

Proposed Standard: APES 215 Forensic Accounting Services

EXPOSURE DRAFT **03/12**
ISSUED: **XX 2012**

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Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by **31 August 2012**.

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A copy of all submissions will be placed on public record on the APESB website:
www.apesb.org.au.

Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **31 August 2012** by contacting:

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Reasons for issuing Exposure Draft 03/12

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to revise APES 215 *Forensic Accounting Services* (APES 215).

Key requirements and guidance in ED 03/12

Overview of the proposed changes

The following summary provides an overview of the proposed revisions to the existing professional standard APES 215. Respondents should not rely on this summary of differences to determine what changes, if any, are required to their current practices, policies or methodologies. Respondents should read the entire Exposure Draft to determine the significance of its proposals.

Definitions

The following definitions have been revised in the proposed standard:

- Expert Witness;
- Lay Witness;
- Court; and
- Independence.

Professional competence and due care

- Additional professional obligations are proposed when a Member is acting as an Expert Witness.

Confidentiality

- 'Employer' has been added as another source of permission for the Member to disclose confidential information to a third party.

The Report of an Expert Witness / False misleading information and changes in opinion

- These sections have been expanded to include a requirement for 'or other evidence' alongside the requirements for a Member expressing an opinion.

Quality Control

- A guidance paragraph has been added to clarify what constitutes working papers.

Appendix 2 & 3

- Development of a Schematic diagram on what constitutes a Forensic Accounting Service and the four different types of Forensic Accounting Services; and
- Development of Examples in Appendix 3.

Proposed operative date

It is intended that this Standard will be operative for Forensic Accounting Engagements commencing on or after **1 January 2013**.

Request for comments

Comments are invited on this Exposure Draft of APES 215 Forensic Accounting Services by **31 August 2012**. APESB would prefer that respondents express a clear overall opinion on whether the proposed Standard, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed Standard.

DRAFT

APES 215 Forensic Accounting Services

[Supersedes APES 215 Forensic Accounting Services issued in December 2008]

REVISED: XX 2012

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APES 215

FORENSIC ACCOUNTING SERVICES

(Issued **XX 2012**)

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1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 215 *Forensic Accounting Services* (**the Standard**), which is effective for Engagements or Assignments commencing on or after ~~01 July 2009~~ XX XX 2012. Earlier adoption of this Standard is permitted.
- 1.2 APES 215 sets the standards for Members in the provision of quality and ethical Forensic Accounting Services. The mandatory requirements of this Standard are in **bold-type (black lettering)**, preceded or followed by discussion or explanations in normal type (grey lettering). APES 215 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.
- 1.3 **Members in Australia shall follow the mandatory requirements of APES 215 when they provide Forensic Accounting Services.**
- 1.4 **Members outside of Australia shall follow the mandatory requirements of APES 215 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.5 **Where a Professional Service which, when it commenced was not a Forensic Accounting Service, later becomes such a service, then the Member shall comply with the requirements of this Standard from that time onwards.**
- 1.6 **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.**
- 1.7 **Members shall be familiar with relevant ~~p~~Professional ~~s~~tandards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.8 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.9 All references to Professional Standards, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.10 In applying the requirements outlined in APES 215, Members should be guided not merely by the words but also by the spirit of the Standard and the Code.

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 services 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 organisation to whom Professional Services are provided by a Member in Public Practice in respect of Engagements of either a recurring or demand nature.

Code means APES 110 *Code of Ethics for Professional Accountants*.

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

Forensic Accounting Services

Consulting Expert Service means a Professional Service 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 an expert determination, referee or in a similar role.

Contingent Fee means a fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. 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 tribunals 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 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, ~~or 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 specialised 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.

Expert Witness Service means a Professional Service 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;
- (c) An entity controlled by such parties; 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 means

- (a) Independence of mind - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a ~~Member's~~, integrity, objectivity or professional scepticism ~~had~~has been compromised.

Forensic Accounting Services

Investigation Service means a Professional Service to perform, advise on, or assist with an investigation, whether or not in the context of Proceedings, in connection with allegations of, or concerns regarding conduct that may be illegal, unethical or otherwise improper.

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

Lay Witness Service means a Professional Service 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. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable professional body.

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 Services to help make an assessment as to whether a matter should be brought before a Court.

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

Professional Services means services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.

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 Section 100 *Introduction and Fundamental Principles* of the Code and with relevant law.

Public interest

3.2 In accordance with Section 100 *Introduction and Fundamental Principles* of the Code, a Member shall observe and comply with the Member's public interest obligations when the Member provides 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 Section 110 *Integrity* and Section 120 *Objectivity* of the Code.

3.4 Members in Public Practice shall comply with Section 220 *Conflict of Interest* and Section 280 *Objectivity – All Services* of the Code.

Professional Independence

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

3.6 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 (AUASB).

3.7 Where a Forensic Accounting Service is an Assurance Engagement, the Member in Public Practice shall comply with Section 290 *Independence – Assurance Engagements* of the Code.

3.8 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 to a different Client,

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.

3.9 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.

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

Professional competence and due care

3.11 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 130 *Professional Competence and Due Care* of the Code.

Forensic Accounting Services

- 3.12 Forensic Accounting Services generally require a Member to have specialised training, study or experience. Before accepting an Engagement or Assignment to provide a Forensic Accounting Service, a Member should exercise professional judgement to determine if the Member is competent to provide the requested Forensic Accounting Service having regard to the Member's training, study or experience.
- 3.13 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 outside the Member's professional expertise 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.
- 3.14 In accordance with Section 330 *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 If a Member acting as an Expert Witness expresses an opinion or provides other evidence that is based on the work of another expert then the Member shall state in the Member's Report that the Member's opinion or other evidence is based in part, on the assumption that the other expert's opinion is valid.
- 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 140 *Confidentiality* of the Code a Member, who acquires confidential information in the course of professional work for a Client or Employer, shall not use that information for any purpose other than the proper performance of that professional work.
- 3.18 Where a Client or Employer has given a Member ~~in Public Practice~~ 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 in accordance with APES 305 *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 210 *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 being inconsistent with the objectives of the other Professional Service, then the Member shall decline the Engagement or the relevant part thereof.

5.2 Subject to paragraph 5.3, 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 being inconsistent 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.

5.3 Paragraph 5.2 does not apply to a Member in Business who is employed by a government agency, where that agency has a statutory function of regulation, investigation, or law enforcement.

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) details of the Member's training, study and experience that are relevant to the matters on which the Member is providing expert evidence;
- (d) 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 (including any of the matters referred to in paragraphs 3.8, 5.1, or 5.2) 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;
- (e) the extent, if any, of reliance by the Member on the work of others;
- (f) the opinions formed by or other evidence of the Member;
- (g) whether an opinion or other evidence is provisional rather than concluded, and, if so, the reasons why a concluded opinion or other evidence has not been formed;
- (h) the significant facts upon which the opinions are based;
- (i) 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;
- (j) if the Member considers that an opinion or other evidence of the Member 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;
- (k) where applicable, that the Member's opinion or evidence is subject to the veracity–validity of another person's Rreport upon which the Member's Report is based;
- (l) the reasoning by which the Member formed the opinions or came to the Member's evidence, including an explanation of any method employed and the reasons why that method was chosen;
- (m) a list of all documents and sources of information relied upon in the preparation of the Report;
- (n) any restrictions on the use of the Report; and
- (o) 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 APES 225 *Valuation Services* is applicable to the Engagement or Assignment. APES 225 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.

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 by the Member or other evidence of 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 APES 320 *Quality Control for Firms*.

- 7.2 A Member in Business who undertakes a Forensic Accounting Service should utilise a system of quality control that includes appropriate policies and procedures taking into consideration the following elements of quality control:

- (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 When preparing a Report, the Member will prepare working papers to document the work performed by the Member and the process by which the Member arrived at an opinion or finding that may or may not be used in a Report. A working paper is not normally considered a Report unless it was designed to communicate expert or lay evidence to the Court.

- 7.5 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 service by way of professional fees computed in accordance with Section 240 *Fees and other Types of Remuneration* of the 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.

Conformity with International Pronouncements

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 215.

Appendix 1: Use of the terms “facts”, “assumptions” and “opinions”

This Appendix analyses some examples to assist a Member determine whether a matter is a fact, an assumption or an opinion for the purposes of APES 215. Members are cautioned that the determination of whether a matter is a fact, an assumption or an opinion under this Standard is a matter to be judged based on the particular facts and circumstances. In part this arises because the character of the matter (i.e. whether it is a fact, an assumption or an opinion) may be confused with other ways of describing it (e.g. as an input to a calculation, a variable in an equation, an estimate, or an approximation). 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.

Generally a fact can arise where the Expert Witness has applied specialised knowledge but has not applied any significant degree of expert judgement. However, where the Expert Witness applies a significant degree of expert judgement and draws an inference then the result will be an opinion.

The following are examples of how the work done by a Member may be characterised:

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 specialised knowledge 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 judgement. 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.

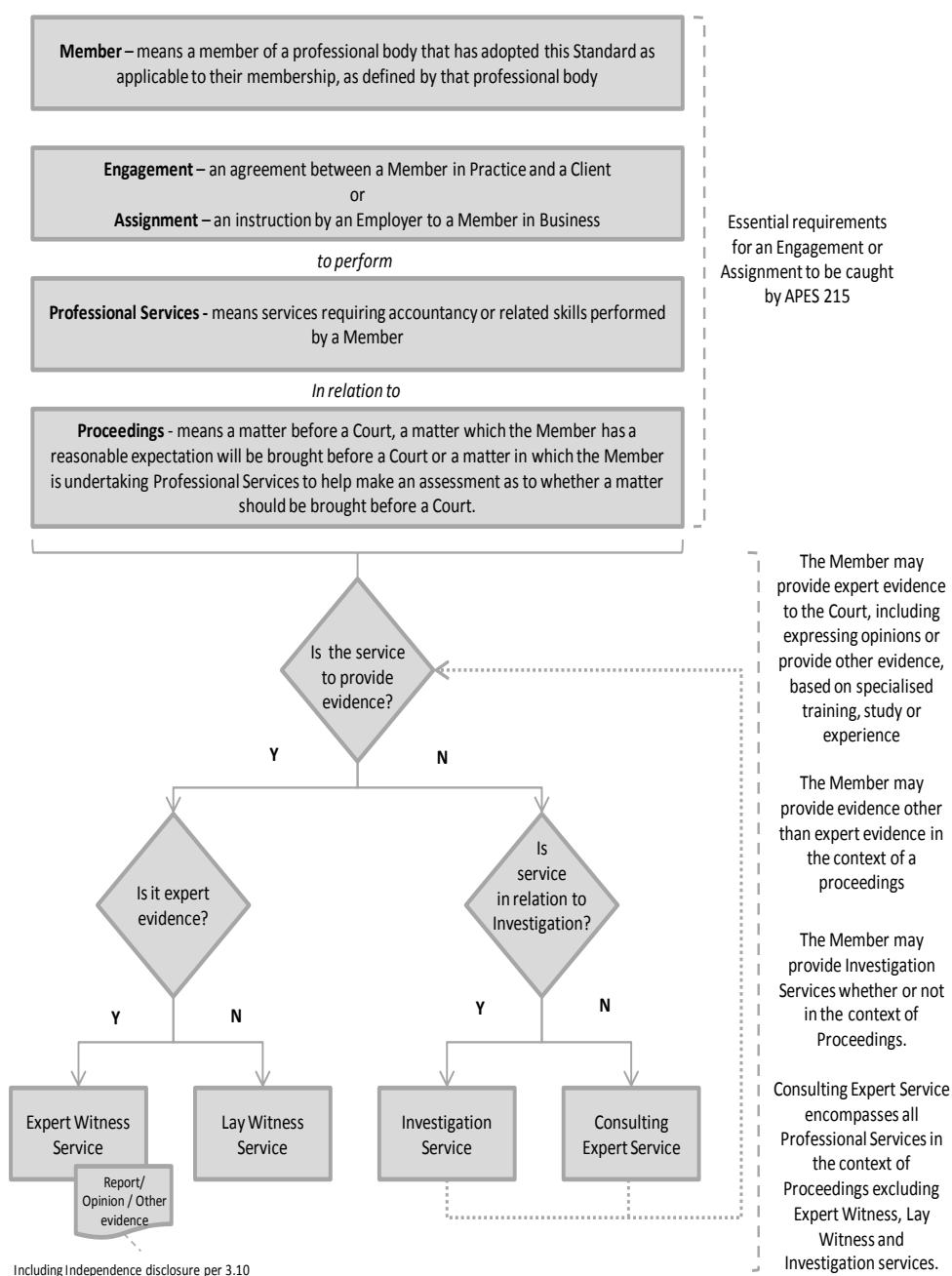
The Member has been asked to quantify the lost profits that would have been earned by a business but for a breach of duty. Among other things, this may require the Member to choose a figure for the sales revenue that the business would have earned but for the breach of duty. The question of what would 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 specialised knowledge and a significant degree of expert judgement 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 specialised knowledge and a significant degree of expert judgement. 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

This Appendix contains a decision tree schematic to assist or determine whether a particular service is a Forensic Accounting Service for the purposes of APES 215 and, if so, whether the Engagement or Assignment is an Expert Witness, Lay Witness, Consulting Expert or Investigation Service.

Members are cautioned that the determination of whether a particular service is a Forensic Accounting Service under this Standard is a matter to be judged based on the particular facts and circumstances.



Appendix 3: Guide to determining the type of Forensic Accounting Service provided by a Member.

This Appendix analyses some examples to assist a Member determine the type of Forensic Accounting Services provided by a Member the type of services provided for the purposes of APES 215.

Members are cautioned that the determination of the type of Forensic Accounting Service provided by a Member under this Standard is a matter to be judged 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 APES 215 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.

<u>No</u>	<u>Nature</u>	<u>Conclusion</u>
<u>1</u>	<u>Participation in professional tribunal</u>	<u>Consulting Expert</u>
<u>2</u>	<u>Dispute mediator</u>	<u>Consulting Expert</u>
<u>3</u>	<u>Adviser to investigation by law enforcement/regulatory agency</u>	<u>Consulting Expert (unless the Member gives evidence)</u>
<u>4</u>	<u>Prepare a Report for a company in a dispute</u>	<u>Expert Witness</u>
<u>5</u>	<u>Prepare a Report for a regulatory body on a listed company's compliance with accounting standards</u>	<u>Expert Witness</u>
<u>6</u>	<u>Member employed at/engaged by a law enforcement/regulatory body preparing a summary of complex transactions for proceedings</u>	<u>Expert Witness</u>
<u>7</u>	<u>Member employed at/engaged by a law enforcement/regulatory body preparing a summary of a flow of funds for proceedings</u>	<u>Expert Witness</u>
<u>8</u>	<u>Member employed by a company under investigation subpoenaed to provide a factual witness statement</u>	<u>Expert Witness</u>
<u>9</u>	<u>Member employed by company under investigation subpoenaed to provide an opinion on the appropriate accounting for a chart of transactions</u>	<u>Expert Witness</u>
<u>10</u>	<u>Provision of loss adjusting services requiring accounting skills</u>	<u>Consulting Expert</u>
<u>11</u>	<u>Provision of advice requiring accounting skills</u>	<u>Consulting Expert</u>
<u>12</u>	<u>Member requested to determine amount of restitution or payment on a fraud or compensation matter</u>	<u>Consulting Expert (unless the Member is or likely is to provide evidence to the Court)</u>
<u>13</u>	<u>Family Law – Appointed by the Court to provide a Report including opinion evidence</u>	<u>Expert Witness</u>
<u>14</u>	<u>Family Law – Engaged to provide consulting advice related to another accounting expert's opinion</u>	<u>Consulting Expert (unless the Member is or likely is to provide an affidavit to the Court)</u>
<u>15</u>	<u>Family Law – Engaged, as a neutral party, to mediate between two accounting experts who have provided expert opinions to the Court</u>	<u>Consulting Expert</u>
<u>16</u>	<u>Member employed at company investigating a potential criminal offence or civil matter</u>	<u>Investigation</u>
<u>17</u>	<u>Member requested to determine amount of restitution or payment on a fraud or compensation matter</u>	<u>Consulting Expert (unless the Member is or likely is to provide evidence to the Court)</u>
<u>18</u>	<u>Member requested to determine amount of compensation on an insurance or statutory scheme</u>	<u>Consulting Expert (unless the Member is or likely is to provide evidence to the Court)</u>
<u>19</u>	<u>Member requested to testify facts of purchases made on construction project account</u>	<u>Lay Witness</u>

Example 1 Participation in professional tribunal

Facts: The Member has been asked to be a member of a professional tribunal. A professional tribunal would include disciplinary and investigative bodies of the Professional Bodies and government appointed tribunals and 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 specialised training, study or experience in accounting 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 accounting knowledge 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 specialised training, study or experience in accounting.

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 accounting knowledge 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 specialised 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 specialised training, study or experience in accounting will be used in providing advice (written and/or oral) to members of the investigation team on 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 accounting knowledge 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 specialised training, study or experience in accounting.

However, if, at any stage during this process, it is decided that the Member either is, or is likely to, give evidence in this matter, then the Member would become an **Expert Witness** from that time.

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 specialised 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 accounting knowledge 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 specialised training, study or experience in accounting will be used in assessing the accounting standards in issues 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 accounting knowledge 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 of opinions on a matter in which they have specialist training, knowledge and experience.

Example 6 Member employed at/engaged by a law enforcement/regulatory body preparing a summary of complex transactions for proceedings

Facts: The Member is employed in a law enforcement/regulatory body and has been asked to prepare a chart or summary that summarises 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 has been produced to the Court or is to be given. The Member offers no opinions in the chart or summary that has been prepared.

Analysis: Expert Witness – the Member is using the Member's accounting knowledge 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 7 Member employed at/engaged by a law enforcement/regulatory body preparing 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 summarises 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 has been produced to the Court or is to be given. The Member offers no opinions in the chart or summary.

Analysis: Expert Witness – the Member is using the Member's 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 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 their involvement in and observations of specific transactions and activities of the company.

Analysis: **Expert Witness** – the Member is using the Member's accounting knowledge 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 9 Member employed by 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 reason for the transactions was and/or whether they were in accordance with normal accounting practice.

Analysis: **Expert Witness** – the Member is using the Member's accounting knowledge 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 10 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 specialised 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 his/her valuation and accounting knowledge 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 accounting knowledge and experience.

However, if at any stage during the process, it is decided that the Member either is or is likely to be asked to provide a report and/or affidavit to the Court in the matter, which may result in the Member having to give evidence then it would become an **Expert Witness Service** from that time.

Example 11 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 specialised 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 their assessment.

Analysis: Consulting Expert – the Member is using his/her accounting knowledge 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 accounting knowledge, training and experience.

However, if at any stage during this process, it is decided that the Member either is, or is likely to give evidence in this matter then it would become an **Expert Witness Service** from that time.

Example 12 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 specialised 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 their review/assessment.

Analysis: Consulting Expert – the Member is using his/her accounting knowledge 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 accounting knowledge, ~~training and~~ training and experience.

However, if at any stage during this process, it is decided that the Member either is, or is likely to give evidence in this matter then it would become an **Expert Witness** service from that time.

Example 13 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 valuation and accounting knowledge to provide a written report as a joint expert to the Court. It is not lay evidence as the Member is expressing opinions on a matter or matters in which they have specialist training, knowledge and experience.

Example 14 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") to him/her 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 accounting knowledge 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 specialised training, study or experience in accounting.

However, if at any stage during the process, it is decided that the Member either is or is likely to be asked to provide an affidavit to the Court in the matter, which may result in the Member having to give evidence, then the Member would become an **Expert Witness** from that time.

Example 15 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 accounting knowledge 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 specialised training, study or experience in accounting.

Example 16 Member employed at company investigating a potential criminal offence or civil matter

Facts: The Member is asked by their 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 the Member's accounting knowledge in their investigations to assist their 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 specialised training, study or experience in accounting.

However, if at any stage during the process, it is decided that the Member either is or is likely to be asked to provide an affidavit or attend Court to give evidence in the matter, then the Member would become an **Expert Witness** from that time.

Example 17 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 specialised 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 their review/assessment.

Analysis: **Consulting Expert** – the Member is using the Member's accounting knowledge 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 accounting knowledge, training and experience.

However, if at any stage during this process, it is decided that the Member either is, or is likely to give evidence in this matter then it would become an **Expert Witness Service** from that time.

Example 18 Member requested to determine amount of compensation on an insurance or statutory scheme

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 specialised 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 their assessment.

Analysis: Consulting Expert – the Member is using his/her accounting knowledge 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 accounting knowledge, training and experience.

However, if at any stage during this process, it is decided that the Member either is, or is likely to give evidence in this matter then it would become an **Expert Witness Service** from that time.

Example 19 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 their 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 opinion 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 the Member's accounting knowledge in their statement to assist the Court in understanding the matter and assist in determining what action should be taken, and is not giving evidence (expert or lay) 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 at any stage during the process, it is decided that the Member either is or is likely to be asked to provide an opinion in Court proceedings, then the Member would become an **Expert Witness** from that time.

APPENDIX 4

Summary of revisions to the previous APES 215 (Issued December 2008)

APES 215 *Forensic Accounting Services* originally issued in October 2008 has been revised by APESB in XX 2012. A summary of the revisions is given in the table below.

Table of revisions*

<u>Paragraph affected</u>	<u>How affected</u>
<u>1.1</u>	<u>Amended</u>
<u>1.7</u>	<u>Amended</u>
<u>2 – Definition of Court</u>	<u>Amended</u>
<u>2 – Definition of Expert Witness</u>	<u>Amended</u>
<u>2 – Definition of Independence</u>	<u>Amended</u>
<u>2 – Definition of Lay Witness</u>	<u>Amended</u>
<u>3.15</u>	<u>Amended</u>
<u>3.18</u>	<u>Amended</u>
<u>5.4</u>	<u>Amended</u>
<u>5.6(f)</u>	<u>Amended</u>
<u>5.6(g)</u>	<u>Amended</u>
<u>5.6(i)</u>	<u>Amended</u>
<u>5.6(j)</u>	<u>Amended</u>
<u>5.6(k)</u>	<u>Amended</u>
<u>5.6(l)</u>	<u>Amended</u>
<u>6.2</u>	<u>Amended</u>
<u>7.4</u>	<u>Added</u>
<u>Appendix 2 (Schematic Diagram)</u>	<u>Added</u>
<u>Appendix 3 (Examples)</u>	<u>Added</u>

* Refer Technical Update 2012/2