

## SUMMARY FOR MEMBERS AND ASSOCIATES OF SAICA RELATING TO LEGISLATIVE REQUIREMENTS ON PROVISION OF SERVICES

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### 1. Introduction and background

Members and associates provides services to clients through various corporate entities. Guidance is often requested on the types of entity through which these services may be provided.

When considering and deciding on the type of entity to practice in, members and associates need to consider the legislative requirements, including the Consumer Protection Act, 2008 and the Tax Administration Act, 2011. Members and associates often also require a SAICA practice number.

This document sets out the various requirements that members and associates should consider when deciding on the format of their practices.

## 2. Registered auditor

The Auditing Profession Act, 26 of 2005 sets out the requirements to be appointed as a registered auditor.

Legislation	Requirements	Performance of service	Report signatory	Standard
Auditing Profession Act, 26 of 2005  Section 37          Section 38	(1) An individual must apply on the prescribed application form to the Regulatory Board for registration as an auditor or candidate auditor.  (1A) An individual may only be registered with the Regulatory Board if he or she is a member of a professional body accredited in terms of section 32(2).  (1) The only firms that may become registered auditors are:  (a) partnerships of which all the partners are individuals who are themselves registered auditors;  (b) sole proprietors where the proprietor is a registered auditor; and  (c) companies which comply with subsection (3).	Registered auditor	Registered auditor	International Auditing Standards

### 3. Accounting officer of a close corporation

The Close Corporation Act, 69 of 1984 sets out the requirements to be appointed as an accounting officer of a close corporation .

Legislation	Requirements	Performance of service	Report signatory	Standard
Close Corporations Act, 69 of 1984 Section 60	<p>A corporation may appoint as its accounting officer:</p> <ul style="list-style-type: none"> <li>• any person who is a member of a <u>recognised profession</u> as listed, which includes Chartered Accountants (SA) “(CA(SA))” and Associate General Accountants (SA) ((AGA(SA)));</li> <li>• A firm as defined in subsection (1) of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991) (superseded by the Auditing Profession Act, No 26 of 2005);</li> <li>• Any other firm, if each partner in the firm is qualified to be so appointed; or</li> <li>• Any other corporation, if each member of such corporation is qualified to be so appointed</li> <li>• NOTE: A private company cannot be an accounting officer</li> </ul>	Accounting officer <sup>1</sup>	<p>The accounting officer using SAICA membership number or SAICA practice number.</p> <p>A practice number can be provided by SAICA to a partnership, close corporation or personal liability company</p>	No standard

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<sup>1</sup> Refer to Annexure 1 which sets a list of all professional bodies whose members qualify to be accounting officers

#### 4. Independent reviewer

Members / associates can perform an independent review of annual financial statements of various entities. Certain requirements are set out in law but for other entities such as trusts, non-profit organisations, partnerships the standard needs to be applied.

The Companies Regulations, 2011 sets out certain requirements to be appointed as an independent reviewer of a company.

Legislation	Requirements	Performance of service	Report signatory	Standard
Companies Regulations, 2011 Section 29	<p>Companies Regulations, regulation 29(4) states that the <b>independent review</b> of a company's annual financial statements must be carried out in the case of a company whose:</p> <ul style="list-style-type: none"> <li>• Public interest score (PIScore) for the particular financial year was at least 100, <ul style="list-style-type: none"> <li>○ by a registered auditor, or</li> <li>○ a member in good standing of a professional body that has been accredited in terms of section 33 of the APA; or</li> </ul> </li> <li>• PIScore for the particular financial year was less than 100, by either <ul style="list-style-type: none"> <li>○ a registered auditor; or</li> <li>○ a member in good standing of a professional body that has been accredited in terms of section 33 of the APA; or</li> <li>○ a person who is qualified to be appointed as an accounting officer of a close corporation in terms of the Close Corporations Act. The definition of a person in terms of the Companies Act, 71 of 2008 includes a juristic person.</li> </ul> </li> </ul>	<p>For companies with a PI Score above 100:</p> <ul style="list-style-type: none"> <li>• RA</li> <li>• CA (SA)</li> </ul> <p>For companies with a PI Score below 100:</p> <ul style="list-style-type: none"> <li>• RA</li> <li>• CA (SA)</li> <li>• Person qualified to be appointed as accounting officer CA(SA)/AGA(SA) as sole proprietor</li> <li>• Partnership</li> <li>• Close corporation</li> <li>• Firm as defined in the Auditing Profession Act (APA) which includes: <ul style="list-style-type: none"> <li>○ Sole proprietor (RA)</li> <li>○ Incorporated company (i.e. personal liability company)</li> <li>○ Partnership</li> </ul> </li> </ul>	The standard requires the practitioner to sign off using their signature, address and date	International Standard on Review Engagements 2400 (Revised) (ISRE 2400)

## Independence

The Companies Regulation 29(5) states that the independent review of a company's annual financial statements must not be carried out by an independent accounting professional who was involved in the preparation of the said financial statements.

Members must **however** consider the capacity in which they will be providing such services. A CA(SA) who is who is performing independent reviews of company financial statements in his/her capacity as an CA(SA) and a CA(SA) who is also a registered auditor (RA) and who is performing independent reviews of company financial statements in his/her capacity as an RA will not be able to do so in the form of a private company.

When performing independent reviews in their capacity as chartered accountants, CAs(SA) need to refer back to the definition of who can perform an independent review as stated in regulation 29(4) and note that for companies with a PIScore above 100 the independent review can be performed by a member in good standing of an accredited professional body and for companies with a PIScore below 100 independent review can be performed by a member in good standing of an accredited professional body or a person who is qualified to be appointed as an accounting officer.

Remember, however, that a private company cannot be appointed as an accounting officer. Also refer to the discussion under the heading "accounting officer" above.

## Sign-off

When signing off an independent reviews or other assurance engagements CA(SA)s and AGAs need to consider the SAICA Code of Professional Conduct, 2021 Edition:

*"R115.6 SA The individual professional accountant responsible for the audit, review or other assurance engagement shall, when signing any audit, review or other assurance report or certificate, reflect the following:*

- (a) the individual professional accountant's full name;*
- (b) if not a sole proprietor, the capacity in which they are signing;*
- (c) their designation underneath their name; and*
- (d) if not set out on the firm's letterhead, the name of the professional accountant's firm."*

CA(SA)s must also consider [Circular 1 of 202](#), Use of the designations (CA)SA and Registered Auditor when signing of audit, review and other assurance reports.

Registered Auditors also needs to consider the IRBA Code of Professional Conduct and the Notice published by the Independent Regulatory Board for Auditors on the [Use of the RA Designation](#), published 14 October 2019.

The Co-operatives Act, 14 of 2005 sets out requirements of who can be appointed as the independent reviewer of a co-operative.

Legislation	Requirements	Performance of service	Report signatory	Standard
Co-operatives Act, 14 of 2005 Section 1	The Co-operatives Amendment Act, 6 of 2013 requires that Category B co-operatives must produce an independent reviewed report and an independent reviewer is defined as: <ul style="list-style-type: none"> <li>• a registered auditor, or a member in good standing of a professional body that has been accredited in terms of section 33 of the APA, or</li> <li>• a person who is qualified to be appointed as an accounting officer of a close corporation in terms of section 60(1), (2) and (4) of the Close Corporations Act</li> </ul>	<ul style="list-style-type: none"> <li>• RA</li> <li>• CA(SA)</li> <li>• AGA(SA)</li> <li>• Person qualified to be appointed as accounting officer</li> </ul>	The standard requires the practitioner to sign off using their signature, address and date	ISRE 2400

### Independence

Section 49 of the Co-operatives Amendment Act states the requirements where a person is disqualified from being the auditor or independent reviewer of a co-operative. It includes having a personal financial interest, not being registered with SAICA or not being able to register as a Registered Auditor with the IRBA or not acting in accordance with the Code of Professional Conduct.

## 5. Performance of secretarial and accounting services

When performing secretarial and accounting services there is currently no legal requirement on who can perform the services.

Legislation	Requirements	Performance of service	Report signatory	Standard
No legislation	No legislative requirement	Person as agreed on engagement letter / contract	Person as agreed on engagement letter / contract	No prescribed standard



## 6. Compilation of annual financial statements

Companies, trusts, close corporations, partnerships and other trading entities needs to compile annual financial statements. There is no general requirements on who can compile financial statements but certain laws have specific requirements, which needs to be taken into consideration when appointing a compiler.

Legislation	Requirements	Performance of service	Report signatory	Standard
Companies Regulation 27	<p>A company's financial statements may be compiled internally or independently</p> <p>Financial statements will be considered to be compiled internally unless they have been <i>independently compiled and reported</i> (Companies Regulations, regulation 26 – 27). The definition of independently compiled and reported requires:</p> <ul style="list-style-type: none"> <li>• that the annual financial statements are prepared by an independent accounting professional;</li> <li>• on the basis of financial records provided by the company; and</li> <li>• compiled in accordance with any relevant financial reporting standards.</li> </ul> <p>Where the financial statements are internally compiled, then there are no requirements in terms of the Companies Act or other legislation that the compiler needs to meet certain requirements.</p> <p>Where the company wants to assert that their annual financial statements were independently compiled and reported the annual financial statements need to be compiled by an independent accounting professional.</p>	<p>Independent accounting professional which is defined as:</p> <ul style="list-style-type: none"> <li>• CA(SA) / AGA(SA) / RA (sole proprietor)</li> <li>• Person qualified to be appointed as an accounting officer which includes: <ul style="list-style-type: none"> <li>• CA(SA)</li> <li>• AGA(SA)</li> <li>• RA</li> <li>• Partnership</li> <li>• Close corporation</li> <li>• Firm as defined in the APA which includes <ul style="list-style-type: none"> <li>▪ sole proprietor</li> <li>▪ incorporated company (i.e. personal liability company)</li> <li>▪ partnership.</li> </ul> </li> </ul> </li> </ul>	Person as agreed on engagement letter / contract	International Standard on Related Services 4410, Revised, Compilation Engagements (ISRS 4410)

## Independence

A CA(SA) or AGA(SA) who meets the stated independence requirements may be engaged to independently compile the financial statements of a company. However, a CA(SA) who is also a registered auditor (RA) with the Independent Regulatory Board of Auditors (IRBA) and who intends to provide any professional services in his/her capacity as a RA in the form of a "firm", must remember that the only firms that may become registered auditors are sole proprietors or partnerships or personal liability companies (refer to section 38 of the APA).

The Companies Regulations, Regulation 26(1)(d) sets out the following requirements, in addition to the professional registration requirements for an independent accounting professional to be viewed as independent. An independent accounting professional is a person who:

*"(ii) does not have a personal financial interest in the company or a related or inter-related company, and*

*(iii) is not-*

*(aa) involved in the day to day management of the company's business, nor has been so involved at any time during the previous three financial years; or*

*(bb) a prescribed officer, or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; and*

*(iv) is not related to any person who falls within any of the criteria set out in clause (ii) or (iii)."*

## 7. Tax practitioners

Chapter 18 of the Tax Administration Act, 28 of 2011 has specific requirements for persons providing tax compliance services and / or tax advice, for a fee.

Legislation	Requirements	Performance of service	Report signatory	Standard
<p>Tax Administration Act, 28 of 2011 (TAA) Chapter 18</p>	<p>The TAA compels natural persons, who for a fee completes or assists in completing returns or provides advice on a tax Act, to register with both SARS and a Recognised Controlling Body (RCB) within 21 business days after that person first completed or assisted with completion of a tax return and/or provided tax advice.</p> <p>Certain exclusions exist, in respect of:</p> <ul style="list-style-type: none"> <li>• Full-time employees assisting with/ completing a tax return/s and/or providing tax advice to/in respect of an employer or connected person to that employer;</li> <li>• employees working under the supervision and control of a registered tax practitioner;</li> <li>• provides the advice in anticipation of or in the course of any litigation to which the SARS Commissioner is a party or where the SARS Commissioner is a complainant; and</li> <li>• incidental or subordinate tax services.</li> </ul> <p>An RCB is a professional body approved by SARS and currently includes SAICA. The registration of a tax practitioner is linked to the individual and currently an entity cannot register as a tax practitioner. Services rendered as a tax practitioner would then have to be rendered to taxpayers on behalf of a professional services company as an independent contractor, employee or office holder.</p> <p>The RCBs have to comply with certain requirements as set out in the legislation and in the relevant SARS Criteria Guide.</p>	<p>Natural person registered as tax practitioner, including CA(SA), AGA(SA) and AT(SA)</p>	<p>Tax practitioner</p>	<p>No standard</p>

	Registered tax practitioners need to fulfil certain requirements in order to maintain registration. Failure to comply may result in deregistration as a tax practitioner.			
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Note: the requirements are summarised and the legislation must be referred to in order to ensure a full understanding of the relevant requirements.

## 8. SAICA Code of Professional Conduct

Members and associates should also consider the SAICA Code of Professional Conduct (Revised 2018) when engaging clients to perform services. The Code requires members and associates in section 110 to comply with the five fundamental principles of:

- Integrity
- Objectivity
- Professional Competence and due care
- Confidentiality
- Professional behaviour

The Code also sets out a conceptual framework (Section 120) to assist members and associates in complying with the fundamental principles. The conceptual framework sets out the steps for the accountant to identify evaluate and address the threats by eliminating or reducing them to an acceptable level.

Members and associates should, in addition to legislative requirements, consider their independence when providing audit, review and other assurance engagements.

Part 4A of the Code deals with independence requirements when providing audit or review engagements and sets out requirements and application material for various types of relationships with the audit/ review client, such as loans, business relationships, gifts and the provision of non-assurance services.

Part 4B deals with the independence requirements when providing other assurance services to clients.

Members and associates should consider the requirements of the Code when accepting an engagement with a client.

## 9. Practice

### **Can SAICA provide a practice with a practice number?**

SAICA provides a practice number to certain practices.

Practitioners who wish to register a new practice can apply for a SAICA practice number. The objective of the practice number is to provide partnerships, incorporated companies and close corporations with a practice number to register with the CIPC as an accounting officer. SAICA does not provide practice numbers to private companies as they are excluded for being appointed as an accounting officer. A private company cannot be appointed as an accounting officer because it is a separate legal entity, therefore the directors and shareholders are not jointly liable for the liabilities of the company.

The practice registration form is available on the [SAICA website](#).

### **Can a SAICA member / associate enter into a practice with a non-SAICA member/ associate?**

SAICA does not prescribe the type of entity that members arrange their affairs in.

SAICA members / associates can enter into practice with non-SAICA members / associate. If the firm will be providing tax, advisory, accounting services any entity can be used. SAICA members / associates need to take note of the requirements of the Chartered Accountants Designation Act as discussed in section 9.

## 10. Chartered Accountants' Designation (Private) Act, 67 of 1993

The Chartered Accountants Designation Act should also be considered where members / associates enter into practice with other members / associates or members of other professional bodies.

As per the Chartered Accountant's Designation Act a member of SAICA can use the designation and a company / firm can use the designation where every shareholder / director / member is a member of SAICA. A company / firm cannot be called XXX Chartered Accountants if not all the shareholders and directors are CA(SA)s. The individual members can still use the designation but the company may not make use of the SAICA logo on their website, signage, letterhead and business cards (except for the business cards of the individuals who are SAICA members). SAICA does not prohibit members to enter into partnerships with members from other professional bodies, but the said partnership could then not refer to it as chartered accountants.

Extract out of Chartered Accountant's Designation Act:

### **"Use of designation "Chartered Accountant" and related designations**

1. (1) *Every member of The South African Institute of Chartered Accountants or of any successor in title to that Institute and every member of The Cape Society of Chartered Accountants or The Natal Society of Chartered Accountants or The Orange Free State Society of Chartered Accountants or The Transvaal Society of Chartered Accountants, or of any successor in title to any of the aforementioned Societies, shall be entitled to use the designation "Chartered Accountant", "Geoktrooierde Rekenmeester", "Chartered Accountant (South Africa)", "Geoktrooierde Rekenmeester (Suid-Afrika)", "Chartered Accountant (S.A.)" or*

*"Geoktrooierde Rekenmeester (S.A.)", or the initials "F.C.A. (S.A.)", "A.C.A. (S.A.)", "C.A.", "G.R.", "C.A. (S.A.)" or "G.R. (S.A.)".*

(2) *Any company, close corporation or other body, firm or partnership which engages in public practice as accountants and auditors and of which every shareholder, every director, every member or every partner, as the case may be, is a member of the Institute or of one of the Societies referred to in subsection (1) shall be entitled to use the designations or initials referred to in that subsection."*

Please note that the APA has specific requirements that auditors and non-auditors cannot form an audit partnership, please refer to section 41 of the APA.

## Annexure 1 - List of all professional bodies whose members qualify to be accounting officers

	<b>GOVERNMENT NOTICE</b>	<b>NAME OF INSTITUTE</b>	<b>ABBREVIATION</b>	<b>DESIGNATION</b>
1	GG No 9503 No.R. 2488 of 16 November 1984	The South African Institute of Chartered Accountants	SAICA	Chartered Accountant (SA) – CA(SA)
2	GG No 9503 No.R. 2488 of 16 November 1984	Independent Regulatory Board for Auditors <sup>2</sup> (replaced the PAAB)  Accountants and Auditors registered in terms of the provisions of the Public Accountants' and Auditors Act, 1951	IRBA	Auditors registered in terms of the Auditing Professions Act  Registered Auditors (RA)
3	GG No 9503 No.R. 2488 of 16 November 1984	Chartered Governance Institute of Southern Africa  Previously known as Chartered Secretaries Southern Africa and The South African Institute of Chartered Secretaries and Administrators  Name changed in 2014 and 2020	CSSA	Company Secretary
4	GG No 9503 No.R. 2488 of 16 November 1984	The Institute of Cost and Management Accountants	CIMA	Members
5	GG No 9503 No.R. 2488 of 16 November 1984	South African Institute of Professional Accountants (previously known as the Association of Commercial and Financial Technicians of Southern Africa) <sup>3</sup>  Name changed in 2006	SAIPA	Members
6	GG No 9775 No.R. 1234 of 7 June 1985	Institute of Accounting and Commerce (formally known as The Institute of Administration and Commerce of Southern Africa)  Name changed in 2009	IAC	Members who have obtained the <ul style="list-style-type: none"> <li>• Diploma in Accountancy</li> <li>• Diploma in Cost and Management Accounting</li> </ul>

<sup>2</sup> Auditing Professions Act effective from 1 April 2006

<sup>3</sup> <https://www.saipa.co.za/the-history-of-saipa/>

7	GG 10088 No.R. 206 of 7 February 1986	Institute of Accounting and Commerce (formally known as The Institute of Administration and Commerce of Southern Africa) Name changed in 2009	IAC	Members who have obtained the Diploma in Company Secretaries
8	GG No 15758 No.R. 993 of 27 May 1994	Members of the Chartered Association of Certified Accountants	ACCA	Members of the Chartered Association of Certified Accountants who have passed the examinations set by the said Chartered Association of Certified Accountants in the relevant South African business laws and have after 3 years appropriate practical experience been allocated a practice number by the said Chartered Association of Certified Accountants <sup>4</sup>
9	GNR.1096 of 5 July 1996	South African Institute for Business Accountants	SAIBA	Senior Members
10	GG No 18635 GN. 150 of 30 January 1998	South African Institute of Chartered Accountants	SAICA	Associate General Accountants (AG(SA))
11	GG No 31232 No.R. 758 of 18 July 2008	Chartered Institute for Business Management	MCIBM	Members
12	GG 32988 GN 167 of 26 February 2010	The South African Institute of Government Auditors	SAIGA	Members

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<sup>4</sup> Member Handbook ACCA South Africa 2013