

PUBLIC ACCOUNTANCY BOARD

JAMAICA

Established under the Public Accountancy Act, 1968

RULES AND RECOMMENDATIONS

RULES AND RECOMMENDATIONS

APPLICATION

The principles, rules and recommendations contained in the following pronouncements are formulated for the conduct and guidance of a Registered Public Accountant (RPA).

EITHER in his capacity as an individual, a partner in a firm, a director or employee of a corporation.

OR in any possible permutations or combinations of the foregoing capacities. An act or default, although not his personal commission or omission, may be attributed to a Registered Public Accountant if he knowingly permits it to take place or continue.

SCOPE

These Rules contain the basics of professional and ethical conduct. The objective of the Rules is to provide guidance to RPA's in the performance of their responsibilities as accounting professionals. They require an unswerving commitment to honourable behaviour even at the expense of personal advantage.

An RPA is obliged to carry out his/her functions in such a way that

- (a) serves the public interest
- (b) honours the public trust
- (c) demonstrates a commitment to professional excellence

Statements or recommendations on particular instances or examples of unethical or discreditable conduct are not intended to be comprehensive, exhaustive, all inclusive or complete. A Registered Public Accountant may be guilty of being discreditable or unethical, even though his conduct may not be specifically prescribed to be discreditable or unethical conduct.

On the other hand, pronouncements on permissible acts must be restricted to their context and confined in their interpretation.

An RPA who departs from these Rules should be aware that he/she will have the burden of justifying, in a Disciplinary Hearing, his/her failure to apply the Rules.

RULES AND RECOMMENDATIONS

I N D E X

	<u>Page</u>
1. INTRODUCTION	5-6
2. INTEGRITY	7-8
3. OBJECTIVITY	9-10
4. PROFESSIONAL COMPETENCE AND DUE CARE	11-12
5. CONFIDENTIALITY	13-15
6. PROFESSIONAL BEHAVIOUR	16
7. INDEPENDENCE	17-28
8. ADVERTISING AND SOLICITATION	29-31
9. PROFESSIONAL COMPETENCE AND RESPONSIBILITIES REGARDING THE USE OF NON-ACCOUNTANTS	32-33
10. ACTIVITIES INCOMPATIBLE WITH THE PRACTICE OF ACCOUNTANCY	34
11. RELATIONS WITH OTHER REGISTERED PUBLIC ACCOUNTANTS	35-43
12. PUBLICITY	44
13. SECOND AND OTHER OPINIONS	45
14. FEES AND COMMISSIONS	46-51
15. TAX PRACTICE	52-54
16. CLIENTS' MONIES	55-56
17. CROSS BORDER ACTIVITIES	57
18. AUDIT QUALITY CONTROL AND ETHICS STANDARDS	58

19.	ACCOUNTING AND AUDIT ETHICS STANDARDS	59
20.	DESCRIPTION OF REGISTERED PUBLIC ACCOUNTANTS AND FIRMS AND THE NAMES OF PRACTISING FIRMS	60-63
21.	MONEY LAUNDERING	64-70
22.	PROFESSIONAL DUTY OF CONFIDENCE IN RELATION TO DEFAULTS AND UNLAWFUL ACTS OF CLIENTS AND OTHERS	71-94
23.	PROFESSIONAL APPOINTMENTS	95-104
24.	LEGAL OWNERSHIP OF, AND RIGHTS OF ACCESS TO, BOOKS, FILES, WORKING PAPERS AND OTHER DOCUMENTS	105-110
25.	RETENTION PERIODS FOR BOOKS, FILES, WORKING PAPERS AND OTHER DOCUMENTS	111-112
26.	PROFESSIONAL LIABILITY OF ACCOUNTANTS AND AUDITORS	113-118
	APPENDIX I - DEFINITIONS	119-126

1. INTRODUCTION

- 1.1 Registered Public Accountants (RPAs) are required to observe proper standards of professional conduct.
- 1.2 RPAs must specifically refrain from taking any action which amounts to a departure from the standards set out in these Rules and Recommendations which also incorporate the *Code of Ethics for Professional Accountants* prepared by the International Ethics Standard Board for Accountants (IESBA), an independent standard setting body within the International Federation of Accountants (IFAC).
- 1.3 Those failing to observe the standards expected of them may be required to answer a complaint before the Board.
- 1.4 It is not possible to specify all those combinations of circumstances in which a Registered Public Accountant may be held by the Board to have committed professional misconduct, as defined in these Rules and Recommendations. However, these Rules (which may be added to or varied from time to time) set out the Board's ethical requirements in relation to those professional situations that most commonly arise.
- 1.5 RPAs who are in doubt as to their correct course of action in particular cases should obtain further guidance from the Registrar. It is advisable to seek guidance prior to embarking on a course of action.
- 1.6 Where statutory and regulatory requirements are concerned, RPAs are reminded that they must also refer to, and comply with, the relevant legislation and regulatory requirements applicable, e.g. The Public Accountancy Act and Regulations, the Companies Act, the Banking Act and the Insurance Act, etc.
- 1.7 The Rules and Recommendations apply to all Registered Public Accountants.
- 1.8 Registered Public Accountants are obligated to familiarize themselves with the provisions of the Code of Ethics for Professional Accountants issued by the

International Ethics Standard Board for Accountants (IESBA), an independent standard setting body within the International Federation of Accountants (IFAC). This code was issued in June 2005 and revised in July 2009. The Code can be down-loaded free of charge from the IFAC'S website <http://www.ifac.org> The Code is broken down into a number of Sections:

Part A - deals with the general application of the Code (Pages 5-16).

Part B – deals with Professional Accountants in Public Practice (Pages 17-110).

Part C – deals with Professional Accountants in Business (Pages 111-120).

Definitions (Pages 119 – 126)

Effective date (Page 129)

The Public Accountancy Board has adopted this Code in its entirety and compliance therewith is mandatory.

At Appendix I is a list of Definitions which are used in the IFAC Code as well as in the Rules and Recommendations.

2. INTEGRITY

- 2.1 All RPA's should perform their professional responsibilities with the highest sense of integrity to maintain and broaden public confidence.
- 2.2 Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a RPA must ultimately test all decisions.
- 2.3 Integrity implies not merely honesty but fair dealing and truthfulness.
- 2.4 Regardless of service or capacity, members should protect the integrity of their professional services and maintain objectivity in their judgment.
- 2.5 The principle of integrity imposes an obligation on all registered public accountants to be straightforward and honest in all professional and business relationships.
- 2.6 A registered public accountant should not knowingly be associated with reports, returns, communications or other information where the professional accountant believes the information:-
- (a) contains a materially false or misleading statement
 - (b) contains statements or information furnished recklessly, or
 - (c) omits or obscures information required to be included where such omission or obscurity would be misleading.
- When a professional accountant becomes aware of such information, he/she should take steps to be disassociated from that information or to issue a modified report on the matter.
- 2.7 Integrity requires a member to be, among other things, honest and candid within the constraints of

client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle.

2.8 Integrity is measured in terms of what is right and just. In the absence of specific rules, standards or guidance or in the face of conflicting opinions, a RPA should test his decisions and deeds by asking: "Am I doing what a person of integrity would do? Have I retained my integrity?" Integrity requires a RPA to observe both the form and the spirit of technical and ethical standards; circumvention of those standards constitutes subordination of judgment.

2.9. Integrity also requires a RPA to observe the principles of objectivity and independence and of due care.

3. OBJECTIVITY

- 3.1 The principle of objectivity imposes an obligation on all registered public accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.
- 3.2 Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest and free of conflicts of interest.
- 3.3 RPAs render attest, tax and management advisory services. RPAs should protect the integrity of their work, maintain objectivity and avoid any subordination of their judgment.
- 3.4 A RPA should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities.
- 3.5 Registered Public Accountants will from time to time be exposed to situations which involve the possibility of pressures being exerted on them. These pressures may impair their objectivity. It is not possible to define and prescribe all such situations where these possible pressures exist. Reasonableness should prevail in establishing standards for identifying relationships that are likely to, or appear to, impair a member's objectivity.
- 3.6 Relationships should be avoided which allow prejudice, bias or influences of others to override objectivity or where not practicable, assignments should not be undertaken. Registered public accountants should not perform a professional service if a circumstance or relationship biases or unduly influences his/her professional judgment with respect to that service.
- 3.7 Registered Public Accountants have an obligation to ensure that personnel engaged to perform professional services adhere to the principle of objectivity.

- 3.8 Registered Public Accountants should neither accept nor offer gifts or entertainment which might reasonably be believed to have a significant and improper influence on their professional judgment or those with whom they deal.

4. PROFESSIONAL COMPETENCE AND DUE CARE

- 4.1 RPA's should
- (a) observe the profession's technical and ethical standards
 - (b) strive continually to improve competence and the quality of services and
 - (c) discharge professional responsibility to the best of his ability.
- 4.2 The quest for excellence is the essence of due care. Due care requires a RPA to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public.
- 4.3 RPA's should not knowingly permit a person whom he/she has the authority or capacity to control, to carry out on his/her behalf, either with or without compensation, acts which, if carried out by the RPA, would place the RPA in violation of the Rules.
- 4.4 Registered public accountants should not portray themselves as having expertise or experience they do not possess.
- 4.5 Professional competence may be divided into two areas:
- (a) Attainment of professional competence

The attainment of professional competence requires initially a high standard of general education followed by specific education, training and examination in professionally relevant subjects, and whether prescribed or not, a period of work experience. This should be the normal pattern of development for a registered public accountant.
 - (b) Maintenance of professional competence

- (i) The maintenance of professional competence requires a continuing awareness and understanding of developments in the accountancy profession including relevant local and international pronouncements on accounting, auditing, other relevant regulations and statutory requirements as well as relevant technical and business developments.
- (ii) A registered public accountant should adopt a programme designed to ensure quality control in the performance of professional services consistent with appropriate local and international pronouncements.
- (iii) Diligence which encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thorough and on a timely basis.

- 4.6 A registered public accountant should take reasonable steps to ensure that those working under his/her authority in a professional capacity have appropriate training and supervision.
- 4.7 Where appropriate the registered public accountant should make clients and other users of his/her services aware of the limitations inherent in the services.
- 4.8 Registered Public Accountants have a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. RPAs should act diligently and in accordance with applicable technical and professional standards when providing professional services.

5. CONFIDENTIALITY

- 5.1 Registered Public Accountants have an obligation to respect the confidentiality of information about a client's or employer's affairs acquired in the course of professional services. The duty of confidentiality continues even after the end of the relationship between the registered public accountant and the client.
- 5.2 Confidentiality should always be observed by a registered public accountant unless specific authority has been given to disclose information or there is a legal or professional duty to disclose.
- 5.3 Registered public accountants have an obligation to ensure that staff under their control and other persons from whom advice and assistance is obtained respect the principle of confidentiality.
- 5.4 Confidentiality is not only a matter of disclosure of information. It also requires that a registered public accountant acquiring information in the course of performing professional services neither uses nor appears to use that information for personal advantage or for the advantage of a third party.
- 5.5 A registered public accountant has access to much confidential information about a client's affairs not otherwise disclosed to the public. Therefore, the registered public accountant should be relied upon not to make unauthorized disclosure to other persons of such information in order properly to discharge the registered public accountant's responsibility according to the profession's standards.
- 5.6 It is in the interest of the public and the profession that the profession's standards relating to confidentiality be defined and guidance given on the nature and extent of the duty of confidentiality and the circumstances in which disclosure of information acquired during the course of providing professional services shall be permitted or required.
- 5.7 It should be recognized, however, that confidentiality of information is part of statute or common law and

therefore detailed ethical requirements in respect thereof will depend on the applicable laws.

5.8 The following are examples of the points which should be considered in determining whether confidential information may be disclosed:

(a) When disclosure is authorized:

When authorization to disclose is given by the client the interest of all the parties including those third parties whose interest might be affected should be considered.

(b) When disclosure is required by law:

Examples of when a registered public accountant is required by law to disclose confidential information are:

(i) To produce documents or to give evidence in the course of legal proceedings; and

(ii) To disclose to the appropriate public authorities infringements of the law which come to light.

(c) When there is a professional duty or right to disclose:

(i) To comply with technical standards, regulations and ethics requirements; such disclosure is not contrary to this section;

(ii) To protect the professional interests of the registered public accountant in legal proceedings;

(iii) To comply with the quality review requirements

(iv) To respond to an inquiry or investigation.

5.9 When the registered public accountant has determined that confidential information can be disclosed, the following points should be considered:

- Whether or not all the relevant facts are known and substantiated, to the extent it is practicable to do so; when the situation involves unsubstantiated fact or opinion, professional judgment should be used in determining the type of disclosure to be made, if any;
- What type of communication is expected and the addressee; in particular, the registered public accountant should be satisfied that the parties to whom the communication is addressed are appropriate recipients and have the responsibility to act on it; and
- Whether or not the registered public accountant should incur any legal liability having made a communication and the consequence thereof.
- Whether the interests of any parties, including third parties whose interest may be affected, could be harmed if the client or employer consents to the disclosure of information by the RPA.

In all such situations the registered public accountant should consider the need to consult legal counsel and/or the Public Accountancy Board or professional organization(s) concerned.

5.10 RPAs should respect the confidentiality of information acquired as a result of professional and business relationship and should not disclose any such information to third parties without proper and specific authority or unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of RPAs or third parties.

6. PROFESSIONAL BEHAVIOUR

- 6.1 RPAs should comply with relevant laws and regulations and should avoid any action that discredits the profession.
- 6.2 The principle of professional behaviour imposes an obligation on RPAs to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.
- 6.3 RPAs should behave with courtesy and consideration towards all with whom they come into contact in a professional capacity.
- 6.4 In marketing and promoting themselves and their work, RPAs should not bring the profession in disrepute. RPAs should be honest and truthful and not:
- (a) make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - (b) make disparaging references or unsubstantiated comparisons to the work of others.

7. INDEPENDENCE

- 7.1 RPA's should be independent in fact and appearance when providing auditing and other attestation services. This requires a continuing assessment of client relationships and public responsibility.
- 7.2 Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services.
- 7.3 When undertaking a **reporting assignment**, registered public accountants should be and appear to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity, objectivity and independence.
- 7.4 The following paragraphs indicate some of those situations which, because of the actual or apparent lack of independence, would give a reasonable observer grounds for doubting the independence of a registered public accountant. They also apply to all professional employees engaged in the reporting assignment, and all managerial employees located in an office participating in a significant part of the reporting assignment.

By Direct Financial Interest in the Client

- 7.5 Any beneficial interest on the part of a registered public accountant or anyone closely connected with a registered public accountant's audit firm, in a client company will constitute an impairment of independence. A registered public accountant therefore should not hold shares in a client company.
- 7.6 A beneficial interest is a beneficial shareholding or other direct investment in the company. Shares and shareholding include debenture and other loan stock and the equivalent, and rights to acquire shares, debenture or other loan stock. Shareholdings also include options to purchase or sell such securities. A person's holdings include holdings by a nominee on behalf of that person or by a trust created by that person for his or her personal benefit. Shareholdings in parent, subsidiary or associated companies of a

client company should normally be regarded on the same basis as shareholdings in the client company itself. However, if the registered public accountant or the relevant firm is auditor only of a company or companies which taken together constitute an insignificant part of a group, independence of the parent, or subsidiary or associated companies is not required.

- 7.7 Where an employee, or a person closely connected with an employee, has such a beneficial interest, the employee should not take part in the audit of the client company.
- 7.8 The foregoing paragraph (7.7) is not intended to preclude a registered public accountant or persons closely connected with the registered public accountant from holding or continuing to hold, in the normal course of business and on normal commercial terms, an insurance or pension policy with a client insurance company or society, though an engagement partner should not take out a new policy with such a client.
- 7.9 Paragraph 7.7 does not preclude a registered public accountant or a person closely connected with the registered public accountant from having a beneficial holding in an authorized unit trust or mutual fund or similar managed fund which holds shares in a client company, provided that the firm does not report upon the trust.
- 7.10 Where a registered public accountant inherits shares or marries a shareholder, or a relevant investment occurs as a result of a takeover, the investment should be disposed of at the earliest practicable date, being a date at which the transaction would not amount to insider dealing. Similar action should be taken where a beneficial investment is held in a company becoming an audit client. Where the necessary disposal cannot be achieved within the timescale envisaged the registered public accountant or relevant firm should not continue as auditor.

By Indirect Material Financial Interest in a Client

- 7.11 When a registered public accountant holds or advises on investing in shares in an audit client on behalf of a third party, for example a trust, the appearance of independence is at risk as responsibilities to the third party may conflict with responsibilities to the audit client. In the case of trustee shareholdings, if a registered public accountant or employee of a firm or person closely connected to the registered public accountant or employee is a trustee of a trust with a holding in shares material to the size of the issued share capital of the company or the total assets of the trust, the practice should not accept the audit of that company. This also applies in the case of those who serve as executors and administrators of any estate. A shareholding in excess of ten percent of the issued share capital of a company would normally be considered material.

By Loans to or from the Client or Any Officer, Director or Principal Shareholder of a Client Company.

- 7.12 A registered public accountant or relevant audit firm or a closely connected person of a registered public accountant should not directly or indirectly make any loan to, or receive a loan from a client or give or accept any guarantee in relation to a debt of the client, firm, registered public accountant or closely connected person of a registered public accountant.
- 7.12A Paragraph 7.12 does not apply to any account in credit with an audit-client bank or similar financial institution or to preclude a loan, overdraft, home mortgage or other dealings being accepted by a registered public accountant, or relevant audit firm or a closely connected person of a registered public accountant, from an audit-client bank, building society, financial or other institution in the ordinary course of business and on normal commercial terms, provided that the loan is not applied so as to subscribe to partnership capital of the audit firm.

By Holding a Financial Interest in a Joint Venture with a Client or Employee(s) of a Client.

- 7.13 A mutual business interest or joint venture between a registered public accountant with a client company or with an officer or employee of the company would be considered to impair the registered public accountant's independence with respect to the client. Where such a mutual business interest exists the engagement should not be accepted or continued.
- 7.14 Where a registered public accountant has an immaterial financial interest in a non-client investor and the non-client investor has a financial relationship with the client, this would not impair the registered public accountant's independence provided the registered public accountant could not reasonably be expected to have knowledge of the financial interests or joint venture.

By Having a Financial Interest Considered Material in a Non-client That Has an Investor or Investee Relationship with the Client.

- 7.15 When a non-client investee is material to a client investor, any direct or material indirect financial interest of the registered public accountant in the non-client investee would be considered to impair the registered public accountant's independence with respect to the client. Likewise, where a client investee is material to a non-client investor, any direct or material indirect financial interest of the registered public accountant in the non-client investor would be considered to impair the registered public accountant's independence with respect to the client.

Appointments in Companies

- 7.16 When a registered public accountant is, within the period under current review or immediately preceding an assignment;
- (a) a member of the board, an officer or employee of a company; or

(b) a partner of, or in the employment of, a member of the board or an officer or employee of a company;

he or she would be regarded as having an interest which could detract from independence when reporting on that company.

7.17 A registered public accountant should not personally take part in the conduct of an audit of a company if he or she has, during the period upon which the report is to be made, or at anytime in the two years prior to the first day thereof, been a member of the board, an officer (other than auditor) or employee of that company.

7.18 Paragraph 7.17 applies where a registered public accountant has been a partner of, or in the employment of, a member of the board or an officer or employee of a company in the two years prior to the commencement of the period being audited.

7.19 A firm's independence may be impaired because of the participation in the conduct of an audit by a registered public accountant or senior employee who intends to join the client. The firm's guidelines should include the requirement for immediate notification to the firm by a registered public accountant or senior employee involved in a client's audit of his or her intention or any discussions concerning the possibility of joining the client.

7.20 Where a registered public accountant or senior employee is to join the client or is involved in substantive negotiations with the client he or she should be removed from the audit team and the significant audit decisions made by the registered public accountant or senior employee should be reviewed.

Provision of Other Services to Audit Clients

7.21 When a registered public accountant, in addition to carrying out an audit or other reporting function, provides other services to a client, care should be

taken not to perform management functions or make management decisions, responsibility for which remains with the board of directors and management.

7.22 In all cases in which independence is required and in which a registered public accountant is concerned in the preparation of accounting records for a client, the following should be observed:

- (a) The registered public accountant should not have any relationship or combination of relationships with the client or any conflict of interest which would impair integrity or independence,
- (b) The client should accept responsibility for the statements.
- (c) The registered public accountant should not assume the role of employee or of management conducting the operations of an enterprise.
- (d) Staff assigned to the preparation of accounting records ideally should not participate in the examination of such records. The fact that the registered public accountant has processed or maintained certain records does not eliminate the need to make sufficient audit tests.
- (e) The registered public accountant should not provide the following services for his clients:
 - (i) the preparation of accounting records and financial statements where the firm's audit staff make managerial decisions;
 - (ii) the provision of valuation services which involve valuation of matters material to the Financial Statements and which require a significant amount of objectivity;
 - (iii) the provision of internal audit services;
 - (iv) the provision of IT services which involve the design and implementation of accounting systems;
 - (v) the provision of actuarial services.

As the provision of non-audit services may create threats to independence it is necessary to evaluate the significance of any threat created by the provision of these services. In some cases it may be possible to eliminate or reduce the threat created by the application of safeguards. The Public Accountancy Board will evaluate possible threats created by the provision of non-audit services.

Personal and Family Relationships

7.23 Personal and family relationships can affect independence. There is a particular need to ensure that an independent approach to any assignment is not endangered as a consequence of any personal or family relationships.

7.24 **Family relationships which always pose an unacceptable threat to independence are those in which an officer or senior employee of an audit client is closely connected to a registered public accountant or an employee engaged on the assignment. Closely connected includes the spouse, dependent child or relative living in a common household but may include an extended family member to whom regular financial assistance is given or who is otherwise indebted financially to the registered public accountant.**

Fees

7.25 When the receipt of recurring fees from a client or group of connected clients represents a substantial proportion of the total gross fees of a registered public accountant or of the practice as a whole, the dependence on that client or group of clients should inevitably come under scrutiny and could raise doubts as to independence.

7.26 A branch office which is auditing the financial statements of a client of the practice as a whole and that client forms a major part of the business of the branch office, in such circumstances, professional

services for that client or group should be reviewed by a partner from another office.

Goods and Services

- 7.27 Acceptance of goods and services from a client may be a threat to independence. Acceptance of undue hospitality poses a similar threat.
- 7.28 Goods and services should not be accepted by registered public accountants or their immediate family or persons closely connected to the registered public accountant, except on business terms no more favourable than those generally available to others. Hospitality and gifts on a scale which is not commensurate with the normal courtesies of social life should not be accepted.

Ownership of the Capital

- 7.29 Ideally, the capital of a practice should be owned entirely by registered public accountants. However, ownership of capital by others may be permitted provided that the majority of both the ownership of the capital and the voting rights lies only with the registered public accountant.

Former Partners

- 7.30 A partner in a practice may leave the practice by resignation, termination, retirement, or sale of the practice. Such a partner may accept an appointment with a client of the practice, of which he or she is a former partner, when an audit or other reporting function is being performed by the practice of which he or she is a former partner. In such circumstances the independence of the practice would not be impaired, if
-
- (a) Payments of the amounts due to a former partner for his or her interest in the practice and for unfunded, vested retirement benefits are made in accordance with a schedule that is

fixed as to both payment dates and amounts. In addition, the amounts owed should be such that they do not cause a substantial doubt about the practices' ability to continue as a going concern.

- (b) The former partner does not participate or appear to participate in the practice's business or professional activities whether or not compensated. Indications of participation include the provision of office space and related amenities to the former partner by the practice.

Actual or Threatened Litigation

- 7.31 Litigation involving a registered public accountant and a client may cause concern that the normal relationship with the client is affected to the extent that the registered public accountant's independence and objectivity may be impaired.
- 7.32 The existence of legal action (or threat of action) may affect the willingness of the management of the company to disclose relevant information to the registered public accountant. It is not possible to specify precisely the point at which it would become improper for the registered public accountant to continue to report. However, he or she should have regard to circumstances when litigation might be perceived by the public as likely to affect the registered public accountant's independence.

Long Association of Senior Personnel with Audit Clients

- 7.33 The use of the same senior personnel on an audit engagement over a prolonged period of time may pose a threat to independence. The registered public accountant should take steps, outlined in paragraphs 7.34 to 7.37, to ensure that objectivity and independence are maintained on an engagement
- 7.34 Professional firms should provide for an orderly rotation of the audit engagement partner and of senior personnel serving on an engagement. The timing and

nature of rotation of engagement personnel, especially the engagement partner, depends on many practical considerations. Such a rotation should, however provide for an orderly blend of experienced and replacement personnel as well as an orderly transition.

- 7.35 Both audit engagement partner and quality control review partner should rotate after serving in either capacity or a combination thereof for a predefined period of no more than seven (7) consecutive years for publicly listed companies and ten (10) consecutive years for private companies. An audit engagement partner or quality control review partner who has ceased under this provision to act as such, should not return to that role in relation to that audit until a minimum of two years has passed but are not precluded from other involvement with the client. The Audit Committee of the entity being audited is authorized to make the decision as regards the appropriate time for rotation.
- 7.36 A limited degree of flexibility over timing may be acceptable in circumstances where audit engagement partner continuity is especially important. Examples could include major changes to a company's structure or management, or its involvement in a takeover, which would otherwise coincide with the partner change.
- 7.37 Senior audit staff should not be assigned to an audit for a period exceeding seven consecutive years and should not be reassigned to that audit until a minimum of two years has passed.
- 7.38 Rotation may be impracticable in small offices or when there are specializations relating to assignments. In such cases, alternative safeguards should be applied, such as the setting up of standing arrangements to consult externally with another suitably experienced registered public accountant.**
- 7.39 The Auditor in his Report is required to state that auditor independence is not impaired. The Public Accountancy Board has recommended that Companies through their Audit Committees should be

required to report annually on the independence of their Auditors.

- 7.40 A person should not be allowed to participate in an audit if during the period of the audit the person was in a position to exert direct and significant influence over the subject matter of the audit.

Documentation of Potential Risk or Threat to Independence

- 7.41 A registered public accountant/audit firm should document for each audit any potential risk or threat to their independence and the safeguards for mitigating these risks. Auditors should not conduct audits where there is material and direct financial interest in the client or where immediate family members are in the most senior management positions. A person who has been a director or manager for the audit period should not serve on the audit team. Financial facilities provided to the members of the team and their immediate family should not constitute a bar. In the case of a conflict, the firm should terminate the relationship, reduce the magnitude of the offending interest or refuse the engagement.
- 7.42 A Registered public accountant who is the lead partners should not be a business partner of any person in senior management of the client.
- 7.43 A Registered public accountant (or his personal companies) should not have benefited from loans from the client entity on a less than “arms length” basis (e.g. absence of or inadequate collateral, project financed has inadequate income to repay the loan).
- 7.44 A Registered public accountant should not conduct an audit of a client with whom he is in default of financial obligations to the client entity.
- 7.45 A Registered public accountant should not be the auditor where the audit engagement is disproportionate to the size of the firm and its other engagements. In such a situation the fees from the audit of the company comprise the majority (or a

material part) of the annual fees earned by the members of the audit firm.

8. ADVERTISING AND SOLICITATION

- 8.1 A registered public accountant may seek publicity for his services and achievements and may advertise his services and products in any way he thinks fit, subject to the following rules (8.2 to 8.8).

When RPAs solicit new work through advertising or other form of marketing, there may be potential threats to compliance with the fundamental principles, e.g. a self-intent threat to compliance with the principle of professional behaviour is created if services, achievements and products are marketed in a way that is inconsistent with that principle.

- 8.2 A registered public accountant may inform the public of the services he is capable of providing by means of advertising or other forms of promotion subject to the general requirement that the medium should not, in the opinion of the Board, reflect adversely on another registered public accountant, the Board or the accountancy profession nor should the advertisement or promotional, in the opinion of the Board:

- (a) as to content or presentation, bring the Board into disrepute or bring discredit to the registered public accountant, firm or accountancy profession;
- (b) discredit the services offered by others whether by claiming superiority for the registered public accountant or his firm's own services or otherwise;
- (c) be misleading, either directly or by implication;
- (d) fall short of the local advertising codes notably as to legality, decency, clarity, honesty and truthfulness.

- 8.3 An advertisement should be clearly distinguishable as such.

Fees

- 8.4 If reference is made in promotional material to fees, the basis on which fees are calculated, or to hourly or other charging rates, the greatest care should be taken to ensure that such reference does not mislead as to the precise range of services and time commitment that the reference is intended to cover. Registered public accountants should not make comparisons in such material between their fees and the fees of other accounting practices.
- 8.5 The danger of giving a misleading impression is particularly pronounced when constraints of space limit the amount of information which can be given. For this reason it will seldom be appropriate to include information about fees in short advertisements. Comparisons in promotional materials between their fees and the fees of other accounting practices must not give a misleading impression.
- 8.6 A registered public accountant may offer a free consultation at which levels of fees will be discussed.

Promotional Material

- 8.7 Promotional material may contain any factual statement the truth of which a registered public accountant is able to justify but should not make unflattering references to or unflattering comparisons with the services of others.

Introductions

- 8.8 A registered public accountant should not give or offer any commission, fee or reward to a third party, not being either his employee or another public accountant in return for the introduction of a client. The purpose of this paragraph is to ensure that introductions made by third parties should only be made by persons governed by ethical standards comparable to those observed by other registered public accountants.

Responsibility for Promotional Activities

- 8.9 For the purposes of this section, promotional activities carried out in the name of a firm should be construed as promotional services carried out by the individual registered public accountants of that practice, whether carried out personally or through agents.

9. PROFESSIONAL COMPETENCE AND RESPONSIBILITIES REGARDING THE USE OF NON-ACCOUNTANTS

- 9.1 A registered public accountant should refrain from agreeing to perform professional services which they are not competent to carry out unless competent advice and assistance is obtained so as to enable them to satisfactorily perform such services. If a registered public accountant does not have the competence to perform a specific part of the professional service, technical advice may be sought from experts such as other registered public accountants, lawyers, actuaries, engineers, geologists, valuers.
- 9.2 In such situations, although the member is relying on the technical competence of the expert, the knowledge of the ethical requirements cannot be automatically assumed. Since the ultimate responsibility for the professional service rests with the registered public accountant, he or she should see that the requirements of ethical behaviour are followed.
- 9.3 When using the services of experts who are not registered public accountants, the registered public accountant must take steps to see that such experts are aware of ethical requirements. Primary attention should be paid to the fundamental principles. These principles would extend to any assignment in which such experts would participate.
- 9.4 The degree of supervision and the amount of guidance that will be needed will depend upon the individuals involved and the nature of the engagement. Examples of such guidance and supervision might include:
- Asking individuals to read the appropriate ethical codes
 - Requiring written confirmation of understanding of the ethical requirements, and
 - Providing consultation when potential conflicts arise.
- 9.5 The registered public accountant should also be alert to specific independence requirements or other risks

unique to the engagement. Such situations will require special attention and guidance to see that ethical requirements are met.

- 9.6 If at any time the registered public accountant is not satisfied that proper ethical behaviour can be respected or assured, the engagement should not be accepted; or, if the engagement has commenced, it should be terminated.

10. ACTIVITIES INCOMPATIBLE WITH THE PRACTICE OF ACCOUNTANCY

- 10.1 A registered public accountant should not concurrently engage in any business, occupation or activity which impairs or might impair integrity, objectivity or independence, or the good reputation of the profession and therefore would be incompatible with the rendering of professional services.
- 10.2 The rendering of two or more types of professional services concurrently does not by itself impair integrity, objectivity or independence.
- 10.3 The simultaneous engagement in another business, occupation or activity unrelated to professional services which has the effect of not allowing the registered public accountant properly to conduct a professional practice in accordance with the fundamental ethical principles of the accountancy profession should be regarded as inconsistent with the practice of accountancy.

11. RELATIONS WITH OTHER REGISTERED PUBLIC ACCOUNTANTS

Accepting New Assignments

- 11.1 The extension of operations of a business undertaking frequently results in the formation of branches or subsidiary companies at locations where an **existing accountant** does not practise. In these circumstances the client or existing accountant in consultation with the client may request a **receiving accountant** practising at those locations to perform such professional services as necessary to complete the assignment.
- 11.2 Referral of business may also arise in the area of special services or special tasks. The scope of the services offered by registered public accountants continues to expand and the depth of knowledge which is needed to serve the public often calls for special skills. Since it is impracticable for any one registered public accountant to acquire special expertise or experience in all fields of accountancy, some registered public accountants have decided that it is neither appropriate nor desirable to develop within their firms the complete range of special skills which may be required.
- 11.3 Registered public accountants should only undertake such services which they can expect to complete with professional competence. It is essential therefore for the profession in general and in the interests of their clients that registered public accountants are encouraged to obtain advice when appropriate from those who are competent to provide it.
- 11.4 A registered public accountant without a particular skill may however be reluctant to refer a client to another registered public accountant who may possess that skill, because of the fear of losing existing business to the other registered public accountant. As a result, clients may be deprived of the benefit of advice which they are entitled to receive.
- 11.5 The wishes of the client should be paramount in the choice of professional advisers, whether or not special

skills are involved. Accordingly, a registered public accountant should not attempt to restrict in any way the client's freedom of choice in obtaining special advice, and when appropriate should encourage a client to do so.

11.6 The services or advice of a registered public accountant having special skills may be sought in one of the following ways:

- (a) by the client
 - (i) after prior discussion and consultation with the registered public accountant
 - (ii) on the specific request or recommendation of the existing registered public accountant; or
 - (iii) without reference to the existing registered public accountant; or
- (b) by the existing registered public accountant with due observance of the duty of confidentiality.

11.7 When a registered public accountant is asked to provide services or advice, inquiries should be made as to whether the prospective client has an existing accountant. In cases where there is an existing accountant who will continue to provide professional services, the procedures set out in paragraphs 11.8 – 11.14 should be observed. If the appointment will result in another registered public accountant being superseded, the procedures set out in paragraphs 11.15 – 11.27 should be followed.

11.8 The receiving accountant should limit the services provided to the specific assignment received by referral from the existing accountant or the client unless otherwise requested by the client. The receiving accountant also has the duty to take reasonable steps to support the existing accountant's current relationship with the client and should not express any criticism of the professional services of the existing accountant without giving the latter an opportunity to provide all relevant information.

- 11.9 A receiving accountant who is asked by the client to undertake an assignment of a type which is clearly distinct from that being carried out by the existing accountant or from that initially received by referral from the existing accountant or from the client, should regard this as a separate request to provide services or advice. Before accepting any appointments of this nature, the receiving accountant should advise the client of the professional obligation to communicate with the existing accountant and should immediately do so preferably in writing, advising of the approach made by the client and the general nature of the request as well as seeking all relevant information, if any, necessary to perform the assignment.
- 11.10 Circumstances sometimes arise when the client insists that the existing accountant should not be informed. In this case, the receiving accountant should decide whether the client's reasons are valid. In the absence of special circumstances a mere disinclination by the client for communication with the existing accountant would not be a satisfactory reason.
- 11.11 The receiving accountant should:
- (a) comply with the instructions received from the existing accountant or the client to the extent that they do not conflict with relevant legal or other requirements; and
 - (b) ensure, insofar as it is practicable to do so, that the existing accountant is kept informed of the general nature of the professional services being performed.
- 11.12 When there are two or more other accountants performing professional services for the client concerned it may be appropriate to notify only the relevant accountant depending on the specific services being performed.
- 11.13 When appropriate the existing accountant, in addition to issuing instructions concerning referred business, should maintain contact with the receiving accountants and cooperate with them in all reasonable requests for assistance.

11.14 When the opinion of a registered public accountant, other than the existing accountant, is sought on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions, the receiving accountant should be alert to the possibility of the opinion creating undue pressure on the judgment and objectivity of the existing accountant. An opinion given without full and proper facts can cause difficulty to the receiving accountant if the opinion is challenged or the receiving accountant is subsequently appointed by the company. Accordingly, the registered public accountant should seek to minimize the risk of giving inappropriate guidance by ensuring that he or she has access to all relevant information. When there is a request for an opinion in the above circumstances there is a requirement for communication with the existing accountant. It is important that the existing accountant, with the permission of the client, provide the receiving accountant with all requested relevant information about the client. With the permission of the client the receiving accountant should also provide a copy of the final report to the existing accountant. If the client does not agree to these communications, then the engagement should ordinarily not be performed.

Superseding Another Registered Public Accountant

11.15 The proprietors of a business have an indisputable right to choose their professional advisers and to change to others should they so desire. While it is essential that the legitimate interests of the proprietors are protected, it is also important that a registered public accountant who is asked to replace another registered public accountant has the opportunity to ascertain if there are any professional reasons why the appointment should not be accepted. This cannot effectively be done without direct communication with the existing accountant. In the absence of a specific request, the existing accountant should not volunteer information about the client's affairs.

11.16 Communication enables a registered public accountant to ascertain whether the circumstances in

which a change in appointment is proposed are such that the appointment can properly be accepted and also whether there is a wish to undertake the engagement. In addition such communication helps to preserve the harmonious relationships which should exist between all registered public accountants on whom clients rely for professional advice and assistance.

- 11.17 The extent to which an existing registered public accountant can discuss the affairs of the client with the proposed registered public accountant depends on:
- (a) whether the client's permission to do so has been obtained; and/or
 - (b) the legal or ethical requirements relating to such disclosure.
- 11.18 The proposed registered public accountant should treat in the strictest confidence and give due weight to any information provided by the existing registered public accountant.
- 11.19 The information provided by the existing accountant may indicate, for example, that the ostensible reasons given by the client for the change are not in accordance with the facts. It may disclose that the proposal to make a change was made because the existing accountants stood their ground and properly carried out the duties as professional accountants despite opposition or evasion on an occasion on which important differences of principles or practice have arisen with the client.
- 11.20 Communication between the parties serves:
- (a) To protect a registered public accountant from accepting an appointment in circumstances where all the pertinent facts are not known;
 - (b) To protect the minority proprietors of a business who may not be fully informed of the circumstances in which the change is proposed;

- (c) To protect the interests of the existing accountant when the proposed change arises from, or is an attempt to interfere with, the conscientious exercise of the existing accountant's duty to act as an independent professional.

11.21 Before accepting an appointment involving recurring professional services hitherto carried out by another registered public accountant, the proposed registered public accountant should:

- (a) Ascertain if the prospective client has advised the existing accountant of the proposed change and has given permission, preferably in writing, to discuss the client's affairs fully and freely with the proposed registered public accountant;
- (b) When satisfied with the reply received from the prospective client, request permission to communicate with the existing accountant. If such permission is refused or the permission referred to in (a) above is not given, the proposed registered public accountant should, in the absence of exceptional circumstances of which there is full knowledge, and unless there is satisfaction as to the necessary facts by other means, decline the appointment;
- (c) On receipt of permission, ask the existing accountant, preferably in writing:
 - (i) to provide information on any professional reasons which should be known before deciding whether or not to accept the appointment, if there are such matters; and
 - (ii) to provide all the necessary details to be able to come to a decision.

11.22 The existing registered public accountant, on receipt of the communication referred to in paragraph 11.21(c) should forthwith:

- (a) Reply, preferably in writing, advising whether there are any professional reasons why the proposed registered public accountant should not accept the appointment;
- (b) If there are any such reasons or other matters which should be disclosed, ensure that the client has given permission to give details of this information to the proposed registered public accountant. If permission is not granted the existing registered public accountant should report that fact to the proposed registered public accountant.
- (c) On receipt of permission from the client disclose all information needed by the proposed registered public accountant to be able to decide whether or not to accept the appointment. It is not sufficient to state that unspecified factors exist.
- (d) Discuss freely with the proposed registered public accountant all matters relevant to the appointment of which the latter should be aware.

11.23 Matters referred to in paragraph 11.22(d) above would, where relevant, include the following:

- (a) Reasons for the change advanced by the client of which the existing registered public accountant is aware are not in accordance with the facts (as understood by the latter);
- (b) The proposal to displace the existing registered public accountant arises in his opinion because he has carried out his duties in the face of opposition or evasion/s in which important differences of principle or practice had arisen with the client;
- (c) The client, its directors, or employees may have been guilty of some unlawful act or default, or that any aspect of their conduct which is relevant to the carrying out of an audit or assignment ought, in the opinion of the existing

registered public accountant, to be investigated further by the appropriate authority;

- (d) The existing registered public accountant has unconfirmed suspicions that the client or its directors or employees have defrauded the Inland Revenue, Customs & Excise or others;
- (e) The existing registered public accountant has serious doubts regarding the integrity of the directors and/or senior managers of the client company;
- (f) The client, its directors, or employees have deliberately withheld information required by the existing registered public accountant for the performance of his duties or have limited or attempted to limit the scope of his work;
- (g) The existing registered public accountant proposed to bring to the attention of shareholders or creditors circumstances surrounding the proposed change of auditor.

11.24 If the receiving accountant does not receive, within a reasonable time, a reply from the existing accountant and there is no reason to believe that there are any exceptional circumstances surrounding the proposed change, the receiving accountant should endeavour to communicate with the existing accountant by some other means. If unable to obtain a satisfactory outcome in this way, the receiving accountant should send a further letter, stating that there is an assumption that there is no professional reason why the appointment should not be accepted and that there is an intention to do so.

11.25 The fact that there may be fees owing to the existing accountant is not a professional reason why another receiving accountant should not accept the appointment.

11.26 The existing accountant should promptly transfer to the receiving accountant all books and papers of the client which are or may be held after the change in appointment has been effected and should advise the

client accordingly unless the existing accountant has a legal right to withhold them.

- 11.27 Certain organizations, either because of legislative requirements or otherwise, call for submissions or tenders, e.g. competitive bids, in relation to professional services offered by registered public accountants. In reply to a public advertisement or an unsolicited request to make a submission or submit a tender, a registered public accountant, if the appointment may result in the replacement of another registered public accountant, state in the submission or tender that before acceptance, the opportunity to contact the other registered public accountant is required so that inquiries may be made as to whether there are any professional reasons why the appointment should not be accepted. If the submission or tender is successful, the existing accountant should then be contacted.

12 PUBLICITY

In the marketing and promotion of themselves and their work, registered public accountants should:

- (a) not use means which bring the profession into disrepute;
- (b) not make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained;
- (c) not denigrate the work of other accountants.

13 SECOND AND OTHER OPINIONS

Where the opinion of a registered public accountant is sought on the application of accounting standards or principles to specific circumstances or transactions, either completed or contemplated, of any entity with which the registered public accountant does not have an ongoing professional relationship to provide audit services, he should be alert to the possibility of his opinion creating undue pressure on the judgment and objectivity of the auditor. Accordingly, he should seek to minimize the risk of giving inappropriate guidance by ensuring that he has access to all relevant information.

14 FEES AND COMMISSIONS

- 14.1 Registered public accountants who undertake professional services for a client, assume the responsibility to perform such services with integrity and objectivity and in accordance with the appropriate technical standards. That responsibility is discharged by applying the professional skill and knowledge which registered public accountants have acquired through training and experience. For the services rendered, the registered public accountant is entitled to remuneration.
- 14.2 Professional fees should be a fair reflection of the value of the professional services performed for the client, taking into account:
- (a) the skill and knowledge required for the type of professional services involved.
 - (b) The level of training and experience of the persons necessarily engaged in performing the professional services.
 - (c) The time necessarily occupied by each person engaged in performing the professional services.
 - (d) The degree of responsibility that performing those services entails.
- 14.3 Professional fees should normally be computed on the basis of appropriate rates per hour or per day for the time of each person engaged in performing professional services. These rates should be based on the fundamental premise that the organization and conduct of the registered public accountant and the services provided to clients are well planned, controlled and managed. They should take into account the factors set out in paragraph 14.2. It is for each registered public accountant to determine the appropriate rates.
- 14.4 A registered public accountant should not make a representation that specific professional services in current or future periods will be performed for either a

stated fee, estimated fee, or fee range if it is likely at the time of the representation that such fees will be substantially increased and the prospective client is not advised of that likelihood.

- 14.5 When performing professional services for a client it may be necessary or expedient to charge a pre-arranged fee, in which event the registered public accountant should estimate a fee taking into account the matters referred to in paragraphs 14.2 to 14.4.
- 14.6 It is not improper for a registered public accountant to charge a client a lower fee than has previously been charged for similar services, provided the fee has been calculated in accordance with the factors referred to in paragraphs 14.2 to 14.4.
- 14.7 Fees should not be charged on a percentage, contingent* or similar basis in respect of audit work, reporting assignments, due diligence and similar non-audit roles incorporating professional opinions and expert witness assignments. Even for other work such methods of charging may be perceived as a threat to objectivity and should therefore only be adopted after careful consideration.
- 14.8 In bankruptcies, liquidations, receiverships, administrations, voluntary arrangements and similar work the remuneration may, by statute or tradition, be based on a percentage of realizations or a percentage of distributions. Consequently, it may not be possible to negotiate a fee in advance or base it on the principle in paragraph 14.2 above. In some circumstances, such as advising on a management buy-in or buy-out, the raising of venture capital, acquisition searches or sales mandates, where no professional opinion is given, it may not be appropriate to charge fees save on a contingent fee basis: to require otherwise might deprive potential clients of professional assistance, for example where the capacity of the client to pay is dependent upon the success or failure of the venture.

- 14.9 Where work is subject to a fee on a contingent*, percentage or similar basis the capacity in which a registered public accountant has worked and the basis of his remuneration should be made clear in any document prepared by the registered public accountant in contemplation that a third party may rely on it.
- 14.10 The foregoing paragraphs relate to fees as distinct from reimbursement of expenses. Out-of-pocket expenses, in particular travelling expenses, attributable directly to the professional services performed for a particular client would normally be charged to that client in addition to the professional fees.
- 14.11 It is in the best interests of both the client and the registered public accountant that the basis on which fees are computed and any billing arrangements are clearly defined, preferably in writing, before the commencement of the engagement to help in avoiding misunderstandings with respect to fees.
- 14.12 The payment or receipt of a commission by a registered public accountant could impair objectivity and independence. A registered public accountant should not, therefore, pay a commission to obtain a client nor should a commission be accepted for referral of a client to a third party. A registered public accountant should not accept a commission for the referral of the products or services of others.
- 14.13 Payment and receipt of referral fees between registered public accountants when no services are performed by the referring accountant are regarded as commissions for the purpose of paragraph 14.12.

***Contingent:** A fee is contingent where under an arrangement no fee will be charged unless a specific result is obtained or when all or part of the fee is otherwise dependent upon the findings or results of the service provided.

- 14.14 A registered public accountant may enter into an arrangement for the purchase of the whole or part of an accounting practice requiring payments to individuals formerly engaged in the practice or payments to their heirs or estates. Such payments are not regarded as commissions for the purpose of paragraph 14.12.
- 14.15 Letters of engagement should state the fees to be charged or the basis upon which the fees are calculated.
- 14.16 Where the letter of engagement is not explicit with regard to the basis on which fees are calculated, RPAs must charge a fee which is fair and reasonable. This may have regard to any or all of the following to the extent that they are not referred to in the letter of engagement:
- (a) the seniority and professional expertise of the persons necessarily engaged on the work;
 - (b) the time expended by each;
 - (c) the degree of risk and responsibility which the work entails;
 - (d) the urgency of the work to the client, and
 - (e) the importance of the work to the client.
- 14.17 In the course of an investigation into allegations of unsatisfactory work, there is evidence of the work having been obtained or retained through quoting a fee that is not economic in terms of the factors mentioned in paragraph 14.16 above, that fact may be taken into account in considering RPAs conduct having regard to the fundamental principles.
- 14.18 When RPAs are about to render a fee note which is substantially different from fees rendered to the same client on earlier occasions for which the work would appear to be comparable, it is good practice to explain to clients the reason for the variation.

- 14.19 To the extent that the increased fee reflects a charge for extra work, the reason for the extra work should be explained in writing to the client. To the extent that the increased fee reflects an increase in disbursements or costs, this should also be explained in writing to the client.
- 14.20 In cases where the fee note rendered is in excess of a quotation or estimate or indication of fees, clients may consider it to be excessive. Clients may be prepared to pay a smaller amount and may tender such a sum. If RPAs do not wish to waive the balance of their fees, it is recommended that RPAs should accept the sum but, at the same time, notify the client in writing that the sum is accepted in part payment of their fees.
- 14.21 When clients behave in such a manner, it is possible that they have genuine doubts as to the propriety of the fee, and are not actuated by malice or lack of means. In such circumstances, RPAs are reminded that, on written application by both the parties to the dispute, the Public Accountancy Board can arrange for an arbitrator to be appointed to determine any dispute over fees charged.
- 14.22 RPAs whose fees have not been paid may in certain circumstances exercise a lien over certain books and papers of clients upon which they have been working. RPAs are referred to Section 24, Legal ownership of, and rights of access to, books, files, working papers and other documents.
- 14.23 RPAs should be prepared to provide clients with reasonable explanations of the fees charged. The explanation should be provided without charge and should be sufficient to enable the client to understand the nature of the work carried out. RPAs should also take all reasonable steps to resolve speedily any dispute which arises.
- 14.24 RPAs may receive commission in respect of transactions effected for clients on the basis that this must be repaid in certain circumstances. In these circumstances, RPAs may agree with clients any one of the following options:

- (a) to delay refunding the clients' commission until the expire of the term; or
- (b) to place the commission into a designated deposit account until the expiry of the term and then to refund the commission to clients with interest; or
- (c) to rebate the clients' commission annually over the term; or
- (d) to request persons paying commission to pay only the commission due each year, retaining the balance; or
- (e) to forego all commission; or
- (f) to instruct the persons offering commission to retain the commission for the benefit of clients' pension or other policies.

Nothing in these regulations prohibits an RPA from refunding the commission to clients either with or without confirmation that they would reimburse RPAs in the event that the commission became repayable.

15 TAX PRACTICE

- 15.1 A registered public accountant rendering professional tax services
- (a) is entitled to put forward the best position in favour of a client, provided the service is rendered with professional competence, does not in any way impair integrity and objectivity, and is in the opinion of the registered public accountant consistent with the law. Doubt may be resolved in favour of the client or the employer if there is reasonable support for the position;
 - (b) should not hold out to a client the assurance that the tax return prepared and the tax advice offered are beyond challenge. Instead, the registered public accountant should ensure that the client is aware of the limitations attaching to tax advice and services so that they do not misinterpret an expression of opinion as an assertion of fact.
- 15.2 A registered public accountant who undertakes or assists in the preparation of a tax return should advise the client that the responsibility for the content of the return rests primarily with the client. The registered public accountant should take the necessary steps to ensure that the tax return is properly prepared on the basis of the information received.
- 15.3 Tax advice or opinions of material consequence given to a client should be recorded, either in the form of a letter or in a memorandum for the files.
- 15.4 A registered public accountant should not be associated with any return or communication in which there is reason to believe that it:
- (a) Contains a false or misleading statement;
 - (b) Contains statements or information furnished recklessly or without any real knowledge of whether they are true or false; or

- (c) Omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities.

Registered public accountants should take note that the Income Tax Act makes liable to penalties a person who for himself or any other person makes a false statement or representation in connection with a tax return. The Act also makes persons who aid or abet another person in such falsehoods liable to penalties.

15.5 A registered public accountant may prepare tax returns involving the use of estimates if it is impractical under the circumstances to obtain exact data. When estimates are used, they should be presented as such in a manner so as to avoid the implication of greater accuracy than exists. The registered public accountant should be satisfied that estimated amounts are reasonable under the circumstances.

15.6 In preparing a tax return, a registered public accountant ordinarily may rely on information furnished by the client provided that the information appears reasonable. Although an examination of documents or other evidence in support of the information is not required, the registered public accountant should encourage, when appropriate, such supporting data to be provided.

In addition, the registered public accountant:

- (a) should make use of the client's returns for prior years whenever feasible;
- (b) is required to make reasonable inquiries when the information presented appears to be incorrect or incomplete; and
- (c) is encouraged to make reference to the books and records of the business operations.

15.7 When a registered public accountant learns of a material error or omission in a tax return of a prior year (with which the registered public accountant may or may not have been associated), or of the failure to file

a required tax return, the registered public accountant has a responsibility to:

- (a) promptly advise the client of the error or omission and recommend that disclosure be made to the revenue authorities. The registered public accountant is not obligated to inform the revenue authorities, nor may this be done without permission, except when specifically required by law. In these circumstances the registered public accountant should advise the client of the position before informing the authorities and should give no additional information to the authorities without the consent of the client;
- (b) If the client does not correct the error the registered public accountant:
 - (i) should inform the client that it is not possible to act for them in connection with that return or other related information submitted to the authorities; and
 - (ii) should consider whether continued association with the client in any capacity is consistent with professional responsibilities.
- (c) If the registered public accountant concludes that a professional relationship with the client can be continued, all reasonable steps should be taken to ensure that the error is not repeated in subsequent tax returns.

16 CLIENTS' MONIES

- 16.1 A registered public accountant should not hold **clients' monies** if there is reason to believe that they were obtained from, or are to be used for, illegal activities.
- 16.2 A registered public accountant entrusted with monies belonging to others should:
- (a) keep such monies separately from personal or firm monies;
 - (b) use such monies only for the purpose for which they are intended; and
 - (c) at all times, be ready to account for those monies to any persons entitled to such accounting.
- 16.3 A registered public accountant should maintain one or more bank accounts for clients' monies. Such bank accounts may include a general **client account** into which the monies of a number of clients may be paid.
- 16.4 An account maintained for clients' money or as a separate account for a trust should be so named or identified.
- 16.5 Appropriate notice of the nature of the accounts should be given to the bank concerned. This ensures that the bank would not have the right of set off against the registered public accountant's other accounts nor would a trustee in bankruptcy be able to effect sequestration of the monies in the clients' account.
- 16.6 Clients' monies received by a registered public accountant should be deposited without delay to the credit of a client account, or – if in the form of documents of title to money and documents of title which can be converted into money – be safeguarded against unauthorized use.
- 16.7 Monies may only be drawn from the client account on the instructions of the client.

- 16.8 Fees due from a client may be drawn from the client's monies provided the client, after being notified of the amount of such fees, has agreed to such withdrawal.
- 16.9 Payments from a client account shall not exceed the balance standing to the credit of the client.
- 16.10 When it seems likely that the client's monies will remain in the client account for a significant period of time, the registered public accountant should, with the concurrence of the client, place such monies in an interest bearing account within a reasonable time.
- 16.11 All interest earned on client's monies should be credited to the client account.
- 16.12 Registered public accountants should keep such books of account as will enable them, at any time, to establish clearly their dealings with clients' monies in general and the monies of each individual client in particular. A statement of account should be provided to the client at least once per year.

17 CROSS BORDER ACTIVITIES

- 17.1 When considering the application of ethical requirements in cross border activities a number of situations may arise. Whether a registered public accountant is a member of the profession in one country only or is also a member of the profession in the country where the services are performed should not affect the manner of dealing with each situation.

18. AUDIT QUALITY CONTROL AND ETHICS STANDARDS

- 18.1 Quality review of all audits of public interest entities must be performed by a registered public accountant. In the case of single partner firms the firm will be required to make special arrangements with another firm of registered public accountants for the conduct of the review.

- 18.2 The working papers for the Audit must be retained by the registered public accountant for not less than seven (7) years.

19. ACCOUNTING AND AUDIT ETHICS STANDARDS

- 19.1 All registered public accountants are required to become acquainted with and be guided by Standards issued by IFAC or endorsed by IFAC. At present these are as follows:
- (a) Audit Standards (also known as International Standards on Auditing)
 - (b) International Public Sector Accounting Standards
 - (c) International Standards on Quality Control
 - (d) International Standards on Review Engagement
 - (e) International Standards on Assurance Engagement
 - (f) International Standards on Related Services
 - (g) International Education Standards
 - (h) Standards endorsed by the Institute of Chartered Accountants of Jamaica (ICAJ), viz. International Auditing Practice Statements.

20. DESCRIPTIONS OF REGISTERED PUBLIC ACCOUNTANTS AND FIRMS AND THE NAMES OF PRACTISING FIRMS

General

- 20.1 The terms “firm” and “practice” include partnerships, corporations (including limited liability partnerships) and sole practitioners.

Descriptions of Registered Public Accountants’ Firms

- 20.2 A registered public accountant is entitled to use the professional designation which he holds.
- 20.3 RPAs may use on their professional stationery words showing designations of the accountancy of the accountancy body to which they belong.
- 20.4. RPAs who hold a civil or service honour (such as OD,CD,OJ) or a civil office (such as JP, etc.) are entitled to use the appropriate designatory letters on their professional stationery if they so wish.
- 20.5 Before including designatory letters RPAs should consider carefully how far (if at all) a statement of such honours or offices is relevant to the professional services they offer.
- 20.6 Any reference to honours or appointments would be entirely inappropriate in signing any audit report or other expression of professional opinion.
- 20.7 A firm in which all the partners are members of the Institute of Chartered Accountants of Jamaica may use the designation “Members of the Institute of Chartered Accountants of Jamaica”.
- 20.8 A firm may include a list of the specialism it provides on its professional stationery.
- 20.9 A firm may also use a description indicating a specialism in a particular area of work e.g “taxation specialists”. However this is only permissible if

- (i) the firm is competent to provide the particular service named and
- (ii) the content and presentation of the descriptions do not bring the accountancy profession into disrepute or bring discredit to the firm or the profession.

Sole Practitioners

- 20.10 Sole practitioners may use the plural form of Registered Public Accountants 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

Persons named on professional stationery

- 20.11 It should be clear from reading a firm’s professional stationery whether any person named on it is a principal in that firm (i.e. a partner, sole practitioner or director).
- 20.12. Firms may include the name of any person who is not a principal of the practice on the professional stationery of the practice. Where such a person is named on the stationery a description about this person, e.g. “Manager”, “Tax Consultant”, etc. must also be included by their name.
- 20.13 The names and descriptions of principals must be clearly separated from those of non principals so that they cannot be mistaken for each other.
- 20.14 Any person named on professional stationery must be competent and have the necessary eligibility and qualifications to provide any specialism shown. They should be described only by the titles, descriptions and designatory letters to which they are properly entitled.
- 20.15 Any description used on a firm’s professional stationery should not bring into disrepute or bring discredit to the practice or the accountancy profession.

The names of practising firms

- 20.16 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.
- 20.17 A practice name should not be misleading.
- 20.18 A practice name would be objectionable if in all the circumstances there was a real risk that it could be confused with the name of another firm, even if the member(s) of the practice could lay justifiable claim to the name.
- 20.19 A practice name may indicate the range or type of services offered by the firm.
- 20.20 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.

Discussion

- 20.21 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.
- 20.22 A firm may trade under different names from different offices providing that this does not mislead.
- 20.23 A firm may be a member of a trading association and may indicate this on the firm's note paper or elsewhere in proximity to the practice name. However, the practice name of such a firm should be clearly distinguishable from the name of the associated firm or group. 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”.

20.24. It would be misleading for sole practitioners to add the suffix “and partners” to their firm’s name.

20.25 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.

Legal Requirements

20.26 A practice name must comply with partnership, limited liability partnership and company law as appropriate and with the Business Names Act. Practising firms may describe themselves in any manner provided that the principles set out in paragraphs 20.16 to 20.20 of these Rules are observed.

Use of firms’ name and premises

20.27 RPAs and firms should not give permission to third parties to use their name, the firm’s name, premises, professional stationery, etc. There is a real danger that the public could mistake the third party for the RPA or firm if such permission were to be given.

21. MONEY LAUNDERING

Introduction

- 21.1 Money laundering is a global phenomenon that affects all countries to varying degrees. It is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activity, often with the unwitting assistance of professionals such as accountants and lawyers. If undertaken successfully, it allows them to maintain control over the proceeds and, ultimately, to provide a legitimate cover for their sources of income. Money laundering also encompasses the process by which terrorists attempt to conceal the destination and ultimate purpose of funds (legitimate or otherwise) which are likely to be used for the purposes of terrorism.
- 21.2 The overarching principles set out in this section are intended to be consistent with the Recommendations issued by the Financial Action Task Force on Money Laundering (FATF) which today constitute the international benchmark for good practice in combating money laundering and the financing of terrorism.
- 21.3 The guidance contained in this section sets out the type of preventative measures that RPAs should adopt and the circumstances in which they should consider reporting any knowledge or suspicions of money laundering activity to the authorities . RPAs should ensure that they and their staff are fully aware of their obligations under Jamaican legislation viz,
- The proceeds of Crime Act (POCA), 2007 (this Act has repealed and replaced the Money Laundering Act, 1998 and the Regulations thereunder);
 - The POCA (Money Laundering Prevention) Regulations, 2007
 - The Terrorism Prevention Act, 2005

- The BOJ AML/CFT Guidance Notes, 2004/(^R2005). (^R2007)¹
- The FATF 40 + 9² Recommendations

21.4 RPA's are reminded that the obligations in the legislation abovementioned may be more stringent than the requirements of this section. In particular members should be aware that failure to follow legislative requirements may be a criminal offence leading to fines and/or imprisonment.

21.5 Guidance as to the principles of law that govern these issues is found elsewhere. Given the serious consequences of prosecution for money laundering offences, RPA's are advised to take legal advice whenever they are uncertain as to their conduct. The legal position and its application to any given set of facts may not be straightforward

Relationship with the local law

21.6 RPAs must obey the law. It is the responsibility of RPAs to familiarize themselves with the law that applies to them and ensure that they work within the law. In particular, they are expected to familiarize themselves with any particular definition of the term 'money laundering' which is used in Jamaican legislation and interpret this section by reference to that definition.

21.7 So far as this section may be inconsistent with any local statutory provision, rule of law or any direction or order of a court of competent jurisdiction that may from time to time be applicable to a RPA, compulsion of law shall be a defence to a breach of any provision of the regulations and this section shall be read as being subject to the applicable provision of the law.

¹ Several adjustments have been effected to the Guidance Notes with the last round of revisions currently being effected to reflect the AML enhancements effected with the passage of the POCA. The draft Guidance Notes being finalized can be viewed at the BOJ's site www.boj.org.jm

² The FATF 40 + 8 Recommendations were increased to FATF 40+9 Recommendations in October 2004. The ninth recommendation treats with the issue of cash couriers.

Internal controls and policies

- 21.8 RPAs should ensure that relevant staff in their firms receive regular training to ensure that client identification procedures are carried out in respect of new clients and that they are competent to identify money laundering or terrorist financing activity where they come across it.
- 21.9 RPAs should ensure that their firms identify for the benefit of relevant staff a clear procedure for the in-house reporting of suspected money laundering and terrorist financing activity which they come across in the course of their work in the firm. This procedure could involve the appointment of a suitable senior member of the firm as the person to whom queries are directed and suspicions reported. The person performing this role could make the final judgment on, and take the final responsibility for, deciding on behalf of the firm whether a matter should be reported.

Client identification

- 21.10 Before any work is undertaken, RPAs should verify the identify of the potential client by reliable and independent means. RPAs should retain on their own files copies of such evidence, as set out in paragraph 21.18. This will involve the following:
- (a) where the client is an individual: by obtaining independent evidence of the client's identify, such as a passport and proof of address.
 - (b) Where the client is a company or other legal entity: by obtaining proof of incorporation; by establishing the primary business address and, where applicable, registered address; by establishing the structure, management and ownership of the company; and by establishing the identities of those persons instructing the RPA on behalf of the company and verifying that those persons are authorized to do so;
 - (c) In either case: by establishing the identify and address of any other individuals exercising

ultimate control over the client and/or who will be the ultimate beneficiaries of the work or transactions to be carried out; and

- (d) By establishing precisely what work or transaction is desired to be carried out and to what purpose.

21.11 If RPAs are unable to satisfy themselves as to the potential client's identity, no work should be undertaken.

21.12 Where RPAs are instructed by another person on behalf of their principal, RPAs should satisfy themselves of both the identify of the person instructing the RPAs and their principal as if both were clients. RPAs should retain these copies on their files in line with the requirement in paragraph 21.18 below.

21.13 Where RPAs are instructed by another Regulated Professional on behalf of another client, RPAs should satisfy themselves that the identity of the common client has been sufficiently established by asking to see copies of the evidence obtained by the Regulated Professional. RPAs should retain these copies on their files in line with the requirement in paragraph 21.18 below. "Regulated Professional" means for the purposes of this section a professional who is subject to equivalent anti-money laundering legislation which complies with the FATF Recommendations.

21.14 Once a RPA has established on reasonable evidence that they are instructed by another Regulated Professional, it is generally not necessary for RPAs to obtain and evidence further proof of the identity and structure of the instructing Regulated Professional.

21.15 Subject to any local requirement to the contrary, RPAs are not required to verify the identity of existing clients, provided they are known personally to a RPA and the RPA has acted for them on a regular basis in the past three years. Where there has been little or no contact with clients in the preceding three year period, the identity of such clients should be established as if they were new clients prior to any work being undertaken by a RPA.

- 21.16 If at any time during the course of a client relationship RPAs begin to have doubts about the client's identity, further evidence should be obtained. If RPAs are unable to satisfy themselves, the client relationship should be terminated.
- 21.17 During the course of the client relationship, RPAs should regularly review the history of the relationship to satisfy themselves that the work or transaction being carried out is/are consistent with the client's usual activities. Anything which appears to be out of the ordinary for that particular client, such as an unusual pattern of transactions or an unusually large transaction, should be closely examined and a written record made of the RPAs conclusions. If RPA's suspicions are aroused, a report should be made in accordance with paragraphs 21.21 to 21.23 below.

Record keeping

- 21.18 RPAs should retain all client identification records for at least five years after the end of the client relationship. Records of all transactions and other work carried out, in a full audit trail form, should be retained for at least five years after the conclusion of the transaction.

Recognition of suspicion

- 21.19 Suspicion can be described as being more than speculation but falling short of proof based on firm evidence. A particular set of circumstances which may be suspicious in relation to one client may not be suspicious in relation to another client. Therefore, the key to recognizing a transaction or a situation is for RPAs to have sufficient understanding of clients and their activities.
- 21.20 RPAs should pay special attention to transactions in which their clients are involved that appear to have no apparent economic or visible lawful purpose. Whenever such transactions occur, their background and purpose should, as far as possible, be examined and any findings recorded in writing. If no purpose for

the transaction can be established, this may be a ground for suspicion.

Reporting suspicious transactions

- 21.21 Accountants in practice are subject to a legal requirement to report knowledge or suspicions of money laundering or terrorist financing to an appropriate national authority. All countries which follow the FATF Recommendations are expected to impose such a requirement. The requirement to report may be broadly based, and apply in respect of information that accountants come across in any part of their professional work, or it may be more focused, and apply only to information they acquire while carrying out specified activities, such as dealing with client funds. RPAs are expected to familiarize themselves with the exact nature of local reporting obligations. Where a requirement to report applies, however, RPAs are expected to comply promptly with their obligation to do so. In this context, RPAs are reminded that tax evasion will usually be deemed a crime and that they may be required to make an additional report to the tax authorities.
- 21.22 Some countries may require a report to be made only where the suspicion related to the proceeds of specified serious crimes, or to proceeds of crimes which exceed a set monetary threshold.
- 21.23 Subject to any local legal requirement to the contrary, where the work done by RPAs for their clients is covered by legal professional privilege, RPAs are not required to report their suspicions. Whether or not legal professional privilege applies to RPAs and in what circumstances will depend on local law and RPAs are strongly advised to seek legal advice as and when the issue arises.

Tipping off

- 21.24 RPAs should not “tip off” a client that a report has been made. If a suspicion has arisen during the course of client identification procedures, RPAs should take extra care that carrying out those procedures will

not tip off the client. In particular, ceasing to act for a client without giving any plausible explanation might tip off the client that a report has been made. However, any attempts to persuade a client not to proceed with an intended crime will not constitute tipping off.

22. PROFESSIONAL DUTY OF CONFIDENCE IN RELATION TO DEFAULTS AND UNLAWFUL ACTS OF CLIENTS AND OTHERS

Introduction

- 22.1 RPAs acquiring information in the course of their professional work should not disclose any such information to third parties without first obtaining permission from their clients.
- 22.2 There are, however, circumstances where RPAs may disclose information to third parties without first obtaining permission. This would be where, for example, there is a statutory right or duty to disclose, or where RPAs are served with a court order or some other form of witness summons, under which they are obliged to disclose information.
- 22.3 This section looks at situations where RPAs may be required to disclose information about their clients without first obtaining permission to do so.
- 22.4 RPAs may suspect or encounter a number of criminal offences during the course of their work, most commonly occurring are:
- (a) money laundering;
 - (b) drug trafficking or terrorism;
 - (c) theft, obtaining by deception, false accounting, and suppression of documents;
 - (d) fraud and forgery;
 - (e) offences under company law;
 - (f) perjury and offences under legislation for the prevention of corruption;
 - (g) bankruptcy or insolvency offences, frauds on creditors, false trade descriptions, and offences arising out of relations between employers and employees;

- (h) conspiracy, soliciting or inciting to commit crime and attempting to commit crime;
 - (i) tax evasion;
 - (j) insider dealing.
- 22.5 RPAs should note that money laundering will be a crime not only in relation to serious offences but in relation to all offences.
- 22.6 RPAs who suspect or acquire knowledge indicating that a client (incorporated or un-incorporated) or an officer or employee of a client may have been guilty of some default or unlawful act should normally notify the client's management as soon as practicable and at an appropriate level. In the case of unlawful acts which may amount to money laundering, RPAs may be required to report the suspicion or knowledge internally or to the appropriate external authority. In such circumstances, RPAs must avoid doing anything which might tip off the client that a report has been made.
- 22.7 If the RPAs' concerns are not satisfactorily resolved, they should consider reporting the matter to non-executive directors or to the client's audit committee where these exist. Where this is not possible or fails to resolve the matter members may wish to consider making a report to a third party.
- 22.8 Guidance is provided below on reporting suspected defaults or unlawful acts to third parties.
- 22.9 RPAs should note that references within this chapter to "client" include former clients.
- 22.10 RPAs acquiring information in the course of their professional work in respect of non-clients (for example potential clients) should not disclose any such information to third parties without first obtaining permission from the individual or entity concerned.
- 22.11 RPAs should consider seeking legal advice before making any disclosures, particularly when contemplating disclosing information to a third party.

Relationship between RPAs and their clients

- 22.12 RPAs should explain to their clients that they may only act for those clients who agree to disclose in full all information relevant to an engagement.
- 22.13 RPAs should not agree to act for those clients who will not consent to make full disclosure of relevant information.
- 22.14 If, during the course of an engagement, RPAs are unable to obtain from their client the information which they consider necessary, they have a duty to indicate this fact in any report that they may make. In either case, members may consider that they can no longer act.
- 22.15 It is likely to be an offence for an officer of a company knowingly or recklessly to make misleading, false or deceptive statements to the company's auditor. This applies to all information, explanations and statements provided by the company's officers to the auditors whether in written or oral form.
- 22.16 RPAs are reminded that an auditor is an officer of a company.

Verification of information by reference to the records of a third party who is also a client

- 22.17 Sometimes in the course of their work RPAs may obtain information from a client (client A) bearing on information supplied to them by another client (client B). In such circumstances it would be a breach of confidence to reveal the information to the second client (client B) without the permission of the first (client A). In all probability, any attempt to obtain that permission from client A would result in a breach of the duty of confidence owed to the second client (client B).
- 22.18 RPAs should instead endeavour to substantiate the information with evidence obtained from the books and records of the second client (client B). If this proves impossible, RPAs should seek the consent of the second client (client B) to obtain direct confirmation of

the information concerned from the first client (client A).

- 22.19 If the second client (client B) refuses permission to contact the first client (client A) RPAs should, where undertaking an audit assignment, consider qualifying their report and/or resigning. Where relevant, RPAs should consider making an appropriate statement of any circumstances connected with the resignation which the RPA believes should be brought to the notice of the members or creditors of the company, without revealing the name of the first client (client A).

Disclosure of defaults or unlawful acts

- 22.20 Confidentiality is an implied term of RPAs' contracts with their clients. For this reason RPAs should not, as a general rule, disclose to other persons, against their client's wishes, information about a client's affairs acquired during and as a result of their professional relationship. The obligation of confidentiality continues even though a professional relationship has ended.
- 22.21 It is in the public interest that this confidential relationship is maintained. Without the benefit of confidentiality clients might be reluctant to seek advice from RPAs. Unintended defaults or unlawful acts may be averted as a result of the client acting on the RPAs' advice, because clients are able to discuss their plans in confidence.
- 22.22 RPAs who become aware that a client has, or may have, committed a default or unlawful act are normally under no legal obligation to disclose what they know to any persons other than the directors of the client or some person having their authority. However, in certain circumstances, whilst there may be no obligation in law to make a disclosure, members may consider it to be in the "public interest" that a disclosure is made. Those members who consider making a disclosure in the "public interest" are advised to seek legal advice before making such a disclosure.

Obligatory disclosure

- 22.23 RPAs who believe that a client has committed terrorist offences, or has reasonable cause to believe that a client has committed treason, are bound to disclose that knowledge to the proper authorities immediately.
- 22.24 RPAs are likely to commit an offence if they assist anyone whom they know or suspect to be laundering money generated by a crime. If an RPA forms a suspicion of money laundering in the course of their professional activities, they must report it to a proper authority. RPAs are likely to commit an offence if they fail to make a report.
- 22.25 Members must disclose information if compelled by the process of law, for example under a court order.
- 22.26 In most circumstances, lawyers and their intermediate agents are not required to disclose oral or documentary communication passing between them and their client in professional confidence without the express consent of the client. However, this legal privilege does not extend to the relationship between accountants and their clients.

Voluntary disclosure

- 22.27 In certain cases RPAs are free to disclose information, whatever its nature. These circumstances fall into four categories of disclosure:
- (a) in the public interest
 - (b) to protect a RPA's interests;
 - (c) authorized by statute;
 - (d) to non-governmental bodies.

Disclosure in the public interest

- 22.28 RPA may disclose information which would otherwise be confidential if disclosure can be justified in the

“public interest”. Whilst it is a concept recognized by the courts, there is no definition of “public interest” which places RPAs in a difficult position as to whether or not disclosure is justified. However, it is likely that these exceptions to the duty of confidentiality are permitted only where the disclosure is made to “one who has a proper interest to receive that information” (as set out in the United Kingdom case of *Initial Services v Putteril* (1967) All ER145). The proper authorities may, for example, be the police, the government department responsible for trade and industry, or a recognized stock exchange, and will depend upon the particular circumstances.

22.29 When considering whether or not disclosure is justified, RPAs should take the following into account:

- (a) the relative size of the amounts involved and the extent of the likely financial damage;
- (b) whether members of the public are likely to be affected;
- (c) the possibility or likelihood of repetition;
- (d) the reasons for the client’s unwillingness to disclose the matters to the proper authority;
- (e) the gravity of the matter;
- (f) relevant legislation, accounting standards and auditing standards, etc.;
- (g) any legal advice obtained.

22.30 Determination of where the balance of public interest lies will require very careful consideration and it will often be appropriate to take legal advice before making a decision. The reasons underlying any decision whether or not to disclose should be fully documented.

Disclosure to protect a Registered Public Accountant's interests

- 22.31 RPAs may disclose to the proper authorities information concerning their clients where their own interests require disclosure of that information to:
- (a) enable RPAs to defend themselves against a criminal charge or to clear themselves of suspicion;
 - (b) resist proceedings for a penalty in respect of a taxation offence, for example, in a case where it is suggested that they assisted or induced their client to make or deliver incorrect returns or accounts;
 - (c) resist a legal action brought against them by a client or some third person;
 - (d) enable RPAs to defend themselves against disciplinary proceedings or criticism of them which is the subject of enquiry by the Public Accountancy Board or the professional body to which they belong;
 - (e) enable RPAs to sue for their fees.

Disclosure authorized by statute

22.32 There are cases of express statutory provision where disclosure of information to a proper authority overrides the duty of confidentiality. RPAs should refer to the legislation relevant to the economic section in which their client operates. Each statute should be considered carefully to determine the protection offered to the person making disclosure since this varies from statute to statute. Members are referred to section 21 regarding Money laundering, for further guidance.

Disclosure to non-governmental bodies

22.33 RPAs may be approached by recognized but non-governmental bodies seeking information concerning suspected acts of misconduct not amounting to a crime or civil wrong. Some of these bodies have statutory powers to require persons to supply information, in which case RPAs should comply. Where there is no such statutory power, RPAs should not supply information without consent from the relevant client.

Prosecution of a client or former client

22.34 Where RPAs are approached by the police, the tax authorities or other public authority making enquiries which may lead to the prosecution of a client or former client for an offence (other than treason, certain terrorist offences or money laundering), RPAs should act with caution.

22.35 RPAs should ascertain whether or not the person requesting information has a statutory right to demand it and seek legal advice before giving any information. RPAs should consider the nature of the alleged offence and whether if they were to give the information they would be justified because of an overriding public interest in disclosure or would be acting contrary to professional ethics.

22.36 Unless ordered by the court or acting under a statutory authority, RPAs should refuse to give the information until they have obtained their client's authority, or received independent legal or other professional advice, that they should or may give the information whether or not they have obtained their client's consent. RPAs should state that in the meantime they are not in a position to discuss their client's affairs. RPAs should, however, keep in close touch with their legal or other professional adviser(s) on the legal aspects of their position.

Appearance as a witness

- 22.37 RPAs invited to appear in court as a witness against a client or former client, whether in civil or criminal proceedings, should normally refuse until served with a subpoena or other form of witness summons. However, where criminal proceedings are concerned, RPAs should carefully consider agreeing to appear as a witness and should seek legal advice before making a decision.
- 22.38 RPAs must answer any questions that are put to them, even though they may thus disclose information obtained in a confidential capacity. RPAs may ask the court for confirmation that they are obliged to answer particular questions.
- 22.39 RPAs must produce any documents in their ownership or possession if directed to do so by the courts. Advance warning will normally be given of the intention to call for such documents.

RPAs' relations with the authorities on clients' behalf

- 22.40 RPAs acting in any professional capacity, have access to much information of a confidential nature. It is essential that they should normally treat such information as available to them for the purpose only of carrying out the professional duties for which they have been engaged. To divulge information about a client's affairs would normally be a breach of professional confidence, which might have the most serious legal and professional consequences.

RPAs own relations with authorities

- 22.41 Registered public accountants commit a criminal offence if they:
- (a) incite a client to commit a criminal offence, whether or not the client accepts their advice; or

- (b) help or encourage a client in the planning or execution of a criminal offence which is committed; or
- (c) agree with a client or anyone else to pervert or obstruct the course of justice by concealing, destroying or fabricating evidence or by misleading the police by statements which they know to be untrue.

22.42 RPAs who know that a client has committed money laundering, treason or certain terrorist offences, but who fail to disclose what they know to the proper authorities, are likely to commit a criminal offence by failing to do so.

22.43 To be convicted of the offence of impeding the arrest or prosecution of a client RPAs would have to do some positive act to assist a client to escape arrest or prosecution for an arrestable offence. An RPA's refusal to answer questions by the police about a client's affairs or to produce documents relating to a client's affairs without that client's consent, would not constitute an act to impede the arrest or prosecution of a client.

22.44 Where RPAs know or believe that a client has committed an arrestable offence, and they have information which may be of material assistance in the prosecution of the client for the offence, they would be committing a criminal offence if they were to accept, or agree to accept, any consideration in return for not disclosing that information. In these circumstances, the acceptance of a reasonable fee for professional services rendered would not be an offence.

Company investigation

22.45 RPAs are reminded that when they act as auditor of a limited company it is the company which is the client, not the directors.

22.46 If it is necessary for an auditor to qualify an audit report, the qualifications should indicate clearly the

offences which have been committed and have given rise to the qualification.

- 22.47 An auditor cannot avoid bringing to the attention of shareholders circumstances which may indicate that offences have been committed by resigning from office without making a report. On resignation, an auditor should include in the notice of resignation either a statement of any circumstances connected with the resignation which the out-going auditor believes should be brought to the notice of the members or creditors of the company or a statement to the effect that there are no such circumstances to be brought to the attention of the members and creditors.
- 22.48 In many cases, the interests of the members and creditors will best be served if the auditor completes the audit and reports to shareholders on the accounts. The auditors may then indicate that they do not wish to be considered for re-appointment at the next annual general meeting of the company.
- 22.49 Where auditors believe that they may need to refer to the commission of offences, either in the audit report or in the notice of resignation, they should be aware of the danger of an action for defamation. Auditors should therefore seek legal advice as to the terms in which they should either report or make a statement in their notice of resignation.

Transmission of report to shareholders

- 22.50 In normal circumstances an auditor's duty is fulfilled when the audit report is sent to the secretary or directors of the company for onward transmission to the company's shareholders. However, if the auditor knows, or has good reason to believe that, for example the audit report:
- (a) has not been sent to shareholders; or
 - (b) has been sent to shareholders in an altered form;

- (c) has been sent to shareholders unaltered, but in a misleading context;

it will be necessary for the auditor to consider what steps should be taken to rectify the situation.

- 22.51 The steps available to the auditor in these circumstances may include communicating directly with the shareholders. Often the mere threat of direct communication with the shareholders will result in the desired action.
- 22.52 If it is decided that direct communication with the shareholders should take place, the auditor must be aware of the danger of an action for defamation being brought against the auditor. Special care is required in the event of those exceptional cases where the difficulty of communication or the urgency of the situation necessitates a public announcement being made. Where this need arises, the auditor must take special care to guard against the possibility of defamation.
- 22.53 As soon as the possibility of making a communication to shareholders arises, the auditor should seek legal advice on an auditor's duty to the shareholders in the particular circumstances of the case. Additionally, the auditor should seek legal advice as to the method of any communication the auditor is required to make and the terms in which the communication should be made.
- 22.54 If the auditor is aware of third parties who may be affected by the situation the auditor should also consider taking the steps outlined in paragraphs 22.59 to 22.63 or 22.64 to 22.66 as appropriate.

Urgent cases

- 22.55 An auditor may sometimes become aware of information which suggests that offences or other unlawful acts or defaults have been committed by a director(s) or an employee(s) of the company. The facts may be of such a nature that, even though they may ultimately give rise to a qualification of the

auditor's report, it would be contrary to the interests of the company for their disclosure to await the transmission of the audit report.

- 22.56 On the occasions when this arises, it is likely to be because the conduct is both serious and liable to be repeated. In such a case it will be necessary for an auditor to report at once to the directors.
- 22.57 There may also be cases in which the involvement of the directors themselves will make it necessary for the auditor to consider taking further steps to ensure that the matter is brought promptly to the attention of shareholders. These steps may include resignation by a notice stating the circumstances or even direct communication with shareholders.
- 22.58 Occasions which call for such steps will be rare, and an auditor who is considering taking them should seek legal advice.

Past accounts and reports

- 22.59 Where an auditor discovers that past accounts on which they reported are defective, the auditor must consider the position in relation to the shareholders, regulatory bodies, the tax authorities and third parties.

Shareholders

- 22.60 Reference should be made to the relevant auditing standards applicable, for example International Standards on Auditing 560 – Subsequent Events.

Tax authorities

- 22.61 The auditor should follow the same procedure as in the case of an individual client.

Other third parties

22.62 An auditor may be liable if having prepared a report which the auditor later discovers to be false in some material respect, he/she subsequently fails to take appropriate action to correct that report, in such circumstances the auditor should ordinarily take legal advice as to the steps which are appropriate. These might include the following

- (a) Where the report was prepared for the company alone or for statutory purposes, the auditor's appropriate course will generally be to disclose the relevant facts to the directors and ascertain what steps they intend to take to bring it to the attention of third parties who are affected.
- (b) If the directors fail to take such steps, the proper course for the auditor to adopt will depend on the gravity of the error and the nature of the reliance which has been or is likely to be placed upon it by the third party.
- (c) The courses open to the auditors include resignation by a notice which contains a statement of the relevant facts and of the directors' failure to bring those facts to the attention of those affected. The auditor may also require the directors of the company to convene (at the company's expense) an extraordinary general meeting of the company to receive, and consider such explanation of the circumstances connected with the auditor's resignation as the auditor may wish to place before the meeting. Where the auditor has resigned and deposited a statement of the relevant facts, it will often be unnecessary to take any further steps to bring the facts to the attention of the third parties.
- (d) There may, however, be cases in which reliance has been placed or may be placed upon the auditor's report by a third party who is not likely to receive a copy of the auditor's notice of resignation and statement of reasons, either because the third party is not one of

those entitled to receive copies of the accounts or because the company does not propose to send the notice and statement to such persons or does not intend to do so sufficiently quickly. In these cases it may be appropriate for the auditor to communicate directly with those third parties known to be affected, stating that they have resigned as auditor, that a statement of reasons for the auditor's resignation has been deposited with the company to be forwarded to, inter alia, the regulator responsible for company registration, and that those reasons may affect the interests of persons who have read the company's accounts and the auditor's report upon those accounts.

- (e) An auditor who believes that a company may fail to forward a copy of the notice of resignation and statement of reasons to the regulator responsible for company registration may, and in some cases should, notify the regulator that they have deposited such a notice and statement with the company and enquire whether it has been received. Auditors should also inform the company that they have notified the regulator of the resignation.

Save in exceptionally urgent cases it will usually be appropriate to notify the company in advance of what the auditor intends to do, so that the company may have an opportunity itself to bring the relevant facts to the attention of those affected.

- 22.63 An auditor may sometimes be instructed to prepare a report (other than a statutory report) for the purpose of being submitted to a third party. Such a report will usually amount in law to a representation made by the auditor to that third party. Where this is the case and the auditor subsequently discovers that it is false in a material respect, the auditor is entitled to communicate a correction directly to the third party, and should normally do so.

Removal of the auditor

- 22.64 The distinction between the directors and the shareholders will sometimes have little or no relevance, either because the directors hold a controlling interest or because all the shareholders are directors. When in these circumstances the directors fail to comply with the auditor's advice they may wish to prevent the auditor from completing the audit and making a report containing qualifications. They could achieve this by calling a general meeting at which the sole business would be the removal of the auditor.
- 22.65 If this procedure is followed the auditor may wish to take one of three courses:
- (a) make written representation to the company
 - (b) attend the general meeting and be heard which, for example, an auditor has a right to do.
 - (c) resign before the general meeting, and include a statement of circumstance in the notice of resignation.
- 22.66 Where there are persons who would be affected by a qualification to the report and who would not be entitled to receive representations (for example, under Section 513 of the Companies Act 2006 of the United Kingdom) or to attend the meeting, resignation with a statement of the circumstances will often be the more appropriate course.

Disclosure of information to office holders under insolvency legislation

- 22.67 Liquidators, administrators and administrative receivers may have a statutory right to call for "such information concerning the company and its promotion, formation, business, dealings, affairs or property as the (liquidator, administrator or administrative receiver) may... reasonably require", from any person who is or was at any time an officer of the company.

- 22.68 An RPA who is required by a liquidator, administrative receiver or administrator to supply information in these cases should normally do so unless the liquidator, administrator or administrative receiver is acting beyond their respective powers, or for a purpose unrelated to their official functions or in breach of their duties. An RPA dealing with a liquidator, administrative receiver or administrator in good faith is entitled to assume that they are acting within their powers.
- 22.69 Receivers, as opposed to administrative receivers or administrators, are unlikely to have a general statutory power to obtain information. Moreover, although the extent of their powers will depend on the terms of the deed or court order pursuant to which they were appointed, it is unlikely that their powers will extend to requiring information from an RPA without the specific consent of the company or an order of the court.
- 22.70 In the case of a client's bankruptcy, there is unlikely to be an express obligation for an RPA to co-operate with, or pass information to, the trustee. However, a bankrupt may be obliged to deliver to the trustee all property, books, papers or other records that relate to the bankrupt's estate or affairs and of which the bankrupt has possession or control. RPAs with a client subject to a bankruptcy order can, therefore, expect the client to direct them to transfer to the trustee such of the client's books, papers and records as are in their possession. RPAs should also be aware that they may be liable to be summoned to produce to the court any documents in their possession or control relating to the bankrupt or the bankrupt's dealings, affairs or property or to answer questions or provide information relating to such matters.
- 22.71 In the case of an individual's voluntary arrangement with creditors, a nominee, in preparing the report for the court on the debtor's proposal, will wish to have access to the debtor's accounts and records. In view of the nature of the voluntary arrangement, it is possible that the debtor will choose to authorize additional co-operation during the course of the arrangement. Accordingly, RPAs can expect clients to

authorize them to disclose this information to the nominee.

- 22.72 Similar rules to those set out above will apply in a company voluntary arrangement with creditors. In the case of such an arrangement, it is the directors who will wish to allow access by the nominee to their company's accounts and records.

Auditors of companies in liquidation

- 22.73 Although the appointment of an auditor of a company is made by the shareholders in general meeting (or in the case of a newly formed company by the directors) the auditor's appointment is by the company as a legal entity and the auditor's duty of confidence is to the company as distinct from the individual shareholders.
- 22.74 If the company goes into liquidation the company's rights remain vested in the company as an entity and it is therefore still the company to which the auditor has a duty of confidence. The liquidator will, however, normally be the proper agent of the company for the purpose of enforcing any rights which the company could have enforced, including the company's right to permit its auditors to provide information to others.
- 22.75 The auditor of a company which is in liquidation may be approached by the police for assistance in enquiries which may lead to a director or other individual being prosecuted. The auditor is under no legal obligation to give to the police any information obtained in the course of the professional relationship with the client. In normal circumstances, the auditor should not assist the police by the disclosure of information, etc. unless the liquidator has given permission for this action (the liquidator being the person who could exercise the right of the company to release the auditor from the duty of confidence). If the liquidator does not give permission to the auditor, unless there are considerations of public interest, the auditor should explain to the police that the information is confidential and may not be disclosed without permission.

Defamation

22.76 If an auditor forms the view that unlawful acts or defaults have occurred and communicates the relevant facts to persons who have a legitimate interest in receiving them, the auditor may enjoy qualified privilege from liability for defamation. Unless malice is proved against the auditor, that privilege will amount to complete defence, even if the facts should prove to be wrong. This statement gives only general guidance on the circumstances in which an auditor may have a duty to communicate such facts; each case must be considered in the light of its own particular circumstances. An auditor who is in any doubt as to the available options should take legal advice about the auditor's rights and duties in such situations.

22.77 In particular, an auditor who is contemplating making a public announcement or communicating directly with shareholders should bear in mind that such an announcement, even if justified by the particular circumstances of the case, may cause serious damage to the company or to individuals, and such a step should not normally be taken without taking legal advice.

Registered public accountant's Working Papers

22.78 In most, but not all, circumstances, a RPA's working papers are the RPA's own property and any request for their production should normally be refused. All documents relating to clients are confidential. They should not be disclosed to their parties unless:

- (a) the clients agree to the disclosure before it is made; or
- (b) disclosure is authorized by statute or court order; or
- (c) disclosure is otherwise in accordance with these Rules and Recommendations.

RPA's should refer to section 24, Legal ownership of, and rights of access to, books, files, working papers and other documents, in order to determine whether the papers in question are the property of the member or the client.

- 22.79 However, if a tax authority requests the production of the working papers relating to a particular client whose affairs are under investigation, RPA's should bear in mind that they have a duty to act in the best possible interests of their clients.
- 22.80 The RPA must check the powers under which the request for the production of records and information is made. If persons requesting the records and information are utilizing statutory powers available to them which compel the production of records and information then the RPA must comply. In other cases, where mandatory powers are not being utilized, the RPA should consider the circumstances on a case by case basis.
- 22.81 If an RPA is of the opinion that their clients would best be served by producing the documents then, provided that the clients do not object, RPA's may deliver the required items and information. In some instances schedules, notes, etc., may well be helpful in supporting RPA's' reports and contentions. Correspondence and notes of interviews with clients and/or RPA's' legal advisers will frequently be of an extremely confidential nature and should only be produced in exceptional circumstances – and even then only with clients' authority. In all such cases, RPA's should consider obtaining legal advice and, where appropriate, recommend the clients to obtain their own legal advice.
- 22.82 The decision whether or not to produce working papers is entirely one for the RPA, even if the client concerned has no objection to the disclosure of information contained therein.

Taxation offences and the proceeds of crime

- 22.83 If the wrongful acts of clients discovered by members, taxation offences of various kinds are likely to be amongst the more frequent. Tax legislation prescribes a number of offences for which monetary penalties are recoverable. The recovery of penalties against taxpayers does not rule out the possibility of criminal proceedings against them.
- 22.84 Any act or omission directed to or resulting in the evasion or attempted evasion of tax may be the subject of criminal charges under both tax law and money laundering legislation. Tax evasion may relate to direct tax such as income tax or corporation tax, or indirect tax such as a tax on goods and services (General Consumption Tax (GCT)). The proceeds of such offences, like any other crime, will be subject to the money laundering legislation. RPAs who suspect or are aware of tax evasion activities by a client may themselves commit an offence if they do not report their suspicions to the appropriate money laundering authority (in addition to any notification to the tax authorities). RPAs should refer to the section on Money laundering, for further guidance.
- 22.85 When RPAs find that clients have misinformed or misled them as to their affairs in order to obtain a tax advantage, RPAs must consider carefully not only their clients' positions but also their own positions vis-à-vis the tax authorities. RPAs should, in particular, consider the matters set out in paragraphs 22.86 to 22.97.

Past accounts

- 22.86 RPAs may discover that accounts already prepared and/or reported on by them and/or computations and returns based thereon are no longer accurate. If these have already been submitted to the tax authorities, RPAs cannot allow the tax authorities to continue to rely on them. They should advise their clients to make full disclosure, or to authorize them to do so, without delay.

- 22.87 RPAs should dissociate themselves from any returns or accounts that may be affected by their clients' concealment. If clients refuse to make or authorize disclosure, RPAs should inform them that they can no longer act for them. RPAs should also inform such clients that it will be necessary to inform the tax authorities in the terms set out in paragraph 22.88 below.
- 22.88 In these circumstances, RPAs should inform the tax authorities that, since the documents concerned were submitted, they have become aware of information which has led them to conclude that they would no longer be prepared to report on the documents in the same terms as previously and that they have ceased to act for the client. In so informing the tax authorities, RPAs are under no duty to indicate in what way the accounts are defective and should not normally do so unless their clients have consented to such disclosure.

Current accounts

- 22.89 Where the information obtained affects accounts or statements that RPAs are currently preparing or auditing, they are in a position to deal with the matter themselves. If the client fails to provide such information as RPAs may require, or objects to the manner in which RPAs consider that the accounts should be presented, it is the RPAs' professional duty to qualify their reports on the accounts in such a way that the respects in which they are defective are made clear. RPAs should also consider whether they ought to continue to act for that client.

New clients

- 22.90 RPAs preparing or auditing accounts for new clients may become aware that accounts previously submitted to the tax authorities are defective. If so, they should advise their clients to make full and prompt disclosure. RPAs have no responsibility for past accounts except in so far that errors in them affect the accuracy of accounts that they are currently preparing or auditing. If the errors have that effect,

then RPAs must inform their clients that an appropriate adjustment must be made in the current accounts. If clients are unwilling to agree to such adjustments, RPAs should qualify their reports on the accounts accordingly, and may wish to consider whether they should continue to act for that client.

Private returns

- 22.91 Where RPAs have acted or are acting on personal tax matters and acquire information indicating that any returns or accounts prepared and/or reported on by them and/or computations based thereon are no longer accurate, they should follow the procedure set out in paragraphs 22.86 to 22.88 above.

Professional responsibility towards clients

- 22.92 Whatever line of conduct may be appropriate for RPAs to protect their own position, they are still under a professional duty to ensure, so far as they can, that clients understand the seriousness of offences against the tax authorities. They should also ensure that clients are aware of the probable consequences of a notification from RPAs to the tax authorities that they are no longer acting for a client. In other words, RPAs should always urge on their clients the desirability of authorizing them to make full disclosure, subject to any legal advice obtained. Any accounts, returns, computations or reports submitted on behalf of taxpayers are deemed to be submitted by them and/or with their consent unless they prove otherwise.
- 22.93 This emphasises the need for RPAs to obtain appropriate instructions from their clients and to ensure that clients have signed or otherwise approved the accounts. Where RPAs have not been instructed to deal with taxation work for a client, they have no authority to deal with the tax authorities.

Tax authority powers

- 22.94 RPAs should ensure that they familiarize themselves with the statutory powers that the tax authorities have

to compel disclosure in particular instances. In dealing with disclosures sought under such powers, RPAs should ensure that the statutory power being invoked actually covers the information sought and, if in any doubt, should take legal advice.

- 22.95 Tax authorities sometimes ask for information to be provided on a voluntary basis, notwithstanding that they might be able to obtain disclosure under statute. Although clients are not obliged to provide the information voluntarily, RPAs may in some cases think that it is advisable for them to do so. In other cases, RPAs may believe that the client should decline to provide the information and await the exercise of statutory powers.

Errors in the taxpayers' favour

- 22.96 The tax authorities may mistakenly make an excessive repayment of tax to taxpayers, even though full disclosure of the fact has been made to it. Where an excessive repayment is paid directly to clients, RPAs should urge their clients to refund the excess sum to the tax authorities as soon as they become aware of the error. Clients could be committing a civil and/or criminal offence if they have knowledge of the error and fail to correct it. Should a client refuse to refund the payment to the tax authorities, RPAs must consider whether, in all the circumstances, they should continue to act for the client. Where RPAs cease to act, they should notify the tax authorities that they no longer act for the client but are under no duty to give the tax authorities any further details.
- 22.97 Where the excessive repayment is made to RPAs on their clients' behalf, RPAs should notify the tax authorities. Failure to do so could involve both members and their clients in a civil and/or criminal offence.

23. PROFESSIONAL APPOINTMENTS

General

- 23.1 Clients are free to choose their accountants/auditors, or other advisers, and to change them as they wish.
- 23.2 RPAs invited to act as accountants/auditors by clients must contact the existing accountants/auditors to ascertain if there are any matters they should be aware of when deciding whether or not to accept the appointment.
- 23.3 RPAs should follow the same procedures with regard to changes in professional appointments.
- 23.4 RPAs asked to undertake work additional to that carried out by an existing accountant should refer to paragraphs 23.48 to 23.51.
- 23.5 References in subsequent paragraphs to an 'accountant' should be taken to apply equally when the appointment under consideration is that of an auditor, reporting accountant or accountant.

Client acceptance

- 23.6 Before accepting a new relationship, RPAs should consider whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management and activities).
- 23.7 Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering); dishonesty or questionable financial reporting practices.
- 23.8 The significance of any threat should be evaluated. If identified threats are other than clearly insignificant, safeguards should be considered and applied as

necessary to eliminate them or reduce them to an acceptable level.

- 23.9 Appropriate safeguards may include obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities, or securing the client's commitment to improve corporate governance practices and internal controls.
- 23.10 Where it is not possible to reduce the threats to an acceptable level, RPAs should decline to enter into the client relationship.
- 23.11 Acceptance decisions should be periodically reviewed for recurring client engagements.

Engagement acceptance

- 23.12 RPAs should agree to provide only those services that RPAs are competent to perform. Before accepting a specific client engagement, RPAs should consider whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competences necessary to properly carry out the engagement.
- 23.13 RPAs should evaluate the significance of identified threats and, if they are other than clearly insignificant, safeguards should be applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:
 - (a) acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work performed;
 - (b) acquiring knowledge of relevant industries or subject matters;

- (c) possessing or obtaining experience with relevant regulatory or reporting requirements;
- (d) assigning sufficient staff with the necessary competences;
- (e) using experts where necessary;
- (f) agreeing on a realistic time frame for the performance of the engagement; and
- (g) complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

23.14 When RPAs intend to rely on the advice or work of an expert, RPAs should evaluate whether such reliance is warranted. RPAs should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in professional appointment

23.15 RPAs who are asked to replace another accountant, or are considering tendering for an engagement currently held by another accountant, should determine whether there are any professional or other reasons, such as circumstances that threaten compliance with the fundamental principles, for not accepting the engagement. For example, there may be a threat to professional competence and due care if RPAs accept the engagement before knowing all the pertinent facts.

23.16 The significance of the threats should be evaluated. Depending on the nature of the engagement, this may require direct communication with the existing accountant to establish the facts and circumstances behind the proposed change so that RPAs can decide whether it would be appropriate to accept the engagement. For example, the apparent reason for the change may not fully reflect the facts and may

indicate disagreements with the existing accountant that may influence the decision as to whether to accept the appointment.

- 23.17 Communication with the existing accountant is not just a matter of professional courtesy. Its main purpose is to enable RPAs to ensure that there has been no action by the client which would on ethical grounds preclude RPAs from accepting the appointment and that, after considering all the facts, the client is someone for whom RPAs would wish to act. Thus, RPAs must communicate with the existing accountant on being asked to accept appointment for any recurring work, except where the client has not previously had an accountant acting for them.
- 23.18 An existing accountant is bound by confidentiality. The extent to which RPAs can and should discuss the affairs of a client with a prospective accountant will depend on the nature of the engagement and on:
- (a) whether the client's permission to do so has been obtained; or
 - (b) the legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.
- 23.19 In the absence of specific instructions by the client, an existing accountant should not ordinarily volunteer information about the client's affairs. Circumstances where it may be appropriate to disclose confidential information are set out in Section 5 "Confidentiality" and Section 24 paragraphs 24.15 to 24.17.
- 23.20 If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.
- 23.21 Such safeguards may include:
- (a) discussing the client's affairs fully and freely with the existing accountant;

- (b) asking the existing accountant to provide known information on any facts or circumstances that, in the existing accountant's opinion, the prospective accountant should be aware of before deciding whether to accept the engagement; and
- (c) when replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that enquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.

23.22 RPAs will ordinarily need to obtain the client's permission, preferably in writing, to initiate discussions with an existing accountant. Once that permission is obtained, the existing accountant should comply with the relevant legal and other regulations governing such requests. The prospective accountant should write to the existing accountant requesting all the information which ought to be made available to enable the prospective accountant to decide whether or not to accept the appointment. Where the existing accountant provides information, it should be provided honestly and unambiguously.

23.23 If the prospective accountant is unable to communicate with the existing accountant, the prospective accountant should try to obtain information about any possible threats by other means, such as through enquiries of third parties or background investigations on senior management or those charged with governance of the client.

23.24 Where the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, RPAs should, unless there is satisfaction as to necessary facts by other means, decline the engagement.

23.25 If the existing accountants continue to fail to reply, or fail to supply satisfactory replies, prospective accountants should send a further letter by a recorded delivery service.

- 23.26 The letter referred to in paragraph 23.25 above should state that unless a reply is received within a stated period, say seven days, the prospective accountants will assume there are no matters of which they should be aware and, at the end of the stated period, will proceed to accept the appointment.
- 23.27 If clients refuse permission to the existing accountants to discuss their affairs, the existing accountants should inform the prospective accountants of this fact. The prospective accountants should inform clients that they are not prepared to accept the appointment.

Matters to be communicated to prospective clients

- 23.28 Prospective accountants should ask clients to write to their existing accountants to:
- (a) notify them of the proposed change; and
 - (b) give permission for the existing accountants to discuss the clients' affairs with the prospective accountants.
- 23.29 If existing accountants receive a communication from a prospective accountant but have not received permission, as set out in paragraph 23.28 above, they should notify the client of the contact. Additionally, they should write to the prospective accountant declining to give information and stating their reasons.
- 23.30 Where the existing accountants receive permission, as set out in paragraph 23.28(b) above, they should provide all reasonable information (in addition to transfer information) in respect to a request from the prospective accountants. It is for the existing accountants to decide what information is reasonable and what they consider may be relevant to the prospective accountants' decision on whether or not to accept the appointment. (The issue of transfer information is considered separately at paragraph 23.45 to 23.48.)

- 23.31 Existing accountants may not prevent prospective accountants from acting on behalf of clients.

Matters to be communicated to prospective accountants

- 23.32 If existing accountants consider there are matters to be brought to the attention of prospective accountants, they must be prepared to specify the nature and details of such matters.
- 23.33 If existing accountants consider there are no matters to be brought to the attention of prospective accountants, they should write to state this fact.
- 23.34 It is recommended that existing and prospective accountants communicate in writing. If oral discussions take place, each party should make and retain their own contemporaneous record of matters discussed and decisions and agreements made.
- 23.35 Where existing accountants have suspicions of some guilty or unlawful act, e.g. defrauding the tax authorities, but have no proof, it is for the existing accountants to decide whether, and to what extent, their suspicions should be conveyed to prospective accountants.

Prospective accountants

- 23.36 Any information supplied by existing accountants should be considered carefully before deciding to accept or reject the appointment,
- 23.37 Prospective accountants should try to find out the reason for the change of accountants. Prospective accountants should be careful that by accepting an appointment they are not assisting clients to act improperly or unlawfully.
- 23.38 For example, prospective accountants may find that the existing accountants have been conscientious in their duty as independent professionals, but have encountered client opposition. The existing

accountants may have declined to give way on what they consider to be a matter of principle. In such circumstances prospective accountants should probably decline appointment.

- 23.39 Prospective accountants must treat any information given by existing accountants in the strictest confidence.

Unpaid fees of previous accountant

- 23.40 Prospective accountants are not expected to refuse to act where there are unpaid fees owed to the existing accountants.
- 23.41 It is a matter for the prospective accountant's own judgment to decide how far they may properly go in assisting the existing accountants to recover their fees.
- 23.42 Prospective accountants would normally be expected to draw the attention of their client to the fact that fees are due and unpaid and to suggest that they should be paid.

Transfer of books and papers

- 23.43 Once a new accountant has been appointed or on ceasing to hold office, the former accountants should ensure that all books and papers belonging to their former client which are in their possession are promptly transferred, whether the new accountant or the client has requested them or not, except where they claim to exercise a lien or other security over them in respect of unpaid fees.
- 23.44 RPAs should refer to paragraph 24 Legal ownership of, and rights of access to, books, files, working papers and other documents.

Transfer of information

- 23.45 In order to ensure continuity of treatment of a client's affairs, former accountants should promptly provide the new accountants with all reasonable transfer information that they request, free of charge.
- 23.46 All reasonable transfer information must be provided even where there are unpaid fees.
- 23.47 "Reasonable transfer information" in paragraph 23.45 above is defined as:
- (a) a copy of the last set of accounts formally approved by the client; and
 - (b) a detailed trial balance that is in agreement with the accounts referred to in paragraph 23.47(a) above.
- 23.48 Any information in addition to the reasonable transfer information, as defined in paragraph 23.47 above, is provided purely at the discretion of the former accountants, who may render a charge to the person requesting the information.

Additional professional work

- 23.49 RPAs may be asked to undertake work that is complementary or additional to the work of existing accountants, who are not being replaced or superseded. Such circumstances may give rise to potential threats to professional competence and due care resulting from, for example, a lack of complete information. Safeguards against such threats may include notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.
- 23.50 Before accepting such work, RPAs should communicate with the existing accountants employed by a client to inform them of the general nature of the work being done.

23.51 It is in the client's interest that the existing accountants are aware of the additional work being undertaken. This will facilitate the transfer of information between the advisers and aid them in carrying out their respective appointments.

23.52 In very exceptional circumstances, RPAs may not be required to communicate with the existing accountants.

Changes in audit appointment

23.53 The proposed auditors should ensure that they have been properly appointed and that their predecessors have vacated office in a correct and valid manner.

Casual vacancy in auditorship

23.54 Where there is a casual vacancy in the auditorship of a company, that vacancy will normally be filled by the directors appointing an auditor.

23.55 Members invited to fill a casual vacancy should follow a course of action similar to that outlined in this chapter.

23.56 If the casual vacancy has arisen through the death or incapacity of the previous auditor, the necessary contacts will have to be made with the former auditor's partners, if any, or with the person who is temporarily responsible for maintaining the practice.

24. LEGAL OWNERSHIP OF, AND RIGHTS OF ACCESS TO, BOOKS, FILES, WORKING PAPERS AND OTHER DOCUMENTS

Introduction

- 24.1 This section sets out the requirements governing the ownership of records, documents and papers. In the course of practice, RPAs will either create or come into possession of records, documents and papers which may belong to RPAs or may belong to RPAs' clients. In certain circumstances RPAs may be able to retain records, documents and papers belonging to clients pending payment of outstanding fees. It should be noted that such rights to a lien may be subject to important qualifications which enable clients and third parties to have access to any records, documents and papers in members' possession.
- 24.2 The term "documents and papers" does not just mean documents stored on paper. The term extends to information stored on microfilm, and also to information stored electronically.
- 24.3 The underlying principles of ownership and liens over records, documents and papers are governed by law and the contract that RPAs enter into with their client. RPAs must comply with the requirements of the Jamaican law that applies to their dealings with their client.
- 24.4 Guidance as to the principles of law that govern these issues is found elsewhere. RPAs are advised to take legal advice wherever an issue as to ownership or possession of records, documents and papers may arise. The legal position and its application to any given set of facts may not be straightforward. Under English law, by way of illustration, the position may be summarized as follows:
- (a) Documents belonging to clients must be given to clients, or their agents, on request, except for those cases where RPAs are able to exercise a right of lien.

- (b) For documents belonging to RPAs, the decision whether to allow clients (or their agents) to inspect them rests with the RPAs. Clients have no rights to demand access.
- (c) Where clients ask RPAs to disclose documents to a third party and those documents belong to clients, RPAs must disclose the documents unless they are exercising their rights of lien. Where documents belong to RPAs, they are not obliged to comply with the request.

24.5 RPAs are reminded that they may act for their clients in different capacities and this may affect their rights to ownership and possession of records, documents and papers. Thus, by way of illustration, under English law an accountant may find himself acting for clients either as principal or as an agent, depending on the nature of the work covered by the engagement.

Relationship with the Jamaican law

24.6 Members must obey the law. It is the responsibility of members to familiarize themselves with the law that applies to them and ensure that they work within the law.

24.7 So far as the requirements of this section may be inconsistent with any Jamaican statutory provision, rule of law or any direction or order of a court of competent jurisdiction that may from time to time be applicable to an RPA, compulsion of law shall be a defence to a breach of any provision of the requirements and these requirements shall be read as being subject to the applicable provision of the law.

The contract

24.8 It is permissible for RPAs (to the extent they are permitted by law) to record and regulate any rights to ownership over any or any identified classes of records, documents and papers created by the RPA in the contract between RPAs and their clients.

- 24.9 It is permissible for RPAs (to the extent they are permitted by law) to record and regulate any right to assert a lien or other security and the rights attaching to the same for their unpaid fees over records, documents and papers owned by the RPA in the contract between members and their clients.

Preservation of documents

- 24.10 Where an RPA retains possession over documents that belong to a client whether to undertake work or to assert any lien or security over them, it is the duty of the RPA to make effective and appropriate arrangements to ensure that such records, documents and papers are at all times preserved safely, orderly and securely.
- 24.11 Where an RPA ceases to be entitled to retain possession over a client's records, documents and papers and their return has been demanded by a client, he must deliver up all such records, documents and papers to his client or to his client's lawyer or accountant promptly and safely. Nothing herein shall prevent an RPA from retaining (to the extent permitted or required by law) a copy of a client's file.

Liens

- 24.12 Nothing in this section shall prevent an RPA from asserting (to the extent permitted by law) a lien or other security for unpaid fees to retain possession of property owned by an RPA's client until the client pays what he/she owes the RPA.
- 24.13 The exercise of a right of lien does not absolve RPAs from the requirement to supply the transfer of information required by section 23, Professional Appointments, paragraphs 23.45 to 23.48.
- 24.14 RPAs are recommended to obtain legal advice before seeking to exercise a lien in any but the most straightforward of cases. RPAs should advise clients disputing a right of lien of an RPA to consult their own

solicitors. By way of illustration, under English law no lien can exist:

- (a) over books or documents of a registered company that, either by statute or by the articles of association of the company, have to be available for public inspection or to be kept at the registered office or some other specified place or be dealt with in any special way;
- (b) over accounting records.

Duty of confidentiality

24.15 The duty of confidentiality owed by an RPA to his/her client is not affected by whether the RPA owns the record, documents or paper or not.

24.16 The duty of confidentiality owed by an RPA to his/her client is not affected by whether the RPA asserts a lien or other security over the client's record, document or paper or not.

24.17 RPAs are reminded that voluntary access to information or documents should be given only where one of the following applies:

- (a) the client has given his/her consent before disclosure;
- (b) the RPAs' duty of confidentiality is overridden by the powers of a third party to require access; or
- (c) the RPA considers himself/herself to be obliged to volunteer information in the circumstances set out in Section 5 which deals with Confidentiality and Section 22, Professional duty of confidence in relation to defaults and unlawful acts of clients and others.

Access to client papers

24.18 Subject to any lawful assertion of a lien or other security, an RPA should permit his client access to

such records, documents and papers as belong to his/her client.

- 24.19 Where a request for access to records, documents or papers is made by a person other than the client or on behalf of a client (for example by a director seeking access to the papers of a company), it is permissible for an RPA, given his duty to maintain client confidentiality, to withhold or defer access to a client's records, documents and papers until the RPA is satisfied that he has seen appropriate and adequate authorization to make such disclosure.
- 24.20 An RPA must obtain written authority from his/her client before the RPA permits access by any third party to a client's books, records or papers whether such records, documents or papers are owned by the client or the RPA. It is suggested that RPAs secure written authority including an indemnity from any claims arising out of the disclosure and that the letter should identify the proposed transaction in connection with which access has been requested, and record the fact that the working papers were not prepared or obtained with that transaction in mind. It is appropriate to reflect in the letter the parties' agreement that:
- (a) the papers and any information provided by the RPA will not be used for any purpose other than the proposed transaction;
 - (b) access to the papers and information will be restricted to the purchasers, the investigating accountants and the purchasers' other professional advisers.
 - (c) Any reliance that the purchasers or their investigating accountants may wish to place on the papers is entirely at their risk;
 - (d) The RPA disclosing the papers accepts no duty or liability resulting from any decisions made or action taken consequent upon access to the working papers or the provision of information, explanations or representations by the RPA; and that

- (e) The purchasers will indemnify and hold harmless the RPA disclosing the papers against any claims from third parties arising out of permitting access or providing information, explanations or representations.

24.21 An RPA should not disclose information about a client's affairs to a third party unless the client consents to disclosure or unless required by law or by a provision of the rules. By way of illustration, a non-exhaustive list under English law of occasions on which this principle may be overridden by third party rights of access might include:

- (a) where the RPA is compelled by a witness summons in litigation;
- (b) where a request is made of an RPA as secondary auditor in a group for access to papers by its primary auditor: see International Auditing Standard *Using the work of another auditor*, ISA 600;
- (c) to prevent a crime;
- (d) where the RPA is required by a liquidator, administrator or administrative receivers to make delivery to them of any documents belonging to the company;
- (e) where required by the PAB or other statutory regulator in respect of auditors, insolvency practitioners, those who undertake investment business or exempt regulated activities and in relation to its disciplinary functions;
- (f) where access is being sought by the Revenue or Customs Department;
- (g) where required by an Inspector appointed by the Minister of Trade to report on the affairs of a company under the provisions of the Companies Act.
- (h) where required under any Act.

25. RETENTION PERIODS FOR BOOKS, FILES, WORKING PAPERS AND OTHER DOCUMENTS

Introduction

- 25.1 In determining the period for which audit, tax and other working papers and general client information should be retained, consideration needs to be given to the following:
- (a) legal requirements that specify the period of retention;
 - (b) the period of time during which actions may be brought in the courts for which the working papers may need to be available as evidence;
 - (c) the period of time for which information in the working papers may be required for use in compiling tax returns;
 - (d) the possibility that a company may seek a quotation on a recognized stock exchange;
 - (e) whether the papers in question form part of the books and records of a company;
 - (f) whether there is an investigation, enquiry or legal action involving the auditor or the company for particular year(s).
- 25.2 RPAs are reminded that the period over which documents are retained may be influenced by questions of law. Those issues include but are not limited to, for the client, duties on the client to retain and make available records (for example to the tax authorities) and, for the RPA, considerations like preserving their records for at least the limitation period so that they are available to meet any allegation of breach of contract or professional negligence.

Trusteeships

- 25.3 RPAs who act as trustees have a continuing responsibility to the beneficiaries. All records should

be retained at least until all transactions have been independently audited and a discharge received from all interested persons.

General considerations

25.4 The retention of working papers involves expenditure on storage space and staff costs. It is permissible for RPAs, subject to statutory requirements to retain and preserve accounting records, to adopt a policy of retaining working papers relating to current clients for a longer period than for those clients for whom they no longer act.

Minimum periods for retention

25.5 RPAs should use their own judgement in determining the period for which working papers should be retained. The minimum period for which RPAs must retain working papers are as follows:

Audit working papers	7 years after the date of the audit report or transmittal letter, whichever is later.
Files on clients' or former clients' chargeable assets and gifts	8 years (then return them to the client or obtain authority from the client or former client for their destruction)
Files of RPA as trustee (other than trustee in bankruptcy)	For the period of trusteeship and 7 years thereafter
Investment business advice	For the life of the policy and 3 years thereafter.

25.6 Tax files and other papers that are legally the property of the client or former client should be returned to the client (or former client) after 7 years or his/her specific authority obtained for their destruction.

- 25.7 Where it is possible that a defect in advice rendered to clients or former clients may not become apparent for a longer period than those set out above then. RPAs may consider it prudent to retain working papers for a longer period of time. For example, RPAs should consider retaining advice given on the creation of a trust for the period until the trust comes to an end.
- 25.8 Whenever an investigation, enquiry or legal action involving the auditor and/or the company, the retention period in 25.5 may have to be extended. It may be necessary to get written permission to dispose of documents from the relevant authority. RPAs are advised to take legal advice.

26. PROFESSIONAL LIABILITY OF ACCOUNTANTS AND AUDITORS

Introduction

- 26.1 This section is concerned only with the liability for professional negligence which an RPA may incur because of an act or default by him/her or by one of his/her employees or associates which results in financial loss to a client or third party to whom a duty of care is owed. It does not deal with liability arising from other causes (for example criminal acts, breaches of trust, or breaches of contract other than the negligent performance of its terms, and certain heads of liability arising by statute independently of contract).
- 26.2 In recent years there have been a number of cases where substantial sums have been claimed as damages for negligence against accountants and auditors. In a number of cases it appears that the claims may have arisen as a result of some misunderstanding as to the degree of responsibility which the accountant was expected to assume in giving advice or expressing an opinion. It is therefore important to distinguish between:
- (a) disputes arising from misunderstandings regarding the duties assumed; and
 - (b) negligence in carrying out agreed terms.
- 26.3 This section sets out the global rules governing RPAs and how they should contract with clients or deal with third parties. The underlying principles are governed by law and the contract that RPAs enter into with their client. RPAs must comply with the requirements of the Jamaican law that applies to their dealings with their client.
- 26.4 Guidance as to the principles of law that govern these issues is found elsewhere. Members are advised to take legal advice wherever an issue may arise. The legal position and its application to any given set of facts may not be straightforward.

Engagement letters

- 26.5 RPAs must record in writing and send to their client a letter of engagement which sets out the terms under which they are agreeing to be engaged by their client before any work is undertaken or, if this is not possible, as soon as practicable after the engagement commences. The RPA must ensure that at the time he/she agrees to perform certain work for the client a letter of engagement is prepared which clearly defines the scope of his/her responsibilities and the terms of his/her contract with his/her client. The letter of engagement should set out in detail the actual services to be performed, the fees to be charged, or the basis upon which fees are calculated, and that the terms of the engagement should be accepted by the client so as to minimize the risk of disputes regarding the duties assumed. Accordingly, RPAs must ensure they retain a copy of the engagement letter which has been signed by the client. Where new work is to be undertaken or any terms have changed, the RPA should send a new letter of engagement. It may also be helpful for the avoidance of misunderstandings to indicate any significant matters which are not included in the scope of responsibilities undertaken, although it will rarely be possible to provide a comprehensive list of matters excluded. Again, RPAs must retain a copy of the new engagement letter which has been signed by the client. It is recommended that an engagement letter be obtained for each continuing engagement on an annual basis.

Excluding or restricting liability to a client

- 26.6 It is permissible for an RPA to include in the letter of engagement terms limiting or restricting an RPA's liability for negligence or breach of contract to a client. RPAs are reminded that an agreement with a client designed to exclude or restrict an RPA's liability may not always be effective in law.

Whilst members may wish to make specific disclaimers of responsibility in appropriate, defined circumstances, the Public Accountancy Board does not encourage the use of standard disclaimer clauses

in audit reports. Such clauses could have the effect of devaluing the report in the eyes of many and should not be necessary in order to protect auditors' interests if the audit has been properly carried out.

Advice on limited information

26.7 Accountants may be called upon to give opinions and advice, including financial advice, in connection with many matters, for example investigations or management consultancy assignments, the preparation or audit of the accounts of sole traders, partnerships and charities, and in the field of taxation. Whilst it is permissible for RPAs to give such advice either within or outside the scope of a letter of engagement, RPAs are recommended to make clear to the beneficiary of that advice the extent of the responsibility they agree to undertake and whom that advice is intended for and restricted to, making particular reference to the information supplied to them as a basis for their work and to those areas (if any) to be excluded from their examination. In particular, if clients require "snap" answers to complicated problems, it is recommended that RPAs record such advice in writing (or alternatively to state orally and forthwith confirm in writing) that the problems are complicated, that they have been given a very limited time in which to study them, that further time is required in order to consider them in depth and that the opinion or advice tendered might well be revised if further time were available to them. RPAs should also state that the client is responsible for the accuracy of the information supplied to the accountant. Except in the case of a genuine emergency the client should be warned against acting on the "snap" advice tendered before further investigation has been carried out.

Avoiding liability to third parties

26.8 It is permissible for members to take appropriate steps to reduce their exposure to the claims of third parties. By way of illustration, such steps might include:

- (a) identifying the purpose for which the advice is given or document is prepared;

- (b) identifying and limiting the audience of the advice or document, for example including the notice “CONFIDENTIAL. This report (statement) has been prepared for the private use of X (the client) only and on condition that it must not be disclosed to any other person without the written consent of Y (the accountant.”;
- (c) including a disclaimer, for example: “Whilst every care has been taken in the preparation of this document, it may contain errors for which we cannot be responsible” or “This report is prepared for the use of X (the client) only. No responsibility is assumed to any other person.”;
- (d) where a document is prepared in the first instance for discussion with or approval by the client or others, and is liable to be altered before it appears in its final form, over-stamping the document on each page: “Unrevised draft”;
- (e) where accounts are prepared on behalf of a client, identifying that the source of the information set out in the accounts is the client and not the accountant and that the client has checked the document. It is a sensible precaution in such a case for the accountant expressly to draw the attention of the client to the need to check the document before submitting it.

26.9 RPAs should, however, be aware that disclaimers may be inappropriate or ineffective. Disclaimers will be inappropriate in circumstances where their use will tend to impair the status of practising accountants by indicating a lack of confidence in their professional work.

Inclusion of the accountant’s name on a document issued by a client

26.10 RPAs are recommended to endeavour to ensure that no statement or document issued by their client (other

than unabridged accounts which have been reported on by them as auditors) will bear their name unless their prior consent has been obtained. It is often desirable for a suitable paragraph to be included in the engagement letter. If an RPA learns that a client proposes to cite his/her name, he/she should inform the client that his/her permission must first be obtained and in appropriate case he/she should withhold his/her permission.

Specialist advice

- 26.11 RPAs are reminded that, from time to time, circumstances may warrant (whether because of the complexity of an assignment or otherwise) that a member should advise his/her client that he/she considers it desirable to take specialist advice. In certain circumstances it may be appropriate for an RPA either to consult another accountant or to instruct or to suggest to his/her client to instruct an RPA of another profession to advise.

Internal complaints-handling procedures

- 26.12 RPAs should implement adequate procedures to handle client complaints in respect of fee, service and contractual disputes.
- 26.13 Many complaints can be resolved without recourse to litigation where adequate internal complaints procedures exist within firms. In this way, not only would the level of client care improve, but issues of poor service might be resolved without the need for investigation by the Public Accountancy Board.
- 26.14 It is recommended that any complaints procedures adopted by a firm should ensure:
- (a) the proper handling of complaints from clients relevant to its compliance with the regulatory system;
 - (b) that complaints are acknowledged promptly;

- (c) where a complaint has been made orally, that the letter of acknowledgement states the RPA's understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement;
- (d) that complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint;
- (e) that any appropriate remedial action on those complaints is promptly taken; and
- (f) where the complaint is not promptly remedied, that the client is advised of any further avenue for complaint available to him/her under the Public Accountancy Act.

26.15 RPAs are recommended to include details of the firm's internal complaints-handling procedures in the letter of engagement.

APPENDIX I

DEFINITIONS

In the *Code of Ethics for Professional Accountants* the following expressions have the following meanings assigned to them:

Acceptable level	A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.
Advertising	The communication to the public of information as to the services or skills provided by professional accountants in public practice with a view to procuring professional business.
Assurance client	The responsible party that is the person (or persons) who: (a) In a direct reporting engagement, is responsible for the subject matter; or (b) In an assertion-based engagement, is responsible for the subject matter information and may be responsible for the subject matter.
Assurance Engagement	An engagement in which a professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria. (For guidance on assurance engagements see the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board which describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Auditing (ISAs), International Standards on

Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply).

Assurance team	<ul style="list-style-type: none">(a) All members of the engagement team for the assurance engagement;(b) All others within a firm who can directly influence the outcome of the assurance engagement, including:<ul style="list-style-type: none">i. those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagementii. those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement,; andiii. those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement
Audit client	An entity in respect of which a firm conducts an audit engagement. When the client is a listed entity, audit client will always include its related entities. When the audit client is not a listed entity, audit client includes those related entities over which the client has direct or indirect control.
Audit engagement	A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement

conducted in accordance with International Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation.

Audit team	<ul style="list-style-type: none">(a) All members of the engagement team for the audit engagement;(b) All others within a team who can directly influence the outcome of the audit engagement, including:<ul style="list-style-type: none">(i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the audit engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);(ii) Those who provide consultation regarding technical or industry-specific issues, transactions or events for the engagement; and(iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and(c) All those within a net work firm who can directly influence the outcome of the audit engagement.
Close family/close Relative	A parent, child or sibling who is not an immediate family member or a non-independent child.
Contingent fee	A fee calculated on a predetermined basis relating to the outcome of a transaction or the

result of the services performed by the firm. A fee that is established by a court or other public authority is not a contingent fee.

Direct financial interest	<p>A financial interest:</p> <ul style="list-style-type: none">• Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or• Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.
Director or officer	Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title, which may vary from jurisdiction to jurisdiction.
Engagement partner	The partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.
Engagement quality control review	A process designed to provide an objective evaluation, on or before the report is issued, of the significant judgements the engagement team made and the conclusions it reached in formulating the report.
Engagement team	All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or a network firm.
Existing accountant	A professional accountant in public practice currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services for a client.

External expert	An individual (who is not a partner or a member of the professional staff, including temporary staff, of the firm or a network firm) or organization possessing skills, knowledge and experience in a field other than accounting or auditing whose work in that field is used to assist the professional accountant in obtaining sufficient appropriate evidence.
Financial interest	An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.
Financial statements	A structured representation of historical financial information, including related notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The related notes ordinarily comprise a summary of significant accounting policies and other explanatory information. The term can relate to a complete set of financial statements, but it can also refer to a single financial statement, for example, a balance sheet, or a statement of revenues and expenses, and related explanatory notes.
Financial statements on which the firm will express an opinion	In the case of a single entity, the financial statements of that entity. In the case of consolidated financial statements, also referred to as group financial statements, the consolidated financial statements.
Firm	(a) A sole practitioner, partnership or corporation of professional accountants; (b) An entity that controls such parties, through ownership, management or other means; and

- (c) An entity controlled by such parties, through ownership, management or other means.

Historical financial Information

Information expressed in financial terms in relation to a particular entity, derived primarily from that entity's accounting system, about economic events occurring in part time periods or about economic conditions or circumstances at points in time in the past.

Immediate family

A spouse (or equivalent) or dependent (whether or not related).

Independence

Independence is:

- a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism
- b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's or a member of the audit or assurance team's integrity, objectivity or professional skepticism has been compromised.

Indirect financial Interest

A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.

Key audit partner

The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the

engagement team who make key decisions or judgements on significant matters with respect to the audit of the financial statements on which the firm will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, “other audit partners” may include, for example, audit partners responsible for significant subsidiaries or divisions.

Listed entity	An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.
Network	A larger structure: <ul style="list-style-type: none">a) That is aimed at co-operation; andb) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.
Network firm	A firm or entity that belongs to a network.
Office	A distinct sub-group, whether organized on geographical or practice lines.
Professional accountant	An individual who is a member of an IFAC member or body.
Professional accountant in business	A professional accountant, irrespective of functional classification (e.g., audit, tax or consulting) in a firm that provides professional services. This term is also used to refer to a firm of professional accountants in public practice.

Professional services Services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.

Public interest
Entity

- (a) A listed entity; and
- (b) An entity (a) defined by regulation or legislation as a public interest entity or (b) for which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator

Public interest entities means entities, other than listed entities, which are of significant public interest because of their Business, their size or their number of employees or their corporate status is such that they have a wide range of stakeholders. Examples of such entities might include credit institutions (for example banks), insurance companies, investment firms and pension firms.