

ASIC Corporations (Approval of Auditing Competency Standard) Instrument 2016/474

ASIC Corporations (Revocation and Repeal) Instrument 2016/475

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes the *ASIC Corporations (Approval of Auditing Competency Standard) Instrument 2016/474* (**Approval Instrument**) under subsection 1280A(1) of the *Corporations Act 2001* (the **Act**).

ASIC makes the *ASIC Corporations (Revocation and Repeal) Instrument 2016/475* (**Revocation and Repeal Instrument**) under subsection 1280A(4) of the Act.

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

Subsection 1280A(4) provides that ASIC may, on application by the person who applied for the approval or if ASIC is no longer satisfied of the things mentioned in subsection 1280A(3), revoke an approval of an auditing competency standard.

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) of the 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 competency 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) of the Act provides that ASIC may, on application, approve an auditing competency standard for this purpose. By subsection 1280A(3) of the Act, 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.

Also as noted, subsection 1280A(4) of the Act provides that ASIC may revoke an approval of an auditing competency standard on application by the person who

applied for the approval or if ASIC is no longer satisfied of the things mentioned in subsection 1280A(3) of the Act.

After consulting with industry, in July 2004 ASIC issued Policy Statement 180 *Auditor Registration* (renamed ASIC Regulatory Guide 180 (RG 180) in July 2007) 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 **2004 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 capability in performing basic audit competencies (including planning an audit, control and substantive testing and forming opinions);
- the currency and continuity of their audit experience; and
- their ability to supervise and manage an audit).

The *Legislative Instruments Act 2003* 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.

In 2014, ASIC became 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.

Consequently, in 2014 ASIC made Class Order [CO 14/784] reapproving the 2004 CPA/ICAA standard. At the same time as making Class Order [CO 14/784], ASIC 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.

CPA Australia and Chartered Accountants Australia and New Zealand have applied for ASIC's approval of the 2004 CPA/ICAA standard to be revoked.

CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants have applied for approval of a new auditing competency standard (the **2016 CPA/CA ANZ/IPA standard**).

ASIC is satisfied of the matters mentioned in subsection 1280A(3) of the Act in relation to the 2016 CPA/CA ANZ/IPA standard.

2. Purpose of the instruments

The purpose of the Approval Instrument is to approve the 2016 CPA/CA ANZ/IPA standard so that ASIC may register auditors in reliance on the 2016 CPA/CA ANZ/IPA standard from commencement of the Approval Instrument.

The purpose of the Revocation and Repeal Instrument is to:

- revoke ASIC's approval of the 2004 CPA/ICAA standard, subject to a transition period which will allow persons to apply for registration as auditors in reliance on the 2004 CPA/ICAA standard until 30 June 2017; and
- repeal ASIC Class Order [CO 14/784].

3. Operation of the instruments

The Approval Instrument and the Revocation and Repeal Instrument each commences on the day after its registration.

The Approval Instrument approves the 2016 CPA/CA ANZ/IPA standard.

The Revocation and Repeal Instrument revokes ASIC's approval of the 2004 CPA/ICAA standard and repeals ASIC Class Order [CO 14/784]. The Revocation and Repeal Instrument provides for a transitional period during which a person will be able to apply for registration as auditors in reliance on the 2004 CPA/ICAA standard until 30 June 2017.

The combined effect of the Approval Instrument and the Revocation and Repeal Instrument is that:

- from commencement of the instruments until 30 June 2017, a person will be able to apply for registration as an auditor on the basis of satisfying either the 2004 CPA/ICAA standard or the 2016 CPA/CA ANZ/IPA standard; and
- after 30 June 2017, a person will be able to apply for registration as an auditor on the basis of satisfying the 2016 CPA/CA ANZ/IPA standard.

Note: There are additional requirements for registration as an auditor: see section 1280 of the Act. As an alternative to satisfying the components of an approved auditing competency standard, a person may satisfy ASIC that the person has such practical experience in auditing as is prescribed (currently 3,000 hours over 5 years including 750 hours as a supervisor): see subparagraph 1280(2)(b)(ii) of the Act.

The 2004 CPA/ICAA standard requires applicants for registration to demonstrate:

- their capability in performing basic audit competencies (including planning an audit, control and substantive testing and forming opinions);
- the currency and continuity of their audit experience; and
- their ability to supervise and manage an audit).

The 2016 CPA/CA ANZ/IPA standard imposes requirements that deal with the same matters as those covered by the 2004 CPA/ICAA standard and includes the following key enhancements:

- a) direct references to fact that ASIC Regulatory Guide 180 *Auditor Registration* (RG 180) provides detail around the process and requirements for auditor registration;
- b) referencing compliance with key requirements of the current auditing standards to appropriate tasks and activities which demonstrate competencies in relation to all aspects of the performance of audits, from planning to forming an opinion on the financial report;
- c) a more principles based approach in comparison to the more descriptive rules based approach in the 2004 CPA/ICAA standard (for example the old standard had a total of 20 tasks and over 100 sub-tasks while the new standard has been streamlined, and consists of only 7 tasks and 32 activities). This focuses applicants and assessors on the key competencies required;
- d) the use of simpler language and enhanced structure for communicating competency requirements; and
- e) an update to the details of the process by which competencies are demonstrated and assessed.

4. Documents incorporated by reference

The Approval Instrument incorporates by reference the Auditing Competency Standard for Registered Company Auditors dated August 2015 issued by CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants, as in force on 27 June 2016. This document is available on the websites of CPA Australia (www.cpaaustralia.com.au), Chartered Accountants Australia and New Zealand (www.charteredaccountants.com.au) and Institute of Public Accountants (www.publicaccountants.org.au).

As mentioned, the Revocation and Repeal Instrument continues in force for a transitional period the approval of 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

ASIC consulted CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants on the approval of the 2016

CPA/CA ANZ/IPA standard. These bodies made an application for the approval of the standard under section 1280A of the Act.

ASIC consulted CPA Australia and Chartered Accountants Australia and New Zealand on the revocation of ASIC's approval of the 2004 CPA/ICAA standard. These bodies made an application for the revocation of ASIC's approval of the standard under section 1280A of the Act.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required in order to make the instruments.

Statement of Compatibility with Human Rights

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

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These instruments are 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 instruments

Under the *Corporations Act 2001*, 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 has 3,000 hours of particular audit experience. ASIC Class Order [CO 14/784] approved the auditing competency standard (the **2004 CPA/ICAA standard**) issued by CPA Australia and The Institute of Chartered Accountants in Australia (now operating as Chartered Accountants Australia and New Zealand).

The *ASIC Corporations (Approval of Auditing Competency Standard) Instrument 2016/474* (**Approval Instrument**) approves a new auditing competency standard (the **2016 CPA/CA ANZ/IPA standard**) issued by CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants.

The *ASIC Corporations (Revocation and Repeal) Instrument 2016/475* (**Revocation and Repeal Instrument**) revokes the approval of the 2004 CPA/ICAA standard and repeals ASIC Class Order [CO 14/784], subject to a transition period which will allow a person to apply for registration as an auditor on the basis of the 2004 CPA/ICAA standard until 30 June 2017.

Engagement with human rights

The 2016 CPA/CA ANZ/IPA 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 Approval Instrument 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 Approval Instrument 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 Approval Instrument 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.

Finally, ASIC notes that the approval of the 2016 CPA/CA ANZ/IPA standard only engages the right to privacy to the same extent as ASIC’s earlier approval of the 2004 CPA/ICAA standard (which earlier approval is revoked by the Revocation and Repeal Instrument).

The instruments do not otherwise engage any of the applicable rights or freedoms.

Conclusion

The instruments are compatible with human rights as they only engage them in the manner specifically contemplated by the Corporations Act; and to the extent necessary to meet the regulatory objectives of that Act.