

## **BUSINESS ENGLISH**

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### ***How to limit liability for professional negligence***

di **Enrico Zappa, Justin Rainey**

Although it is not possible to guard against every circumstance in which an accountant or auditor may run the danger of incurring liability for professional negligence<sup>[1]</sup>, the following matters should

be borne in mind:

- a) Before carrying out any work for a client, a member should ensure that the exact duties to be performed, and in particular any significant matters to be excluded, have been agreed with the client, in writing, by a letter of engagement<sup>[2]</sup> or otherwise. If the accountant is asked to perform any additional duties at a later date, these should also be defined in writing.
- b) In giving 'snap' advice<sup>[3]</sup> at the request of a client, or advice which must necessarily be based on incomplete information, a member should make it clear that such advice is subject to limitations, and that consideration in depth may have led him or her to revise the advice given.
- c) When publishing documents generally a member may find it advantageous to include in the document a clause disclaiming liability.
- d) When submitting unaudited accounts or other unaudited financial statements<sup>[4]</sup> or reports to the client, a member should ensure that any special purpose for which the statements or reports have been prepared is recorded on their face, and in appropriate cases, should introduce a clause recording that the report or statement is confidential and has been prepared solely for the private use of the client.
- e) It should be recognised that there are areas of professional work (for example when acting as an auditor under the Companies Act 1985) where it is not possible for liability to be limited or excluded, and that there are other areas of professional work (for example when preparing reports on a business for the purpose of being submitted to a potential purchaser) where, although such a limitation or exclusion may be included, its effectiveness will depend on the view which a court may subsequently form of its reasonableness.
- f) When giving references to a third party with regard to future transactions (eg the payment of rent), a member should state that his or her opinion is given without financial responsibility on the member's part.

g) Where the circumstances appear to warrant it, because of the complexity of an assignment or otherwise, the member should advise the client that it is considered desirable to take specialist advice. In certain circumstances, it may be appropriate for the member either to consult another accountant or to suggest to the client that the advice of a member of another profession should be sought.

h) Where a member acts as receiver<sup>[5]</sup>, he or she should endeavour to ensure that the person appointing him or her executes an appropriate letter of indemnity in the member's favour or should include appropriate exclusions of the member's personal liability in contracts with third parties. A member should also arrange for additional professional indemnity insurance cover of a realistic amount, and should ascertain from his or her brokers whether or not cover is provided for the special risks involved.

#### COMPREHENSION EXERCISE

1. The text suggests 8 things (a to h) that accountants should do to limit the risk of liability for professional negligence.

Each paragraph has a title that summarises its contents. Match the title (1 to 10) to the paragraph. Remember there are two titles that you will not need!

1. Write directly on unaudited documents the reason or reasons why they have been prepared
2. Declare no financial responsibility for references or opinions given to 3<sup>rd</sup> parties
3. Understand your client's needs
4. What you have to do must be put in writing
5. Remember that limitation of liability for some types of work is not possible
6. Limit your liability if appointed as a receiver
7. Insert a disclaimer whenever publishing a document
8. Recommend specialist advice when necessary
9. Tell the client any bad news at the start
10. Any advice given quickly is always subject to revision

2. Choose the five most important pieces of advice for you and put them in order of importance.

Text adapted from [http://www.acca.org.uk/content/dam/acca/global/PDF-members/2012/2012p/Prof\\_liability.pdf](http://www.acca.org.uk/content/dam/acca/global/PDF-members/2012/2012p/Prof_liability.pdf) (last visited 10.10.13)

#### ANSWERS

a/4

b/10

c/7

d/1

e/5

f/2

g/8

h/6

Titles 3 & 9 are not used

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[\*\*\[1\]\*\*](#) Esporsi al rischio di responsabilità professionale in caso di negligenza

[\*\*\[2\]\*\*](#) Lettera di incarico

[\*\*\[3\]\*\*](#) Consiglio dato al volo

[\*\*\[4\]\*\*](#) Bilanci non sottoposti a revisione esterna

[\*\*\[5\]\*\*](#) Curatore fallimentare