

Effective 1 January 2022

Regulatory and Monitoring Supervision
**Guidelines for the Recognised
Accountancy Bodies when
performing Investigation and
Disciplinary Functions**

Mission

To contribute to Ireland having a strong regulatory environment in which to do business by supervising and promoting high quality financial reporting, auditing and effective regulation of the accounting profession in the public interest.

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Part I: Background to these guidelines

Regulatory outcomes

The provision of accounting and auditing services to clients places accountants in a special position of trust. Members of the public, shareholders, suppliers, credit institutions, employers and other stakeholders rely on the output of accountants to make economic decisions, to administer their assets and to assist them in meeting their compliance obligations. Where an accountant fails to exercise and maintain the standards reasonably expected of them, they should be subject to timely, proportionate and effective actions. The operation of an investigation and disciplinary function is a key mechanism by which a Recognised Accountancy Body (RAB) holds its members to account for falling short of the standards reasonably expected of them.

An effective investigation and disciplinary function should achieve the following outcomes in the public interest:

- promote public confidence in the accounting profession and its regulation
- protect clients, members of the public and other stakeholders
- uphold proper standards of conduct and competence
- deter repeat, or similar, poor behaviour

To assist in achieving the outcomes listed above, an effective investigation and disciplinary function should apply the following principles:

- A. ensure a fair, objective and thorough process
- B. undertake effective engagement with complainants
- C. operate timely processes that prevent unnecessary delay
- D. apply effective, proportionate and dissuasive sanctions in the public interest
- E. be transparent and accountable

Under IAASA's supervision, each RAB is responsible for the regulation and monitoring of their members and for ensuring that their investigation and disciplinary function operates to achieve the outcomes listed above.

Purpose of these guidelines

The purpose of this document is to set out guidelines for the RABs to apply to their investigation and disciplinary functions to support the achievement of the outcomes listed above.

These guidelines are not intended to replace or override any legislative provisions. They should be read in conjunction with the Companies Act 2014 (the Act), Regulation (EU) No 537/2014 and any section 931 notice, rule or other guideline that IAASA may issue.

Nothing in these guidelines may be construed so as to constrain IAASA from taking action, where it deems it to be appropriate, in respect of a RAB's performance of its investigation and disciplinary functions.

Definitions

| Term | Meaning |
|--------------------------------|---|
| The Companies Act 2014/the Act | The Companies Act 2014 |
| General Guidelines | <u>General guidelines for the recognised accountancy bodies when performing regulatory functions in respect of statutory auditors</u> issued by IAASA |
| Member | A person or a firm that is, or was at the relevant time, subject to the RAB's approved investigation and disciplinary procedures. (This definition accords with the definition of 'member' in section 900(1) of the Act) It includes members and member firms of the RAB as well as statutory auditors and audit firms in respect of whom the RAB performs functions under section 930C of the Act. Such statutory auditors and audit firms include EU auditors and audit firms and third country auditors |
| Statutory auditor/Audit firm | An individual or firm who is approved in accordance with Part 27 of the Act to carry out statutory audits |

Scope of these guidelines

Section 906 of the Act provides that IAASA may issue guidelines concerning any matter that relates to its functions. These guidelines relate to the investigation and disciplinary function of the RABs which IAASA supervises under section 905 of the Act.

These guidelines are applicable to all RABs recognised in accordance with the provisions of section 930 of the Act. At the date of publication of these guidelines, the five RABs are:

- ACCA - Association of Chartered Certified Accountants;
- CPA - Institute of Certified Public Accountants in Ireland;
- ICAEW - Institute of Chartered Accountants in England and Wales;
- ICAI - Institute of Chartered Accountants in Ireland; and
- ICAS - Institute of Chartered Accountants of Scotland.

The guidelines apply to the RABs when they are exercising regulatory functions in respect of (i) members located in, or employed by an entity located in, the Republic of Ireland or (ii) the provision of services to clients located in the Republic of Ireland.

The application guidance provided under each set of guidelines in sections A to E sets out IAASA's expectations for how a RAB can demonstrate compliance with the guidelines. However, it is not a complete list of the ways in which a RAB complies with the guidelines, nor do the expectations constitute the only way in which compliance can be demonstrated. Each RAB should be able to demonstrate that it complies with these guidelines through the implementation of effective regulatory policies and procedures tailored to its context. Each RAB should also ensure that the provisions of its constitution, bye-laws, rules and regulations are in compliance with these guidelines.

Enforcement of these guidelines

IAASA may take regulatory action in respect of a failure to comply with these guidelines. This will be done in accordance with its powers under the Act.

Legislative background

Section 931A of the Act provides the prescribed accountancy bodies (PABs)¹ with a general power in respect of investigations of a possible breach of their standards by a member or former member. It provides that a disciplinary committee of a PAB may require a relevant person to produce books or documents relating to an investigation, attend before it or give it any other assistance that the relevant person is reasonably able to give. A relevant person includes a member or former member, client, the PAB or any person whom the PAB reasonably believes has information or documents relating to the investigation.

Section 934I of the Act requires a RAB to establish effective mechanisms to encourage the reporting to it of relevant contraventions or suspected relevant contraventions as defined in section 900(1).

Under section 1492 of the Act, each RAB is required to institute adequate arrangements for the effective enforcement of compliance with certain standards by statutory auditors and audit firms. These standards relate to continuing professional development, professional ethics, independence, objectivity and professional scepticism in relation to statutory audit work.

Section 1493 provides that the arrangements for enforcement of those standards shall include provision for sanctions and making information available to the public relating to the measures taken and penalties imposed.

Section 1499 requires each RAB, in relation to auditors who are not its members but in respect of whom it may perform functions, to institute arrangements for effective systems of investigation and penalties to detect, correct and prevent the inadequate execution of a statutory audit. In addition, section 1501 requires each RAB to ensure that its contractual relationship and other arrangements with its members enable it to impose effective, proportionate, dissuasive penalties on statutory auditors and audit firms.

Under section 1504, a RAB must obtain IAASA's consent to commence an investigation of a statutory auditor or audit firm related to a public interest entity.

¹ All of the RABs are also PABs by virtue of the definition of PAB in section 900 of the Act.

Effective date

These guidelines apply from 1 January 2022 to all RABs performing investigation and disciplinary functions in relation to its members as defined in these guidelines.

By 30 September 2021, each RAB shall submit a report to IAASA detailing how these guidelines will be implemented by it.

These guidelines apply until such time as they are withdrawn, amended or replaced by IAASA. It is IAASA's intention that the guidelines will be subject to periodic review and updating, in consultation with the RABs unless the proposed amendments are inconsequential.

Part II: Guidelines for RABs when performing investigation and disciplinary functions

Set out in sections A-E are the guidelines to be applied by the RABs when performing investigation and disciplinary functions. The guidelines are listed under the principles set out in part I.

RABs should also refer to the other IAASA guidelines applicable to the regulatory functions to ensure an integrated approach to the operation of its regulatory functions.

It is important to note that the requirements of the [General Guidelines](#) also apply to the investigation and disciplinary function. The Authority wishes to highlight the following areas of those guidelines for particular attention by each RAB in the operation of its investigation and disciplinary function:

- the allocation of sufficient staffing and other relevant resources
- the maintenance of adequate records
- provision of appropriate supports including training for staff, boards and committees
- independent decision-making, undertaken in a timely, proportionate and consistent manner
- adequate review and oversight of the RAB's regulatory functions, including a robust risk management framework
- conflict of interest policies and procedures

A. ENSURE A FAIR, OBJECTIVE AND THOROUGH PROCESS

Guidelines

- A.1. A RAB operates its investigation and disciplinary function in a manner that is fair to all parties, responding objectively, robustly and proportionately to concerns coming to its attention about a member's conduct or competence.
- A.2. Where a RAB decides that a concern about a member's conduct or competence warrants investigation, it undertakes a thorough investigation, ensuring that all reasonable efforts have been made to identify, obtain and consider relevant evidence.
- A.3. Decisions of individuals or committees operating the investigation and disciplinary function are taken in an objective and fair manner, based solely on facts and evidence gathered.
- A.4. The risks of inappropriate influence and conflicts of interest in the investigation and disciplinary function are managed appropriately.

Application guidance

A RAB can demonstrate compliance with the above guidelines by meeting the following expectations:

- (a) Concerns which are complaints or referrals from third parties about a member's conduct or competence are considered following receipt according to the RAB's approved investigation and disciplinary procedures. A RAB's consideration is adequately documented so as to demonstrate compliance with its procedures. Following consideration, a RAB may decide that it cannot or should not be handled through the investigation and disciplinary function, but that further action may be warranted. In that case, it deals with the concern through another regulatory process or alternative dispute resolution such as conciliation.
- (b) A RAB performs a review of concerns from other credible sources about a member's conduct or competence which come to its attention. It decides on the appropriate course of action having regard to the nature of the matters raised and risks arising, allocating the concern to the relevant regulatory function when further action or monitoring is warranted. A RAB adequately documents its rationale for the chosen course of action.
- (c) Where a RAB decides to proceed with an investigation, a member who is the subject of an investigation and disciplinary process is given information to help them understand what is happening, what is expected of them and informed that they may seek independent advice.
- (d) Members who are the subject of an investigation and disciplinary process are afforded fair procedures consistent with the rules of natural justice, including the right to be heard and to make representations. They receive written reasons for decisions and have a right of appeal.
- (e) A RAB ensures that all members who may be accountable for the matters under investigation, both firms and individuals, are subject to the investigation and disciplinary process.
- (f) Once a complainant brings a complaint to the attention of a RAB, the RAB takes responsibility for the assessment and where appropriate, investigation of it. A RAB takes such steps as are necessary to establish the facts, including gathering further information from relevant sources and undertaking analysis before arriving at a determination.
- (g) Where a concern under investigation relates to the conduct of an audit, a RAB reviews the audit file, or part thereof, as part of the investigation, unless it is not relevant to the allegations.
- (h) A RAB makes use of its powers under [section 931A](#) of the Act where necessary for the purposes of an effective investigation.
- (i) Where a complainant withdraws from the investigation and disciplinary process, a RAB nonetheless continues its processing of the concern where sufficient evidence remains available to suggest that the member may be liable to disciplinary action.

- (j) A RAB does not accept a member's resignation where the resignation could impede the progress of a concern through the investigation and disciplinary process. This does not preclude closure of a case by resignation for reasons of long-term incapacity of a member where no public interest considerations arise.
- (k) Decisions made by individuals in the investigation and disciplinary function in relation to the closure of cases are subject to oversight by a suitably qualified individual or committee.
- (l) A RAB establishes a management structure that clearly assigns roles, responsibility, authority and reporting relationships in the investigation and disciplinary function. It maintains up-to-date and documented policies and procedures addressing all stages of the process.
- (m) To avoid the threat of self-review², cases are not referred back to an individual (or a committee comprising the same individuals) who previously made a decision on the case.
- (n) As provided for in a RAB's bye-laws, regulations or by condition on its recognition, investigation and disciplinary committees or tribunals have a majority non-accountant membership.
- (o) In accordance with A.3 and A(b) of the [General Guidelines](#), conflicts of interest are avoided and conflict of interest policies and procedures are in place to ensure that potential conflicts are actively considered, managed and documented. The RAB's structure, policies and procedures include safeguards to ensure that a RAB's member representation activities could not improperly influence the operation of the investigation and disciplinary function. An example of such safeguards includes codes of conduct applying to all staff as well as council, board and committee members involved in member representation functions.
- (p) In accordance with B.1 and B.2 of the [General Guidelines](#), a RAB ensures that its investigation and disciplinary function is allocated sufficient staffing and other relevant resources and staff, boards and committees have the requisite expertise, experience and skills to effectively discharge their responsibilities. They are provided with appropriate supports to competently perform their roles.
- (q) In accordance with D.4. of the '[General Guidelines](#)', a RAB maintains adequate records in relation to its investigation and disciplinary function that are sufficient to demonstrate compliance with the applicable provisions and to allow IAASA to exercise its oversight responsibilities. Case files should be a complete and accurate record of all contact with relevant parties, work performed, papers and reports drafted and decisions made.

² Self-review arises where an individual or committee involved in the investigation and disciplinary function may be tasked with reviewing a previous decision that it made.

B. UNDERTAKE EFFECTIVE ENGAGEMENT WITH COMPLAINANTS

Guidelines

- B.1. Complainants have easy access to the investigation and disciplinary process, are kept updated and treated fairly throughout the process.**
- B.2. The role of a complainant in the RAB's investigation and disciplinary process is clearly explained to the complainant at the outset of the process.**

Application guidance

A RAB can demonstrate compliance with the above guidelines by meeting the following expectations:

- (a) A RAB's complaint handling process is easy for complainants to access, understand and navigate. Complaint submission information is displayed prominently on a RAB's website.
- (b) Complainants are provided with clear and simple information about the process, and their role, rights and responsibilities. They are also informed about potential timelines and outcomes.
- (c) Complainants are allocated a contact person, kept updated about the status of their complaint, given timely notification of hearings and promptly informed of outcomes.
- (d) Complainants are provided with written reasons for decisions in relation to their complaint that clearly explain the evidence basis for each decision.
- (e) The process provides for an independent review of a decision where a complaint is dismissed following investigation and prior to a hearing.

C. OPERATE TIMELY PROCESSES THAT PREVENT UNNECESSARY DELAY

Guidelines

- C.1. A RAB operates timely investigation and disciplinary processes that prevent unnecessary delay.
- C.2. Staff and committees responsible for the operation of the investigation and disciplinary function have timely access to relevant, accurate and complete information to effectively manage the function.
- C.3. A RAB responds on a timely basis to serious concerns about the conduct or competence of a member coming to its attention. Where necessary to protect the public, this involves appropriate interim measures until a case is concluded.

Application guidance

A RAB can demonstrate compliance with the above guidelines by meeting the following expectations:

- (a) A RAB sets target timelines for the processing of concerns from receipt to closure and at each distinct stage. These timelines are monitored and performance against target reported periodically to the regulatory board³. Exception reporting to the regulatory board takes place where there are material delays in any case.
- (b) Staff can easily and quickly access the information they need and rely on its accuracy and completeness. Key quantitative and qualitative information on the number, nature, progress and outcomes of cases is regularly reviewed and acted upon.
- (c) A RAB takes all reasonable steps to minimise delays in the processing of cases, including undertaking regular engagement with all parties. Correspondence to the parties issues promptly.
- (d) A RAB uses its best endeavours to prevent any party from unduly delaying the investigation and disciplinary process. A RAB develops appropriate responses where unreasonable behaviour by any party threatens to delay progress.
- (e) All parties are kept updated on the progress of a case and the reasons for any apparent delays arising, appropriately disclosed having regard to confidentiality considerations as well as data protection or other legal obligations.
- (f) Adequate resourcing is applied to the investigation and disciplinary function to ensure timely actions⁴.
- (g) Committee members receive high quality papers in advance of meetings, sufficient to adequately consider the decisions being requested of them.
- (h) Deferral of investigation and disciplinary matters occurs in limited circumstances and only where it will not frustrate the subsequent investigation of the case. Examples of such limited circumstances are where:
 - the Director of Public Prosecutions has requested it
 - serious prejudice could arise
 - there is a serious illness of the member or other key party

Regular review of cases on deferral is undertaken to assess whether deferral continues to be appropriate.

³ As defined in the [General Guidelines](#)

⁴ In compliance with Section B of the [General Guidelines](#)

A RAB submits a policy for deferral of investigation and disciplinary matters to IAASA for approval.

D. APPLY EFFECTIVE, PROPORTIONATE AND DISSUASIVE SANCTIONS IN THE PUBLIC INTEREST

Guidelines

- D.1. The focus of a RAB's sanctioning process is public protection and safeguarding the reputation of the profession.**
- D.2. A RAB applies and enforces effective, proportionate, and dissuasive sanctions which support the public interest.**
- D.3. A RAB takes into account the relevant circumstances listed in Article 30b of Directive 2014/56/EU when applying a sanction or penalty in respect of a statutory audit matter.**

Application guidance

A RAB can demonstrate compliance with the above guidelines by meeting the following expectations:

- (a) Sanctions and penalties imposed are tailored to both the seriousness of the finding and the risk being managed and are applied on a consistent basis. Aggravating and mitigating factors are also taken into account.
- (b) To support the application of effective, proportionate and dissuasive sanctions, as well as to ensure consistency of application, a RAB provides guidance to committees and other relevant persons on sanctions and penalties.
- (c) A member's disciplinary history is taken into account in the sanctioning process. Where there is persistent or repeat non-compliance by a member, a RAB considers further regulatory measures which may be necessary to address the risk to the public or the reputation of the profession.
- (d) Where a statutory auditor or audit firm demonstrates serious failings in competence or behaviour, a RAB promptly withdraws the approval of a statutory auditor or audit firm in accordance with relevant procedural requirements. It does this in the public interest, for the protection of clients and other stakeholders.
- (e) In respect of the sanctioning of a statutory audit matter, consideration is given to the gravity and duration of the breach, amounts of profits gained or losses avoided, and level of cooperation provided, as well as the degree of responsibility and financial strength of the statutory auditor or audit firm (Article 30b).
- (f) A RAB monitors compliance by members with any measures taken and sanctions and penalties imposed. It takes appropriate follow-up action in instances of non-compliance. In particular, a RAB ensures that:
 - it maintains a register of outstanding actions, evidences completion and records closure
 - all fines imposed are monitored for receipt and there is an effective mechanism for follow up of non-payment
 - where a member's authorisation is suspended or withdrawn, their details are promptly removed from any register or other applicable listing

E. BE TRANSPARENT AND ACCOUNTABLE

Guidelines

- E.1. A RAB's investigation and disciplinary processes are transparent and accountable. Outcomes are publicly reported in a readily accessible manner.**
- E.2. A RAB publishes the identity of the member who is the subject of an adverse finding unless it would be disproportionate, cause disproportionate damage to the individual or an institution concerned, or jeopardise the financial markets or an ongoing criminal investigation.**
- E.3. In the interests of public protection, a RAB engages in clear and timely communications with other regulatory bodies and agencies in accordance with the relevant legal framework.**
- E.4. A RAB seeks continuous improvement of its investigation and disciplinary function and acts effectively in response to feedback.**

Application guidance

A RAB can demonstrate compliance with the above guidelines by meeting the following expectations:

- (a) A RAB clearly sets out the purpose, process and procedures applying to its investigation and disciplinary function for the benefit of complainants, members and other stakeholders. It provides contact points for further information.
- (b) A RAB provides clear, evidence-based reasons for decisions to all parties and maintains adequate records to demonstrate how it has discharged its responsibilities.
- (c) Disciplinary hearings take place in public with limited exceptions permitted.
- (d) At least annually, a RAB publicly reports the overall results of its investigation and disciplinary function in a clear and accessible manner.
- (e) Details of sanctions imposed on members are published on the RAB's website in one readily accessible place. Publication timescales are for as long as is necessary for the protection of stakeholders and safeguarding the reputation of the profession. A RAB develops guidance for determining the appropriate timescale. In the rare circumstances where a decision is taken not to publish any details of sanctions imposed, a RAB documents the rationale for the decision in detail.
- (f) For findings relating to statutory audit, publication is mandatory and for a minimum of five years in accordance with Article 30c of Directive 2014/56/EU. A RAB ensures that disclosure to the public of the measures taken and penalties imposed follows the principles outlined in the 'Principles Governing the Timing and Manner of Disclosure of Penalties and Sanctions' approved by IAASA under [section 1502\(15\)](#) of the Act.
- (g) A RAB ensures that its disciplinary committees discharge their obligations under [section 931\(8\)](#) of the Act to report to the Director of Corporate Enforcement where they have reasonable grounds for believing that a category 1 or 2 offence may have been committed.
- (h) A RAB co-operates with other regulatory bodies and agencies including seeking and sharing information about the outcome of cases in accordance with the relevant legal framework. Where a RAB becomes aware of proceedings of another body or agency involving a member, it monitors the outcome so that it may take regulatory action where appropriate.
- (i) Where another regulatory body or agency provides information to a RAB relating to a member, it assesses whether that information suggests that the member has failed to exercise or maintain the standards reasonably expected of them. This includes matters in respect of which the other regulatory body or agency did or did not take action.

- (j) A RAB sets and monitors key performance indicators (KPIs) for the investigation and disciplinary function which support the regulatory outcomes listed in part I above. KPIs are included in the annual regulatory plan and progress is reported to the regulatory board periodically.
- (k) A RAB monitors its investigation and disciplinary function to ensure that any recurrent or systemic issues are acted upon and that management information is used to stimulate improvements. This includes monitoring for common themes around competence or behaviour and taking action to address them. It seeks periodic feedback from a range of stakeholders, rectifies weaknesses identified and acts on opportunities to improve the function's effectiveness.
- (l) A RAB conducts periodic reviews of relevant bye-laws, regulations, policies and processes related to its investigation and disciplinary function. This is to ensure they remain relevant and appropriate having regard to its experience, and legal and other relevant developments.



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