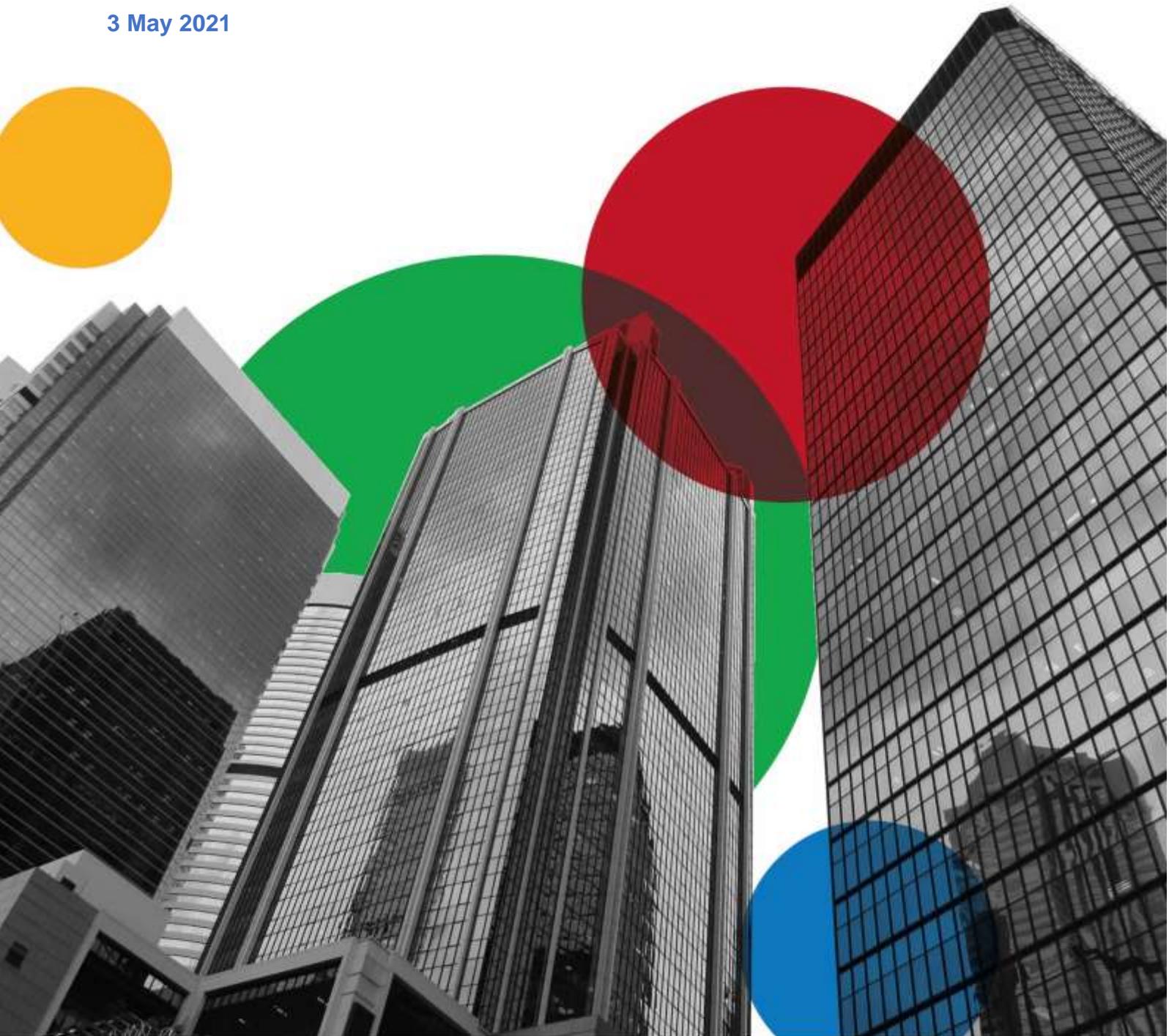


ICAS Response to:
IESBA Exposure Draft: 'Proposed Revisions
to the Definitions of Listed Entity and Public
Interest Entity in the Code'.

3 May 2021



Introduction

ICAS is a professional body for more than 22,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854. The ICAS Charter requires its Boards to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

The ICAS Ethics Board has considered the IESBA Exposure Draft: 'Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code' and I am pleased to forward its comments.

Any enquiries should be addressed to Ann Buttery, ICAS Head of Ethics.

Key Points

Overall, we are generally supportive of IESBA's proposals outlined in the above Exposure Draft and believe that the new provisions will be beneficial to users of the Code.

Overarching objective

We are supportive of the overarching objective described within paragraphs 400.8 and 400.9 however we suggest that the paragraphs could be made clearer with some additional text. For example, paragraph 400.9 might be enhanced to clarify that there are "additional" independence requirements for public interest entities in order to enhance confidence in the independence of auditors of such entities.

Also, we note that whilst the Explanatory Memorandum paragraph 18 refers to "the overarching objective as set out in proposed paragraphs 400.8 and 400.9", it is only paragraph 400.9 which is referenced as the "objective" in the 'Public interest entity' paragraphs R400.14 (f) and 400.14 A1. It might be clearer to either reference both paragraph 400.9 and 400.8 in paragraphs R400.14 (f) and 400.14 A1, or, alternatively, to reference paragraph 400.8 within paragraph 400.9.

Approach to revising the PIE definition

We are supportive of IESBA's approach to the new PIE definition with IESBA providing a list of high-level categories of PIEs which then needs to be refined by the relevant local bodies as part of the adoption and implementation process. However, we note that in the proposed Code the list of high-level categories is provided at paragraph R400.14 while the application material re the refinement of this list by relevant local bodies is in paragraph 400.15 A1. We suggest that the content of paragraph 400.15 A1 in relation to relevant local bodies ought to be signposted and would be better placed as application material to R400.14 rather than as application material to R400.15, as it is paragraph

R400.14 and its application material that discuss which entities fall within the definition of a public interest entity and integral to this is the need for local jurisdictions to refine the list to ensure that the right entities are captured as PIEs for their environment.

Definition of publicly traded entity

We support the use of the new term 'publicly traded entity' as IESBA explains in the Explanatory Memorandum however we believe that the definition of 'publicly traded entity' in the Glossary is somewhat circular – i.e. 'An entity that issues financial instruments that are transferrable and publicly traded' – which might not help users understand IESBA's intentions. For the benefit of users, we suggest IESBA's intention re the terms 'publicly traded' and 'financial instruments' are explained further in the Glossary.

Role of firms

We support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs however suggest that some further detail from the Explanatory Memorandum within some of the bullet points in paragraph 400.16 A1 might be helpful for users.

Transparency requirement for firms

Given the objective of the additional requirements and application material for PIEs is to enhance stakeholder confidence in an entity's financial statements through enhancing confidence in the audit of those financial statements, we support the proposal for firms to disclose if they have treated an audit client as a PIE.

Responses to the specific questions

Overarching Objective

1. Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 as the objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code?

Yes – we support the overarching objective set out in proposed paragraphs 400.8 and 400.9.

Paragraph 400.8

We suggest that it might be helpful for users for some additional text to be inserted in paragraph 400.8 from the Explanatory Memorandum and extant Code as follows:

"400.8 Some of the requirements and application material set out in this Part are applicable only to the audit of financial statements of public interest entities, reflecting significant public interest in the financial condition of these entities **due to the possible impact of their financial well-being on stakeholders. (Note: from paragraph 19 Explanatory Memorandum)** The extent of public interest will depend on factors to be considered including:

- The nature of the business or activities, such as taking on financial obligations to the public as part of an entity's primary business. **Examples might include financial institutions, such as banks and insurance companies, and pension funds (Note: in extant Code)**
- Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations.
- Size of the entity.
- The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure **and whether such failure will cause significant disruption to the supply of goods or services on which the public may depend. (Note: from paragraph 25 Explanatory Memorandum)**
- Number and nature of stakeholders including investors, customers, creditors and of employees.

- The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.”

We recognise that there is a delicate balance between what content should be included in the Code and what can be included in the Basis for Conclusions. However, we do believe that the above additions to the wording of the Code would be beneficial for users without unnecessarily cluttering the Code.

Paragraph 400.9

Paragraph 17 of the Explanatory Memorandum states: “The IESBA believes it is important to make clear that these additional independence requirements are not about having a different “level” of independence (as all firms must be independent when performing an audit engagement) but rather about enhancing confidence in that independence.”

Paragraph 400.9 might be enhanced to make it clear that these are “additional” requirements and application material for public interest entities in order to enhance confidence in independence.

Also, we note that whilst the Explanatory Memorandum paragraph 18 refers to “the overarching objective as set out in proposed paragraphs 400.8 and 400.9”, it is only paragraph 400.9 which is referenced as the “objective” in paragraphs R400.14 (f) and 400.14 A1. It might be clearer to either reference both paragraph 400.9 and 400.8 in paragraphs R400.14 (f) and 400.14 A1, or, alternatively, to reference paragraph 400.8 within paragraph 400.9.

For example, paragraph 400.9 could be amended to either:

400.9 The purpose of these ~~se~~ **additional** requirements and application material for public interest entities, **as explained in paragraph 400.8**, is to enhance confidence in their financial statements through enhancing confidence in the audit of those financial statements.

or

400.9 The purpose of these requirements and application material for public interest entities, **as explained in paragraph 400.8**, is to enhance confidence in their financial statements through enhancing confidence in the audit of those financial statements **by having additional auditor independence requirements for such entities**.

2. Do you agree with the proposed list of factors set out in paragraph 400.8 for determining the level of public interest in an entity? Accepting that this is a non-exhaustive list, are there key factors which you believe should be added?

We agree with the proposed list of factors set out in paragraph 400.8 (other than the suggested clarifications noted in 1. Above).

We also suggest that the sentence in paragraph 24 of the Explanatory Memorandum could be added for clarity: “Each of these proposed factors on its own may not amount to significant public interest in the financial condition of an entity and should not be considered in isolation.”

Approach to Revising the PIE Definition

3. Do you support the broad approach adopted by the IESBA in developing its proposals for the PIE definition, including: • Replacing the extant PIE definition with a list of high-level categories of PIEs? • Refinement of the IESBA definition by the relevant local bodies as part of the adoption and implementation process?

Yes – we support the broad approach proposed by IESBA to provide a high-level list of categories of PIEs which are then refined by relevant local bodies as part of the adoption and implementation process.

Paragraph 51 of the Explanatory Memorandum states: “51. Proposed paragraph 400.15 A1 aims to clarify the high-level nature of the Code’s PIE definition and the role of the local bodies. Given the broad nature of the expanded list of PIEs in the proposed paragraph R400.14, these categories need to be further refined as appropriate for use within a local jurisdiction in order that the right entities are captured as PIEs by the local Code. As such, it is imperative that the relevant local bodies proactively determine what further refinements to the IESBA’s list of PIE categories are necessary as part of the adoption and implementation process.”

We note that in paragraph 51 of the Explanatory Memorandum above, IESBA discusses that the broad nature of the expanded list of PIEs means that the categories need to be further refined by relevant local bodies, however, in the proposed Code the list of high-level categories is noted at paragraph R400.14 while the need for the refinement of this list by relevant local bodies is discussed in paragraph 400.15 A1. We suggest that the content of paragraph 400.15 A1 would be better placed as application material to paragraph R400.14, rather than as application material to paragraph R400.15, as it is paragraph R400.14 and its application material that discuss which entities fall within the definition of a public interest entity and integral to this is the need for local jurisdictions to refine the list to ensure that the right entities are captured as PIEs by the local Code (or equivalent).

Also, as IESBA has noted the necessity for the list in R400.14 to be further refined by local bodies, it might also be helpful to signpost the content of paragraph 400.15 A1 in paragraph R400.14. For example:

“R400.14 For the purposes of this Part, a firm shall treat an entity as a public interest entity when it falls within any of the following categories (and subject to the refinement of this list by relevant local bodies as explained in paragraph 400.15 A1):

PIE Definition

4. Do you support the proposals for the new term “publicly traded entity” as set out in subparagraph R400.14(a) and the Glossary, replacing the term “listed entity”? Please provide explanatory comments on the definition and its description in this ED.

We support the use of the new term ‘publicly traded entity’ as IESBA explains in the Explanatory Memorandum however we believe that the definition of ‘publicly traded entity’ in the Glossary is somewhat circular – i.e. ‘An entity that issues financial instruments that are transferrable and publicly traded’ – which might not help users understand IESBA’s intentions.

IESBA notes in paragraph 38 of the Explanatory Memorandum what it intends by the term ‘publicly traded entity’ but this information is then lost in the brevity of the definition. We suggest consideration could be given to some of the detail from paragraph 38 of the Explanatory Memorandum being used within the definition, or added as additional explanatory material to the definition (similar to the approach IESBA has taken with the definition of ‘Inducement’ in the Glossary to the Code), for example:

“An entity that issues financial instruments that are transferrable and **where there is a facilitated trading mechanism which aims to match buyers and sellers. publicly traded. This would exclude financial instruments which are traded through privately negotiated agreements or financial instruments issued by an entity which are only listed and not traded.**”

Similarly, we note that it might also be beneficial for IESBA’s intention in relation to the term ‘financial instrument’ to be explained further. IESBA states at paragraph 38 of the Explanatory Memorandum: “The term “financial instruments” is intended to be broadly applied, covering “shares, stock or debt” (the term currently used in the extant definition of “listed entity”), securities, equity or debt instruments or other types of instruments such as warrants or hybrid securities.” Users might find it more helpful if IESBA’s intention for the term “financial instrument” to be broad is explained further in the Glossary, with examples given.

5. Do you agree with the proposals for the remaining PIE categories set out in subparagraphs R400.14 (b) to (f)?

We generally agree with the proposals for the remaining PIE categories.

However, we reiterate the point made in response to Question 1 above that whilst the Explanatory Memorandum paragraph 18 refers to “the overarching objective as set out in proposed paragraphs 400.8 and 400.9”, it is only paragraph 400.9 which is referenced as the “objective” in paragraphs R400.14 (f) and 400.14 A1. It might be clearer to either reference both paragraph 400.9 and 400.8 in paragraphs R400.14 (f) and 400.14 A1, or, alternatively, to reference paragraph 400.8 within paragraph 400.9.

6. Please provide your views on whether, bearing in mind the overarching objective, entities raising funds through less conventional forms of capital raising such as an initial coin offering (ICO) should be captured as a further PIE category in the IESBA Code. Please provide your views on how these could be defined for the purposes of the Code recognizing that local bodies would be expected to further refine the definition as appropriate.

This remains a developing issue. We therefore believe that local bodies are best placed to determine whether such an entity should be treated as a PIE in their particular jurisdiction.

Role of Local Bodies

7. Do you support proposed paragraph 400.15 A1 which explains the high-level nature of the list of PIE categories and the role of the relevant local bodies?

As noted in our response to Question 3, Paragraph 51 of the Explanatory Memorandum states: “51. Proposed paragraph 400.15 A1 aims to clarify the high-level nature of the Code’s PIE definition and the role of the local bodies. Given the broad nature of the expanded list of PIEs in the proposed paragraph R400.14, these categories need to be further refined as appropriate for use within a local jurisdiction in order that the right entities are captured as PIEs by the local Code. As such, it is imperative that the relevant local bodies proactively determine what further refinements to the IESBA’s list of PIE categories are necessary as part of the adoption and implementation process.”

The Explanatory Memorandum refers to it being imperative that relevant local bodies proactively determine refinements to IESBA’s broad list of categories proposed in R400.14. However, as we noted in response to Question 3 above, in the proposed Code the list of high-level categories is noted at paragraph R400.14 while the refinement of this list by relevant local bodies is in paragraph 400.15 A1. We suggest that the content of paragraph 400.15 A1 in relation to relevant local bodies would be better placed as application material to R400.14 rather than as application material to R400.15.

8. Please provide any feedback to the IESBA’s proposed outreach and education support to relevant local bodies. In particular, what content and perspectives do you believe would be helpful from outreach and education perspectives?

We are supportive of the proposed outreach and education support to relevant local bodies. In terms of content and perspectives this should seek to provide clarity as to the roles to be played by relevant local bodies and the firms. Ultimately, in the proposed model these groups will play a key role in determining what is a PIE in a given jurisdiction, therefore, it is key that they are aware of what is expected of them.

Role of Firms

9. Do you support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs?

We support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs however suggest that some further detail from paragraph 65 of the Explanatory Memorandum within some of the bullet points in paragraph 400.16 A1 might be helpful for users:

“400.16 A1 In addition to the factors listed in paragraph 400.8, factors to consider when determining whether additional entities or certain categories of entities should be treated as public interest entities include:

- Whether the entity has been specified as not being a public interest entity by law or regulation. **It is not anticipated that a firm should treat an entity as a PIE when it has been explicitly specified as not being a PIE by law or regulation.**
- Whether the entity is likely to become a public interest entity in the near future.
- Whether in similar circumstances the firm or a predecessor firm has treated the entity as a public interest entity.
- Whether in similar circumstances the firm has treated other entities as a public interest entity.
 - Whether the entity or other stakeholders requested the firm to treat the entity as a public interest entity and, if so, whether there are any reasons for not meeting this request.
- The entity’s corporate governance arrangements, for example whether those charged with governance are distinct from the owners or management, **as many of the additional independence requirements for PIE audits relate to increased communication with TCWG.**

10. Please provide any comments to the proposed list of factors for consideration by firms in paragraph 400.16 A1.

We are broadly supportive of the proposed list of factors set out in paragraph 400.16 A1.

Transparency Requirement for Firms

11. Do you support the proposal for firms to disclose if they treated an audit client as a PIE?

Given the objective of the additional requirements and application material for PIEs is to enhance stakeholder confidence in an entity’s financial statements through enhancing confidence in the audit of those financial statements, we support the proposal for firms to disclose if they have treated an audit client as a PIE.

12. Please share any views on possible mechanisms (including whether the auditor’s report is an appropriate mechanism) to achieve such disclosure, including the advantages and disadvantages of each. Also see question 15(c) below.

We believe that the most appropriate mechanism would be via the audit report as this would aid transparency.

Other Matters

**13. For the purposes of this project, do you support the IESBA’s conclusions not to:
(a) Review extant paragraph R400.20 with respect to extending the definition of “audit client” for listed entities to all PIEs and to review the issue through a separate future workstream?**

As IESBA explains in paragraphs 75 and 76 of the Explanatory Memorandum, due to the complexity of the issue and the need for further research on this topic, we agree with IESBA’s conclusion that extending the definition of audit client for listed entities to all PIEs in paragraph R400.20 should be reviewed through a separate workstream, and that, in the meantime, the only change to R400.20 be the replacement of the term “listed entity” with “publicly traded entity”.

(b) Propose any amendments to Part 4B of the Code?

14. Do you support the proposed effective date of December 15, 2024?

Yes, we are supportive of the proposed effective date.

15. To assist the IAASB in its deliberations, please provide your views on the following:

(a) Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 for use by both the IESBA and IAASB in establishing differential requirements for certain entities (i.e., to introduce requirements that apply only to audits of financial statements of these entities)? Please also provide your views on how this might be approached in relation to the ISAs and ISQMs.

Yes, we are supportive of a consistent approach being adopted by IESBA and the IAASB.

(b) The proposed case-by-case approach for determining whether differential requirements already established within the IAASB Standards should be applied only to listed entities or might be more broadly applied to other categories of PIEs.

There is a rebuttable presumption that differential requirements should be applied to all categories of PIEs. However, this is a matter that would need to be subject to more detailed consideration to ensure that such an approach would be proportionate.

(c) Considering IESBA's proposals relating to transparency as addressed by questions 11 and 12 above, and the further work to be undertaken as part of the IAASB's Auditor Reporting PIR, do you believe it would be appropriate to disclose within the auditor's report that the firm has treated an entity as a PIE? If so, how might this be approached in the auditor's report?

Yes, we do believe that it would be appropriate to disclose within the auditor's report that an audit firm has treated an entity as a PIE. This in our view would be the most transparent mechanism for doing so.

##



Contact us

CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH

+44 (0) 131 347 0100

connect@icas.com | [icas.com](https://www.icas.com)

 @ICASaccounting  ICAS – The Professional Body of CAs