

CR 9 – Designation, Trade Mark and Practice Name Terms of Use



Issued 8 October 2019

9.1 Purpose

- (a) This Regulation sets out the terms and conditions on which Members of CA ANZ are entitled to use:
 - (i) designations regulated by CA ANZ;
 - (ii) registered or unregistered trade marks and logos owned by CA ANZ; and
 - (iii) Practice names and descriptions.
- (b) This Regulation applies to all Members regardless of whether the entity through which they practise is entitled to use the description “Chartered Accountant(s)”.

9.2 Definitions

Unless expressly defined in this Regulation, capitalised terms used in this Regulation are defined in By-Laws 2 and 39.

9.3 In this Regulation

- (a) **Designation** means a designation defined in or referred to in the Supplemental Charter, By-Laws or NZICA Rules (as applicable) and includes associated words and initials that are applicable to a Member’s membership status.
- (b) **CA ANZ Licensed Brands** means the Designations and Trade Marks.
- (c) **Members** means current members and excludes Provisional Members (as defined in the By-Laws) and former members.
- (d) **Practice** means a business providing professional services including services which require the holding of a Certificate of Public Practice by the individual Member who is a Principal and may include a group of Practice Entities.
- (e) **Principal** in this CR 9 has the same meaning given to that term in By-Law 39(r) namely it means any person, who is a principal of a Practice Entity or a principal, partner, director, officer or trustee of a Related Entity of the Practice Entity and includes:
 - (i) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a partnership, a partner of that partnership;
 - (ii) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a body corporate, a director of that body corporate;
 - (iii) in the case of a Practice Entity or a Related Entity of the Practice Entity that is conducted as a trust, an individual who, as an officer or employee of the trustee of that trust, or otherwise, provides or participates as a Principal in the provision of the services provided by the Practice Entity; and
 - (iv) in the case of a Practice Entity or a Related Entity of the Practice Entity, an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice Entity, provides or participates as a Principal in the provision of the services provided by the Practice Entity.
- (f) **Trade Marks** means the form of descriptions, words, logos and initials owned by CA ANZ including the Designations, the words “Chartered”, “Chartered Accountant(s)” and the “Chartered Accountants” logo (whether registered or unregistered).

9.4 License to use CA ANZ Licensed Brands

- (a) CA ANZ grants each Member a non-exclusive, non-transferable, non-sublicensable, revocable, royalty free licence to use the CA ANZ Licensed Brands for the purpose of providing accountancy services in accordance with this CR 9 and for the term of that Member's active Membership. For clarity, this licence terminates when the Member ceases to be an active Member, resigns or is suspended or excluded from Membership.
- (b) The licence granted under CR 9.4(a) is subject to the Member complying with all of the ongoing requirements of membership to the satisfaction of CA ANZ including as set out in:
 - (i) the Supplemental Charter;
 - (ii) the By-Laws;
 - (iii) the Regulations;
 - (iv) the NZICA Rules (if applicable);
 - (v) the CA ANZ Brand Style Guide, as updated from time to time (the **Style Guide**) and note that the Style Guide includes limitations on the purpose, manner or style of use of the CA ANZ Licensed Brands in relation to a specific class of Members;
 - (vi) any other guidelines or directions given by CA ANZ; and
 - (vii) the terms and conditions set out in this Regulation.
- (c) The Licence granted under CR 9.4(a) does not confer any proprietary or other right, title or interest in the CA ANZ Licensed Brands on a Member of CA ANZ.
- (d) Each Member acknowledges that use by that Member of the CA ANZ Licensed Brands in Australia and New Zealand (and corresponding trade marks and brands in other countries, whether registered or not) and all updates and variations to the CA ANZ Licensed Brands is subject to this Regulation.
- (e) All rights, opportunities and approvals not expressly granted to a Member under CR 9.4 are reserved by CA ANZ.
- (f) All goodwill arising from the use by Members of the CA ANZ Licensed Brands in Australia and New Zealand (and corresponding trade marks in other countries, whether registered or not) and all updates and variations to the CA ANZ Licensed Brands accrues to the benefit of and vests in CA ANZ.

Commentary

For example, where appropriate to his or her membership status a Member may use the following designations, and associated words and initials:

- a Chartered Accountant may use "Chartered Accountant", "CA" or if residing outside either Australia or New Zealand "CA ANZ";
- a Chartered Accountant Fellow may use "Chartered Accountant Fellow", "FCA" or if residing outside either Australia or New Zealand "FCA ANZ";
- an Affiliate may use "Affiliate" or if residing outside either Australia or New Zealand "Affiliate CA ANZ";
- an Associate Chartered Accountant may use "Associate Chartered Accountant", "ACA", "FACA" or if residing outside either Australia or New Zealand "ACA ANZ" or "FACA ANZ"; and
- an Accounting Technician may use "Accounting Technician", "AT", "AT Fellow" or if residing either outside Australia or New Zealand "AT ANZ" or "AT Fellow ANZ".

9.5 Terms of Use of CA ANZ Licensed Brands

- (a) Members and Practice Entities must:

- (i) use the CA ANZ Licensed Brands in good faith and strictly in accordance with the terms and conditions of this Regulation;
 - (ii) use best endeavours to preserve the goodwill that subsists in the CA ANZ Licensed Brands;
 - (iii) provide all assistance reasonably requested by CA ANZ to protect CA ANZ's rights in the CA ANZ Licensed Brands; and
 - (iv) comply with any reasonable directions in relation to the use of the CA ANZ Licensed Brands given by CA ANZ from time to time.
- (b) Members and Practice Entities must not:
- (i) bring an action for infringement of the CA ANZ Licensed Brands;
 - (ii) give notice to Customs in relation to the CA ANZ Licensed Brands;
 - (iii) sublicense the use of the CA ANZ Licensed Brands;
 - (iv) make or attempt to make any modifications, developments or enhancements of or to the CA ANZ Licensed Brands;
 - (v) commit, be engaged in or authorise any act by any person which may threaten any registration in relation to the CA ANZ Licensed Brands or the rights of CA ANZ as the owner of the CA ANZ Licensed Brands;
 - (vi) engage in any misleading or deceptive conduct, or conduct likely to be misleading or deceptive, in relation to its use of the CA ANZ Licensed Brands;
 - (vii) remove, alter, cover or obfuscate any trade mark notices or other proprietary rights notices placed or embedded on or in the CA ANZ Licensed Brands;
 - (viii) sell, transfer, licence, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the CA ANZ Licensed Brands to any third party;
 - (ix) act or conduct itself in any way as if it owns the CA ANZ Licensed Brands, or is entitled to use the CA ANZ Licensed Brands, otherwise than in accordance with this Regulation;
 - (x) use the CA ANZ Licensed Brands or any part of the CA ANZ Licensed Brands:
 - A. in respect of any goods or services other than the goods or services to which the relevant CA ANZ Licensed Brands relate; or
 - B. to suggest that the CA ANZ Licensed Brands relate to any goods or services other than the goods or services to which the relevant CA ANZ Licensed Brands directly relate;
 - (xi) use the CA ANZ Licensed Brands (or any part of them) to suggest the endorsement, affiliation, association, sponsorship, support or partnership of CA ANZ in relation to any goods or services other than the goods or services to which the relevant CA ANZ Licensed Brands directly relate;
 - (xii) register or attempt to register anywhere in the world, any of the CA ANZ Licensed Brands as trade marks, company names, business names, domain names or social media handles or anything else that is substantially identical with or deceptively similar to any of the CA ANZ Licensed Brands;
 - (xiii) use any marks or symbols of any third party, which in the opinion of CA ANZ, may be mistaken for the CA ANZ Licensed Brands;
 - (xiv) combine any of the CA ANZ Licensed Brands together with any other symbol, trade mark, marks or other means of identification of any goods or services except as provided for in this Regulation; or

- (xv) do, cause or authorise the doing of anything that may adversely affect or jeopardise the CA ANZ Licensed Brands or the goodwill or value in the CA ANZ Licensed Brands or CA ANZ's right, title or interest in the Trade Mark.

9.6 Practice Names and Descriptions

- (a) Members are prohibited from using a Practice name which is, or is likely to be, false, misleading or deceptive. Practice names and descriptions must not reflect adversely on the profession.
- (b) Members must not seek to obtain rights in, transfer, or in any way deal in, any rights or entitlements to business names, company names, trademarks, domain names or social media handles that contain the words "Chartered" or "Chartered Accountants".
- (c) Unless otherwise approved by the Board a Practice Entity must only use the designation or description "Chartered Accountant(s)" and the Chartered Accountants logo under and in accordance with the provisions set out in Articles 17 and 18 of the Supplemental Charter and where the following conditions are met:
 - (i) all the Principals are Chartered Accountants or Affiliate Members;
 - (ii) all such Chartered Accountants hold and continue to hold a current Certificate of Public Practice;
 - (iii) the number of Affiliate Members in the Practice Entity does not exceed the number of Chartered Accountants who are Principals;
 - (iv) the total share of Affiliate Members and their associated persons and entities in the capital, financial results and voting rights of the Practice Entity does not exceed one half (1/2) (loans by Affiliate Members and their associated persons and entities being treated as capital for such purpose); and
 - (v) the Practice Entity at all times uses the description "Chartered Accountant(s)" and the Chartered Accountants logo in accordance with the current Style Guide.
- (d) The effect of suspension of a Member on an interim basis under By-Law 40(9.1) is not to be taken into account, and may be ignored, in determining whether a Practice Entity satisfies the conditions in CR 9.6(c).
- (e) Practice Entities comprising of Members resident in New Zealand may only use the designation or description "Chartered Accountant(s)" and the Chartered Accountants logo if the Practice Entity meets the requirements set out in Appendix IV of the NZICA Rules.

Commentary

Where any breach of CR 9.6(c) is a result of an inadvertent change of Member Principals and the Practice Entity undertakes to remedy the defect within a commercially realistic timeframe, CA ANZ may determine that no deemed unprofessional conduct has occurred.

Where non-member owners are influencing the standard of professional work undertaken by a Practice Entity, this is deemed to be a breach of CR 9.6(c) by those Members who are Principals of that Practice Entity.

General Commentary on Use of the Description and Logo

While recognising the evolving nature of the marketplace and the likelihood that innovative practice structures will arise in the future, the focus is on the principle of the individual responsibility of Members for control over the standard of professional work. CA ANZ relies on this principle to support and underpin the Chartered Accountants brand while guiding Members in how they choose to structure their practice. If there is any doubt about whether an entity is entitled to use the description "Chartered Accountants" and the Chartered Accountants logo, guidance and advice should be sought from CA ANZ. If necessary, specific approval can be given by the Board under CR 9.8 to a particular structure.

Definitions and assumptions

Members should have regard to the definitions in the By-Laws when reading this Commentary, particularly to the definitions of Chartered Firm and Practice Entity. A discussion of the factors to consider whether a person is a Principal in relation to a Practice Entity (or its related entities) is contained in CR 2.

Examples

Practice Entities that are recognised as compliant with CR 9.6(c) and are therefore able to use the description "Chartered Accountants" include:

- a Chartered Accountant with a Certificate of Public Practice, being a sole practitioner, practising in the Member's own name, a firm name, through a single-director company or through a trust with a sole trustee or a single-director corporate trustee;
- a partnership in which there are no Principals other than the partners and all the partners are Chartered Accountants with Certificates of Public Practice or Affiliate Members, or practice entities entitled to use the description "Chartered Accountants" and the Chartered Accountants logo;
- a company in which there are no Principals other than the directors and all the directors are Chartered Accountants with Certificates of Public Practice or Affiliate Members;
- a trust in which there are no Principals other than the trustees (or the directors of the corporate trustee) and all the trustees (or directors of the corporate trustee) are Chartered Accountants with Certificates of Public Practice or Affiliate Members;
- any combination or partnership of the above Practice structures.

For the purposes of this CR 9, no distinction is made between equity partners and salaried partners.

Generally, in Chartered firms the role of non-member owners is limited to being a non-participating shareholder of a company or beneficiary of a trust; such non-member owners could not be involved in the provision of professional services in a Practice Entity entitled to use the description "Chartered Accountants" or the Chartered Accountants logo.

Common brand names

A common brand name includes common initials or a common name. A Practice Entity is considered to be using a common brand name if it includes, for example, the common brand name as part of, or along with, the business name of the Practice Entity, on the entity's business stationery or web site.

It is not acceptable to have different "offices" of Chartered firms practising under a common name using different descriptions (for example, Chartered Accountants, Certified Practising Accountants or Public Accountants) unless it can be demonstrated that they are quite separate entities. This distinction must be clearly evident to members of the public. Use of a common brand name will generally not make this evident.

Commentary

Because intellectual property including registered business names and registered and unregistered trademarks are capable of transfer to third parties, it is not appropriate for Members to include the words "Chartered" or "Chartered Accountants" in a business or company name, trademark or social media handle and Members are not licensed to do this. Instead, where the conditions of CR 9.6(c) are met, these words may be used under licence as an indicator of Membership, and the Member being associated with a registered trading name or symbol.

9.7 Sole practitioners – use of words denoting the plural

The name and/or description of the Practice Entity of a sole practitioner which implies a greater number of Principals than is in fact the case, is permissible only when the name of the sole practitioner is displayed with the name of the Practice Entity on all stationery, promotional materials, electronic communications and website of that Practice Entity.

Commentary

For example, the following imply that there is more than one Principal:

- names such as "& Associates", "& Company (Co)" or "& Partners"; and
- descriptions such as "Chartered Accountants".

9.8 Board Approval

If there is any doubt about whether a Member or Practice Entity is entitled to use a Designation, Practice Entity description or the CA ANZ Licensed Brands referred to in this Regulation CR 9, the Member or Practice Entity must seek the advice and approval of CA ANZ, and, if necessary, the specific approval of the Board.

Commentary – Board recognition

The Board has recognised Chartered firms as compliant with the principles of CR 9.6(c) in the following circumstances:

- *A share in ownership of the Practice is incorporated into the employee remuneration package, where the shares or units issued to these employees are limited to a non-voting category of shareholding or interest. In such circumstances it is accepted that such employees do not exercise any control or influence, either directly or indirectly, over the standard of professional work undertaken by the Practice and the responsibility to ensure that all aspects of the Practice are conducted in accordance with the technical, professional and ethical standards remains that of the Chartered Accountants and Affiliate Member Principals of the Practice Entity.*
- *Shares or units issued to employees do not represent a material interest in an entity whose ownership is widely held, such as a listed entity.*

9.9 Evidence of Compliance

- (a) CA ANZ may at all reasonable times and on reasonable notice request a Practice Entity to provide evidence of compliance with this Regulation.
- (b) Without limiting the evidence that may be requested by CA ANZ, Members and Practice Entities may be required to provide:
 - (i) evidence of use of the Designations and CA ANZ Licensed Brands only in accordance with this Regulation and/or the Style Guide; or
 - (ii) evidence of use of the Designations and CA ANZ Licensed Brands only in accordance with the uses permitted for the relevant Member or Practice Entity's actual Designation, as set out in the Style Guide.

Commentary

Chartered firms may be requested to provide appropriate evidence of compliance with CR 9. Compliance is monitored by CA ANZ to protect and safeguard the brand:

- *in the approval process for Practice Entity Membership; and*
- *in the approval process for Affiliate Membership; and*
- *in the approval process for Certificates of Public Practice; and*
- *as part of the Quality Review Program; and*
- *as part of CA ANZ's operational procedures to ensure that the integrity and accuracy of the Member database is maintained in accord with Members' obligations under By-Law 30.*

9.10 General

CA ANZ may at any time, and from time to time, request that a Member or Practice Entity change its manner of use of the CA ANZ Licensed Brands if CA ANZ reasonably considers that the use does not comply with this Regulation.