

PROFESSIONAL RISK MANAGEMENT BULLETIN

Technical Bulletin
Managing the professional liability of accountants (N1)
(Issued July 1999)

Appendix III - Release Letter to Prospective Purchaser / Investor / Lender and Investigating Accountants

(The Release Letter assumes a proposed purchase of a company. It must be amended as appropriate for the circumstances of each transaction).

PRIVATE AND CONFIDENTIAL

Purchaser Limited

Address

Investigating Accountants & Co

Address

Dear Sirs

PROPOSED [ACQUISITION] OF SUBSIDIARY COMPANY LIMITED

1. In connection with the proposed [acquisition] of Subsidiary Company Limited ("the Company") by Purchaser Limited the Company has requested us to allow Investigating Accountants & Co. access to our working papers relating to our audit(s) [currently in progress] of the accounts of the Company for the year(s) ended [31 December 19XX] ("the Audit Papers") and the taxation computations as submitted to and/or agreed with the Inland Revenue Department for each of the last [] years and copies of the correspondence and related documents between us and the Inland Revenue Department in respect of those computations ("the Taxation Papers"), only in connection with the proposed [acquisition]. The Company has further authorised us at our discretion to provide information and explanations in response to requests from you in relation to the Audit Papers and the Taxation Papers (together referred to as "the Working Papers") where we consider it appropriate to do so.
2. We point out that the Audit Papers were prepared solely for the purpose of our forming an opinion, in accordance with the statutory (or regulatory) requirement for audit, on whether the financial statements, which are the responsibility of the directors of the Company, give a true and fair view of the state of affairs as at the end of the financial year and of the profit and loss and cash flows for the period then ended (see Note 1). They should not be relied upon by any other person or for any other purpose. Nor should any reliance be placed on any information or explanations provided by us in connection therewith.
3. In particular, our audit(s) of the Company's financial statements, and the Audit Papers prepared or obtained in connection therewith, was [were] not planned or conducted in contemplation, or for the purpose, of the proposed [acquisition]. Further, the scope of an audit is normally substantially narrower than an investigation on behalf of a [purchaser]. Therefore, items of possible interest to Purchaser Limited may not have been specifically addressed for the purposes of the audit.
4. Moreover, there are a number of inherent limitations in audited financial statements [see Note 2]. Our use of professional judgement and the assessment of materiality for the purpose of our audit means that matters may have existed that would have been assessed differently by Purchaser Limited or Investigating Accountants & Co for the purposes of the proposed [acquisition]. We do not warrant or represent that the information in our Working Papers is sufficient or even appropriate for your purposes. That is a matter for your judgement. Nor have we expressed an opinion or other form of assurance on individual account balances, financial amounts, financial information or the adequacy of financial, accounting or management systems.
5. You should further note that we have not reported on the Company's financial statements for any period subsequent to [31 December 19XX] and significant events may well have occurred since that date.
6. The Taxation Papers were prepared solely for the purpose of our calculating and/or agreeing the Company's tax liability for the years in question. They should not be relied upon by any other person or for any other purpose.
7. Auditor & Co its partners and staff neither owe nor accept any duty to Purchaser Limited or Investigating Accountants & Co, and shall not be liable, in respect of any loss damage or expense of whatsoever nature which is caused by Purchaser Limited's or Investigating Accountants & Co's reliance upon the Working Papers or information or explanations provided in relation thereto or which is otherwise consequent upon [Purchaser Limited's] or Investigating Accountants & Co's access to Working Papers or receipt of such explanations. Provided that this clause shall not exclude liability (if it would otherwise but for this clause have arisen) for death or personal injury caused by the negligence (as defined in Section 2 of the Control of Exemption Clauses Ordinance Chapter 71) of Auditor & Co its partners and staff. In the premises, if Purchaser Limited and Investigating Accountants & Co wish to rely upon the Working Papers and information and explanations provided by Auditor & Co in relation thereto, they do so entirely at their own risk.
8. Purchaser Limited shall indemnify and hold harmless Auditor & Co, its partners and staff against all actions, proceedings and claims brought or threatened against Auditor & Co or any of them and all loss, damage and expense (including legal costs) relating thereto, in any way arising out of or in connection with the grant of access to the Working Papers to Investigating Accountants & Co and/or Purchaser Limited and the provision of information or explanations in relation thereto.
9. Purchaser Limited and Investigating Accountants & Co may only use the Working Papers and any information and explanations provided in connection with the proposed [acquisition].
10. The Working Papers and any information and explanations provided in connection therewith shall be treated as confidential. They will not be disclosed by Purchaser Limited or Investigating Accountants & Co to any other party except their professional advisers.

11. Purchaser Limited shall show this letter to its professional advisers who are involved in the transaction and hereby undertakes to take all reasonable steps to secure their compliance with the clauses above as if the obligations stated therein extended to the professional advisers.
12. No-one is authorised by Auditor & Co whether expressly or ostensibly to make representations or reach an agreement in relation to the Conditions upon which access to the Working Papers is granted to Investigating Accountants & Co and information and explanations in relation thereto are provided which is inconsistent with or varies or adds to the terms and conditions set out in this letter.
13. This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Working Papers is granted to Investigating Accountants & Co and upon which information and explanations in relation thereto are provided and supplants all prior representations, if any, made by Auditor & Co in relation to the said Conditions.
14. The terms and effect of this letter shall be governed by and construed in accordance with the laws of Hong Kong and any dispute arising out of this engagement or these terms shall be subject to the exclusive jurisdiction of the Hong Kong courts.
15. Please confirm your agreement to the foregoing Conditions by signing, dating and returning to us a copy of this letter. Auditor & Co acts as agent for its partners and staff as well as for itself as to clauses 7 and 8 above.

Yours faithfully,

Auditor & Co

Purchaser Limited hereby acknowledges that it understands and agrees to the conditions upon which access to the Working Papers is granted and information and explanations in relation thereto are made.

| | | |
|---|----------|------|
| Signature | Position | Date |
| Name of director for and on behalf of Purchaser Limited | | |

Investigating Accountants & Co hereby acknowledges that it understands and agrees to the conditions upon which access to the Working Papers is granted and explanations in relation thereto are made.

| | |
|--------------------------------|------|
| Investigating Accountants & Co | Date |
|--------------------------------|------|

Explanatory Notes:

- 1) If access is to be granted to audit papers on an incomplete audit, the following paragraph should be added:

"However, we have not yet completed the statutory audit of the financial statements of Subsidiary Company Limited for the year ending Accordingly we are unable to, and do not express at this time any opinion on those financial statements. Further, we have no responsibility to inform you, or any other of the Purchaser parties of any changes that may be made to such audit papers during the course of completing our audit."
- 2) Users of audited financial statements should be aware that there are inherent limitations in any set of financial statements. These limitations include the following matters:
 - Financial statements present a company's state of affairs only at the balance sheet date and an historical view of the company's results for the period then ended;
 - Financial statements must be interpreted having careful regard to the underlying accounting policies;
 - Financial statements may not reflect items which are considered to be immaterial;
 - Certain revenues, costs, assets and liabilities, for which no precise means of measurement exist, may be included in the financial statements on the basis of the directors' best estimates;
 - Events that have occurred between the balance sheet date and the date of the audit report will only be reflected in the financial statements in so far as they relate to the period being reported on;
 - Although financial statements are normally prepared on a going concern basis, they do not give any indication of the level of future profitability or cash flows of the business.

N1: This statement is based on similar guidance issued by The Institute of Chartered Accountants in England and Wales (ICAEW) appropriately adapted to the local context. The Society gratefully acknowledges the permission given by the ICAEW in this respect.