



Fitness Committee (Admission to Provisional Membership, Re-registration and Readmission) Regulations

EFFECTIVE FROM 1 JANUARY 2018

Authority and commencement

- 1 These **regulations** are made by the Council of **ICAEW** under Clause 16 of the Supplemental Charter of 1948 and Principal Bye-law 49(a). They come into force on 1 January 2018.
- 2 Any notice or document may be served on **ICAEW** by delivering it to the **PCD Committee Secretary** in **ICAEW's** Professional Conduct department.
- 3 Any notice, decision, order or other document which needs to be served on an **applicant, ICAEW** or other person under these **regulations** may be delivered by hand, or sent by email or post:
 - i. if it is delivered by hand to the addressee, service will take effect immediately;
 - ii. if sent by email, it will be sent to the most recent email address at which the addressee has agreed to receive notification and service will take effect at 9am on the next **business day** following the date on which it was transmitted;
 - iii. if sent by post, it will be sent to the latest address given by the addressee and service will take effect two **business days** after posting.

Interpretation

- 4 In these **regulations** the words set out below have the following meanings:
 - a. **Applicant** means:
 - i. a person applying for provisional membership of **ICAEW**;
 - ii. a person who was previously a member of **ICAEW** and who is re-applying for membership in accordance with the Membership Cessation, Readmission and Resignation regulations; or
 - iii. a person who was previously a **Foundation Qualification Holder** and is applying for re-registration as a **Foundation Qualification Holder** in accordance with the Foundation Qualification Regulations.
 - b. **Business day** means a day when banks are open for business (excluding weekends) in England and Wales.
 - c. **Contracted firm** has the meaning set out in **Disciplinary Bye-law** 1.2.
 - d. The **director** means the person for the time being holding the office of the Executive Director of the Professional Standards Department of **ICAEW** or any member of his or her department authorised to act in his or her name.
 - e. **Disciplinary Bye-laws** means the Disciplinary Bye-laws of **ICAEW** for the time being in force.

- f. **Disciplinary record** means any previous (adverse) disciplinary findings or orders made by any regulatory or disciplinary committee of **ICAEW**, but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under **Disciplinary Bye-law** 15.2(d) that no further action be taken on the complaint or on any specified part of it.
- g. **Fitness Committee** means the committee constituted under paragraph 6 of the Schedule to the **Disciplinary Bye-laws**.
- h. **Foundation Qualification Holder** is someone who holds the **ICAEW** Foundation Qualification and is registered to use the relevant designatory letters.
- i. **ICAEW** means the Institute of Chartered Accountants in England and Wales.
- j. **Member firm** has the meaning set out in **Disciplinary Bye-law** 1.2.
- k. **Panel** means a panel of the **Fitness Committee** appointed to hear the application for provisional membership or readmission to membership of **ICAEW**;
- l. **Panel chair** means the lay chair of the **Fitness Committee** (or another lay member of the **Fitness Committee** who has been approved by the Regulatory Appointments Panel to act as a lay chair of tribunals of the Disciplinary Committee) and who has been appointed chair of a **panel** in accordance with **regulation** 10.
- m. **Parties** means the **applicant** and **ICAEW**.
- n. **PCD Committee Secretary** means the Professional Conduct Department (PCD) Committee Secretary appointed to that role by the head of staff.
- o. **Provisional member** means a person who has not been admitted to full membership of **ICAEW** as defined in **Disciplinary Bye-law** 1.2.
- p. **Regulated firm** has the meaning set out in **Disciplinary Bye-law** 1.2.
- q. **Regulations** means these Fitness Committee (Admission to Provisional Membership, Re-registration and Readmission) Regulations, as modified or amended from time to time.
- r. **Written record of decision** means the document prepared by the **PCD Committee Secretary** and approved by the **panel** which records in writing the order of the **panel**, including any term or condition on which the order was made, and, in the case of a refusal of the application, a summary of the reasons for the decision.

5 In these **regulations** words importing the singular include the plural and vice versa.

- 6 Headings are included for convenience only and do not affect interpretation of the **regulations**.

The Fitness Committee's role and the appointment of the panel

- 7 These **regulations** govern the role of the **Fitness Committee** in determining:
- i. applications for provisional membership of **ICAEW** where the application has been referred to the Professional Standards department by the Learning and Professional Development department;
 - ii. applications for readmission to membership of **ICAEW** in accordance with the Membership, Cessation, Readmission and Resignation regulations; and
 - iii. applications for re-registration of **Foundation Qualification Holder** status in accordance with the Foundation Qualification Regulations.
- 8 Where the **PCD Committee Secretary** receives a referral from the **director** in relation to an application under **regulation 7**, he/she shall ensure that the application is considered at the next meeting of the **panel**, provided that meeting is at least 15 **business days** after receipt by the **PCD Committee Secretary** of the referral.
- 9 The **PCD Committee Secretary** will write to the **applicant** within 5 **business days** of the referral advising him/her of the date and time of the meeting and inviting the **applicant** to make any written representations in support of the application at least 5 **business days** prior to the meeting. The **PCD Committee Secretary** shall enclose with this notice copies of any documents which will be considered by the **panel** in relation to the application at the meeting.
- 10 **Panels** of the **Fitness Committee** will be convened regularly and shall comprise three members of the **Fitness Committee**, one of whom is an **ICAEW** member and two of whom are lay (ie, non-accountants). One of the two **lay members** shall be appointed as **panel chair**.

Meeting of the panel

- 11 At the meeting the **panel** will consider whether it can approve the application based solely on its consideration of the documents referred to in **regulation 9** and any written representations which have been received from the **applicant**. If the **panel** is unable to approve the application on that basis, the matter will be adjourned and the **applicant** will be given the opportunity to make oral representations before the **panel** at a subsequent hearing in accordance with **regulations 18 – 27** below.
- 12 If the **panel** approves the application in accordance with **regulation 11**, the **PCD Committee Secretary** shall write to the **applicant** informing him/her of the **panel's** decision within 5 **business days** of the date of the meeting.

Pre-hearing procedure

- 13 If the **panel** is unable to approve the application in accordance with **regulation 11**, the **PCD Committee Secretary** shall write to the **applicant** within 10 **business days** informing him/her of the request by the **panel** to hear oral representations in support of the application, and inviting the **applicant** to make such representations either in person or by conference call. The **PCD Committee Secretary** shall inform the **applicant** of the date and time of the subsequent hearing and invite him/her to make written representations to the **panel chair** as to whether the hearing should take place in person or by conference call.
- 14 The **panel** appointed to conduct the hearing should be, as far as reasonably practicable, the same **panel** as considered the matter in accordance with **regulation 11**. If for any reason a member of the original **panel** is unable to attend the hearing, the hearing shall be adjourned until the **panel** member can attend, or a new **panel** shall be appointed by the **panel chair** (or, failing him/her, by the chair or vice-chair of the **Fitness Committee**) in accordance with **regulation 10**.
- 15 The **PCD Committee Secretary** shall decide, in his/her absolute discretion, whether an application for a postponement of a hearing which has not commenced should be granted.
- 16 At least 10 **business days** before the day fixed for the hearing the **applicant** shall provide the **PCD Committee Secretary** with any documents and/or material which he/she intends to rely upon in support of the application at the hearing (unless the documents have been included amongst the documents sent to, or received from, the **applicant** in accordance with **regulation 9** above). The **PCD Committee Secretary** shall provide **ICAEW** with a copy of any documentation received from the **applicant** and provide **ICAEW** with a reasonable opportunity to respond.
- 17 At any time prior to the hearing the **panel chair** may require an **applicant** or **ICAEW** to provide such further information and documents relating to the application as the **panel chair** thinks necessary to assist the **panel** in reaching a decision at the hearing and to supply such further copies of any document he/she considers necessary.

Hearing

- 18 A hearing of the **panel** may be convened in person or by conference call at the **panel chair's** discretion having taken into account any representations made by the **parties** on this point.
- 19 Subject to **regulation 21** below, the hearing shall take place in private with only the members of the **panel**, the **applicant**, the **PCD Committee Secretary** and a stenographer or shorthand writer in attendance.
- 20 A hearing of the **panel** may proceed in the **applicant's** absence where the **panel** is satisfied the **applicant** was provided with notice of the hearing in accordance with **regulation 13**.
- 21 The **applicant** may request that other persons attend the hearing to act as representatives or to give evidence in support of the application.

- 22 The hearing shall be informal and proceed on an inquisitorial basis. The strict rules of evidence shall not apply, but the **panel** shall ensure that the **applicant** has a reasonable opportunity to be heard. The **panel** has the right to determine the procedure of the hearing and to ask whatever questions it considers appropriate of the **applicant** in order to reach a decision in the case that is just and fair.
- 23 If the hearing concerns an application for readmission to membership of **ICAEW** or an application for re-registration **Foundation Qualification Holder** status, the **PCD Committee Secretary** shall provide the **panel** with a copy of the **applicant's disciplinary record**.
- 24 The **panel** may deliberate in the absence of the **applicant**, the **PCD Committee Secretary** and any other persons in attendance at the hearing at any time.
- 25 A **panel** may adjourn its proceedings from time to time as it thinks fit of its own volition or upon the application of the **parties**.
- 26 A written transcript or digital recording of the proceedings may be taken on behalf of the **panel**.
- 27 No objection shall be upheld to any technical fault in the procedure adopted by a **panel** provided that the proceedings are fair and in accordance with the relevant regulations.

Panel's decision and appeals

- 28 The **panel** may approve the application on such terms and conditions as it considers appropriate.
- 29 If a **panel** declines the application, it shall give its reasons for considering that the **applicant** is not fit to become a member, **provisional member** or **Foundation Qualification Holder** of **ICAEW**.
- 30 A **written record of the decision** of the **panel** shall be prepared by the **PCD Committee Secretary** for approval by the **panel**.
- 31 The **PCD Committee Secretary** shall send to the **applicant** a copy of the **written record of the panel's decision** as soon as reasonably practicable after it has been approved by the **panel**.
- 32 There shall be no right of appeal against a decision of the **panel** not to admit an **applicant** as a **provisional member** of **ICAEW**.
- 33 An **applicant** who is refused readmission to **ICAEW** membership may, within 28 days of the date on which the **written record of the panel's decision** is served on him/her, give notice of appeal to the **director** in accordance with the Membership Cessation, Readmission and Resignation Regulations. Any such notice shall state the grounds of appeal.
- 34 An **applicant** who is refused re-registration as a **ICAEW Foundation Qualification Holder** may, within 28 days of the date on which the **written record of the panel's decision** is served on him/her, give notice of appeal to the **director** in accordance with

the Foundation Qualification Regulations. Any such notice shall state the grounds of appeal.

Disclosure

- 35 All written material and information provided by either **ICAEW** or the **applicant** in connection with proceedings shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:
- a. to legal advisers for the purposes of the proceedings;
 - b. where the **applicant** is a principal in, or employed by, a **member firm**, **contracted firm** or **regulated firm**, to a principal in that firm;
 - c. to any other person to whom disclosure is necessary for the purposes of obtaining information or assistance in connection with proceedings;
 - d. to an insurer where disclosure is required under the terms of an policy or in connection with any application for insurance cover;
 - e. where the disclosure to any person or body undertaking regulatory, disciplinary or law enforcement responsibilities is for the purpose of assisting that person or body to undertake those responsibilities required or allowed by law.