

Change on the way

Anne Davis provides an important update on the revisions to the IFA's articles of association, bye-laws, code of ethics and regulations.



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TEN SECOND SUMMARY

- 1 Key changes to the articles of association include the simplification of provisions relating to general meetings.
- 2 The IFA's new code of ethics is also changing will be based on the code of the International Ethics Standards Board for Accountants.
- 3 Public practice regulations will cover practising certificates, professional indemnity insurance, death, incapacity, and client money.

Throughout the year, the IFA has been busy updating its articles of association, bye-laws, code of ethics and regulations and these will apply from 1 January 2018. They can be found on the IFA website at www.ifa.org.uk/regulations. The changes will apply to members (associates and fellows), students, affiliates and member firms. For the purposes of this article, in general, I will refer to this grouping as professional accountants.

In a nutshell, the revisions were driven by legal and regulatory changes, the need to align with the IPA bye-laws as far as possible, and the desire to

raise standards and enhance public trust in the accountancy profession.

Articles of association

Our articles of association are of limited consequence to members, students, affiliates or member firms because the changes govern the interaction between the IPA and the IFA rather than the IFA and its professional accountants. However, some of the key changes include the replacement of the Council with the Members' Advisory Committee, the simplification of provisions relating to general meetings, and the standardisation of some wording.

Bye-laws

The bye-laws govern the relationship between professional accountants and the IFA. The bye-laws have not been amended significantly since 2005 and required a refresh in light of the amalgamation with the IPA, changes in legislation, and best practice in the accountancy profession. The key changes are as follows.

- **Governance.** Amendments to governance arrangements that are linked to changes in the articles. The proposed changes to the governance arrangements in the bye-laws are intended to link to the proposed changes in the articles and to clarify the delegation



of authority from the IPA to the IFA Board of Directors and its Chief Executive. This is particularly the case in relation to future changes in bye-laws and regulations.

- **Scope.** Increasing the scope of the application of the bye-laws to include members, students, affiliates and member firms.
- **Definitions.** These include additional definitions to clarify key terms that are required in the bye-laws. In particular, note the definition of “affiliates” and “member firms”. An affiliate means a person who is a director, partner, or limited liability (LLP) member in a firm regulated by the IFA, but who is not a member of the IFA. Broadly, a member firm is a sole practitioner, partnership, limited partnership or body corporate engaged in public practice where more than 50% of the rights to vote on all or substantially all matters of substance are held by IFA members.
- **Membership.** Clarification of criteria for membership, categories and designations of membership, obligations and rights. Where possible, we have tried to align the IFA categories of membership to that of the IPA, both in terms of entry criteria and designations. This strengthens the reciprocal membership arrangements between the two organisations.

- **Member firm.** Introduction and implementation of member firm which is deemed to be best practice in the accountancy profession when monitoring and supervising individuals and firms falling into the scope of the Money Laundering Regulations 2017.
- **Register of members and member firm.** The creation of a register of members and member firms which is best practice in the UK accountancy profession. This is a requirement by some regulators for recognition purposes and one that is being encouraged by HM Treasury for the purposes of anti-money laundering (AML) monitoring and supervision.
- **Students.** Clarification of the eligibility criteria, obligations and disciplinary process.
- **Continuing professional development (CPD).** CPD requirements for members and their obligations in relation to these are set out. These requirements are covered in greater detail in my article on CPD regulations (see this issue, page 28).
- **Public practice.** Clarification of conditions for engaging in public practice, eligibility to hold a practising certificate and issuing a practising certificate. For the avoidance of doubt, members in public practice who are directors,

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partners or principals of a firm, must have a practising certificate issued by the IFA.

- *Supervisory authority, compliance and monitoring.* Refining the IFA's requirements for compliance and monitoring purposes.
- *Data protection.* Updating the data protection statement to clarify our obligation to disclose information to proper authorities.
- *Notices.* These set out our methods of communication and what we consider to be due service to our members. This is important for our regulatory, supervisory, compliance, monitoring and disciplinary activities.

Code of ethics

As mentioned in the July/August edition, the IFA's code of ethics is also changing. The new code is largely based on the code of the International Ethics Standards Board for Accountants (IESBA), which is part of the International Federation of Accountants (IFAC) independent standards setting bodies.

Professional accountants have a responsibility to take into consideration the public interest and to maintain the reputation of the accountancy profession. Personal self-interest must not prevail over those duties.

The code helps professional accountants meet these obligations by providing them with ethical guidance. Failure to follow this code may lead to a professional accountant becoming liable to disciplinary action as outlined in the IFA's Disciplinary Regulations.

The revisions to the code are as follow.

New sections 225 and 360

These relate to non-compliance with laws and regulations (NOCLAR). The code includes guidance on what professional accountants should do if they encounter actual or suspected instances of NOCLAR at their client or employer. These are new sections 225 and 360 of the code respectively.

NOCLAR is defined as any "act of omission or commission, intentional or unintentional, committed by a client or by those charged with governance, by management or by other individuals working for or under the directions of a client which are contrary to the prevailing laws or regulations." Potential illegal acts could be a breach of a range of laws and regulations concerning fraud, corruption and bribery, money laundering, terrorist financing, proceeds of crime, the securities markets and trading, banking and other financial products and services. This also encompasses data protection, tax and pension liabilities and payments, environmental protection and health and safety.

The laws and regulations that are relevant to the professional accountant for the purposes of the NOCLAR guidance are those with a direct impact on material items in the financial statements or are fundamental to an organisation's operations.

The NOCLAR provisions in the code do not take precedence over local laws and regulations

regarding the reporting of actual or suspected non-compliance with laws and regulations. If there is a conflict between local legislation and the code, the professional accountant must adhere to local legislation. Therefore, professional accountants must always be aware of the disclosures that could amount to "tipping-off" under the UK Anti-Money Laundering laws and regulations.

The introduction of the NOCLAR framework in the code has resulted in consequential amendments to other sections in the code such as section 140 "confidentiality". Accountants are permitted to set aside the duty of confidentiality under the code to disclose NOCLAR to appropriate public authorities in specific circumstances.

Further guidance on implementing NOCLAR is available through the IESBA website at tinyurl.com/IESBA-non-com.

Other sections

Other sections of the code of ethics that have been revised are as follows.

- *210: Professional Appointments.* This has been revised to include additional guidance on client acceptance and continuity as well as changes in professional appointments.
- *220 and 310: Conflicts of Interest.* These sections have been revised to include more specific requirements and provide more comprehensive guidance to support members in identifying, evaluating and managing conflicts of interest.
- *240: Fees and Other Types of Remuneration.* This section has been updated to include guidance on calculating fees and advice on fee information and fee disputes.
- *290: Independent – Audit and Review Engagements and 291: Independence – Other Assurance Engagements: Amendments for non-assurance services.* The changes to these sections include new and clarified guidance on what constitutes management responsibility as well as additional guidance on the types of engagements that should be regarded as review or assurance engagements.

As well as the above, if appropriate, the IFA has added references to various UK legislation and regulations.

Disciplinary regulations

The IFA Disciplinary Regulations were last updated in 2015 for minor amendments.

- *Definitions.* These include additional definitions to clarify key terms that in turn will help with the disciplinary process.
- *Complaints.* A new section on complaints explains which type of complaints will be considered by the IFA and provides an explanation of why complaints may not be taken forward.
- *Disciplinary process.* Discretionary powers are issued to chairs of the relevant Conduct Committee to issue interlocutory orders and/or intervention orders.

- **Investigations Committee.** The sanctions that are available to the Investigations Committee are amended and allow it to issue an order for fines or costs in addition to sanctions.
- **Disciplinary Committee.** These include regulations on circumstances such as when a hearing will proceed without member attendance and when the hearing will be adjourned as well as amendments to sanctions.
- **Appeal Committee.** These include regulations on grounds for appeal and related processes as well as the introduction of circumstances when a hearing will be adjourned.
- **Publicity.** An amendment will clarify that all disciplinary cases that are proved will be publicised, except for a caution issued by the Investigations Committee. Such a caution will only be included as part of a member's disciplinary record and not publicised externally.

Public practice regulations

For the first time, the IFA has issued public practice regulations which cover the following areas.

- **Practising Certificates.** IFA members are only entitled to engage in public practice in the UK if they hold a practising certificate from the Institute. Under the regulations, public practice means members and member firms providing accountancy services to the public for reward in the UK. This is whether in the capacity of sole practitioner, in partnership or through the medium of a body corporate or otherwise. Therefore, practising certificates are required for directors and partners of firms engaged in public practice. However, they will not be required for employees working in public practice firms unless there are no other professional accountants in positions of seniority or supervision over the employee or the clients of the public practice firm are led to believe that the employee is the partner or director of the firm. For the avoidance of doubt, this means that a member must have a practising certificate with the IFA and not another professional body to engage in public practice as a member of the IFA. The rationale for this is that different professional bodies have different eligibility requirements for practising certificates and the scope of the services covered by such certificates differ between professional bodies.
- **Professional indemnity insurance.** Subject to certain exemptions detailed in the regulations, professional indemnity insurance (PII) requirements apply to all members and firms engaged in public practice. Directors, partners or LLP members in a firm engaged in such work are responsible for their own work and that of their employees and subcontractors. These responsible individuals must protect their clients, their business and themselves by having adequate PII cover. The regulations prescribe the terms of the cover for the PII insurance, the IFA's approach to monitoring and supervision in this area and the requirements for insurance arrangements on the cessation of a practice.

- **Death or permanent incapacity.** The regulations require all members in public practice to make adequate arrangements to ensure the continuity of the management of the practice at all times in the event of sickness, ill-health and death. Members have a duty of care to their clients and without these arrangements serious difficulties may arise, prejudicing the interests of clients. The regulations make it mandatory for sole practitioners to have a nominated person or firm (an "alternate") to discharge the obligations of the practice in the event of ill-health or death. Failure to appoint such a nominated person or firm may result in the Institute not issuing a practising certificate to the member and may also lead to disciplinary action. Members in a partnership or corporate firm may nominate other directors, principals or partners in that practice to act as their alternate as long as these persons are competent and have the capacity to undertake the additional work to continue the practice. When arranging for the continuity of practice, members must consider the competency and capacity of the individual or firm and whether arrangements require specific legal measures such as powers of attorneys, wills or other legally binding arrangements. These arrangements should be periodically reviewed by relevant parties.
- **Client money.** This applies to money of any currency that a firm holds or receives for or from a client and which is not immediately due and payable on demand to the firm for its own account. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded. The regulations require client money to be kept separate from funds belonging to the firm. For this reason, client money must be kept in a separate bank or building society account which is in the name of the firm, but includes the word "client" in its title. The client account can be a general client account or an account designated to a particular client. Professional accountants are reminded in the regulations about their duties under the Money Laundering Regulations 2017. These aim to ensure that the client bank account is used for lawful and legitimate purposes. The regulations also include requirements regarding the withdrawal of money held in client bank accounts, record-keeping and monthly reconciliations between clients' bank accounts and clients' ledgers.

Conclusion

There is much change coming for IFA members and it is imperative that they take the time to read and familiarise themselves with the revisions. Further, if necessary, they should act on any requirements detailed in the regulations above.

The IFA will be looking at the above areas as part of its monitoring and supervisory duties. Failure to adhere to the Institute's requirements may lead to disciplinary action. Ignorance is not bliss when it comes to the disciplinary process.

FURTHER INFORMATION

Member benefits

Tax portal:
ifa.org.uk/taxportal
PI insurance:
ifa.org.uk/ajgallagher
Tax fee protection insurance:
ifa.org.uk/qdos
Online CPD support:
ifa.org.uk/nelsoncroom
Secure email platform:
ifa.org.uk/frama
Branch meetings:
ifa.org.uk/events

Many of our partners offer technical helplines at preferential rates for members. Visit: www.ifa.org.uk/memberbenefits.

IFA articles of association, bye-laws, code of ethics and regulations:
www.ifa.org.uk/regulations
Further guidance on implementing NOCLAR:
www.ethicsboard.org/responding-non-compliance-laws-and-regulations