



**FINAL NOTICE ISSUED UNDER
SECTION 936 OF THE
COMPANIES REGULATIONS 2020**

To: Terra Nova Holdings Ltd
2428ResCowork03, 24, Al SilaTower,
Abu Dhabi Global Market Square,
Al Maryah Island, Abu Dhabi,
United Arab Emirates

Email: [REDACTED]

Date: 23 January 2023

1. DECISION

- 1.1 This Final Notice ("Notice") is issued under section 936 of the *Companies Regulations 2020* ("CR 2020") to Terra Nova Holdings Ltd ("Terra Nova").
- 1.2 CR 2020 requires all Abu Dhabi Global Market ("ADGM") companies to file audited accounts and reports with the ADGM Registrar within a set period. Where applicable, CR 2020 also requires qualifying companies to file audited group accounts.
- 1.3 Terra Nova filed with the ADGM Registrar individual accounts as a dormant company for the 2019 fiscal period, and individual accounts as a small company for the 2020 fiscal period. Terra Nova did not seek an extension for filing accounts and reports for the 2021 fiscal period and is yet to file the 2021 accounts.
- 1.4 ADGM Registration Authority ("RA") staff ("RA Staff") enquiries showed that for the 2019 and 2020 fiscal periods Terra Nova did not qualify for small or dormant company/group exemptions and should have filed audited group accounts for both, 2019 and 2020 fiscal periods.
- 1.5 Terra Nova therefore failed to file accounts and reports in compliance with section 415 of CR 2020 before the end of the applicable period for filing its accounts and reports for the 2019, 2020 and 2021 fiscal periods.
- 1.6 For the reasons given in this Notice, the Registrar of ADGM has decided to impose a financial penalty on Terra Nova of:
 - i) **USD 8,000** for a contravention of section 426 of CR 2020 (*default in filing accounts and reports: contraventions*) for failing to file its accounts and reports for the financial year ending 31 December 2019 in compliance with section 415 of CR 2020, before the end of the period for filing those accounts and report, namely 30 September 2020.
 - ii) **USD 8,000** for a contravention of section 426 of CR 2020 (*default in filing accounts and reports: contraventions*) for failing to file its accounts and reports for the financial year ending 31 December 2020 in compliance with section 415 of CR 2020, before the end of the period for filing those accounts and report, namely 30 September 2021.
 - iii) **USD 12,000** for a contravention of section 426 of CR 2020 (*default in filing accounts and reports: contraventions*) for failing to file its accounts and reports for the financial year

REGISTRATION AUTHORITY
سلطة التسجيل



ending 31 December 2021 in compliance with section 415 of CR 2020, before the end of the period for filing those accounts and report, namely 30 September 2022.

2. DEFINED TERMS AND RELEVANT REGULATIONS

- 2.1 Defined terms are identified in the Notice in parentheses, using the capitalisation of the initial letter of a word or of each word in a phrase, and are either defined in the Regulations, or in the body of this Notice at the first instance the term is used. Unless the context otherwise requires, where capitalisation of the initial word is not used, an expression has its natural meaning.
- 2.2 Extracts of Regulations and Rules referred to in this Notice are attached in **Annexure A**. Complete copies of the Regulations and Rules are accessible on the ADGM website www.adgm.com/legal-framework/rules-and-regulations.

3. SUMMARY OF EVIDENCE SUPPORTING THE DECISION

The period ending 31 December 2019 and the year ending 31 December 2020 accounts and reports

- 3.1 Terra Nova is an ADGM private limited company that incorporated on 9 June 2019 and is licensed to carry out the business activity of a special purpose vehicle. CR 2020 requires ADGM companies to deliver their audited annual accounts and reports for each fiscal period to the RA by the filing deadline for each period. For Terra Nova this falls on 30 September 2022. CR 2020 and relevant Rules require annual accounts to be audited by an eligible auditor registered with the Registrar ("ADGM Registered Auditor").
- 3.2 On 24 June 2021 at 12:41pm, Terra Nova filed its individual annual accounts for the year ending 31 December 2020 ("2020 Accounts"), purportedly in compliance with the small companies exemption under CR 2020. The filing included:
- Trial balance;
 - Statement of comprehensive income; and
 - Accounts audited by [REDACTED] [REDACTED] are not an ADGM Registered Auditor.
- 3.3 RA Staff routinely review financial statements of ADGM entities filed with the Registrar. RA Staff reviewed Terra Nova's 2020 Accounts on this basis. A review of the 2020 Accounts did not make it clear how Terra Nova qualified for the small company exemptions available in CR2020. This led to RA Staff to initiate enquiries.
- 3.4 On 11 January 2022, RA Staff emailed a letter to the sole director of Terra Nova, Mr Pascal Simon ("Mr Simon") requesting the following: 1) the principal activity of two subsidiaries of Terra Nova disclosed in the 2020 Accounts, 2) the reason for not including a Directors' report in 2020 Accounts, 3) a copy of the most recent financial statements for Terra Nova's two subsidiaries, and 4) further detail on some related party transactions in the 2020 Accounts.
- 3.5 On 26 January 2022, the RA received Mr Simon's response (dated 13 January 2022). In addition to providing responses to our queries, Mr Simon enclosed the following in his letter as attachments:

REGISTRATION AUTHORITY
سلطة التسجيل



- a) Directors' report for the 2020 Accounts;
- b) The financial statements for the two of Terra Nova's subsidiaries; [REDACTED]
[REDACTED] The financial statements for [REDACTED] showed revenue of approximately USD \$90 million.
- 3.6 On 4 March 2022, RA Staff sent its second letter to Mr Simon highlighting that the accounts for the fiscal period 2019 and 2020 have purportedly been submitted under the small companies' exemption under CR 2020. In their letter, RA Staff asked Mr Simon to clarify the basis on which Terra Nova qualifies for the small companies' exemptions for the 2019 and 2020 fiscal periods.
- 3.7 On 14 March 2022, Mr Simon, as a Director of Terra Nova, responded that each company in the group is considered as an individual company and Terra Nova meets the criteria of a small company on a standalone basis.
- 3.8 In accordance with section 370 of CR 2020, to qualify as a small group, both of the following qualifying conditions must be met:
- a) *Aggregate turnover is not more than USD 13.5 million, and*
- b) *Aggregate number of employees is not more than 35.*
- 3.9 On 15 March 2022, in a letter RA Staff communicated to Mr Simon that the RA is concerned Terra Nova did not comply with the duty to prepare group accounts for the 2019 and 2020 fiscal periods. RA Staff requested a Microsoft Teams call to discuss this further.
- 3.10 On 22 March 2022, RA Staff organised a virtual video meeting with Terra Nova staff, Mr Simon, and [REDACTED] as a member of the accounts and finance team at Terra Nova. Mr Simon did not attend this call citing technical difficulties. In this call, RA Staff explained the requirements of CR 2020 in relation to the preparation and filing of audited group accounts.
- 3.11 On 22 March 2022, following the virtual video meeting, RA Staff sent a letter outlining their findings in relation to the annual accounts' filings for the fiscal periods 2019 and 2020 by Terra Nova. In their letter, RA Staff highlighted that [REDACTED] reported revenue alone is USD 90 million for the 2019 fiscal period, thereby making Terra Nova ineligible to qualify as a small group under CR 2020. RA Staff also explained that whilst the 2020 fiscal period revenue may meet the small groups criteria, CR 2020 requires the qualifying conditions to occur in two consecutive financial years for Terra Nova to avail the exemption.

The required remediation actions

- 3.12 Following the virtual video meeting on 22 March 2022, RA Staff issued a letter, dated 22 March 2022, to Mr Simon setting out the RA's required remedial actions of Terra Nova. The RA required Terra Nova to:
- a) Prepare and file a full set of group accounts audited by an ADGM Registered Auditor for the 2019 and 2020 fiscal period by no later than 30 June 2022. RA Staff also highlighted the 2019 accounts must include 2018 comparative figures.
- b) Notify the RA via the RA's Online Registry Solution as soon as an ADGM Registered Auditor has been appointed. This notification must include the name of the audit firm and the lead engagement partner at the firm.



- 3.13 On 25 March 2022, Mr Simon emailed RA Staff acknowledging receipt of the RA's letter dated 22 March 2022 and indicating Terra Nova will comply with both required remedial actions.
- 3.14 On 5 May 2022, [REDACTED] emailed the RA to request a 30-day extension to meet the required remedial actions, citing an extensive scope of work for the audit engagement and resourcing constraints with the auditor.
- 3.15 On 12 May 2022, the RA approved the first extension request and agreed for Terra Nova to submit group accounts for the 2019 and 2020 fiscal periods by no later than 31 July 2022. RA Staff requested [REDACTED] to inform the RA of the name of the audit firm and the lead engagement partner.
- 3.16 On 13 May 2022, [REDACTED] emailed RA Staff to inform that the auditor appointed is [REDACTED] following which RA Staff replied via email to [REDACTED] on the same day highlighting that [REDACTED] is an ineligible auditor. RA Staff also emphasised that group accounts for the fiscal periods 2019 and 2020 will not be accepted if they are audited by a non-ADGM Registered Auditor.
- 3.17 On 17 May 2022, RA Staff held a short telephone call with [REDACTED] to further explain and ensure Terra Nova understand that an ADGM Registered Auditor must be used to comply with the required remedial action. In this call, [REDACTED] confirmed that she understood an ADGM Registered Auditor must be used.
- 3.18 On 6 June 2022, RA Staff sent a follow up email to [REDACTED] to seek an update on the appointment of an auditor by Terra Nova. [REDACTED] replied on the same day confirming Terra Nova have appointed [REDACTED] as auditor.
- 3.19 On 8 June 2022, [REDACTED] emailed RA Staff requesting a meeting to discuss an issue.
- 3.20 On 9 June 2022, RA Staff held a telephone meeting with [REDACTED]. In this call, [REDACTED] explained that [REDACTED] had disengaged from the audit of Terra Nova. [REDACTED] also explained other ADGM Registered Auditors were not willing to accept this audit engagement, due to the engagement exceeding their risk appetite. Following the call, [REDACTED] then communicated this issue via email to RA Staff.
- 3.21 On 9 June 2022, RA Staff replied to [REDACTED] explaining there are several other ADGM Registered Auditors that Terra Nova can approach and engage. RA Staff also used the opportunity to highlight and remind [REDACTED] of the deadline to meet the required remedial actions.
- 3.22 On 16 June 2022, RA Staff emailed [REDACTED] for an update on the appointment of an ADGM Registered Auditor. On the same day, [REDACTED] responded confirming Terra Nova are in the process of appointing [REDACTED] as auditors.
- 3.23 On 27 July 2022, [REDACTED] emailed RA Staff requesting a one-week extension to meet the required remedial action of filing group accounts for the 2019 and 2020 fiscal periods. This is the second extension request lodged by Terra Nova.
- 3.24 Following a telephone conversation and further email exchanges to understand the basis of the request, the RA approved the second extension request via email on 29 July 2022. In the email, RA Staff highlighted that Terra Nova's full set of audited group accounts for the fiscal periods 2019 and 2020 must be submitted by no later than 7 August 2022.
- 3.25 On 5 August 2022, [REDACTED] emailed the RA to state that the auditors will be unable to meet the 7 August 2022 deadline. In the email, [REDACTED] attached a letter from [REDACTED]



addressed 'to whomsoever it may concern'. This letter confirmed [REDACTED] is the appointed auditor of Terra Nova and its subsidiaries for the 2019 and 2020 fiscal periods. The letter also requested an extension to submit the audited financial statements, without quantifying the extension time frame.

3.26 On 11 August 2022, RA Staff sent a letter to Mr Simon highlighting Terra Nova's failure to comply with the required remedial action of submitting to the RA a full set of audited group accounts for the 2019 and 2020 fiscal periods. Among other points, the RA Staff also explained that Terra Nova has not provided any indication of when it will be in a position to comply and meet the required remedial action. In the same letter, RA Staff also explicitly stated that the RA reserves the right to take enforcement action without further notice to Terra Nova.

3.27 On 15 August 2022, Mr Simon emailed a letter acknowledging receipt of the RA's letter dated 11 August 2022 and explained Terra Nova are having a status update meeting with [REDACTED]

3.28 [REDACTED]

The year ending 31 December 2021 accounts

3.29 30 September 2022 is the statutory deadline for Terra Nova to file audited accounts for the fiscal period ending 31 December 2021.

3.30 30 September 2022 is also the deadline to lodge a request for an extension with the ADGM Registrar. The RA did not receive any such request from Terra Nova in relation to the 2021 fiscal period accounts.

3.31 [REDACTED]

4. CONTRAVENTIONS

4.1 Based on the facts and matters noted above, the Registrar considers that Terra Nova has contravened section 426 of CR 2020 for failing to file its accounts and reports, for the financial periods ending 31 December 2019, 2020 and 2021, in compliance with section 415 of CR 2020, before the end of the period for filing those accounts and report, which fell 9 months after each period end date.

4.2 Terra Nova failed to file its 2021 annual accounts by 30 September 2022, [REDACTED]

5. SANCTIONS

Financial penalties

5.1 In deciding to impose financial penalties, the Registrar has considered the factors and considerations in the Registrar's Decision Procedures, Disqualification and Enforcement Manual (the "Manual").

Determination to impose a financial penalty

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- 5.2 With reference to paragraph 4.7 of the Manual, the Registrar considers the following factors to be of relevance in imposing financial penalties against Terra Nova:
- a. To promote compliance with the Regulations and achieve the Registrar's objectives by:
 - i. penalising persons who have committed contraventions;
 - ii. deterring persons that have committed or may commit similar contraventions; and
 - iii. depriving persons of any benefit that they may have gained as a result of their contraventions.
- 5.3 The Registrar has decided to impose financial penalties, given the seriousness of the contravention and the circumstances.

Determination of the level of financial penalty

- 5.4 With reference to paragraph 4.8 of the Manual, the Registrar has considered the factors and considerations for determining the appropriate level of the financial penalty that it has decided to impose, which are set out as follows.

The seriousness of the contraventions

- 5.5 The contravention is serious for several reasons as follows. Filing accounts with the Registrar is a key legal obligation for ADGM companies. The RA has a responsibility to ensure that the UAE adheres to international commitments and standards concerning the provision of accounts to the Registrar, such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.
- 5.6 Terra Nova was originally requested to provide audited accounts for the fiscal periods 2019 and 2020 by no later than 30 June 2022. Two further extensions were granted by the RA, taking the final deadline to 7 August 2022. However, despite this, nearly 9 months since the RA issued its requested actions, [REDACTED]
- 5.7 Furthermore, the RA issued the required actions letter in March 2022. However, it appears Terra Nova did not appoint an ADGM Registered Auditor until 15 June 2022.
- 5.8 These points suggest that the matter was not being handled by Terra Nova and its directors with appropriate care, skill and diligence and this is likely contributed to the ongoing default in Terra Nova filing compliant accounts by the filing deadline.
- 5.9 Terra Nova and its directors have failed to adhere to ADGM's accounts obligations and when brought to their attention, have failed to rectify the matter in timely fashion and in accordance with the requests of the Registrar.
- 5.10 The contravention concerning the 2021 annual accounts is considered to be more serious, given that the firm and Mr Simon were on notice of the requirement for audited accounts since receiving RA Staff's requirements letter in March 2022.

Deliberate or reckless

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- 5.11 In RA Staff's communication with Mr Simon and [REDACTED] both have been cooperative and RA Staff did not perceive Terra Nova's non-compliance to be deliberate. Rather, a lack of care, skill and diligence appears to be a contributing factor.

Whether the person is an individual

- 5.12 This factor has not been considered as Terra Nova is not an individual.

Effect on third parties

- 5.13 This factor was not considered.

Deterrence

- 5.14 Deterrence is one of the main purposes of taking enforcement action. That is, deterring persons who have committed contraventions from committing further contraventions.

- 5.15 The penalty imposed must deter Terra Nova and other ADGM companies from failing to file accounts or filing accounts incorrectly.

- 5.16 The micro and small companies regime is designed to support small businesses by reducing the regulatory burden of ADGM's accounting obligations. Given its size, Terra Nova did not qualify for the micro and small companies regime and had an obligation to file audited group accounts. Terra Nova's directors' should have been aware of this requirement under CR 2020.

- 5.17 Any sanction must send a message of deterrence that companies must take care to not incorrectly avail the exemptions provided in CR 2020.

Financial gain or loss avoided

- 5.18 The RA did not consider this factor to be relevant.

Subsequent conduct

- 5.19 Since receiving the RA's letter of 22 March 2022 setting out the required actions and deadline, Terra Nova and its directors' have sought multiple extensions and ultimately failed to satisfy the Registrar's requests and their legal obligations.

Disciplinary record and compliance history

- 5.20 Apart from the contravention related to accounts and reports, Terra Nova has no disciplinary record.

Maximum Penalty

- 5.21 The maximum penalty for a contravention of section 426 of CR 2020 is level 5 (i.e., USD 15,000).

6. PROCEDURAL MATTERS

Representations

- 6.1 On 7 December 2022, the Registrar issued Terra Nova with a Warning Notice in which it proposed to impose on Terra Nova financial penalties in the amount of USD 28,000.
- 6.2 Terra Nova was provided with an opportunity to make written representations regarding the Registrar's concerns and the actions proposed.

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- 6.3 On 12 January 2023, the Registrar received a written statement from Terra Nova (through its registered corporate service provider) in which Terra Nova agreed "*not to contest the penalty amounts proposed in the Warning Notice and waive our rights to refer the matter to the ADGM Courts*". In such written statement, Terra Nova further requested the Registrar to proceed with the issuance of the invoices for the proposed penalty amounts.
- 6.4 Having taken into the accounts the facts, matters and circumstances of the contraventions above, the Registrar has decided to impose on Terra Nova financial penalties in the amount of USD 28,000.

Payment of the financial penalty

- 6.5 The financial penalty imposed by this Notice is to be paid by Terra Nova on or before 22 February 2023.
- 6.6 In the event that any part of the financial penalty remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable as a debt by the Registrar.
- 6.7 Payment of the financial penalty can be made by electronic funds transfer. The account details are listed in the invoice attached with this Notice.

Confidentiality and publicity

- 6.8 As this Notice has now been issued, the Registrar may, at his discretion, publish the details about the matter to which this Notice relate.

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Signed:



Tarek Kardahji

Senior Manager, Office of the Chief Executive Officer, Registration Authority
Delegate of the Registrar, Registration Authority

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ANNEXURE A

EXTRACTS OF THE REGULATIONS AND RULES REFERRED TO IN THIS NOTICE

EXTRACT OF THE COMPANIES REGULATIONS 2020

PART 14: ACCOUNTS AND REPORTS

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369. Companies qualifying as small: general

- (1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.
- (2) Subject to subsection (3), a company qualifies as small in relation to a subsequent financial year if the qualifying conditions are met in that year.
- (3) In relation to a subsequent financial year, where on its balance sheet date a company meets or ceases to meet the qualifying conditions, that affects its qualification as a small company only if it occurs in two consecutive financial years.
- (4) The qualifying conditions are met by a company in a year in which it satisfies both of the following requirements—
 1. Turnover Not more than 13.5 million US dollars
 2. Number of employees Not more than 35
- (5) For a period that is a company's financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows—
 - (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
 - (b) add together the monthly totals, and
 - (c) divide by the number of months in the financial year.
- (7) This section is subject to section 370 (companies qualifying as small: parent companies).

373. Companies qualifying as micro-entities

- (1) A company qualifies as a micro-entity in relation to its first financial year if the qualifying conditions are met in that year.
- (2) Subject to subsection (3), a company qualifies as a micro-entity in relation to a subsequent financial year if the qualifying conditions are met in that year.
- (3) In relation to a subsequent financial year, where on its balance sheet date a company meets or ceases to meet the qualifying conditions, that affects its qualification as a micro-entity only if it occurs in two consecutive financial years.

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- (4) The qualifying conditions are met by a company in a year in which it satisfies both of the following requirements–
1. Turnover not more than 2.5 million US dollars
 2. Number of employees not more than 9
- (5) For a period that is a company's financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows–
- (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
 - (b) add together the monthly totals, and
 - (c) divide by the number of months in the financial year.
- (7) In the case of a company which is a parent company, the company qualifies as a micro-entity in relation to a financial year only if–
- (a) the company qualifies as a micro-entity in relation to that year, as determined by subsections (1) to (7), and
 - (b) the group headed by the company qualifies as a small group, as determined by section 369(2) to (6).

415. Duty to file accounts and reports with the Registrar

- (1) The directors of a company must deliver to the Registrar for each financial year the accounts and reports required by–
- section 418 (filing obligations of companies subject to small companies regime),
section 419 (filing obligations of companies entitled to small companies exemption: additional requirements),
section 420 (filing obligations of medium-sized companies), and
section 421 (filing obligations of companies generally).
- (2) This is subject to–
section 422 (unlimited companies exempt from filing obligations), and
section 423 (dormant subsidiaries exempt from filing obligations).
- (3) Subject to section 411(7), this Chapter shall not apply to a company that is a restricted scope company unless the Registrar has given notice to any restricted scope company that this Chapter applies to it and following notice such restricted scope company shall deliver to the Registrar all accounts required to be prepared by it under these Regulations.
- (4) Accounts of restricted scope companies will not be subject to public disclosure by the Registrar.

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426. Default in filing accounts and reports: contraventions

- (1) If the requirements of section 415 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company and every person who immediately before the end of that period was a director of the company, commits a contravention of these Regulations.
- (2) A person does not commit the contravention referred to in subsection (1) if he proves that he took all reasonable steps for securing that those requirements would be complied with before the end of that period, and for this purpose, it is not enough to prove that the documents in question were not in fact prepared as required by this Part.
- (3) A person who commits the contravention referred to in subsection (1) shall be liable to a fine of up to level 5.

PART 31: THE REGISTRAR OF COMPANIES

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936. The Registrar's functions

- (1) The Registrar shall-
 - (a) perform the functions conferred on the Registrar by or under the ADGM Founding Law, these Regulations, the Commercial Licensing Regulations 2015 or any other law or regulation applicable in the Abu Dhabi Global Market, and
 - (b) perform such functions on behalf of the Board, in relation to the registration of companies or other matters, as the Board may from time to time direct by resolution.
- (2) Without limiting the generality of subsection 1(a) or (b), the functions of the Registrar shall include-
 - (a) the preparation indicative and non-binding guidance on these Regulations and advising the Board when any such guidance is issued;
 - (b) prescribing forms to be used for any of the purposes of these Regulations, the Commercial Licensing Regulations 2015 or any other regulations administered by the Registrar;
 - (c) any tasks and powers properly delegated to it by the Board or any other authority in the Abu Dhabi Global Market; and
 - (d) where it considers it appropriate to do so, delegating such of its functions and powers as may more efficiently and effectively be performed by its officers or employees and, with the approval of the Board, to any other Abu Dhabi Global Market authority (other than the Court).
- (3) The Registrar shall assist the United Arab Emirates in complying with its obligations under any international treaty or other agreement to which the United Arab Emirates is a party through the exercise of its powers and functions.
- (4) In exercising its powers and performing its functions the Registrar shall act in an independent manner.
- (5) References in these Regulations to the functions of the Registrar are to functions within subsections (1) and (2).

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PART 35: AUDITORS

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1032. Eligibility for appointment as an auditor

No firm may be appointed or act as an auditor of an audited person unless the first-mentioned firm is:

- (a) registered or treated as having been registered as an auditor pursuant to rules made by the Registrar under section 1032A;
- (b) holds any permit as may be required to act as such auditor; and
- (c) is otherwise in compliance with the requirements of this Part.

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