

ASIC CLASS ORDER [CO 14/784]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Class Order [CO 14/784] under subsection 1280A(1) of the *Corporations Act 2001* (the *Act*).

Subsection 1280A(1) provides that ASIC may, on application, approve an auditing competency standard for the purposes of the auditor registration provisions.

1. Background

The Act requires certain entities to appoint registered company auditors, audit firms or authorised audit companies to conduct audits or perform other tasks. Audit firms and authorised audit companies must, among other things, include registered company auditors as members and directors.

Part 9.2 of the Act provides for the registration of individuals as auditors. Under subsection 1280(2) ASIC must register a person as an auditor if, among other things, ASIC is satisfied that the person satisfies all the components of an auditing standard approved by ASIC or had such practical experience in auditing as is prescribed (currently 3,000 hours over 5 years including 750 hours as a supervisor).

As noted, subsection 1280A(1) provides that ASIC may, on application, approve an auditing competency standard for this purpose. By subsection 1280A(3) ASIC must not approve a standard unless it is satisfied of certain things, including that the standard provides that a person's performance against each component of the standard is appropriately verified.

After consulting with industry, in July 2004 ASIC issued Policy Statement 180 *Auditor Registration* which dealt with, among other things, how ASIC would exercise its power to approve an auditing competency standard.

In November 2004, ASIC approved the auditing competency standard (the *CPA/ICAA standard*) issued by CPA Australia and the Institute of Chartered Accountants in Australia (now operating as Chartered Accountants Australia and New Zealand) under section 1280A in the form provided to ASIC at that time. The standard requires applicants for registration to demonstrate their capacity to perform particular tasks in specified contexts, including tasks relating to audit planning, testing of internal control procedures and forming opinions on the extent of misstatements in account balances.

The *Legislative Instruments Act 2003* (the *LI Act*) commenced on 1 January 2005. Under that Act, legislative instruments made in 2004 were required to be lodged with the Attorney-General's Department by 1 October 2006 for registration on the Federal Register of Legislative Instruments. Failure to lodge such an instrument by that date has the effect that the instrument is taken to have been repealed.

ASIC has recently become aware that the instrument by which it approved the CPA/ICAA standard is likely to be a legislative instrument. It was never lodged for registration. It is likely that it was taken to have been repealed by the Legislative Instruments Act on 1 October 2006. ASIC has been registering auditors in reliance on the standard since that date.

At the same time as making Class Order [CO 14/784], ASIC has provided relief under Class Order [CO 14/757] to enable, to the extent possible, affected auditors and their clients to prospectively conduct their affairs despite the potential defect.

The Government will be introducing remedial legislation to ensure the validity of the registration of auditors in reliance on the standard since 1 October 2006, with effect from their purported registration.

2. Purpose of the class order

The purpose of this class order is to ensure that ASIC may register auditors in reliance on the CPA/ICAA standard from the date of registration of the class order.

3. Operation of the class order

This class order approves the CPA/ICAA standard.

The effect of the approval is to reinstate the standard as criteria that may be applied by ASIC in deciding whether to register a person as an auditor, if the approval in 2004 was repealed by the Legislative Instruments Act.

4. Documents incorporated by reference

This class order incorporates by reference the *Auditing Competency Standard for Registered Company Auditors* dated 24 November 2004 issued by CPA Australia and the Institute of Chartered Accountants in Australia as in force on that date. This document is available on the websites of CPA Australia (www.cpaaustralia.com.au) and Chartered Accountants Australia and New Zealand (www.charteredaccountants.com.au).

5. Consultation

As this class order reinstates the approval of an audit competency standard if its original approval had been repealed by the Legislative Instruments Act (due to the inadvertent failure to register the instrument of approval), ASIC considers the making of it to be of a technical nature.

Nonetheless, ASIC consulted CPA Australia and Chartered Accountants Australia and New Zealand on the need to reapprove the standard. These bodies made an application for the approval of the CPA/ICAA standard under section 1280A of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Class Order [CO 14/784]

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the class order

Under the Corporations Act ASIC must register a person as an auditor if, among other things, ASIC is satisfied that the person satisfies all the components of an auditing standard approved by ASIC or 3,000 hours of particular audit experience. ASIC Class Order [CO 14/784] (the **Class Order**) reapproves the auditing competency standard (the **CPA/ICAA standard**) issued by CPA Australia and The Institute of Chartered Accountants in Australia (now operating as Chartered Accountants Australia and New Zealand).

This standard was approved by ASIC in November 2004 for this purpose. This approval is likely to have lapsed as a result of the inadvertent failure to register the instrument of approval under the Legislative Instruments Act.

Engagement with human rights

The CPA/ICAA standard contemplates that an applicant for registration will provide personal information about the audit activities which they have engaged in to an assessor and to ASIC. The Class Order may therefore engage the human right to privacy under Article 17 of the International Covenant on Civil and Political Rights. That Article prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. However, the Corporations Act precludes ASIC from approving an audit standard unless it is satisfied (among other things) that the standard provides that a person's performance against each component of the standard is to be appropriately verified by a qualified person and that the standard adequately addresses the level of practical experience needed for registration.

ASIC considers that the Class Order is compatible with the right in Article 17. The right in Article 17 is not absolute. The right has implied limitations ('unlawful' and 'arbitrary') and may be subject to a permissible limitation where that limitation aims to achieve a legitimate objective, there is a rational connection between the limitation and the objective and the limitation is reasonable, necessary and proportionate. Any limitation imposed on the right by the class order has a clear legal basis, in that it:

- (a) *Aims to achieve a legitimate objective* – Auditors perform a number of key functions under the Corporations Act and other legislation. The objective in obtaining the information is to ensure that only people with appropriate skills and experience are registered as auditors.
- (b) *Is reasonable, necessary and proportionate* – In order to ensure that only people which the appropriate skills and experience are registered as auditors (and therefore eligible to be involved in conducting audits and reviews required by the Corporations Act), it is necessary for applicants for registration to provide information that enables their personal competency to be evaluated. The information required is information that is relevant to determining whether the applicant has the necessary skills and experience.

The class order does not otherwise engage any of the applicable rights or freedoms.

Conclusion

Class Order [CO 14/784] is compatible with human rights as it only engages them in the manner specifically contemplated by the Corporations Act; and to the extent necessary to meet the regulatory objectives of that Act.