

PRACTITIONER SUPPLEMENT

THE AUDIT REPORT AND AUDITORS DUTY OF CARE TO THIRD PARTIES

The purpose of this supplement is to suggest wording for inclusion in audit reports in relation to managing the risk of liability, as a result of relying on an audit opinion, to third parties to whom the report is not expressly addressed or intended.

This does not in any way change existing responsibilities of a) the audit firms in carrying out audit procedures in accordance with selected auditing standards and b) auditors obligations to their clients; however it does provide clarification language to reduce the scope for the unintended assumption of duty of care to third parties.

It is not intended to be prescriptive but rather to indicate what would generally be regarded by the accounting profession in the Cayman Islands as best practice. It should not be relied upon in respect of points of law.

INTRODUCTION

A Scottish court judgment in [Royal Bank of Scotland v Bannerman Johnstone Maclay and others](#) (“Bannerman”) indicated that in the absence of a disclaimer in the audit report it may be inferred that the auditor has assumed responsibility for the audit report to a third party i.e. duty of care may be expanded beyond those to whom the audit report was addressed. Based on Cayman legal counsel opinion this case is likely to be taken into consideration in Cayman as a source of case law should a similar situation arise in this jurisdiction.

WORDING TO INCLUDE IN THE AUDIT REPORT

To manage risk of liability to third parties CISPA would regard disclaimer language similar to the following examples as being appropriate for inclusion in audit reports (the wording below are examples for type of wording that can be used, ultimately it is expected that each Firm may have slightly differing variations based on their own risk management policies and /or legal counsel advice)

EXAMPLE 1

This report, including the opinion, has been prepared for and only for the company’s members as a body and for no other purpose. We do not, in giving this opinion, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

EXAMPLE 2

This report has been prepared for and only for [name of client] in accordance with the terms of our engagement letter dated [date] and for no other purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

EXAMPLE 3

This report is made solely to the directors in accordance with the terms of our engagement. Our audit work has been undertaken so that we might state to the directors those matters we are required to state to them in an auditors' report and for no other purpose. We do not accept or assume responsibility to anyone other than the directors, for our audit work, for this report, or for the opinions we have formed.

EXAMPLE 4

Our responsibility is to express an opinion on these financial statements based on our audit and to report our opinion solely to you, as a body, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

OTHER RELEVANT MATTERS

- a) Nothing in this supplement should be taken as restricting auditors taking on responsibilities to third parties should they decide to do so. It is anticipated that third parties wishing to rely on the auditors work should approach the auditors to agree expressly the scope and nature of the auditors work to meet their purposes. Such arrangements should be subject to separate and specific contract terms.
- b) Auditors may consider using application of this supplement in other attestation engagements such as interim reviews, regulatory reports etc.
- c) Audit Firms even with this additional language in their reports need to be aware that they do not override the disclaimer in the audit report through actions with third parties that are inconsistent with that position.
- d) The disclaimer language proposed in this supplement may not be acceptable in other jurisdictions.
- e) Consideration should be given to referring in the engagement letter to the parties to whose benefit the audit is intended.