

BYE LAW 15

Anti-Money Laundering Regulations

Introduction

15.1.1

In this Bye Law 15, a reference to any statute or statutory provision includes reference to that statute or statutory provision as from time to time amended, extended or re-enacted, with or without amendment.

15.1.2

In this Bye Law 15, unless there is something inconsistent in the subject or context, words denoting the singular number only, include the plural and vice-versa; words denoting one gender only, include the other genders; words denoting individuals include corporations and vice-versa; and references to "person" include reference to a Firm, or corporation, or other body of persons; words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall refer, unless the context clearly indicates to the contrary, to the whole of this Bye Law 15 and not to any particular section or paragraph thereof.

15.1.3

The headings and captions to the paragraphs in this Bye Law 15 are inserted for convenience of reference only and do not affect its construction or interpretation.

15.1.4

The Institute of Certified Public Accountants in Ireland (the Institute) is a competent authority under S.60 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended, (the Act) and is responsible for the supervision of its *members* and *Firms* who are considered to be *designated persons* under *the Act*.

The Institute may also supervise *designated persons* who are not *members* but who are partners, directors, or *Responsible Individuals* in *firms* in accordance with this Bye Law and Bye Law 13 and subject to agreements made under S. 61 of *the Act*.

In accordance with S.61 of *the Act* *the Institute* may enter into an agreement with another *Designated Accountancy Body* to agree and establish the supervision of a *firm* or *member*.

15.1.5

A *member* or *firm* is considered to be a *designated person* only in respect of those activities or services that render the person a *designated person*. Typically for the purposes of a *member* of the Institute such services include audit, external accountancy, tax adviser, trust or company services.

Definitions

15.1.6

The defined terms set out in Article 1 and Article 48 of the Articles have the same meaning in this Bye Law 15. The following terms have the following meaning;

Act means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended

AML means anti money laundering and terrorist financing

Committee means the Registration Committee

Designated Accountancy Body means a Prescribed Accountancy Body as provided for by the Companies Act 2014

Designated person has the meaning given under *the Act*

Designated persons without a practising certificate means a *Member* who by virtue of their activities is not required by Bye Law 13 to hold a practising certificate but is considered to be a *designated person* under *the act*.

External Accountant has the meaning assigned to it by *the Act*.

Firm means a firm that is registered by *the Institute* as either a Statutory Audit Firm or a Non-Audit Firm in accordance with Bye Law 13.

The Institute means the Institute of Certified Public Accountants in Ireland

Member has the meaning assigned to it by the Institute's Constitution.

Practising certificate refers to a practising certificate issued under Bye Law 13.

Public Practice has the meaning assigned to it by Bye Law 13.

Registration means a registration granted under Bye Law 15 to facilitate supervision of a designated person under the Act.

Registration Appeals Committee has the meaning assigned to it by Bye Law 13.

Registered Member means a *member* or *firm* who holds a registration under Bye Law 15.

Relevant Offence has the meaning assigned to it by S. 63A (4) of *the Act*.

A "**Responsible Individual**" has the meaning given to it by Bye Law 13.

Trust or company service provider has the meaning assigned to it by the Act.

Tax Adviser has the meaning assigned to it by the Act.

15.2.1

Registration

Members who hold a CPA *practising certificate* and *firms* registered in accordance with Bye Law 13 are considered *registered* for the purposes of AML supervision in accordance with Bye Law 15.

Members who provide services which render them a *designated person* under *the Act*, but which do not require them to hold a *practising certificate* in accordance with Bye Law 13, Practice and Audit Regulations, such as those services outlined in Bye Law 13.15.7 are required to register in such form and to provide such information as the *Committee* requires for the purposes of AML supervision. Such members are referred to as *designated persons without a practising certificate*.

An application for *registration* under this Bye Law shall be made in such format as the Registration Committee requires.

The *Institute* shall take the necessary measures to prevent persons convicted of a *relevant offence* from performing a management function in or being the beneficial owners of the *designated persons* or *firm*.

Any person supervised by *the Institute* for AML purposes and performing a management function in or being the beneficial owner of the *designated person* or *firm* and who is convicted of a *relevant offence* must inform *the institute* within 30 days of the day on which that person was convicted of the *relevant offence*.

Any *designated person* for which or in respect of which a person who is convicted of a *relevant offence*, performs a management function or is a beneficial owner, shall inform *the Institute* of the conviction within 30 days of the date on which the *designated person* became aware of the conviction.

A *member* or *firm* who holds a *registration* under Bye Law 15 for the purposes of AML supervision, is referred to as a *Registered Member*.

15.3.1

Renewal of Registration

Renewal of *registration* for *practising certificate* holders will be conducted via the process for the annual renewal of a *practising certificate*, in accordance with Bye Law 13.

Members who are *designated persons without a practising certificate*, shall renew their *registration* under this Bye Law annually in such form as is required by the *Registration Committee*.

15.4.1

Responsibility

It is the responsibility of each *Member* to ensure that he/she is adequately *registered* for the purposes of this Bye Law and *the Act*.

It is the responsibility of each *member* to ensure that they are subject to supervision for the purposes of *the Act* either;

- i. by the Institute in accordance with Bye Law 7 and 13.
- ii. by the Institute in accordance with this Bye Law
- iii. by another *Designated Accountancy Body* in accordance with S.61 of *the Act*, or
- iv. in accordance with Chapter 9 of *the Act*.

In determining whether a *Member* should be *registered* by *the Institute* for the purposes of this Bye Law, the decision of the *Registration Committee* shall be final. Failure to do so may render the *member* liable to disciplinary action.

15.5.1

Powers of Committee

The responsibilities and powers of the Registration Committee are provided for by Bye Law 13, Practice and Audit Regulations.

With regard to *registration* for the purposes of this Bye Law, the *Registration Committee* has the power to;

- a) Grant a *registration*
- b) Grant a *registration* with restrictions and/or conditions
- c) Refuse a *registration*
- d) Renew an application
- e) Refuse to renew a *registration*
- f) Review all returns and reports made under this Bye Law
- g) Grant or refuse dispensation from the requirements of this Bye Law
- h) Make appropriate enquires into the eligibility of a *Member* or *Firm* to hold *registration* (by writing, or authorising a review or visit to the Firm's office or offices, or in any other way);
- i) Make appropriate enquiries to confirm that a *Registered Member* is complying with this Bye Law (by ordering that the *Member* or *Firm* be written to or visited, using a periodic return, or in any other way);
- j) Publish in any manner it decides its orders or decisions if it believes this to be appropriate following the expiration of any appeal period or appeal process provided for in bye law 15; and
- k) Make a complaint under Bye Law 6 where it believes that such a complaint should be made and;
- l) Withdraw a registration in accordance with this bye law
- m) To make a report in accordance with S.63 (4) of *the Act*
- n) To maintain a register of *Registered Members* supervised by the *Institute* under the *Act*.

The committee may delegate at its own discretion any of its responsibilities and powers to any sub committee, employees of the Institute or other duly appointed agent other than;

- a) Grant a *registration* with restrictions and/or conditions
- b) Refuse a *registration*
- c) Refuse to renew a *registration*
- d) Grant or refuse dispensation from the requirements of this Bye Law
- e) Withdraw a registration in accordance with this bye law

Where such delegations occur a summary of delegations made must be presented to the *Registration Committee* on an annual basis.

15.6.1

Appeal

If a *Registered Member* or an applicant for *registration* in accordance with Bye Law 15, is dissatisfied with a decision of the Registration Committee in relation to the refusing to grant or renew a *registration*, to withdraw a *registration*, to impose conditions or restrictions on a *registration*, he/she may appeal the decision before the *Registration Appeals Committee*. The *Registered Member* must so appeal In Writing (setting out the grounds of the appeal and all accompanying documentation) to the *Registration Appeals Committee* within ten business days of the notice of the *Registration Committee*'s decision being served.

A *Registered Member* can only appeal on the grounds that the *Registration Committee*:

- (a) was wrong in law;
- (b) wrongly interpreted any relevant Bye Law; or
- (c) did not comply with this Bye Law 15.

The procedures of the *Registration Appeals Committee* are provided by Bye Law 13, Practice and Audit Regulations.

15.7.1

Cessation of Registration

A *registered Member* who is also the holder of a *practising certificate* shall comply with the requirements of Bye Law 13 regarding the cessation of their public practice activities.

In the event that the cessation of *public practice* activities by such a *member* still renders them subject to Bye Law 15, by virtue of the nature of the activities that they continue to provide, the *Member* shall make an application for a registration under Bye Law 15 as a *designated person without a practising certificate*.

A *designated person without a practising certificate* may apply to cease their *registration* by notice in writing to the *Committee* not later than one month before cessation.

Upon cessation such a *registered Member* must satisfy the *Committee* on the following matters in relation to himself/herself:

- (a) that there are no outstanding regulatory or disciplinary matters;
- (b) that all returns due have been submitted;
- (c) that all fees due have been paid.

15.8.1

Changes in Circumstances

A *Registered Member* is required to notify the Institute as soon as practicable, but not later than ten business days after the event, of any matter in relation to his/her continuing eligibility to hold a *registration* or any changes to the *Firm(s)* through which the designated services are provided. This includes changes to address/ place of business(s), partnership or corporate structure etc.

15.9.1

Provision of Information to the Committee

In exercising its powers and carrying out its duties under this Bye Law 15, the *Registration Committee* (and any of its sub-Committees, the Secretariat, or any other duly appointed agent) has the power to require a *Registered Member*, to provide access to any of the firm's places of business and any information about the *Registered Member*. This information may include books, papers and records about the *Registered Member* or clients.

15.10.1

Waiver

The *Registration Committee* may at its discretion waive or alter the requirements of this Bye Law 15, subject to relevant legislation, with or without extra conditions (in order to adapt them to the particular circumstances where relevant to the *Registered Member* for the particular kinds of business carried on and the procedures used) if the *Registration Committee* considers that:

- (a) complying with the relevant requirements is too burdensome for the *Registered Member* compared to any benefit which compliance might give to clients or the public; and
- (b) altering the requirements set out in this Bye Law 15 will not result in any undue risk to clients or the public.

The *Registration Committee's* decision to grant or refuse to grant a waiver with or without conditions shall be final and is not open to appeal.

Waivers shall only be granted in exceptional cases by the *Registration Committee* and at its sole discretion and shall be decided on a case by case basis. The *Registration Committee* shall not grant a waiver or alter the requirements of this Bye Law if the requirements that the *Registered Member* is unable to comply with are requirements provided for by law.

15.11.1

Monitoring

The Institute shall adopt a risk-based approach to the exercise of its supervisory functions.

The arrangements for the monitoring and supervision of *Registered Members* for AML purposes may be conducted as follows;

- Submission of information by the *registered member*
- Desktop reviews of information provided
- Inspection process
- Other methods as deemed appropriate

The frequency and intensity of supervision shall be based on the risk profile of *designated persons*, and on the risks of money laundering and terrorist financing in the state.

The Institute shall review, both periodically and when there are major events or developments in their management and operations, their assessment of the money laundering and terrorist financing risk profile of designated persons, including the risks of non-compliance with the provisions of this *Act*.

Effective Date

The inspection process for *Members* who hold *practising certificates* from the *Institute* and regulated *Firms* will be conducted where possible in conjunction with the quality assurance process provided for under Bye Law 7, Quality Assurance, and this Bye Law.

The inspection process for *Registered members* who are *designated persons without a practising certificate* shall be conducted in accordance with this Bye Law 15.

The *Institute* may take into account the degree of discretion allowed to the *designated person*, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls, and procedures.

Inspections conducted to assess compliance with *the Act* in accordance with this Bye Law will be conducted in accordance with Appendix One.

15.12.1

Compliance Principal

All Registered *members* who are designated persons and registered for the purposes of this Bye Law shall appoint a Compliance Principal. All such members shall notify the Institute in writing of the name of its Compliance Principal on his/her appointment. The *Institute* shall be notified if the Compliance Principal is changed and of the name of the new appointment. The Compliance Principal shall be the point of contact for the purposes of *AML* supervision in accordance with this Bye Law.

15.13.1

Obligations of a Registered Member

All Registered *Members* who are considered to be *designated persons*, must comply with the requirements of the following;

- a) The Act
- b) This Bye Law
- c) Any guidance issued from time to time by CCAB-I or the *Institute* on *AML*.

Registered Members shall ensure that they and all persons associated with them meet their obligations under the Act and co-operate fully with the *Institute* and its officers in its monitoring and enforcement of compliance with *the Act* and Bye-Laws, relating to the operation of their activities

A failure to co-operate fully with the *Institute* may result in disciplinary action as laid down in Bye Law 6.

Failure to comply with the *AML* requirements of the Act, the Bye laws or any guidance issued from time to time by CCAB-I or the Institute on *AML* may result in disciplinary action as laid down in Bye Law 6.

15.14.1

Maintenance of Competence

A *registered member* is required to maintain their competence on the topic of *AML* through the completion of relevant Continuing Professional Development.

15.15.1

Annual reporting.

The Institute shall include in its annual report an account of the activities that it has carried out in performing its functions under this *Act* during the year to which the annual report relates. The annual report shall also include information regarding the measures taken by the authority to monitor compliance *the Act*.

15.16.1

Disclosure of Information

In exercising its powers and carrying out its duties under this Bye Law 15 the *Registration Committee* will treat all information as confidential but may disclose any information if it believes it is appropriate to do so in the following circumstances:

- (a) to individuals appointed to investigate complaints against *Registered Members* in accordance with Bye Law 6;
- (b) to any Institute Committee empowered by Council in the regulatory and disciplinary areas;
- (c) in connection with the discharge by the *Institute* of its functions as a competent authority under the legislation governing AML in the Republic of Ireland; and
- (d) if it is required to do so by law
- (f) to another Designated Accountancy Body, Competent Authority or State Competent Authority in connection with the discharge by the Institute of its functions as a competent authority
- (g) to a competent authority in another Member State with regard to a *Registered Member* registered in accordance with *the Act*.

15.16.2

Reporting Breaches

The *Institute* shall establish effective and reliable mechanisms to encourage the reporting of potential and actual breaches of *the Act* through a secure communication channel. This secure communication channel can also be to report threats or retaliatory or hostile actions resulting from the reporting of suspected breaches.

15.17.1

Appendix One

AML Inspection Process

15.17.2

The purpose of the AML Inspection process is to ensure that all *Registered Members* maintain an appropriate level of compliance with their obligations as *designated persons* under *the Act*. This is achieved primarily by conducting on-site and desk top reviews of *Registered Members* and, amongst other tasks, examining a cross section of current records at such intervals as may be determined by the *Institute*.

15.17.3

Registered Members shall ensure that they and all persons associated with them co-operate fully with the *Institute* in its monitoring and enforcement of compliance with *the Act* and Bye-Laws relating to the operation of their activities and co-operate fully with Quality Assurance Officers. A failure to co-operate fully with the *Institute* may result in disciplinary action as laid down in these Bye Laws.

15.17.4

Quality Assurance Officers engaged by the *Institute* carry out the AML Inspection process independent of *Council*, on a confidential basis.

15.17.5

Quality Assurance Officers engaged by the *Institute* to carry out the quality assurance process shall declare (if such be the case) that there are no conflicts of interest between them and the *Registered Member* to be inspected. Arrangements shall be made to ensure that standards relating to data protection are in place.

15.17.6

All practice and client information obtained during a review and communication concerning the inspection process between the Quality Assurance Officer(s), the *Professional Standards Department* of the *Institute* and the *Registered Member* will be confidential unless the result is subject to *Appeal* or the case is referred to the Director of *Professional Standards* or the *Investigation Committee*, or the *Disciplinary Committee*, or other disclosure such as a report under *the Act* or required by law.

15.17.7

If the Registration Committee, Registration Appeals Committee, *Investigation Committee*, *Disciplinary Committee* or a *Disciplinary Tribunal* direct that an AML inspection be carried out, the Quality Assurance Officer(s) shall report back to the appropriate committee in relation to all aspects of the review including the findings and shall provide the appropriate committee with all relevant documentation including correspondence if required.

15.17.8

A Quality Assurance Officer, Director of Professional Standards, Registration Committee; Registration Appeals Committee; Investigation Committee; Disciplinary Committee or Appeal Panel may utilise the services of an expert or seek external advice in relation to any matter relating to an AML inspection if considered necessary.

15.17.9

The Quality Assurance Officer and any other parties involved in an AML Inspection of a *Registered Member* shall confirm their independence in relation to the *Member* or *Firm* itself as well as the clients of the *Firm* whose files are the subject of the review.

15.17.10

The Director of Professional Standards or the Quality Assurance Manager or the Practice Regulation Manager may report the findings of an inspection to the Registration Committee, Registration Appeals Committee, *Investigation Committee*, *Disciplinary Committee* or a *Disciplinary Tribunal* if considered necessary.

15.17.11

Registered Members will be advised of the findings at each stage of the Inspection process. A full written report on the findings of each stage of the Inspection process will be sent to the Compliance Principal as soon as practicable. This report shall include the main findings and outcome and where appropriate recommendations for improvement. Registered Members must take all reasonable steps to ensure that recommendations arising from the inspection process are implemented within a reasonable period.

15.17.12

A Quality Assurance Officer may refer a matter as a complaint in accordance with Bye Law 6 if he/she considers it appropriate to do so.

15.17.13

There is no Appeal in relation to the decision to refer a matter as a complaint. Such a referral can occur at any time or at any stage during the inspection and may relate to one or more specific matters or the entire review.

15.17.14

Where a *Member* does not accept the outcome of an inspection, they may *Appeal* the outcome to the Director of Professional Standards or the Quality Assurance Manager or the Practice Regulation Manager. Any conditions imposed shall not be enforced until the appeal has been concluded unless deemed by the Director of Professional Standards to be necessary to protect the public or the clients of the *Firm*.

An Appeal of an outcome of an AML Inspection shall be conducted in accordance with the provisions of Bye Law 7.

15.17.15

The Registration Committee, Registration Appeals Committee, *Investigation Committee* or Disciplinary Committee or any *Disciplinary Tribunal* may direct, at their absolute discretion, that an AML Inspection be carried out. The above committees have the right to specify the terms of the review.

15.17.16

Selection Process

The Institute shall adopt a random and risk-based approach to the exercise of its AML Inspection function.

In determining risk, the following criteria may be used, this list is not exhaustive;

1. Number, size and nature of assignments/clients retained
2. Nature of services provided
3. Client profile
4. Business activities of clients
5. Geographical exposure
6. Previous STR filing history
7. Previous quality assurance / inspection history
8. Previous disciplinary, licensing or other regulatory history
9. Complaints made to the *Institute*
10. Failure to complete adequate continuing professional development.
11. Information in the public domain
12. Information provided to the Institute by the *Registered Member* in compliance with the Bye Laws,
13. Failure to demonstrate that recommendations arising from quality assurance reviews or inspections are implemented within a reasonable period
14. Consideration of risk factors provided in Schedules 3 and 4 of the Act
15. Consideration of any relevant information on the domestic and international risks of money laundering and terrorist financing which affect the sector

The quality assurance visit will be conducted through the Compliance Principal who shall be responsible for ensuring all information required is available.

15.17.17

Notice of Inspection

Upon selection for inspection, a notice will issue to the *Registered Member* advising of the date and time of the review to be held at the *Firm's* premises or by such other means as the Institute may determine.

Registered Members are obliged to inform the *Institute* of all places of business. Where a Registered Member has more than one place of business, the Quality Assurance Officer(s) may visit all branches/offices in the course of the review where deemed appropriate or conduct reviews in a remote manner.

Under normal circumstances, at least one *Month's* notice will be given of a review. However, this notice period can be abridged at the direction of Chairman of *Investigation Committee*, Chairman of the *Disciplinary Committee*, or any *Disciplinary Tribunal*, Chairman of the *Registration Committee* or *Registration Appeals Committee* or the Director of Professional Standards of the *Institute*.

All requests for postponement of a review shall set out the reasons for the requested postponement and should be supported by appropriate documentary evidence such as medical certificates. Postponements shall only be granted in exceptional circumstances and at the total discretion of the Director of Professional Standards or the Quality Assurance Manager or the Practice Regulation Manager or the Quality Assurance Officer assigned to the review.

A pre-visit questionnaire will issue with the notice of review. A detailed list of the items to be examined will be sent out to the *Registered Member* in advance of the review. This questionnaire or list does not restrict the Quality Assurance Officer from requesting additional information or reviewing additional items during the course of the review.

15.17.18

MEETINGS DURING THE REVIEW

The Compliance Principal is obliged to attend both the opening and closing meeting of an Inspection. Any other partners, or senior staff may attend the opening and closing meetings at the discretion of the Compliance Principal.

OUTCOME OF REVIEW

The Quality Assurance Officer(s) may award the following grades following an AML Inspection:

1. **'Compliant'** - no follow up action necessary.
2. **'Generally Compliant'** - some follow-up action will be required by the *Registered Member* within a specified period to address particular areas of weakness identified, with a view to achieving a "Compliant Grade".
3. **'Non Compliant'** - Where a significant number of areas of weakness or more serious problems are identified, and compliance with obligated is deemed unsatisfactory. A detailed plan to address these will be required to be provided and implemented. A Quality Assurance Officer may also refer a case to the Director of Professional Standards or the Quality Assurance Manager or Practice Regulation Manager where non-compliance with AML requirements is identified for further action in line with Bye Law 15.17.19.
4. **'No Grade'** – where it is not possible to assess the adequacy and appropriateness of the AML records of the Registered Member. This may occur where a member does not engage in the review. This is deemed unsatisfactory and requiring remedial action. This may result in referral of the matter to the Director of Professional Standards or Quality Assurance Manager or Practice Regulation Manager in accordance with Bye Law 15.17.19.

At any stage during a review, a quality assurance officer may refer a case to the Director of Professional Standards if any matter of concern is noted or any potential statutory reporting obligation of the *Institute* arises.

15.17.19

The Director of Professional Standards , Quality Assurance Manager and Practice Regulation Manager are appointed by the *Council* and are employees of the *Institute*. The Director of Professional Standards ,Quality Assurance Manager and Practice Regulation Manager have the following powers in relation *Registered Members* and *Firms*:

- i. to direct *the Registered Member* to carry out any action which he/she deems appropriate in the circumstances.
- ii. to ask the *Registered Member* to provide him/her with any information and/or documents which he deems appropriate in the circumstances.;
- iii. to order an accelerated inspection be carried out;
- iv. to request undertakings from a *Registered Member*, this may include requiring the firm to obtain training and seek professional advice on standards and technical matters from a firm acceptable to the Institute;
- v. to impose any directions or restrictions that are deemed appropriate or necessary;
- vi. to refer a case as a *complaint* to be processed in accordance with Byelaw 6 (Discipline).
- vii. to implement and monitor conditions imposed by any Regulatory Committee in accordance with Bye Law 6, Bye Law 13 and this Bye Law;
- viii. Notify a regulatory committee of the Institute of a matter; and
- ix. Notify another Designated Accountancy Body or a relevant competent authority of a matter
- x. To effectively monitor a *Registered Members* compliance with all AML Inspection matters
- xi. To make a report in accordance with S.63 (4) of *the Act*.

A failure by a *Registered Member* to provide any undertakings or to comply with any such directions or restrictions of the Director of Professional Standards, Quality Assurance Manager or Practice Regulation Manager within a reasonable period may result in disciplinary action in accordance with Bye law 6.

15.17.20

OUTCOME OF RE-REVIEW

When a *Registered Member* is listed for an AML re-review, the potential outcomes are listed below;

1. **'Compliant'** - no follow up action necessary.
2. **'Generally Compliant'** - some follow-up action will be required by the Registered Member within a specified period to address particular areas of weakness identified.
3. **'Non-Compliant'(Unsatisfactory)** - the matter will automatically be referred to The Director of *Professional Standards* or the Quality Assurance Manager or Practice Regulation Manager who may take any action in accordance with Bye law 15.17.19.
4. **'No Grade' (Unsatisfactory)** - where it is not possible to assess the records held by the Registered Member. This is deemed unsatisfactory and requiring remedial action. If this outcome is record on a re-review the matter will automatically be referred to The Director of Professional Standards or the Quality Assurance Manager or Practice Regulation Manager who may take any action in accordance with Bye law 15.17.19.

Effective Date

15.17.21

A re-review report will issue as soon as practicable after the re- review.

15.17.22

The direct costs of a re-review and the costs of assessing any follow up action resulting from a Grade other than a compliant grade will be charged directly to the Registered Member on an hourly basis. The rate per hour will be determined by Council and may be amended from time to time by Council.