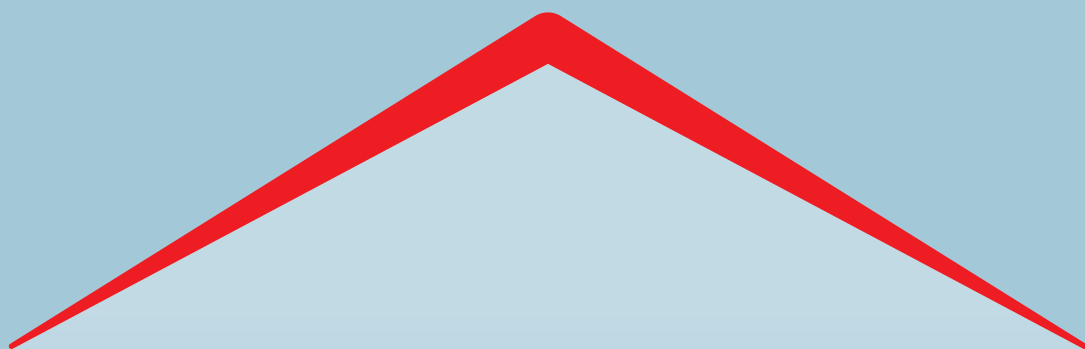
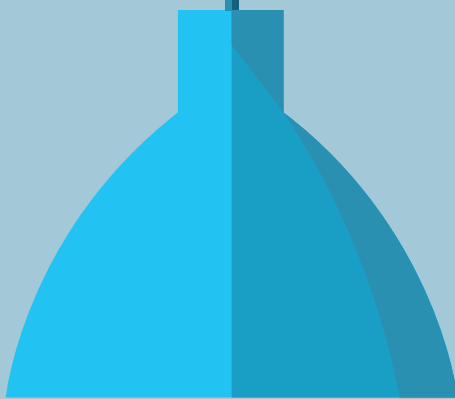


ICAEW  
REGULATORY BOARD



# *Shine a light*

ANNUAL REPORT TO ICAEW BOARD AND COUNCIL 2018

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# *Regulation in the public interest since 1880*

Since our Royal Charter was granted in 1880, ICAEW has been responsible for maintaining the highest professional standards as well as delivering technical excellence in the public interest.

The regulatory role of ICAEW is distinct from its representative role.

ICAEW is:



- the largest recognised supervisory body (RSB) and recognised qualifying body (RQB) for statutory audit in the UK, registering approximately 2,800 firms and 7,500 responsible individuals under the Companies Act 2006;
- the largest prescribed accountancy body (PAB) and recognised accountancy body (RAB) for statutory audit in Ireland, registering approximately 2,800 firms and 7,500 responsible individuals under the Republic of Ireland's Companies Act 2014;
- the largest recognised supervisory body (RSB) for local audit in England. We have eight firms and over 80 key audit partners registered under the Local Audit and Accountability Act 2014;
- the largest insolvency regulator in the UK. We license over 800 insolvency practitioners (out of a total UK population of 1,600) as a recognised professional body (RPB) under the Insolvency Act 1986;
- a designated professional body (DPB) under the Financial Services and Markets Act 2000 (and previously a RPB under the Financial Services Act 1986). Currently, we license approximately 2,100 firms to undertake exempt regulated activities under this Act;
- a supervisory body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2017, dealing with approximately 11,000 firms;
- an accredited body under the Financial Conduct Authority (FCA) Retail Distribution Review (RDR) arrangements;
- an approved regulator and licensing authority for probate under the Legal Services Act 2007. Over 300 firms are accredited to carry out this reserved legal activity;

and:

- more than 400 firms are accredited to perform ATOL returns work under the ICAEW Licensed Practice scheme for ATOL Reporting Accountant work. This was set up in 2016 after the Civil Aviation Authority (CAA) gave approval for ICAEW to license, register and monitor firms which perform ATOL returns work.
- Our Practice Assurance scheme provides ICAEW members working in practice with a framework of principles-based quality assurance standards. We monitor over 11,000 firms to ensure they are complying with the Practice Assurance standards.

# Foreword

It gives me great pleasure to present the ICAEW Regulatory Board (IRB) 2018 annual report to the ICAEW Board and Council.

There has been much for the IRB to consider in discharging its responsibility for overseeing the activities of the Professional Standards Department and its committees, and the statutory role of ICAEW as a regulator.

These are uncertain times. We have been forward-looking in seeking to ensure that ICAEW as a regulator is well placed to deal with the potential difficulties and challenges that lie ahead; particularly in the short term.

The detailed report is in the following pages.



## SOME OF THE ISSUES CONSIDERED BY THE IRB

- How Brexit will affect ICAEW in its role as a regulator and for its members.
- The Kingman report and the potential outcomes from the recommendations including the impact these may have.
- Consideration of responses to a number of consultations.
- Reviews and agreement of amendments to ICAEW's disciplinary bye-laws and Guidance on Sanctions.
- Regulatory fees and budget approval.

Throughout the year, we have continued to engage with ICAEW's oversight regulators.

## KEY AREAS OF ACTIVITY IN 2018

**Quality assurance programme:** we commenced our quality assurance programme of the Professional Standards committees with a full review of the Investigation Committee. We were greatly impressed by the work carried out by that committee. We are well advanced in our review of the Audit Registration Committee.

**Application for reserved legal services:** we supported the judicial review proceedings challenging the decision of the Lord Chancellor not to grant ICAEW's application for certain reserved legal services. We considered the application to be appropriate and justified.

**Professional Standards:** at our October meeting in Milton Keynes, we heard presentations from Professional Standards (PS) staff which informed our quality assurance role. The presentations reflected the pressure under which PS is working and the dedication and professionalism of the staff. Before this meeting, the IRB also had its first IRB strategy discussion.

**Transparency:** we believe the work of the IRB should be accessible and visible. To support this, we have started a programme to ensure this, for instance on [icaew.com](http://icaew.com)

## SUPPORT FROM PROFESSIONAL STANDARDS MANAGEMENT AND STAFF

The IRB wishes to acknowledge the help and support it has received from Professional Standards' management and staff during 2018.

In particular, we'd like to highlight the quality of the reports IRB has considered in the course of the year and the willingness of management and staff to attend meetings and answer questions to enable the IRB to make fully informed decisions.

We thank Duncan Wiggetts, Executive Director for Professional Standards, and in particular our secretary, Tracy Stanhope, for all her assistance. We would not be able to operate as a board without the help from Duncan, Tracy and the PS team.

I also wish to thank all the IRB members for their contributions during the year. A considerable amount of work takes place outside board meetings and members are always ready to step up to do so.

The most important aspect is that every member of the IRB has shown they are prepared to speak their mind, to question and challenge where necessary and to ask for any explanations. By doing so we are confident that we fulfil our responsibilities to ICAEW and act in the public interest.



Michael Caplan QC  
Chair, IRB

# *Background*

The ICAEW Regulatory Board (IRB) was established in January 2016 to enhance the distinction between ICAEW's representative and regulatory roles and follows the recommendations of an independent review of ICAEW's regulatory governance.

The IRB comprises up to 12 members including the chair and is formed of a parity of lay and non-lay members. The current Chair is Michael Caplan QC, who is a lay member. The Vice-Chair is Philip Nicol-Gent. Philip is also a lay member.

Details of the full IRB board are available in Appendix 1.

## **TERMS OF REFERENCE**

The IRB's current terms of reference are available in Appendix 2 of this report. The terms of reference are also available on [icaew.com/irb](http://icaew.com/irb)

The IRB is responsible for overseeing the activities of the Professional Standards Department (PS) and its committees, and the statutory role of ICAEW as a regulator of audit, insolvency, investment business and legal services, including the development of policies, actions and the regulatory plan.

The IRB has regard to the objectives of the profession, as set out in ICAEW's Royal Charter, subject always to a primary consideration of the public interest. The IRB is required, by its terms of reference, to communicate on its regulatory activity to ICAEW Board and Council annually. This annual report is used as a means of communicating its regulatory activity and is the third annual report the IRB has produced.

The following amendments were made to the IRB's terms of reference during 2018:

- deletion of the reference to statements of professional standing at paragraph 11(j); and
- three new paragraphs (13 to 15) have been added to mirror the powers contained in the Probate Committee's terms of reference and to more clearly set out the roles and responsibilities of the IRB and the Probate Committee towards each other.

## *Operation of the IRB*

The IRB operates within a separate framework and terms of reference. It applies the procedures in ICAEW's Governance Handbook to the conduct of its meetings. The quorum for a meeting of the IRB is four: two lay and two non-lay members. All the IRB meetings held in 2018 were quorate.

Decisions are reached by discussion within the IRB, led by the chair. During 2018, there has been no instance where a formal vote has been required and by extension, no occasion when the IRB chair has been required to use his casting vote. There is also a process for decisions to be made out of meeting based on the consideration of papers circulated to the IRB members. Where a decision has been made out of meeting this is indicated in the list of the IRB's decisions at Appendix 3 but no decisions were taken out of meeting during 2018.

The IRB also uses sub-groups of members to progress matters between meetings. For example, a sub-group was set up to review Professional Standards' response to the Legal Services Board's consultation on their internal governance rules.

Where IRB members have an interest in an agenda item, they declare it and this is noted in the minutes of the meeting. Where a member decides because of the nature of their interest not to participate in an agenda item, this is also recorded in the minutes. IRB members were asked to declare any interests they may have to ICAEW's Executive Office as part of the appointment process.

In the interests of transparency, IRB members disclose all their other interactions with ICAEW as well as their membership of other ICAEW committees outside of Professional Standards. These details are included in the members' biographies shown on the IRB's webpage, [icaew.com/irb](http://icaew.com/irb), and in Appendix 1.

IRB meetings are attended by Duncan Wiggetts, Executive Director, Professional Standards, and Matthew Downton, Director of Finance, Operations and Projects, Professional Standards. Other staff members of the Professional Standards Department attend meetings for specific agenda items and to present papers.

All the papers for the IRB meetings are made available using Diligent (the replacement for Boardpad). IRB members are provided with ICAEW-owned IT equipment to enable them to access the papers if they wish. The Diligent reading room is used to store background material and routine reports. Papers for consideration by the IRB members are made available on Diligent before each meeting and IRB members are encouraged to contact the relevant staff member if they require further information or clarification in advance of the meeting.

Secretariat support to the IRB is provided by Professional Standards with Tracy Stanhope acting as Secretary of the IRB. Minutes are taken at IRB meetings and are initially approved by the chair before being circulated to the IRB members for comment. The chair signs a hard copy of the minutes as a true record of the meeting. In the interests of transparency, the IRB agreed that a record of the decisions made at its meetings (from April 2016 onwards) are made available on [icaew.com/irb](http://icaew.com/irb). Typically, the record of decisions is uploaded on to the website once the minutes of the meeting have been approved by the IRB at the subsequent meeting.

In Q4 2017, the IRB initiated an independent review of its online presence and the transparency of the information available about the IRB and its activities. During 2018, as part of that review, the IRB's webpage [icaew.com/irb](http://icaew.com/irb) has been refreshed and its content enhanced.

On 8 October 2018, the IRB members held their strategy meeting in Milton Keynes. Outcomes of this meeting include:

- an IRB-specific risk register;
- IRB to discuss conflicts of interest which may arise within ICAEW's regulated population during 2019.

IRB members attended the training for the Professional Conduct committee members.

Michael Caplan also sits on the Regulatory Appointments Panel (see paragraph 9 b of the IRB's terms of reference at Appendix 2) which considers all appointments of members of the IRB, the quasi-judicial professional conduct and regulatory committees (including their Chair and Vice-Chair), and the reviewers of complaints.

## **SUCCESSION PLANNING**

The Chair of the IRB, Michael Caplan QC was re-appointed for a further three-year term, from 1 November 2018. Michael's re-appointment was approved by the Nominating Committee at their meeting on 20 September 2018.

The IRB was set up as a new board in 2016 and the majority of its members were recruited at the same time; all those original members also come to the end of their first term at the same time. If no original member had been offered a second term, the IRB would have been left with only two experienced members, one of which would be the chair. However, simply offering the original IRB members a second term would have delayed dealing with the issue of succession planning. The IRB chair with support from staff in the ICAEW Chief Executive's Office, devised a succession plan for the IRB, to offer staggered second terms to the IRB members. This plan was endorsed by the Regulatory Appointments Panel. Details of the second terms of the IRB members are set out in Appendix 1. Recruitment will take place during 2019 to fill the vacancies for two non-lay members of the IRB that will become available at the end of 2019.



## *Interaction with other parts of ICAEW*

ICAEW's Governance Handbook includes a process for consultation between the IRB and other boards. The terms of reference of the Learning and Professional Development Board, ICAEW Members, Commercial and Shared Services Board and Technical Strategy Board were amended after the creation of the IRB to emphasise the route for making representations to the IRB is via the relevant departmental Board.

An example of this interaction has been the sharing of the Guidance on Sanctions as it was developed with both the Members, Commercial and Shared Services Board and the Practice Committee.

A liaison group has been specifically created to deal with any contentious issues that may arise between the IRB and ICAEW Board that cannot be resolved by dialogue. Contentious issues could include, but are not limited to, budgeting principles, proposals for bye-law amendments and changes in processes. The liaison group consists of the ICAEW President, ICAEW Chief Executive, IRB Chair, Executive Director, Professional Standards and the Chair of the Investigation Committee. If the liaison group cannot reach agreement on an issue, it will be referred to Council for decision after consultation with ICAEW Board.

During 2018, no matters were referred to the liaison group.

The IRB appreciates the importance of input provided from the membership side of ICAEW on matters it is being asked to consider. While listening closely to the feedback from members, the IRB recognises that it may not always be possible to marry precisely the interests of members and its duty to ensure a reliable and robust regulatory function in accordance with ICAEW's statutory responsibilities.

# *Matters considered by the IRB during 2018*

Council has delegated the regulatory and disciplinary functions of ICAEW to the IRB. The IRB's terms of reference set out in detail the responsibilities which have been delegated to the IRB by Council (see Appendix 2).

Five meetings of the IRB were held in 2018. Dawn Dickson, Head of Professional Oversight at the Financial Reporting Council (FRC) attended the April 2018 meeting of the IRB. For its October 2018 meeting, the IRB visited ICAEW's offices in Milton Keynes.

The decisions made at the meetings held in 2018 (as published on ICAEW's website) are listed at Appendix 3. Appendix 3 also shows the use of delegated powers by the IRB. Where no matter is reported, the IRB has not exercised that delegated power.

Detailed below are the main matters which have been considered by the IRB during 2018.

## **DISCIPLINARY SCHEME**

The IRB has responsibility for the submission to the ICAEW Board of any recommendations for additions, deletions or amendments to the Charter and Disciplinary Bye-laws (DBLs) in relation to professional conduct and regulatory matters for recommendation to Council for approval.

During 2018, the IRB has considered and approved various changes to the DBLs. Notable changes approved by the IRB include:

### **Serious criminal conviction complaints**

This change was proposed as part of a series of measures aimed at reducing the workload of the Investigation Committee (see also fixed penalties and sanctioning powers for the Practice Assurance Committee below).

Currently, all complaints (other than those dealt with a fixed penalty) must be referred first by the Professional Conduct Department (PCD) to the Investigation Committee for the committee to determine whether the complaint discloses a prima facie liability to disciplinary action under the DBLs. Where these complaints relate to serious criminal convictions, the Investigation Committee will not consider it has sufficient sanctioning power and will refer these cases to the Disciplinary Committee for consideration as a matter of course.

The IRB agreed to a proposal that such serious criminal conviction cases may be referred directly from PCD to the Disciplinary Committee. This will reduce the time taken between the conclusion of the investigation to the tribunal stage and would provide greater protection to the public (and to ICAEW's brand).

### **Interim orders**

The IRB agreed that the power to make an order restricting the practice of an ICAEW member be transferred from the Investigation Committee to a tribunal of the Disciplinary Committee and to expand the types of circumstances in which these orders can be made to include cases of suspected dishonesty or where an order is necessary to protect the interests of any client or otherwise in the public interest. Checks and balances have been built into the process to protect the rights of the member.

### **Settlement powers**

The IRB agreed in principle to introduce a settlement process prior to a tribunal hearing. The IRB's discussions included if and when a settlement should be publicised, the possible adverse effect of any publicity on respondents who had not settled, whether partial settlement was practically possible.

### **Vexatious complaints / complainants**

A considerable amount of time is spent by PCD staff dealing with vexatious complaints, with complainants in such cases often behaving in an abusive or intimidating manner. Currently, PCD cannot refuse to start a formal investigation or to stop a formal investigation irrespective of the situation of the merit in the complaint and the actions of complainants during the investigation. The IRB agreed in principle to the introduction of mechanisms to enable PCD staff to deal with vexatious complainants.

The IRB also approved a change to the DBLs to enable communication by email.

## **PROCESS FOR DEALING WITH MINOR COMPLAINTS BY FIXED PENALTIES**

As reported in the IRB's reports for 2016 and 2017, the IRB previously agreed to the creation of a fixed penalty regime for minor complaints and approved amendments to the DBLs needed to introduce this new process.

At its meeting on 17 April 2018, the IRB approved of the list of complaints for designation into the fixed penalty process under DBL 14A; and approved the recommended penalty for each complaint, or combination of complaints, to enable the fixed penalty process to come into operation on 1 July 2018. This new process avoids the need for less serious complaints to be considered by the Investigation Committee and therefore matters are dealt with more efficiently. By the end of 2018, 13 matters had been dealt with by way of a fixed penalty.

The IRB has since agreed to extend the scope of the fixed penalty process to deal with more criminal conviction cases as part of an initiative aimed at reducing the number of cases currently being laid before the Investigation Committee.

### **Guidance on Sanctions**

As also reported in the IRB's 2016 and 2017 annual reports, the IRB recognises the introduction of the new process for dealing with minor complaints should be carried out alongside a comprehensive review to ICAEW's Guidance on Sanctions. A detailed review of this important document was carried out by Professional Standards' staff during 2017 and at its meeting on 17 April 2018, the IRB approved the new Guidance on Sanctions effective 1 July 2018. Feedback to date from the Professional Standards committees, as users of the new Guidance on Sanctions, has been positive with the new guidance being commended as being clear and easy to use.

There is a second stage to the review of the Guidance on Sanctions which comprised reviewing and monitoring the sanctions imposed by the committees in relation to the current starting point. It also compared the existing level of sanctions to similar breaches dealt with by other regulators including non-accountancy regulators. The IRB was provided with feedback from this review at its meeting on 9 October 2018. The view of the IRB was that ICAEW's sanctions were broadly equivalent to other

comparable regulators. Further data will be provided to the IRB in 2019 when the guidance has been in use for a longer period of time.

At its December meeting the IRB approved proposals to introduce more severe financial sanctions for anti-money laundering failings by firms.

### **Sanctioning powers for the Practice Assurance Committee**

Currently the Practice Assurance Committee has no formal powers to order sanctions against a member or firm, but it can order follow-up reviews by the Quality Assurance Department (QAD) or require undertakings from firms that they will carry out certain actions. If a matter could give rise to a liability to disciplinary action under the DBLs, it must be referred by the Practice Assurance Committee to PCD for investigation and, following investigation, may be laid before the Investigation Committee. The process and relationship between the Practice Assurance Committee and Investigation Committee contrasts with that of the regulatory committees in that regulatory committees<sup>1</sup> can offer a sanction (called a 'regulatory penalty') to members / firms in respect of (less serious) breaches of the regulations. The current process can give rise to duplication of work and cause confusion among members and member firms.

At its meeting on 11 December, the IRB agreed the Practice Assurance Regulations will be amended to provide, for the first time, sanctioning powers that the Practice Assurance Committee can deploy in relation to failures identified in QAD's Practice Assurance visit reports. The IRB's conclusion was that the Practice Assurance Committee should be re-engineered to operate in a similar way to our regulatory committees whereby it will have the duty to offer consent orders containing financial and non-financial sanctions to deal with breaches highlighted in QAD reports.

The effect of these changes, which will be implemented during 2019, will be to reduce the Investigation Committee's workload, speed up the process of dealing with complaints and remove elements of duplication and irritation to members / member firms. Guidance will be produced for the Practice Assurance Committee setting out what should be dealt with by the committee and what should be referred.

### **Practical operation of the disciplinary scheme**

At its meeting on 5 February 2018, the IRB approved the establishment of a parallel reporting line from the PS Committee Secretary to the IRB, through initial communication with the chair of the IRB. This reporting line provides a channel for the PS Committee Secretary to raise any concerns about any instruction received from the PS Executive Director which they consider undermines, or has the potential to undermine, the integrity of disciplinary and regulatory proceedings administered by the Disciplinary and Regulatory Committees.

The IRB also agreed to the introduction of a case management process to allow for an early determination of the issues between the parties in a disciplinary case.

At its meeting on 9 October 2018, the IRB approved an increase in the allowance paid to Investigation Committee members to reflect a day of reading/preparation time effective from 1 January 2019. The IRB had previously approved an additional 0.5% increase in regulatory fees to enable increased payments to be made to members of the Investigation Committee.

The contracts put in place for committee members in 2017 were updated in 2018 to take account of GDPR.

<sup>1</sup> The Audit Registration, Insolvency Licensing, Investment Business and Probate Committees

## AUDIT

The IRB has responsibility for making and amending regulations in respect of audit.

ICAEW's Audit Regulatory Plan was agreed by a sub-group comprising Michael Caplan (IRB Chair) Pauline Wallace (IRB member) and Steve Snook (Audit Registration Committee Chair). ICAEW's annual returns to the FRC and IAASA have been shared with the IRB for information.

Dawn Dickson of the FRC attended the April meeting of the IRB to discuss the FRC's 2017 inspection report on ICAEW's compliance with the delegation conditions which was finalised during 2018. The IRB has also been kept updated on other interactions between PS and the FRC during 2018.

The IRB has been kept informed on the progress of the Kingman review and the impact on ICAEW's role as an audit regulator of potential outcomes of the review. Now the review outcome is known, its conclusions will be considered further by the IRB during 2019.

The IRB has also been updated on the discussions around the impact of a no deal Brexit on ICAEW's 2,800 UK registered audit firms and their ability to continue to practise in Ireland, and the various solutions being proposed.

## ANTI-MONEY LAUNDERING

The IRB has discussed the developing relationship between PS and the recently established Office for Professional Body Anti-Money Laundering Supervision (OPBAS). This has involved discussing the mechanism for recovering the costs of OPBAS. The IRB chair was involved in agreeing the detail of a strategy for undertaking criminal record checks for business owners and managers within ICAEW firms after discussions at the IRB.

At its meeting in December, the IRB considered the report from OPBAS' first oversight visit to PS and the proposed response. The IRB chair reviewed the final response submitted to OPBAS.

## INSOLVENCY

The IRB has responsibility for making and amending regulations in respect of insolvency. It also has responsibility for the approval of Statements of Insolvency Practice.

At its meeting on 5 February 2018, the IRB approved an amendment to the Insolvency Licensing Regulations and Guidance, effective from 1 May 2018, which obliges insolvency practitioners to protect the estate money they hold.

The IRB was provided with a copy of the Insolvency Service's report on its review of insolvency complaint investigations at ICAEW and was given information on the PCD's response to the findings of the review.

## FINANCIAL SERVICES

The IRB has responsibility for making and amending regulations in respect of exempt regulated investment business.

At its meeting on 4 July 2018, the IRB approved changes to the DPB (Investment Business) Handbook needed to implement the Insurance Distribution Directive, effective 1 October 2018. A sub-group of the IRB reviewed drafts of the handbook as changes were agreed with the Financial Conduct Authority.

## LEGAL SERVICES

The IRB has responsibility for making and amending regulations in respect of legal services.

The IRB has been kept informed of ICAEW's strategy since the rejection of the application to regulate additional legal services by the Lord Chancellor. Subsequently, the IRB has been kept up to date on the judicial review process, with the IRB Chair joining the Chair of the Probate Committee for some of the meetings with counsel.

The IRB reviewed and expressed views on the initial consultation on the Legal Services Board's Internal Governance Rules and discussed the outcome of that consultation. A sub-group of the IRB was set up at the end of 2018 to be involved in the review of the further consultation on the Internal Governance Rules issued by the Legal Services Board, after discussions within the IRB about the potential impact of the rules on PS.

## PROFESSIONAL INDEMNITY INSURANCE

The IRB has responsibility for making and amending regulations in respect of professional indemnity insurance (PII).

At its meeting on 4 July 2018, the IRB approved amendments to the PII Regulations and Guidance, effective 1 October 2018 and amendments to the minimum approved wording also effective 1 October 2018, principally to deal with the implementation of the Insurance Distribution Directive. The IRB also agreed an amendment to Regulation 5.1 (Constitution of the PII Committee) of the PII Regulations, effective 1 October 2018.

## REGULATORY FEES AND BUDGETS

The IRB has responsibility for the setting of the level of regulatory fees, Compensation Scheme contributions and the Practice Assurance fee, provided that it may not approve any increase in these fees above the level of inflation used by ICAEW for employment cost inflation, or any increase which represents a change in policy or any change by ICAEW to the budgeting principles as outlined at Appendix A of the IRB's terms of reference (see Appendix 2) without discussion with the ICAEW Board.

At its meeting on 4 July 2018, the IRB approved an increase in regulatory fees for 2019 of 2.5%. As this increase was above the level of inflation used by ICAEW for employment cost inflation, endorsement by ICAEW Board was required. ICAEW Board endorsed the increase at its meeting on 17 July 2018.

## QUALITY ASSURANCE OF THE PROFESSIONAL STANDARDS COMMITTEES

The IRB has responsibility for the general oversight of the performance of the Audit Registration Committee, the Insolvency Licensing Committee, the Investment Business Committee, the Review Committee, the Probate Committee and its successor, the Legal Services Committee, the Investigation Committee, the Disciplinary Committee, and the Appeal Committee or their successors, the Practice Assurance Committee and the Professional Indemnity Insurance Committee, subject to these committees not being answerable to the IRB for their decisions in individual cases.

The IRB's terms of reference (see Appendix 2) also include a commitment to the training of the committee members (paragraph 26), appraisal of committee members and where necessary performance management and effectiveness review (paragraph 27), and reviewing the structure and membership of the committees of which the IRB has oversight and their training and competence (paragraph 28).

During 2018, the IRB carried out its first review of a Professional Standards committee - a review of the Investigation Committee. The Investigation Committee was chosen as it has the heaviest workload of the Professional Standards committees and meets frequently. As part of the review, IRB members observed three meetings of the Investigation Committee, the observers being both lay and non-lay IRB members. Investigation Committee members were invited to complete an online questionnaire created by ICAEW's Insight Team, the design of which had been agreed by the IRB. Questions were asked around the following areas: governance, support and resources, decision making and chair assessment. The Investigation Committee Chair completed a similar questionnaire. The Investigation Committee Chair and PCD Committee Secretary were then invited to the July IRB meeting to discuss the operation of the Investigation Committee. The IRB was satisfied with the operation of the Investigation Committee and commended the committee members for their commitment and diligence.

As part of its oversight role, the IRB has been kept updated on the progress of a large investigation case, the resource implications associated with the case, and its impact on the workload of the Investigation Committee.

The next committee to be reviewed is the Audit Registration Committee and IRB members attended meetings of the Audit Registration Committee as observers in late 2018. The findings from this review will be considered by the IRB in 2019.

During its meeting in Milton Keynes on 9 October 2018, the IRB heard presentations from Professional Standards staff and their teams from the PCD, the PCD Committee Secretary, QAD and the Regulatory Practice Group. These presentations informed the IRB's quality assurance role.

## PROJECT LIGHT

The IRB commissioned an external review to assess how the IRB and ICAEW regulatory activity are positioned and portrayed publicly and through channels such as icaew.com. The review also looked at how to address any misconceptions about the independent role of the IRB and regulatory decisions at ICAEW.

A working group of IRB members, led by the Vice-Chair of the IRB and PS staff has considered the review in detail. Potential actions were considered with the overarching aim to provide regulatory assurance and transparency in the public interest.

### Objectives of Project Light

- To reflect the position of IRB as a proactive board working to support the regulation of ICAEW firms, students, members and affiliates.
- To create a distinction between regulatory and membership activity communications eg, on icaew.com and in particular the home page.
- To consider the requirements and user experience of all the PS stakeholders.

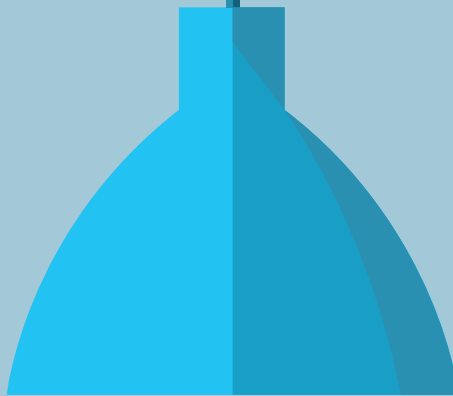
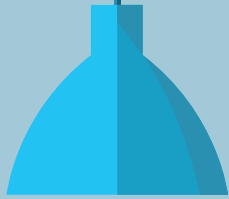
Two strands of activity are underway:

- Changes to the website which include:
  - the addition of consumer-focussed content to explain the role of IRB, regulatory committees, ICAEW's role as a regulator, the role of an ICAEW Chartered Accountant, what it means for a firm to be regulated by ICAEW, how to complain if it goes wrong and the options for redress; and
  - the introduction of a regulations button on the icaew.com home page - accessible to anyone not logged into the site.
- Branding of the IRB and regulatory communications:
  - The Project Light team worked with the ICAEW brand team to develop a brand solution to visually emphasise that regulation and regulatory decisions are made independently of the membership arm of ICAEW.

Work will continue into 2019 to roll out this new brand solution and on icaew.com to further create a visual distinction between the regulatory and membership arms of icaew.com

As part of Project Light, the IRB will look to produce a publicly available report on its activities to be published on the ICAEW website.





# 2019

## *Forward look*

During 2019, the IRB will focus on the following matters:

- Continue to protect the public interest.
- Continue to progress its quality assurance programme, with a review of the Audit Registration Committee.
- Consider policies around conflicts of interest.
- Progress the proposals to provide the Practice Assurance Committee with sanctioning powers.
- Continue to discuss changes needed to ICAEW's Disciplinary Bye-laws.

The IRB will continue to respond to issues and challenges that a fast-paced regulatory landscape produces.

There is a list of the dates of IRB meetings for 2019 at Appendix 4.

The IRB is responsible for overseeing the activities of the Professional Standards Department and its committees, and the statutory role of ICAEW as a regulator of audit, insolvency, investment business and legal services, including the development of policies, actions and the regulatory plan.

The IRB has regard to the objectives of the profession, as set out in ICAEW's Royal Charter, subject always to a primary consideration of the public interest.

# Appendix 1

## MEMBERS OF THE IRB

The chair and members of the IRB were initially been appointed for a three-year term. A succession plan was put into effect in 2018 so that all the IRB members do not retire at the same time.

The current IRB members are:



**Michael Caplan (Chair)**  
Lay member  
Term ends Nov 2021



**Philip Nicol-Gent (Vice-Chair)**  
Lay member  
Term ends Dec 2021



**Pauline Wallace**  
Non-lay member  
Term ends Dec 2019



**Christine Fraser**  
Lay member  
Term ends Dec 2020



**Andrew Goldsworthy**  
Non-lay member  
Term ends Dec 2021



**Ian Leigh**  
Lay member  
Term ends Dec 2020



**John Milsom**  
Non-lay member  
Term ends Dec 2019



**David Chitty**  
Non-lay member  
Term ends Nov 2021



**Ann Wright**  
Lay member  
Term ends Dec 2020<sup>2</sup>



**Jane Titley**  
Non-lay member  
Term ends Dec 2021



**Steve Barrow**  
Lay member  
Term ends Dec 2021



**Michael Sufrin**  
Non-lay member  
Term ends Dec 2021

Members of the ICAEW Board or Council may not be members of IRB. There is a cooling off period of at least one year between ceasing to be a member of Council and ICAEW Board and taking up membership of the IRB. In addition, members of the IRB cannot also be members of other ICAEW regulatory committees.

Biographies of IRB members are available at [icaew.com/irb](http://icaew.com/irb)

<sup>2</sup> First term

# Appendix 2

## ICAEW REGULATORY BOARD

### TERMS OF REFERENCE: 25 JUNE 2018

#### Authority

1. The ICAEW Regulatory Board (IRB) derives its authority from Council.
2. ICAEW is a unitary body. However, to ensure a greater degree of independence, both in substance and appearance, Council has delegated the regulatory and disciplinary functions of ICAEW to the IRB, to separate them from the other activities of ICAEW. In discharging its role and responsibilities the IRB will discuss significant matters with the ICAEW Board and relevant departmental Boards.
3. The IRB will have regard to the objectives of the profession, as set out in ICAEW's Royal Charter, subject to a primary consideration of the public interest.

#### Composition

4. The IRB comprises up to twelve members including the chair and will be formed of a parity of lay and non-lay members.
5. The quorum for a meeting will be four: two lay and two non-lay members. In the event that there is not parity, the chair will use their discretion as to whether matters of gravity or public interest will be delayed to another meeting and or taken to vote at that meeting. If there is equality of votes, the chair will have a casting vote.
6. The IRB shall elect a Deputy-Chair annually from amongst its membership.
7. The chair of the IRB may not be a member of the ICAEW Board or Council or any other ICAEW Committee. They can attend the ICAEW Board or Council by invitation as agreed by the respective chair.
8. The chair of the IRB will be appointed on the basis of being the person best suited for the job, judged on merit, without regard to whether they have a lay or accountancy background.
9. The chair and members of the IRB and the Committees which it has oversight of are appointed by independent sub-committees of the Nominating Committee. In practice the appointments process is as follows:
  - a. The Nominating Committee appoint a panel ('IRB Chair Appointments Panel'), comprising three members to make a recommendation to Council, to appoint the chair of the panel to appoint the chair of the ICAEW Regulatory Board;
  - b. the appointment of a panel ('Regulatory Appointments Panel') comprising three Council or Chartered Accountant members and three lay members, including the chair of the ICAEW Regulatory Board, with delegated authority to appoint members to the ICAEW Regulatory Board, to the quasi-judicial professional conduct and regulatory committees (including their chair and vice-chair), and the reviewers of complaints.
10. Members of the ICAEW Board or Council may not be members of IRB and there will be a period of at least one year between ceasing to be a member of Council or ICAEW Board and taking up membership of IRB. IRB members may not be members of other ICAEW regulatory committees.

## Council delegations

11. Council has delegated the following responsibilities to the IRB:
- a. development of proposals for ICAEW's professional standards strategy and policies, after consultation with the ICAEW Board and with the relevant departmental Boards as appropriate.
  - b. approving policies and guidelines that are relevant to the discharge of the functions of the IRB and the committees which it has oversight of, including sanctions.
  - c. developing proposals for funding and resources required for professional standards activities as part of the budget preparation process having regard to the high level budgeting principles set at Appendix A.
  - d. developing and monitoring performance criteria and performance measures for ICAEW's professional standards activities.
  - e. general oversight of the performance of the Audit Registration Committee, the Insolvency Licensing Committee, the Investment Business Committee, the Review Committee, the Probate Committee and its successor, the Legal Services Committee, the Investigation Committee, the Fitness Committee<sup>3</sup>, the Disciplinary Committee, and the Appeal Committee or their successors, the Practice Assurance Committee, Professional Indemnity Insurance Committee subject to these committees not being answerable to the IRB for their decisions in individual cases.
  - f. considering and, where appropriate, amending, the recommendations of the specialist advisory and operational committees (the Joint Audit, Joint Insolvency, Joint Professional Indemnity Insurance Committee, the Practice Assurance Committee and the Professional Indemnity Insurance Committee and the Board of the Chartered Accountants' Compensation Scheme Ltd) or its successors.
  - g. the submission to the ICAEW Board of any recommendations for additions, deletions or amendments to the Charter and bye-laws in relation to professional conduct and regulatory matters for recommendation to Council for approval.
  - h. the setting of the level of regulatory fees, Compensation Scheme contributions and the Practice Assurance fee, provided that it may not approve any increase in these fees above the level of inflation used by ICAEW for employment cost inflation, or any increase which represents a change in policy or any change by ICAEW to the budgeting principles as outlined at Appendix A without discussing with the ICAEW Board.
  - i. making and amending regulations in the professional conduct area (except those regulations made by the Investigation, Disciplinary and Appeal Committees under powers delegated to them in the Schedule to the Disciplinary Bye-laws), provided that it may not approve any such regulations or amendments without discussing with the ICAEW Board where these represent new, or changes to, policy.
  - j. making and amending regulations in respect of insolvency, exempt regulated investment business, audit, professional indemnity insurance, clients' money, corporate practice, use of the description 'Chartered Accountant', membership (cessation, readmission and resignation of members only), the Review Committee, the Chartered Accountants Compensation Scheme and Practice Assurance and legal services areas provided that it may not approve

<sup>3</sup> As from 3 October 2016, the date of the Privy Council's allowance of the Disciplinary Bye-laws.

- any such regulations or amendments without discussing with the ICAEW Board where these represent new, or changes to, policy.
- k. amending the Practice Assurance standards and guidance provided that it may not approve any amendments to the standards without discussing with the ICAEW Board where these represent new or changes to policy.
  - l. amending the guidance on the duty to report misconduct; the duty on firms to investigate complaints; and publicity for the disciplinary and regulatory processes, provided that it may not approve any such amendments without discussing with the ICAEW Board where these represent new, or changes to policy.
  - m. monitoring compliance with HM Treasury Clients' Money Regulations.
  - n. approving amendments to 'engaging in public practice' after consultation with the ICAEW Board and with the relevant departmental Boards as appropriate for recommendation to Council.
  - o. commenting to the Technical Strategy Board / Ethics Standards Committee on issues relating to ethical standards generally including proposed amendments to the Code of Ethics.
  - p. approval of Statements of Insolvency Practice (SIPs), changes to SIPs and changes to the Insolvency Code of Ethics after taking into account the views of the Insolvency Committee and the Ethics Standards Committee as appropriate, but if any ethical guidance to be produced contains a prohibition (and so does not follow the general system of threats and safeguards) and the Insolvency Committee or Ethics Standards Committee as appropriate does not agree with the prohibition or does not otherwise agree with the approach, the IRB will refer the matter to the Liaison Group, and then if necessary to ICAEW Board and then if necessary to Council.
  - q. commenting to the Learning & Professional Development Board on proposals for requirements for: continuing professional development, practising certificate eligibility, and the audit qualifications.
  - r. maintaining liaison with other parts of ICAEW whose work affects the quality of professional practice (including the work of members in business through the ICAEW Board and relevant departmental Boards).
  - s. approving, on recommendation from the ICAEW Board<sup>4</sup> memoranda of understanding in relation to Professional Conduct activities with other bodies with which ICAEW has a relationship provided, in the opinion of the IRB, these are appropriate in assisting ICAEW fulfil its functions.
  - t. Oversight of ICAEW's supervisory relationship with the Financial Reporting Council (FRC) and its subsidiary Boards, Legal Services Board (LSB), Insolvency Service (IS), Financial Conduct Authority (FCA), and Irish Auditing and Accounting Supervisory Authority (IAASA) (including related links with other participating accountancy bodies) with respect to ICAEW's regulatory responsibilities to these bodies excluding the RQB responsibility under the Companies Act which remains with the LPD Board.
  - u. in undertaking its activities the IRB will maintain close cooperation with the relevant corresponding functions of ICAS and CAI as appropriate.

<sup>4</sup> Delegated by the Board to the Executive Director, Professional Standards on 26 January 2017

- v. to approve an annual regulatory plan that takes into account ICAEW's operational plan and strategy.
12. The IRB has no role in relation to any Professional Standards activity that does not directly relate to the regulation and discipline of ICAEW members or those authorised by ICAEW to undertake regulated activities.

### Delegations by the IRB

13. The IRB has delegated the following powers to the Probate Committee as they pertain to probate activities;
- a. ICAEW's functions as an approved regulator and licensing authority as set out more fully in the Probate Regulations, which include:
    - i. considering and determining applications for probate accreditation;
    - ii. considering and determining applications for authorised individual, Head of Legal Practice, Head of Finance and Administration, non-authorised owner or probate affiliate status;
    - iii. monitoring compliance with the Probate Regulations;
    - iv. taking regulatory action as required to secure compliance with the Probate Regulations;
    - v. referring matters to ICAEW's disciplinary committees as required;
    - vi. compiling and maintaining a register of licensed firms and supplying this information to the Legal Services Board (LSB) as required.
  - b. ICAEW's functions under the Probate Compensation Scheme Regulations in determining applications for grants;
  - c. the development of ICAEW policy in relation to probate practitioners, in consultation with the IRB and other key stakeholders;
  - d. rule-setting and any amendments to the Probate Regulations and Probate Compensation Scheme Regulations in consultation with the LSB, the IRB and other stakeholders;
  - e. budget and fee-setting in relation to accredited probate firms, in consultation with the LSB, the IRB (and ICAEW Board where any proposed increase is above the rate of wage inflation); and
  - f. liaising freely with the LSB and other stakeholders on matters concerning probate practitioners and responding to requests for information from the LSB.
14. On the above matters the executive power lies with the Probate Committee and the IRB has purely a consultative role. The IRB retains the right to request that the LSB intervene into the Committee's arrangements if it is considered that the Committee is failing to discharge its functions in accordance with the Probate Regulations or the Act's regulatory objectives.
15. The powers delegated to the Probate Committee cannot be withdrawn or amended by the IRB without consultation with the LSB.

16. The IRB delegates responsibility for detailed work on the coordination of policy on:
  - a. the regulation of audit to the Joint Audit Committee;
  - b. the maintenance, improvement, development and promotion of insolvency standards and guidance and the facilitation of discussions between the authorising bodies to the Joint Insolvency Committee; and
  - c. professional indemnity insurance to the Joint Professional Indemnity Insurance Committee subject to these joint committees having no executive powers.
17. The IRB delegates responsibility for the operation of the Practice Assurance Scheme to the Practice Assurance Committee.
18. ICAEW owns shares in a limited company, Chartered Accountants Compensation Scheme Ltd, which decides on claims for compensation arising from investment business transactions by authorised firms and from exempt regulated investment business transactions by licensed firms. This relationship is governed by the memorandum and articles of the company and also by various shareholders' agreements. The purpose of this body is to provide services under an agency agreement with each of the participating bodies. The Board of this company (described in this Scheme as an 'operational committee') is accountable to the IRB, for the management of these joint activities.
19. The IRB delegates to the Head of the Regulatory Practice Group authority to consider dispensation applications and applications for general affiliate status under the Regulations governing the use of the description 'Chartered Accountants' and ICAEW general affiliates.

### **Operation of the IRB**

20. The IRB will carry out its responsibilities within the framework of general duties and procedural requirements for Committees as set out in the Governance Handbook.
21. If any contentious issues arise between the ICAEW Board and the IRB which cannot be resolved through initial dialogue, the issue will be referred to the liaison group. Contentious issues would include matters relating to the budget principles outlined in Appendix A, proposals for bye-law amendments and changes in process.
22. The liaison group consists of the ICAEW President and Chief Executive and the IRB Chair and Executive Director, Professional Standards and the chair of the Investigation Committee. In the event that the Liaison Group cannot reach agreement on an issue, it will be referred to Council for decision after consultation with ICAEW Board.
23. The IRB normally meets up to five times a year or as otherwise necessary to conduct its business.
24. The IRB will communicate on its regulatory activity to ICAEW Board and Council annually.
25. The IRB will take account of inclusion and diversity in relation to its activities.
26. As part of the IRB's responsibility for quality assurance, all members of the IRB and its Committees, both professional and lay, should be provided with appropriate training upon appointment and, as appropriate, thereafter.
27. Members of the IRB and the committees which it has oversight of should also be subject to annual appraisal and, where necessary, performance management and effectiveness review.

28. The IRB will keep under review, in consultation with the Nominating Committee, the structure and membership of the IRB and the committees which it has oversight of, their training and their competence.

**Definitions**

'Lay' means someone who is not and never has been a member, affiliate or employee of ICAEW or any other accountancy body and such further relevant restrictions as may be appropriate to enhance public confidence in the regulatory process. In making lay appointments, the focus will normally be on consumers of accountancy services and stakeholder organisations rather than those who have more general experience of regulation of other professional services.



# Appendix A

## IRB BUDGET PRINCIPLES

1	Regulatory activities of ICAEW are overseen by IRB, whose role is derived from Council. ICAEW acts as a unitary professional body.
2	As part of its role, IRB will recommend a budget for regulatory activities including the fees required to discharge its responsibilities. This budget will be subject to the agreement of the ICAEW Board, for integration within ICAEW's overall budget.
3	The basis for recovering costs through regulatory fees should be confirmed from time to time between the ICAEW Board and IRB. Professional Standards' activities should normally be self-financing.
4	The number and scope of regulated services may vary from time to time subject to approval of business cases by both the ICAEW Board in the first instance and IRB.
5	Regulatory and disciplinary costs to be met will include both direct costs of those activities and a reasonable and proportionate share of ICAEW's overhead costs derived on a consistent basis across ICAEW.
6	IRB will be provided with key details of the budgetary framework, constraints and assumptions in order to assist with understanding and approval.
7	Exceptional changes to costs or income encountered during a budget year should be discussed between Professional Standards and the finance director in order to make proposals to IRB and the ICAEW Board for managing the event.
8	In the event of disagreement over budget proposals, the matter should be referred to the liaison group.

## Appendix 3

### USE OF DELEGATED POWERS BY THE IRB: 2018

Date of meeting	Decision	Paragraph in the IRB's terms of reference
5 February 2018	Approval of various amendments to the Disciplinary Bye-laws for recommendation to ICAEW Board.	11(g)
5 February 2018	Approval of a draft Memorandum of Understanding between the Charities Commission and ICAEW for signing by the Executive Director, Professional Standards.	11(s)
5 February 2018	Approval of the establishment of a parallel, reporting line from the PS Committee Secretary to the IRB, through initial communication with the Chair of the IRB.	11(b)
5 February 2018	Approval of an amendment to the Insolvency Licensing Regulations and Guidance, effective from 1 May 2018.	11(j)
17 April 2018	Approval of the Guidance on Sanctions effective from 1 July 2018.	11(b)
17 April 2018	Approval of the submission of a Memorandum of Understanding to HMRC for agreement and signature.	11(s)
17 April 2018	Approval of the list of complaints for designation into the fixed penalty process under DBL 14A; and approved the recommended penalty for each complaint, or combination of complaints.  Agreement that the fixed penalty process should commence with effect from 1 July 2018 for any new complaints which are referred to the Professional Conduct Department from that date.	11(b)
17 April 2018	Approval of the content of the template letter of variation for dispatch to committee members to deal with GDPR.	11(b)
4 July 2018	Approval of the regulatory and Practice Assurance fees for 2019.	11(h)
4 July 2018	Approval of amendments to the PII Regulations and Guidance, effective 1 October 2018	11(j)
4 July 2018	Approval of amendments to the minimum approved wording effective 1 October 2018.	11(j)
4 July 2018	Approval of changes to the DPB (Investment Business) Handbook for the implementation of the Insurance Distribution Directive, effective 1 October 2018.	11(j)

9 October 2018	Approval of the addition of drink driving convictions to the list of designated fixed penalty complaints from 1 November 2018.	11(b)
9 October 2018	Approval of an increase in the allowance paid to Investigation Committee members to reflect a day of reading/preparation time effective from 1 January 2019.	11(b)
9 October 2018	Retrospective approval of an amendment to Regulation 5.1 (Constitution of the PII Committee) of the PII Regulations, effective 1 October 2018.	11(j)
11 December 2018	Approval of changes to the Guidance on Sanctions.	11(b)
11 December 2018	Extension to the fixed penalty process to certain criminal convictions.	11(b)

## *Appendix 4*

### MEETING DATES: 2019

ICAEW Regulatory Board dates 2019
5 February
9 April
18 June
6 August
2 October
10 December

A meeting is generally diarised for August if the regulatory fees are not approved at the June IRB meeting or ICAEW Board does not endorse the increase if the fees are above the rate of wage inflation. In 2018 (and in 2017), no August meeting was held as the level of regulatory fees agreed by the IRB was endorsed by ICAEW Board.

## PROFESSIONAL STANDARDS

ICAEW's regulatory role is distinct from its representative role. Managed by our Professional Standards department, we act in the public interest by ensuring our students, members, firms and affiliates are competent and act with integrity. Our role is to:

- authorise and monitor our members, firms and affiliates to undertake work regulated by law (audit, local audit, investment business, insolvency and probate) to the highest professional standards;
- review and encourage compliance in general accountancy practice through our Practice Assurance scheme;
- investigate complaints and hold members and firms accountable if they fall short of standards; and
- provide guidance, advice and award-winning training films to help our students, members, firms and affiliates comply with laws, regulations and professional standards.

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There are over 1.7m chartered accountants and students around the world – talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 178,500 of these are ICAEW Chartered Accountants and students. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

We've been at the heart of the accountancy profession since we were founded in 1880 to ensure trust in business. We share our knowledge and insight with governments, regulators and business leaders worldwide as we believe accountancy is a force for positive economic change across the world.

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