



AUDIT &
ASSURANCE
FACULTY

TECHNICAL RELEASE

ACCESS TO INFORMATION BY SUCCESSOR AUDITORS

Technical Release AAF 01/08

THE
INSTITUTE OF
CHARTERED
ACCOUNTANTS
OF SCOTLAND



THE INSTITUTE OF
Chartered Accountants
IN IRELAND

ACCESS TO INFORMATION BY SUCCESSOR AUDITORS

Technical Release AAF 01/08

Technical Release AAF 01/08 is issued by the Audit and Assurance Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) in August 2008. It gives guidance for both predecessor and successor auditors on the provision of access to information.

AAF 01/08 does not constitute an auditing or assurance standard. Professional judgement should be used in its application and where appropriate, legal assistance should be sought.

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About Technical AAF 01/08

AAF 01/08 provides practical guidance to practitioners on the mandatory regime that has been put into place by the Companies Act 2006 and Audit Regulation 3.09 in relation to predecessor auditors providing access to information to successor auditors.

1 BACKGROUND

- 1 For accounting periods starting on or after 6 April 2008, following a change in the law, when there is a change in an audit appointment, the registered auditor ceasing to hold office (“the predecessor”) will be required to provide access to relevant information where the newly appointed registered auditor (“the successor”) makes a written request for such access. This guidance is intended to provide a helpful and effective framework to assist auditors in managing the process in relation to such access.

Statutory Audit Directive

- 2 This requirement arose out of the European Union’s (EU) Statutory Audit Directive (2006/43/EC). Article 23 (3) states that: *“where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide the incoming statutory auditor or audit firm with access to all relevant information concerning the audited entity.”*

Companies Act

- 3 To bring the EU requirement into UK law, schedule 10 of the Companies Act 2006 (the ‘2006 Act’) was amended to require that this requirement is provided for under the rules of the Recognised Supervisory Bodies. This clause¹ states *“the Body must have adequate rules and practices designed to ensure that... a person ceasing to hold office as a statutory auditor makes available to his successor in that office all relevant information which he holds in relation to that office.”* Therefore, as with many other aspects of the 2006 Act’s (and the underlying Statutory Audit Directive’s) requirements in respect of registered auditors, the obligation on registered auditors is to comply with the Audit Regulations which implement the law.

Audit Regulation

- 4 Audit Regulation 3.09² provides as follows:

*When a **Registered Auditor** (the ‘predecessor’) ceases to hold an audit appointment and another **Registered Auditor** (the ‘successor’) is appointed the predecessor must, if requested in **writing** by the successor, allow the successor access to all relevant information held by the predecessor in respect of its **audit work**. If relevant information is to be sought by the successor, it should be sought and provided in accordance with the following guidance. Any information obtained by the successor is for the purposes of its **audit** and must not be disclosed to a third party unless the successor is required to do so by a legal or professional obligation.*

The guidance referred to in the Audit Regulation is set out in Section 2³. Terms shown in bold above are defined terms in the Audit Regulations.

- 5 The guidance to the Audit Regulation states that *“the purpose of this regulation is to assist in maintaining the effectiveness (including cost effectiveness) and the efficiency of the audit process in the context of a change of auditor....”* and *“is intended to reduce the (actual or perceived) risk of changing auditors.”*

¹ Sub-Paragraph 3 of Paragraph 9 of Schedule 10 to the Companies Act 2006 (extract at Appendix A).

² Joint Audit Regulations are issued by the three Institutes: the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland.

³ The Institutes have taken leading counsel’s advice in the drafting of Audit Regulation 3.09 and the associated Guidance. Leading counsel has confirmed that in his opinion they have complied with the obligation to make adequate rules and practices designed as provided by Schedule 10 of the Companies Act 2006.

Audit Choice Market Participants Group

- 6 The Financial Reporting Council's Audit Choice Market Participants Group ('MPG') published a final report in October 2007 which addressed (amongst other things) the subject of establishing mechanisms to improve access by incoming auditors to information relevant to the audit held by the outgoing auditor. The MPG's report informed the drafting of the guidance to the Audit Regulation.

Mandatory framework

- 7 The combination of the Directive, legislation and Audit Regulation creates a mandatory framework for the provision of access to relevant information in respect of the predecessor's audit work. Responsibility for the implementation of the Directive rests with BERR which has chosen to discharge this responsibility through the 2006 Act (paragraph 3 above). The faculty provides practical guidance on the application of the Audit Regulation as it is this that auditors must comply with.
- 8 As the Audit Regulation provides, *"If relevant information is to be sought by the successor, it should be sought and provided in accordance with the....guidance"*.

2 GUIDANCE TO THE AUDIT REGULATION

- 9 The following text is the guidance that sits underneath Audit Regulation 3.09 (“the Guidance”).

Origin and purpose

This audit regulation (“the Regulation”) gives effect to the obligation in the 2006 Act that RSBs must have adequate rules and practices designed to ensure that a person ceasing to hold office as a statutory auditor makes available to his successor in that office all relevant information which he holds in relation to that office. The requirement derives from Article 23(3) of the EU Statutory Audit Directive. The Department for Business, Enterprise and Regulatory Reform has stated that the Regulation should provide “the most appropriate minimum requirement in relation to access to relevant information”.

The purpose of the Regulation is to assist in maintaining the effectiveness (including cost effectiveness) and the efficiency of the audit process in the context of a change of auditor. The Regulation is intended to reduce the (actual or perceived) risk of changing auditors.

It takes time for a successor to develop a comprehensive understanding of the business of an audit client. A wide variety of different arrangements have existed to facilitate an effective handover between successor and predecessor, including exchanges of letters, discussion, exchange of audit committee papers and minutes, and shadowing of the predecessor at key meetings such as the final audit committee meeting. Before the Regulation it was however unusual for a predecessor to share audit working papers. This was due mainly to liability concerns.

Liability concerns formerly arose in the context of access to audit working papers being allowed voluntarily, but any access will now be compulsory. Further it is no part of the purpose or object of the Regulation to involve one auditor in liability for another’s audit. Also the Department for Business, Enterprise and Regulatory Reform has confirmed its view that Article 23(3) and the 2006 Act provision implementing it do not alter the existing liability of each auditor in relation to its respective audit.

Provision is already made separately by statute for the making of representations, for the attendance and hearing at meetings, and for the making of a statement of circumstances, where the predecessor has been removed as auditor, where there has been a failure to re-appoint the predecessor as auditor, where the predecessor has resigned as auditor, and where the predecessor has ceased to hold office. The Regulation and guidance do not seek to duplicate that framework, and are framed in recognition of the fact that that framework already exists.

This guidance is separate from and additional to the Institute’s Code of Ethics which sets out procedures to be followed before accepting a professional appointment.

Timing

A request for relevant information may be made by a successor once the successor has been formally appointed to the audit client. In all cases the provision of information should be on a timely basis.

“Audit”

It should be borne in mind that the 2006 Act sets out a number of functions that are required of the registered auditor in specific circumstances. These are within the definition of an audit (and so fall within the definitions of audit report and audit work). The situations in which they arise currently include the following:

- section 92 a company applying to re-register as a public company;
- section 428 statement on summary financial statements issued by a quoted company;
- section 449 abbreviated accounts;
- section 714 when a private company makes a payment out of capital for the redemption or purchase of its own shares;
- section 837 when a distribution is to be made by a company and the audit report was qualified; or
- section 838 when initial accounts are prepared for a proposed distribution by a public company.

(Where the registered auditor is appointed to an entity that is not a company similar reporting requirements may apply.)

Procedure

Before making a request for relevant information the successor should as part of its planning consider the need to make a request to the predecessor under the Regulation, and the extent of that request. This will involve judgement by the successor in each case, so as to ensure that necessary request is made and an unnecessary request is not. It is also important to assess what information will be relevant in each case and what will not.

It does not follow that a successor is required or expected to request information in every case, or to request extensive information in a case in which only limited information is necessary. The successor's consideration will include consideration of what work it would do with any information provided to it pursuant to a request. There are specific references to reviewing the predecessor's audit work in ISA 510 (opening balances), ISA 710 (comparatives) and ISA 300 (planning). Accordingly, information is likely to be necessary in particular for such purposes.

The provision of information under this regulation will be achieved more efficiently where the successor auditor is as specific as possible as to the nature of the information being sought. The successor should therefore, wherever possible, avoid a request framed simply as a request for "all relevant information held by the predecessor and concerning the audited entity" or "all relevant information held by the predecessor in relation to the office of auditor". Thus the successor should strive to identify the information required, or the type of information required, as precisely as possible.

For example, where relevant information is requested by the successor, the information will normally be that contained in the working papers produced by the predecessor, and the appropriate request may therefore be for some or all of those working papers. In some audits there will be Institute or APB guidance indicating the working papers expected for such an audit. For example in the case of a financial statement audit, ISAs will indicate the audit working papers to be prepared. In other cases, where there is no guidance, the predecessor will have determined the working papers to be prepared.

Where the information related to audit work is requested by the successor but is not filed on the current audit file but, for example, on a 'permanent' or 'systems' file, or there is a reference to a prior audit file, access should be provided by the predecessor to this information.

The predecessor should be prepared to assist the successor by providing oral or written explanations on a timely basis to assist the latter's understanding of the audit working papers.

Period

Normally the period for which relevant information is requested would be in respect of any audit report relating to a period falling between the beginning of the last financial statements on which the predecessor reported and the date of cessation of the predecessor's audit appointment. The request would include any subsequent review conducted by the predecessor in accordance with guidance published by the APB in relation to published interim reports.

A successor may consider that it needs to have information in addition to that within the period mentioned above. In the normal case, in the interests of cost and efficiency, the successor should first review the information already provided. If after that review a judgment is made that additional information is needed, the additional information sought should be described in writing, as precisely as possible. The successor should be prepared to provide reasons which demonstrate that the additional information is "relevant" information and therefore within the Regulation. Here as elsewhere the successor should be prepared to confirm that the information is needed to aid its audit work for the audit client and not for some other purpose.

Other points

The request for information may be made of the immediate predecessor only.

Because (as indicated above) it is no part of the purpose or object of the Regulation to involve one auditor in liability for another's audit, it would be usual for the basis on which the information is to be provided to be documented in writing by an exchange of letters between the two registered auditors, copied to the audited entity. Guidance on suitable letters is available on each Institute's website as part of a technical release.

There is no obligation to allow the copying of working papers but it would be usual to allow copying of extracts of the books and records of the audit client that are contained in the audit working papers. Generally speaking, where access to relevant information is necessary, the practical arrangements to allow that access to be provided in a cost effective and efficient way should be discussed and agreed between the successor and the predecessor.

A request for information under the Regulation should not be made other than in connection with the successor's audit. The successor should refuse to accept an additional engagement, such as to act as an expert witness or to review the quality of the predecessor's audit work, where the engagement would involve the use of the information obtained by it under the Regulation. In any event, the successor should not comment on the quality of the predecessor's audit work unless required to do so by a legal or professional obligation.

The reference in the Regulation to the information not being disclosed to a third party includes to the audit client. This does not prevent the successor discussing the information with the client where to do so is a necessary part of its audit work. Nor does it prevent the provision of this information to any third party if that is required of the successor by a legal or professional obligation.

Section 1210 of the 2006 Act sets out a list of appointments to which this Regulation and guidance apply. Section 1210(h) allows additional types of appointments to be added to the list. Registered auditors are not required to allow access to their working papers in respect of other appointments.

This regulation only applies in respect appointments for the audits of financial years starting on or after 6 April 2008.

3 APPLICATION

10 The new requirement applies to all statutory audits. Statutory audits are defined by section 1210 of the 2006 Act, (reproduced in Appendix A).

11 Statutory audits include audits of the following types of entity:

- Companies;
- Building societies;
- Various categories of insurer and insurance undertaking; and
- Banks.

Section 1210(h) allows other audits to be added to the new requirement. At the time of publication of this technical release, additional audits included:

- Qualifying partnerships (each partner being a company or a Scottish partnership in which each partner is a limited company); and
- Limited Liability Partnerships (from October 2008).

Where an 'audit exempt' company has an audit, for example because shareholders have required one, this is a statutory audit and the new requirement applies.

12 The new requirement (and hence this technical release) only applies to the statutory audits listed in section 1210. Thus, for example, the requirement does not apply to:

- Unincorporated charities;
- Pension schemes; and
- General partnerships which are not qualifying partnerships (see paragraph 11).

13 In circumstances where, although the requirement and this technical release do not apply, predecessors are prepared to consider granting access, it is important that they bear in mind that the range of matters requiring consideration may extend beyond those addressed in this technical release.

Auditors of UK entities

14 The requirement only applies between auditors of UK entities which are subject to the 2006 Act.

Auditors where there is a group of companies

15 If the predecessor was the principal auditor⁴ of a group of companies and a successor is appointed principal auditor, then the requirement applies only to relevant information in respect of the audit of the parent's single entity and consolidated accounts. Accordingly, the successor auditor will have access to that relevant information whether held by the predecessor on a consolidation audit file or elsewhere in accordance with the ISAs. A successor will not have access to information if it is held by a predecessor who, although the principal auditor, holds that information only in his capacity as statutory auditor of the UK subsidiary, unless the successor is also appointed as the statutory auditor of that subsidiary.

16 Access to relevant information held only in the capacity as statutory auditor of UK subsidiaries will be covered to the extent that the audit appointments change at the individual subsidiary level.

⁴ Principal auditor is defined in ISA (UK and Ireland) 600.

Irish Entities

- 17** Irish audit firms can audit UK entities and (subject to certain restrictions) vice versa. Implementation of the Statutory Audit Directive in the Republic of Ireland will be at a later date than in the UK. Therefore, at the time of publication, there is no legal obligation on the predecessor to allow the successor access to relevant information in respect of an Irish entity audit. This position will change when the Irish law is amended to implement the Directive and it is understood that auditors of Irish entities will be informed of the requirements when this becomes clearer.
- 18** Audit Regulation 3.09 and this technical release therefore have no application in respect of Irish entity audits. In circumstances where, although the requirement and this technical release do not apply, auditors of Irish entities are nonetheless prepared to consider granting access, it is important that they bear in mind that the range of matters requiring consideration may extend beyond those addressed in this technical release.

4 RELEVANT AUDITING STANDARDS

- 19** The Guidance under the Audit Regulation states: *“where relevant information is requested by the successor, the information will normally be that contained in the working papers produced by the predecessor, and the appropriate request may therefore be for some or all of those working papers. In some audits there will be Institute or APB guidance indicating the working papers expected for such an audit. For example in the case of a financial statement audit, ISAs will indicate the audit working papers to be prepared. In other cases, where there is no guidance, the predecessor will have determined the working papers to be prepared.... There are specific references to reviewing the predecessor’s audit work is made in ISA 510 (opening balances), ISA 710 (comparatives) and ISA 300 (planning). Accordingly, information is likely to be necessary in particular, for such purposes.”*
- 20** The three standards⁵ referred to in this technical release make reference to initial engagements and underpin the work that the successor needs to carry out to develop the overall audit strategy and audit plan and to obtain sufficient appropriate evidence about the opening balances and consistency of accounting policies.

ISA (UK and Ireland) 300, Planning an audit of financial statements

- 21** Paragraphs 28 and 29 of this ISA are relevant when carrying out an audit of a client for the first time.
- 22** Paragraph 28 states: *“The auditor should perform the following activities prior to starting an initial audit....*
- ...(b)communicate with the previous auditor, where there has been a change of auditors...”.*
- 23** Paragraph 29 states: *“The purpose and objective of planning are the same whether the audit is an initial or recurring engagement. However, for an initial audit, the auditor may need to expand the planning activities because the auditor does not ordinarily have the previous experience with the entity that is considered when planning recurring engagements. For initial audits, additional matters the auditor may consider in developing the overall audit strategy and audit plan include the following:*
- *“Unless, prohibited by law or regulation, arrangements to be made with the previous auditor, for example, to review the previous auditor’s working papers;... and*
 - *The planned audit procedures to obtain sufficient appropriate audit evidence regarding opening balances(see paragraph 2 of ISA (UK and Ireland)510, “Initial Engagements – Opening Balances”)”.*

ISA (UK and Ireland) 510, Initial engagements – opening balances

- 24** This ISA would be relevant when an auditor is carrying out an audit of a client for the first time. As part of the work under this ISA, auditors need to obtain sufficient appropriate audit evidence that:
- “(a) the opening balances do not contain misstatements that materially affect the current period’s financial statements;*

⁵ These are correct at the time of going to press but the outcome and future implementation of the International Auditing and Assurance Standards Board’s (IAASB’s) clarity project may have an impact on these standards.

- (b) *the prior period's closing balances have been correctly brought forward to the current period or, when appropriate, have been restated; and*
- (c) *appropriate accounting policies are consistently applied or changes in accounting policies have been properly accounted for and adequately presented and disclosed."*

25 One of the audit procedures that is available to the successor to meet this objective is the review of the predecessor's working papers.

ISA (UK and Ireland) 710, Comparatives

26 Under this ISA, auditors need to obtain sufficient appropriate audit evidence that:

- "(a) the accounting policies used for the corresponding amounts are consistent with those of the current period and appropriate adjustments and disclosures have been made where this is not the case;*
- (b) the corresponding amounts agree with the amounts and other disclosures presented in the preceding period and are free from errors in the context of the financial statements of the current period; and*
- (c) where corresponding amounts have been adjusted as required by relevant legislation and accounting standards, appropriate disclosures have been made."*

5 ACCESS AND RISK

- 27** As the Audit Regulation states, a request for relevant information should be made in writing.
- 28** An example of a proforma request from the successor is attached at Appendix B. An example of a proforma letter from the predecessor (which should be copied to the client) setting out the basis on which the information is to be provided is attached at Appendix C. These proformas do not contemplate countersignature; where a predecessor and a successor proceed in accordance with the basis described in them, their effectiveness is not dependent on countersignature.
- 29** The Guidance further states: *“It is no part of the purpose or object of the Regulation to involve one auditor in liability for another’s audit”.*
- 30** The requesting and granting of access to relevant information can carry risk. In managing the associated risks a risk management strategy would include:
- (in the case of the predecessor) limiting the circumstances in which a duty of care to the successor or the client may be said to arise;
 - (in the case of the successor) limiting the circumstances in which a duty of care other than any accepted in its audit report⁶ may be said to arise;
 - (in the case of the predecessor and the successor) excluding any duty that might otherwise be said to arise;
 - (in the case of the predecessor and the successor) limiting the circumstances in which a duty of care (if any) may be said to be breached.
- 31** The risk management procedures adopted will generally include:
- the exchange of letters referred to above;
 - compliance with available guidance on audit reporting;
 - the approach to information or explanations referred to below; and
 - focusing on information that is relevant.

Mindful of the cost and resource involved in a successor looking at information provided (as well as in a predecessor providing that information), whilst a successor will look to make a necessary request for information it will also guard against making an unnecessary request for information. Of course in some cases a request will be unnecessary because the information requested is irrelevant rather than relevant information: in such a case the predecessor may challenge the successor’s entitlement to make the request.

Information or explanations additional to the working papers

- 32** The Guidance states: *“The predecessor should be prepared to assist the successor by providing oral or written explanations on a timely basis to assist the latter’s understanding of the audit working papers.”*
- 33** The predecessor can provide explanations orally or in writing and can request that any questions be put in writing by the successor, whilst recognising the need for as smooth a process as possible. Questions should be directed to clarification or explanation about the audit working papers that have been accessed.

⁶ Refer also to the guidance contained within Technical Release Audit 01/03, *The Audit Report and Auditors’ Duty of Care to Third Parties*.

- 34** In providing explanations in relation to the audit working papers in response to a request by the successor, the predecessor should keep in mind:
- that its obligation does not extend beyond relevant information;
 - that explanations should be given a factual or evidential reference point; and
 - the desirability of an internal written note or record of the request made and explanation given.
- 35** The predecessor may re-emphasise at the beginning of any such discussion with the successor that any statements made by the predecessor are made in accordance with the terms of the letter (Appendix C).

6 RELEVANT INFORMATION

36 The Guidance reproduced in Section 2 sets out the procedures, period and other points relevant to what constitutes ‘relevant information’. The Guidance provides:

“The successor should therefore, wherever possible, avoid a request framed simply as a request for “all relevant information held by the predecessor and concerning the audited entity” or “all relevant information held by the predecessor in relation to the office of auditor thus the successor should strive to identify the information required, or the type of information required, as precisely as possible.

For example, where relevant information is requested by the successor, the information will normally be that contained in the working papers produced by the predecessor, and the appropriate request may therefore be for some or all of those working papers. In some audits there will be Institute or APB guidance indicating the working papers expected for such an audit. For example in the case of a financial statement audit, the ISAs (UK and Ireland) will indicate the audit working papers to be prepared. In other cases, where there is no guidance, the predecessor will have determined the working papers to be prepared....

...Period

Normally the period for which relevant information is requested would be in respect of any audit report relating to a period falling between the beginning of the last financial statements on which the predecessor reported and the date of cessation of the predecessor’s audit appointment. The request would include any subsequent review conducted by the predecessor in accordance with guidance published by the APB in relation to published interim reports.”

37 Audit Regulation 3.09 and its associated Guidance have been drafted to comply with the statutory obligation to have adequate rules and practices designed to ensure that all relevant information is made available by a predecessor to his successor⁷.

38 Auditors are required to comply with the Audit Regulation under which the predecessor allows access to all relevant information held by him in respect of his “audit work”. This technical release is intended to provide practical guidance on the application of the Audit Regulation. This section provides guidance as to what might constitute relevant information. The Guidance provided with the Audit Regulation indicates that ‘relevant information’ will normally be that contained in the audit working papers of the predecessor. It is not possible for the faculty to list or prescribe what will constitute relevant information in each case. Ultimately, it is a question for auditors to use their professional judgement as to what to request.

39 ISA (UK and Ireland) 230, *Documentation* states that “The auditor should document matters which are important to providing audit evidence to support the auditor’s opinion and evidence that the audit was carried out in accordance with ISAs (UK and Ireland). “Documentation” means the material (working papers) prepared by and for, or obtained and retained by the auditor in connection with the performance of the audit. Working papers include papers prepared to:

- (a) assist in the planning and performance of the audit;
- (b) assist in the supervision and review of the audit work; and
- (c) record the audit evidence resulting from the audit work performed to support the auditors opinion.”⁸

⁷ See footnote 3.

⁸ This is correct at the time of going to press but the outcome and future implementation of the IAASB’s clarity project may have an impact on this standard.

- 40 The information in the audit working papers can be in any form, including as data, text, image or sound and may be stored in any type of information system as hard copy documents or as electronic communication in any data storage device. Where access may involve access to integrated proprietary software, the predecessor may need to consider how it provides appropriate means of access to relevant audit documentation. The provision of access to any intellectual property of the predecessor or any material in which the predecessor has copyright does not amount to permission to the successor to use or exploit that intellectual property or copyright in any way.
- 41 Files may contain papers relating to the client that are not held by the predecessor in respect of its audit work. In a particular case, for example, tax papers held by the predecessor in respect of tax rather than audit work may be on the same file as the audit working papers. The obligation to provide access in this situation will not extend to those tax papers.
- 42 The successor may separately request access to the tax papers where they belong to the client. It may, however, be appropriate to facilitate access to such papers directly via the client. If the successor wishes to have access to tax papers held by the predecessor, then the predecessor should consider adapting the guidance contained within Audit 04/03, *Access to Working Papers by Investigating Accountants*. Similar considerations apply to accounts preparation papers held by the predecessor.
- 43 Typically information that will not constitute relevant information and that will not (save possibly in exceptional cases, where relevance will have to be demonstrated by the successor) be disclosable, will be:
- the internal budgeting documents concerning costing and billing for the audit assignment;
 - information relating to staffing for the engagement and any incidental personnel records or information about the engagement team; and
 - certain information that is subject to legal professional privilege (see further below).

Special considerations apply to any documents that form part of a disclosure to the Serious Organised Crime Agency (“SOCA”). This is referred to in paragraphs 67 to 69 below.

- 44 “Relevant information” includes information that comes to the knowledge of, or into the possession of the predecessor between the completion of the latest audit or interim review and the date on which their appointment as auditor ceases. Although a successor may enquire about this information, it recognises that the predecessor may not have been made aware of all matters that might be relevant to the successor’s first audit.

Legal professional privilege

- 45 “Relevant information” may be subject to legal professional privilege. Whether or not legally privileged information is disclosed to the successor will depend on the circumstances in which legal privilege arises in respect of that information.
- 46 Information may have legally privileged status because the client has asserted, when providing the information originally to the predecessor, that such “client information” was legally privileged and that the privilege was not being waived on disclosure to the predecessor. An example might include legal advice concerning the merits of litigation against the client by a third party. In any such case, or where the predecessor is uncertain about the legally privileged status of client information, the predecessor

will make enquiries of the client to ascertain whether it objects to disclosure of that information to the successor, or whether the client wishes to impose any terms regulating disclosure to the successor.

- 47 If the client does not authorise the disclosure to the successor of client information held by the predecessor on the basis that it is legally privileged, the predecessor considers informing the successor that certain information is being withheld (without disclosing any details regarding that information) because the client asserts legal privilege. The matter should then be addressed between the client and the successor. If the client does not object to client privileged information being disclosed to the successor, the predecessor should disclose it.
- 48 Information may also be relevant but subject to legal professional privilege because legal privilege is asserted by the predecessor. This may arise where information has been generated by the predecessor who has, for example, sought legal advice on matters relating to the client and the audit. Whether or not such information needs to be disclosed to the successor will be dependent on the legal position applicable to the particular circumstances and the predecessor should consider obtaining legal advice on their disclosure obligations.

7 PRACTICALITIES OF ACCESS

49 The written request for access to relevant information needs to be sent to the immediate predecessor registered auditor. The request will be made to the firm as the registered auditor marked for the attention of the audit partner designated as the Senior Statutory Auditor for that audit. Both the requests for access and the granting of access need to be timely with a view to minimising the costs/burden on the predecessor, the successor or the client. There needs to be a clear understanding about which papers will be provided, by what method and when.

Format

50 In the case of access to audit working papers, it will be for the predecessor to determine the format in which they are willing to provide access. This may either be in hard copy or in electronic form. However, it will wish to do so in a manner that does not put at risk the confidentiality of its firm's audit methodologies or of the confidential information of other clients.

51 It is reasonable for the successor to make notes of its review in support of its own documentation requirements under ISA (UK & Ireland) 230.

52 The predecessor is under no obligation to allow copying of its audit working papers, but it would be reasonable to allow, as a minimum, the copying of extracts of the books and records of the client. It would also be reasonable and indeed helpful to allow copying of papers such as: breakdown of analyses of financial statement figures and documentation of the client's systems and processes.

53 Whilst there is no obligation to allow copying of papers that show judgements or the nature, scope and results of tests conducted to form an audit opinion and to which access has been provided, it would be for the predecessor and the successor to discuss and arrive at an agreement between them of what it is reasonable to copy.

54 Ultimately, the predecessor will maintain control of which audit working papers can be and are copied. It would be sensible to check through any documents that the successor asks to copy and keep a record of all the copied items.

Timing and period of access

55 Access can only be requested after the appointment of the successor to the entity has been completed. In the normal course, requests for access will be made soon after the appointment of the successor at the planning stage of its first audit. Correspondingly, the predecessor should grant access within a reasonable amount of time of receipt of the request. The timing of access should have regard to the following:

- the point at which the audit file will be complete (ISA (UK and Ireland) 230 allows the predecessor up to 60 days after the date of the audit report to complete the assembly of its final audit file); and
- the successor's reporting timetable.

56 Requests for access need to be reasonable without causing either the predecessor or the successor undue resourcing or timing difficulties.

57 There will need to be cooperation between the predecessor and the successor regarding the period of time during which the successor can have access to the audit working papers. The period needs to be reasonable.

Location

- 58** The location where access is to be provided will be for the predecessor to determine. Access will normally be at the predecessor's premises in the UK.
- 59** Whatever location is chosen, firms will need to be mindful of the confidentiality of other clients' information.

Cost

- 60** The legislation is silent on the question of the predecessor charging, either the client or the successor, for providing access. A significant level of charging could be seen as a barrier to competition and choice and could potentially introduce an unnecessary burden on the process of changing auditors, which is not the intention of the legislation. On the other hand, some recovery of actual costs may be considered reasonable.
- 61** Actual costs may be incurred in retrieving the information, gathering it together, extracting what is not relevant, and then making it available to the successor. Payment for these actual costs can be justified on the basis that without payment, disclosure could impose an unnecessary and unreasonable burden on the predecessor, who would otherwise incur a financial loss through its compliance with its statutory obligations. Thus, it may be reasonable to charge for the cost of:
- copying documents;
 - paying someone to make the copies;
 - retrieving documents from archive sources; and
 - paying someone to attend to such retrieval and to provide documents for inspection by the successor.
- 62** It is, however, unlikely to be reasonable to include in any charge any element for profit, or to charge on any footing that a service was being provided. If a charge is made that goes beyond "actual costs" of the type described above, there is a risk that payment for such wider costs may affect the reasonableness of the denial of any responsibility in connection with the provision of information and its use. Any payment for such wider costs could therefore increase the prospect of the predecessor being taken to have assumed a duty of care to the paying party in relation to the provision of that information and its use.
- 63** In practice, it is unlikely that the successor will be willing to bear responsibility for any payment, whether or not limited to the actual costs incurred by the predecessor. Accordingly, the predecessor is likely to be able to look only to the client for any payment. The client may recognise that, to avoid the transfer process becoming an unnecessary and unreasonable burden on the predecessor, a payment limited to actual costs incurred with no element for profit or services might be made. It may be considered appropriate as a matter of policy to provide for the recovery of costs of providing access to an eventual successor in the audit engagement letter, thereby making it a contractual obligation with the client. Even though some recovery of actual costs may be considered reasonable, the predecessor cannot use a failure to be reimbursed for costs as a reason for failing to meet the obligation to allow access.

8 CONFIDENTIALITY ISSUES

Duty of confidentiality

- 64 The predecessor providing the successor with access to relevant information is complying with a mandatory requirement and therefore access will not breach professional confidentiality. Nonetheless before providing access to relevant information a letter from the predecessor to the successor (in the form set out in Appendix C) will be copied to the client as a matter of courtesy.
- 65 The Audit Regulation and Guidance provides expressly:
- *“Any information obtained by the successor is for the purposes of its **audit** and must not be disclosed to a third party unless the successor is required to do so by a legal or professional obligation.”*
 - *“A request for information under the Regulation should not be made other than in connection with the successor’s audit. The successor should refuse to accept an additional engagement, such as to act as an expert witness or to review the quality of the predecessor’s audit work, where the engagement would involve the use of the information obtained by it under the Regulation. In any event, the successor should not comment on the quality of the predecessor’s audit work unless required to do so by a legal or professional obligation.”*
 - *“The reference in the Regulation to the information not being disclosed to a third party includes to the audit client. This does not prevent the successor discussing the information with the client where to do so is a necessary part of its audit work. Nor does it prevent the provision of this information to any third party if that is required of the successor by a legal or professional obligation.”*

Data protection

- 66 Data protection laws apply to the personal data of individuals. Relevant information may contain personal data (for example about employees or about sole traders with whom the client does business). However, the predecessor is obliged to provide access to relevant information by legislation. Therefore, where personal data is disclosed as a result of providing access to the relevant information, as long as the information being provided is necessary to discharge that legal obligation there are no data protection risks for the predecessor in complying with the Audit Regulation.

Money laundering

- 67 All auditors are subject to the Money Laundering Regulations 2007 and relevant underlying legislation (including the Proceeds of Crime Act 2002 and Terrorism Act 2000). The reporting requirements of the money laundering legislation are beyond the scope of this guidance. Full information is available from the Anti-Money Laundering Guidance for the Accountancy Sector, issued by the CCAB (available from www.icaew.com/moneylaundering). Reference should also be made to APB Practice Note 12, in particular paragraphs 56 to 60 (attached at Appendix D) which deals with the predecessor’s communication with the successor.

Tipping off

- 68 There are various tipping off offences which can be committed if there is disclosure of knowledge or suspicion that a report has been made to an MLRO, SOCA or, in some cases, anyone authorised to receive a disclosure. Details of the offences and the elements which give rise to them are beyond the scope of this guidance.
- 69 Full information is available from the Anti-Money Laundering Guidance for the Accountancy Sector, issued by the CCAB (available from www.icaew.com/moneylaundering). Subject to the full terms of that guidance:
- Any money laundering report and papers recording the predecessor's related consideration of apparently suspicious activities should not be provided by the predecessor to any person (including the successor) unless the predecessor has clear advice that to do so would be lawful. Accordingly it is recommended that such advice is sought from the MLRO or externally.
 - So far as concerns the successor, if any relevant information provided to the successor causes the successor to conclude that there are circumstances that require a report to the money laundering authorities, the successor should make that report whether or not it believes that a report might already have been made by the predecessor.

APPENDIX A: EXTRACTS FROM LEGISLATION

Statutory Audit Directive

Article 23 (3)

Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide the incoming statutory auditor or audit firm with access to all relevant information concerning the audited entity.

Paragraph 9 of Schedule 10 to the Companies Act 2006

Sub-paragraph (3)

The body must also have adequate rules and practices designed to ensure that—

.....

(c) a person ceasing to hold office as statutory auditor makes available to his successor in that office all relevant information which he holds in relation to that office.”

Section 1210 of the Companies Act 2006 (as amended by SI 2008/565)

Meaning of “statutory auditor” etc

(1) In this Part “statutory auditor” means—

- (a) a person appointed as auditor under Part 16 of this Act,
- (b) a person appointed as auditor under section 77 of or Schedule 11 to the Building Societies Act 1986 (c. 53),
- (c) a person appointed as auditor of an insurer that is a friendly society under section 72 of or Schedule 14 to the Friendly Societies Act 1992 (c. 40),
- [(d) *a person appointed as auditor of an insurer that is an industrial and provident society under section 4 of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) or under section 38 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.))*]⁹,
- (e) a person appointed as auditor for the purposes of regulation 3 of the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219) or appointed to report on the “aggregate accounts” within the meaning of those Regulations,
- (f) a person appointed as auditor of an insurance undertaking for the purposes of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008,
- (g) a person appointed as auditor of a bank for the purposes of regulation 4 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (S.I. 1991/2704), and
- (h) a person appointed as auditor of a prescribed person under a prescribed enactment authorising or requiring the appointment;

and the expressions “statutory audit” and “statutory audit work” are to be construed accordingly.

⁹ Subsection (1)(d) was omitted by SI 2008 No 565.

APPENDIX B: SPECIMEN LETTER FROM THE SUCCESSOR REQUESTING ACCESS

[Predecessor firm]

[Address]

For the attention of: [Name of Senior Statutory Auditor]

Dear Sirs,

Provision of Information pursuant to audit regulation 3.09 relating to the audit of [audit client]

This firm was duly appointed statutory auditor (as defined by section 1210 of the Companies Act 2006 (“the Act”)) on [date] to [company] (“the Company”) [and its UK subsidiaries as listed in the schedule to this letter (together “the Companies”)].

Pursuant to paragraph 9(3) of Schedule 10 to the Companies Act 2006 and Audit Regulation 3.09, and in accordance with Technical Release AAF 01/08 issued by the Institute of Chartered Accountants in England and Wales, we request for the purposes of our audit work, access to the following information:

[Set out information necessary at this stage, noting the guidance under Audit Regulation 3.09 that wherever possible a request framed simply as a request for “all relevant information held by the predecessor and concerning the audited entity” or “all relevant information held by the predecessor in relation to the office of auditor” should be avoided. The successor should strive to identify the information required, or the type of information required, as precisely as possible.]

[Where the request is for access to audit working papers and subsequent interim review working papers, insert where applicable:

[The working papers in respect of your audit report on the financial statements of the [Company/Companies] relating to [insert period between the beginning of the last financial statements on which the predecessor reported and the date of cessation of the predecessor’s appointment].

[Where in your capacity as auditor you conducted a review of interim financial information subsequent to the audit report referred to above, this request includes a request for access to the working papers relating to that review also.]

We may also request explanations from you in connection with our consideration of the above information, and on the same basis.

[We/ the Company will meet reasonable costs that you will incur in giving access/ providing copies, provided that a maximum amount is agreed first.]

We look forward to receiving your confirmation letter in response to this request, which should be addressed for the attention of [*name of successor engagement partner*].

Yours faithfully

[Successor]

[Schedule of UK subsidiaries to which this letter applies in addition to the Company

Company 2 Limited

Company 3 Limited

.....]

APPENDIX C: SPECIMEN LETTER FROM PREDECESSOR RESPONDING TO THE SUCCESSOR'S REQUEST FOR ACCESS

[Successor firm]

[address]

Dear Sirs,

Provision of Information pursuant to audit regulation 3.09 relating to the audit of [audit client]

We refer to your letter dated [] following your appointment as statutory auditors of [company] ("the Company") [and its UK subsidiaries listed in the schedule to your letter (together "the Companies")].

We confirm we will provide access to the information requested, namely:

[This should reflect the information set out in the successor's request letter which is necessary at this stage, noting the guidance under Audit Regulation 3.09 that wherever possible a request framed simply as a request for "all relevant information held by the predecessor and concerning the audited entity" or "all relevant information held by the predecessor in relation to the office of auditor" should be avoided. The successor should have identified the information required, or the type of information required, as precisely as possible.]

[Where the request is for access to audit working papers and subsequent interim review working papers if applicable, the following language reflects that set out in the proforma request letter in Appendix B:

[The working papers in respect of our audit report on the financial statements of the [Company/Companies] relating to [insert period specified by the successor, such as the period between the beginning of the last financial statements on which the predecessor reported and the date of cessation of the predecessor's appointment].

[The working papers relating to our review of interim financial information for the period ended [insert period subsequent to the audit report referred to above, as specified by the successor].]

We understand that you may also request explanations from us in connection with your consideration of the above information, and on the same basis.

In accordance with the guidance under Audit Regulation 3.09 and Technical Release AAF 01/08 issued by the Institute of Chartered Accountants in England and Wales this letter sets out the basis on which the information and explanations (if any) are to be provided. Should you request or we provide any supplementary information to that set out above, such provision will be made on the same basis.

The access is provided to you:

- (a) solely in your capacity as duly appointed statutory auditor (as defined by section 1210 of the Companies Act 2006 ("the Act")) of the [Company/Companies];
- (b) solely because we are required to give you access to information pursuant to paragraph 9(3) of Schedule 10 to the Act and Audit Regulation 3.09.

The provision of access does not and will not alter any responsibility that we may have accepted or assumed to the [Company/Companies] or the [Company's/respective Companies'] members as a body, in accordance with the statutory requirements for audit, for our audit work, for our audit report or for the opinions we have formed in the course of our work as auditors.

To the fullest extent permitted by law we do not accept or assume responsibility to you or to anyone else:

- (a) as a result of the access given;
- (b) for the information to which we provide access;
- (c) for any explanation given to you;
- (d) in respect of any audit work you may undertake, any audit you may complete, and audit report you may issue, or any audit opinion you may give.

Where access is provided to audit [and interim review] working papers, those papers were not created or prepared for, and should not be treated as suitable for, any purpose other than the statutory audit that was the subject of our audit report [and respectively the interim review we carried out]. The statutory audit was planned and undertaken solely for the purpose of forming and giving the audit opinion required by the relevant statutory provision to the persons contemplated by that statutory provision. [The interim review was planned and undertaken solely for the purpose of meeting the requirements of the relevant standard.] The statutory audit [and the interim review] [was/were] not planned or undertaken, and the working papers were not created prepared, in contemplation of your appointment as statutory auditor or for the purpose of assisting you in carrying out your appointment as statutory auditor.

Neither you nor anyone else should rely on the information to which access is provided, or any explanations given in relation to that information. The information cannot in any way serve as a substitute for the enquiries and procedures that you should undertake and the judgments that you must make for any purpose in connection with the audit for which you are solely responsible as the auditor.

If notwithstanding this letter you rely on the information for any purpose and to any degree, you will do so entirely at your own risk.

[Insert where applicable:]

[We will remove/ have removed from the audit working papers all material in respect of which legal professional privilege is asserted.]¹⁰

[Thank you for your confirmation that you/ the Company will meet the reasonable costs that we will incur in giving access. [As already agreed] these will not exceed £*.]

In accordance with the guidance issued under Audit Regulation 3.09:

- (a) you should refuse to accept an additional engagement, such as to act as an expert witness or to review the quality of our audit work, where the engagement would involve the use of the information obtained by you under the Regulation;
- (b) you should not comment on the quality of our audit work unless required to do so by a legal or professional obligation;
- (c) the information should not be disclosed beyond persons who have a need to access the information where to do so is a necessary part of your audit work, nor should the information be disclosed to a third party including the [Company/Companies] (although this does not prevent you discussing the information with the [Company/Companies] where to do so is a necessary part of your audit work, or providing information to any third party if that is required of you by a legal or professional obligation).

In the event that access to information involves your having access to any intellectual property of ours or any material in which we have copyright, we do not grant permission to you to use or exploit that intellectual property or copyright and you must respect the same at all times.

¹⁰ See Section 6, paragraphs 45 to 48 on Legal Professional Privilege.

When in this letter we refer to ourselves, we include [any person or organisation associated with this firm through membership of the international association of professional service firms to which this firm belongs], our [and their] partners, directors, members, employees and agents. This letter is for the benefit of all those referred to in the previous sentence and each of them may rely on and enforce in their own right all of the terms of this letter.

Yours faithfully

[Predecessor]

cc The Company/Companies

APPENDIX D: MONEY LAUNDERING – INTERIM GUIDANCE FOR AUDITORS IN THE UNITED KINGDOM

Extract from Practice Note 12

Resignation and communication with successor auditors

- 56** The auditor may wish to resign from the position as auditor if the auditor believes that the client or an employee is engaged in money laundering or any other illegal act, particularly where a normal relationship of trust can no longer be maintained. Where the auditor intends to cease to hold office there may be a conflict between the requirements under section 519 of the Companies Act 2006 for the auditor to deposit a statement at a company's registered office of any circumstances that the auditor believes need to be brought to the attention of members or creditors and the risk of 'tipping off'. This may arise if, for example, the circumstances connected with the resignation of the auditor include knowledge or suspicion of money laundering and an internal or external disclosure being made. See section 9 of CCAB Guidance for guidance on cessation of work and resignation.
- 57** Where such disclosure of circumstances may amount to 'tipping off', the auditor seeks to agree the wording of the section 519 disclosure with the relevant law enforcement agency and, failing that, seeks legal advice. The auditor seeks advice from the MLRO who acts as the main source of guidance and if necessary is the liaison point for communication with lawyers, SOCA and the relevant law enforcement agency. The auditor may as a last resort need to apply to the court for direction as to what is included in the section 519 statement.
- 58** The offence of 'tipping off' may also cause a conflict with the need to communicate with the prospective successor auditor in accordance with legal and ethical requirements relating to changes in professional appointment. For example, the existing auditor might feel obliged to mention knowledge or suspicion regarding suspected money laundering and any external disclosure made to SOCA. Under section 333C of POCA this would not constitute 'tipping off' if it was done to prevent the incoming auditor from committing a money laundering offence. However, as an audit opinion is rarely used for money laundering purposes, this is unlikely to apply in an audit situation.
- 59** If information about internal and external reports made by the auditor is considered relevant information for the purposes of paragraph 9 of Schedule 10 of the Companies Act 2006¹¹, the auditor considers whether the disclosure of that information would constitute a 'tipping off' offence under section 333A, because it may prejudice an investigation. If the auditor considers a 'tipping off' offence might be committed, the auditor speaks to SOCA to see if they are content that disclosure in those circumstances would not prejudice any investigation. The auditor may, as a last resort, need to apply to the Court for directions as to what is disclosed to the incoming auditor.
- 60** Where the only information which needs to be disclosed is the underlying circumstances which gave rise to the disclosure, there are two scenarios to consider:
- Where the auditor only wishes to disclose the suspicions about the underlying criminal conduct and the basis for those suspicions, the auditor will not commit an offence under POCA if that information only is disclosed. For example, if audit files are made available to the incoming auditor containing working papers that detail

¹¹ SI 2007/3494 "The Statutory Auditors and Third Country Auditors Regulation 2007" comes into force on 6th April 2008 and requires the auditor to make available all relevant information held in relation to hold the office as auditor to a successor auditor.

circumstances which have lead the audit team to suspect the management of a fraud and this suspicion is noted on the file, this will not constitute a 'tipping off' offence.

- If the auditor wishes to disclose any suspicions specifically about money laundering (for example, if the working papers in the example above indicated that the suspected fraud also constituted a suspicion of money laundering), then as a matter of prudence, the approach adopted follows that described in paragraphs 56 and 57 in relation to the section 519 statement.

ACCESS TO INFORMATION BY SUCCESSOR AUDITORS

Technical Release AAF 01/08

Technical Release AAF 01/08 is issued by the Audit and Assurance Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) in August 2008. It gives guidance for both predecessor and successor auditors on the provision of access to information.

AAF 01/08 does not constitute an auditing or assurance standard. Professional judgement should be used in its application and where appropriate, legal assistance should be sought.