

## EXPLANATORY MEMORANDUM

Minute No.     of 2012 - Minister for Financial Services and Superannuation

Subject -       *Superannuation Industry (Supervision) Act 1993*

*Superannuation Industry (Supervision) Amendment Regulation 2012  
(No. )*

*Superannuation (Self Managed Superannuation Fund Auditors) Fees  
Imposition Act 2012*

*Superannuation Auditor Registration Imposition Regulation 2012*

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SIS Act.

Further provisions that provide for regulations to prescribe details relating to approved self managed superannuation fund (SMSF) auditors are specified in the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and the Superannuation Auditor Registration Imposition Bill 2012.

The purpose of the proposed Regulations is to amend the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) to:

- require approved SMSF auditors to meet specified criteria in order to conduct audits of self managed superannuation funds;
- require certain fee amounts to be due and payable by the day specified; and
- provide for transitional arrangements to apply for existing experienced approved auditors.

The Super System Review found that while some approved auditors are subject to minimum competency standards through their professional association, not all approved auditors are subject to the same enforcement actions.

In addition, the Super System Review identified issues with SMSF auditor independence. The ATO's 2009 compliance activities targeting high risk approved auditors identified that 29 per cent of those auditors were the SMSF's accountant and had prepared a material part of its financial statements. Also, 28 per cent of those auditors exhibited evidence of a relationship or conflict of interest that might impact the auditor's ability to be independent.

Auditors of SMSFs are required to assess the fund's overall compliance with the law and the fund's financial statements. The annual audit provides assurance to the Government and the general public that SMSFs are complying with the superannuation laws. This is particularly important given the level of taxation concessions provided to complying superannuation funds. Since auditors play a crucial role in the regulation of the SMSF sector, it is necessary that SMSF auditors have a high standard of competency.

The proposed Regulations will specify the qualifications, practical experience, continuing professional development, professional indemnity requirements and auditor independence requirements that must be satisfied by auditors of SMSFs. This

will raise the standard of SMSF auditor competency and ensure there is a set of minimum standards that apply across the entire sector.

The proposed Regulations will also specify when fees must be paid and the amount that must be paid. Fees will be payable for applying for registration, undertaking a competency exam and submitting an annual statement to the Regulator. Additionally, approved SMSF auditors may be liable for additional fees if they do not submit their annual statement on time, fail to notify ASIC of certain matters on time and fees will be payable for certain searches of a register kept by ASIC under the SIS Act. The proposed Regulations will ensure that these fees are paid by indicating when they are due and payable.

The proposed Regulations will also specify the transitional arrangements that will apply to approved SMSF auditors before 1 July 2013. Transitional arrangements will give recognition to existing approved auditors who are highly experienced and competent.

Details of the proposed Regulations are provided in Attachment 1.

The proposed Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations will commence on 31 January 2013.

The Minute recommends that the Regulations be made in the form proposed.

Authority: Subsection 353(1) of the  
*Superannuation Industry  
(Supervision) Act 1993*

**Details of the proposed *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. )***

**Section 1** will specify the name of the Regulation is the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. )*.

**Section 2** will provide that the Regulation will commence on 31 January 2013.

**Section 3** will provide that Schedule 1 will amend the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

**Schedule 1 – Amendments**

**Item 1** will insert into subregulation 1.03(1) that a registered company auditor has the same meaning as in section 9 of the *Corporations Act 2001*.

**Item 2** will make an amendment to the current requirements to be an approved auditor in subregulation 1.04(2). As ‘approved SMSF auditor’ will be separately defined in the SIS Act (following an amendment through the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012), the specifications of an auditor for an SMSF can be removed in this subregulation.

**Item 3** will insert Part 9A – Approved SMSF auditors into the SIS Regulations to specify the eligibility requirements that a person must meet in order for ASIC to grant the person’s application for registration as an approved SMSF auditor.

Regulation 9A.01 will prescribe qualifications that a person must meet to be eligible for registration as an approved SMSF auditor. The applicant must have one of the following qualifications:

- (1) A degree, diploma or certificate in accounting of not less than 3 years, which includes a course in audit, from a university or institution mentioned in regulation 9.2.02 of the *Corporations Regulations 2001*; or
- (2) A degree, diploma or certificate in accounting of not less than 3 years, which does not include a course in audit if the applicant has satisfactorily completed a course in audit that is mentioned in 9.2.03 of the *Corporations Regulations 2001*; or
- (3) A degree, diploma or certificate which ASIC regards as equivalent to the degree, diploma or certificate mentioned in (1).

Regulation 9A.02 will prescribe the practical experience that a person must have to be eligible for registration as an approved SMSF auditor. This will require at least 300 hours of work in auditing SMSFs under the direction of an approved SMSF auditor in the three years immediately before making an application to be an approved SMSF auditor or practical experience that ASIC regards as equivalent.

Regulation 9A.03 will prescribe the continuing professional development requirements required. Each of the following are continuing professional development requirements that must be completed:

- an approved SMSF auditor must undertake at least 120 hours of continuing professional development training every three years; and
- the training must include 30 hours of training about superannuation, of which 8 hours is training about SMSF auditing; and
- the training must be training that could reasonably be expected to enhance an approved SMSF auditor's technical skills or professional service delivery.

The approved SMSF auditor must also keep a written record of the training they have undertaken for at least 3 years after the end of the calendar year in which the training occurred.

Regulation 9A.04 will prescribe the level of professional indemnity insurance required as either:

- a level set under a limitation of liability scheme provided by a professional organisation mentioned in Schedule 1AAA; or
- the level that is adequate to ensure that the amount of coverage in relation to a single claim or in aggregate is at least \$500,000 and in the opinion of ASIC is adequate because other terms of the policy will indemnify the auditor against civil liability that may arise from an act, error, or omission in connection with audits of self managed superannuation funds.

Without limiting the criteria on which ASIC may assess the adequacy of a professional indemnity insurance policy, ASIC will generally require the policy to have as minimum the characteristics outlined in the following table.

General terms	<p>The insurance policy must:</p> <ul style="list-style-type: none"> <li>• cover any civil legal liability (up to at least \$500,000) arising in relation to a SIS Act audit of a SMSF, including liability arising out of fraud/dishonesty of directors/partners, employees and contractors of the Practice (although fraud cover is not required for sole traders);</li> <li>• cover costs and expenses incurred when defending and settling claims arising out of a civil legal liability, including legal costs and expenses of investigation. A cost-in-addition cover is preferred;</li> <li>• not be cancellable by the insurer solely because of an innocent non-disclosure or misrepresentation;</li> <li>• may cover claims for audits other than audits under the SIS Act; and</li> <li>• be on ordinary commercial terms offered by insurers for insurance of that type at the time the insurance contract is entered into.</li> </ul> <p>Note 1: "Practice" means a business providing professional services.  Note 2: "Professional Services" means services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.</p>
Persons covered	<p>The policy must cover:</p> <ul style="list-style-type: none"> <li>• the approved SMSF auditor, directors, partners and</li> </ul>

	<p>employees; and</p> <ul style="list-style-type: none"> <li>• contractors, if they do not have their own professional indemnity cover, then the approved SMSF auditor must have cover that includes the work of contractors for which the approved SMSF auditor is liable.</li> </ul>
Excess/deductibles	<p>The amount of excess in a policy has to be set at a level which the approved SMSF auditor has sufficient financial resources to cover but without affecting the minimum level of cover.</p> <p>Note 1: A practice with a lower cash flow available to meet claims might require a larger amount of cover and/or cover with a lower excess. If there is a limited asset base available to meet claims, a policy with a lower excess might be preferable.</p> <p>Note 2: If a professional indemnity insurance policy has a significant excess or deductible in proportion to the limit of indemnity, it may not be adequate.</p> <p>Note 3: In some circumstances, we may accept a bank guarantee that covers the amount of the any deductible or excess.</p>
Automatic reinstatement	<p>The policy must include at least one automatic reinstatement.</p> <p>Note: Automatic reinstatement means that if the limit of the policy is exhausted before the end of the policy period, the limit of indemnity is reinstated for the balance of the period to cover any new claims that might arise. This is important, as approved SMSF auditors must ensure their professional indemnity insurance cover is adequate at all times.</p>

Regulation 9A.05 will prescribe the auditor independence requirements. In particular, the auditor independence requirements produced by the Accounting Professional and Ethical Standards Board as set out in the APES 110 Code of Ethics for Professional Accountants will need to be complied with by all approved SMSF auditors.

Regulation 9A.06 will specify when fees imposed under the Superannuation Auditor Registration Imposition Bill 2012 are due and payable.

A fee for applying for registration will be due and payable when the application is submitted. A fee for undertaking a competency examination is due and payable when applying to sit the exam. A fee for giving ASIC an annual statement is due and payable when the statement is submitted. A fee for inspecting or searching a register that ASIC keeps under Division 1A of the SIS Act for a current or historical extract will be due and payable when the request is made. There will be no fee for online searches of these registers.

**Item 4** will insert Part 14 to specify the transitional arrangements that will apply to current approved auditors of SMSFs.

Regulation 14.01 will insert circumstances in a table under which transitional arrangements for applications as an approved SMSF auditor submitted before 1 July 2013 will apply.

Item 1 in the table will prescribe that an approved auditor who has signed off on an SMSF audit in the 12 months immediately before applying for registration as an

approved SMSF auditor will not be required to meet the practical experience requirement to become registered.

Item 2 in the table will prescribe that an approved auditor who has signed off on at least 20 audits in the 12 months immediately before applying for registration as an approved SMSF auditor will not be required to sit a competency exam to become registered.

Item 3 in the table will prescribe that an approved auditor who is a registered company auditor before 1 July 2013 will not be required to meet the practical experience requirement or sit a competency exam in applying for registration as an approved SMSF auditor.

**Item 5** will amend item 3 of the table in Schedule 1AAA to replace the National Institute of Accountants with the Institute of Public Accountants as a name change occurred in 2011.

**Details of the proposed Superannuation Auditor Registration Imposition Regulation 2012)**

**Section 1** will specify the name of the Regulation is the *Superannuation Auditor Registration Imposition Regulation 2012*.

**Section 2** will provide that the Regulation will commence on 31 January 2013.

**Section 3** will provide that in this Regulation, Act means the *Superannuation Auditor Registration Imposition Act 2012* and SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

**Section 4** will prescribe fee amounts for the matters for which fees are due and payable under section 128L of the SIS Act.

Fee amounts are outlined in the following table.

<i>Fee payable for...</i>	<i>Fee (\$)</i>
Applying for registration as an approved SMSF auditor	100
Undertaking a competency examination in accordance with section 128C of the SIS Act	100
Giving ASIC a statement under section 128G of the SIS Act	50
Giving ASIC a statement under section 128G of the SIS Act within 1 month after it fell due	Nil
Giving ASIC a statement under section 128G of the SIS Act more than 1 month after it fell due	Nil
Giving ASIC particulars under section 128H of the SIS Act within 1 month after they fell due	Nil
Giving ASIC particulars under section 128H of the SIS Act more than 1 month after they fell due	Nil
Inspecting or searching a register that the Regulator keeps under Division 1A of the SIS Act for a current extract	9
Inspecting or searching a register that the Regulator keeps under Division 1A of the SIS Act for a historical extract	9

**Section 5** will prescribe a method for calculating fees in financial years subsequent to the financial year starting on 1 July 2013 to allow for increases in the consumer price index.