are members of either the Association of Chartered Certified Accountants or the {insert name of local professional body}”.

A mixed firm – for example, one wholly composed of partners (or directors) who are Chartered Certified Accountants or UK/Irish Chartered Accountants - is *not* permitted to use the description “Chartered Certified and Chartered Accountants” or “Chartered and Chartered Certified Accountants”. Such a firm may use the following statement on their business stationery (provided the Chartered Accountants have obtained permission from their own Institute to use the statement):

“The partners {or directors} of this firm are members of either the Association of Chartered Certified Accountants or the Institute of Chartered Accountants in England and Wales {or of Scotland or in Ireland}”.

Members of ACCA may be either Members or Fellows, and both are entitled to use the professional designation “Chartered Certified Accountant” or “Certified Accountant”. They may also use the designatory letters “ACCA” or “FCCA” respectively on business stationery. However, members are not permitted to add “Honours” or “Hons” after their designation or designatory letters. (No honours are awarded in ACCA’s examinations.)

Where members belong to two or more accountancy bodies, they should either use all their designatory letters or none at all. When listing non-principals on business stationery, care must be taken to ensure that they cannot be confused with the principals. In general, this will entail placing their names on a separate part of the stationery to that containing the partners’ names, and avoiding any descriptive terminology that implies they are partners or directors (eg “associate partner” or “salaried partner”). In fact, section 3.11 states that, where such a person is named on the stationery, a description *must* be included by their name, and terms such as “manager” and “tax consultant” are given as acceptable examples.

Members who hold a civil or service honour (such as CBE, DSO, DFC, etc) or a civil office (such as MP, etc) are entitled to use the appropriate designatory letters on their

professional stationery if they so wish. However, the designatory letters for a Justice of the Peace (JP) or its equivalent outside the United Kingdom must not be included on professional stationery. Before including designatory letters, members should consider carefully to what extent (if at all) a statement of such honours or offices is relevant to the professional services they offer. Any reference to honours or appointments would be entirely inappropriate in signing any audit report or other expression of professional opinion.

Registered Auditors and investment business

Firms in the United Kingdom or the Republic of Ireland holding a firm's auditing certificate issued by ACCA may describe themselves as "Registered Auditors", and may add the following statement to their business stationery:

"Registered as auditors by the Association of Chartered Certified Accountants".

Firms that carry on exempt regulated activities in the United Kingdom are referred to regulation 6(6) of the Designated Professional Body Regulations 2001. The approved wording for the purpose of regulation 6(6) is as follows:

"Regulated for a range of investment business activities by the Association of Chartered Certified Accountants".

Firms that conduct exempt regulated activities may (without undue prominence) use the logos of investment business organisations of which they are members on their professional stationery.

Where appropriate, Registered Auditors may combine the "audit registration" statement with the exempt regulated activities statement as follows:

"Registered as auditors and regulated for a range of investment business activities by the Association of Chartered Certified Accountants".

Firms that carry on investment business in the Republic of Ireland are referred to regulation 7(2) of the Irish Investment Business Regulations 1999. The approved wording for the purpose of regulation 7(2) is as follows:

"Authorised to undertake investment business services in Ireland by the Association of Chartered Certified Accountants".

Insolvency practitioners

A member who holds a current insolvency licence in the United Kingdom *may* describe himself/herself as a "Licensed Insolvency Practitioner". However, members who hold a current insolvency licence issued by ACCA *must* add either one of the following statements to their business stationery:

"Licensed to act as an insolvency practitioner by the Association of Chartered Certified Accountants" or

"Insolvency Practitioner licensed by the Association of Chartered Certified Accountants".

Firms composed wholly of insolvency licence holding partners/directors (whether issued by ACCA or other Recognised Professional Bodies or the Competent Authority under the Insolvency Act 1986 or Insolvency (Northern Ireland) Order 1989) may describe themselves as firms of "Licensed Insolvency Practitioners".

Control and other regulatory aspects of partnership agreements

Like most contracts, there is no requirement for a partnership agreement to be in writing. However, a written agreement may reduce uncertainty at a later date. (ACCA will usually require there to be a written agreement where there are unqualified principals.) It should also be borne in mind that even if a partnership agreement is written, it may be overridden by any subsequent agreements among

the partners, whether written, oral or simply implied by accepted procedures and courses of action.

A partnership agreement might, typically, cover goodwill, property, division of profits and losses, the method of valuing work in progress, partners' drawings, expulsion of partners, dissolution of the partnership, obligations of partners in terms of time and other commitments, restrictions on setting up in new firms for those leaving the partnership, leave and sickness arrangements, life insurance and permanent health insurance premiums, pension arrangements and the basis on which the agreement may be amended. It should be noted that this list is not exhaustive and that ACCA is unable to provide advice on drawing up a partnership agreement; on a matter of this importance there can be no substitute for obtaining specific legal advice. This guidance is intended simply to highlight the control and other regulatory aspects of a partnership agreement.

Where there is a written partnership agreement, the control provisions relating to audit and investment business authorisation should be included in the agreement, as appropriate, in such a way as to ensure that, in the case of audit, the majority of the votes are vested with holders of the relevant qualifications and/or, in the case of investment business, overall control cannot be exercised by persons who are not members of the relevant professional bodies. The agreement should provide for these arrangements to endure at least until such time as the firm has met its obligations to give ACCA notice of a change in its composition. (see factsheet entitled 'Notification requirements' which can be downloaded from ACCA's website at www.accaglobal.com/members/professionalstandards).

It should be noted that, in relation to audit registration, control is determined by the distribution of votes. There is no regulatory requirement for the allocation of votes to correlate to the ownership of the firm or the share of

profits. Where there is a major difference between the allocation of votes and ownership/distribution of profits (eg in a partnership containing a greater number of unqualified individuals rather than holders of relevant qualifications), the firm may be required to demonstrate (during monitoring visits and, possibly, to the Admissions and Licensing Committee) that control is held by holders of relevant qualifications and is not simply written into the partnership agreement for the sake of appearance.

Where there is *no* written partnership agreement, the firm's control procedures should be documented in writing.

The control requirement in respect of investment business/exempt regulated activities registration is determined with reference to the number of principals. For example, in the case of exempt regulated activities, no more than half of the partners, directors or controllers may be non-DPB members. One partner must also be an ACCA member holding a practising certificate which is valid in the UK in order for the firm to register with ACCA for exempt regulated activities.

All practitioners are required to make arrangements for the continuity of their practices in the event of their death or incapacity (see separate factsheet entitled 'Continuity of practice requirements' which can be downloaded from ACCA's website at www.accaglobal.com/members/professionalstandards). For those in partnerships, such arrangements will often form part of the partnership agreement. Continuity arrangements must be in writing, and so there will need to be a written continuity agreement where there is no written partnership agreement. A model partnership agreement may be obtained from OyezStraker (tel: +44 (0)20 7556 3345). As noted above, however, a partnership agreement is a legal contract and should be prepared in consultation with a solicitor.

Control and other regulatory aspects of articles of association

Incorporated practices may apply for audit and investment business authorisation (although incorporated firms in Ireland cannot be issued with auditing certificates). The control and regulatory requirements for incorporated firms are broadly similar to those described earlier for partnerships, and incorporated firms in which all of the shares are held by directors (and which, in reality, are not operationally dissimilar from partnerships) will experience few additional regulatory complications as compared with partnerships.

As with partnerships, the principal point to be considered in drawing up the company's articles of association is a procedure for ensuring that control remains vested in appropriately qualified persons in terms of audit and investment business authorisation control procedures. Whereas a partnership needs only to deal with this issue in relation to its partners, an incorporated firm must deal with it in relation to both directors and shareholders.

Continuity provisions must also be drawn up, and these may be written into the articles of association. Therefore, the document will often be inspected during monitoring visits. ACCA may also wish to inspect the articles of association before granting audit registration to an incorporated firm, and this may result in it taking slightly longer to process the application than usually applies in the case of a partnership. Incorporated firms should also be aware that they will have to supply full shareholder details, both in the initial application and at each renewal of authorisation.

Model articles of association may be obtained from OyezStraker (tel: +44 (0)20 7556 3345).

Members are reminded that it is essential that model documents are reviewed and tailored to meet their specific sets of circumstances. Members are strongly

recommended to seek legal advice when drawing up documents such as a company's articles of association, and to review the articles of association on a periodic basis to ensure continued compliance with current legislation and current ACCA regulatory requirements.

Practice names

Subject to the following rules, a member (or members) holding the appropriate practising certificate(s) may practise under whatever name or title they see fit:

- (a) A practice name should be consistent with the dignity of the profession in the sense that it should not project an image inconsistent with that of a professional bound by high ethical and technical standards.
- (b) A practice name should not be misleading.
- (c) It would be misleading for a firm with a limited number of offices to describe itself as "international" even if one of them was overseas, or for a sole practitioner to add the suffix "and partners" to their firm's name. Similarly, it would be misleading for firms to add the suffix "and Associates" to their business name unless they have two or more formal associations/consultancies in existence which can be demonstrated to exist.
- (d) A practice name would be objectionable if there was a real risk that it could be confused with the name of another firm (even if the member(s) of the practice could lay justifiable claim to the name).
- (e) A practice name may indicate the range or type of services offered by the firm.
- (f) A firm may trade under different names from different offices, providing that this does not mislead.

- (g) A practice name must comply with partnership, limited liability partnership and company law as appropriate, and with any other local legislation, such as the Business Names Act 1985 in the United Kingdom.

It has been the custom of the profession for members to practise under a firm's name based on the names of past or present members of the firm itself or of a firm with which it has merged or amalgamated. A practice name so derived will usually be in conformity with this guidance.

A firm may be a member of a trading association and may indicate this on the firm's note paper, in proximity to the practice name. However, the practice name of such a firm should be clearly distinguishable from the name of the trading association. Thus, it would be misleading for a member of a trading group to bear the same name as the group. (There would be no objection to a firm practising under its own name and including a statement on its professional stationery to the effect that it is "a member of {a named} accountancy group".)

When choosing a firm's name, members are recommended, as a means of ensuring compliance with this guidance, to consult with the Advisory Services Section of ACCA as to the propriety of the proposed name. This is particularly so where the new name will not be based on the names of past or present members of the firm.

Sole practitioners

Sole practitioners may use the plural form of Chartered Certified Accountants or Certified Accountants and/or Registered Auditors and/or Licensed Insolvency Practitioners to describe their firms, providing they hold the appropriate certificate and either:

- (a) they apply the suffix "& Co." after their name, or
- (b) otherwise trade under a business name which is not the same as their personal name.

Practice descriptions

The description "Chartered Certified Accountant(s)", "Certified Accountant(s)" or "Registered Auditor(s)" must not form part of the name of a firm or company. (For example, a limited liability company must not include the description in the name which is registered with Companies House in the United Kingdom or its equivalent elsewhere.) This is because there are strict rules to determine whether or not these descriptions may be used, and if the various requirements were to cease to be met, the name of the firm would be misleading.

Business stationery

Use of the ACCA mark

A firm that has at least one ACCA member as a partner or director may use the ACCA mark on letterheads, other stationery and on an Internet site. The mark should be used in an appropriate manner, so that it cannot be confused with the mark/logo of the firm (for example, in conjunction with the regulation statement in respect of audit or financial services).

The positioning, size and colour of the mark should not compromise its recognition, and it should normally appear in white reversed out of a black box. Firms wishing to use another colour should contact ACCA for guidance on the other colours that can be used. It is recommended that the size of the mark should be either 10 x 10mm or 17.6 x 17.6mm.

The mark is available in both paper and electronic format from ACCA by telephoning +44 (0)20 7059 5900, or by e-mailing members@accaglobal.com.

Specialisms

A firm may include on its professional stationery a list of the services it provides. It is also permitted to use a

description indicating a specialism in any area of work, for example “Tax advisers”, provided that:

- (a) it is competent to provide the specialisms shown, and
- (b) the content and presentation of the descriptions do not bring ACCA into disrepute or bring discredit to the firm or the accountancy profession.

Persons named on professional stationery

As stated earlier in this section, it should be clear from reading a firm's professional stationery whether each person named on it is a principal in that firm (ie a partner, member, sole practitioner or director). Firms may include the name of any person who is not a principal of the practice on its professional stationery. However, where such a person is named, a description about this person (eg “manager”, “tax consultant”, etc) must also be included by their name.

Further information

Further information is available from the ACCA website at www.accaglobal.com, or by telephoning the Advisory Services Helpline in your region.

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