

MISCELLANEOUS TECHNICAL STATEMENT

REPORTING TO THIRD PARTIES

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REPORTING TO THIRD PARTIES

INTRODUCTION

1. Accountants are often asked by their clients to sign reports that have been requested by trade bodies, regulators and other third parties with whom the client has a relationship ("third parties").
2. Accountants are not bound by arrangements between clients and third parties to which they were not party and so have no obligation to sign such reports. However, accountants wish to assist their clients if possible and endeavour to become familiar with clients' reporting requirements at an early stage in their relationship with their clients and negotiate appropriate engagement terms for providing such reports sufficiently far in advance of the reports becoming due. This helps to avoid any disagreements with the client or the third party regarding the form of the report that is needed and should ensure sufficient time for the work to be completed and the report to be given.
3. In the past there has been limited guidance available to assist accountants with such requests and accountants often signed reports for third parties without considering the potential liability to which they were exposed. The Institute has developed the practical guidance in this Statement to assist accountants in deciding whether to accept these engagements and, if they do, the key points they consider when determining the process to follow (see paragraph 7).
4. This Statement provides general guidance for accountants seeking to manage their risks effectively. The Institute is also active in helping with specific problematic reporting engagements and communicates with a number of third parties in order to agree appropriate forms of report and engagement terms. Where appropriate, specific guidance is issued relating to such reports - for example, the Miscellaneous Technical Statements M 27 and M 33.
5. Additional guidance on reporting to third parties can be found in the Miscellaneous Technical Statement *"Firms' Reports and Duties to Lenders in connection with Loans and other facilities to Clients and related covenants"* - M 36. That Statement is based on the law governing the duty of care and gives guidance on the matters that should be taken into consideration by accountants regarding the extent of their duty of care in respect of audit, review reports and ancillary reporting services.
6. This Miscellaneous Technical Statement does not cover:
 - corporate finance engagements;
 - reports required under ROI company legislation (in that case accountants follow the guidance in the Auditing Practices Board's Practice Note *"Reports by Auditors under Company Legislation in the Republic of Ireland"* - N 9);
 - reports required under NI company legislation (in that case accountants follow the guidance in the Auditing Practices Board's Practice Note *"Reports by Auditors under Company Legislation in the United Kingdom"* - N 8);

- reports in respect of and/or to public sector¹ entities;
- requests for references on clients' financial status and their ability to service loans

However, many of the principles of risk management in this Statement will still apply.

7. The guidance in this Statement is set out under the following headings that describe the process accountants follow in response to requests for reports from third parties:
 - (a) Determine who will rely on the accountants' work and for what purpose.
 - (b) Consider the form of report requested by the third party.
 - (c) Agree the work to be performed and the form of report to be given.
 - (d) Agree appropriate terms of engagement.
 - (e) Perform the work.
 - (f) Report.

The process is illustrated by the flowchart in Appendix 1.

The Statement is directly applicable in the Republic of Ireland. Certain detailed guidance has been added, in the exclusive context of Northern Ireland, to have regard to differing statutory requirements in that jurisdiction. All such changes are prefaced by the "NI only" symbol and are in italicised text

DETERMINE WHO WILL RELY ON THE ACCOUNTANTS' WORK AND FOR WHAT PURPOSE

8. When accountants know that their report has been requested by a third party and that the third party will rely on the report, there is a risk, in the absence of an effective disclaimer², that the accountants owe the third party a duty to take reasonable care in preparing and providing the report. If the accountants do owe the third party such a duty, they could be liable to that third party if they were negligent and the third party suffered loss in reliance on the report.
9. It is vital, therefore, for accountants to understand who the third party is, why it requires the report and the extent of loss which the third party could suffer in reliance on the report. If, for example, the third party runs a scheme for compensating the clients customers in the event of the client's insolvency, the accountants risk is much greater than if, for example, the third party's only role is to perform marketing for a particular service sector.
10. The accountants understanding of the risks involved in providing a report underpins the decisions they make about whether to accept the engagement and on what terms. Depending upon the circumstances accountants either:
 - (a) accept that they owe a duty of care to the third party and enter into an engagement contract with the third party, including provisions limiting liability if appropriate; or
 - (b) proceed with an engagement for their client but before allowing the third party access to their report, require the third party to acknowledge in writing to the accountants that the accountants owe the third party no duty of care; or

¹ "Public sector" is defined in the Auditing Practices Board's Practice Note "Audit of Central Government Financial Statements in the Republic of Ireland"- and "Audit of Central Government Financial Statements in the United Kingdom"- N 10(i) and N 10 respectively.

² Accountants consider the legal effectiveness of disclaiming liability and of the proposed disclaimer in the particular circumstances of their engagement.

- (c) proceed with an engagement for their client but disclaim or limit any liability or duty to the third party by notice in their report; or
- (d) do not accept the engagement.

If accountants regard a report as high risk, they agree to provide the report only if the third party is a party to the engagement contract or the third party has acknowledged in writing that the accountants owe no duty of care to the third party. If accountants regard a report as low risk, typically because the accountants' assessment is that the third party could suffer little or no loss in reliance on the report, then they may decide to provide the report without contracting with the third party. In this case a notice can be included in the report disclaiming or limiting the accountants' liability to the third party. In addition to that notice, it may be appropriate for the accountants to write to the third party, in advance of the third party receiving the report, notifying the third party of the basis on which the report will be provided. Also, if a third party writes to the accountants in an attempt to indicate reliance on a report, the accountants consider whether it is reasonable to accept such reliance. Where it is not, a disclaimer is given in writing.

11. Accountants are advised not to allow their reports to be provided to a third party unless the basis and extent of their liability to the third party is clear and agreed.

NI only: Accountants consider the consequences of the Contracts (Rights of Third Parties) Act 1999. Under the Act, third parties have the right to enforce a term of a contract if that is the intention of the parties, which intention shall be determined from the contract. An intention will be found if, upon proper construction, the contract purports to confer a benefit or an express term grants the right³.

12. Definitions of the scope of work or limitations on that work contained in an engagement letter will not be binding on any third party unless the third party has sight of the engagement letter or those definitions/limitations are repeated in the accountants' report. Therefore, accountants set out in the report details of the precise work which is being carried out and its purpose and, as far as possible, the work which has not been carried out, together with any limitations in the work undertaken.
13. Where accountants are aware that specific third parties will have access to the report, they consider requesting them to sign a copy of the engagement letter to indicate acceptance of the terms, or, if this is not possible, it is made clear that the accountants make no representations to third parties as to the sufficiency of the procedures adopted.

CONSIDER THE FORM OF REPORT REQUESTED BY THE THIRD PARTY

14. As stated in paragraph 2, accountants maintain a dialogue with their clients to enable requests for reports to be highlighted at the earliest possible stage, so that difficulties may be addressed. Accountants are not bound by any form of report agreed between the client and the third party without the accountants' consent. The requested form of report (which can - but might not - take the form of a 'standard' report on a pre-printed form), will often be inappropriate because the considerations in this guidance are not met. In such circumstances, accountants do not accept third parties' arguments that such reports cannot be changed.
15. If a third party refuses to accept the principles in this guidance, it may be beneficial for the accountants to consult the Institute. Examples of wording in requested reports that are unacceptable to accountants following this guidance are given in Appendix 2.

³ If under the engagement between the firm and the client reference is made to the provision of the accounts to a lender, or to a lender requiring the accounts for specific purpose, it is conceivable that a benefit will have been conferred upon that lender. Furthermore, in considering the reasonableness of any exclusion of liability to that lender, any such provisions will be taken into account, which has the potential of defeating any such exclusion in its entirety. It is therefore important that the engagement letter between the firm and the client makes clear that it does not confer any rights on any third party and that, for the avoidance of doubt, any rights conferred on third parties pursuant to the Contracts (Rights of Third Parties) Act 1999 shall be excluded.

16. Accountants only sign reports if they have performed sufficient work and obtained sufficient evidence to support the statement they are asked to make in the report. Sometimes third parties ask accountants to sign statements concerning such matters as the future solvency or performance of the client, which cannot be supported by any amount of work performed by the accountants. By signing such reports misunderstandings may arise that accountants may become the equivalent to insurers or guarantors of the clients' obligations to third parties. Accountants do not accept this responsibility and refuse to sign such reports. However, they may propose alternative forms of report which are capable of being supported by work performed by them. Accountants may determine that an agreed upon procedures form of report is the most appropriate (see paragraph 25).
17. If third parties require a guarantee regarding the future solvency of a client, it is usually most appropriate for them to introduce their own procedures to monitor clients' financial solvency, or to require the clients to obtain bank guarantees, or to take out their own separate insurance to cover their potential exposure - an accountants' report can never be a substitute for any of these options and it is no part of the accountants' function to act as an insurer.
18. Accountants do not agree to forms of report, used by third parties, which place reliance on the statutory audit of the client, for example, wording such as that under the fourth heading in Appendix 2. To avoid the risk of this reliance being established, accountants also take into account the guidance in the Miscellaneous Technical Statement *"Firms' Reports and Duties to Lenders in connection with Loans and other facilities to Clients and related covenants"*- M 36 - on duties of care for the statutory audit. Accountants avoid circumstances that may result in a duty of care for the statutory audit report becoming established with a third party. They exercise caution if asked by the client to send audited accounts direct to a third party. For example, they avoid sending the audited accounts direct to the third party unless this is accompanied by an effective disclaimer and they respond in writing to attempts by a third party to establish a duty of care in respect of the statutory audit report by disclaiming all liability to the third party (see Appendix 1 of M 36).

AGREE THE WORK TO BE PERFORMED AND THE FORM OF REPORT TO BE GIVEN

19. Accountants make clear to clients and third parties that engagements to provide reports to a third party are separate engagements from the statutory audit engagement. The work performed in order to provide the report for the third party will be separate work and subject to a separate fee from the work performed on the statutory audit, and liability will be limited as appropriate (see paragraph 31).
20. Accountants agree with the client and the third party a form of report that is appropriate taking into account the purpose of the report, the amount of work to be performed and the cost of the work. The timescale for providing the report is agreed at this stage. This timescale should provide sufficient time for the work to be completed and the report to be given - accountants do not agree to timescales for providing reports where it is not possible to plan and complete all the necessary work within the timescale requested.
21. Generally, the higher the level of assurance sought in a report, the more work is necessary and the greater the cost to the client. A common problem is that the third party requests a demanding report but expects the client to pay for the necessary work. If the client is not prepared to pay for the work needed to provide the level of assurance sought then the accountants decline to act.
22. There are no Irish professional standards on the forms of reporting envisaged by this guidance, although there are international standards which give some guidance⁴. However, it should be noted that these standards do not apply directly in the Republic of Ireland nor in Northern Ireland. In general terms, there are four options for these reporting engagements:

⁴ At present, the most relevant international standards in issue are ISA 920 *"Engagements to perform Agreed-Upon Procedures regarding Financial Information"* and the International Standard on *"Assurance Engagements"* (ISA 100).

- High level of assurance
- Moderate level of assurance
- Agreed upon procedures
- Compilation engagements.

23. High level assurance is usually regarded as providing a conclusion expressed in positive terms. It can only be provided where the subject matter reported on and/or the scope of work are/is such as to enable the accountants to give a high level of assurance. According to ISA 100, an assurance engagement exhibits all of the following elements:
- (a) a three party relationship involving:
 - a professional accountant;
 - a responsible party; and - an intended user;
 - (b) a subject matter;
 - (c) suitable criteria;
 - (d) an engagement process; and
 - (e) a conclusion.

ISA 100 provides guidance on each of these elements and establishes basic principles and essential procedures for the performance of engagements intended to provide a high level of assurance.

24. An assurance engagement which provides a moderate level of assurance involves performing more limited procedures and may involve providing a negative assurance in the style of *"nothing has come to our attention .."*. It may also be appropriate to situations where the subject matter reported upon is not capable of being reported on in high level of assurance terms. Reports with a moderate level of assurance are currently the subject of research on behalf of the International Auditing Practices Committee.
25. An agreed upon procedures engagement involves performing certain specified procedures on factual information and reporting the findings without giving any form of opinion on the implications of the work performed. Example extracts from an engagement letter for an agreed upon procedures engagement are given in Appendix 3 and illustrative contents of a report of factual findings are given in Appendix 4. Accountants tailor the engagement letter and report to reflect the specific circumstances of the engagement. They attach to the engagement letter a draft of the type of report of factual findings that will be issued.
26. A compilation engagement involves preparing financial information on behalf of clients. Guidance on such engagements is given in the Miscellaneous Technical Statement *"Compiling and Reporting on Financial Statements not subject to Audit"*- M 14.
27. In most situations where accountants are asked to provide a report to a third party, an agreed upon procedures engagement will best meet the expectations of the third party and the client regarding the work the accountants perform and the fees the accountants charge. These engagements (see paragraph 25 above) have the advantage that there is less scope for misunderstanding about the work to be performed and the nature of the results.
28. When determining the appropriate level of work to perform and the appropriate fee, accountants consider risks relating to who the client is and the purpose of the report. In some circumstances, however, the risks, even after appropriate limitation of liability, are so great that they cannot be adequately compensated by any reward and, if this is the case, the accountants decline to do the work.

AGREE APPROPRIATE TERMS OF ENGAGEMENT

29. When accountants are requested by a client to provide a report for the purposes of a third party, accountants manage their relationship with not only the client but also with the third party.
30. Accountants usually manage their relationships by agreeing engagement terms in writing with the client and the third party. If the third party refuses to engage with the accountants, then accountants either refuse to provide the report or only do so subject to a disclaimer of liability to the third party (see paragraphs 10 and 11). In deciding to issue a disclaimer, accountants consider whether the disclaimer will be reasonable and therefore likely to be effective. Accountants need to be aware that disclaimers might not always be effective. An example disclaimer notice is provided in Appendix 5.
31. Engagement contracts include the following:
- a clear unambiguous description of the scope of work to be performed and the form of report to be provided using defined terms where appropriate to avoid misunderstandings;
 - a description of the client's obligations and the client's responsibility for the information on which the accountants report;
 - clarification that the engagement is separate from the statutory audit and that the accountants have no duty of care to the third party in relation to the statutory audit;
 - an appropriate liability cap⁵, agreed having regard to the nature of the work being performed, the level of fee charged and other relevant factors. Any limitation of liability must be negotiated and agreed with the client
NI only: Any such limitation must be fair and reasonable in compliance with the Unfair Contract Terms Act, 1977⁶
 - details of the addressee for the report, limitations as to the purpose for which the report is prepared and restrictions on who is entitled to see and rely upon the report and on the distribution of it;
 - a copy of the form of report to be provided.
32. For non-statutory engagements, particularly where the risks associated therewith are unacceptably high, members consider the need to negotiate a limitation on the monetary amount of any liability to the client. The purpose of such a clause in the engagement letter is to put a monetary limit on the claim that a client can make for breach of the accountants' contractual obligations or negligence. Any monetary limitation imposed under a contract should be reasonable in amount and agreed by means of a genuine negotiation with the client.

An example of a liability cap is provided in Appendix 6.

33. Matters which the Court may take into account in considering whether a restriction of liability is reasonable include:
- Whether the client knew or ought to have known the restriction - has it been specifically brought to the client's attention
 - The nature and bargaining powers of the parties

5 Accountants consider whether the liability cap is reasonable given the specific circumstances of the engagement.

6 Disclaimers of responsibility will be subject to a test of reasonableness set out in Section 2 of the Unfair Contract Terms Act 1977. It is for a person seeking to rely upon the disclaimer to show it is reasonable, failing which it will be void. Disclaimers of responsibility to lenders (and other third parties) who seek to claim reliance on a report, and disclaimers made for the avoidance of doubt to confirm that a firm does not accept a duty to a lender or other third party to whom a report is shown or reference to a report is otherwise made, should be capable of being worded so as to pass the reasonableness test. Consequently they are an effective method of excluding or limiting a firm's liability to a lender or other third party.

- The resources of the accountants and the availability to them of insurance cover
- The nature of the transaction and the size of likely loss
- Whether other providers of similar services do not impose similar exclusions or limitations
- The size of the fee payable
- Whether there was an inducement to the client to accept the restriction

It is extremely unlikely a total exclusion of liability would be considered reasonable.

PERFORM THE WORK

34. The work for a third party report is separate from the work involved in the statutory audit and the accountants plan and document the work, retaining separate working papers for each reporting engagement.
35. Accountants perform work on a third party reporting engagement in the same professional manner as any other engagement and in accordance with the scope agreed and recorded in the engagement letter. If it is necessary to depart from the terms of the engagement letter, an amended scope of work is agreed, in writing with the client and with the third party.

REPORT

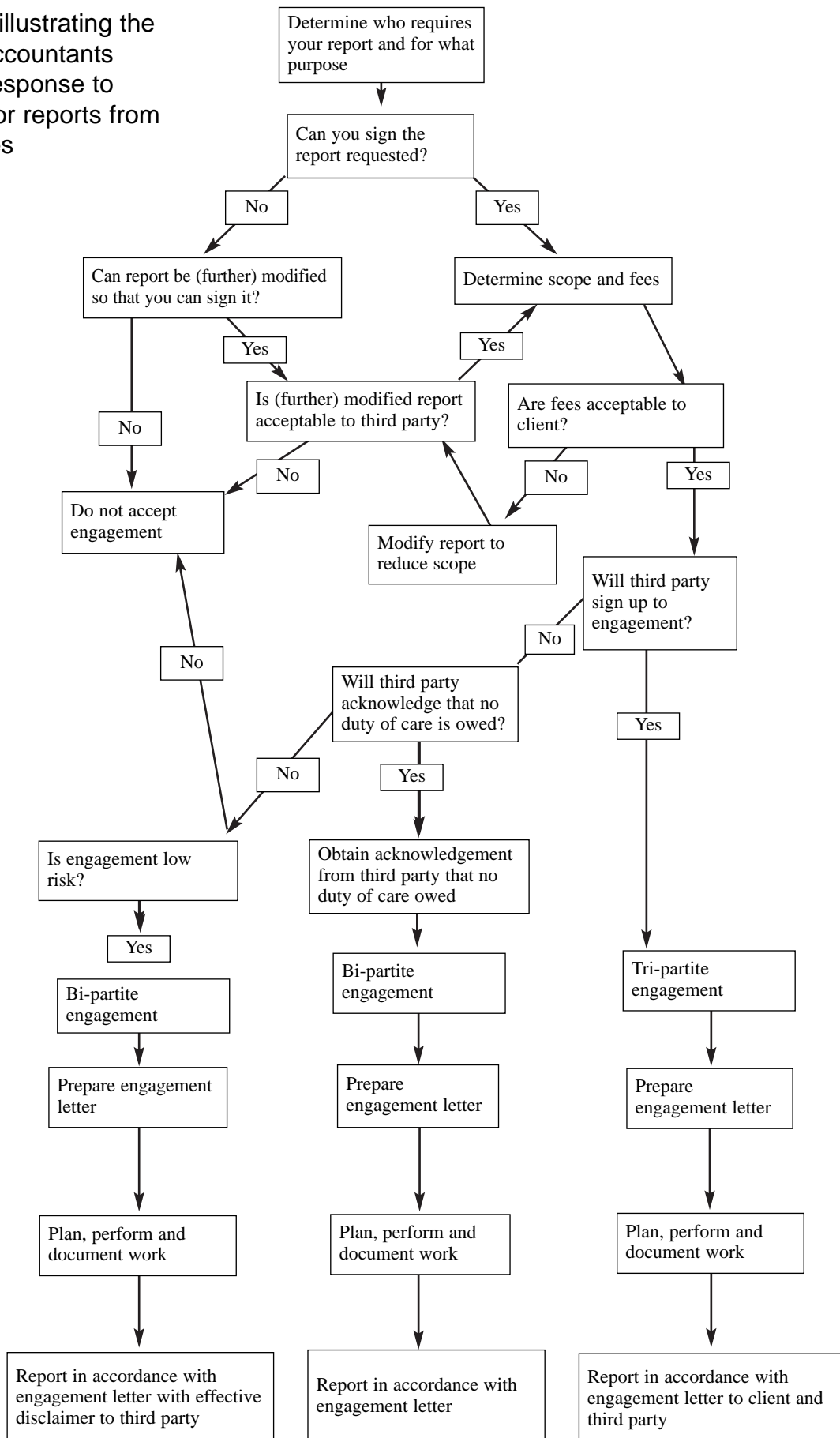
36. Accountants provide a report that reflects the agreement set out in the engagement letter and is supported by the work carried out by them (see paragraph 16). The report makes clear :
 - for whom it is prepared and who is entitled to rely upon it and for what purpose;
 - that the engagement was undertaken in accordance with the engagement terms;
 - the work performed and the findings.

Where considered appropriate, they also provide a statement that by delivering this report the accountants accept no additional duties in relation to the statutory audit.

37. Accountants' reports do not include either undefined terms such as "review", without specifying what the terms mean, or open-ended wording, without indicating the scope of the work which has been performed by reference to an engagement letter or relevant standards or guidance. Examples of inappropriate wording are given under the fifth heading in Appendix 2.
38. Accountants do not modify the form of their report in response to comments from the client or the third party that it does not meet their needs unless such modification is both appropriate and they have the opportunity to perform the necessary/additional work. If it subsequently transpires that a different form of report is now being requested to that agreed in the engagement terms, the accountants either agree a new engagement or decline to issue the requested report, giving the reasons in writing.

APPENDIX 1

Flowchart illustrating the process accountants follow in response to requests for reports from third parties



APPENDIX 2

Some examples of types of wording or opinions that are unacceptable to accountants providing special reports (This not intended to be an exhaustive list).

1. *Wording giving an opinion on a matter as a statement of fact when that matter, by its nature, is inherently uncertain or a matter of judgement*
Examples include 'we certify' wording which accountants would not normally be in a position to use as it implies complete accuracy. Accountants also avoid using words or phrases such as "correct" or "accurate" or "we have ensured" for assertions that can never be made with absolute certainty.

However, accountants can certify that they have performed an examination in accordance with agreed criteria.
2. *The use of the term "true and fair" when financial information is not prepared under the framework of Financial Reporting Standards*
The use of other phrases such as "present fairly" or "properly prepared" are avoided unless they are clearly placed in context, for example, *present fairly in all material respects in accordance with...*
3. *"Fair and reasonable" opinions*
Accountants generally avoid giving "fair and reasonable" opinions as they are normally associated with investment banks making recommendations to shareholders in respect of transactions. There is also the risk that they might be construed as valuations, which can [give] [pose] independence problems for auditors.
4. *Wording that might suggest that the third party is able to rely on the statutory audit of the client*
Accountants avoid any possibility of a link becoming established between the special report and the statutory audit report. For example, they avoid phrases such as 'we audited the accounts and we. . .' or "during our audit we . . .".
5. *Opinions that are open-ended or otherwise cannot be supported by the work carried out by the accountants*
Accountants avoid phrases that are open-ended unless the scope of the work is clear by reference to the engagement letter or relevant standards or guidance, for example phrases such as "we obtained all the explanations we considered necessary" or "we have performed such procedures as we considered necessary" They do not give opinions that are not supported by the work carried out, for example, assertions about completeness that cannot be supported by a limited amount of work that has been performed. Other examples of inappropriate reporting include providing positive opinions on solvency or prospective information which is inherently uncertain. A report can only give assurance on the basis of the information available at the time that it is provided.
6. *Opinions which accountants do not have the necessary competence to provide*
Accountants avoid opinions that are not within their professional competence, for example an opinion of an actuarial nature or a property valuation, where there has been no input from a relevant expert. Another example of this would be the appropriateness of insurance cover.
7. *Opinions on matters beyond the accountants' knowledge and experience*
Accountants avoid giving any opinion about how 'appropriate' operational information or records being held or maintained by the client are, where the information or records relate to matters concerning the specific operational circumstances of the client which are beyond the scope of the accountants' professional knowledge and experience.
8. *Wording that is open to interpretation*
Certain words or phrases might be open to interpretation and these are only appropriate to use in clearly defined circumstances where the meaning is well established and understood. The word 'review' is best avoided as it can be unclear what has been reviewed and the extent of the work.

Accountants always define terms if the meaning might be unclear and do not otherwise use such terms. The word '*material*' is avoided unless this can be referenced to a clear definition. Words to avoid can also include accounting terms, for example, '*net current assets*' in sectors where specific adjusting items might be recognised when assessing liquidity.

9. *Reports on internal controls*

Reports on internal controls are only possible in well defined and well established circumstances, where the reporting arrangements have been agreed in a clear manner. Reports on systems and controls are avoided where there are inadequate criteria specified. Reports include an indication of the limitations of a system and are related to a point in time or period. Guidance is given in the APB Briefing Paper '*Providing assurance on the effectiveness of internal control*'. It is also useful to clarify in writing the responsibilities of management and in particular, to indicate that they are responsible for identifying, evaluating and managing new and changing risks on an ongoing basis.

10. *Reports without addressees*

Accountants do not provide reports where it is unclear to whom the report is being provided.

11. *Reports on financial information which is not explicitly approved by the client*

The client has responsibility for the financial information being provided and it is, therefore, not appropriate for the accountants to report on financial information unless it is clear that it has first been approved by the client.

12. *Qualifications in the covering letter only*

Accountants do not provide qualifications in their covering letter. Such qualifications are included in the main body of the report, so that they cannot be detached.

13. *Opinions which would impair the auditors' independence*

Accountants do not provide opinions that would impair their independence as auditors. For example, where the client is an SEC registrant, certain forms of valuation opinion are not permitted from auditors.

APPENDIX 3

Example extracts from an engagement letter for an agreed upon procedures engagement**Services to be provided**

We will complete the specified limited scope procedures set out below:

(describe the nature, timing and extent of the procedures to be performed, including specific reference, where applicable, to the identity of documents and records to be read, individuals to be contacted and parties from whom confirmations will be obtained.)

The above procedures will be performed solely for your purposes. You are responsible for determining whether the scope of our work specified above is sufficient for your purposes.

Upon completion of the procedures we will provide you with a report of our findings in the form of that attached to this letter, solely for your information (*attach proforma of report*). Our report is not to be used for any other purpose or disclosed to any other person without our consent. [We consent to the report being released to *[name of third party]* provided that *[name of third party]* acknowledges in writing that we owe no duty of care to *[name of third party]* and we will not be liable to *[name of third party]* for any reliance it chooses to place on the report.]

We have agreed that, under this engagement, we will not perform an audit or any verification procedures other than those which are specified in the scope section above. [If we were to perform additional procedures or if we were to perform an audit or any more limited review, other matters might come to our attention that would be reported to you.] Our report will not extend to any financial statements of the Company taken as a whole.

Audit work

Our audit work on the financial statements of the Company is carried out in accordance with our statutory obligations and is subject to a separate engagement letter. Our audit report is intended for the sole benefit of the Company's shareholders as a body, to whom it is addressed, to enable them to exercise their rights in general meeting. Our audits of the Company's financial statements are not planned or conducted to address or reflect matters in which anyone other than such shareholders as a body may be interested.

We do not and will not, by virtue of this report or otherwise, assume any responsibility whether in contract, negligence or otherwise in relation to our audits of the Company's financial statements; we and our employees shall have no liability whether in contract, negligence or otherwise to *[name of third party addressee (if applicable)]*, or to] any *[other]* third parties in relation to our audits of the Company's financial statements.

Timetable

We will be able to commence our limited scope procedures on [date] and we expect our work to be completed by [date]. Our work will depend upon receiving without undue delay full co-operation from all relevant officials of the Company and their disclosure to us of all [the accounting records of the Company and all other] records and related information (including certain representations) we may need for the purpose of our work.

Staffing

X will be the partner in charge of the engagement. Y will act as manager.

Scope of our work

The scope of our work and the procedures we shall carry out in preparing our report, together with the limitations inherent therein, are outlined above. If the scope and procedures do not meet your requirements, please tell us so that we can discuss a different scope or additional or alternative procedures. [You should understand that there is no guarantee that these procedures will result in the identification of all matters which may be of interest to you.]

Our work will be based primarily on internal management information and will be carried out on the assumption that information provided to us by the management of the Company is reliable and, in all material respects, accurate and complete. We will not subject the information contained in our reports and letters to checking or verification procedures except to the extent expressly stated. This is normal practice when carrying out such limited scope procedures, but contrasts significantly with, for example, an audit. Even audit work provides no guarantee that fraud will be detected. You will therefore understand that the services are not designed to and are not likely to reveal fraud or misrepresentation by the management of the Company. Accordingly we cannot accept responsibility for detecting fraud (whether by management or by external parties) or misrepresentation by the management of the Company.

APPENDIX 4

Illustrative contents of a report of factual findings for an agreed upon procedures engagement

These include:

- Addressee(s)
- Identification of the applicable engagement letter and specific information to which the agreed upon procedures have been applied
- Statement that the procedures performed were those agreed with the client (*and third party if applicable*)
- Identification of the purpose for which the agreed upon procedures were performed
- Listing of the specific procedures performed (*procedures may include: inquiry and analysis; recomputation, comparison and other clerical accuracy checks; observation; inspection; and obtaining confirmations*)
- Description of the accountants' factual findings, including sufficient details of errors and exceptions found
- Statement that the procedures performed do not constitute either an audit or a review
- Statement that had the accountants performed additional procedures, an audit or a review, other matters might have come to light that would have been reported
- Statement that the report is restricted to those parties that have agreed to the procedures performed
- Statement that the report relates only to the matters specified and that it does not extend to the entity's financial statements taken as a whole
- Date of the report

APPENDIX 5**Example of a Disclaimer Notice for an Accountants' Report**

Where the third party signs the engagement letter

Our report is prepared solely for the confidential use of [insert name of client] [and [insert name of identified third party]], and solely for the purpose of [describe the purpose]. It may not be relied upon by [insert name of client] [or [insert name of identified third party]] for any other purpose whatsoever. Our report must not be recited or referred to in whole or in part in any other document. Our report must not be made available, copied or recited to any other party [without our express written permission]. [Insert name of accountants] neither owes nor accepts any duty to any other party and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by their reliance on our report.

Where the third party does not sign the engagement letter

Our report is prepared solely for the confidential use of [insert name of client] and solely for the purpose of [describe the purpose]. It may not be relied upon by [insert name of client] for any other purpose whatsoever. Our report must not be recited or referred to in whole or in part in any other document. Our report must not be made available, copied or recited to any other party [without our express written permission]. [Insert name of accountants] neither owes nor accepts any duty to any other party and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by their reliance on our report.

APPENDIX 6**Example of a Liability Cap for the accountants' reporting engagement⁷**

The aggregate liability, whether to [insert name of client] or [insert name of third party] or any other party, of whatever nature, whether in contract, tort or otherwise, of [insert name of accountants] for any losses whatsoever and howsoever caused arising from or in any way connected with this engagement [and this transaction] shall not exceed [insert amount] (including interest).

⁷ This is an example of a liability cap only, which will be one of a number of provisions relating to the accountants' liability and any limitations thereon. For example, the, liability provisions will need to make it clear that the accountants are not seeking to exclude those liabilities (such as liability for their own fraud) which cannot be excluded by law