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ICAS Anti-Money Laundering Regulations

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The Institute of Chartered Accountants of Scotland

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Council, in terms of Rules 8 and 11.10.5 of the ICAS Rules, hereby makes the following Regulations.

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1. General

Citation and commencement

- 1.1 These Regulations may be cited as the ICAS Anti-Money Laundering Regulations and shall come into force on 1 January 2024.

Definitions

- 1.2 In these Regulations, words and phrases have the same meaning as in the ICAS Rules and, unless the context requires otherwise:

Adverse Decision – a decision of the Committee under Regulation 5.4.

AML Monitoring – the regulatory inspection programme through which ICAS seeks to uphold and improve standards of Supervised Firms.

Applicant – a sole practitioner, body corporate, partnership, limited liability partnership or unincorporated practice, applying to ICAS for Supervision.

Approved Person – a beneficial owner, officer, or manager (BOOM) of a Supervised Firm, duly approved by the Committee under Regulation 2.11.1.

Approved Sectoral Guidance – anti-money laundering guidance, approved by HMT, which has been issued for the accountancy sector, or related sectors, as updated from time to time.

Committee – the committee established by the Regulation Board under Regulation 2.1.

CPD – continuing professional development.

Hearing – a hearing in respect of a proposed Adverse Decision under Regulation 5.4.

Legislation – the primary and secondary legislation which has effect in the United Kingdom in respect of money laundering and associated offences.

Money Laundering Compliance Principal – as defined in the Legislation, the person appointed by a Supervised Firm as the officer responsible for ensuring the Supervised Firm's compliance with the Legislation.

Nominated Officer – as defined in the Legislation, the person appointed by a Supervised Firm to receive disclosures, and to determine whether such disclosures give rise to knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that a person is engaged in money laundering or terrorist financing.

OPBAS – the Office for Professional Body AML Supervision.

Regulatory Penalty – a penalty proposed by the Committee in accordance with Regulations 5.18 to 5.24.

Sub-Committee – means no fewer than three members of the Committee appointed under these Regulations, including not less than one Lay Member.

Supervision – the exercise of supervisory functions by ICAS in respect of a Supervised Firm, in accordance with the Legislation.

Supervised Firm – a sole practitioner, body corporate, partnership, limited liability partnership or unincorporated practice, which is subject to Supervision by ICAS in accordance with these Regulations and the Legislation.

Notices

- 1.3 Any notice or other document to be sent under these Regulations shall be delivered electronically, by hand or by post. It must be sent to the address that the Affiliate, Applicant, Member, or Supervised Firm has given to ICAS for this purpose. Delivery shall be deemed to have occurred:
 - 1.3.1 for emails, facsimile, and other electronic means, when sent;
 - 1.3.2 by hand, when delivered;
 - 1.3.3 by post, 48 hours after posting.
- 1.4 Any reference to legislation, rules, regulations, schemes, or other documents will apply to any re-enactment, re-issue, or amendment.

Application

- 1.5 These Regulations apply to Affiliates, Applicants, Members, Supervised Firms, and Firms which were previously subject to Supervision in accordance with these Regulations.

2. The Committee

Constitution and composition

- 2.1 The Regulation Board shall establish a Committee comprised of a Convener and seven or more other persons. Not less than three members of the Committee shall be Lay Members.
- 2.2 Appointments to the Committee shall be for a term of three years, renewable for one further term of three years at the discretion of the Regulation Board.
- 2.3 The length and number of terms referred to in Regulation 2.2 may be extended or varied in exceptional circumstances at the discretion of the Regulation Board.

Conduct of business

- 2.4 The Committee shall meet a minimum of four times a year.
- 2.5 At meetings of the Committee, three members shall constitute a quorum, of who one must be a Member and one must be a Lay Member. The majority of those present must not be Lay Members.
- 2.6 A meeting of the Committee may be conducted in person, by email, telephone or other electronic or video conferencing means whereby communications between members can be conducted in real time.
- 2.7 The Convener shall, in the case of an equality of votes, have a second or casting vote.

Declaration of interest

- 2.8 Each member of the Committee must declare any interest in a matter before the Committee. A member of the Committee who has declared such an interest shall ensure that they withdraw from any discussion and decision on the matter concerned.

Remuneration

- 2.9 Members of the Committee are entitled to be reimbursed by ICAS for any expenses reasonably incurred in connection with their membership of the Committee.
- 2.10 Lay Members of the Committee are entitled to reasonable remuneration in connection with their membership of the Committee.

Powers

- 2.11 The Committee shall have the power to:
- 2.11.1 grant and reject applications for Supervision and Approved Person status;
 - 2.11.2 impose conditions and/or restrictions on Supervision;
 - 2.11.3 withdraw Supervision;
 - 2.11.4 monitor the compliance of Supervised Firms with these Regulations;
 - 2.11.5 offer and impose Regulatory Penalties;
 - 2.11.6 make referrals to the Investigation Committee;
 - 2.11.7 make enquiries, directions and determine all other matters incidental to or arising from the exercise of its powers under Regulations 2.11.1 to 2.11.6, or otherwise in respect of the Legislation.
- 2.12 In exercising its powers, the Committee may take into account:
- 2.12.1 any orders or penalties imposed under the Rules or Regulations;
 - 2.12.2 information provided by an Applicant or Supervised Firm;
 - 2.12.3 information provided by another Regulatory Committee;
 - 2.12.4 information provided by the FCA, HMRC, HMT, OPBAS, law enforcement agencies, or any other relevant body or organisation;
 - 2.12.5 information provided by another membership or professional body;
 - 2.12.6 guidance issued in relation to the Legislation, including the Approved Sectoral Guidance;
 - 2.12.7 such other information which it believes to be relevant.

Delegation of powers

- 2.13 Subject to Regulation 2.14, the Committee may sub-delegate its powers under Regulation 2.11 to an individual or Sub-Committee on such terms as it may decide.
- 2.14 The powers under the following Regulations shall not be delegated:
- 2.14.1 the power to reject applications for Supervision under Regulation 2.11.1;
 - 2.14.2 Regulation 2.11.2;
 - 2.14.3 Regulation 2.11.3;
 - 2.14.4 Regulation 2.11.5;
 - 2.14.5 Regulation 2.11.6.

Waiver

- 2.15 Subject to Regulation 2.16, the Committee may waive the requirements of these Regulations to adapt to the particular circumstances of an Applicant or Supervised Firm if:
- 2.15.1 complying with the relevant requirements would be unnecessarily burdensome for the Applicant or Supervised Firm compared to any benefit which compliance might give to third parties or the public interest; and
 - 2.15.2 waiving the requirements of these Regulations will not constitute a material breach of the Legislation and is unlikely to result in any undue risk to third parties or the public interest.
- 2.16 A waiver granted by the Committee under Regulation 2.15 may be limited in terms of scope and timing, as the Committee deems appropriate.

3. Application for Supervision

Requirement for Supervision

- 3.1 Where required by the Legislation, Members, Affiliates and Firms shall ensure that they are subject to Supervision by ICAS, or another body that is authorised under the Legislation to exercise relevant supervisory functions.

Eligibility requirements to be a Supervised Firm

- 3.2 An Applicant must satisfy the Committee that:
- 3.2.1 it satisfies, and will continue to satisfy, the relevant requirements of the Legislation;
 - 3.2.2 where required by the Legislation, it has nominated suitable persons to act in the roles of Money Laundering Compliance Principal and Nominated Officer;
 - 3.2.3 each Principal, beneficial owner, officer or manager of the Applicant satisfies the eligibility requirements in Regulations 3.3 and 3.4 to be an Approved Person;
 - 3.2.4 it is fit and proper for Supervision;
 - 3.2.5 where appropriate, it can demonstrate compliance with the Approved Sectoral Guidance;
 - 3.2.6 where appropriate, it can demonstrate compliance with the Rules and Regulations.

Eligibility requirements for Approved Person status

- 3.3 To be granted Approved Person status, a Principal, beneficial owner, officer, or manager of the Applicant must satisfy the Committee that, in accordance with the Legislation, they have not been convicted of a relevant offence.

Applying for Supervision or Approved Person status

- 3.4 An application for a Supervision or Approved Person Status under Regulation 2.11.1 shall be:
- 3.4.1 in the form prescribed by the Committee, including such supporting information as may be requested;
 - 3.4.2 submitted on or before any date which may be prescribed by the Committee;
 - 3.4.3 accompanied by payment of the applicable fee.

Consideration of applications

- 3.5 Upon receipt of an application for Supervision under Regulation 3.5, the Committee may:
- 3.5.1 grant the application, with Supervision to be effective from such date as may be stated by the Committee;
 - 3.5.2 be minded to reject the application;
 - 3.5.3 be minded to grant the application subject to conditions and/or restrictions; or
 - 3.5.4 request further information from the Applicant before taking a decision.
- 3.6 Upon receipt of an application for Approved Person status under Regulation 3.5, the Committee shall grant the application, providing the applicant satisfies the eligibility provisions in Regulations 3.3 and 3.4, failing which the application shall be rejected.

Cessation of Supervision

- 3.7 Supervision of a Supervised Firm shall automatically cease if:
- 3.7.1 the Supervised Firm ceases to exist, whether through insolvency, corporate restructure or such other process;
 - 3.7.2 the Committee accepts an application from the Supervised Firm to terminate Supervision; or
 - 3.7.3 the Committee withdraws Supervision in accordance with these Regulations.
- 3.8 Approved Person status shall automatically cease if:
- 3.8.1 the Approved Person is convicted of a relevant offence, in accordance with the Legislation;
 - 3.8.2 the Committee accepts an application from the Approved Person to terminate Approved Person status; or
 - 3.8.3 the Supervised Firm, in which the Approved Person is employed, ceases to be a Supervised Firm in accordance with Regulation 3.7.

- 3.9 If, following cessation of Supervision under 3.8, the sole practitioner, body corporate, partnership, limited liability partnership or unincorporated practice applies to be supervised by one of the other professional bodies which is authorised under Legislation to discharge supervisory functions, it shall notify ICAS within 10 business days of the date of application.

4. Obligations of Supervised Firms

Cooperation

- 4.1 Supervised Firms shall at all times:
- 4.1.1 comply with these Regulations;
 - 4.1.2 cooperate fully and promptly with the Committee and individuals acting on its behalf or otherwise employed by ICAS;
 - 4.1.3 cooperate fully and promptly with the FCA, HMRC, HMT, OPBAS, and any other relevant body or organisation;
 - 4.1.4 use best endeavours to accommodate AML Monitoring.
- 4.2 A Supervised Firm shall pay to ICAS such fees and other monies as are required to be paid to ICAS in connection with Supervision, within such timescales as are prescribed by ICAS.
- 4.3 Upon receipt of a request from the Committee or an individual acting on its behalf, a Supervised Firm shall:
- 4.3.1 provide such information or explanation as requested, whether by way of annual return, thematic review, questionnaire, or otherwise;
 - 4.3.2 permit the examination of or deliver up such internal systems or processes, books, papers or records as the Committee considers necessary.
- 4.4 A Supervised Firm shall notify the Committee of any material change in its circumstances, including, but not limited to:
- 4.4.1 any matter affecting compliance with Regulations 3.2 or 3.3;
 - 4.4.2 any change in its name or trading name;
 - 4.4.3 any change in its principal address, or the addresses of any of its offices;
 - 4.4.4 any change in relation to its Approved Persons;
 - 4.4.5 any change in the Money Laundering Compliance Principal or Nominated Officer.
- 4.5 A Supervised Firm shall notify the Committee of any breach of Rules or Regulations which has been committed, or is likely to be committed, by the Supervised Firm, or any Member, Affiliate, or Approved Person.
- 4.6 Notification under Regulations 4.4 and 4.5 shall be provided by the Supervised Firm within 10 business days after the matter or change in question, or within such other timescale as may be prescribed in the Legislation.
- 4.7 The Committee may require the Money Laundering Compliance Principal, Nominated Officer, and/or such other senior representative of a Supervised Firm to attend a meeting with the Committee, or individuals acting on its behalf, on provision of reasonable notice.
- 4.8 All duties and obligations arising under these Regulations shall equally apply to a Supervised Firm which ceases to be Supervised.
- 4.9 A Supervised Firm shall ensure that a request under these Regulations is dealt with by the Money Laundering Compliance Principal, Nominated Officer, or such other senior representative of the Supervised Firm.

- 4.10 The principals and employees of a Supervised Firm shall make all reasonable efforts to ensure that the Supervised Firm complies with its obligations under these Regulations.

AML Monitoring

- 4.11 AML Monitoring shall cover:
- 4.11.1 the Supervised Firm's compliance with these Regulations;
 - 4.11.2 the regulatory and compliance processes of the Supervised Firm in respect of the Legislation, including its risk assessment;
 - 4.11.3 the performances of the Money Laundering Compliance Principal and Nominated Officer, where appointed;
 - 4.11.4 the CPD and other training undertaken by the Principals of the Supervised Firm, including the Money Laundering Compliance Principal and Nominated Officer, where appointed;
 - 4.11.5 the resources allocated by the Supervised Firm to securing compliance with these Regulations and the Legislation.
- 4.12 Subject to any statutory or other regulatory requirement, the Committee shall determine the timing and frequency of AML Monitoring visits.
- 4.13 At the conclusion of an AML Monitoring visit, the Supervised Firm shall receive a report in summary of the visit.
- 4.14 The report referred to in Regulation 4.13 shall be assessed and the Supervised Firm shall be notified of any follow-up action which is proposed in accordance with these Regulations.
- 4.15 If a Supervised Firm, its Approved Persons, its Principals, and/or its employees are subject to other regulation by ICAS, the scope of AML Monitoring may be extended to accommodate the monitoring regimes set out in other Regulations.

Compliance

- 4.16 A Supervised Firm shall at all times ensure compliance with:
- 4.16.1 the Legislation;
 - 4.16.2 any applicable standards, regulations or guidance issued by the FCA, HMRC, HMT, OPBAS, or any other relevant body or organisation;
 - 4.16.3 the Approved Sectoral Guidance;
 - 4.16.4 the ICAS Code of Ethics;
 - 4.16.5 the Rules and Regulations.

Referral for investigation

- 4.17 The Committee may refer a Supervised Firm, or any Member of Affiliate employed by the Supervised Firm, to the Investigation Committee if it considers that the Supervised Firm, Member or Affiliate:
- 4.17.1 has failed to comply with the Regulations;
 - 4.17.2 may otherwise be liable to disciplinary action in accordance with Rule 13.
- 4.18 If an Approved Person, Principal or employee of a Supervised Firm is not a Member or Affiliate, the Committee may write by way of a complaint to a relevant membership or professional body, if it considers that the Approved Person, Principal or employee:
- 4.18.1 has failed to comply with the Regulations;
 - 4.18.2 may be liable to disciplinary action in accordance with the rules, regulations or bye-laws of the relevant membership or professional body.

5. Decisions of the Committee

Conditions, restrictions, and withdrawal

- 5.1 The Committee may seek to take the following actions in respect of Supervision if it is satisfied that one or more of the conditions in Regulation 5.2 applies:
 - 5.1.1 application of conditions and/or restrictions; or
 - 5.1.2 withdrawal.
- 5.2 The conditions referred to in Regulation 5.1 are as follows:
 - 5.2.1 the Supervised Firm no longer meets one or more of the eligibility requirements in Regulation 3.3;
 - 5.2.2 the Supervised Firm has not complied with the Rules or Regulations;
 - 5.2.3 the Supervised Firm has not complied with any applicable statutory requirements, standards, code of practice, or guidance, whether ethical or technical, including those set out in 4.16;
 - 5.2.4 the quality of the regulatory and compliance processes of the Supervised Firm have fallen short of the standards expected of a Supervised Firm;
 - 5.2.5 the Supervised Firm has not complied with an existing condition and/or restriction placed on Supervision, or any written undertaking provided to the Committee;
 - 5.2.6 the action is required to prevent risk or potential risk to third parties or the public interest.

Implementation of decisions

- 5.3 Subject to Regulation 5.4, a decision of the Committee shall come into force immediately, or on such date as may be specified by the Committee.

Adverse Decision

- 5.4 Subject to Regulation 5.5, the Committee shall make an Adverse Decision if it exercises its powers under Regulation 2.11 by:
 - 5.4.1 rejecting an application for Supervision;
 - 5.4.2 imposing conditions and/or restrictions on Supervision;
 - 5.4.3 withdrawing Supervision.
- 5.5 If the Committee proposes to make an Adverse Decision, it shall first serve notice on the Applicant or Supervised Firm, which notice shall include a note of the reasons in support of the proposed Adverse Decision.
- 5.6 An Applicant or Supervised Firm which does not accept the proposed Adverse Decision may:
 - 5.6.1 submit written representations in opposition; or
 - 5.6.2 request a Hearing.
- 5.7 If the Applicant or Supervised Firm does not submit written representations and does not request a hearing in accordance with Regulation 5.6, the proposed Adverse Decision shall come into force upon expiry of ten business days from the date of service of the notice under Regulation 5.5.

Written representations

- 5.8 If the Applicant or Supervised Firm submits written representations in accordance with Regulation 5.6.1, the Committee shall consider the written representations and decide whether to withdraw, vary or affirm the proposed Adverse Decision.

Hearings

- 5.9 If the Applicant or Supervised Firm requests a Hearing in accordance with Regulation 5.6.2, a Hearing shall be held before the Committee.

- 5.10 The Committee shall consider the representations made by the Applicant or Supervised Firm and decide whether to withdraw, vary or affirm the proposed Adverse Decision.
- 5.11 A Hearing shall be held in accordance with any guidance on regulatory hearings which may be issued by ICAS from time to time.
- 5.12 The Committee may at its discretion order the Applicant or Supervised Firm to contribute to the costs of a Hearing.

Notification of outcome

- 5.13 The Applicant or Supervised Firm shall be notified of the outcome of the Committee's decision following its consideration of representations made in writing or at a Hearing.
- 5.14 If the Committee decides not to withdraw the proposed Adverse Decision, the notice under Regulation 5.5 shall confirm the date upon which the Adverse Decision shall come into effect, subject to Regulation 5.15.

Appeals

- 5.15 If the Committee decides not to withdraw its proposed Adverse Decision following its consideration of representations made in writing or at a Hearing, the Applicant or Supervised Firm has the right to appeal the Adverse Decision.
- 5.16 An appeal must be made to the Tribunal Clerk within 21 days of the date on which notice of the Adverse Decision is communicated to the Applicant or Supervised Firm in accordance with Regulation 5.13 and shall be considered in accordance with the Discipline and Appeal Tribunals Regulations.
- 5.17 If the Applicant or Supervised Firm submits an appeal under Regulation 5.16, the Adverse Decision shall not come into force until such date as may be prescribed by the Appeal Tribunal.

Regulatory Penalties

- 5.18 The Committee may propose a Regulatory Penalty under Rule 13.16.10 to a Supervised Firm if it is satisfied that the following conditions are met:
 - 5.18.1 the Supervised Firm has not complied with these Regulations; and
 - 5.18.2 the circumstances do not involve conduct or competence to suggest that the Supervised Firm should not continue to be subject to Supervision by ICAS.
- 5.19 The Committee shall determine the amount of the proposed Regulatory Penalty and shall notify the Supervised Firm accordingly.
- 5.20 The Supervised Firm shall respond to the Committee in writing within ten business days of service under Regulation 5.19 to confirm whether or not the proposed Regulatory Penalty is accepted.
- 5.21 A Supervised Firm may make representations to the Committee in respect of the proposed Regulatory Penalty. Upon consideration of any such representations, the Committee shall notify the Supervised Firm that the proposed Regulatory Penalty has been affirmed, varied or withdrawn.
- 5.22 If a proposed Regulatory Penalty has been affirmed or varied under Regulation 5.21, the Supervised Firm shall have an additional period of 10 business days to confirm whether or not the proposed Regulatory Penalty is accepted. The Committee shall not be obliged to consider any additional representations from the Supervised Firm.

- 5.23 If a Supervised Firm accepts a proposed Regulatory Penalty, the sum referred to shall be payable within ten business days of the Supervised Firm's acceptance, or within such longer period of time as the Committee may specify or agree.
- 5.24 If a Supervised Firm does not accept the proposed Regulatory Penalty, or does not respond within the applicable timescale, the Committee may proceed in accordance with Regulations 4.17 or 4.18.

Publicity

- 5.25 The Committee may publish its decisions and the course of any action taken under these Regulations in such manner as it thinks fit.



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