NT2022-35 NOTE TECHNIQUE DU CONSEIL
IRE COUNCIL TECHNICAL NOTE

(as adopted by IRE Council on 21st February 2022)

ACCESSING THE PREDECESSOR STATUTORY AUDITOR AUDIT WORKING PAPERS

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1. OBJECTIVE

This technical note aims at providing an example of the "*hold harmless letters*" which an (approved) statutory auditor may obtain when granting access to the successor (approved) statutory auditor to its audit working papers in the case of an audit of financial statements whether required by law (*"statutory audit"*) or by the audited entity on a voluntary basis (*"contractual audit"*).

The (approved) statutory auditor is also advised to obtain a written authorization from the former audited entity to provide access to its audit working papers to a successor (approved) statutory auditor and to respond to its inquiries.

This "*hold harmless letters*" can be sent to a successor (approved) statutory auditor to obtain the latter's acknowledgment of an agreement to conditions precedent to its obtaining access to the audit working papers.

In this technical note, the term "*statutory auditor*" covers equally the "*statutory auditor*", "*approved statutory auditor*", "*audit firm*" and the "*approved audit firm*". For the definition of these terms including "*statutory audit*", reference should be made to the Law of 23 July 2016 on the audit profession.

It is worth to note that for a statutory auditor to be considered as the "*successor auditor*", he/she must have been appointed by the body of the audited entity authorised for this purpose.

2. TECHNICAL SOURCES

Article 28, paragraph 5 first indent of the Law of 23 July 2016 on the audit profession states the following:

> *"(5) Paragraph 1 shall not obstruct an approved statutory auditor, an approved audit firm or an audit firm from communicating information:*
>
> *– to the approved statutory auditor or approved audit firm replacing another approved statutory auditor or approved audit firm in the context of the statutory audit of the entity concerned. The approved statutory auditor or approved audit firm being replaced shall provide the successor with free access to all relevant information concerning the audited entity and the most recent audit of that entity;"*

For a statutory audit performed in compliance with International Standards on Auditing, whether required by law or not, the statutory auditor should also refer to the relevant ethical and professional requirements[1].

3 ILLUSTRATIVE EXAMPLE OF A HOLD HARMLESS LETTER

The illustrative example presented below does not contain an exhaustive list of matters that might be included, and the (approved) audit firms are advised to take care to prepare letters that are tailored to their own particular circumstances and requirements.

[*Successor statutory auditor*]
[*Address*]

Luxembourg, [*date*]

Dear [*Sir or Madam*],

We have previously audited, in accordance with International Standards on Auditing [*or other auditing standards applicable to the audit*], [if applicable: *as adopted for Luxembourg by the Commission de surveillance du secteur financier*], the financial statements of [*audited entity name*] (the *"Company"*) as at [*date*].

We issued an audit report dated [*date*] on those financial statements and have not performed any audit procedures since that date. In connection with your audit of the Company as at [*date*], you have requested access to our audit working papers prepared in connection with our audit of the Company's financial statements. The Company has authorised our firm to provide you with access to those audit working papers.

[1] International Code of Ethics for Professional Accountants, including International Independence Standards, issued by the International Ethics Standards Board for Accountants as adopted for in Luxembourg by the IRE, section "Changes in a professional appointment" (§ 320.4 and following).

Our audit, and the audit working papers prepared in connection therewith, of the Company's financial statements were not planned or conducted for your purposes. Therefore, items of possible interest to you may not have been specifically addressed. Our use of professional judgment and the assessment of audit risk and materiality for the purpose of our audit means that circumstances may have existed that would have been assessed differently by you. We make no representations as to the sufficiency or appropriateness of the information in our audit working papers for your purposes.

We understand that the purpose of you having access to our audit working papers is to obtain information about the Company and our [*insert year*] audit results to assist you in planning your audit of the Company for the year ending [*date*].

For that purpose only, we will provide you access to those of our audit working papers that relate to that objective. Audit working papers also include work performed according to legal or regulatory requirements.

You agree that the audit results documented in the audit working papers will not be used, except as contemplated by ISA510 "*Initial Engagements – opening balances*" [if applicable : *as adopted for Luxembourg by the Commission de surveillance du secteur financier*].

Because your review of our audit working papers is undertaken solely for the purpose described above, and will not entail a review of all our audit working papers, you agree that:

(1) The information obtained from the review will not be used by you for any other purpose,

(2) You are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with International Standards on Auditing [if applicable: *as adopted for Luxembourg by the Commission de surveillance du secteur financier or other auditing standards applicable to the audit*],

(3) You will not provide expert evidence or litigation support services or otherwise accept an engagement to comment on issues relating to the quality of our audit, and

(4) You will not use the audit procedures or results thereof documented in our audit working papers as evidential matter in rendering your opinion on the financial statements of the Company as of [*date*], except as contemplated in the International Standards on Auditing [*or other auditing standards applicable to the audit*].

[*Upon request, we will consider providing you with copies of certain audit documentation. You agree to subject any such copies or information otherwise derived from our audit working papers to your normal policy for retention of audit working papers [if more restrictive retention is requested, so describe] and protection of confidential client information*.]

In the event of a third party request for access to your audit working papers prepared in connection with your audits of the Company, you agree to request and obtain our written authorization before allowing any such access to any copies of [*predecessor statutory auditor name*] audit documentation, and to obtain on our behalf any releases that you obtain from such third party with respect to your own audit working papers. This paragraph does not apply to the *Commission de surveillance du secteur financier* nor the *Institut des réviseurs d'entreprises*.

Furthermore, in the case of a subpoena, summons or other court order seeking access to any copies of [*predecessor statutory auditor name*] audit documentation, you agree to notify us promptly upon receipt of the subpoena, summons or other court order and to provide us a copy thereof.

[*You also agree to indemnify and hold harmless [predecessor statutory auditor name] and its personnel from any claim by the Company or any other third party that arises directly and indirectly as a result of [successor statutory auditor name] permitting access to its audit working papers other than those claims that may arise as a result of disclosures required to be made by [successor statutory auditor name] in terms of the requirements of any law, regulation, accounting or auditing standards.]*[2]

The terms of the present agreement shall be subject exclusively to Luxembourg law, and the Courts of Luxembourg shall have exclusive jurisdiction in respect of any dispute arising out of it or in connection with it. [*successor statutory auditor name*] and [*predecessor statutory auditor name*] irrevocably waive any right to bring proceedings in any other jurisdiction, to object to proceedings being brought in those Courts, to claim that the proceedings have been brought in an inappropriate forum, or to claim that those Courts do not have jurisdiction.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours faithfully

[*predecessor statutory auditor name and signature*]

On behalf of [*successor statutory auditor name*]

We confirm our acceptance of the provisions of this letter.

Name:	Date:
Title:	Signature:

End

[2] This clause should only be included in certain circumstances where the predecessor auditor would not agree to give access to information without this level of protection – it should be discussed on a case by case basis between predecessor and successor auditors.