

# CILEx Regulation-ACCA Handbook 2021

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### Interpretation

In these regulations, unless otherwise provided;

ACCA	means the Association of Chartered Certified Accountants
Authorisation	means: <ol style="list-style-type: none"><li>authorisation by CILEx Regulation as a CILEX -ACCA firm</li><li>authorisation or approval by CILEx Regulation as a Relevant Person / CILEx Practitioner (ACCA-Probate)</li></ol>
Authorised Person	has the same meaning as in section 18 of the Legal Services Act 2007;
Bye-laws	means the bye-laws of CILEx
CILEx	means The Chartered Institute of Legal Executives
CILEx-ACCA Probate Entity	means a partnership (including a limited liability partnership), company or sole principal authorised by CILEx under the Legal Services Act 2007 to carry on probate activities which is a reserved legal activity.
CILEx Practitioner (ACCA-Probate)	means a person who is authorised by CILEx Regulation to carry on probate activities which is a reserved legal activity
CILEx Regulation	means CILEx Regulation Limited
FGI	means Fidelity Guarantee Insurance
Enforcement Rules	means the Rules of CILEx which are in place from time to time and which govern the complaints handling, misconduct investigation and disciplinary procedures of CILEx Regulation
Legal Ombudsman	means the Legal Ombudsman for England and Wales set up by the Office for Legal Complaints under the Legal Services Act 2007
Non-contentious probate	means probate work that relates to transactions occurring between one or more parties, for which they do not seek or require appearance in a court or tribunal.

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PII	means Professional Indemnity Insurance
Regulatory conflict	A regulatory conflict is defined in section 54 Legal Services Act as:  ' a conflict between—  (a) a requirement of the regulatory arrangements of the approved regulator, and  (b) a requirement of any regulatory provision made by an external regulatory body.
Reserved legal activity	has the same meaning as in the Legal Services Act 2007

## 1. Application, Citation and Commencement

- 1.1 The regulations contained herein form the CILEx Regulation-ACCA Handbook and shall apply to all ACCA entities and individuals regulated by CILEx Regulation for the reserved legal activity of probate.
- 1.2 These regulations extend to non-contentious probate business only.
- 1.3 These regulations extend to England and Wales only.
- 1.4 These regulations will apply in conjunction with any additional obligations imposed by ACCA and are not intended to replace or supersede any such obligations.
- 1.5 The regulations and annexes contained herein may be cited as the CILEx Regulation-ACCA Handbook 2021.
- 1.6 These regulations and annexes shall come into force on \_\_\_\_\_.

## 2. Eligibility for Legal Activities Authorisation

### ACCA Members

- 2.1 ACCA members responsible for a firm's engagements to provide reserved legal activities shall be required to obtain the relevant legal activities qualifications in accordance with regulation 4. A legal activities qualification will convey to the holder the necessary authorisation to carry on that reserved legal activity.

### Non-ACCA Members

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- 2.2 Non-ACCA members responsible for engagements to provide reserved legal activities in a firm holding an appropriate legal activities certificate shall be required to obtain the relevant legal activities qualifications in accordance with regulation 4, or otherwise demonstrate their authorisation to carry on those reserved legal activities. A legal activities qualification will convey to the holder the necessary authorisation to carry on that reserved legal activity.

### ACCA and Non-ACCA Members

- 2.3 ACCA and non-ACCA members responsible for a firm's engagements to provide reserved legal activities shall be additionally required to provide undertakings to be bound by the following:
- (a) the CILEx Regulation continuing professional development regulations;
  - (b) the CILEx-ACCA Code of Conduct; and
  - (c) the CILEx Regulation Enforcement procedures and penalties which may be imposed under such provisions insofar as such penalties could be applicable.
  - (d) the CILEx Regulation-ACCA Handbook.

## 3. Eligibility for a Firm's Legal Activities Certificate

- 3.1 A firm's legal activities certificate will convey to the holder the necessary authorisation to carry on the reserved legal activity or activities to which the certificate relates. A firm shall be eligible for authorisation to carry on a reserved legal activity if:
- (a) each of the individuals responsible for the firm's reserved legal activities holds a legal activities qualification, or, in the case of non-members of ACCA, holds an equivalent authorisation; and
  - (b) it is controlled by authorised persons within the meaning of regulation 5; and
  - (c) it is fit and proper within the meaning of regulation 6; and
  - (d) you must not receive, control or handle client money apart from what the client pays you for your services; and
  - (e) it holds the necessary PII and FGI in accordance with regulation 7; and
  - (e) it has made arrangements for the continuity of its practice in accordance with regulation 8; and
  - (f) it undertakes to be bound by the regulations contained within this handbook.

## 4. Legal Activities Qualifications

Qualifications required to hold a practising certificate issued by CILEx Regulation:

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- 4.1 To be qualified to hold a practising certificate issued by CILEx Regulation, an individual will need to meet the requirements of Annex 1.

Qualifications required to carry on a reserved legal activity:

- 4.2 To be qualified to carry on a reserved legal activity, an individual must have met the requirements of Annex 2.

## 5. Meaning of Firm Controlled by Authorised Persons

- 5.1 Firms controlled by authorised persons are authorised for carrying on reserved legal activities in accordance with regulation 3.
- 5.2 A firm shall only be regarded as controlled by authorised persons for the purposes of regulation 3 where:
- (a) all of the partners or all of the directors and shareholders of the firm, or all of the members and designated members of a limited liability partnership, are authorised persons; and
  - (b) if the firm's affairs are managed by a board of directors, committee or other management body, all of that body are authorised persons.
- 5.3 References in regulation 5.2 above to a person being authorised are, in relation to an individual, to their being qualified to carry on reserved legal activities in accordance with regulation 4.2.

## 6. Fit and Proper Persons

- 6.1 Annex 3 applies to authorised persons where authorisation to carry on a reserved legal activity is concerned.
- 6.2 In determining whether a person is "fit and proper", CILEx Regulation:
- (a) may take into account whether that person has contravened any provision of law relating to the carrying on of reserved legal activities;
  - (b) shall take into account whether that person has contravened any law or regulation or undertaken any practices or conduct referred to in relevant law, regulation or guidance issued by a body with responsibility for the regulation of the activities of the holder of the certificate or of CILEx Regulation in its regulation of such activities;
  - (c) may take into account any matter which relates to the person and any matter relating to any person who is or will be employed by or associated with the person for the purposes of or in connection with the operation of a CILEx-ACCA Probate Entity.

## 7. Professional Indemnity Insurance

Legal activities certificates held by firms

- 7.1 Annex 4 applies to applicants for, and firms holding, legal activities certificates.

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### Limits

- 7.2 Firms wishing to hold, or continue holding, a legal activities certificate that authorises the firm to carry on the reserved legal activity of probate must effect professional indemnity insurance with minimum limits of indemnity of £500,000 in respect of each and every claim.

### Continuity following cessation

- 7.3 Annex 4(5) applies to all persons subject to the regulations contained within this handbook in respect of their ceasing to operate a CILEx-ACCA firm. In addition, firms that have effected a higher level of indemnity in respect of probate activities should ensure that such cover remains for a period of six years after they cease to engage in probate activities.

## 8. Continuing Professional Development

- 8.1 Firms holding a legal activities certificate must require all those responsible for the firm's reserved legal activities who are partners or directors or, in the case of a limited liability partnership, members or designated members, or agents, who are not members but who are responsible for the firm's reserved legal activities to obtain continuing professional development (CPD), and be able to demonstrate that they have obtained CPD. This includes compliance with regulation 8(2) below.
- 8.2 Individuals authorised to carry on one or more reserved legal activities must maintain competence in those reserved legal activities and comply with the CPD requirements for CILEx Practitioners set out within the CILEx Regulation CPD Regulations.

## 9. Continuity of Practice

- 9.1 Annex 5 shall be applicable to all firms holding a legal activities certificate.

## 10. Notification

- 10.1 Firms holding a legal activities certificate must comply with Annex 6.
- 10.2 Additionally, firms shall give written notice forthwith of the commencing of proceedings against any authorised person of the firm or any actions for damages, injunctions or restitution orders connected with regulated work carried on by the individual in question.

## 11. Conduct of Reserved Legal Activities

- 11.1 In the conduct of reserved legal activities, authorised individuals and firms holding a legal activities certificate shall comply with all applicable laws and regulations, including:
- (a) all applicable sections of this handbook, including the Code of Conduct at Annex 8; and
  - (b) the Legal Services Act 2007.



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### 12. Monitoring

- 12.1 Authorised individuals and firms holding a legal activities certificate shall be subject to monitoring by CILEx Regulation in accordance with Annex 7.

### 13. Complaints Handling by Firms

- 13.1 Firms holding a legal activities certificate shall establish procedures to deal with complaints.

- 13.2 The firm's procedures to deal with complaints shall require that:

(a) at the beginning of an engagement (and existing clients, at the next appropriate opportunity), clients are notified, in writing, of:

(i) the client's right to complain to the firm, including how to complain and the name of the individual to be contacted in the event of a complaint; and

(ii) the client's right to complain to the Legal Ombudsman at the end of the firm's complaintshandling process if the client is not satisfied with the outcome; and

(iii) the point at which a complaint may be made to the Legal Ombudsman, and how to contact the Legal Ombudsman; and

(iv) the client's right to complain to CILEx Regulation if the complaint does not fall within the Legal Ombudsman Scheme Rules;

(b) complaints received are acknowledged promptly;

(c) complaints made orally are acknowledged in writing, stating the firm's understanding of the nature of the complaint;

(d) complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint;

(e) complaints are investigated in a fair, prompt, constructive and honest manner;

(f) records are maintained of the way in which each complaint is handled;

(g) the client is notified promptly, in writing, of the outcome of the investigation of the complaint and, if the client is not satisfied with the outcome, of:

(i) the client's right to complain to the Legal Ombudsman, the time limit for doing so, and how to contact the Legal Ombudsman; and

(ii) the client's right to complain to CILEx Regulation if the complaint does not fall within the Legal Ombudsman Scheme Rules;

(h) any appropriate remedial action is promptly taken;

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(i) if, after eight weeks following the making of the complaint, the client has not been notified, in writing, of the outcome of the investigation, the client is informed, in writing, of

(i) the client's right to complain to the Legal Ombudsman, the time limit for doing so, and how to contact the Legal Ombudsman; and

(ii) the client's right to complain to CILEx Regulation if the complaint does not fall within the Legal Ombudsman Scheme Rules.

### 14. Investigation of complaints

- 14.1 Authorised individuals and firms holding a legal activities certificate shall cooperate with any investigation by the Legal Ombudsman and promptly comply with any decision or remedy ordered by the Legal Ombudsman.
- 14.2 Authorised individuals and firms holding a legal activities certificate must comply with the investigation arrangements of CILEx Regulation, and shall be subject to the enforcement procedures and processes of CILEx Regulation in accordance with the requirements of the CILEx Regulation Enforcement Rules.

### 15. Disclosure of information

- 15.1 Authorised individuals and firms holding a legal activities certificate must supply CILEx Regulation with all necessary information to enable CILEx Regulation to comply with its obligations to the Legal Services Board, the Legal Ombudsman and other bodies in its capacity as an approved regulator under the Legal Services Act 2007.

### 16. Transparency Requirements

- 16.1 A CILEx-ACCA Probate Entity must
- a) publish on, or via a link from, its **website homepage** the information set out at regulation 16.2-16.7, or
  - b) if it does not have a website, make available on request the information set out at regulation 16.2-16.7.
  - c) adhere to the CILEx-ACCA Code of Conduct for the time being in force, including but not limited to, Principles 2, 4 and 5. A **CILEx-ACCA Probate Entity** is bound by the associated regulatory arrangements in force from time to time.

#### **PRICE information**

- 16.2 Price information must include:
- a) The **total price** of the legal service being provided.
  - b) The basis on which the **total price** is calculated, for example, fixed fee or hourly rate.

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- c) The services that are included in the published **total price**, and services that might reasonably be expected to be included in the published **total price** but are not.
- d) The price of all disbursements payable, together with an explanation of the disbursement.
- e) The prices and disbursements on which VAT must be paid and the amount of VAT payable.

### **SERVICE information**

16.3 Service information must include:

- a) A description of non-contentious probate.
- b) The key stages of non-contentious probate.
- c) Typical timescales for each stage of non-contentious probate.

### **COMPLAINTS AND REDRESS information**

16.4 A **CILEX-ACCA Probate Entity** must publish details of its free complaints handling procedure including how and when a complaint can be referred to the Legal Ombudsman and to CILEx Regulation.

### **REGULATORY information**

- 16.5 A **CILEX-ACCA Probate Entity** must state that it is required to have Professional Indemnity Insurance (PII) to cover non-contentious probate and any related work.
- 16.6 A **CILEX-ACCA Probate Entity** must display on the company's letter headed paper, emails and on the home page of its website the wording that it is 'Authorised and regulated as a CILEX-ACCA Probate Entity' followed by its Authorisation number.
- 16.7 A **CILEX-ACCA Probate Entity** must display on the home page of its website the **CILEX-ACCA logo** relating to probate for which the firm is authorised.

### **Interpretation**

16.8 In these regulations, unless otherwise provided:

<b>logo:</b>	means any CILEx Regulation logo or smart badge that any <b>CILEX-ACCA Probate Entity</b> is authorised to display.
<b>total price:</b>	means all costs that must be paid for a legal service including, but not exclusively, the legal fees, disbursements, any other costs and VAT on these elements where payable.
<b>website homepage</b>	means the website of the <b>CILEx-ACCA Probate Entity</b> or the website of the ACCA Accountancy firm

### 17. Appeals

17.1 An appeal may be made against any of the following decisions made by CILEx Regulation under these rules:

- (a) refusal of an application for authorisation;
- (b) revocation of authorisation;
- (c) refusal of an application to be a CILEx Practitioner (ACCA-Probate);
- (d) withdrawal of CILEx Practitioner (ACCA-Probate) designation from an individual.

Entity

17.2 An appeal may be made by giving notice to the Appeals Panel established under the CILEx Regulation Enforcement Rules.

17.3 Any such person or organisation must lodge an application for reconsideration at the CILEx Regulation offices within 20 working days of receiving written notification of the decision. This may be submitted by email to [applications@cilexregulation.org.uk](mailto:applications@cilexregulation.org.uk). The application must include written reasons why it should be reconsidered.

17.4 Appeals will be considered by an Appeal Panel comprising a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on CILEx Regulation's appeal bodies under the CILEx Regulation Enforcement Rules. The Appeal Panel will have available to it all the powers available to at the original consideration of the application.

Individual

17.5 Whenever the Officer is unable to make a decision on an individual application or takes the view that the matter requires Committee consideration, they may refer the matter to the Admissions and Licensing Committee.

17.6 A person or organisation affected by any decision which the Admissions and Licensing Committee makes pursuant to its powers under the Admissions and Licensing Committee Rules may apply for reconsideration of that decision.

17.7 Any such person or organisation must lodge an application for reconsideration at the CILEx Regulation offices within 20 working days of receiving written notification of the decision. This may be submitted by email to [applications@cilexregulation.org.uk](mailto:applications@cilexregulation.org.uk). The application must include written reasons why it should be reconsidered.

17.8 Where an application is reconsidered by the Admissions and Licensing Committee it shall have all the powers that were available to it at the original consideration of the application. The applicant shall have a right to be heard by the Committee when it reconsiders their application.

17.9 An appeal may be made against the decision reached by the Admissions and Licensing Committee.

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- 17.10 Any such person or organisation must lodge an application for reconsideration at the CILEx Regulation offices within 20 working days of receiving written notification of the decision. This may be submitted by email to [applications@cilexregulation.org.uk](mailto:applications@cilexregulation.org.uk). The application must include written reasons why it should be reconsidered.
- 17.11 Appeals will be considered by an Appeal Panel comprising a professional member and two lay members drawn from the panel of lay and professional members appointed to serve on CILEx Regulation's appeal bodies under the CILEx Regulation Enforcement Rules. The Appeal Panel will have available to it all the powers available to the Admissions and Licensing Committee at the original consideration of the application.

## 18. Interventions

- 18.1 For the purposes of intervention under rule 5 (2) (a) of The Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014, a CILEx-ACCA Probate Entity will be treated as a CILEx Authorised Entity.

## 19. Legal Professional Privilege

- 19.1 CILEx Regulation may inspect material that is subject to a CILEX-ACCA Probate Entities client's legal professional privilege (LPP) or confidentiality but may only use such material for its regulatory purposes.
- 19.2 CILEx Regulation also protects the LPP and confidentiality of clients. LPP material will not be disclosed by CILEx Regulation to any other person other than where necessary for its regulatory purposes. Material that is not subject to LPP may be disclosable in the public interest, in the absolute discretion of CILEx Regulation, including material comprising communications in furtherance of crime or fraud.

## 20. Dealing with regulatory conflicts

- 20.1 If a conflict arises between a requirement imposed on an CILEX-ACCA-Probate Firm or a CILEX Practitioner (ACCA-Probate) by CILEx Regulation as the regulator of the firm and individual, and on the individual by another approved regulator, then the requirement imposed by CILEx Regulation prevails over the requirement imposed by the other approved regulator.
- 20.2 If a conflict arises between a requirement imposed on an ACCA accountancy practice or CILEX Practitioner (ACCA-Probate) by another approved regulator as the regulator of the accountancy practice and the accountant, then the requirement imposed by ACCA prevails over the requirement imposed by CILEx Regulation

## Annexes:

### Annex 1 - The Practising Certificate

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- (1) The practising certificate issued by CILEx Regulation shall authorise the carrying on of the activities as specified in the holder's application.
- (2) An individual shall be eligible for a practising certificate where:
- (a) they are sufficiently qualified in accordance with Annex 2 to carry on any activity constituting public practice;
  - (b) they are fit and proper within the meaning of Annex 3;
  - (c) they hold the necessary PII in accordance with Annex 4; and
  - (d) they have made arrangements for the continuity of their practice in accordance with Annex 5.

## Annex 2 – Qualifications

### (1) Qualification required to hold a practising certificate

To be qualified to hold a practising certificate authorising the carrying on the reserved legal activity of probate, an individual must:

- (a) if they are an ACCA member,
  - (i) hold an ACCA practising certificate; and
  - (ii) have successfully completed a course of training and assessment in the reserved legal activity, as prescribed by CILEx Regulation<sup>1</sup>, and provided CILEx Regulation with evidence of the individual's skill and competence in the reserved legal activity in a manner prescribed by CILEx Regulation; or
- (b) if they are not an ACCA member, be a member of another member body of the International Federation of Accountants and be entitled to practise accountancy, and
  - (i) have successfully completed a course of training and assessment in the reserved legal activity, as prescribed by CILEx Regulation, and provided CILEx Regulation with evidence of the individual's skill and competence in the reserved legal activity in a manner prescribed by CILEx Regulation; or
  - (ii) hold, or be eligible to hold, authorisation to carry on the reserved legal activity with another approved regulator; or
  - (ii) be otherwise entitled to carry on the reserved legal activity under the Legal Services Act 2007.

## Annex 3 – Fit and Proper Persons

(1) CILEx Regulation shall only issue a practising certificate to an applicant that is fit and proper, as determined by it in accordance with this Annex 3.

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<sup>1</sup> CILEx Regulation currently recognises the ACCA-Probate qualification offered by Altior by BARBRI. It is open to other training providers to apply to become recognised to deliver a training course which meets the requirements prescribed by CILEx Regulation. Further details as to how to apply can be found at Annex 9.

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(2) In determining whether a person is “fit and proper”, CILEx Regulation may, without limitation, take into account whether that person has:

- (a) been convicted of a criminal offence; or
- (b) been the subject of a disciplinary order made by CILEx Regulation, ACCA or another professional body; or
- (c) been or is the subject of an investigation, whether criminal, disciplinary or otherwise, in respect of their conduct; or
- (d) committed a material breach of an applicable rule or regulation of CILEx Regulation; or
- (e) fallen within any of the criteria set out at Annexes 3(4) and (5); or
- (f) on any occasion given CILEx Regulation false, inaccurate or misleading information and/or failed to co-operate with CILEx Regulation.

(3) CILEx Regulation may take into account all current and past matters which impact on the ability to hold a practising certificate.

(4) In the case of individuals, the criteria referred to in Annex 3(2)(e) are whether the person is or has been:

- (a) at any time bankrupt, signed a trust deed for creditors or entered into a deed of arrangement, scheme or composition in respect of their financial affairs (or any similar or analogous event); or
- (b) removed from the office of liquidator, trustee, administrative receiver, administrator or supervisor; or
- (c) the subject of a disqualification order or disqualification undertaking made under the Company Directors Disqualification Act 1986 of the United Kingdom; or
- (d) the subject of a bankruptcy restriction order or bankruptcy restriction undertaking under the Insolvency Act 1986 of the United Kingdom; or
- (e) excluded from or refused membership of a professional body on disciplinary grounds; or
- (f) found to have failed to ensure that the experience and competence of their employees and practice associates are adequate, having regard to the nature of the work involved; or
- (g) a patient under the Mental Health Act 1983 of the United Kingdom; or
- (h) the equivalent of or similar to the above criteria under the corresponding legislation of any country or jurisdiction.

(5) In the case of firms, the criteria referred to in Annex 3(2)(e) are as for individuals as specified in Annex 3(4), with such amendments as are appropriate to make the criteria applicable to firms.

(6) In determining whether any person is “fit and proper” for the purposes of this Annex 3, CILEx Regulation may take into account any matter which relates to the person and:

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- (a) any matter relating to any person who is or will be employed by or associated with the person for the purposes of or in connection with public practice;
- (b) in the case of a partnership, any matter relating to any of the partners, any director or controller of any of the partners, any body corporate in the same group as any of the partners and any director or controller of any such other body;
- (c) in the case of a body corporate, any matter relating to any director or controller of the body, any other body corporate in the same group or any director or controller of any such other body; and
- (d) in the case of a limited liability partnership, any matter relating to any of the members or designated members of the limited liability partnership.

## Annex 4 – Professional Indemnity Insurance

### (1) Holders of a practising certificate

- (a) Subject to Annex 4(6), applicants for and holders of a practising certificate must hold professional indemnity insurance (“PII”) covering the liabilities and according with the limits set out in this Annex 4 and, in the case of such a person whose firm employs full and/or part time staff, the firm must also hold a policy of fidelity guarantee insurance (“FGI”) in respect of all partners, directors, members and designated members of limited liability partnerships and employees in accordance with this regulation. For the avoidance of doubt such FGI may, but need not, form a single policy with such PII and all such PII and FGI must remain in force for all of the period during which a relevant practising certificate is held.
- (b) Such PII and FGI may be effected with any reputable insurance company or insurance companies or other underwriter provided that CILEx Regulation reserves the right to require applicants for or holders of a practising certificate not to use certain insurance companies or underwriters, if it so directs.

### (2) Liabilities to be covered

PII shall provide cover in respect of all civil liability incurred in connection with the conduct of the firm’s business by the partners, directors, members and designated members of limited liability partnerships or employees and FGI shall include cover against any acts of fraud or dishonesty by any partner, director or employee in respect of money or goods held in trust by the firm.

### (3) Limits

- (a) The limit of indemnity on PII in respect of each and every claim shall be:
  - (i) in the case of a person whose firm’s total income for the accounting year immediately preceding the year in question (the “relevant total income” and “relevant accounting year”) is less than or equal to £200,000, at least the greatest of:
    - (aa) twenty-five times the largest fee raised by the firm during the relevant accounting year; and
    - (bb) £500,000;



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(ii) in the case of a person whose firm's relevant total income exceeds £200,000 but is less than or equal to £700,000, at least the greater of:

(aa) the aggregate of £300,000 and the firm's relevant total income;  
and

(bb) twenty-five times the largest fee raised by the firm during the relevant accounting year; and

(cc) £500,000

(iii) in the case of a person whose firm's relevant total income exceeds £700,000, at least the greater of:

(aa) £1 million; and

(bb) twenty-five times the largest fee raised by the firm during the relevant accounting year.

(b) The limit of indemnity on PII in respect of year 2021 date recognition claims, where available, may be on an aggregate basis as opposed to an each and every claim basis. The minimum limit on this cover must be calculated in accordance with Annex 4(3)(a).

(c) A firm's "total income" is the aggregate of the firm's professional charges and all other income (including commissions) received by a firm in respect of and in the course of the firm's business, but excluding any commission which the firm passes on to the client.

(d) The "largest fee" raised by a firm relates, in all cases, to the highest cumulative amount of fees raised to a particular client during the year rather than the largest single invoice raised.

(e) Any uninsured excess (that is to say, the amount of any claim which is borne by the firm before there is any payment by the insurer) in accordance with a firm's PII and FGI shall be restricted to 2 per cent of the limit of indemnity in respect of each and every claim provided pursuant to the PII or, as the case may be, FGI or £20,000 per principal in respect of each and every claim, whichever amount is the lesser.

(f) The annual limit of indemnity to be provided by a firm's FGI shall be not less than £50,000 in respect of each and every claim.

### (4) Administrative provisions

(a) (i) Each person subject to Annex 4(1) must on request provide CILEx Regulation with a policy and/or certificate from their insurer or broker as evidence that PII and, if required, FGI is in force in accordance with this regulation as at the practising certificate renewal date of each year, and will remain in force for the year covered by the practising certificate, being PII and, as the case may be, FGI which meets the requirements of this regulation.

(ii) In the event that PII is subject to an aggregate limit and claims are notified during the year in question but not met in that year, the aggregate limit for the following year and, if such claims are not by then met,

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subsequent years should be increased to take account of the amount (or a best estimate of that amount) either paid or reserved for such claims.

(b) The policy terms and wording shall be available for inspection by CILEx Regulation.

(c) Each person subject to Annex 4(1) shall be deemed to have authorised CILEx Regulation to seek, direct from the relevant insurer and/or broker, confirmation of matters of record.

(d) Each person subject to Annex 4(1) must keep a record of insurance claims made by them pursuant to their PII and, as the case may be, FGI.

(e) Such record, together with each annual renewal proposal form, must be available for inspection by CILEx Regulation.

### (5) Continuity following cessation

Persons subject to Annex 4(1) shall ensure that arrangements exist for the continued existence of PII and, as the case may be, FGI for a period of six years after they cease to engage in public practice. Such PII and, as the case may be, FGI shall be on terms satisfying the requirements of this regulation as applied to their business during the year immediately preceding such cessation.

### (6) Exception

An individual who is not a sole proprietor, partner or director of the firm in which he works, or member or designated member of a limited liability partnership, but holds a practising certificate and is responsible for public practice work carried on by the firm, shall be deemed to hold PII in accordance with Annex 4(1) where the firm (or all of them if more than one) in which he works:

(a) is a person subject to Annex 4(1) and holds PII in compliance with Annex 4(1); or

(b) holds PII which CILEx Regulation regards as adequate.

## Annex 5 – Continuity of Practice

### (1) Individuals

(a) A holder of a practising certificate must enter into and keep in force for all of the period during which a practising certificate is held a written agreement with another individual or firm (the “nominee”), providing for the nominee, or nominees if more than one, to be responsible for the individual’s practice in the event of their death or incapacity.

(b) The nominee or nominees must:

(i) be based in the same country as the individual; and

(ii) hold equivalent qualifications and be authorised to carry on the individual's work for which they have undertaken to be responsible.

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(c) Where the individual's practice is based in more than one country, he must comply with this regulation in respect of each country in which he is based, but may appoint different nominees in respect of different countries.

### (2) Firms

(a) A firm must make provision for the continuity of its practice in the event of its dissolution, winding-up or liquidation, or the death or incapacity of an individual holder of a practising certificate who is a partner, director or member of the firm by providing for another individual or firm (the "nominee" or "nominees" if more than one) to be responsible for the firm's practice in those circumstances.

(b) Such provision may be made in the partnership agreement (where the firm is partnership) or in the Memorandum and Articles of Association (where a firm is a company) or in the incorporation document (where the firm is a limited liability partnership) or other such agreement as the members of the limited liability partnership may agree or by entering into and keeping in force for all of the period during which a practising certificate is held a written agreement with another firm.

(c) The nominee or nominees must:

(i) be based in the same country as the firm; and

(ii) hold equivalent qualifications and be authorised to carry on the firm's work for which they have undertaken to be responsible.

(d) An individual holder of a practising certificate who is the sole director or shareholder of the firm may not provide nominee services to that firm.

(e) Where the firm's practice is based in more than one country, it must comply with this regulation in respect of each country in which it is based and may appoint different nominees in respect of different countries.

### (3) Exception for individuals

An individual holder of a practising certificate who does not carry on public practice on his own account shall not have to comply with Annex 5(1) provided any firm of which he is a partner, director, member or designated member of a limited liability partnership or employee and for whom he works has complied with Annex 5(2) or, if it is not subject to that regulation, has made arrangements for the continuity of its practice which CILEx Regulation regards as adequate.

## Annex 6 – Notification

### (1) Notification 28 days in advance

(a) A holder of a practising certificate shall notify CILEx Regulation in writing of the following changes not less than 28 days before the change is implemented:

(i) a change in the name of the holder, or where it is a body corporate, its registered name and, in the case of a firm, of any partner, member or designated member or director or controller of it;

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(ii) a change in the address of the holder's principal or, in the case of a body corporate, registered office or, if different, the address of the place for service of notices or documents;

(iii) the opening or closure of a branch office of the holder;

(iv) the disposal or cessation of a holder's practice.

(b) Notification of a change of name of a person holding a practising certificate shall be accompanied by an application for a new practising certificate of the relevant type from the stated date.

### (2) Notification forthwith

A holder of a practising certificate shall give written notice forthwith to CILEx Regulation of the occurrence of any of the following, setting out in the notice details of the event in question and any other relevant information:

(a) in the case of a partner, member or designated member or director of a firm, a person has become or ceased to be a partner, member or designated member or director of it, and, in the case of a body corporate, a person has become or ceased to be a controller of it and, in the case of a sole practitioner, he has ceased to practise;

(b) the appointment of a receiver, administrator, trustee, judicial factor or sequestrator of the assets of the holder (or the happening of any similar or analogous event) or, in the case of a firm, of any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it;

(c) the making or any proposals for the making of a composition or arrangement with creditors or any one creditor of the holder or, in the case of a firm, of any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it;

(d) where the holder is a partnership, an application or notice to dissolve the partnership and where it is a body corporate, the presentation of a petition for winding-up or the summoning of any meeting to consider a resolution to wind up the body corporate or any other body corporate in its group;

(e) the granting or refusal of any application for, or revocation of, a recognised professional qualification or any certificate entitling the holder or, in the case of a firm, any partner, member or designated member or director of it and, in the case of a body corporate, a controller of it to carry on company audit work from another qualifying or supervisory body or authorisation to carry on insolvency, investment, banking or insurance business;

(f) the appointment of inspectors by a statutory or regulatory authority to investigate the affairs of the holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it;

(g) the imposition of disciplinary measures or sanctions on the holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it by any other regulatory authority or professional body of which he or such a person is a member;

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(h) in relation to a holder or, in the case of a firm, any partner, member or designated member or director of it or controller of it:

(i) the institution and abandonment or completion of proceedings in relation to and/or a conviction for any offence involving fraud or other dishonesty;

(ii) the institution and abandonment or completion of proceedings in relation to and/or a conviction for any offence under legislation relating to investment, banking, building societies, companies, consumer credit, credit unions, friendly societies, industrial and provident societies, insolvency, insurance or other financial services;

(iii) the presentation of a petition for a bankruptcy order or an award of sequestration;

(iv) the making of an order by a court disqualifying that individual from serving as director or as a restricted director or as a disqualified director of a company or from being concerned with the management of a company;

(v) the commencement by the police or any other authority of an investigation into any matter related to public practice, or any other matter which might reasonably affect CILEx Regulation's willingness to grant or renew a practising certificate of a type relevant to the activities in question;

(i) the disappearance of a partner, member or designated member of a firm such that he is no longer contactable by the other partners or members of the firm;

(j) the happening of any event which causes the holder to cease to be eligible for the practising certificate;

(k) any changes in any of the information previously supplied to CILEx Regulation;

(l) any other information relevant to the determination by CILEx Regulation of the fitness and propriety of the holder in accordance with Annex 3;

(m) any other information that CILEx Regulation may require in connection with the requirements of these regulations.

### (3) Force Majeure

If any event happens or any circumstances arise which make it impossible, impracticable or unreasonable for a person to comply with this Annex 6, provided the person takes all practicable steps to relieve the situation and complies with this regulation as soon as the event or circumstances cease to apply, they will not be regarded as having been in breach of this regulation if they fail to comply with it for so long as the event or circumstances do apply.

### (4) Notification obligation

A person who has notified CILEx Regulation that he is carrying on public practice but does not hold a practising certificate when required to do so shall give written notice forthwith to CILEx Regulation of all of the matters referred to in Annex 6 (1)(a) and (2).

## Annex 7 – Monitoring and Compliance

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(1) Persons subject to these regulations shall be subject to monitoring by CILEx Regulation, in order to monitor compliance with these regulations and with the bye-laws, which may be carried out by post, by email, by visiting the person's business premises and/or by any other form of communication.

(2) For the purposes of Annex 7(1), persons subject to these regulations must supply CILEx Regulation with all the information necessary to enable CILEx Regulation to complete its monitoring process efficiently.

(3) Persons subject to these regulations shall, and shall ensure (insofar as they are able) that all persons associated with them shall, co-operate with CILEx Regulation in its monitoring and enforcement of compliance with these regulations and with the bye-laws.

(4) Persons subject to these regulations shall maintain proper books and records at all times to facilitate the proper performance of their duties.

(5) The requirements of this Annex 7 shall apply to persons for as long as they hold a practising certificate, and for a period of five years after they cease to do so for any reason.

(6) For the purposes of this Annex 7, 'practising certificate' includes all types of practising certificates and licences issued by CILEx Regulation.

## Annex 8 - CILEx-ACCA Code of Conduct

This is the Code of Conduct (the Code) for those individuals working in a CILEx-ACCA Probate Entity who are responsible for a firm's engagements to provide reserved legal activities. It sets out the principles for such individuals and sets out the standards to which they must adhere in their conduct, practice and professional performance of legal work, and the outcomes they must meet.

Authorisation and regulated practice carry both privileges and responsibilities. They require that in your conduct, practice and professional performance you must:

- Develop and use your professional knowledge and skills for the benefit of those who use your services
- Maintain good professional relationships with others
- Act in a way that promotes confidence and trust in the legal professions and the provision of legal services.

### Core Principles

You must adhere to the following core principles in the legal work you do and the decisions you make. The principles also help the public to know the standards of conduct and professional performance that are expected of you.

You must:

1. Uphold the rule of law and the impartial administration of justice;
2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services;

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3. Behave with honest and integrity;
4. Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively;
5. Act competently, in the best interests of your client and respect client confidentiality;
6. Treat everyone fairly and without prejudice;
7. Ensure your independence is not compromised;
8. Act effectively and in accordance with proper governance and sound financial and risk management principles;
9. Protect client money and assets.

### Application

You must comply with the Code whenever it applies to you. Your professional and personal conduct will be judged against it and a breach may lead to action being taken against you. Compliance with the Code will be taken into account in considering information which raises a question about your conduct, practice or professional performance.

### The Principles Explained

Each core principle is supported by a series of outcomes. You must adhere to the principles and meet the outcomes.

Where CILEx Regulation provides guidance on the Code of Conduct, this is not exhaustive but is intended to help you to understand our expectations of you. Compliance with any guidance may not be an absolute requirement but you may be called upon to justify a departure from it if your conduct or professional performance is called into question.

### Definitions

In the Code: You and your means a CILEx Practitioner (ACCA-Probate) or a CILEx-ACCA Probate Entity.

1. Uphold the rule of law and the impartial administration of justice.

You must:

- 1.1 understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt;
- 1.2 not knowingly or recklessly allow the court to be misled.

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2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services.

You must:

- 2.1 advise your client of your professional status and that you are authorised to practise and/or regulated for the provision of legal services by CILEx Regulation. Where your practice is regulated by CILEx Regulation your business communications must confirm that;
- 2.2 not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others.

3 Behave with honesty and integrity.

You must:

- 3.1 be honest in all your dealings and in all financial matters;
- 3.2 not intentionally mislead anyone you deal with;
- 3.3 report to CILEx Regulation without delay any suspicion that a person has breached the Code subject to any relevant duty of confidentiality to clients
- 3.4 report to the relevant authority any misconduct of a person which falls to be regulated by that authority subject to any relevant duty of confidentiality to clients;
- 3.5 not hold yourself out as having a qualification or professional status that you do not possess.

4 Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively.

You must:

- 4.1 understand and comply with the law and regulation applicable to you;
- 4.2 take all practicable steps to ensure you can demonstrate that you have adhered to the core Principles and met the associated Outcomes;
- 4.3 not place others in breach of any regulatory requirement or rule of professional conduct;
- 4.4 respond openly, promptly and co-operatively to communications from your regulators and ombudsmen.



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5 Act competently, in the best interests of your client and respect client confidentiality.

You must:

- 5.1 maintain a high level of competence in your legal work and ensure that your legal knowledge is current and of sufficient depth for your role;
- 5.2 identify and address any deficiencies in your knowledge or training, or that of your staff, so as to maintain a level of competence and knowledge appropriate to the legal work and level of responsibility in which you or your staff are engaged;
- 5.3 act only on matters that are within your competence;
- 5.4 not act for a client in an area of law where you have insufficient knowledge or experience;
- 5.5 act on your client's instructions except when to do so would involve a breach of the law or this Code;
- 5.6 not act in a matter where you do not have the right or are not authorised to act;
- 5.7 adequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost, outcome and timescale for the advice and services to be provided;
- 5.8 provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the legal work you are performing for them within agreed timescales;
- 5.9 inform your client fully as to your complaints procedure including their right to refer a complaint to the Legal Ombudsman or CILEx Regulation where appropriate;
- 5.10 not charge a client for the cost of handling a complaint;
- 5.11 where your practice is regulated by CILEx Regulation for the provision of legal services, include in the terms of business with your client, a statement that CILEx Regulation is your regulator for legal services and may seek access to their papers and that, in these circumstances, you will grant CILEx Regulation access unless the client objects;
- 5.12 maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.

6 Treat everyone fairly and without prejudice.

You must:

- 6.1 ensure your business or your role within it, your business model, processes and practices adequately:
  - assist consumers and clients to access justice and the full range of legal services; and

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- provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.

### 7 Ensure your independence is not compromised.

You must:

- 7.1 not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise;
- 7.2 not act or continue to act for a client if you reasonably consider that they are providing instructions under duress or undue influence, except where to withdraw from acting would be detrimental to the client's interests;
- 7.3 where instructions are provided by a third party, confirm them with your client to ensure they are your client's own instructions;
- 7.4 ensure that none of your commercial interests or financial arrangements adversely affect the independence of your advice or your ability to act impartially.

### 8 Act effectively and in accordance with proper governance and sound financial and risk management principles.

You must:

- 8.1 maintain proper standards of legal work and keep accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter;
- 8.2 ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such legal work;
- 8.3 ensure that anyone you ask to perform legal work on your behalf is appropriately qualified and authorised to perform it;
- 8.4 ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the legal work and to ensure issues identified are addressed;
- 8.5 adhere to effective management, oversight and reporting structures;
- 8.6 adhere to effective procedures to ensure compliance with your legal and regulatory obligations.

### 9 Protect client money and assets.

You must:

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- 9.1 identify, assess, manage and promptly address risks to money and assets entrusted to you by clients and others;
- 9.2 effectively monitor the financial stability of your business or your role within it, so as to protect client money and assets from risks associated with the financial position of your business or the business of your employer.

### Further Help and Guidance

If you are unsure how this Code applies to you, contact CILEx Regulation on 01234 845770 or email [info@cilexregulation.org.uk](mailto:info@cilexregulation.org.uk).

## Annex 9 – Applying to become an approved training provider to deliver the ACCA-Probate qualification

### Requirements for approval

Applications to become an approved training provider for delivering the ACCA-Probate qualification should be made using the Training Provider Approved Qualification Policy, with the exception of the requirements in relation to technical knowledge and size and level of the qualification.

In relation to technical knowledge, a training provider applicant must be able to demonstrate that the course of study meets the requirements set out in Annex 10 of this handbook. This replaces pages 5-8 of the Training Provider Handbook.

Size and level of the course of study and assessment is not defined for this course. However, CILEx Regulation will seek assurance that the course and assessment cover the outcomes set out at Annex 10 of this handbook. This replaces pages 9-10 of the Training Provider Handbook.

## Annex 10 – Learning Outcomes for Approved Probate Practice course and assessment for CILEx Practitioners (ACCA-Probate)

LO ref	Learning Outcome	Knowledge, understanding and skills and assessment criteria
1	Understand the Legal Services Act 2007 (The Act) as it applies to probate activities.	The delegate should be able to: <ul style="list-style-type: none"><li>• understand what is meant by a reserved activity</li><li>• understand that preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales is a reserved activity</li><li>• understand and apply CILEx Regulation’s Code of Conduct</li><li>• understand the relationships between the LSB, CILEx Regulation, ACCA, LeO and the Act/Government</li><li>• understand the diversity of frontline legal regulators</li><li>• understand the principle of regulatory independence, and how CILEx Regulation achieves this</li></ul>

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		<ul style="list-style-type: none"> <li>• understand the impact of the recent CMA findings on the legal services market (and ongoing push for change, e.g. to address unmet legal need)</li> </ul>
2	Understand the main principles of the law of trusts and the law of property in so far as they apply to the practice of probate and administration of estates.	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• identify relevant core legal principles or rules, and</li> <li>• apply them appropriately and effectively to the practice of probate and the administration of estates</li> </ul>
3	Understand the requirements for a valid will and of testamentary capacity.	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• identify and apply the relevant law in scenarios concerning testamentary capacity</li> <li>• identify and apply the formal requirements for the execution of wills</li> <li>• identify and apply the relevant law in cases concerning the revocation of wills</li> <li>• identify and apply the law as to the effect of marriage and divorce</li> </ul>
4	Understand how to interpret the contents of a will and advise on the distribution of testate, intestate and partially intestate estates	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• interpret the individual clauses of a will including the administrative provisions</li> <li>• identify situations where gifts fail</li> <li>• identify cases of total or partial intestacy</li> <li>• apply the intestacy rules to advise on the distribution of the estate</li> <li>• identify property passing outside the estate</li> <li>• explain to whom it passes</li> <li>• understand the effect of letters of wishes</li> </ul>
5	Understand the scope for claims under the Inheritance (Family and Dependents) Act 1975	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• identify potential applicants</li> <li>• understand the grounds for making a claim</li> <li>• identify possible ways to minimise such claims</li> </ul>
6	Understand the different types of will trusts and taxation implications.	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• identify the more commonly arising kinds of trust</li> <li>• understand the Inheritance Tax (IHT) rules which apply to these trusts</li> </ul>
7	Understand how to apply the law and practice in connection with an application for a grant of representation.	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• identify cases where a grant of representation is or is not required</li> <li>• identify cases where either a grant of probate, a grant of letters of administration or a grant of letters of administration with the will annexed is required</li> <li>• identify who is entitled to apply for a grant of representation</li> </ul>

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		<ul style="list-style-type: none"> <li>• identify the procedure to apply for a grant of representation identify and be able to complete the documents required to apply for a grant of representation, including the oath and the IHT return</li> </ul>
8	Understand how to administer an estate (both testate and intestate)	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• understand and apply the requirements for Personal Representatives to collect in the assets of the estate</li> <li>• consider which assets should or should not be sold to raise any funds required to pay funeral and administration expenses, tax, debts and legacies</li> <li>• understand the requirement for Personal Representatives to: i) pay pecuniary legacies, ii) vest gifted property in the beneficiaries, distribute the residue and iii) prepare estate accounts.</li> </ul>
9	Understand key aspects of Inheritance Tax	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• understand the use of the nil rate and residence nil rate band</li> <li>• understand how the charge to tax on potentially exempt transfers arises</li> <li>• understand the availability of exemptions and reliefs</li> <li>• understand the use and tax consequences of post death variations.</li> <li>• Identify the dates for payment of tax</li> <li>• Identify and select the most appropriate method of raising funds to pay tax before the issue of the grant</li> <li>• Identify the taxable estate on death</li> <li>• complete the relevant IHT returns</li> <li>• give appropriate advice on inheritance tax planning to a client contemplating making a will</li> </ul>
10	Understand the duties, powers and liabilities of Personal Representatives	<p>The delegate should be able to:</p> <ul style="list-style-type: none"> <li>• apply the law and practice relating to the more commonly used powers of Personal Representatives and Trustees.</li> <li>• understand the administrative and fiduciary duties of trustees</li> <li>• understand the rights and remedies of beneficiaries.</li> <li>• explain the liability of Personal Representatives in respect of Income Tax and Capital Gains Tax.</li> <li>• explain the Capital Gains Tax liability of beneficiaries</li> </ul>