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Global Accountants'  
Liability Update  
July 2020



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Hogan Lovells has a global team of securities and professional liability lawyers uniquely positioned to monitor legal developments across the globe that impact accountants' liability risk. We have experienced lawyers on five continents ready to meet the complex needs of today's largest accounting firms as they navigate the extensive rules, regulations, and case law that shape their profession. We recently identified developments of interest in Hong Kong, The Netherlands, Spain, and the United States, which are summarized in the pages that follow.



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## Recent regulatory and enforcement developments



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# Hong Kong

## COVID-19 – CPAs benefit from quarantine exemptions

Certified public accountants are among those who may benefit from a mechanism [announced](#) by the Hong Kong government in May 2020 to exempt certain inbound travelers from compulsory quarantine. The [exemption](#) is provided under s. 4(1) of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) and applies to certified public accountants who are required to travel to Mainland China to conduct audit work for companies listed on a recognized stock market and having Mainland operations.

The exemption is available to certified public accountants in practice and employees of practice units registered with the Hong Kong Institute of Certified Public Accountants (HKICPA) under the Professional Accountants Ordinance (Cap. 50).

Exempted persons who travel to the Mainland are still subject to the 14-day compulsory quarantine requirement imposed by the Mainland authorities, which may call into question the practicality of the scheme. Talks with Mainland authorities about establishing a mutual health recognition scheme, which would avoid the need for quarantine, have stalled in the wake of a recent increase in infections in Hong Kong.

### Accounting for the pandemic

On 9 June 2020, the HKICPA issued further [educational guidance](#) on COVID-19-related financial reporting issues for 2020 reporting periods. The June guidance follows [March guidance](#) that highlighted some key financial reporting implications brought about by COVID-19 and was primarily aimed at reporting periods ending on 31 December 2019.

The June guidance highlights other financial reporting considerations related to 2020 interim and annual financial statements, including in the areas of expected credit losses, impairment of non-financial assets, fair value measurements, revenue recognition, government grants, rent concessions, property, plant and equipment, inventories and possible breaches of loan covenants.

The guidance considers the accounting impact of government and bank relief measures for borrowers affected by COVID-19, which could be in the form of payment holidays. Entities providing such holidays are advised to consider the impact on their financial statement and whether the payment holidays have brought about a significant increase in credit risk or default. Where government assistance is provided by governments (such as guarantees),



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entities should assess whether this should be recognized as a separate reimbursement asset or a government grant under HKAS20 Accounting for Government Grants and Disclosures of Government Assistance.

The guidance encourages entities to re-evaluate their portfolios in light of the effects of COVID-19, and to be mindful of the need to make prompt disclosure of assumptions used in preparing forecasts, in particular in terms of the impact of support measures. Entities should also recognize the impact of government closure-orders for factories and shops and reduced demand from customers and be ready to recognize appropriate impairment losses.

The guidance also notes that the use of valuers presents challenges because they may not be able to perform valuation properly due to lockdown measures in place in some jurisdictions. Valuation reports may therefore need to include suitable caveats noting any restrictions on information or physical inspection.

Finally, where additional discounts or incentives are provided to customers, entities need to evaluate whether additional legal obligations are created, such as implied promises or performance obligations for future contracts.

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# The Netherlands

## Impact of Covid-19 on the accountancy sector

### Introduction

On the 6th of April 2020, The Netherlands Institute of Chartered Accountants (Koninklijke Nederlandse Beroepsorganisatie van Accountants or the NBA) published its updated NBA Alert 42 titled “Impact Coronavirus On Professional Services Provided By Professional Accountants.” The purpose of an NBA Alert is to provide guidance to registered accountants and accounting consultants on a specific aspect of the audit professions.

The NBA’s policy with regard to the coronavirus is, among other things, aimed at:

1. Assisting accountants and indirectly their clients and giving them the opportunity to manage the financial crisis; and
2. Finding solutions that contribute to the Dutch economy.

We discuss the most important guidance provided in this NBA Alert below.

### Going concern issues in the financial statements and in the engagement report

A large number of entities face – without support of the government – going concern issues due to the impact of Covid-19 on the global economy. The effects of Covid-19

became relevant in the Netherlands at the end of February 2020. For financial statements or other financial reports with a reporting date before February 2020, the impact of Covid-19 can generally be seen as a subsequent event that says nothing about the situation as of the balance sheet date. However, this may differ for entities that – for their result – strongly rely on areas that suffered from the Covid-19 crisis earlier (for example China). Financial statements and other financial reports covering periods closing after the end of February 2020 will capture some effects of Covid-19, and financial statements for an entity that closes its financial year on March 31 should reflect events up to that date. Of course, subsequent events could further shape the financial standing of these entities. The past and ongoing impact of Covid-19 can be significant due to possible impairments of assets, valuation of outstanding receivables, and possible breaches of contract and penalties.

The Annual Reporting Guidelines (*Richtlijnen voor de jaarverslaggeving*) expects entities – in the event of a material uncertainty related to going concern – to include an adequate explanation in the notes to the financial statements. Apart from already known consequences and measures taken, in the current situation most entities cannot yet provide a clear analysis of the situation and the consequences. Therefore, entities are to



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describe the uncertainty in the best way possible and present an outline of the expected impact. They must also indicate that it is unclear what the ultimate outcome will be.

### Audit opinion

In case of a material uncertainty related to going concern, the auditor will have to consider the requirements of ISA 570, which deals with the auditor's responsibilities in an audit of financial statements relating to going concern and the implications for the auditor's report. However entities may not have detailed plans on how to survive the Covid-19 crisis because the effect and duration cannot be estimated. In normal situations, an adequate disclosure of a material uncertainty related to going concern could in principle lead to an unqualified opinion. A going concern section should then also be included in the auditor's report. If for reasons other than Covid-19 an uncertainty related to going concern already existed, the auditor should assess the impact thereof. In those situations, entities must have cash flow forecasts, at least from the period before the outbreak of the virus. The auditor will have to determine whether the explanatory notes are clear enough and whether the valuation on a going concern basis is acceptable. The impact of Covid-19 on going concern of the entity is expected to become more apparent as time progresses. Where possible, it may therefore be an option to postpone the preparation of the financial statements and the issuance of the auditor's report. If postponing is not an option, uncertainty

is not a reason not to issue an auditor's report.

The abovementioned ISA standard does not require including a disclosure in the compilation report or the review report. However, accountants can of course add a going concern section.

### Delay in collecting information

Employees in the Netherlands have been asked to work from home as much as possible. This can result in:

1. Practitioners being asked to perform their procedures outside the premises of the entity;
2. It sometimes taking longer to provide relevant (audit) evidence;
3. Practitioners not being able to have face-to-face contact with certain employees of the client; and,
4. Practitioners being unable to carry out on-site reviews due to a travel ban.

In many cases, it will be possible to carry out the work from home. However, there will also be situations where this is not possible. The circumstances, however extraordinary they may be, do not alter the requirements to obtain sufficient and appropriate (audit) evidence to support the audit, compilation or other reports. There will be cases where it is not possible to wait any longer to issue the report. An auditor must not issue an unqualified opinion if it was not able to obtain sufficient audit evidence. Depending on the case, the auditor will issue a qualified report or a disclaimer of opinion.



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## Compiling financial statements

Many entities will not know exactly what to include in the financial statements about the effects of the Covid-19 events. The practitioner who uses knowledge to support management in preparing the financial statements can provide added value here. Professional judgement is certainly important in the case of the current Covid-19 situation. A practitioner should obtain a good understanding of ISRS 4410 and its guidance in NBA practice statement 1136.

## Adjusting financial statements

Developments with regard to Covid-19 follow each other quickly. Regularly, time goes by between the preparation of the financial statements and the adoption of the financial statements at the annual shareholders meeting. It is possible that the description of the impact of the coronavirus in the notes to the financial statements or the directors' report prepared by the management do not correspond with the situation at the time of adoption. The general rule is that the date on which management prepares the financial statements (in IFRS terms '*the date of authorisation for issue*') is the date until which subsequent events are included. There are however exceptions to this.

Financial statements should be adopted with due observance of what has appeared on the balance sheet with regard to financial matters that have occurred between the preparation of the financial

statements and the annual shareholders meeting as far as this is essential for the understanding referred to in Article 2: 362 paragraph 1 of the Dutch Civil Code.<sup>1</sup> So, this does not apply to subsequent events that do not provide information about the situation as of the balance sheet date. The Covid-19 crisis must be seen as such event.

In case the going concern basis is not appropriate (transition to liquidation basis), the financial statements should be adjusted to reflect this development. Other Covid-19-related developments during the period between the preparation of and adoption of the financial statements do not require adjustments. The management or shareholders meeting can of course voluntarily decide and adjust the financial statement. If the financial statements are adjusted, the auditor should provide a new auditor's report. Whenever the auditor has concerns regarding the going concern basis for the financial statements, while management adheres to the going concern basis, it is reasonable to have management's written representation.

## Payment of taxes

Special deferral of payment of all taxes may be requested from the tax authorities. This deferral is available until 1 October 2020 and a deferral request must meet certain conditions. A statement of a third party expert (for example, an accountant) is not needed for the first request. After three months, one can request an extension of the deferral. In cases in which the tax debt exceeds € 20,000, such third party statement is required. The statement



must show that the financial problems are mainly caused by the Covid-19 crisis. In addition, the statement contains a so-called liquidity forecast. This must be plausible according to the third expert.<sup>2</sup>

### The NOW

The Bridging Employment Emergency Measure (*Noodmaatregel Overbrugging Werkgelegenheid* or the **NOW**) is intended to meet the needs of employers facing loss of turnover. This enables them to continue to pay their employees with a permanent and flexible contract. The NOW 1.0 has been extended by 4 months. This NOW 2.0 can be applied from 6 July 2020 and provides an allowance for labour costs from 1 June 2020. Employers who expect at least a loss of 20% of turnover can apply for an allowance for these four months amounting to a maximum of 90% of the wage bill related to the loss of turnover.

An auditor's report is required for an advance payment of € 100,000 (=80%) or more and a determined subsidy of € 125,000 or more. These amounts are always based on the amount of subsidy granted to the group, or if there is no group, the legal or natural person. Companies that make use of the possibility to determine the decrease in turnover at operating company level will always have to provide an auditor's report.<sup>3</sup>

The NBA furthermore notices that accountants will be implicated in the NOW in many ways. For example, they will assist in applying for the facility and in preparing the statement. The NBA calls

on accountants to watch for signs that the entity does not meet the conditions for the facility or would like to provide incorrect information.

- 1 Paragraph 1 states: In accordance with standards that are considered acceptable in society, the financial statements provide an insight that enables a responsible opinion to be formed about the capital and the result, and insofar as the nature of the financial statements permits, about the solvency and the liquidity of the legal entity.
- 2 In the NBA Alert it is stated that it is unclear what the statement should look like if the postponement lasts longer than 3 months. In the meantime, this has been agreed upon. See: Besluit noodmaatregelen coronacrisis Article. 3.1
- 3 In the NBA Alert, it is stated that it is unclear what the limit is for an engagement report. In the meantime, this has been established. Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid Article 6a and Article 14.

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# Spain

## 30th Auditor's Forum held in Barcelona: News on the Bill of the Royal Decree approving the Regulations implementing Law 22/2015 on accounts auditing and other issues

On 3 July 2020, during the 30th Auditor's Forum organized by the Catalan Chartered Accountants Association (hereinafter, CCJCC for its initials in Spanish), the president of the Spanish Institute of Accounting and Auditing (hereinafter, ICAC for its initials in Spanish), stated that the Bill of the Royal Decree approving the Regulations implementing Law 22/2015 of 20 July on the auditing of accounts (*Proyecto de Real Decreto por el que se aprueba el Reglamento de desarrollo de la Ley 22/2015, de 20 de julio, de auditoría de cuentas*) (the Bill) will come into force on 1 January 2021.

This Bill was first published on 3 October 2018 by the ICAC and has been amended several times since. It will repeal the current Royal Decree 1517/2011, of 31 October, which develops the previous Law on account auditing and includes the following main changes: (i) measures for collecting and digitally documenting information, (ii) computer security and record keeping, (iii) extensive communication obligations for the auditing companies (*i.e.* among others a new section focused on communications between auditing companies and the ICAC), and (iv) additional controls on accreditation and deadlines.

In addition, at this Auditor's Forum, it was highlighted that there is a need to reduce

the thresholds set out in the regulations that trigger mandatory audits of companies (such as the value of the assets, the income of the company, and the average number of employees). In this regard, the president of the CCJCC, stated that "*although in Spain the percentage of voluntary audits reaches 30%, their practice should be further strengthened in order to achieve the necessary trust and transparency among organizations and for society as a whole.*" It is believed that, due to COVID-19, auditing services will be crucial in the recovery of confidence and, consequently, in the economic growth of Spain. Thus, it was recommended that the legal thresholds for mandatory audits of companies be revised in order to increase the number of companies subject to auditing services.

Lastly, in the Auditor's Forum, attention was also directed to the role of the auditor in the verification of non-financial information. In this regard, the president of the ICAC indicated that it would be appropriate to establish a "*standardized criteria*" with respect to the preparation and verification of non-financial information.

**Audited SMEs will have better access to credit in times of COVID-19**

It seems that things are returning to normal in Spain, but that the economic crisis



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produced by COVID-19 will have a greater impact on small and medium-sized enterprises (SMEs) as they have seen their income drastically reduced and have fewer economic resources to deal with liquidity problems than larger companies.

In this regard, the Spanish Chartered Accountants Association (an organization that represents auditing professionals and companies, linked to the Ministry of Economic Affairs and Digital Transformation) (ICJCE for its initials in Spanish), published a note dated 28 May 2020, highlighting that those SMEs that submit their accounts to audit will have greater access to obtain funding from banks.

These are the conclusions of the study “*The Value of Audit for the SMEs in Spain: study of the perception of risks analysts*” ordered by the ICJCE, which shows that the fact that a SME is audited improves its access to credit. This is because the audit provides enhances trust and therefore decreases the perceived risk of the financial transaction. Moreover, audit reports contribute to SMEs securing more favorable financial terms such as interest rates, the required guarantees, etc.

In short, audit reports of SMEs can play a vital role in these times during which, due to COVID-19, banks are more reluctant to provide financing. These reports can improve the perception of SMEs providing them with greater transparency, which is a crucial factor for obtaining the credit. That credit, in turn, may enable SMEs to survive the economic effects of the pandemic.

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# United States

## SEC suspends three former audit partners for cheating on internal training exams and impeding an internal investigation

On 18 May 2020, the U.S. Securities and Exchange Commission (the SEC or Commission) issued orders suspending three former KPMG audit partners from practicing before the SEC. The partners, [Michael Bellach](#), [Timothy Daly](#), and [John Donovan](#), were accused of cheating on and sharing the answers to KPMG’s internally-administered training examinations.

Bellach, Daly and Donovan were partners in KPMG’s audit practice until March 2019. All are CPAs licensed to practice in various states, including New York, Connecticut, Texas and California. To maintain their CPA licenses, Bellach, Daly and Donovan were required to complete a minimum number of continuing professional education (CPE) courses. KPMG also requires its audit professionals to complete additional training courses, in excess of state licensing requirements, and to take examinations generally not mandated by state accountancy boards. To help its professionals meet these requirements, KPMG administers its own set of online training programs that qualify for state CPE credit. KPMG auditors are required to pass an examination at the conclusion of each online training program and are given three opportunities to pass. If an auditor is unable to pass the examination

after three attempts they are: (1) required to re-take the training, (2) prohibited from conducting further auditor work until the exam is successfully completed; and/or (3) their compensation could be reduced.

The SEC’s orders allege that Daly and Bellach were working together on an engagement, when Bellach shared with Daly that he had completed a difficult training exam and had taken pictures of the questions and his responses after his first failed attempt at completing the examination. Daly then asked for the photographs, which Bellach texted to him. Donovan similarly is alleged to have supported examination sharing within his team. Between April and September 2018, Donovan allegedly received “answers to training exams from subordinates on his engagement on seven occasions and shared answers with his team three times.”

In addition to sharing examination answers, the SEC orders allege that Bellach, Daly and Donovan impeded KPMG’s internal investigation of cheating at the firm. After learning of the issue, KPMG’s Board of Directors formed a Special Committee led by an independent board member to oversee an investigation of this conduct. As part of the investigation, all KPMG personnel were directed to preserve documents related to KPMG’s training requirements or training sessions and certain audit professionals were required to “complete a questionnaire that probed whether individuals had shared exam materials.” Daly and Bellach allegedly



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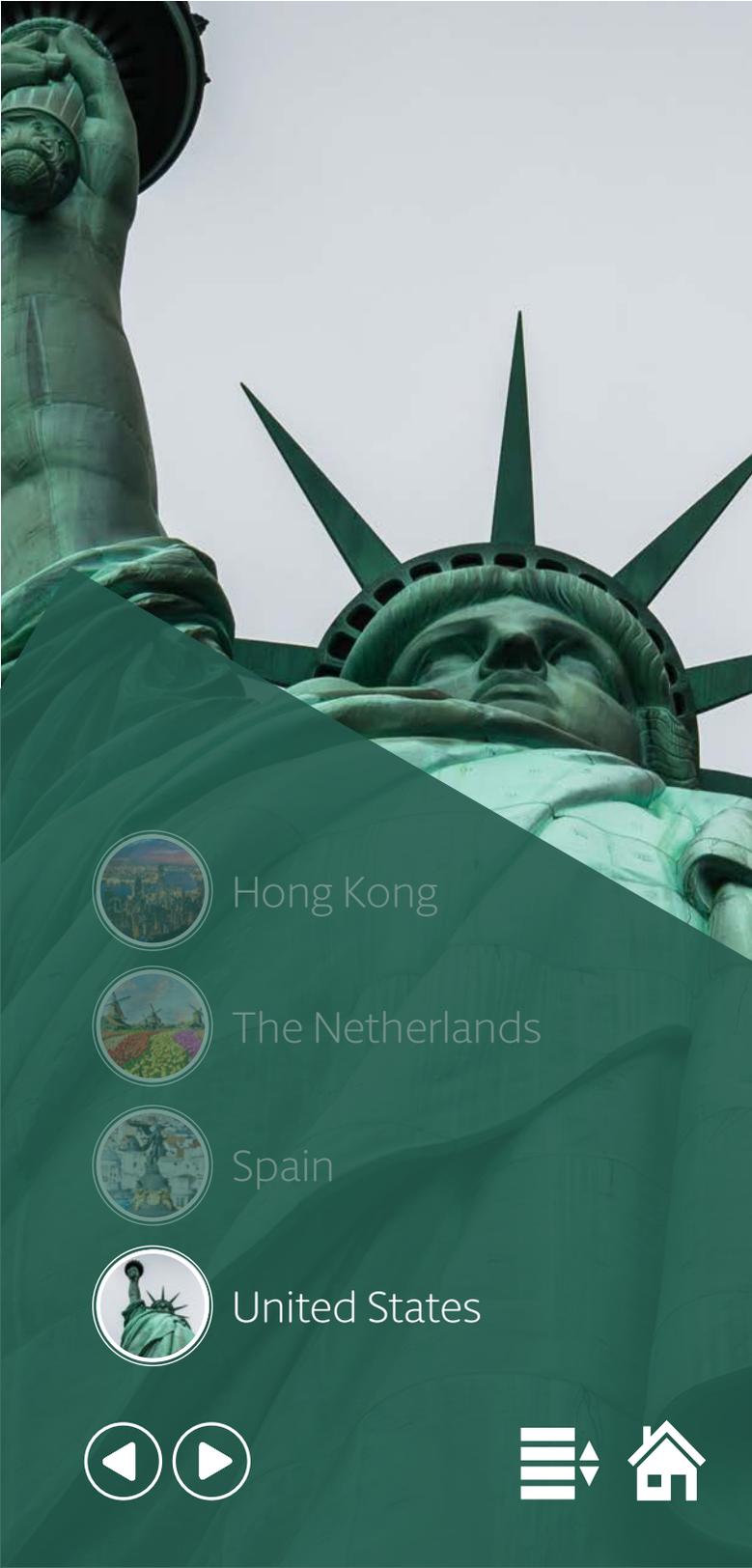


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deleted text messages and/or images the two had exchanged regarding the training examination and Donovan and Daly provided inaccurate answers in response to questionnaires.

The SEC determined that Bellach, Daly and Donovan’s conduct violated the American Institute of Certified Public Accountant’s Code of Professional Conduct, as well as PCAOB Rule 3500T, which requires audit professionals to “maintain integrity when performing any professional service in connection with the preparation or issuance of any audit report.” Without admitting or denying the SEC’s findings, Bellach, Daly and Donovan reached a settlement with the SEC pursuant to which they are “denied the privilege of appearing or practicing before the Commission as an accountant” for two, three and one year(s), respectively. Each can request reinstatement at the end of their respective ban periods.

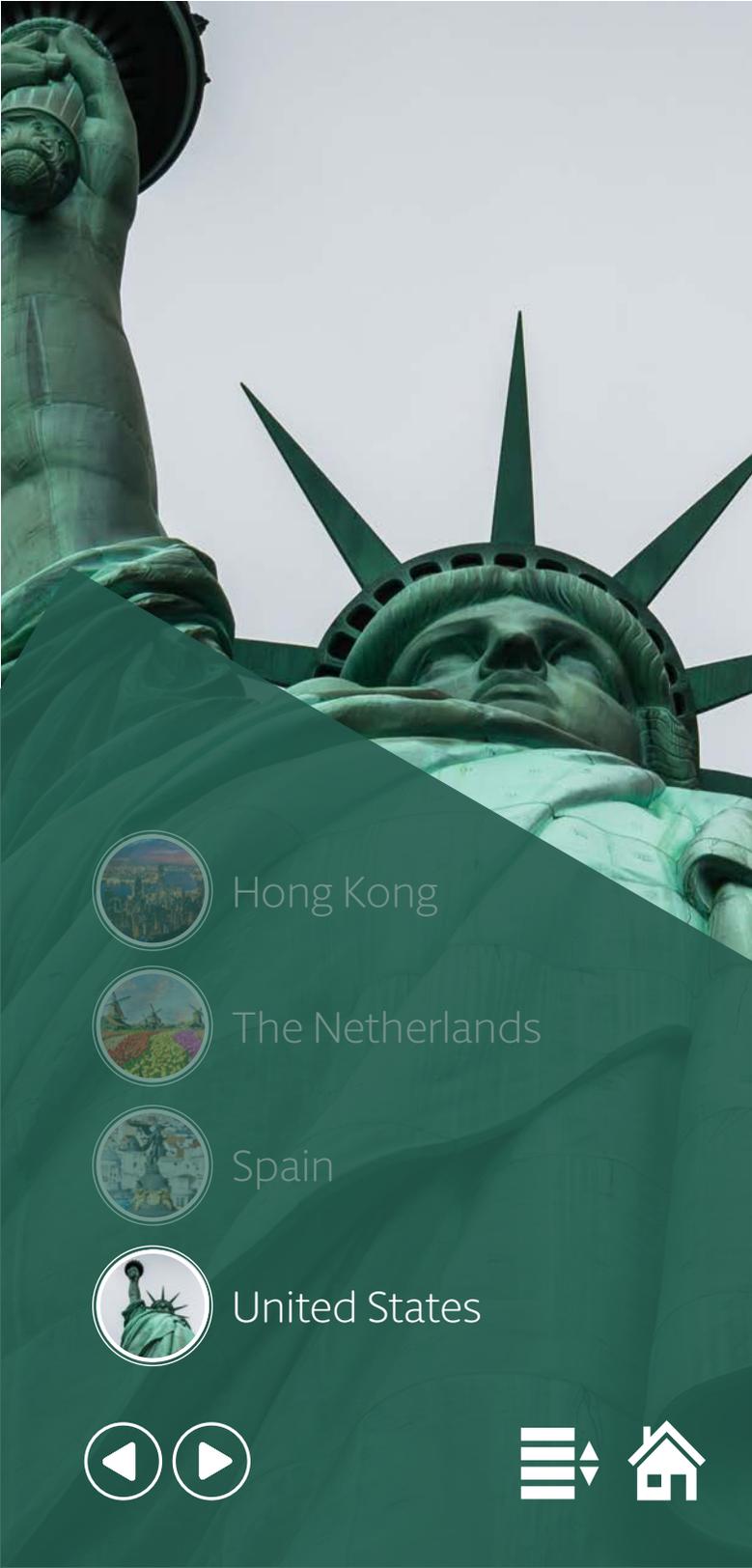
#### PCAOB fines Australian accounting firm and revokes registration for violating auditing rules and quality control standards

On 29 June 2020, the Public Company Accounting Oversight Board (PCAOB) issued a [settled disciplinary order](#) that revoked the registration of Sydney, Australian-based HLB Mann Judd (the Firm) and fined the Firm \$50,000 for violating PCAOB rules and auditing standards in connection with the audits of a client’s (Issuer A’s) financial statements for six fiscal years, as well as violating PCAOB quality control standards. In addition, the PCAOB fined Firm partners Darryl Swindells (\$15,000) and Aidan Smith (\$10,000) and barred each for being

an associated person of a registered public accounting firm for three years and one year, respectively.

The PCAOB determined that when HLB Mann Judd accepted Issuer A as an audit client and performed audits of Issuer A’s financial statements, the Firm was not in a position to adequately audit public issuer clients under PCAOB rules and standards. In particular, the PCAOB order states that the Firm failed to (i) train its personnel to perform issuer audits in accordance with PCAOB standards, and (ii) staff its audits of Issuer A with auditors qualified and knowledgeable to perform issuer audits in accordance with such PCAOB standards; and, thus that the Firm lacked quality control policies and procedures that addressed the requirements of, or otherwise referenced considerations distinctive to, public issuer audits.

The PCAOB found that other than a 20-minute session on “Information/discussion for foreign PCAOB registrants” that Smith attended in 2015, none of the members of the audit engagement teams assigned to the Firm’s audits of Issuer A received training in PCAOB auditing standards before or during those engagements. By failing to assign personnel with adequate technical training and proficiency in issuer audit work, and failing to exercise due professional care in ensuring the engagement teams had knowledge commensurate with their responsibilities in performing issuer audits, the Firm violated auditing standards. In addition, the Firm failed to implement and maintain a system of quality control that would provide it



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with reasonable assurance that the work performed by engagement personnel would comply with applicable PCAOB professional standards.

The PCAOB also determined that Swindells and Smith violated PCAOB rules and auditing standards in connection with three aspects of Issuer A’s audits: client acceptance and continuance; audit planning and performance; and, documentation. With respect to audit planning and performance, those deficiencies arose in key areas of the audits: risk assessment, revenue testing and goodwill valuation testing.

### PCAOB changes format and content of Inspection Reports to enhance transparency

The PCAOB revised the format and content of its inspection reports in June 2020 for the first time since it began issuing such reports approximately fifteen years ago.

PCAOB Chairman William D. Duhnke III explained the Board’s decision to revise the inspection reports: “inspection reports are one of the primary ways we communicate with the public about our oversight activities, and we have heard time and again through our external engagement that the reports can be improved.”

The PCAOB has issued a [Guide to Reading the PCAOB’s New Inspection Report](#) that highlights the changes made to provide clearer and more useful information to the public:

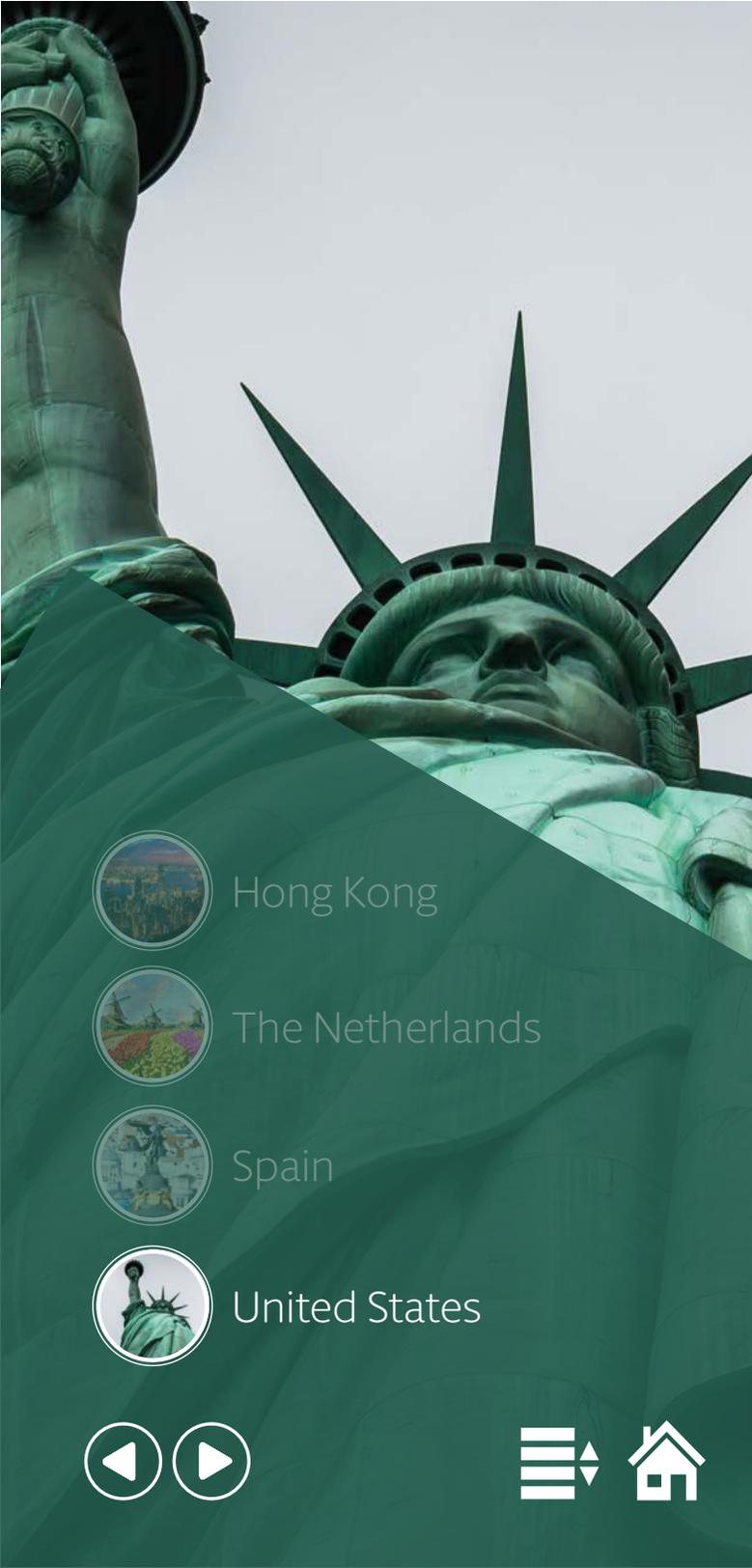
- Streamlines the content to enhance readability for investors, audit committee

- members, preparers, audit firms, and the general public;
- Utilizes new charts and graphs to make the information more digestible and accessible;
- Reduces the amount of technical and boilerplate language; and
- Provides access to a new, refined document that describes general, non-firm specific information about what and how we inspect, rather than repeating such information in each report.

For annually inspected firms, the PCAOB will provide inspection data for the three most recent inspection years.

Notably, the PCAOB revised the information provided in “Part 1” of the inspection report, which historically detailed the PCAOB’s inspection observations as they related to selected issuer audits. The new report has two sections in Part 1: (i) Part 1.A discusses deficiencies identified in an inspection that may be of such significance that the PCAOB believes the firm, at the time it issued its audit report, had not obtained sufficient appropriate audit evidence to support its opinion on the issuer’s financial statements and/or ICOFR; and (ii) Part 1.B discusses deficiencies, not previously presented in Part I of prior inspection reports, related to other instances of noncompliance with PCAOB standards or rules, *e.g.*, communications with the audit committee, timely and accurate reporting of other participants in the audit on Form AP, or assembling for retention a complete and final set of audit documentation.

On 1 June 2020, the [PCAOB issued the 2018](#)



[inspection reports for the six largest U.S. audit firms](#) in the new, redesigned format. All triennially inspected firms' reports, beginning with the 2019 inspection reports, will utilize a similar format, but may not include all of the same data as the annually inspected firms' reports due to the frequency of inspections and the size and nature of those firms.

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