

INSTITUTE OF FORENSIC ACCOUNTANTS OF NIGERIA



HANBOOK ON FORENSIC ACCOUNTING SERVICES FOR MEMBERS USE

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TABLE OF CONTENTS

1. 1. Scope and application.....	2
2. 2. Definitions.....	2-5
3. 3. Fundamental responsibilities of Members.....	6
Public interest.....	6
Professional Independence.....	6
Professional competence and due care.....	7
Confidentiality.....	8
4. 4. Professional Engagement matters.....	8
5. 5. Expert Witness Services.....	8
The Report of an Expert Witness.....	9
6. 6. False or misleading information and changes in opinion.....	10
7. 7. Quality control.....	10
8. 8. Professional fees.....	11
Appendix 1 – Facts, assumptions, and opinions.....	11
Classification of facts for expert evidence.....	11
Examples.....	12
Appendix 2 – Decision Tree to determine the type of Forensic Accounting Service.....	13
Appendix 3 – Examples of Forensic Accounting Services.....	14-25

1.1 Scope and Application:

The objective of *Forensic Accounting Services* is to specify a Member's professional and ethical obligations in respect of:

the provision of a Forensic Accounting Service to a Client or Employer;
the types of Engagement or Assignment that are a Forensic Accounting Service;
applicable Independence requirements; relationships and the provision of other Professional Activities that create threats to compliance with the fundamental principles;
the obligations of a Member who provides an Expert Witness Service and the required disclosures in the Member's Report; and applicable quality control and documentation obligations.

Members in Nigeria shall follow the mandatory requirements in this Handbook when they provide Forensic Accounting Services. Members outside of Nigeria shall follow the mandatory requirements of this Handbook to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations. Where a Professional Activity which, when it commenced was not a Forensic Accounting Service, later becomes such a service, the Member shall comply with the requirements of this Standard from that time onwards.

Where a Member is undertaking a Forensic Accounting Service, other than an Expert Witness Service, which later becomes an Expert Witness Service, the Member shall comply with the requirements of section 5 of this Standard from that time onwards. Members shall be familiar with relevant Professional Standards and guidance notes when providing Forensic Accounting Services. All Members shall comply with the fundamental principles outlined in the Code.

The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation. All references to Professional Standards, guidance notes and legislation are references to those provisions as amended from time to time. In this Standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organizations, whether incorporated or not.

2. Definitions

For the purpose of this Standard:

Assignment means an instruction, whether written or otherwise, by an Employer to a Member in Business relating to the provision of Professional Activities by a Member in Business. However, consultations with the Employer prior to such instruction are not part of an Assignment.

Client means an individual, firm, entity or organization to whom Professional Activities are provided by a Member in Public Practice in respect of Engagements of either a recurring or demand nature.

Code means *Code of Ethics for Professional Accountants*.

Consulting Expert means a Member who has been engaged or assigned to provide a Consulting Expert Service.

Consulting Expert Service means a Professional Activity provided in the context of Proceedings, other than an Expert Witness Service, a Lay Witness Service or an Investigation Service. It includes acting as an adviser, an arbitrator, mediator, member of a professional tribunal, expert in Members' Handbook .

Contingent Fee means a fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the Firm. A fee that is established by a Court or other public authority is not a Contingent Fee.

Court means any body described as such and all other bodies exercising judicial or quasi-judicial functions and includes professional disciplinary tribunals, industrial and administrative tribunals, statutory or parliamentary investigations and inquiries, royal commissions, arbitrations and mediations.

Employer means an entity or person that employs, engages or contracts a Member in Business.

Engagement means an agreement, whether written or otherwise, between a Member in Public Practice and a Client relating to the provision of Professional Services by a Member in Public Practice. However, consultations with a prospective Client prior to such agreement are not part of an Engagement.

Engagement Document means the document (i.e. letter, agreement or any other appropriate means) in which the Terms of Engagement are specified in a written form.

Expert Witness means a Member who has been engaged, assigned or otherwise obligated to provide an Expert Witness Service. As an Expert Witness, the Member may express opinions or provide Other Evidence to the Court based on the Member's specialized knowledge derived from the Member's training, study or experience on matters such as whether technical or Professional Standards have been breached, the amount of damages, the amount of an account of profits, or the amount of a claim under an insurance policy. Generally all opinion evidence is expert evidence if it is wholly or substantially based on the specialized knowledge derived from the Member's training, study or experience, however not all expert evidence is opinion evidence. Expert evidence may be opinion or Other Evidence.

Expert Witness Service means a Professional Activity provided in the context of Proceedings to give expert evidence in a Report or, in certain circumstances, orally.

Firm means:

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties, through ownership, management or other means;
- (c) An entity controlled by such parties, through ownership, management or other means; or
- (d) An Auditor-General's office or department.

Forensic Accounting Services means Expert Witness Services, Lay Witness Services, Consulting Expert Services and Investigation Services.

Independence is:

- (a) Independence of mind - the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism.
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a Firm's, or a Member's integrity, objectivity or professional skepticism has been compromised.

Investigation Service means a Professional Activity to perform, advise on, or assist with an investigation, whether in the context of Proceedings, or in connection with allegations of, or concerns regarding conduct that may be illegal, unethical or otherwise improper in respect of which the Member has a reasonable expectation that the matter will be brought before a Court.

Lay Witness means a Member who has been engaged, assigned or otherwise obligated to provide a Lay Witness Service.

Lay Witness Service means a Professional Activity provided in the context of Proceedings to provide evidence other than expert evidence, whether orally or in the form of a Report or both. This service involves the Member giving evidence on matters within the Member's professional knowledge that are directly observed or perceived by the Member.

Member means a member of a Professional Body that has adopted this Standard as applicable to their membership, as defined by that Professional Body.

Member in Business means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

Member in Public Practice means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides Professional Services. This term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable Professional Body.
Members' Handbook

Other Evidence means evidence which does not provide an opinion, but which requires the application of the Expert Witness's specialized knowledge derived from the Expert Witness's training, study or experience. An example might be where a Member provides a summary of the sales, by month, by product, by geography, based on the information contained within a series of invoices and a general ledger. Whilst it may be a matter of fact as to what sales were made, the extraction and summary of this information is facilitated by the Member's specialized knowledge. Another example requiring specialized knowledge might be where a Member sets out the accounting standards that are relevant to particular types of transactions without actually expressing an opinion as to whether the actual treatment is in line with those standards.

Proceedings means a matter before a Court, a matter which the Member has a reasonable expectation will be brought before a Court or a matter in which the Member is undertaking Professional Activities to help a Client or Employer make an assessment as to whether a matter should be brought before a Court.

Professional Activity means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.

Professional Bodies means and includes Institute of Forensic Accountants of Nigeria.

Professional Services means Professional Activities performed for Clients.

Professional Standards means all standards issued by Accounting Professional & Ethical Standards Board and all professional and ethical requirements of the applicable Professional Body.

Report means a written report, affidavit or written statement that is for the purpose of communicating expert evidence or lay evidence in Court.

Terms of Engagement means the terms and conditions that are agreed between the Client and the Member in Public Practice for the Engagement.

3. Fundamental responsibilities of Members

3.1 A Member providing a Forensic Accounting Service shall comply with Sections on *Introduction and Fundamentals of the Institutes code*.

Principles of the Code and with relevant law.

Public interest

3.2 In accordance with the *Introduction and Fundamental Principles* of the Code, a Member shall observe and comply with the Member's public interest obligations when providing a Forensic Accounting Service.

3.3 When engaged to perform a Forensic Accounting Service, a Member shall be and be seen to be free of any interest which may be regarded as being incompatible with the fundamental principles of *Integrity and Objectivity* of the Code.

3.4 Members in Public Practice shall comply with Section on *Conflicts of Interest and Objectivity – All Services* of the Code.

3.5 When a Member is requested to perform an Expert Witness Service and the Member or the Member's Firm has previously provided a Forensic Accounting Service other than an Expert Witness Service, the Member shall consider whether the Member is able to perform the Expert Witness Service in an objective manner.

Professional Independence

3.6 When a Member in Public Practice is engaged to provide a Forensic Accounting Service which requires Independence or when the Member purports to be independent in providing a Forensic Accounting Service, the Member shall comply with Independence as defined in this Standard.

3.7 A Member in Public Practice shall determine whether the circumstances of the Forensic Accounting Service make the Engagement an assurance Engagement under the *Framework for Assurance Engagements* issued by the Auditing and Assurance Standards Board .

3.8 Where a Forensic Accounting Service is an assurance Engagement, the Member in Public Practice shall comply with *Independence – Audit and Review Engagements on Independence – Other Assurance Engagements*, as applicable of the Code.

3.9 If a Member in Public Practice is asked to provide a Professional Service to a Client where:

(a) the Member or the Member's Firm is providing or has provided an Expert Witness Service to the Client; or

(b) the Member or the Member's Firm is providing or has provided an Expert Witness Service as per *Members' Handbook* and the proposed Professional Service is related to the Expert Witness Service, and the Member determines that a reasonable and informed third party having knowledge of all the relevant information,

including safeguards applied, would regard the objectives of the proposed Professional Service to be undertaken as being inconsistent with the objectives of the Expert Witness Service, then the Member shall decline the Engagement or the relevant part thereof.

3.10 There is no requirement, at law, that an Expert Witness be free of any relationship with parties to Proceedings. For example, there is no legal prohibition on a Member in Public Practice acting as an Expert Witness for a Client for whom the Member provides other Professional Services.

3.11 A Member who is providing an Expert Witness Service shall disclose all matters in the Member's Report that would assist the Court to assess the degree of the Member's Independence.

Professional competence and due care

3.12 A Member providing a Forensic Accounting Service shall maintain professional competence and take due care in the performance of the Member's work in accordance with Section on *Professional Competence and Due Care* of the Code.

3.13 Forensic Accounting Services generally require a Member to have specialized knowledge derived from the Member's training, study or experience. Before accepting an Engagement or Assignment to provide a Forensic Accounting Service, a Member should exercise professional judgment to determine if the Member is competent to provide the requested Forensic Accounting Service having regard to the specialized knowledge derived from the Member's training, study or experience.

3.14 In accordance with Section dealing with '*Acting with Sufficient Expertise*' of the Code, a Member in Business shall only undertake Assignments for which the Member has, or can obtain, sufficient training or expertise and shall not intentionally mislead an Employer as to the level of expertise or experience possessed, nor shall a Member fail to seek appropriate expert advice and assistance when required.

3.15 Where a Forensic Accounting Service or part thereof requires the consideration of matters that are outside a Member in Public Practice's professional expertise, the Member shall seek expert assistance or advice from a suitably qualified third party on those matters or decline all, or that part of, the Forensic Accounting Service. Where the Member relies upon the advice of a third party, the Member shall disclose in any Report issued by the Member the name and qualifications of the third party and the area in the Report where the third party advice has been obtained.

3.16 Where a Member performs a Forensic Accounting Service that involves acting as an investigator or as a decision-maker (as might be the case for certain Consulting Expert Services, such as acting as an arbitrator, mediator or referee), the Member may be required to observe some or all of the rules of procedural fairness (which collectively are referred to as "natural justice"). If a Member is not certain of the Member's legal obligations then the Member should consider taking legal advice.

Confidentiality

3.17 In accordance with Section on *Confidentiality* of the Code, a Member who acquires confidential information in the course of performing a Forensic Accounting Service for a Client or Employer shall not use that information for any purpose other than the proper performance of the professional work for that Client or Employer.

3.18 Subject to legislative requirements, where a Client or Employer has given a Member permission to disclose confidential information to a third party, it is preferable that this permission is in writing. Where oral permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's or Employer's permission.

4. Professional Engagement matters

4.1 A Member in Public Practice shall document and communicate the Terms of Engagement to a Client in accordance with the *Terms of Engagement*.

4.2 A Member in Public Practice who is approached by a potential Client to undertake a Forensic Accounting Service shall comply with Section on *Professional Appointment* of the Code.

5. Expert Witness Services

5.1 If a Member in Public Practice is asked to provide an Expert Witness Service to a Client where:

(a) the Member or the Member's Firm is providing or has provided another Professional Service to the Client; or (b) the Member or the Member's Firm is providing or has provided another Professional Service to a different Client, and the proposed Expert Witness Service is related to the other Professional Service, and the Member determines that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Expert Witness Service to be undertaken as giving rise to a conflict with the objectives of the other Professional Service, then the Member shall decline the Engagement or the relevant part thereof. If a Member in Business is asked to provide an Expert Witness Service to the Member's Employer where:

(a) the Member or another employee of the Member's Employer has provided, or is providing, another service to the Employer which is related to the proposed Expert Witness Service; or

(b) the Member's Employer has an interest in the outcome of the Proceedings (whether as a party or otherwise), and the Member determines that a reasonable and informed third party having knowledge of all the relevant information, including safeguards applied, would regard the objectives of the proposed Expert Witness Service to be undertaken as giving rise to a conflict with the objectives of the other service, or if the Member's objectivity is impaired as a result of the Employer's interest in the outcome of the Proceedings, then the Member shall decline the Assignment or the relevant part thereof.

5.4 A Member who is acting as an Expert Witness shall comply with the following:

- (a) the paramount duty to the Court which overrides any duty to the Client or Employer;
- (b) a duty to assist the Court on matters relevant to the Member's area of expertise in an objective and unbiased manner;
- (c) a duty not to be an advocate for a party; and
- (d) a duty to make it clear to the Court when a particular question or issue falls outside the Member's expertise.

5.5 A Member who is acting as an Expert Witness should comply with evidentiary and procedural requirements relating to Expert Witnesses.

The Report of an Expert Witness

5.6 Subject to any legal requirements or restrictions, a Member providing an Expert Witness Service shall clearly communicate in any Report:

- (a) the instructions received, whether oral or written;
- (b) any limitations on the scope of work performed;
- (c) a statement of the Member's training, study or experience that are relevant to the matters on which the Member is providing expert evidence;
- (d) whether any of the opinions, findings or conclusions of the Member are not based wholly or substantially on the Member's specialized knowledge derived from training, study or experience;
- (e) the relationships, if any, the Member or the Member's Firm or the Member's Employer has with any of the parties to the Proceedings that may create a threat or a perceived threat to the Member's obligation to comply with the fundamental principles of the Code or the Member's paramount duty to the Court, and any appropriate safeguards implemented;
- (f) the extent, if any, of reliance by the Member on the work of others;
- (g) the opinions formed, or Other Evidence given, by the Member;
- (h) whether an opinion or Other Evidence is provisional rather than concluded, and, if so, the reasons why a concluded opinion or concluded Other Evidence has not been provided;
- (i) the significant facts upon which the opinions or Other Evidence are based;
- (j) the significant assumptions upon which the opinions or Other Evidence are based and the following matters in respect of each significant assumption:
 - (i) whether the Member was instructed to make the assumption or whether the Member chose to make the assumption; and
 - (ii) if the Member chose to make the assumption, then the reason why the Member made that choice;
- (k) if the Member considers that an opinion or Other Evidence may be misleading because a significant assumption is likely to mislead, then a statement to that effect and an explanation of why the assumption is likely to mislead;
- (l) where applicable, that the Member's opinion or Other Evidence is based upon another person's report;

- (m) the reasoning by which the Member formed the opinions or arrived at the Other Evidence, including an explanation of any method employed and the reasons why that method was chosen;
- (n) a list of all documents and sources of information relied upon in the preparation of the Report;
- (o) any restrictions on the use of the Report; and
- (p) a statement that the Expert Witness Service was conducted in accordance with this Standard.

5.7 In providing an Expert Witness Service, a Member should consider whether *Valuation Services* is applicable to the Engagement or Assignment. requires, amongst other things, that a Member make certain disclosures in a Report.

5.8 If a Member is not certain whether a matter is a significant assumption or an opinion, the Member should consult the legal representative of the Member's Client or Employer.

5.9 Working papers document the work performed by the Member and the process by which the Member arrived at an opinion or Other Evidence that may or may not be used in a Report. A working paper is not considered a Report unless it was specifically designed to communicate expert evidence to the Court.

6. False or misleading information and changes in opinion

6.1 A Member shall not knowingly or recklessly make a statement or cause another to make a statement in or in connection with a Forensic Accounting Service that, by its content or by an omission, is false or misleading.

6.2 If a Member who was engaged or assigned to provide an Expert Witness Service becomes aware that an opinion expressed or Other Evidence given by the Member in a Report or in oral evidence was based on information that was false, misleading or contained material omissions and that situation has not been subsequently disclosed in a Report or in oral testimony, the Member shall promptly inform, as appropriate, the legal representative of the Client, the Employer or the Court of the situation. The Member shall also consider whether it is necessary to issue a supplementary Report.

7. Quality control

7.1 A Member in Public Practice shall comply with the requirements of *Quality Control for Firms*.

7.2 A Member in Business who undertakes a Forensic Accounting Service should utilize a system of quality control that includes appropriate policies and procedures dealing with elements of quality control including but not limited to:

- (a) Leadership responsibilities for quality within the Employer;
- (b) Ethical requirements;
- (c) Human resources;

- (d) Assignment performance; and
- (e) Monitoring.

7.3 A Member performing a Forensic Accounting Service shall prepare working papers that appropriately document the work performed, including the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Forensic Accounting Service have been made.

7.4 A Member should be aware that working papers generated as part of undertaking a Forensic Accounting Service may be required to be furnished to other parties or the Court as evidence. Where appropriate, a Member should maintain the chain of custody, including origin, possession and disposition of documents and other material, particularly originals, relevant to the Engagement or Assignment.

8. Professional fees

8.1 A Member in Public Practice providing a Forensic Accounting Service shall be remunerated for such Professional Service by way of professional fees computed in accordance with *Fees and Other Types of Remuneration* of the Institute's Code.

8.2 A Member in Public Practice shall not enter into a Contingent Fee arrangement or receive a Contingent Fee for:

- (a) an Expert Witness Service; or
- (b) a Forensic Accounting Service, other than an Expert Witness Service, that requires Independence or where the Member purports to be independent.

8.3 A Member in Business shall not enter into a contingent remuneration arrangement or receive contingent remuneration for an Expert Witness Service.

Appendix 1 – Facts, assumptions, and opinions

This Appendix contains some examples to assist a Member determine whether a matter is a fact, an assumption or an opinion for the purposes of Members are cautioned that the determination of whether a matter is a fact, an assumption or an opinion under this Standard is a matter of professional judgment, based on the particular facts and circumstances. The examples contained in this Appendix are provided for illustrative purposes only. In all of the examples presented below it is assumed that there are no unmentioned facts which would be relevant to the consideration as to whether a matter is a fact, an assumption or an opinion.

Classification of facts for expert evidence

An opinion is an inference drawn from facts. In the context of expert evidence, facts may be classified as observed, scientific, accepted, or assumed. Observed facts and scientific facts are both based on observations by the expert witness. They differ in that observed facts are lay observations but scientific facts are expert observations. Observed facts are lay observations because they are based on perceptions by the expert witness using one or more of the five senses, but are not based on the application of the expert witness's expertise.

An example would be the observation by a land valuer of the presentation of a property. On the other hand, scientific facts are based on the expertise of the expert witness but do not involve any significant degree of expert judgment. It has been said that scientific facts are true by virtue of the proper application of an accepted scientific method that is analytical or mathematical. An example might be a complex financial calculation by a Member that is based on the application of specialized knowledge but that does not amount to an opinion. This would occur where the results of the calculation flow mathematically or analytically without requiring inferences or questions of judgment if the underlying financial records are proved and if the calculation is done correctly. However, both observed facts and scientific facts are facts. Accepted facts and assumed facts both involve assumptions. Accepted facts are basic assumptions about background matters that the expert believes are true. An example would be a basic assumption about the workings of the market economy. Another example would be a basic assumption about the dating of information or the provenance of documents. On the other hand, assumed facts are assumptions about matters that may or may not be true but which the expert witness assumes are true for the purpose of forming his or her opinion. An example, in a contractual dispute involving a claim for lost profits, would be an assumption about the selling price of a product but for the alleged breach of contract. If the expert witness's opinion depends upon accepted facts or assumed facts then those facts must be proved or admitted in order for the expert witness's opinion to be given weight. Both accepted facts and assumed facts are assumptions, although whether any particular accepted fact or assumed fact is a *significant* assumption will depend on the circumstances.

Examples:

The Member has been asked to calculate the cost of goods sold expense for a period based on balances for opening stock, purchases and closing stock that have already been agreed by the parties. In calculating the expense, the Member applies specialized knowledge derived from the Member's training, study or experience using a well-accepted method which is not controversial (i.e. that cost of goods sold expense is equal to opening stock plus purchases less closing stock). However, the calculation does not require the Member to apply any significant degree of expert judgment. In this case, the figure calculated by the Member is a fact rather than an opinion (i.e. because it is in the nature of a scientific fact). On the other hand, if the Member were instructed to assume a figure for the cost of goods sold expense then that would be an assumption. The Member has been asked to quantify the lost profits that would have been earned by a business but for a breach of duty. Among other things, this may require the Member to choose a figure for the sales revenue that the business would have earned but for the breach of duty.

The question of what would have happened to sales revenue but for the breach requires the Member to consider a situation that is hypothetical rather than real and which, therefore, cannot be a question of fact. If in assessing the figure for sales revenue the Member applies specialized knowledge derived from the Member's training, study or experience and a significant degree of expert judgment then the Member will be expressing an opinion. On the other hand, if the Member were instructed to assume a figure for the sales revenue then that would be an assumption. The Member uses the Capital Asset Pricing Model (CAPM) to determine a discount rate for the valuation of a business using the discounted cash flow method. The Member must choose a figure for the beta, which is an input to the CAPM. In the normal course, the Member will choose a beta after having gathered relevant information and having performed relevant analyses. In assessing the figure for beta the Member will apply specialized knowledge derived from the Member's training, study or experience and a significant degree of expert judgment. Therefore, the Member will be expressing an opinion. On the other hand, if the Member were instructed to assume a figure for the beta then that would be an assumption.

Appendix 2 – Decision Tree to determine the type of Forensic Accounting Service

This Appendix contains a decision tree schematic to assist or determine whether a particular service is a Forensic Accounting Service and, if so, whether the Engagement or Assignment is an Expert Witness, Lay Witness, Consulting Expert or Investigation Service. Each type of Forensic Accounting Service carries professional obligations specific to its purpose and therefore it is important for Members to make this determination. Members are cautioned that the determination of whether a particular service is a Forensic Accounting Service under this Standard is a matter of professional judgment, based on the particular facts and circumstances.

The critical determination is whether a particular Forensic Accounting Service is an Expert Witness Service. Subsequently whether evidence is deemed admissible by the Court is a matter for the Court. However, this is likely to happen after the Forensic Accounting Service has been wholly or substantially provided by the Member. The important step is for the Member to assess, both initially and during the Engagement or Assignment, whether it is a Forensic Accounting Service and, if so, which one. If the Member determines that it is an Expert Witness Service, a subsequent decision to not admit the evidence from that Expert Witness Service does not change the nature of the Forensic Accounting Service. It is the intention to give expert evidence that is relevant and in turn creates the obligation for a Member to comply with the requirements of this Standard.

Examples of Forensic Accounting Services:

This Appendix analyses some examples to assist a Member determine the type of Forensic Accounting Services provided by a Member.

Members are cautioned that the determination of the type of Forensic Accounting Service provided by a Member under this Standard is a matter of professional judgment, based on the particular facts and circumstances. The examples contained in this Appendix are provided for illustrative purposes only and are not intended to be, and cannot be, all inclusive. The examples are not a substitute for reading the full text of Members Code and applying the Standard to the particular circumstances to determine the type of Forensic Accounting Service provided by a Member. In all of the examples presented below it is assumed that there are no unmentioned facts which would be relevant to the consideration to determine the type of Forensic Accounting Service.

1. Participation in a professional tribunal Consulting Expert
2. Dispute mediator Consulting Expert
3. Adviser to investigation by law enforcement/regulatory agency Consulting Expert (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
4. Prepare a Report for a company in a dispute Expert Witness
5. Prepare a Report for a regulatory body on a listed company's compliance with accounting standards Expert Witness
6. Member employed by/engaged by a law enforcement/regulatory body to provide a summary of complex transactions for Proceedings Expert Witness
7. Member employed by/engaged by a law enforcement/regulatory body to provide a summary of a flow of funds for Proceedings Expert Witness
8. Member employed by a company under investigation subpoenaed to provide a factual witness statement Lay Witness
9. Member employed by a company under investigation subpoenaed to provide a factual witness statement and subsequently asked to apply expertise Expert Witness
10. Member employed by a company under investigation subpoenaed to provide an opinion on the appropriate accounting for a chart of transactions Expert Witness
11. *Insurance Claim* - Provision of loss adjusting services requiring accounting skills Consulting Expert (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
12. *Insurance Claim* - Provision of advice requiring accounting skills Consulting Expert (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)
13. Member requested to determine amount of restitution or payment on a fraud or compensation matter Consulting Expert (unless the Member is or is likely to provide an opinion or Other Evidence to the Court)

14 *Family Law* – Appointed by the Court to provide a Report including opinion evidence
Expert Witness

15. *Family Law* – Engaged to provide consulting advice related to another
accounting expert's opinion Consulting Expert (unless the Member is or is likely to
provide an opinion or Other Evidence to the Court)

16. *Family Law* – Engaged, as a neutral party, to mediate between two
accounting experts who have provided expert opinions to the Court Consulting Expert

17. Member employed by a company investigating a potential criminal
offence or civil matter Investigation Service

18. Member requested to testify facts of purchases made on construction
project account Lay Witness (unless the Member is or is likely to provide an opinion or
Other Evidence to the Court)

19. Member requested to provide an affidavit in respect of processes the
Member undertook as part of a forensic investigation, specifically in
relation to the collection and securing of computer forensic evidence
Lay Witness (unless the Member is or is likely to provide an opinion or Other
Evidence to the Court)

20. Member requested to give evidence in relation to the Member's observations of a
staff member who has been charged with theft of company equipment/ property
Lay Witness

21. Member requested to give evidence in relation to observations of a
motor vehicle accident in which the Member was involved Lay Witness

22. Member employed by a revenue authority undertaking an investigation
into a taxpayer's affairs Expert Witness

23. Member is employed by a regulatory agency tasked with the review of
a trust account in which alleged irregularities have occurred Expert Witness

Example 1 Participation in a professional tribunal

Facts: The Member has been asked to be a member of a professional tribunal handling
a disciplinary matter involving an auditor. Professional tribunals typically include
disciplinary bodies of the Professional Bodies and statutory boards involved in the
review of auditors and liquidators. As a member of the professional tribunal, the tribunal
will be relying on the Member's specialized knowledge derived from the Member's
training, study or experience in providing informed input to allow the tribunal to
determine the issues to be raised and decided upon before the tribunal.

Analysis: Consulting Expert – the Member is using the Member's specialized
knowledge derived from the Member's training, study or experience in
accounting to provide assistance in respect of a Proceeding, but is not giving evidence
(expert or lay) in the Proceedings. The Member has been chosen to be a tribunal
member in part because of the Member's specialized knowledge derived from the
Member's training, study or experience.

Example 2 Dispute mediator

Facts: The Member has been asked to be a mediator in a dispute between two parties over lost profits that would have been earned by a business but for a breach of duty. As a mediator, the Member will be neutral and impartial and will assist the parties identify the issues, such as the accounting treatment of transactions, consider options and negotiate solutions. The parties must reach their own agreement and the mediator will not make any decisions about the dispute.

Analysis: Consulting Expert – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to mediate the Proceeding, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to be the mediator in this matter in part because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting.

Example 3 Adviser to investigation by law enforcement/regulatory agency

Facts: The Member has been asked to be an adviser to an investigation being conducted by a law enforcement/regulatory agency. The Member's specialized knowledge derived from the Member's training, study or experience in accounting will be used in providing advice (written and/or oral) to members of the investigation team on accounting issues and transactions that are, or are intended to be, investigated. The Member can act as an adviser to the investigation even when Proceedings are contemplated or have commenced. It is not envisaged that the Member will be required to provide evidence and/or a report in the Proceedings (if any) arising from the investigation.

Analysis: Consulting Expert – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the investigation, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to assist in the investigation in part because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting. However, if during this process, it is decided that the Member either is, or is likely, to give expert evidence (an opinion or Other Evidence) in this matter, then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

Example 4 Prepare a Report for a company in a dispute

Facts: The Member has been asked by a company involved in a dispute, or the company's legal advisers, to prepare a Report to quantify the lost profits that would have been earned by a business but for a breach of duty or a breach of contract. It is highly likely that the Report will be produced in Court in relation to legal action that is contemplated or has been commenced by the company.

It is also highly likely that the Member will have to give evidence in the Court about matters covered in the Report. The Member's specialized knowledge derived from the Member's training, study or experience in accounting will be used in assessing the issues in dispute and preparing the Report. The Report will express opinions about the lost profits that would have been earned by a business but for a breach of duty.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the Court through the provision of written and/or oral evidence. As it is not lay evidence (i.e. the Member is not simply describing what the Member observed or did), it is considered expert evidence (whether or not it involves the expression of opinions).

Example 5 Prepare a Report for a regulatory body on a listed company's compliance with accounting standards

Facts: The Member has been asked by a regulatory body to prepare a Report on whether certain accounting standards have been complied with by a listed company. The Report will be produced in Court in relation to legal action that has been commenced by the regulatory body against directors of the company. It is also highly likely that the Member will have to give evidence in Court about matters covered in the Report. The Member's specialized knowledge derived from the Member's training, study or experience in accounting will be used in assessing the accounting standards issue and preparing the Report. The Report will express opinions about the accounting standards that were used and whether the accounting standards were or were not complied with.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the Court through the provision of written and/or oral evidence. It is not lay evidence as the Member is expressing opinions on a matter in which the Member has specialized knowledge derived from the Member's specialist training, knowledge and experience.

Example 6 Member employed by/engaged by a law enforcement/ regulatory body to provide a summary of complex transactions for Proceedings

Facts: The Member is employed by a law enforcement/regulatory body and has been asked to prepare a chart or summary that summarizes a number of complex transactions and related accounting journals and ledger entries. The chart or summary will be produced by the Member in Court in relation to legal action that has been commenced by the law enforcement/regulatory body. The chart or summary is likely to aid the comprehension of material that is to be produced for the Court. The Member offers no opinions in the chart or summary that has been prepared.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the Court, through the chart/summary of transactions. As it is not lay evidence (i.e. the Member is not simply describing what the Member observed or did), it is considered expert evidence (even though it may not involve the expression of opinions).

Example 7 Member employed by/engaged by a law enforcement/ regulatory body to provide a summary of a flow of funds for Proceedings

Facts: The Member is employed by a law enforcement/regulatory body and has been asked to prepare a chart or summary that summarizes the flow of funds/money through various bank accounts and trace the use of these funds/money. The chart or summary will be produced by the Member in Court in relation to legal action that has been commenced by the law enforcement/regulatory body. The chart or summary is likely to aid the comprehension of material that is to be produced for the Court. The Member offers no opinions in the chart or summary.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the Court, through the chart/summary of transactions. As it is not lay evidence (i.e. the Member is not simply describing what the Member observed or did), it is considered expert evidence (even though it may not involve the expression of opinions).

Example 8 Member employed by a company under investigation subpoenaed to provide a factual witness statement

Facts: The Member is or was employed by a company that has been the subject of an investigation by a law enforcement/regulatory body which has subsequently asked or subpoenaed the Member to provide a witness statement covering the Member's involvement in and observations of specific transactions and activities of the company without drawing on the Member's specialized knowledge derived from the Member's training, study or experience.

Analysis: Lay Witness – the Member is not using the Member's specialized knowledge derived from the Member's training, study or experience to provide assistance to the law enforcement/regulatory body, and hence to the Court, through the Member's observations made. As the Member is simply describing what the Member observed or did, it is not considered expert evidence.

Example 9 Member employed by a company under investigation subpoenaed to provide a factual witness statement and subsequently asked to apply expertise

Facts: The Member is or was employed by a company that has been the subject of an investigation by a law enforcement/regulatory body which has subsequently asked or subpoenaed the Member to provide a witness statement covering the Member's involvement in and observations of specific accounting transactions and activities of the company without drawing on the Member's specialized knowledge derived from the Member's training, study or experience. Upon examination during the Court proceedings the Member is asked to provide an opinion to aid the Court in understanding accounting records presented as evidence.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the Court, in support of the Member's observations made. Since the Member has subsequently been asked to provide an opinion on a matter in which the Member has specialized knowledge derived from the Member's training, study or experience, it is not lay evidence. When the Member is asked to provide an opinion or Other Evidence in Court proceedings, then it would become an Expert Witness Service from that time.

Example 10 Member employed by a company under investigation subpoenaed to provide an opinion on the appropriate accounting for a chart of transactions

Facts: Similar facts to Example 8, but the Member is required to give the Member's opinions on what the reasons for the transactions were and/or whether they were in accordance with generally accepted accounting practice.

Analysis: Expert Witness – the Member is using specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the law enforcement/regulatory body, and hence to the Court, through the chart/summary of transactions. As it is not lay evidence (i.e. the Member is not simply describing what the Member observed or did), it is considered expert evidence (even though it may not involve the expression of opinions).

Example 11 Insurance Claim – Provision of loss adjusting services requiring accounting skills

Facts: The Member is assigned to provide loss adjusting services in respect of an insurance claim that involve use of the Member's specialized knowledge derived from the Member's training, study or experience in accounting. The Member is to assess the claim value with respect to both material damage and business interruption in accordance with the insurance policy.

Analysis: Consulting Expert – the Member is using specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to one party in the matter (i.e. the insurance company or the insured), but is not (at least initially) engaged to give evidence (expert or lay) in the Proceedings. It is to be presumed that the Member has been chosen to assist because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting.

However, if during this process, it is decided that the Member either is, or is likely to be asked, to provide an opinion or Other Evidence to the Court in the matter, then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

Example 12 Insurance Claim – Provision of advice requiring accounting skills

Facts: The Member has been asked to determine the appropriate amount of compensation a claimant is entitled to under an income protection (or similar) insurance policy or statutory scheme. The Member's specialized knowledge derived from the Member's training, study or experience will be used in providing advice (written and/or oral) to the Employer, statutory agency or insurance company on the claimant's entitlements. It is not envisaged that the Member will be required to provide evidence and/or a report to the Court in the Proceedings (if any) arising from the assessment.

Analysis: Consulting Expert – the Member is using specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the investigation, but is not giving evidence (expert or lay) in the Proceedings. It is to be presumed that the Member has been chosen to undertake the assessment in part because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting. However, if during this process, it is decided that the Member either is, or is likely, to give an opinion or Other Evidence in this matter then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

Example 13 Member requested to determine amount of restitution or payment on a fraud or compensation matter

Facts: The Member has been asked to determine the amount of restitution or overpayment in a fraud or compensation matter based on the evidence obtained up until that time. The Member's specialized knowledge derived from the Member's training, study or experience will be used in providing advice (written and/or oral) to members of the investigation team on the amount of restitution or overpayment.

It is not envisaged that the Member will be required to provide evidence and/or a report to the Court in the Proceedings (if any) arising from the review/assessment.

Analysis: Consulting Expert – the Member is using specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to the investigation, but is not giving evidence (expert or lay) in the Proceedings. It is to be presumed that the Member has been chosen to undertake the assessment in part because of the specialized knowledge derived from the Member's training, study or experience in accounting. However, if during this process, it is decided that the Member either is, or is likely, to give an opinion or Other Evidence in this matter then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

Example 14 *Family Law* – Appointed by the Court to provide a Report including opinion evidence

Facts: The Member is appointed by the Court following representations by the parties' solicitors to provide a Report for both parties to the dispute including opinion evidence on valuation and accounting matters.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience to provide a written Report as a joint expert to the Court. It is not lay evidence as the Member is expressing opinions and/or providing Other Evidence on a matter or matters in which the Member has specialized knowledge derived from the Member's training, study or experience.

Example 15 *Family Law* – Engaged to provide consulting advice related to another accounting expert's opinion

Facts: The Member is asked by one of the parties to a matrimonial dispute to provide consulting advice (as a "shadow") in relation to another accounting expert's opinion. When asked, the Member is not expected to file a report giving the Member's opinion to the Court, but merely to assist the instructing party and their solicitor.

Analysis: Consulting Expert – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to one party to the dispute, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to assist because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting. However, if during this process, it is decided that the Member either is, or is likely, to be asked to provide an opinion or Other Evidence to the Court in the matter, then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

Example 16 *Family Law* – Engaged, as a neutral party, to mediate between two accounting experts who have provided expert opinions to the Court

Facts: The Member is asked by the solicitors for both parties to a matrimonial dispute to mediate between two accounting experts who have provided expert opinions on the valuation of business assets with the parties to the dispute present at the mediation. As a mediator the Member will be neutral and impartial and will assist the parties identify the issues between the two expert valuers, consider options and negotiate solutions. The parties must reach their own agreement and the mediator will not make any decisions about the dispute.

Analysis: Consulting Expert – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to provide assistance to mediate the Proceedings, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to be the mediator in this matter in part because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting.

Example 17 Member employed by a company investigating a potential criminal offence or civil matter

Facts: The Member is asked by the Member's Employer to undertake or assist in investigating a potential criminal offence or civil matter with the intention of identifying the facts, determine the financial implications/overpayment/amount inappropriately obtained and ultimately assisting the Employer to understand the situation and make a fully informed decision on what action should be taken. It is not envisaged that the Member will be required to provide evidence and/or a report to the Court in the Proceedings (if any) arising from the investigation.

Analysis: Investigation Service – the Member is using specialized knowledge derived from the Member's training, study or experience in accounting in the investigations to assist the Employer in understanding the matter and assist in determining what action should be taken, but is not giving evidence (expert or lay) in the Proceedings. The Member has been chosen to investigate this matter in part because of the Member's specialized knowledge derived from the Member's training, study or experience in accounting. However, if during this process, it is decided that the Member either is, or is likely to be asked, to provide an opinion or Other Evidence to the Court in the matter, then it would become an Expert Witness Service from that time.

Example 18 Member requested to testify facts of purchases made on construction project account

Facts: The Member is employed as a project accountant on a construction project. The Member has been asked by the Member's Employer to appear in Court to provide a statement on the total amount of purchases made on account for a recently completed construction project which is in legal dispute. The Member's participation is restricted to providing a factual representation of the purchases processed by the Member in the project accounting ledger and the fact that the Member observed the construction project in progress. It is not envisaged that the Member will be required to provide an opinion and/or Other Evidence and/or provide a Report to the Court in the Proceedings. The terminology used in the Member's statement is expressed in a manner that the Court can understand without technical accounting assistance.

Analysis: Lay Witness – the Member is not using specialized knowledge derived from the Member's training, study or experience in accounting in the statement to assist the Court in understanding the matter and assist in determining what action should be taken, and is not giving expert evidence in the Proceedings. The Member has been chosen to participate in this matter only due to the Member's employment on the project team.

However, if during this process, it is decided that the Member either is, or is likely, to be asked to provide an opinion or Other Evidence in Court proceedings, then it would become an Expert Witness Service from that time.

Example 19 Member requested to provide an affidavit in respect of processes the Member undertook as part of a forensic investigation, specifically in relation to the collection and securing of computer forensic evidence

Facts: A Member has been engaged to assist with the identification, collection and secure storage of electronic evidence held by an organization. The Member provides an affidavit/statement detailing the actions and steps taken to perform the above Engagement or Assignment. The Member has been subpoenaed to Court to give this evidence.

Analysis: Lay Witness – the Member is not using the Member's specialized knowledge derived from the Member's training, study or experience in accounting in the statement to assist the Court in understanding the matter nor is the Member assisting the Court in determining what action should be taken. The Member has been chosen to participate in this matter only because of the Member's skills in electronic evidence retrieval, without any analysis or examination of the underlying evidence collected.

However, if at any stage during this process, it is decided that the Member either is, or is likely to have the additional responsibility of providing an opinion or Other Evidence in relation to the summarizing or charting of that evidence collected using specialized

knowledge derived from the Member's training, study or experience then it would become an Expert Witness Service from that time. Where, during the conduct of an Engagement, the scope of work changes significantly, a Member in Public Practice should amend and reissue the Terms of Engagement, particularly where it will result in an Expert Witness Service.

Example 20 Member requested to give evidence in relation to the Member's observations of a staff member who has been charged with theft of company equipment/property

Facts: The Member is employed as an accountant by an accounting firm. The Member was present when another staff member allegedly took a laptop, mobile phone and other company equipment from the office to their home and was involved in some discussion surrounding the alleged theft with the staff member who has been charged. The Member has provided a witness statement/affidavit about the Member's observations and discussions with the accused and has been subpoenaed to Court to provide evidence about this matter. The Member's participation is restricted to providing a factual account of the Member's observations and discussions leading up to and after the alleged theft.

Analysis: Lay Witness – the Member is not using specialized knowledge derived from the Member's training, study or experience in accounting in the statement/affidavit to assist the Court in understanding the matter nor is the Member assisting the Court in determining what action should be taken. The Member has been chosen to participate in this matter solely because of what the Member had witnessed.

Example 21 Member requested to give evidence in relation to observations of a motor vehicle accident in which the Member was involved

Facts: The Member is employed as an accountant and was involved in a motor vehicle accident where the Member was driving a vehicle and was not at fault for the accident. The fault driver has been charged with criminal offences as a result of the motor vehicle accident. The Member has provided a witness statement/affidavit setting out the Member's observations and knowledge of the circumstances surrounding the motor vehicle accident. The Member has been subpoenaed to Court to give this evidence.

Analysis: Lay Witness – the Member is not using specialized knowledge derived from the Member's training, study or experience in accounting in the statement/affidavit to assist the Court in understanding the matter nor is the Member assisting the Court in determining what action should be taken. The Member has been chosen to participate in this matter only because of the Member's involvement in the motor vehicle accident and what the Member had witnessed.

Example 22 Member employed by a revenue authority undertaking an investigation into a taxpayer's affairs

Facts: The Member is employed by a government revenue authority and is undertaking a review of a taxpayer's affairs in connection with a Proceeding, and with a view to providing a Report on the findings to the Court. The work is likely to result in an assessment or amended assessment for the taxpayer as there are alleged breaches of the applicable tax legislation.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting and taxation knowledge to formulate the Report and the conclusions contained therein to the Court. In this situation, the Member will be expressing an opinion or providing Other Evidence about the interpretation of the relevant legislation, its application to the factual findings concerning specific items of the review and whether the alleged breaches result in an unidentified liability (or overpayment). It is not lay evidence as the Member is expressing opinions and/or providing Other Evidence on matters in which the Member has specialized knowledge derived from the Member's training, study or experience.

Example 23 Member is employed by a regulatory agency tasked with the review of a trust account in which alleged irregularities have occurred

Facts: The Member is employed in a regulatory agency and is undertaking a review of a trust account in which alleged irregularities have occurred. The Member is tasked with performing a review and providing a Report on the findings to the Court.

Analysis: Expert Witness – the Member is using the Member's specialized knowledge derived from the Member's training, study or experience in accounting to formulate the Report to the Court. It is not lay evidence, as the Member will be expressing opinions and/or providing Other Evidence on matters in which the Member has specialized knowledge derived from the Member's training, study or experience.