



# ***Regulated firm restructures***

If your firm is carrying out a business restructure, then you must notify ICAEW to ensure continuation of any regulatory registrations (ie, audit registration, Licenced Practice (ATOL), probate accreditation, and/or a DPB (Investment Business) licence).

Typical scenarios we need to be told about are:

- if your firm acquires another firm (either by a share acquisition or the purchase of assets and goodwill)
- the sale, transfer or partial sale of an interest in your firm (including where a holding company is introduced into your structure)
- a hive-up or transfer of assets and goodwill from one entity to another in your group
- any reorganisation where external investors, such as a private equity fund, are acquiring a stake in your firm

If in doubt, or if your proposed change of structure is not listed above, please contact us and we can check whether you need to formally notify us about your changes.

## **WHEN TO NOTIFY US**

We always prefer an early notification where a firm is planning any changes to its ownership structure.

The regulations require firms to notify us within 10 business days of the change. However, in a business restructure we often need one or more of the parties in the group to apply for a new licence or registration, and this will always take us several weeks to process. We will also need sufficient time to assess whether the new structure complies with the relevant eligibility criteria. In some cases, aspects of a firm's restructure may need to be assessed by one of our regulatory committees – this process can add several weeks onto the timetable, depending on the next available committee meeting date.

For all these reasons, firms should give us as much notice as possible, particularly if you do not want any gaps between an existing firm holding a licence/registration and a new firm becoming registered.

We are happy to work with the firm to identify which entities in the group need to hold the relevant licence or registration, and whether new applications are needed. Working with us helps to minimise any inadvertent breaches of our regulations and makes the process more streamlined. If you approach us after the restructure has happened, it may become difficult if you need to make changes to the approved and signed-off legal documentation or structure to maintain eligibility.

Please note that for confidentiality reasons, we cannot discuss or disclose how other firms and groups are structured (neither will we discuss your firm's structure with other firms). Additionally, we are not able to provide your firm with suggested structures, draft governance documents or any wording for legal agreements as each firm and group is different and the motivation or rationale for one firm's restructure will not necessarily be right for another firm.

Please also note that depending on the complexity of your restructure, a separate one-off processing fee is payable, in addition to any standard application fees. We will notify you of this one-off fee once we have made our initial assessment of your plans.

[View ICAEW's mergers and acquisitions fee scale](#)

## HOW TO NOTIFY US

Details of any restructure that involves an audit-firm should be sent to [auditregistration@icaew.com](mailto:auditregistration@icaew.com).

If your restructure does not involve an audit-firm, then please send the information to [regulatorysupport@icaew.com](mailto:regulatorysupport@icaew.com).

## WHAT TO SEND US

When contacting us about a planned restructure, can you please provide the following as a minimum:

- A completed [Merger, Acquisitions and other Business Changes form](#). If the restructure is at an early stage, then please provide the key details in a letter or email, with the completed form to follow. Also, if your restructure does not easily fit within the questions on this form, then please provide supplementary information in a covering letter or email.
- A structure diagram of the group, both before and after the restructure. This should show all entities in the group, highlighting those that are registered with ICAEW, directors of each entity and details of all shareholders (including any parties holding non-voting shares).
- Copies of all draft governance agreements, including where relevant:
  - Shareholders' and, if applicable, investor agreements
  - LLP agreements
  - Articles of Association for the relevant companies in the group
  - Service agreements
  - Terms of reference for relevant Boards and/or Committees (eg, management board, remuneration committee, audit committee)
  - All other documents that set out details of the arrangements around voting, decision making and control of the firm(s)

We will assess whether the draft agreements demonstrate the firm will be eligible for the regulatory registrations the firm wishes to hold. Some of our regulations require holders of certain qualifications to hold a majority of the firm's voting rights. This can be challenging for mixed practices, or where there has been investment from a third party who also takes a share of the firm's equity as part of the restructure. We will check the governance documents for any specified

matters that require more than a simple majority of members to pass a resolution and we may need the firm to revise its agreements if we consider the draft documentation is inadequate. The areas of the governance documents we are likely to be most interested in are those which explain the following:

Area of focus	Why are we interested in this?
Voting rights, including those attached to different classes of shares or categories of partner / LLP member	To ensure that the firm remains eligible for the regulated area and to assess the voting rights held by external investors and the extent they are able to control decisions relating to the group and/or firm.
Arrangements for appointment and removal of directors / partners / LLP members	We review these arrangements to ensure that for audit-registered firms (and those using the description Chartered Accountants these decisions are made by appropriately qualified persons (and Chartered Accountants respectively).
Arrangements for appointing an alternate or proxy director / partner / LLP member	If the documents allow for an alternative person to be appointed (eg, in the case of absence or incapacity) then it must specify that any alternate or proxy has to have the same qualifications as the person they are deputising for.
Meetings of directors / partners / LLP members, including: <ul style="list-style-type: none"> <li>• Quorum requirements</li> <li>• Matters requiring a simple majority</li> <li>• Reserved matters requiring more than a simple majority</li> <li>• Matters that cannot be exercised without the prior consent of others (eg, investors)</li> </ul>	<p>We review these clauses to ensure appropriately qualified persons are able to control all decisions.</p> <p>This is particularly relevant for audit-registered firms, and firms wishing to use the description, Chartered Accountants.</p>
Meetings of shareholders/those with voting rights, including: <ul style="list-style-type: none"> <li>• Quorum requirements</li> <li>• Matters requiring a simple majority</li> <li>• Reserved matters requiring more than a simple majority</li> <li>• Whether matters are decided by way of a show of hands, or a poll vote</li> <li>• Matters that cannot be exercised without the prior consent of others (eg, investors)</li> </ul>	<p>We will review these clauses to ensure appropriately qualified persons are able to control all decisions affecting a firm's policy direction or decisions that alter a firm's constitution.</p> <p>This is particularly relevant for audit-registered firms, probate firms and any firms wishing to use the description, Chartered Accountants.</p>

<p>Appointment of a Chair, professional qualifications of the Chair (eg, whether the firm requires the Chair to be an ICAEW member, an audit-qualified person etc) and circumstances when the Chair may have a casting vote.</p>	<p>In circumstances where the Chair may have the casting vote, we will review the relevant governance document/agreement to ensure that the firm continues to meet the relevant eligibility criteria.</p>
<p>For audit registered limited companies, the inclusion of specific Articles addressing the requirements of audit regulation 2.03d, and in particular, part 6 which does not form part of the ICAEW <a href="#">model article</a>.</p>	<p>The firm must include relevant Articles that demonstrate the firm complies with audit regulation 2.03d.</p>
<p>For audit registered firms, whether the firm's constitutional documents include any matters that require approval by more than a simple majority of principals or shareholders/members.</p> <p>These matters could be:</p> <ul style="list-style-type: none"> <li>• listed within the firm's governance documents or as an appendix, stating, for example, items where 75% or unanimous approval of members is required</li> <li>• for limited-company firms, the standard Companies Act decisions that require approval by a special resolution (ie 75% of members)</li> <li>• items included in a separate investor agreement (or similar) where a firm's external investor has to give its consent for the matter to be approved</li> </ul>	<p>Under the Audit Regulations, a majority of the firm's voting rights (regulation 2.03b) and the rights to vote on the firm's management board (regulation 2.03c) must be held by audit-qualified persons.</p> <p>In this context, 'voting rights' means the rights to vote at meetings of principals or shareholders of a firm on all matters that direct the firm's overall policy or alter its constitution require approval by audit-qualified members.</p> <p>Additionally, 'majority' of the voting rights means more than 50% unless the firm's constitution specifies a higher percentage of these rights is required for decision making, in which case, 'majority' shall be taken to mean that specified percentage or more. 'majority' of the voting rights means more than 50% unless the firm's constitution specifies a higher percentage of these rights is required for decision making, in which case, 'majority' shall be taken to mean that specified percentage or more.</p> <p>We will review the firm's constitutional documents for any items that require approval by a 'supermajority'. If these matters direct the firm's policy or alter its constitution, the firm will need to demonstrate to us that audit-qualified persons have a majority of the voting rights for these matters.</p> <p><a href="#">Access further details on the audit eligibility criteria and supermajorities</a></p>

## PROBATE CONSIDERATIONS

In a licensed probate firm, any non-authorised persons who hold a material interest in the firm (as defined in Legal Services Regulation (LSR) 6.2) must be approved by ICAEW before they obtain their interest in the probate firm. This includes all persons who hold at least 10% of the shares, voting rights and/or voting rights in the management board of the probate firm **and** any person holding these interests in any parent of the regulated firm. If, for any reason, a firm is unable to provide us with details of persons who own a material interest in a parent or holding entity, then the firm will not be eligible for a probate licence.

In a group structure where there could be a number of intermediate entities between the probate firm and the ultimate owner (or controlling party / parties) we assess every layer (or tier) of ownership and control separately. Any person who owns 10% or more of the shares, voting rights or voting rights in each entity's management board must apply for and be approved as a non-authorised owner (NAO).

Full details, including worked examples, are included in our [helpsheet on probate investment structures](#).

## OTHER MATTERS TO BE CONSIDERED

### Use of description Chartered Accountants

Please [refer to our guidance](#) to check whether any of the firms involved in the restructure that wish to use the description, Chartered Accountants, will be eligible to do so or whether a dispensation application, and/or general affiliate applications are needed.

### Anti-money laundering supervision

Please [refer to our guidance](#) to check whether each of the firms involved in the restructure will continue to be automatically supervised by ICAEW for anti-money laundering purposes or whether a separate contract is required.

### Maintaining a firm's record

It is important to maintain an accurate ICAEW firm record. [Use this guide](#) to find out what to consider when changing the structure of your firm.