

The Institute of Taxation

PROFESSIONAL AND PRACTICING RULES

INTERPRETATION

1. In this publication:

'ATA' means Associate Tax Adviser being Associate Member of the Institute

'commencement date' means the effective date of the Rules and Regulations i.e. July 1, 2020

'client' includes, where the context requires, former client. **'Board'** means the Board of Directors of the Institute. **'CPD'** Continued Professional Development program

'CTA' means Certified Tax Adviser being Certified Member of the Institute

'CTM' means Certified Tax Manager

'FTA' means Fellow Tax Adviser being Fellow Member of the Institute

'Firm' means a sole MIP, a partnership, a limited liability partnership or a body corporate or a body unincorporated registered with the Institute for Tax Advisory services.

'Institute' means The Institute of Taxation.

'Member' means a member of the Institute holding membership designation of either Affiliate, ATA, FTA or CTA.

'Member in Practice (MIP)' means a member who is holding the membership designation of the Institute as FTA or CTA and provides taxation services on a full-time or part time basis as a sole practicing member, a member of a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a director of, or an employee of, a company providing taxation services in which he has a financial interest in the equity capital.

'principal' means a sole MIP, partner, member of a limited liability partnership or director in a company.

'P&PR' means and include the Memorandum and Articles of Association, bylaws and Practicing Regulations of the Institute

'Tax Authority' means Tax Authority which includes the Federal Board of Revenue, Provincial Tax Authorities and any other tax authority.

'student' means a student registered as such for the time being with the Institute.

Words importing "persons" include "bodies corporate". Words importing the masculine gender include the feminine. Words in the singular include the plural and words in the plural include the singular.

2. These rules and guidelines are based on the law and practice in Pakistan. Members practicing in other jurisdictions should have regard to relevant local law and practice.

3. These rules and regulations apply equally to an employed Member as they do to an MIP whether or not his employer is a member of the Institute. These rules apply to every employed Member irrespective of the nature of the activities or business of his employer.

4. References to an Act include any statutory modifications or re-enactment of it for the time being in force.

5. The Institute Memorandum and Articles of Association and byelaws of the Institute, form the Professional & Practicing Regulations of the Institute can be found on the Institute's website – www.citp.org.pk.

1. INTRODUCTION

1.1. Unless otherwise stated these rules and guidelines apply to:

- a) Members
- b) Students
- c) Firms

1.2. The Institute provides two tier professional education in taxation; 1) Certified Tax Manager – CTM and 2) Certified Tax Adviser – CTA. After passing CTM examination one qualifies to become a non-practicing Affiliate Member of the Institute that subsequently leads to advancement as Associate Tax Adviser (ATA), Fellow Tax Adviser (FTA) and ultimately Certified Tax Adviser (CTA). Only FTA and CTA are eligible for public practice. FTA shall be practicing as “Certified Tax Practitioner” and CTA shall be practicing as “Certified Tax Adviser”. CTA is the highest tier in tax profession.

1.3. The hallmark of a professional should be his honesty, integrity and objectivity.

1.4. A Member has duties to the following:

- a) Each of the Member’s clients
- b) Clients generally
- c) The Member’s employer, if any
- d) The public
- e) Third parties (in certain circumstances)
- f) Tax Authorities
- g) The taxation profession
- h) Any partner of the Member
- i) Any employee of the Member
- j) The Institute
- k) Himself

1.5. From time to time those duties may conflict. Resolving such conflicts may involve careful questions of judgement. Often it will be appropriate for the Member to seek advice and guidance of others. The purpose of these P&PR is to provide a framework within which to make those judgements.

1.6. No rules and regulations can cover every set of facts and circumstances that affect professional conduct. Moreover, the danger of attempting to codify guidance in this area is that anything that is not specifically forbidden may come to be regarded as permissible. To adopt such an approach is to miss one of the fundamental principles of professional practice. It is important to observe the spirit, as much as the letter, of these P&PR and use professional judgement when applying them in practice.

1.7. This publication entails Professional and Practicing Regulations (P&PR).

1.8. The P&PR provides that a Member may be subject to disciplinary action if guilty of a breach of the P&PR or of any other Directive of the Institute.

1.9. A Member in practice is required to comply with the law of the country in which he practices. These P&PR apply unless the law or generally accepted practice in that country is to the contrary.

1.10. A Member may have duties and obligations to other professional bodies and regulators and should have regard to these as relevant.

1.11. A Member seeking further guidance should contact the Institute. However, as members will appreciate, they can only advise. Any decision is a matter for judgement by the member himself.

2 PROFESSIONAL RULES

2.1 Conduct

2.1.1 Member must:

- a) Take due care in his conduct
- b) Take due care in all his professional dealings
- c) Uphold the professional standards of the Institute as set out in the Rules and Regulations of the Institute.

2.1.2 Member must not:

- a) Perform his professional work, or conduct his practice or business relationships, or perform the duties of his employment improperly, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the Institute or to the members or any part of the membership or to the taxation profession
- b) Breach the Rules & Regulations of the Institute

2.2 Integrity

2.2.1 Member must be honest in all his professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information.

2.2.2 Member must not be party to bribery or other illegal activities.

2.2.3 Member should not act if he considers that the fulfilment of his client's instructions involves a risk of assisting in a criminal activity.

2.3 Courtesy

2.3.1 Member must be courteous and considerate towards all with whom he comes into contact in the course of his professional work.

2.4 Competence

2.4.1 Member must carry out his professional work with a proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which the member is not competent to perform, whether because of lack of experience or the necessary technical or other skills; unless appropriate advice or assistance is obtained to ensure that the work is properly completed.

2.5 Objectivity and independence

2.5.1 Member must be objective in all works undertaken. Member should be morally and intellectually independent. This applies both to the representation of clients and to the resolution of conflicting interests as between the Institute members, clients, tax authorities and any other interested parties. If such independence and objectivity may be impaired through conflict of interest the member must act in accordance with P&PR.

2.6 Confidentiality

2.6.1 Member owes a duty of confidentiality to his client or employer. The duty to observe confidentiality applies without time-limit to all information with which the Member is entrusted by his clients or which is brought to his knowledge during or at any time after the carrying out of his assignment, or in the course of his professional practice in general. The same duty of confidentiality should be imposed on employees and subcontractors.

2.6.2 Information acquired in the course of a member's work must not be divulged in any way outside his organisation without the specific consent of the client or employer unless there is a legal or regulatory duty or professional obligation to disclose.

2.6.3 Member should safeguard the confidentiality of client information particularly where there could be a conflict of interest with another client.

2.6.4 Confidential information obtained in the course of the work must not be used for personal advantage by a Member or anyone associated with him.

2.7 Clients' Money and Assets

2.7.1 Great care must be taken with money and assets that have to be maintained separately from the member's own funds. A Member must ensure that clients' money is properly accounted for in accordance with the Practice Guidelines.

2.8 Money Laundering

2.8.1 Members must comply with the Anti-Money Laundering Act 2010.

2.9 Incompatible Activities

2.9.1 Member must not undertake within his professional practice business activities which are not compatible with those normally undertaken by a Tax Adviser.

2.10 Practice Development

2.10.1 Member must not obtain or seek professional work in any unprofessional manner.

2.11. Mandatory Continued Professional Development Program

2.11.1 Member who is engaged in the practice of taxation in industry, commerce or private practice should keep his professional knowledge up to date and in this regard must fulfil the requirements of the CPD regulations. The CPD regulations do not apply to students.

2.13 Provision of Information to the Institute

2.13.1 Member must provide such information as is reasonably requested by the Institute as a member without unreasonable delay. Member must reply to correspondence from the Institute which requests a response and again must do so without an unreasonable delay.

2.14 Compliance with the Disciplinary Process and orders from the Institute's Disciplinary Committee

2.14.1 Member is subject to the disciplinary processes of the Committee in respect of a complaint against him. Member must comply with any order from the Committee including orders in respect of costs and fines. Failure to comply with such an order will in itself be a disciplinary matter.

2.15 Obligation to Notify the Institute

2.15.1 Member must promptly inform the Institute if he:

1. Is convicted of a criminal offence (other than a 'summary only' road traffic offence);
2. Is notified of disciplinary action initiated against him by another professional body to which the member belongs;
3. Has a bankruptcy order made against him;
4. Is disqualified as a director, or enters into a disqualification undertaking.

3. PRACTICE RULES

3.1 Business Structure

3.1.1 Member is recommended to have a memorandum of understanding or other governing document setting out the basis on which the business will be conducted and the arrangements between the principals.

3.1.2 Member is subject to the same P&PR irrespective of the business structure of the firm. There may be statutory and professional requirements on the conduct of a member's professional activities through different structures which it is the member's responsibility to observe.

3.2 Multi-Disciplinary Practice

3.2.1 Member who is a principal in a firm may act in association with principals who are not members of the Institute provided that such associates (who may practice under the rules and regulations of another professional body) recognise these P&PR. The firm's policy relating to the provision of tax services should be consistent with that of the Institute and be observed in the conduct of tax work by all so engaged. See also Appendix 4.

3.3 Names and Letterheads of Practice

3.3.1 In this paragraph letterheads mean material used by the Member for external communications including practice notepaper, advertisements, electronic mail, facsimile and internet material.

3.3.2 A Firm's name should convey a professional image consistent with the standards required of Member.

3.3.3 A Firm's name must comply with the requirements for registration under the Companies Act 2017.

3.3.4 A Firm's name should not be misleading. Generally, it will not be misleading where a Member practices under a name based on the names of past or present Members of the Firm or of a Firm with which it has merged or to which it has succeeded. However:

- A Firm with a limited number of offices should not describe itself as international because one of them is overseas
- Where the Firm's name might be confused with the name of another existing Firm this should be avoided even if the Member could reasonably justify a claim to the name

3.3.5 Letterheads, documents and other stationery, including nameplates, used by the practice should meet the following criteria:

- They should be of a suitable professional standard

- They must comply with legal requirements as to names of partners, principals and other participants
- They must comply with the practicing designations guidelines (see paragraph 3.4 below)
- They should not advertise any specialist service unless the firm has the relevant expertise

3.4 Practicing Designations

34.1 MIP may always use his designatory letters and personally describe himself as FTA or CTA as the case may be defined and prescribed by P&PR. However, the MIP must not allow business associates to use words or descriptions which indicate that they have qualifications to which they themselves are not directly entitled, except in accordance with the Regulations promulgated by the Board. For partnerships, limited liability partnerships and companies see the rules prescribed in Appendix 3.

3.5 the Institute Practice License and Seal

35.1 the Institute Practice License shall be awarded to FTA, or CTA.

352 FTA shall be practicing as “Professional Tax Adviser” and CTA shall be practicing as “Certified Tax Adviser”.

353 The Practice license and Seal of the Institute is the Institute’s exclusive property and must not be reproduced or used by anyone other than the MIP.

354 The rules for the use of the Institute Seal and License are set out in Appendix 4.

355 Specimen copies of the license and seal can be seen at Appendix 9.

3.6 Temporary Incapacity of a Sole Practitioner

36.1 MIP who is a sole practitioner should make suitable arrangements to ensure that his firm can continue to carry on in the event of his illness or temporary incapacity. Without contingency arrangements serious difficulties may arise, prejudicing the interests of clients.

362 MIP should consider whether his firm has sufficient resources to meet his obligations in his absence or whether those obligations should be discharged by another firm under a prior arrangement or by a MIP acting on a locum basis. MIP should be satisfied that a person or firm to whom the work is to be assigned has sufficient experience and expertise to act for the work to be undertaken.

3.7 Death or Permanent Incapacity of a Sole MIP

37.1 Similar considerations to those in paragraph 3.6 apply to the death or permanent incapacity of a sole MIP, although the difficulties are potentially far greater for both the Firm and its clients.

372 If a Member dies his property vests in his personal representatives. If he is permanently incapacitated his rights and obligations remain vested in him.

3.73 In arranging for the future management of his Firm, the MIP should ensure that the practice to which it is to be entrusted is compatible with his Firm.

3.74 Arrangements should be set out in detail in a written agreement to avoid any doubt or confusion which may otherwise arise. The agreement should provide for the duration and extent of the manager's duties and responsibilities and the legal relationship with the sole MIP or his personal representatives. MIPs are recommended to consult a lawyer with appropriate experience in drawing up such an agreement. Members should also consider granting a power of attorney where appropriate.

3.75 Member who acts as a manager of a firm is under the same standard of duty to the sole MIP or his personal representatives as he is to any client. Such a Member must not use his position to seek any personal gain other than the agreed remuneration.

3.76 In the case of death, adequate provision should be made by will to enable executors to manage the firm personally or to appoint a Member or other professionally qualified person to do so. If an MIP dies intestate, delay may be encountered in the appointment of administrators and their statutory powers of administration will be limited. For this reason, MIPs are reminded of the importance of making an appropriate will.

3.8 Business Continuity Plan

3.81 MIP should have in place a business continuity plan which would ensure the continuity of the business in the event of a serious incident such as fire, flood or major IT systems failure.

3.82 MIP should have in place a disaster recovery plan which would ensure the recovery of the business in the event of a serious incident such as fire, flood or major IT systems failure.

3.9 Bankruptcy

3.91 An MIP who is subject to a bankruptcy order must notify the Institute within 30 days of the date of the bankruptcy order.

3.92 If an MIP fails to notify the Institute and the bankruptcy order is brought to the notice of the Institute, his membership of the Institute shall cease automatically upon the expiry of the 30 days.

3.93 Where an MIP notifies the Institute within the 30 day period the Institute will consider whether exclusion is appropriate or whether membership should continue.

3.94 An MIP who notifies within the 30 day period will be advised of the Institute's decision within 2 months of his notifying the Institute.

3.10 Dissolution or Merger of Practice

3.101 A merger of two or more practices or the dissolution of a practice should normally be notified to all clients who will thus be given the opportunity of deciding whether they wish to continue to instruct the newly constituted practice.

3.102 MIP should also consider taking specialist legal advice in respect of matters such as the assignment of engagements and other contractual matters.

3.11 Cessation of Practice

3.11.1 MIP's liability in respect of services provided whilst acting for a client continues after the Member has ceased to practice.

3.12 MIP's Own Tax Affairs

3.121 MIP's own tax affairs should be kept up to date and all returns and other relevant documents lodged within the stipulated time. Neglect of the member's own affairs could cause doubts in the minds of Tax Authorities as to the standard of the MIP's professional work.

3.13 Honorary and Pro Bono Work

3.131 MIP's duty of care covers honorary work, pro bono work and work for family, friends and charitable organisations. Honorary work means a formal honorary post for charities, amateur organisations and other 'not for profit' organisations. Pro bono work means work for which absolutely no payment is made either in cash or kind.

3.132 Member should consider whether, in carrying out work of this nature, he comes within the definition of a 'MIP' with the related obligations.

4 NEW CLIENTS

4.1 Obtaining clients

4.1.1 Client has the right to choose or change Tax Professional or Tax Adviser, or to take a second opinion, or to retain separate Adviser on different matters.

4.1.2 Member should not obtain or seek professional work for himself, another MIP or anyone else in a manner which is unprofessional.

4.1.3 What constitutes unprofessional conduct can only be determined in the light of all the relevant facts and circumstances. The following are illustrations of unprofessional conduct:

a) Implying in an improper manner, whether orally or in correspondence or in any material that existing MIP are not competent to provide an adequate service to any client;

b) Giving any commission, fee or reward to a third party, not being an employee, in return for the introduction of a client, which does not fall within the provisions in paragraph 4.1.4. In the case of a payment to an employee care should be taken to see that the employee has not breached the guidelines.

4.1.4 MIP may pay a fee or commission, or provide some other gift or favour, to a third party in return for the introduction of a new client (or further work for an existing client) provided that:

a) The MIP has no reason to believe, and does not believe, that undue pressure or influence was exerted on the prospective client by the third party; and

b) Before accepting instructions, the MIP has disclosed to the prospective client, in writing, both the amount and nature of the fee, commission, gift or favour, and the identity of the third- party recipient.

4.1.5 The practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work ('cold calling') is not of itself unprofessional conduct. However, repeated cold calling to a particular non client may become offensive and lead to a complaint.

4.1.6 Direct mailing and the sending of unsolicited electronic material, brochures, circulars and other literature about the MIP or his firm to non-clients would not, of themselves, amount to unprofessional conduct, unless they breach one of the other guidelines.

4.1.7 Subject to the above, an MIP may advertise his services to the public. Chapter 14 deals with advertising.

4.2 Client Acceptance

4.2.1 A MIP who is invited to undertake professional work by a prospective Client is under no obligation to act. Indeed, he should decline to do so if he believes that he would be unable to

assume the duty of care that he would have to extend to that client (see paragraph 5.1).

4.2.2 Before accepting instructions to act for a new client, an MIP should

- a) Comply with the identification requirements set out in the anti-money laundering law and guidance.
- b) Consider whether the Client will be an acceptable client in terms of the risks which will arise for the practice from acting for that Client and whether the MIP has the capability to manage those risks. In assessing the risks relating to the Client the MIP should consider the potential client's personal circumstances, business situation, financial standing, source of funds, integrity and attitude to disclosure in regard to compliance with taxation law.
- c) Consider whether the MIP and Firm will have the skill and competence to service the Client's requirements during the course of the engagement.
- d) Consider whether there is any conflict of interest in accepting the Client and if so whether and how it might be managed (See chapter 6).
- e) Proceed with caution when deciding to accept instructions from a Client who refuses to give the existing MIP permission to disclose appropriate information about his affairs.
- f) Note that an MIP must do nothing to assist a Client to commit any criminal offence, or (save to the extent permitted by law) to shield the client from the consequences of having defrauded the government of tax or of having been negligent in regard to direct or indirect tax matters. An MIP who acquires information, which leads him to conclude that a prospective Client may have been guilty of taxation misdemeanors should only accept the appointment on the basis that full disclosure will be made to the appropriate authorities.

MIPs are encouraged to record the basis for Client acceptance.

4.2.3 Having accepted the Client, before starting work on any assignment for a Client, the MIP should understand and agree with the Client the scope of the assignment, having first assessed the Client service risks, and be satisfied that the relevant skills and experience to perform the work are available or accessible.

4.3 Professional Clearance

4.3.1 A Member who is invited to undertake professional work in place of another MIP, particularly where any tax compliance services are concerned, should, before accepting the appointment, request the prospective Client's permission to communicate with the existing MIP. If this permission is refused, the member should decline to accept the appointment.

4.3.2 The objective of the communication referred to in paragraph 4.3.1 is to ensure that:

- a) The incoming MIP is fully aware of all factors that may be relevant to acceptance of the appointment and the effective handling of the client's tax affairs.
- b) The incoming MIP is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to Tax Authorities.
- c) The Client's affairs are properly dealt with, on a timely basis, and that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed in the transitional period.

4.3.3 When permission has been received from the prospective Client for such communication, the Member should ask the previous MIP, in writing, for all information which, in the opinion of that previous MIP, is necessary to enable the member to decide whether or not to accept the appointment.

4.3.4 A Member who receives a communication of the type referred to in paragraph 4.3.3 should ask the Client for permission to discuss his affairs freely with the prospective new MIP. When the Client's permission has been received, he should disclose to the prospective new MIP, either orally or in writing, all information which, in his opinion and based on his knowledge of the client and his affairs, may be needed to enable that MIP to decide whether or not to accept the appointment. If the client's permission is not received, that fact should be communicated to the prospective MIP who should normally not accept the appointment, unless satisfied that circumstances exist that make it appropriate to override the normal rule. It would require very exceptional circumstances to justify acceptance of the appointment and such cases are likely to be rare. A Member who believes that such circumstances exist may wish to discuss them with Technical Committee of the Institute. In any event, it would be advisable to document at that time the facts, circumstances and justification.

4.3.5 The request for professional clearance to the retiring MIP should be responded to within a reasonable time and should not be unduly delayed or withheld.

4.4 Engagement Letter

4.4.1 On accepting instructions, an MIP is strongly recommended to set out in a letter of engagement (see Appendix 6) to the Client his understanding of the scope and nature of the assignment and invite the Client to agree in writing. This exchange of letters serves as the contract between MIP and the Client although a contract still exists in the absence of such an exchange. Careful wording is needed to ensure that the scope of work is fully defined and that the Client understands what the MIP has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the basis on which fees will

be charged (including whether there will be a charge for the initial meeting). MIPs are recommended to consult the guidance note entitled **Engagement Letters for MIP** (see Appendix 6). The original contract, whether oral or written, can subsequently be varied either orally or in writing, unless a specific procedure is agreed between the parties (e.g. that all variations must be in writing).

4.5 Requesting Information from the existing MIP

4.5.1 When requesting for information from a predecessor, requests should be reasonable and relevant. Regard should be given to the likely cost to the Client for supplying the information.

4.6 Obligations in respect of advice given by a Predecessor

4.6.1 Unless the contract provides otherwise, an MIP is under no duty to advise a new Client on matters on which advice has been given by a predecessor, unless he becomes aware that the advice given by the predecessor in the area of the engagement was incorrect or had been overtaken by events.

5 CLIENT SERVICE

5.1 Duty of Care

5.1.1 When acting for a Client an MIP places his professional expertise at the disposal of that Client and, in so doing, the MIP assumes a duty of care towards the Client. An MIP must, therefore, exercise reasonable skill and care when acting for a Client. A failure to do so may result in the MIP being liable for a claim for professional negligence. The MIP must understand the duties and responsibilities in respect of the Client and the risks associated with a failure to adequately discharge those duties and responsibilities. The MIP must manage the risks associated with advising a particular Client. In order to do so the MIP must assess his ability to discharge his duty of care to that Client in respect of the matters on which advice is sought or the work to be undertaken. See also paragraph 7.2.

5.2 Professional Competence

5.2.1 MIP should advise a Client only when he has an adequate understanding of that Client's personal and business circumstances and tax position. In addition, the MIP should fully understand the issues under consideration and the objectives of the advice.

5.2.2 MIP should advise only within the scope of his own professional competence and within the scope of the terms of the engagement (see paragraph 4.4).

5.3 Supervision and Training

5.3.1 If work is delegated, the MIP should exercise sufficient supervision to confirm that the work performed is adequate. An MIP who considers any work done by subordinate staff as inadequate has a duty to remedy any defects before its completion.

5.3.2 An MIP who delegates work should be satisfied that it is undertaken by staff who have been adequately trained to carry out the work involved.

5.3.3 The principles of this chapter will also apply to sub-contractors and consultants engaged by an MIP.

5.3.4 A Member who is an employee and is not satisfied that staffs have adequate training or skills to perform their duties should report the situation to his employer with any appropriate recommendation as to further training, replacement or recruitment of staff. The member should also indicate to his employer the potential consequences of ignoring the recommendation, so far as it is reasonably possible.

5.4 Use of Sub-contractors

5.4.1 MIP must obtain a client's consent before subcontracting work on that client's affairs to another firm. MIP could consider including a clause authorizing referral to a sub consultant within his

engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral.

5.5 Consultation and Second Opinions

5.5.1 MIP is encouraged to consult with fellow professionals when advising Clients, where appropriate, to ensure that relevant skill and judgement is applied. It is a matter of judgement for the MIP whether consultation is necessary in any particular situation. If an MIP relies on consultation, evidence of it should be retained on the Client file. Client confidentiality rules, especially those concerning consent, must be taken into account. See paragraph 2.6 for further details.

5.5.2 An MIP who is giving a significant opinion to a Client should consider obtaining a second opinion to support the advice. This may be obtained by requesting formally an independent view from a colleague, or by instructing another Member or tax counsel. In addition, in any case where the risks for the MIP, assessed in terms of professional reputation or financial exposure of his practice, of giving wrong advice are high, the MIP should consider taking a second opinion. It is a matter of judgement for the MIP whether a second opinion should be obtained in any situation. If MIP relies on a second opinion, evidence of it should be retained on the Client file.

A significant opinion is one in respect of which either:

- a) The amount of tax at stake, or potentially at stake, in relation to the matters advised on is significant for the Client and there is a real risk that a contrary view to that taken by the member on those matters could be reached; or
- b) The matters advised on are, for some other reason, of sufficient importance to the Client to merit obtaining a second opinion.

5.6 Form and Content of Advice

5.6.1 In deciding on the form of advice provided to a taxpayer, MIP should exercise professional judgement and should consider such factors as the following:

- a) The importance of the transaction and amounts involved
- b) The specific or general nature of the taxpayer's enquiry
- c) The time available for development and submission of the advice
- d) The technical complications presented
- e) The existence of authorities and precedents
- f) The tax sophistication of the taxpayer
- g) The need to seek other professional advice

5.6.2 An advice communication should normally set out:

- a) The purpose for which the advice is required and the Client's objectives
- b) The background facts and assumptions on which the advice is based
- c) The alternatives open to the Client
- d) The risks associated with the advice
- e) Relevant caveats and exclusions

5.6.3 When formulating advice, the MIP should refer to the relevant taxation legislation and the practice of Tax Authorities. Due regard should also be given to case laws.

5.6.4 MIP should make it clear that the advice given is current and may be affected by subsequent changes in the law. To reduce the risk of misunderstanding, a member may wish to make it clear in the engagement letter that no responsibility is accepted to inform the Client automatically that advice previously given, by either the MIP or a predecessor, has been affected by a change in the law but that he is willing to receive instructions to reconsider such advice.

5.6.5 If it is intended that a Client should place reliance on taxation advice, the advice should be sufficient for the purpose and normally be given in writing. However, frequently the MIP will give impromptu advice in meetings or by telephone, endeavouring to be responsive to the needs of the Client. It is for the MIP to decide whether to confirm in writing advice given orally, particularly where the Client is not a tax professional. It would be prudent for MIP either to write to the Client confirming oral advice as a matter of course or at least to make a note on file of advice given and he should consider sending a copy of that note to the Client for his information and comment. This will allow the Client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given.

5.6.6 In any event the MIP should make and keep a contemporaneous and dated note on his file of the discussion and advice given. This means that the member may protect himself in the event of a subsequent dispute over what was said at the time and, in the case of what the member perceives to be important meetings and conversations, he should consider ensuring that such notes are signed and dated by the originator.

5.7 Keeping proper professional records

5.7.1 MIP should make a proper professional record of all his dealings in connection with his Client in order that:

- a) The MIP himself and his colleagues and successors can access a complete record of the Client

history to inform future client service.

- b) The MIP is able to resolve any misunderstandings or complaints, including in relation to fees
- c) The MIP is able to defend any allegation of negligence

5.7.2 The records should include:

- a) All written communications relating to the client's affairs, including letters, faxes and e-mails
- b) File notes of meetings and telephone conversations, which should be contemporaneous and dated;
- c) Records of how the advice given is reached, including details of technical research, consultations and second opinions (see paragraph 5.5)
- d) All necessary permanent information and copies of such working documents as are likely to be required.

5.7.3 Records should be organised so as to be accessible. Electronic records should be backed up.

5.7.4 The retention of working papers is an important issue. MIP should put in place a policy which takes into account both statutory requirements and time limits for legal action against a member. Further guidance is given in Chapter 13: Legal Matters.

5.8 Time Limits, Due Dates and penalties

5.8.1 MIP should maintain a diary system to ensure that warning is given of all relevant time limits including appeals, claims and elections, and that appropriate action is taken. MIP should also be in a position to advise Clients of the date by which action must be taken, in particular the due date of filing appeal, payment of tax, rules governing surcharge and penalties, etc.

5.8.2 Where an MIP undertakes tax compliance work for a Client this will normally include responsibility for keeping the Client informed of the amount of tax due for payment, the due date for payment and drawing the Client's attention to the fact that interest or surcharge accrues from that date.

5.8.3 If an MIP believes that he has no responsibility for monitoring the relevant dates for a compliance Client, a specific exclusion to that effect should be incorporated in the letter of engagement.

5.8.4 An MIP who has no compliance responsibilities for a particular Client would not normally be expected to monitor relevant dates and tax payments, unless specifically requested to do so. In cases of doubt, MIP is advised to discuss the issue with the Client and incorporate the agreed position into the letter of engagement.

5.9 Representation Before Commissioners and Tribunals

5.9.1 MIPs are referred to the Appendices for guidance on:

- a) Representation before Commissioners and Tribunals (Appendix 6)
- b) Acting as client's representative before Commissioners and Tribunals (Appendix 6)

6 CONFLICTS OF INTEREST

6.1 Professional Independence

6.1.1 A member must, at all times, maintain his professional independence.

6.1.2 A member must not only remain professionally independent, but also be seen to be so by clients, the public, Tax Authorities or other authorities and third parties. Particular care must be taken to preserve apparent, as well as actual, independence.

6.1.3 Conflicts of interest can arise between MIP and his Client or between two or more Clients or potential Clients.

6.1.4 If a Member becomes aware of any factor which affects or might affect his independence in respect of a matter (or which might be perceived to do so) the Member should immediately take action to address that factor in order to preserve his professional independence. If no appropriate action can be taken to remove the threat to the Member's professional independence, the Member should refuse to act on the matters in question or, if already acting when becoming aware of the adverse factor, should cease to act.

6.1.5 Most problems can be avoided by being alert to potential conflicts of interest and by not accepting an assignment where it seems likely that a conflict of interest could occur.

6.2 Managing conflicts

6.2.1 There are many circumstances in which an MIP may be presented with an actual or potential conflict of interest. It is not possible to envisage every possible situation but the more common occurrences are set out below in paragraphs 6.3 to 6.6, together with general guidance notes for each circumstance. It is not possible to provide guidance for every eventuality. This is a matter for the professional judgement of the Member based upon the precise circumstances.

6.2.2 Points to consider are:

- a. Conflicts of interest are not always easy to recognise or anticipate. However, the MIP should always be aware of the possibility that a conflict may arise and of the fact that this may impair the ability to give independent advice to a client.
- b. A Member must seek not only to avoid conflicts of interest but also to avoid situations where it may be perceived that a conflict of interest exists. The MIP must, therefore, consider his position and his actions not only in the light of his own views about whether a conflict exists, but also in the light of the way in which the situation will be perceived by the Client, the public, the authorities and third parties.
- c. A Member should acknowledge the existence of a conflict or potential conflict as soon as he becomes aware of it and must conduct himself accordingly thereafter.
- d. A Member should immediately address any conflict or potential conflict and seek a

solution which is compatible with high professional standards and the duty owed to the client or clients.

e. If the conflict or potential conflict cannot be resolved the Member must consider whether it is appropriate to continue to act. Usually, the existence of a conflict of interest will mean that it is inappropriate to continue to act for one or more of the Clients concerned (as to which, see paragraphs 6.3 - 6.5 below). Should the MIP consider it appropriate to continue to act for a Client despite the existence of a conflict or potential conflict, he must inform the Client fully and frankly of the existence of the conflict and should advise him to obtain independent advice on whether it is in the Client's interests for the MIP to continue to act.

f. Once agreed, arrangements for resolving or dealing with actual or potential conflicts of interest should be confirmed in writing to the Client as should any agreement whereby a Client agrees to a member continuing to act in circumstances where a conflict, or potential conflict, of interest exists. Once arrangements for dealing with a conflict have been made a MIP should regularly review them, and the circumstances.

6.3 Acting for both parties to a transaction

6.3.1 In most circumstances, an MIP who is asked to act for both parties to a transaction should refuse to do so. However, this may present difficulties if both the parties are existing clients. The MIP has an in-built conflict if he shows preference in providing services to one Client and not the other, and an added conflict if he does not act in the best interests of both.

6.3.2 The member has three choices:

a. **To act for neither party.** This is often the best course of action because of the potential conflict of interest between the parties and the difficult position in which this may put the member. However, to refuse to act may occasionally not serve the interests of everyone concerned and, in these instances, may not be the best course. It is, however, the recommended course if the MIP is in any doubt.

b. **To advise both clients of the conflict** and to give both the opportunity to consider whether or not they wish the MIP to act or whether they wish to seek alternative representation.

If both clients are agreeable the MIP may act provided that there is adequate disclosure of all relevant facts to both parties, so that they may formulate proper business judgements and provided that no preference is shown in advising one against the other and that the MIP is satisfied that the circumstances of the conflict can be managed. In practice this may be

difficult but there may be sufficient 'mutuality of interest' between the parties to allow this course to be followed. In this situation, both clients should be advised to consider seeking independent advice on whether it is appropriate for the MIP to act for both parties.

With the agreement of the client the MIP may also resolve the potential conflict by appointing a separate team to act for each client, who maintains ethical walls to prevent confidential information relating to one client becoming known to the team acting for the other.

c. **To act for only one client.** Generally, this will be the client who first sought advice. If an MIP has acquired relevant knowledge concerning a client who has instructed him in relation to a transaction and is then instructed by the other party to the transaction, it may be appropriate to inform both clients of the potential conflict and then to act only for the client who first sought advice. To change allegiance after accepting instructions could present a conflict in relation to the use of information already supplied as it would be a breach of client confidentiality to release such information, in any form, to another party without express approval of the client who provided such information. A member who decides to act only for the first instructing client should advise the other client of this decision in order to avoid any suggestion of acting improperly or misusing any confidential information concerning that client.

6.4 Acting for both an employer and his employees

6.4.1 An employer may ask a Member to provide tax or other advice to his employees. It is important for the Member to identify with whom the client relationship exists. No confidential information pertaining to an employee should be given to the employer without the express approval of the employee (preferably in writing). Where the nature of the assignment is such that there is a requirement for a report to the employer, this fact should be made clear in the engagement letter submitted to the individual employee.

6.4.2 If the employer discharges the Member's fees for services which are of direct benefit to the employee, the employer should be reminded of the requirement to make an appropriate report to Tax Authorities of any benefit in kind received by the employee.

6.5 Acting for both parties in a divorce settlement

6.5.1 Acting for both parties in a divorce settlement can present difficulties, particularly if the MIP has previously acted for both parties.

6.5.2 It will rarely, if ever, be appropriate to act for both parties in relation to a divorce settlement as it is highly unlikely there will be sufficient mutuality of interest between them. Usually it will be necessary to act for only one of the parties or for neither of them.

6.6 Financial involvement with clients

6.6.1 Financial involvement with a client may affect a MIP's independence. Such involvement could arise in a number of ways, for example holding shares in a client company or by the making of loans to or receiving them from a client.

6.6.2 MIP should formulate a policy in respect of shareholdings in client companies to be followed by partners and staff. Procedures should be put in place to monitor compliance with the policy.

6.6.3 Where An MIP, or the spouse or child of the member, makes a loan to a client, or guarantees a client's borrowing, or accepts a loan from a client or has borrowings guaranteed by a client, then a conflict of interest could occur. MIP should consider carefully whether it would be better not to undertake such financial transactions with a client, or if such arrangements are already in force, not to act for that person. An MIP who considers it is still appropriate to act or continue to act in these circumstances should fully and frankly inform the client of the conflict or potential conflict and advise the client to take independent advice on whether it is appropriate for the member to act or continue to act. If the client agrees that the member acts or continues to act, that agreement should be properly documented.

6.6.4 Similarly, acceptance of goods, services or hospitality of any kind that could influence MIP's independence should not be accepted, unless of a modest amount or on terms similar to those generally available to the employees of that client.

6.6.5 MIP should make sure that any financial involvement with a client does not lead to less favourable service being given to any other client.

6 OTHER CLIENT HANDLING ISSUES

6.1 Managing Liability to Other Third Parties

6.1.1 Where MIP provides advice or reports or other documents to clients with whom he has an engagement letter, he has the protection of a defined scope and exclusions. Where however he gives advice or reports or other documents to a third party, he may be exposed to claims against him from the third party without the benefit of the reasonable contractual protections applying to the relationship with his client.

6.1.2 When dealing with third parties on a client's behalf MIP must be careful not to breach client confidentiality or inadvertently assume a duty of care towards the third party. The following are ways in which the MIP may manage these risks:

- a Unless required to do so by law the MIP must not release to a third-party information provided by the client which can be said to be confidential without first obtaining the client's consent.
- b The MIP should require, as a term of the engagement, that the client must seek his consent before advice, reports or other documents which he has produced, or with which his or his firm's name is associated, are released by the client to third parties.
- c Before consenting to the release of documents, the MIP may request that the third party and its agents or members undertake that the MIP will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.
- d If no such undertaking is obtained the MIP should communicate to the third party the terms upon which the documents are released including caveats, e.g. limitations on scope or a warning that the advice is generic and may not apply in all circumstances, and confirmation that no responsibility is accepted, if appropriate. Where a number of third parties are involved, each with different circumstances and reasons for their interest, particular care and attention should be paid to the caveats.
- e The MIP should consider whether it is possible to decline to provide the advice or reports or other documents if it is commercially practical, for example, he may be able to decline to provide a reference.
- f In some cases, it may be possible to obtain an indemnity from the client in respect of

any possible claim against the MIP by the third party. This is most appropriate where the client has a strong interest in the advice, reports or other documents being provided to the third party; for example, where the client asks the MIP to give access to his client files to a potential buyer of one of the client's subsidiaries or business.

g. In some cases, it may be appropriate for the MIP to accept that he owes a duty of care to the third party and manage that with a separate engagement letter. This can be done either by binding the third party into the engagement letter with the primary client or entering into a shorter agreement tailored for the situation. Possible situations include:

- The MIP's client is a company but the shareholders wish to rely personally on the MIP's advice to the company.
- A client's wife wishes to use the advice given to her husband for a similar transaction.

6.13 If MIP becomes aware that any of the advice, reports or other documents which he has produced or with which he is associated and which are being used or relied upon by the third party are defective, he should insist that the client withdraws them from the third party. Failure to do this may, depending on the nature of the consents or warnings given, leave the MIP exposed to an action for damages by the third party if, on the strength of the documents, the third party sustained loss. It would be prudent for him to obtain proof of the withdrawal (e.g. a copy of a letter from the client to the third party withdrawing the document). If the client refuses to withdraw the document, the member should consider what further steps might be taken such as writing to the third party saying that the document can no longer be relied upon. However, this should not be done without first taking legal advice.

6.2 Working with other Professional Practitioners

6.21 An MIP should ascertain whether any other MIPs are involved in any project or assignment which a client asks him to undertake or in any related services. It is advisable to define clearly the respective areas of responsibility and record this in the letter of engagement.

6.22 In some cases, an MIP may enter into a direct relationship with another MIP rather than the taxpayer concerned. In such cases it is important to be clear whether the other MIP or the taxpayer is the client. Where the taxpayer is not the immediate client reference should be made to paragraph 7.2 on managing liability to other third parties.

6.23 When working alongside another MIP, an MIP should be careful to observe his duty of client

Confidentiality (see paragraph 2.6). In cases of doubt, the member should obtain instructions from his client, preferably in writing. The member should advise his client of the advantages of permitting appropriate communication between the MIPs on a project or assignment in order to progress the matter efficiently. Where the MIP is aware of information which will be properly required by another MIP in performing his duties and the client does not authorise direct communication, the MIP should ensure that his advice draws the client's attention to the matters of which the other MIP should be informed.

6.2.4 MIP should keep appointments and meet commitments entered into with other MIP as regards timely supply of information and the giving of advice. He should attend meetings, as agreed, and ensure that proper arrangements are made for any meeting for which he is responsible, including adequate notice of the meeting, advising its date, time and venue and the provision of all necessary facilities at the meeting.

7.2.5 MIP should deal promptly with all correspondence with other MIPs, and maintain a file record of such correspondence, including fax, electronic and telephone communications, and notes of any meetings. If any undue delay is likely to arise in responding to other MIPs' communications then the other MIP should be notified promptly of this, together with the reasons and, if possible, an indication of the date when a response will be sent.

7.2.6 Where the progress of work involves the contribution of other MIPs, a member should endeavour to ensure that his client is kept informed on the state of progress so far as he reasonably can ensure this.

6.3 Working as a Subcontractor to another Professional Practitioner

6.3.1 An MIP working as a sub consultant to another professional practitioner should ensure that there is a contract setting out terms and conditions of the arrangement. As a minimum there should be a written record of the agreement between the two parties.

6.3.2 The scope and basis of the work undertaken should be clear, for example, whether the sub consultant will rely wholly on information provided by another professional practitioner or whether he will undertake his own research.

6.3.3 The sub consultant should ascertain how he will be held out to the end user and how his advice will be communicated to the client. For example, will he be in direct contact with the client or will he work 'behind the scenes' with all communication directed through another Professional practitioner.

6.4 Referrals to Another MIP

641 An MIP who does not have the expertise or the staff resources available to meet his client's needs should refer the client to another MIP.

642 A member should take care when making referrals and should always aim to give the client a choice of MIP.

643 A member should make it clear to his client that the member has no responsibility for the work undertaken by the other MIP.

6.5 Money Laundering

651 MIP shall comply with the Anti-Money Laundering Act 2010 or any amendment thereto.

652 In particular, members shall bear reporting responsibilities to the supervising body against Money Laundering or Financial Monitoring Unit (FMU) against in the area of:

a. Suspicious Transaction Reports-F (STR-F), and

b. Suspicious Transaction Reports -A (STR-A)

653 MIP shall be liable and may be charged for professional misconduct to the Institute Disciplinary Committee if he supports, aids, abets or participates in Money Laundering activities or terrorists financing.

654 Every MIP has an obligation to promptly report through FMU any money laundering activity that comes to his knowledge in the course of his professional practice provided that no report will be made if it cannot be factually and professionally substantiated.

655 MIP should also strive to know their clients well to be able to discern their nature of their businesses. In this wise, each member should devise a Know Your Customer checklist and administer on each client.

6.6 Clients' money

661 An MIP who receives clients' money in connection with the carrying on by the member of investment business must handle that money in accordance with the aspects of the regulations of the regulatory authority with which he is registered relating to the handling of such funds. The following guidance addresses only non-investment business clients' money. See also paragraph 3.14.

662 Clients' money means money of any currency which an MIP holds or receives for or from a client, and which is not immediately due and payable on demand to the MIP for his own account. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded.

663 Clients' money must be kept separate from money belonging to the firm. For this reason, clients'

money must be kept in a separate client account. A client account can be a current or deposit account at a bank in the name of the member or his firm but it must also include the word 'client' in the title of the account. Clients' money can be kept either in a general client account, or in separate client accounts each designated with the name of a specific client, or in both.

664 The following conditions apply to client accounts:

- a Written notice must be given to the bank concerned that all money standing to the credit of each client bank account is held by the firm as clients' money, and that the bank is not entitled to combine the account with any other account, or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it on any other account of the firm.
- b Any interest payable in respect of sums credited to the account shall be credited to that account.
- c The bank must describe the account in its records in such a manner to make it clear that the money in the account does not belong to the member.
- d The bank should be required to acknowledge in writing that it accepts the terms of the notice.

665 Clients' money received by the firm must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.

666 If a cheque, draft or electronic transfer includes both clients' money and non-clients' money, that cheque, draft or electronic transfer must be paid into the appropriate client account immediately and the non-clients' money must be withdrawn from the account as soon as the funds have cleared. Under no circumstances should clients' money be paid into the firm's own account.

667 Where money of any one client in excess of **Rs.500,000 (Five Hundred Thousand Rupees)** is held or is expected to be held by the firm for more than 30 days, it is recommended that the money should be paid into a separate bank account designated as that of the client.

668 Money held in a client bank account may be withdrawn only where properly required for a payment to or on behalf of the client, including debts due to the firm and agreed fees or reimbursement of expenses incurred by the firm on client's behalf.

669 A firm must at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a client bank account, distinguishing the money of each client from the money of other clients and from firm money. Each client bank account must be reconciled against the balances shown in the client's ledger at least at six-

monthly intervals, and the records of such reconciliation must be kept for at least six years from the date of the last transaction recorded therein.

66.10 Members are reminded that converting or concealing criminal property or terrorist funds, for example by allowing them to be passed through the clients' money account is a criminal offence under the money laundering legislation. However, there is no offence if a member makes a prompt report to the law enforcement agencies and their permission is obtained to continue the transaction.

7 CHARGING FOR SERVICES

7.1 Basis of Charge

7.1.1 Before undertaking any work on behalf of a new client, a member should ensure that the client is aware of the basis on which fees will be charged and how expenses incurred on behalf of the client will be treated. It will usually be appropriate to set these matters out in the letter of engagement on accepting a new client (see Appendix 5). A member should make it clear at the outset whether he will charge for the initial meeting.

7.1.2 The calculation of an appropriate charge for services involves good judgement; it is not merely a question of applying a fixed scale to the time involved in completing the assignment. These guidelines should be interpreted in the light of the general principle that charges should be fair in relation to those services performed and the benefit of these services to the client.

7.1.3 Fee arrangements are a matter for commercial negotiation by members. A member's fee should have regard to the responsibility, nature and importance of the work, the time devoted to it, the client relationship and associated risk involved. The possible arrangements include:

- a Time and expenses - where the member charges on the basis of time spent according to the skill and the resources deployed. This is likely to be the usual basis in the absence of any other arrangement and the rate to be charged can reflect the complexity of the engagement and the value of the benefit to the client.
- b Fixed fees - where the member charges a fixed amount for an agreed assignment the fee should be based upon a proper costing of the work to be undertaken. When the arrangement is to run for any length of time, say beyond one year, there should be an appropriate variation clause in the engagement letter to enable additional work to be charged and cost escalation to be recouped.

7.14 It is vital to be as clear as possible as to the basis of fees and to include in the letter of engagement provision for varying the amount to be charged where extra work is performed.

7.15 Members should take steps to avoid fee disputes by agreeing fees before issuing invoices or giving indicative fees before work is started.

7.16 Normally, it is not necessary for a fully detailed bill to be sent automatically to the client unless a prior request has been made. However, the member's records should be adequate to enable a fully detailed bill to be prepared at a later date if required.

7.17 When charging costs or fees to different projects or different but connected clients, care should be taken to ensure that the allocation is commercially justifiable and reflects the benefit of the work to those clients.

7.2 Contingent Fees and Value Billings

7.21 A client's instructions may be accepted where the fee basis is contingent upon success. However, members should be aware that such fees may be perceived by third parties, in particular TA, as reflecting adversely on the independence of the member. Accordingly, where a contingent fee basis is adopted, the member should take care to ensure that his conduct meets, and is seen to meet, the required standards of integrity and objectivity, and that he can refute any challenge by TA on the standard of disclosure adopted in connection with the client's affairs.

8.23 Particular care will be needed in preparing the letter of engagement to ensure that the fee basis is fully and effectively documented. Where contingent fees are used the engagement letter should stipulate the action to be taken should subsequent events cancel all or part of the benefits of the contingent fee arrangement. It should set out clearly and precisely whether part or the entire fee is to be repaid and whether interest is payable.

8.24 Where a contingent fee forms the basis of reward for the member, the basis should be disclosed in any public document on which a third party may rely.

A member should be aware of the Tax Avoidance Disclosure regime where contingent fees are considered.

7.3 Retainers

73.1 Although retainer arrangements are not a common practice, there is no objection to a member seeking to charge, or accept fees from a client simply for the retention by that client of the member's services, whether or not additional fees will be charged for specific services which may subsequently be rendered.

73.2 Normally, under retainer arrangements, the client is able to call for certain services without any further charge.

73.3 A member may undertake to provide specific professional services for a fixed fee. Arguably, this is not the same as a retainer arrangement. Nevertheless, in both cases there is clearly a need for a carefully worded letter of engagement.

73.4 To reduce the possibility of disputes arising with a client, any retainer arrangements should normally be set out in writing, with a view to ensuring that the member and the client clearly understand the extent, and limitations, of the arrangements. In particular, such a letter of engagement should make clear the point at which further charges may be levied: see Appendix 5.

73.5 When a member agrees to a retainer arrangement, under which the client can call on that member's services at any time, the member should recognise that, in fulfilling his obligations to that client he may be unable to fulfil his obligations to other clients because of a conflict of interest. It is for this reason that members are advised to consider carefully all the implications before entering into material retainer arrangements and should normally include in the letter of engagement provision for terminating the arrangements in the event of a conflict of interest.

73.6 When entering into a retainer arrangement the member is advised to consider the commerciality of the arrangement and carefully consider the nature and scope of the services to be provided. The retainer fee should be commensurate with the expected activity on the client account. Where there is higher than expected activity, the member may wish to consider some limitation of scope within the retainer to avoid cost over runs.

7.4 Payments on Account

74.1 Payments on account of work being performed, or in advance of work to be performed, may be part of the terms on which a member agrees to act for a client.

742 The terms of such payments, and any circumstances in which they might become repayable with or without interest, should be incorporated in the letter of engagement to the client before the member starts to act for that client.

743 Any such payments should be reasonable in amount in relation to the likely level of fee which will be charged for the work performed or to be performed within a reasonable time scale.

744 On completion of the work, the member should provide a fee note for the services rendered, detailing the total fee charged and deducting there from payments on account or received in advance.

745 A member who is asked to cease acting at any stage should promptly prepare a fee note for the services rendered; if any earlier payment on account or in advance was greater than this fee, the member should promptly return the excess to the client.

746 Where a payment in advance has been received and the member becomes unable to start or complete the assignment, the member should promptly notify the client and repay to the client the advance payment received, after taking account of an appropriate charge for any work performed and any disbursements incurred in undertaking the assignment for the client.

747 If a substantial payment is received in advance for work to be performed, the member should recognise the contingent liability of having to return it in whole or in part to the client should the member be unable to complete the assignment or should the client subsequently require the member to cease acting. The member should keep adequate funds to repay in whole or part any advance payment (together with any interest thereon) in excess of the billing value of work done.

748 The member should ensure that there is proper accounting for any GST that may arise in respect of payments on account or advance payments.

7.5 Clients Who are Slow to Pay

751 A member should inform clients in writing of the payment terms of fees to be rendered. Normally, this should be incorporated in the letter of engagement sent to the client (see paragraph 4.4.1).

752 If a client does not settle an account within a reasonable time, a member should first ensure that the fees have been properly addressed to the client and endeavour to obtain confirmation that the relevant fee notes were received by the client. Normally, this can best be done by direct contact with the client. Alternatively, the use of a recorded delivery letter to the client should be considered.

753 Thereafter, the member should endeavour to ascertain the reason for the non-payment of the fee. This may have arisen through circumstances beyond the client's control (eg absence on business, holidays or hospitalisation). The non-payment may also have arisen because the client is dissatisfied with the service received, or the amount of the fee, or both. In the light of the client's comments, the member may need to consider whether to pursue collection of the fee and whether to continue to act for that client.

8.6.4 If there is no satisfactory explanation for the non-payment of the fee and the member has drawn the unpaid fee to the client's attention, the member endeavor to recover it.

8.5.5 Alternatively, or in addition, the member may wish to notify the client that he will cease acting on behalf of that client unless payment is received within a stated period, being a reasonable period of time. See also Chapter 10.

A member who has a client who is persistently dilatory in settling accounts may wish to consider whether to continue to act for that client.

8.5.6 A member should not settle his fees from money held, or received by the member on behalf of the client (e.g. a tax repayment), unless prior approval for such action has been obtained from the client. Any such arrangement should be in writing and have regard to the guidance in paragraph 7.7.

7.6 Fee Disputes

8.7.1 Fee arrangements are a matter for commercial negotiation by members. Steps should be taken, so

far as possible, to avoid disputes with clients over fees. A little foresight can often avoid a dispute and a number of suggestions to achieve this are made in the immediately preceding paragraphs. However, if a client does consider the amount of a bill excessive, an attempt should normally be made to settle the difference by negotiation; legal debt recovery action should be considered as a last resort.

8.62 If a client who disputes a bill offers to pay a smaller sum on account, the amount tendered may be accepted without disadvantage provided it is made clear to the client at the time of acceptance, preferably in writing, that it is accepted as part payment only and not in full settlement.

8.63 A member may exercise a lien in appropriate circumstances. A lien is the legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met. However before doing so the member should consider:

- a. Whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the bill.
- b. Whether the potential loss of goodwill, both towards the member and towards the taxation profession as a whole, which may be caused by such formal legal action outweighs the financial considerations.
- c. Whether to take specialist legal advice or recommend the client to take specialist legal advice.

See paragraph 13.9 for further advice.

8.64 It should be noted that the Institute will arbitrate between a member and his client upon the amount of a disputed fee.

9. COMPLAINTS

9.1 Complaints to Members

9.1.1 A member in practice is strongly recommended to have in place and operate procedures to handle complaints from clients.

9.1.2 Such procedures should ensure that:

a. Each new client is informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided, and of the ability to complain to the the Institute. This information should be included in the engagement letter. An example of suitable wording is contained in Appendix 5.

b. Each complaint is acknowledged promptly in writing.

c. Each complaint is investigated thoroughly and without delay by a person of sufficient experience, seniority and competence who preferably was not directly involved in the act or omission giving rise to the complaint, and the client is told about the investigation.

d. If the investigation finds that the complaint is justified in whole or in part, appropriate action should be taken.

9.1.3 If the client refers the complaint to the Institute the member may be required to show how the complaint has been dealt with. Members are therefore recommended to maintain a careful written record of each complaint and of the steps taken.

9.1.4 Experience shows that the majority of complaints could have been avoided by taking some simple measures. The following paragraphs highlight a few areas to which attention can usefully be given and provide guidance on what to do when a client complaint is received.

9.1.5 Members are strongly recommended to issue an engagement letter in every new matter. Examples of engagement letters are contained in Appendix 6. Some complaints may arise either because of confusion as to what the member has agreed to do, or over the fees charged. The engagement letter should define as precisely as possible the scope of the assignment. It should also set out clearly the basis upon which fees will be charged. Any change in the scope of the work or the fees quoted should be set out in writing and the client's agreement obtained.

9.1.6 Some complaints may arise because the member, although doing his work properly, has failed

to inform the client of what is happening. Lengthy gaps in communicating with the client should be avoided. Members should reply promptly to correspondence. If an early response to an enquiry cannot be given, the member should explain to the client why that is so and provide an estimate of when a full reply will be sent. If the client complains about delay in completing the assignment, the member should provide a completion date which should then be kept. If delay is caused by third parties, this should be explained to the client, who should be told what is being done about it. If the client fails to provide information that the member has requested, a reminder should be sent after a reasonable interval.

9.1.7 A complaint received from a client should be treated seriously and immediate action taken. The objective should be to defuse the problem which has given rise to the complaint and remedy any defective work (so far as practicable) as quickly as possible. Time spent in dealing promptly with a complaint is often less than that required to deal with it later. A speedy response often repairs any damage that may have been done to the member/client relationship

If the complaint is found to be justified, a prompt acknowledgement of this and a suitable apology is often accepted. If the complaint is felt, after investigation, not to be justified, this should be explained to the client in as simple terms as possible. Whether a complaint is justified or not, it is often helpful to try to see it from the client's point of view, and act accordingly.

9.1.8 Whenever a complaint is received it is important to consider whether it is such that it may result in a claim. The member should also consider whether to take legal advice.

9.2 Complaints to the Institute

9.2.1 A complaint received by the Institute (including a complaint by one member against another) about the standard of a member's work or the quality of the service provided will be passed directly to the Institute Disciplinary Committee - a body set up by the Institute to deal with complaints against its members.

9.2.2 The role of the Disciplinary Committee is solely to determine whether a member has breached the Rules and Regulations of the Institute in a case of an alleged Professional misconduct and where necessary, apply appropriate sanction. It does not become involved in claims, nor, have the powers to award costs, compensation or damages.

9.2.3 It may be possible for the Disciplinary Committee to resolve the complaint by conciliation to the satisfaction of both parties at this early stage, but all complaints will be considered by the Disciplinary Committee to determine whether or not there is a prima facie case for the member to answer.

9.2.4 If the Disciplinary Committee concludes that there is a case to answer, it has the following powers:

- a. It may notify the member that no further action will be taken.
- b. It may admonish the member, or allow the complaint to rest on the file for three years, in either of which cases the member has the right to refuse to accept the decision and require the complaint to be referred to Board for determination.

c. It may decide the matter after giving the proper opportunity of hearing to member (s). The decision of the Disciplinary Committee will be communicated to the complainant as well as to the member.

9.2.5 Where a complaint is undertaken by the Disciplinary Committee, the member will be issued with the show-cause notice and where required as notice of disciplinary hearing. The member may present his own case, or may be represented, and may call witnesses as well as cross-examine any witnesses called on behalf of the presenter of the case. If the complaint is upheld in whole or in part the Disciplinary Committee may decide to apply one or more of the following sanctions:

- a. To reprimand the member
- b. To fine the member up to a prescribed maximum
- c. To expel or suspend the member from membership of the Institute.
- d. To require the member to pay all or part of the costs of the proceedings
- e. To order that its decision is publicised

9.2.6 The member may appeal against the order of the Disciplinary Committee. Any such appeal is then heard by the Appeal Committee of the Board. The Appeal Committee of Board may uphold an appeal only on certain specified grounds. If it upholds an appeal the Appeal Committee of Board may affirm the finding of the Disciplinary Committee, or overturn, vary or rescind the sanction applied. It may also, in certain circumstances, remit the case for re-hearing. In any case it may make an order as to costs.

9.2.7 If a complaint is dismissed by the Disciplinary Committee, or an appeal is upheld by the Appeal Committee of Board, there is power to award costs to the successful member.

9.2.8 Students are also subject to the disciplinary process and the Disciplinary Committee may sanction such erring student against whom a complaint is upheld.

9.2.9 Bye-laws of the Institute give further details about the disciplinary process.

10 CEASING TO ACT

10.1 Ceasing to Act

10.1.1 A member who has accepted a client's instructions should not cease to act for the client until the relevant work has been completed unless:

- a. The client requires it; or
- b. The member gives reasonable notice to the client of his intention to cease to act. However, a member will need to have due regard to the terms of his engagement letter.

10.1.2 In no circumstances should the member cease acting for a client without notifying the client in writing that he is no longer acting. The member should continue to act until he has taken reasonable steps to notify the client that he is no longer acting.

10.1.3 Where a member has prepared tax returns and routinely dealt with correspondence on a client's behalf he should advise TA that he has ceased to act.

10.1.4 On ceasing to act, the member will usually discuss with the client the arrangements for settling unpaid fee accounts and billing work not yet invoiced. It is recommended that at this juncture consideration is given to the client's requirements for handing over papers to the member's successor and the member's costs associated with making the necessary arrangements. In this regard, members' attention is drawn to paragraph 13.9 and the limited right to retain papers belonging to a client until fees have been paid.

10.1.5 A member who after ceasing to act receives a communication from a successor should proceed as set out in paragraph 4.3.

10.1.6 If a member ceases to act and is not invited to hand over his client's affairs to a successor, he should put his client on notice and draw his attention to all open matters.

10.1.7 If a member is asked to hand over relevant papers to his former client or a successor, the following points should be considered:

- a. If the request does not come from the client direct, the member should obtain written consent from his former client prior to providing papers to a successor.
- b. Some documents on the member's files may belong to the client (see paragraph 13.1).

The member is therefore required to provide these, subject to any lien the member may have (see paragraph 13.9). In the event of any dispute as to ownership of documents a member should normally seek specialist legal advice. Where the original documents are handed over, the member should first take copies, so that he can maintain proper professional records (see paragraph 5.7).

c. Where documents belong to the member (see paragraph 13.1) the member should co-operate in providing copies of documents relevant to the client's ongoing tax affairs. If a significant amount of work is required, reasonable arrangements should be made for the member to be paid.

d. If there is a risk that the former client may use the information provided to support a legal claim against the member, the member should consider whether to take legal advice.

10.1.8 If after ceasing to act, the member subsequently receives any correspondence relating to the former client, he should pass that correspondence on without delay and advise the sender to address future correspondence direct to that client.

10.1.9 Unless the contract provides otherwise, a member is under no duty to inform a former client that advice previously given is affected by a change in law or practice which occurs after the relationship of client and member has ended.

11 CPD

11.1 Continued Professional Development Scheme (CPD)

11.1.1 The CPD rules do not apply to students of the Institute nor to affiliates of the Institute.

11.1.2 It is important that a member keeps fully up to date in relation to statute and case law and practice in areas where the member holds himself out to be competent to practice. A member must be prepared to meet the obligations necessary to provide the best possible service to clients or an employer.

11.1.3 A compulsory CPD scheme applies to all the Institute members with some minor exceptions. Full details are given in Appendix 1. For the current detailed requirements and guidelines, members should refer to the current CPD Regulations.

12 MEMBERS IN EMPLOYMENT

12.1 Employees

12.1.1 These Professional Rules and Regulations apply equally to an employed member as they do to a member in practice whether or not his employer is a member of the Institute. They apply to every employed member irrespective of the nature of the activities or business of his employer.

12.1.2 An employed member should ensure that there is nothing in his contract of service which precludes him from complying with these Professional Rules and Regulations.

12.2 Employees Acquiring Knowledge of Default or An Unlawful Act

12.2.1 It is possible that an employed member, whether working in a tax practice or in industry, may acquire knowledge which suggests that his employer may have committed an unlawful act. In such circumstances the member should seek to establish the facts so that, as far as is possible, he has a clear understanding of the situation. He should then raise his concerns internally at an appropriate level.

The member should keep a record of the personal actions he has taken in order to be able to demonstrate that he has acted properly throughout.

12.3 Employees Acquiring Knowledge of Taxation Irregularities

12.3.1 The general guidelines at paragraph 12.2 apply to employees acquiring knowledge of taxation irregularities. Further specific guidance relating to such irregularities is given below.

12.3.2 An employed member who is responsible for agreeing the employer's taxation liabilities with TA has the same duty as a member in practice to ensure that there is appropriate disclosure of all relevant information. Similarly, upon a discovery of default, negligence or fraud on the part of the employer, the member is required to draw the employer's attention to the penalties for which the employer may become liable and to recommend the earliest possible voluntary disclosure.

12.3.3 Even if not directly involved in compliance work for the employer, a member who becomes aware of malpractice must adopt a similar stance.

13 LEGAL MATTERS

13.1 Ownership of Documents

13.1.1 When considering the ownership of a document, the terms of the contract between the member and his client should first be reviewed. If they provide expressly for the ownership of the documents prepared during the engagement; that concludes the matter. Alternatively, the contract terms may imply who owns the documents prepared during the engagement.

13.1.2 If the contract makes no express or implied provision as to the ownership of documents, a member will have to consider whether he is acting in the particular engagement as the agent of the client or as a principal. An agency relationship exists, for example, where the work done by the member is of a tax compliance nature, such as preparing returns and computations for TA. However, the member will be acting as a principal where he is retained to carry out advisory or consultancy work.

13.1.3 Where there is an agency relationship, the client has a right to documents prepared by the member for the client. Such documents would include any tax return, supporting documentation for that return and copies of letters passing between the member and third parties. However, a member's working papers belong to him. For example, where a member is instructed to prepare a computation, his working papers compiled to enable him to produce the computation will belong to the member. Only the computation itself, and any supporting schedules, belong to the client.

Correspondence with TA in connection with compliance work is conducted by the member as agent for the client. Therefore, copies of letters written by the member to TA, and the originals of letters received from them, belong to the client.

However, where an agency relationship exists and the member has not been paid by the client for the work undertaken, the member has a lien over any relevant documents which belong to the client: see paragraph 13.9.

13.1.4 If a document was prepared by a member who was acting as a principal, the position depends upon the type of document in question. Generally, documents created by a member for the purposes of advising or carrying out work for the client belong to the member but not where the document is provided by the client. Therefore, documents created on the specific instructions of the client belong to him, whilst documents prepared by the member for his own purposes belong to the member. Examples of documents belonging to a member include copies of letters passing between the member and third parties, file notes, internal memoranda and drafts created in preparing advice for the client. However,

the letter or document containing the advice sent to the client will belong to the client and the file copy will belong to the member.

13.1.5 A document created by the client or a third party before any client relationship has begun, whether sent to the member by his client or by a third party, is held on behalf of the client or third party as the case may be.

13.1.6 Where a document is sent by the client to the member and the title to that document is intended to pass to the member, then the document belongs to the member. Examples include letters, authorities and instructions.

13.1.7 In practice, there may be difficulty in identifying whether the member or the client owns a particular document. The member may wish to take specialist legal advice on this if it becomes a material issue and on the extent to which he may be obliged to allow access to his files and working papers, including those documents which he owns.

13.2 Retention of Records and Time Limits for Court Action

13.2.1 When deciding the period of retention for records (paper and electronic) a member should consider:

- a. The periods of retention set out in legislation
- b. The period of time during which actions may be brought in the courts and for which working papers may need to be available as evidence

13.2.2 Members who are uncertain about the time limits they should observe should seek legal advice.

13.2.3 Members should take steps to ensure that records are maintained securely and that client confidentiality is protected. All documents, regardless of ownership, created in the course of acting for a client are client confidential information (see paragraph 2.6).

13.2.4 A member should keep his working papers for at least six years from the end of the tax year, or accounting period, to which they relate or such longer period as the rules of tax assessment may require.

13.2.5 Papers and records which are legally the property of the client (or former client) should be

returned to the client (or former client) or the client's permission obtained for their destruction.

13.2.6 Care should be taken if there are any open investigations into a client's affairs or any pending court action. In such circumstances, records must be retained until the open matters are concluded.

13.2.7 There is a general principle that after the passing of a given period of time an action may not be brought before the courts. The law requires that persons with a legitimate cause should make their claim within a reasonable time. Many statutes specify a time limit within which action must be taken. Where no such limit is given by the Limitation Act, the law of Pakistan the general position on time limits as follows:

- a. Twelve years for actions upon a specialty (a contract under seal or an obligation under seal securing a debt) or a judgement given by the courts.
- b. For actions based upon a simple contract or tort the later of:
six years; or
Three years from the earliest date on which the claimant or any person in whom the cause of action was vested first had both the knowledge required for bringing an action for damages in respect of the relevant damage, and a right to bring such an action, subject to a maximum period of fifteen years.

It is possible to override the statutory time limits by entering into a contractual arrangement with the client.

13.3 Information Requests from Taxation Authorities

13.3.1 A member should be aware that the Taxation Authorities may in certain circumstances have the right to access members' and clients' papers and records.

13.3.2 Client confidentiality rules will apply to any disclosure of the member's records. A member cannot disclose papers to the Taxation Authorities without the client's permission or a legally enforceable request by the Taxation Authorities. Determining when the Taxation Authorities has legally effective powers or whether the request may be discussed with the client can be a complex matter and a member should consider obtaining specialist advice particularly when a client refuses permission to disclose.

13.3.3 Upon receipt of an informal request for information from the Taxation Authorities a member should advise his client whether he should provide the information or whether he should resist the information request until a legally enforceable request is made. Points to consider include:

- a. How onerous would it be to comply?
- b. Would complying with the request set an unwelcome precedent?
- c. Are the documents sought harmful to the client?
- d. Will TA ultimately be able to obtain the information either through legally enforceable powers or from another source?
- e. Is it possible to curtail the scope of information request through negotiation with TA?
- f. Are the documents requested relevant?

13.3.4 Where TA use or threaten to use statutory powers to obtain information, a member should:

- a. Inform his client unless legally prevented from doing so
- b. Consider whether the statutory powers have been properly applied and seek specialist advice in cases of doubt.
- c. Consider whether legal professional privilege applies – see Professional Conduct in Relation to Taxation for further guidance on privilege
- d. Consider whether Human Rights related legal provisions offer any protection

13.4 Search Warrants

13.4.1 The TA has power to apply under the relevant Tax Law for a warrant entitling them to search premises where there is reasonable ground for suspecting there may be evidence relating to a serious tax fraud. This power has been used to ‘raid’ the premises of taxable persons, the Institute Members and other professionals. Members should take any search extremely seriously. They need to be fully aware of the TA’s powers in this regard and should take legal advice from a suitably qualified legal adviser in the event of such a raid. Failure to do so could expose the member to a claim for damages for professional negligence.

13.4.2 An application by the TA under this section is made without notice to the affected parties, so the first that the member is likely to know of the warrant is when the TA’s officers appear at the premises demanding to be allowed entry.

13.4.3 As stated above, if a member is raided in this way, he should consult a legal adviser

immediately and if possible, arrange for his immediate attendance at the member's offices. The TA should be asked to take no steps until the legal adviser has arrived. If the TA does not agree, a legal advice should be sought since it would be an offence to obstruct the search. Upon arrival, the legal adviser can then advise the member in relation to compliance with the warrant and can advise as to the appropriateness (or otherwise) of the use of this power. In appropriate cases, the member may have grounds for seeking an interim injunction to halt the search on suitable undertakings being given. Alternatively, he may seek to persuade the officer in charge that the search should be abandoned and, if appropriate, information provided voluntarily.

13.4.4 Although not actually required by statute, warrants typically include the following information:

- a. Some description of the fraud being investigated and the particular tax or taxes involved
- b. The names of customers or clients being investigated
- c. The authorised time of entry (usually not before 7.00 am or after 6.00 pm)
- d. The number of officers who can be involved in the search
- e. What items can be seized and removed by the searching officers (failing which, they can remove anything they reasonably believe may be required as evidence in proceedings)

13.4.5 Where any documents are seized and taken away, the member is entitled to ask for access to them or for copies of them. The officer in charge of the investigation has a limited discretion whether or not to grant this request. In any event, the member should at least ask for a record of what has been removed.

13.4.6 It is essential that the person whose premises are raided (and his solicitor) read the warrant very carefully to ensure that the TA are not given access to any documents of the client under investigation which are not covered by the warrant or to documents which are confidential to other clients.

13.4.7 One issue which may arise in the context of a search is the question of privileged documents. This is a particularly complex legal area and specialist advice should always be sought in this regard.

13.5 Orders for the Delivery of Documents

13.5.1 The TA can obtain an order for the delivery of documents under the relevant tax regulation requiring a person to deliver documents where tax fraud is suspected. Typically, this is used to obtain

information from innocent third parties in place of a raid. A member receiving such a notice must not tell the client. He should also consider obtaining specialist advice.

13.6 Request from Other Third Parties

13.6.1 If a member receives a request for information or documents from any third party other than TA he should either obtain his client's permission or ensure that the request is legally enforceable and overrides client confidentiality. Determining whether the third party has legally effective powers or whether the request can be discussed with the client can be a complex matter and a member should consider obtaining legal advice, particularly when a client refuses permission to disclose.

13.7 Legal Professional Privilege Modified

13.7.1 A member should consider whether documents requested by the TA might be covered by legal professional privilege.

13.8 Lien

13.8.1 A lien is a legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met.

13.8.2 A lien can be either general or particular. A general lien gives the person holding the lien the right to retain possession of all property that he holds belonging to the person who owes him the debt until that debt has been paid, whether or not that property relates to the debt in question. A general lien may be difficult to establish and is not considered further here.

A particular lien is a lien over specific property in relation to which work has been done and a debt is owed. A member will probably have a particular lien over documents belonging to the client in respect of which he has performed work for which he has not been paid the fee due.

13.8.3 The following conditions must all be met if a right of particular lien is to exist:

- a. The documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client.
- b. The documents must have come into the possession of the member by proper means
- c. Fees must be due to the member in respect of work done on the client's instructions in respect of the documents and a bill for those costs must have been rendered.
- d. The fees for which the lien is exercised must be outstanding in respect of that work and not in respect of other, unrelated, work.

It follows that a failure by a director to pay fees for personal tax work does not give a member a lien over the company's documents.

13.8.4 A member may exercise a lien in appropriate circumstances, but before doing so he should consider:

- a. Whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the bill.
- b. Whether the potential loss of goodwill, both towards the member and towards the taxation profession as a whole, which may be caused by such formal legal action outweighs the financial considerations.
- c. Whether to take specialist legal advice or recommend the client to take specialist legal advice.

If a third party has a legal right of access to a client's documents without the client's consent but the member has a lien over those documents, the member should seek legal advice before handing them over to the third party.

13.9 Drafting Legal Documents

13.9.1 There are certain categories of legal documents which may only be drafted for a fee by appropriately qualified people. A person convicted of drafting such documents without the appropriate qualifications will be liable to a fine. However, if a member merely indicates required amendments to a legal document, but does not himself amend them, he is not committing an offence.

13.9.2 A member who is not a lawyer, barrister or licensed conveyancer may not prepare for a fee any document relating to real property (i.e. land) or personal property (i.e. goods other than land). However, a member may draft a document which falls within one of the following exceptions:

- a. A Will or other document which transfers goods or property but does not take effect until the death of the person making the transfer.
- b. An agreement not intended to be executed as a deed (except any contract for the sale of land). This means any document which is not a deed or was not intended to be a deed on the face of the document.
- c. A letter or power of attorney.
- d. A transfer of stock 'containing no trust or limitation thereof'. There are no clear

guidelines on what this means but it is thought to mean any document transferring shares which does not create a trust or similarly limit the transferee's rights in the shares.

In practice, it may be difficult to ascertain whether a member may or may not draft a particular document and the member may wish to take specialist legal advice on this matter.

13.9.3 A member who is not a lawyer or barrister may not prepare for a fee papers on which to apply for, or oppose, a grant of probate or letters of administration to the estate of a deceased person. However, a member may provide assistance to a person who is applying for a grant in person, or to a lawyer who is acting in the estate. It is therefore permissible for a member to provide information or prepare material, such as schedules of figures, which are used by an applicant in person or the lawyer to prepare the documents forming the application for the grant of probate. In addition, a member who is appointed an executor under a Will can charge for his services in accordance with the terms of the charging clause in the Will. However, an executor cannot charge for preparing papers to found or oppose a grant of probate or letters of administration.

13.9.4 A member who is not a lawyer or barrister may not prepare for a fee any instrument relating to legal proceedings. However, a litigant may always act in person and therefore a member may always conduct litigation on his own behalf. A member can also assist a client who is litigating in person in an administrative capacity (such as giving advice and taking notes).

In addition, a member who is not a lawyer may not issue any claim or commence, prosecute or defend any proceedings in any civil or criminal court. Anyone breaching these particular rules is liable to criminal prosecution with the possibility of imprisonment if convicted and is also guilty of contempt of court.

13.9.5 This paragraph sets out the present position. However, the Courts contain machinery for individuals and bodies other than lawyer to be authorised to carry out a number of these activities.

13.9.6 Before preparing any document, which has legal effect (and is not in a prohibited class) a member should consider carefully whether he is competent to draft it as he may be exposing himself to the risk of a claim for negligence. He should also consider whether it is in the best interests of the client

that he should prepare the document or whether it should be referred to a lawyer or other professional.

13.10 Data protection

13.10.1 A member should observe the following:

- a. Whether in electronic or paper form, he may not collect, process or store data about his clients without their consent.
- b. He must store data confidentially and securely.
- c. He may not use personal data for marketing purposes without his client's consent.
- d. He must have in place systems and procedures which will enable him to confirm what data is held about a person, if asked.
- e. Clients or targets must be given the opportunity to be removed from a member's mailing list.

14. ADVERTISING, PUBLICITY AND PROMOTION

14.1 General principles

14.1.1 Members may seek publicity for their professional standing, experience and services by means of advertising or other forms of promotion, subject to the general requirement that the medium should not reflect adversely on the member, the Institute or other members and fellow professionals.

14.1.2 For the purposes of this Practice Guideline, 'advertising' encompasses all forms of marketing of professional services, including all types of media advertising, whether for work, sub-contract work, staff recruitment, practice mergers, employment, publications, seminars, business cards, promotional gifts or general mail-shots. These guidelines apply equally to web-based marketing.

14.2 SPECIFIC GUIDELINES

14.2.1 An advertisement should be clearly distinguishable as such.

14.2.2 Advertising should not be misleading in any way. For example, members should not appear to hold themselves out as having expertise in a particular field that they do not in fact possess.

14.2.3 Members who are members of any Board, Committee, or Sub-committee of the Institute may publicize their membership in any book, article or advertising material for any conference at which they are lecturing or acting as chairman. A member must not publicize such membership in any other way without the prior consent of the Institute. Such members must use reasonable endeavors to ensure that this Guideline is observed by any person, firm or corporate body with which they are associated.

14.2.4 Members should ensure that any advertising or publicity for which they may be held responsible is accurate, is not ambiguous and is not likely to cause public offence.

14.2.5 A member remains responsible for an advertisement even if the work is delegated to an advertising agency or other intermediary.

14.2.6 Members may state the areas in which they specialize.

14.2.7 Promotional material should be factually and technically accurate, contain suitable disclaimers, include copyright notice, appropriate reference to the name of the firm and contact details. A member should be able to justify the truth of any factual statements in the promotional material and it should

not contain any disparaging references to or disparaging comparisons with, the services of others. Promotional material would also include web-based material for this purpose.

14.3 Fees

143.1 If reference is made in promotional material to fees, the basis on which fees are calculated, or to hourly or other charging rates, great care must be taken to ensure that such reference does not mislead as to the precise range of services and time commitment that the reference is intended to cover. Members should not make comparisons in such material between their fees and the fees of others, whether members or not.