

CAN

SAICA MEMBERS REGISTER A PRIVATE COMPANY TO PERFORM SERVICES



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ANSWER | SAICA cannot advise on how members set up their practice, but members need to consider the type of work that the entity wishes to perform.

Certain legislation has specific requirements depending on the functions performed.

The Close Corporations Act, No 69 of 1984 has specific requirements for an **accounting officer** and states that a corporation may appoint as its accounting officer:

- any person who is a member of a recognised profession as listed, which includes Chartered Accountants (SA) (“CA(SA)”) and Associate General Accountants (SA) ((AGA(SA))
- A firm as defined in subsection (1) of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991) (superseded by the Auditing Profession Act, No 26 of 2005);
- Any other firm, if each partner in the firm is qualified to be so appointed; or
- Any other corporation, if each member of such corporation is qualified to be so appointed.

The act also states that the liability of a partner in respect of debts and liabilities incurred by a firm contemplated during the partner’s period as a partner and the liability of a member in respect of the debts and liabilities of a corporation during the member’s period as a member may not be excluded by operation of law or in any other way.

The Close Corporations Act therefore allows for a CA(SA)/AGA(SA) (sole practitioner), partnership, close corporation and a firm as defined in the Auditing Profession Act (APA) to be appointed as an accounting officer.

A firm is further defined by the APA as a sole proprietor or incorporated company (i.e. personal liability company) or a partnership. Therefore a private company is not included in the definition of firm.

Companies Regulations, regulation 29(4) states that the **independent review** of a company’s annual financial statements must be carried out in the case of a company whose:

- ▶ Public interest score (PIScore) for the particular financial year was at least 100,
 - by a registered auditor, or
 - a member in good standing of a professional body that has been accredited in terms of section 33 of the APA; or
- ▶ PIScore for the particular financial year was less than 100,

by either

- a registered auditor or
- a member in good standing of a professional body that has been accredited in terms of section 33 of the APA or
- a person who is qualified to be appointed as an accounting officer of a close corporation in terms of the Close Corporations Act. The definition of a person in terms of the Companies Act, No 71 of 2008 includes a juristic person.

The Companies Regulations therefore allows for a CA(SA) to perform an independent review of a company’s annual financial statements, whether the company’s public interest score is at least 100 or is less than 100 . An AGA(SA) is only allowed to perform independent reviews for companies whose public interest scores are less than 100, by virtue of the fact that an AGA(SA) is allowed to be appointed as an accounting officer of a close corporation.

Members must **however** consider the capacity in which they will be providing such services. A CA(SA) who is also a registered auditor (RA) and who is performing independent reviews of company financial statements in his/her capacity as an RA will not be able to do so in the form of a private company. When performing independent reviews in their capacity as chartered accountants, CAs(SA) need to refer back to the definition of who can perform an independent review as stated in regulation 29(4). Remember, however, that a private company cannot be appointed as an accounting officer. Also refer to the discussion under the heading ‘accounting officer’ above.

With regards to the following there is no requirement for the form in which the services are provided:



Secretarial services



Accounting services (no requirement for a person to be qualified / registered with an association)



Compilation of company’s financial statements if the statements are internally compiled

A company's financial statements may be compiled internally or independently. Financial statements will be considered to be compiled internally unless they have been independently compiled and reported (Companies Regulations, regulation 26 - 27). The definition of independently compiled and reported requires:

- ▶ that the annual financial statements are prepared by an independent accounting professional;
- ▶ on the basis of financial records provided by the company; and
- ▶ compiled in accordance with any relevant financial reporting standards.

The requirements therefore refer back to the definition of an independent accounting professional, which is defined as:

- ▶ a registered auditor in terms of the APA;
- ▶ a member in good standing of a professional body that has been accredited in terms of section 33 of the APA (CA(SA)); or
- ▶ qualified to be appointed as an accounting officer of a close corporation in terms of Section 60(1), (2) and (4) of the Close Corporations Act, 1984 and
- ▶ does not have a personal financial interest in the company or a related or inter-related company; and
- ▶ is not-
 - involved in the day to day management of the company's business, nor has been so involved at any time during the previous three financial years; or
 - a prescribed officer, or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; and
- ▶ is not related to any person who falls within any of the criteria set out in the previous two bullet points.

Therefore a CA(SA) or AGA(SA) who meets the stated independence requirements may be engaged to independently compile the financial statements of a company. However a CA(SA) who is also a registered auditor (RA) with the Independent Regulatory Board of Auditors (IRBA) and who intends to provide any professional services in his/her capacity as a RA in the form of a 'firm', must remember that the only firms that may become registered auditors are sole proprietors or partnerships or personal liability companies (refer to section 38 of the APA).

The regulation of tax practitioners is done in terms of Chapter 18 of the Tax Administration Act, No 28 of 2011 (TAA). The TAA compels natural persons, who for a fee completes or assist in completing returns or provide advice on a tax Act, to register with both SARS and a Recognised Controlling Body (RCB). Certain exclusions exist for employees under supervision and control and incidental tax services. A RCB is a professional body approved by SARS and currently includes SAICA. The registration of a tax practitioner is linked to the individual and currently an entity cannot register as a tax practitioner. Services rendered as a tax practitioner would then have to be rendered to taxpayers on behalf of a professional services company as an independent contractor, employee or office holder.

Members are requested to consider the above when setting up a new private company or other type of entity to ensure that they meet the requirements of relevant legislation with respect to providing certain types of professional services, including the capacity in which they will be providing those services.

PRACTICE ISSUES: *Seminars & events*

Quarter 2



SAICA will be running the following Practice Management Seminars in the second quarter. Please visit www.saica.co.za/smp for more information on upcoming events.

Event	City
Cash Flow Management Workshop	Johannesburg
	Cape Town
Practice Management Workshop	Johannesburg
	Cape Town
Practice Management Benchmarking Survey The online survey will be conducted to provide a standard comparison between practices as well as identify challenges practices face.	Online
Managing Partner Conference Managing Partners of firms are invited to join us for insights and discussions relevant to challenges identified in practice. During this event the Practice Management Benchmarking Report will be launched and discussed.	Johannesburg