

The Audit Inspection Unit
Operating Procedures for Maintaining Confidentiality

Feedback statement on main comments received

Introduction

The AIU has been following draft operating procedures for maintaining confidentiality, which were published in July 2005, pending their finalisation. Written comments on the draft procedures were received from some audit firms and these have been carefully considered by the AIU/Oversight Board in finalising the procedures. The operating procedures in final form have been expanded to appropriately address the main points raised. A summary of these points is set out below, with the AIU/Oversight Board's response to them in italics.

Summary of Issues Raised by Commentators and the AIU/ Oversight Board's Response

1. Client confidentiality - How is the auditor protected under the Audit Regulations or elsewhere against liability for disclosure of confidential client information?

Our understanding is that any disclosure of confidential client information to or by the AIU in accordance with the Audit Regulations will be deemed to have been authorised by both the audit firm and its client and therefore not to give rise to any breach of confidence. In addition, we understand that a number of firms make specific provision in their audit engagement letters for the disclosure of confidential client information in accordance with legal or regulatory requirements.

However, it is not the role of the AIU or the Oversight Board to advise firms in connection with the duties of confidence owed by them to clients. Firms should therefore seek their own legal advice on the matter to the extent that they consider this to be necessary.

2. Firms should be given prior notice of AIU's intention to disclose confidential information outside AIU/POB and the opportunity to make representations as to why it should not be so disclosed.

The AIU will, at its discretion, give such advance notice of disclosure to an audit firm (or any other person or body) as it considers necessary and appropriate in a particular case. It will not, however, undertake to give advance notice in all cases. Accordingly, firms should recognise that disclosures of information may be made by the AIU under Audit Regulation 7.07 without prior notice.

If, exceptionally, the AIU considers it appropriate it will afford the firm (or other person or body) concerned a reasonable opportunity to make representations as to

whether an intended disclosure should be made and as to the scope of any disclosure. In most cases where advance notice is given, however, the purpose will not be to provide the firm with an opportunity to make such representations and the notice period given will therefore reflect this.

The operating procedures have been expanded to cover the above matters.

3. Firms should be advised when the AIU wishes to copy documentation to give them the opportunity to raise any concerns.

Firms will be advised, as a matter of courtesy, if copies of their documentation taken by the AIU are to be removed from their premises (or other location) where the inspection takes place. The working methods adopted by the AIU mean that this is unlikely to be necessary in practice in most cases.

4. AIU teams should adhere to the firm's own procedures regarding the safekeeping of laptops and working papers at the firm's premises.

AIU teams adopt appropriate procedures to ensure the safekeeping of laptops and working papers at a firm's premises, utilising the facilities provided by the firm, and will have regard to any specific requests in this connection made by the firm concerned.

5. AIU's policy on retention of working papers should be disclosed to firms.

AIU will retain documentation relating to individual inspections for at least six years following the completion of the inspection. Thereafter, it will destroy such documentation on a systematic basis. The operating procedures have been expanded to cover this policy.

6. AIU should not be able to disclose confidential information to overseas regulators. There is no statutory authority for this. It may lead to the disclosure of personal data in contravention of the Data Protection Act 1998.

Information is disclosed by the AIU under Audit Regulation 7.07 which does not restrict such disclosures to UK persons or bodies. There is no need for any statutory authority for such disclosures. In assessing whether or not such a disclosure should be made, the AIU will have regard to the nature of the relevant information and its knowledge of the regulator concerned.

The AIU will only disclose information to a regulator outside the EU where it is satisfied that there is adequate protection for confidential information in the country concerned in accordance with relevant statutory requirements, in particular the Data Protection Act 1998.

The operating procedures have been expanded to cover the above points.

7. Departures from “normal” working practices described should be rare and exceptional or, alternatively, the circumstances in which they will not be followed should be explained.

References to “normal” working practices were intended to identify the working practices to be followed in most cases and not to imply that departures from such practices would be rare and exceptional. The AIU may, at its discretion, decide to depart from its usual practice where administrative convenience, resourcing issues and/or regulatory best practice so require.

The wording used in the operating procedures has been amended to clarify the position.

8. The AIU’s position under the Freedom of Information Act 2000 should be explained.

The Oversight Board, of which the AIU forms part, is not currently designated as a public authority under the Freedom of Information Act 2000. However, a provision for the designation of the Oversight Board is contained in the (recently enacted) Companies Act 2006. The AIU’s operating procedures will be reviewed prior to that provision coming into force.

The operating procedures have been expanded to cover the above point.