

1 February 2017
Exposure Draft

Response Due Date
24 April 2017

Exposure Draft

**Improving the Structure of the Code of Ethics
for Professional Accountants – Phase 2**
**With Certain Proposed Conforming
Amendments Arising from the
Safeguards Project**



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

CONTENTS

Exposure Draft

The Exposure Draft can also be found on the Institute's website at:

<http://www.hkicpa.org.hk/en/standards-and-regulations/standards/code-of-ethics/exposure-drafts/>

Exposure Draft

January 2017

Comments due: May 25, 2017

*International Ethics Standards Board
for Accountants®*

Improving the Structure of the Code of Ethics for Professional Accountants— Phase 2

With Certain Proposed Conforming
Amendments Arising from the
Safeguards Project



This Exposure Draft was developed and approved by the International Ethics Standards Board for Accountants® (IESBA®).

The IESBA is a global independent standard-setting board. Its objective is to serve the public interest by setting high-quality ethics standards for professional accountants worldwide and by facilitating the convergence of international and national ethics standards, including auditor independence requirements, through the development of a robust, internationally appropriate *Code of Ethics for Professional Accountants*.

The structures and processes that support the operations of the IESBA are facilitated by the International Federation of Accountants® (IFAC®).

Copyright © January 2017 by the International Federation of Accountants (IFAC). For copyright, trademark, and permissions information, please see [page 92](#).

REQUEST FOR COMMENTS

This Exposure Draft, [Improving the Structure of the Code of Ethics for Professional Accountants—Phase 2](#) (Structure ED-2) was developed and approved by the International Ethics Standards Board for Accountants® (IESBA®). This document sets out the proposals in Phase 2 of the Structure of the Code project (“Structure project”), describes the key features of this phase of the project, and explains the rationale for the IESBA’s proposals. It also includes conforming amendments arising from the Safeguards project. These conforming amendments are presented in gray text. The explanatory memorandum to the January 2017 Exposure Draft, [Proposed Revisions Pertaining to Safeguards in the Code—Phase 2](#) (Safeguards ED-2) explains the nature of the proposed conforming amendments arising from the Safeguards project. Although the material in Safeguards ED-2 is not repeated in this document, the IESBA welcomes feedback about structural matters on Safeguards ED-2. The IESBA welcomes feedback on those conforming amendments as part of respondents’ comments on Safeguards ED-2. **Comments on Safeguards ED-2 are requested by April 25, 2017.**

The proposals in Structure ED-2 may be modified in light of comments received before being issued in final form. **Comments on Structure ED-2 are requested by May 25, 2017.**

Respondents are asked to submit their comments electronically through the IESBA website, using the [“Submit a Comment”](#) link. Please submit comments in both PDF and Word files. Also, please note that first-time users must register to use this feature. All comments will be considered a matter of public record and will ultimately be posted on the website. Although IESBA prefers that comments are submitted via its website, comments can also be sent to Ken Siong, IESBA Technical Director at KenSiong@ethicsboard.org.

This publication may be downloaded from the IESBA website: www.ethicsboard.org/restructured-code. The approved text is published in the English language.

IMPROVING THE STRUCTURE OF THE CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS—PHASE 2

CONTENTS

	Page
EXPLANATORY MEMORANDUM	5
I. Introduction	5
II. Background	6
III. Key Features of the Proposed Restructured Code	7
IV. Significant Matters	8
V. Other Matters	9
VI. Project Timetable and Proposed Effective Date	9
VII. Guide for Respondents	10
EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (SECTIONS ADDRESSED IN PHASE 2)	12
Chapter 1 of Structure ED-2 – Proposed Restructured Text of Provisions in Part C of the Extant Code as revised, in the Close-off document for Part C Phase 1*	13
Chapter 2 – Proposed Restructured Text of the Final NOCLAR Pronouncement, <i>Responding to Non-compliance with Laws and Regulations</i> (Sections 260 and 360)	34
Chapter 3 – Proposed Restructured Text of the Long Association Close-off Document (Sections 540 and 940)	55
Chapter 4 – Proposed Restructured Text of the Provisions Addressing Restricted Use Reports (Section 800)	62
Chapter 5 – Proposed Restructured Text Relating to Independence – Other Assurance Engagements (Part 4B)	65

EXPLANATORY MEMORANDUM

I. Introduction

1. It is in the public interest for the [Code of Ethics for Professional Accountants](#) (the Code) to be understandable and usable. In restructuring the Code, the IESBA is aiming to enhance the understandability and usability of the Code, thereby facilitating its adoption, effective implementation, consistent application, and enforcement.
2. In January 2017, the IESBA released three Exposure Drafts (EDs), including Structure ED-2, that are inter-related through the IESBA's initiative to develop a restructured Code. This memorandum provides background to, and an explanation of, the proposed text in Structure ED-2. Highlights of the other two EDs are included in the subsection "Other Exposure Drafts" that follows immediately below. The IESBA approved those EDs in December 2016.
3. Structure ED-2 comprises the restructuring of the text of several IESBA projects representing the majority of the remainder of the extant Code that was not included in Phase 1 of the Structure project. It includes:
 - Chapter 1 – Proposed Restructured Text of Provisions in Part C of the Extant Code, as revised in the [Close-off Document for Part C Phase 1](#) (Part 2- Professional Accountants in Business¹ (Sections 200-270))
 - Chapter 2 – Proposed Restructured Text of the final NOCLAR Pronouncement, [Responding to Non-compliance with Laws and Regulations](#)² (Sections 260 and 360, *Responding to Non-compliance with Laws and Regulations*)
 - Chapter 3 – Proposed [Restructured Text of the Long Association \(LA\) Close-off Document](#)³ (Section 540, *Long Association of Personnel (Including Partner Rotation) with an Audit Client*; and Section 940, *Long Association of Personnel with an Assurance Client*)
 - Chapter 4 – Proposed Restructured text of the Provisions Addressing Restricted Use Reports⁴ (Section 800, *Reports that Include a Restriction on Use and Distribution*)
 - Chapter 5 – Proposed Restructured Text Relating to Independence–Other Assurance Engagements (Part 4B, except for material relating to the provision of non-assurance services to assurance clients (see Safeguards section immediately below)).⁵

Other Exposure Drafts

Safeguards

4. The IESBA also released in January 2017 [Safeguards ED-2](#) which was developed using the structure and drafting conventions of the proposed restructured Code. Safeguards ED-2 includes proposed

¹ Extant Part C – *Professional Accountants in Business*

² Extant Sections 225 and 360, *Responding to Non-compliance with Laws and Regulations*

³ Revised provisions addressing long association in extant Sections 290 and 291, which the IESBA approved under the extant structure and drafting conventions in December 2016

⁴ Extant paragraphs 290.500 to 290.514, *Reports that Include a Restriction on Use and Distribution*

⁵ Extant Section 291, *Independence – Other Assurance Engagements*

EXPLANATORY MEMORANDUM

Section 600, *Provision of Non-assurance Services to an Audit Client* and Proposed Section 950, *Provision of Non-assurance Services to an Assurance Client*. Some of the revisions to proposed Sections 600 and 950 are intended to enhance safeguards in the non-assurances services sections of the extant Code and therefore go beyond the scope of the Structure project. Accordingly, Sections 600 and 950 are not repeated in this document.

Applicability of Extant Part C to Professional Accountants in Public Practice

5. Part 2 of the restructured Code (Part C of extant Code) focuses on issues relating to professional accountants in business (PAIBs) and addresses both issues within the employing organization and issues relating to business relationships with external parties.
6. In January 2017, the IESBA also released a third ED, [Proposed Revisions to Clarify the Applicability of Provisions in Part C of the Extant Code to Professional Accountants in Public Practice](#) (Applicability ED). The IESBA concluded that in certain situations, the requirements and application material in Part 2 might also be relevant to professional accountants in public practice. Accordingly, the proposals in the Applicability ED address issues with respect to firms as employing organizations.
7. The Applicability ED was developed using the structure and drafting conventions of the proposed restructured Code. Comments on the Applicability ED are due by **April 25, 2017**.

II. Background

8. The IESBA published proposals in Phase 1 of its Structure project in the December 2015 ED, [Improving the Structure of the Code of Ethics for Professional Accountants—Phase 1](#) (Structure ED-1). Structure ED-1 included:
 - A new Guide to the Code.
 - Restructured Part A of the extant Code.⁶
 - The restructured text of most of Part B⁷ of the extant Code.Fifty comment letters were received from various respondents, including regulators and audit oversight authorities, national standard setters, firms, public sector organizations, preparers, IFAC member bodies and other professional organizations.
9. There was widespread support for the key features of the restructuring, including an enhanced focus on the fundamental principles, requirements distinguished from application material, enhanced clarity and improved usability. Respondents appreciated that the improvements in terms of understandability of the restructured Code would facilitate compliance and enforcement. At its December 2016 meeting, the IESBA agreed in principle the new structure and drafting conventions for the Code and the [text of Phase 1 of the Structure project](#), taking into account respondents' feedback on Structure ED-1 as well as input from its Consultative Advisory Group (CAG). IESBA Staff has prepared a [Basis for Agreement in Principle](#), highlights of which are included in Section III, to summarize the conclusions reached by the IESBA on Phase 1 of the project and to explain the rationale for them.

⁶ Extant Part A – *General Application of the Code*

⁷ Extant Part B – *Professional Accountants in Public Practice*, Sections 200 to 290 (excluding paragraphs 290.500 to 290.514 *Reports that Include a Restriction on Use and Distribution*)

EXPLANATORY MEMORANDUM

10. While expressing support for the proposals in Structure ED-1, some respondents requested that the complete proposed restructured Code be made available when they review the proposals in Phase 2 of each of the Structure and Safeguards projects. In response to this request, and to assist respondents in better understanding how the provisions in the texts of Phases 1 and 2 of the Structure project relate to each other, and to the work on the Safeguards Project, the following staff-prepared resources are available at: www.ethicsboard.org/restructured-code:
- (a) Basis for Agreement in Principle (BFAP) documents to explain the rationale for the IESBA's decisions following exposure of the proposals included in Structure ED-1 (Structure BFAP) and in the December 2015 Exposure Draft, [Proposed Revisions Pertaining to Safeguards in the Code—Phase 1](#).
 - (b) [Compilation of the proposed restructured Code](#) as of January 2017. This document includes the agreed-in-principle text of Phase 1 of each of the Structure and Safeguards projects, and the proposed texts in [Structure ED-2](#), [Safeguards ED-2](#), and the [Applicability ED](#). The document includes comments alongside each paragraph to explain the derivation of the restructured provisions, i.e., whether they are from particular paragraphs in the extant Code or represent new material. These comments are intended to facilitate review and comparison of the material in the extant Code and the proposed restructured Code.
 - (c) A [mapping table](#) to facilitate tracking of the changes from the extant Code to the proposed restructured Code. The mapping table complements the compilation of the proposed restructured Code as of January 2017.
 - (d) [Mark-ups showing restructuring changes to new or recently revised sections of the extant Code](#) with respect to non-compliance with laws and regulations (NOCLAR), long association and Phase 1 of the Part C project. These sections are also included in the mapping table for completeness.
11. The IESBA has discussed its proposals with its CAG throughout this project.

III. Key Features of the Proposed Restructured Code

12. The Structure BFAP summarizes significant feedback received from respondents to Structure ED-1 and explains the rationale for the IESBA's conclusions on Phase 1 of the Structure project. It also sets out key elements and other highlights of the restructuring. The IESBA does not intend to make changes to the Phase 1 agreed-in-principle text unless required to ensure consistency with the final text of Phase 2 of the Structure project.
13. Key elements of the restructuring include:
- Increased prominence of the requirement to comply with the fundamental principles and apply the conceptual framework.
 - Requirements in paragraphs identified with an "R", distinguished from other material.
 - Application material generally positioned next to the relevant requirements in paragraphs identified with "A".
 - Increased clarity of responsibility – more clearly enabling identification, where relevant, of a firm's responsibilities and, together with firms' policies and procedures, the responsibilities of particular professional accountants; specific references to network firms to clarify when the Code applies to them; reduction of the use of the word "generally."

EXPLANATORY MEMORANDUM

- Increased clarity in drafting – where possible: simpler and shorter sentences; simplifying complex grammatical structures; increased use of the active voice; avoiding legalistic and archaic terms.

14. Additional aspects of the restructuring are as follows:

- The addition of a *Guide to the Code*.
- Reorganizing the Code as appropriate, to enhance clarity and usability; positioning the Code to take advantage of forthcoming electronic features.
- Organization of the material into more self-contained sections and subsections:
 - Each Section has its own introduction which broadly describes the context, including the threats that might exist, and references the fundamental principles.
 - Revised numbering convention to facilitate revisions.
- Re-ordering of extant Parts B and C to recognize the relevance of the material applicable to PAIBs to professional accountants in public practice in certain circumstances. This also facilitates presentation of the independence sections of the Code after other material.
- Independence sections moved to the end of the Code, re-titled as the *International Independence Standards* (IIS).⁸
- Definitions section enhanced and presented as a glossary, which also includes descriptions of terms used.
- A new title for the Code.

IV. Significant Matters

15. The IESBA believes that the proposals in this ED are consistent with, and meet the objectives of, the restructuring established in Phase 1 of the project. Consistent with those objectives, the proposed changes are to improve the understandability and usability of the Code by restructuring it, without changing its meaning. The IESBA has made significant effort to avoid inadvertent changes in the meaning of the extant Code. It has also sought to avoid any weakening of the extant Code.
16. In addition to changes to align with the new structure and drafting conventions agreed-in-principle in Phase 1 of the project, significant matters pertaining to the following proposed restructured sections are as follows:
- Section 800, *Reports that Include a Restriction on Use and Distribution*, describes an engagement to issue a restricted use and distribution report (in the circumstances set out in proposed restructured Code, paragraph R800.3) as an “eligible audit engagement.”
 - Part 4B–*Independence for Other Assurance Engagements*. The IESBA noted that conforming amendments might be needed to extant Section 291 in light of the International Auditing and

⁸ The independence sections in the proposed restructured Code are included in the IIS, which comprise Part 4A – *Independence for Audits and Reviews* (i.e., Sections 400 to 899); and Part 4B – *Independence for Other Assurance Engagements* (i.e., Sections 900 to 999).

EXPLANATORY MEMORANDUM

Assurance Standards Board's (IAASB's) 2013 release of ISAE 3000 (Revised)⁹ and the related amendments to the International Framework for Assurance Engagements. The IESBA agreed to restructure the material in extant Section 291. The IESBA also determined that a consideration of the nature and extent of conforming amendments that might be needed to extant Section 291 as a result of ISAE 3000 (Revised) is outside the scope of the Structure project. The IESBA will consider the need for a separate project to align extant Section 291, as restructured, with ISAE 3000 (Revised) as part of the development of its strategy and work plan for its next strategy cycle.

- Section 900, *Applying the Conceptual Framework to Independence for Other Assurance Engagements*, now includes a specific reference to an audit of specific elements, accounts or items of a financial statement as being in the scope of extant Section 291, as restructured (see paragraph 900.1). This clarification was made in response to questions about whether the independence provisions in extant Section 290 apply to such an audit.

V. Other Matters

Matters for Future Board Attention

17. During the restructuring work, the IESBA identified a number of matters that would involve potential changes outside the scope of the Structure project. These matters are being considered as the Board develops its strategy and work plan for its next strategy cycle.

Electronic Code and Future Tools

18. The IESBA believes that the proposals in this ED will help position the Code for further enhancements in terms of navigability. Development of further electronic features and tools to assist navigability and facilitate implementation will be considered after the Code has been restructured. Such features might include filtering options and enhancements to the navigability of the current electronic Code. Terms in the Glossary will be electronically linked to the body of the Code.

VI. Project Timetable and Proposed Effective Date

19. The IESBA is mindful of the need for appropriate alignment of the timing of Phases 1 and 2 of the Structure project with the timing of other projects currently in progress, and in particular the Safeguards project. The proposed timing of Phase 2 of the Structure project has taken into account the anticipated approval dates for various sections of the Code currently under revision or restructuring. The IESBA anticipates completing the restructuring of the Code in December 2017.

20. Subject to the restructuring work progressing as planned, the IESBA proposes that:

- Parts 1, 2, 3 and 4B of the restructured Code be effective on June 15, 2019; and
- Except for restructured Sections 540 and 940 as noted below, Part 4A be effective for audits of financial statements for periods beginning on or after June 15, 2019.

Early adoption will be permitted.

⁹ International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*

EXPLANATORY MEMORANDUM

21. Subject to the transitional provision below which is explained in the [Basis for Conclusions](#) for the revised long association provisions, the IESBA determined that:

- Section 540 be effective for audits of financial statements for periods beginning on or after December 15, 2018; and
- Section 940 be effective as of December 15, 2018.

Early adoption will be permitted in both cases.

Paragraph R540.18 will have effect only for audits of financial statements for periods beginning prior to December 15, 2023. This will facilitate the transition to the required cooling-off period of five consecutive years for engagement partners in those jurisdictions where the legislative body or regulator (or organization authorized or recognized by such legislative body or regulator) has specified a cooling-off period of less than five consecutive years.

22. The [January 2017 IESBA Update](#) includes a further discussion of the timing of the restructuring work and proposed effective dates for the restructured Code.

23. The IESBA encourages national standard setters and others to start to translate the [staff-prepared compilation](#) of the restructured Code, where necessary, in order to make an early start to implementation considerations.

VII. Guide for Respondents

24. The IESBA welcomes comments on all matters addressed in this ED, but especially those identified in the Request for Specific Comments below. Comments are most helpful when they refer to specific paragraphs, include the reasons for the comments, and, where appropriate, make specific suggestions for any proposed changes to wording. When a respondent agrees with proposals in this ED, it will be helpful for the IESBA to be made aware of this view.

25. As explained in the Background section of this memorandum, the objectives of the restructuring are to improve the understandability and usability of the Code by restructuring it without changing its meaning. Respondents are asked to distinguish in their responses between comments on the application of the structure and drafting conventions and comments on any changes in meaning.

Request for Specific Comments

26. The IESBA welcomes views from respondents on the following matters.

Structure of the Code Phase 2

1. Do you believe that the proposals in this ED have resulted in any unintended changes in meaning of:
 - The provisions for Part C of the Extant Code, as revised in the close-off document for Part C Phase 1 (see Sections 200-270 in Chapter 1)?
 - The NOCLAR provisions (see Sections 260 and 360 in Chapter 2)?
 - The revised provisions regarding long association (see Sections 540 and 940 in Chapter 3)?
 - The provisions addressing restricted use reports in the extant Code (see Section 800 in Chapter 4)?
 - The provisions relating to independence for other assurance engagements (Part 4B in

EXPLANATORY MEMORANDUM

Chapter 5)?

If so, please explain why and suggest alternative wording.

2. Do you believe that the proposals are consistent with the key elements of the restructuring as described in Section III of this Explanatory Memorandum?

Conforming Amendments Arising from the Safeguards Project

3. Respondents are asked for any comments on the conforming amendments arising from the Safeguards project. **Comments on those conforming amendments are requested by April 25, 2017 as part of a response to Safeguards ED-2.**

Effective Date

4. Do you agree with the proposed effective dates for the restructured Code? If not, please explain why not.

Request for General Comments

27. In addition to the request for specific comments above, the IESBA is also seeking comments on the matters set out below:

- *Small and Medium Practices (SMPs) and PAIBs* – The IESBA invites comments regarding any aspect of the proposals from SMPs and PAIBs.
- *Regulators and Audit Oversight Bodies* – The IESBA invites comments on the proposals from an enforcement perspective from members of the regulatory and audit oversight communities.
- *Developing Nations* – Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular on any foreseeable difficulties in applying them in their environment.
- *Translations* – Recognizing that many respondents may intend to translate the final changes for adoption in their own environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (SECTIONS ADDRESSED IN PHASE 2)

Structure Phase 2 Proposals

Structure Phase 2 proposals are set out in this document and include:

- Chapter 1 – Proposed Restructured Text of Provisions in Part C of the Extant Code, as revised in the [Close-off Document for Part C Phase 1](#) (Sections 200-270).
- Chapter 2 – Proposed Restructured Text of the Final NOCLAR pronouncement, [Responding to Non-compliance with Laws and Regulations](#) (Section 260 and 360).
- Chapter 3 – Proposed Restructured Text of the [Long Association Close-off Document](#) (Sections 540 and 940).
- Chapter 4 – Proposed Restructured text of the Provisions Addressing Restricted Use Reports (Section 800)
- Chapter 5 – Proposed Restructured Text Relating to Independence – Other Assurance Engagements (Part 4B, except for material relating to provision of non-assurance services to assurance clients).

The January 2017 ED, [Proposed Revisions Pertaining to Safeguards in the Code – Phase 2](#) (Safeguards ED-2) has been developed using the structure and drafting conventions of the proposed restructured Code. Safeguards ED-2 includes revisions to the non-assurance services (NAS) section of the extant Code, Proposed Section 600, *Provision of Non-assurance Services to an Audit Client* and Proposed Section 950, *Provision of Non-assurance Services to an Assurance Client*.

Proposed Conforming Amendments Arising from the Safeguards Project

The gray text in this document sets out the proposed conforming amendments arising from the Safeguards project. The IESBA welcomes feedback on those proposed conforming amendments. Such feedback should be submitted as part of respondents' comments on Safeguards ED-2. The explanatory memorandum to Safeguards ED-2 explains the nature of the proposed conforming amendments arising from the Safeguards project.

Chapter 1 of Structure ED-2 – Proposed Restructured Text of Provisions in Part C of the Extant Code as revised, in the [Close-off document for Part C Phase 1](#)*

PART 2 – PROFESSIONAL ACCOUNTANTS IN BUSINESS

Section 200

Applying the Conceptual Framework – Professional Accountants in Business

Introduction

200.1 This Part of the Code describes requirements and application material for professional accountants in business when applying the conceptual framework set out in Section 120. It does not describe all of the facts and circumstances, including professional activities, interests and relationships that could be encountered by professional accountants in business, which create or might create threats to compliance with the fundamental principles. Therefore, professional accountants in business are required to be alert for such facts and circumstances.

Commented [IESBA1]: 300.1 Close-off document

200.2 Investors, creditors, employers and other sectors of the business community, as well as governments and the public, might rely on the work of professional accountants in business. Professional accountants in business might be solely or jointly responsible for the preparation and reporting of financial and other information, on which both their employing organizations and third parties might rely. They might also be responsible for providing effective financial management and competent advice on a variety of business-related matters.

Commented [IESBA2]: 300.2 Part C Close-off document

200.3 A professional accountant in business might be an employee, contractor, partner, director (executive or non-executive), owner-manager, or volunteer of an employing organization. The legal form of the relationship of the accountant with the employing organization has no bearing on the ethical responsibilities placed on the accountant.

Commented [IESBA3]: 300.3 Part C Close-off document

200.4 In this Part, the term “professional accountant” refers to:

- (a) Professional accountants in business; and
- (b) Professional accountants in public practice when performing professional activities pursuant to the professional accountant’s employment or ownership relationship with

* The IESBA approved a [Close-off document for Part C Phase 1](#) in March 2016, which was drafted using the extant Code’s structure and drafting conventions. A mark-up showing the restructuring to the Close-off document for Part C Phase 1 is available at: www.ethicsboard.org/restructured-code.

The proposed restructured text of the final [Responding to Non-compliance with Laws and Regulations pronouncements](#) (NOCLAR) that is applicable for professional accountants in business, (Section 260), is set out in Chapter 2 of this ED. The NOCLAR pronouncement comprises of revisions to Section 225 and Section 360, *Responding to Non-Compliance with Laws and Regulations* of the extant Code. It was released in July 2016 using the extant Code’s structure and drafting conventions. Additional information about the Board’s NOCLAR pronouncements is available at: <http://www.ethicsboard.org/responding-non-compliance-laws-and-regulations>.

their firm. More information on when Part 2 might be applicable to professional accountants in public practice is set out in R120.4, 120.4 A1, R300.5 and 300.5 A1.

Requirements and Application Material

R200.5 A professional accountant shall comply with the fundamental principles set out in Section 110 and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to compliance with the fundamental principles.

Commented [IESBA4]: 300.6 Part C Close-off document

200.5 A1 A professional accountant has a responsibility to further the legitimate objectives of the accountant's employing organization. The Code does not seek to hinder accountants from fulfilling that responsibility, but addresses circumstances in which compliance with the fundamental principles might be compromised.

Commented [IESBA5]: 300.4 Part C Close-off document

200.5 A2 Professional accountants may promote the position of the employing organization when furthering the legitimate goals and objectives of their employing organization, provided any statements made are neither false nor misleading. Such actions usually would not create an advocacy threat.

Commented [IESBA6]: 300.10 IESBA Part C Close-off document

200.5 A3 All professional accountants have a responsibility to act in the public interest. The more senior the position of the accountant, the greater will be the ability and opportunity to access information, and to influence policies, decisions made and actions taken by others involved with the employing organization. To the extent that they are able to do so, taking into account their position and seniority in the organization, accountants are expected to encourage and promote an ethics-based culture in the organization. Examples of actions that might be taken include the introduction, implementation and oversight of:

Commented [IESBA7]: 300.5 Part C Close-off document

- Ethics education and training programs.
- Ethics and whistle-blowing policies.
- Policies and procedures designed to prevent non-compliance with laws and regulations.

Identifying Threats

200.6 A1 Compliance with the fundamental principles might be threatened by a broad range of facts and circumstances. The categories of threats are described in paragraph 120.6 A3. The following are examples of facts and circumstances within each of those categories that might create those threats for a professional accountant when undertaking a professional activity:

Commented [IESBA8]: 300.7 Part C Close-off document

(a) Self-interest Threats

- A professional accountant holding a financial interest in, or receiving a loan or guarantee from, the employing organization.
- A professional accountant participating in incentive compensation arrangements offered by the organization.
- A professional accountant using corporate assets for personal use.
- A professional accountant accepting a gift or special treatment from a supplier of the employing organization.

Commented [IESBA9]: 300.8 Part C Close-off document

(b) Self-review Threats

Commented [IESBA10]: 300.9 Part C Close-off document

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- A professional accountant determining the appropriate accounting treatment for a business combination after performing the feasibility study supporting the purchase decision.

(c) Advocacy Threats

- A professional accountant having the opportunity to manipulate information in a prospectus in order to obtain favorable financing.

(d) Familiarity Threats

- A professional accountant being responsible for the financial reporting of the employing organization when an immediate or close family member employed by the organization makes decisions that affect the financial reporting of the organization.
- A professional accountant having a long association with contacts influencing business decisions.

Commented [IESBA11]: 300.11 Part C Close-off document

(e) Intimidation Threats

- A professional accountant or immediate or close family member facing the threat of dismissal or replacement over a disagreement about the application of either:
 - An accounting principle; or
 - The way in which financial information is to be reported.
- An individual attempting to influence the decision making process of the professional accountant, for example with regard to the awarding of contracts or the application of an accounting principle.

Commented [IESBA12]: 300.12 Part C Close-off document

Evaluating Threats

200.6 A2 Conditions, policies and procedures as described in 120.6 A1 might impact the evaluation of whether a threat to compliance with the fundamental principles is at an acceptable level. Such conditions, policies and procedures might relate to the employing organization and its operating environment.

Commented [IESBA13]: New paragraph

200.6 A3 The professional accountant's evaluation of the level of a threat is also impacted by the nature and scope of the professional activity.

200.6 A4 A professional accountant's evaluation of the level of a threat might be impacted by the work environment within the employing organization and its operating environment. For example:

Commented [IESBA14]: 300.14 Part C Close-off document

- Leadership that stresses the importance of ethical behavior and the expectation that employees will act in an ethical manner.
- Policies and procedures to empower and encourage employees to communicate ethical issues that concern them to senior levels without fear of retribution.
- Policies and procedures to implement and monitor the quality of employee performance.
- Systems of corporate oversight or other oversight structures and strong internal controls.
- Recruitment procedures emphasizing the importance of employing high caliber competent personnel.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Timely communication of policies and procedures including any changes to them, to all employees and appropriate training and education on such policies and procedures.
- Ethics and code of conduct policies.

200.7 A1 Professional accountants might consider obtaining legal advice where they believe that unethical behavior or actions by others have occurred, or will continue to occur, within the employing organization.

Commented [IESBA15]: 300.15 Part C Close-off document

200.7 A2 In extreme situations, if the circumstances that created the threats cannot be eliminated or safeguards are not capable of being applied to reduce the threat to an acceptable level, it might be necessary for a professional accountant to resign from the employing organization.

Commented [IESBA16]: 300.15 Part C Close-off document

Communicating with Those Charged with Governance

R200.8 When communicating with those charged with governance in accordance with the Code, a professional accountant shall determine the appropriate individual(s) within the entity's governance structure with whom to communicate. If the accountant communicates with a subgroup of those charged with governance, the accountant shall determine whether communication with all of those charged with governance is also necessary.

Commented [IESBA17]: 100.25

200.8 A1 In determining with whom to communicate, a professional accountant might consider:

Commented [IESBA18]: 100.25

- (a) The nature and importance of the circumstances; and
- (b) The matter to be communicated.

200.8 A2 If a professional accountant communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, communication with all of those charged with governance might also be necessary to ensure they are adequately informed.

Commented [IESBA19]: 100.25

R200.9 If a professional accountant communicates with individuals who have management responsibilities, the accountant shall be satisfied that communication with those individuals adequately informs all of those in a governance role with whom the accountant would otherwise communicate.

Commented [IESBA20]: 100.26, NOCLAR

200.9 A1 In some circumstances, all of those charged with governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those persons also have governance responsibilities, the matters do not need to be communicated again with those same persons in their governance role.

Commented [IESBA21]: 100.26, NOCLAR

Section 210

Conflicts of Interest

Introduction

210.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

Commented [IESBA22]: New paragraph

210.2 A conflict of interest creates a threat to compliance with the principle of objectivity and might create threats to compliance with the other fundamental principles. Such threats might be created when:

Commented [IESBA23]: 310.1

- (a) A professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
- (b) The interest of a professional accountant with respect to a particular matter and the interests of a party for whom the accountant undertakes a professional activity related to that matter are in conflict.

A party might include an employing organization, a vendor, a customer, a lender, a shareholder, or another party.

210.3 Section 210 sets out specific requirements and application material relevant to applying the conceptual framework to conflicts of interest.

Commented [IESBA24]: New paragraph

Requirements and Application Material

General

R210.4 A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

Commented [IESBA25]: 310.5

210.4 A1 Examples of circumstances that might create a conflict of interest include:

Commented [IESBA26]: 310.2

- Serving in a management or governance position for two employing organizations and acquiring confidential information from one organization that might be used by the professional accountant to the advantage or disadvantage of the other organization.
- Undertaking a professional activity for each of two parties in a partnership, where both parties are employing the accountant to assist them to dissolve their partnership.
- Preparing financial information for certain members of management of the accountant's employing organization who are seeking to undertake a management buy-out.
- Being responsible for selecting a vendor for the employing organization when an immediate family member of the accountant might benefit financially from the transaction.
- Serving in a governance capacity in an employing organization that is approving certain investments for the company where one of those investments will increase the value of the investment portfolio of the accountant or an immediate family member.

Conflict Identification

R210.5 A professional accountant shall take reasonable steps to identify circumstances that might create a conflict of interest, and therefore a threat to compliance with one or more of the fundamental principles. Such steps shall include identifying:

Commented [IESBA27]: 310.3 / 310.6

- (a) The nature of the relevant interests and relationships between the parties involved; and
- (b) The activity and its implication for relevant parties.

R210.6 A professional accountant shall remain alert to changes over time in the nature of the activities, interest and relationships that might create a conflict of interest during a professional activity.

Commented [IESBA28]: 310.6

Applying the Conceptual Framework to Threats Created by Conflicts of Interest

210.7 A1 In general, the more direct the connection between the professional activity and the matter on which the parties' interests conflict, the more likely that the level of the threat is not at an acceptable level.

Commented [IESBA29]: 310.7

210.7 A2 Examples of actions that might be safeguards to address threats created by conflicts of interest include:

Commented [IESBA30]: 310.8

- A restructure or segregation of certain responsibilities and duties.
- Appropriate oversight, for example, acting under the supervision of an executive or non-executive director.

210.7 A3 An action that might eliminate threats created by conflicts of interest is withdrawing from the decision-making process related to the matter giving rise to the conflict of interest.

Commented [IESBA31]: 310.8

Disclosure and Consent

210.8 A1 It is generally necessary:

Commented [IESBA32]: 310.9

- (a) To disclose the nature of the conflict of interest and how any threats created were addressed to the relevant parties, including, to the appropriate levels within the employing organization affected by a conflict; and
- (b) When safeguards are applied to address the threat, to obtain consent from the relevant parties for the professional accountant to undertake the professional activity.

210.8 A2 Consent might be implied by a party's conduct in circumstances where the professional accountant has sufficient evidence to conclude that parties know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.

Commented [IESBA33]: 310.9

210.8 A3 If such disclosure or consent is not in writing, the professional accountant is encouraged to document:

Commented [IESBA34]: 310.10

- (a) The nature of the circumstances giving rise to the conflict of interest;
- (b) The safeguards applied to address the threats; and
- (c) The consent obtained.

Other Considerations

210.9 A1 When addressing a conflict of interest, the professional accountant is encouraged to seek guidance from within the employing organization or from others, such as a professional body, legal counsel or another accountant. When making such disclosures or sharing information within the employing organization and seeking guidance of third parties, the principle of confidentiality applies.

Commented [IESBA35]: 310.4

210.10 A1 A professional accountant might encounter other threats to compliance with the fundamental principles, for example, when:

Commented [IESBA36]: 310.11 Part C Close-off document

- Preparing or presenting financial information as a result of undue pressure from others within the employing organization; or
- Financial, business or personal relationships that immediate or close family members of the professional accountant have with the employing organization.

Requirements and application material relevant to such threats is set out in Sections 220, 240 and 270.

Section 220

Preparation and Presentation of Information

Introduction

220.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

Commented [IESBA37]: New paragraph

220.2 Self-interest, intimidation or other threats to compliance with the fundamental principles might be created when an accountant is responsible for preparing or presenting information.

Commented [IESBA38]: New paragraph

220.3 Section 220 sets out specific requirements and application material relevant to applying the conceptual framework when preparing and presenting information.

Commented [IESBA39]: New paragraph

Requirements and Application Material

220.4 A1 Professional accountants at all levels in an employing organization are involved in the preparation and presentation of information both within and outside the organization.

Commented [IESBA40]: New paragraph

220.5 A2 Stakeholders to whom, or for whom, such information is presented or prepared, include:

Commented [IESBA41]: 320.1 Part C Close-off document

- Management and those charged with governance.
- Investors, lenders and other creditors.
- Regulators.

This information might assist stakeholders in understanding and evaluating aspects of the organization's state of affairs and in making decisions concerning the organization. Information can include financial and non-financial information that might be made public or used for internal purposes.

Examples include:

- Operating and performance reports.
- Decision support analyses.
- Budgets and forecasts.
- Information provided to the internal and external auditors.
- Risk analyses.
- General and special purpose financial statements.
- Tax returns.
- Reports filed with regulators for legal and compliance purposes.

220.6 A1 For the purposes of this section, preparing or presenting information includes recording, maintaining and approving information.

Commented [IESBA42]: 320.2 Part C Close-off document

220.7 A1 The professional accountant is required to comply with the fundamental principles when preparing or presenting information which includes:

Commented [IESBA43]: 320.2 Part C Close-off document

- Presenting the information in accordance with a relevant reporting framework, where applicable.

- Preparing or presenting it in a manner that is intended neither to mislead nor to influence contractual or regulatory outcomes inappropriately.
- Not omitting information with the intention of rendering the information misleading or of influencing contractual or regulatory outcomes inappropriately. An example of influencing a contractual or regulatory outcome inappropriately is using an unrealistic estimate with the intention of avoiding violation of a contractual requirement such as a debt covenant or of a regulatory requirement such as a capital requirement of a financial institution.
- Exercising professional judgment to:
 - Represent the facts accurately and completely in all material respects.
 - Describe clearly the true nature of business transactions or activities.
 - Classify and record information in a timely and proper manner.

Use of Discretion in Preparing or Presenting Information

R220.8 Preparing or presenting information might require the exercise of discretion in making professional judgements. The professional accountant shall not exercise such discretion with the intention of misleading or influencing contractual or regulatory outcomes inappropriately.

Commented [IESBA44]: 320.3 Part C Close-off document

220.8 A1 Examples of ways in which discretion might be misused to achieve inappropriate outcomes includes:

Commented [IESBA45]: 320.3 Part C Close-off document

- Determining estimates, for example, determining fair value estimates in order to misrepresent profit or loss.
- Selecting or changing an accounting policy or method among two or more alternatives permitted under the applicable financial reporting framework, for example, selecting a policy for accounting for long-term contracts in order to misrepresent profit or loss.
- Determining the timing of transactions, for example, timing the sale of an asset near the end of the fiscal year in order to mislead.
- Determining the structuring of transactions, for example, structuring financing transactions in order to misrepresent assets and liabilities or classification of cash flows.
- Selecting disclosures, for example, omitting or obscuring information relating to financial or operating risk in order to mislead.

R220.9 When performing professional activities, especially those that do not require compliance with a relevant reporting framework, the professional accountant shall exercise professional judgment to identify and consider:

Commented [IESBA46]: 320.4 Part C Close-off document

- (a) The purpose for which the information is to be used;
- (b) The context in which it is given; and
- (c) The audience to whom it is addressed.

220.9 A1 For example, when preparing or presenting pro forma reports, budgets or forecasts, the inclusion of relevant estimates, approximations and assumptions, where appropriate, would enable those who might rely on such information to form their own judgments.

Commented [IESBA47]: 320.4 Part C Close-off document

220.9 A2 The accountant might also consider clarifying the intended audience, context and purpose of the information to be presented.

Commented [IESBA48]: 320.4 Part C Close-off document

Relying on the Work of Others

R220.10 A professional accountant who intends to rely on the work of others, either internal or external to the organization, shall exercise professional judgment to determine what steps to take, if any, in order to fulfill the responsibilities set out in paragraph 220.7 A1.

Commented [IESBA49]: 320.5 Part C Close-off document

220.10 A1 Factors to consider in determining whether reliance on others is reasonable include:

Commented [IESBA50]: 320.5 Part C Close-off document

- Reputation, expertise, resources available to the individual or organization; and
- Whether the other individual is subject to applicable professional and ethical standards.

Such information might be gained from prior association with, or from consulting others about, the individual or the organization.

Addressing Information that Might be Misleading

R220.11 When the professional accountant becomes aware that the information with which the accountant is associated is misleading, the accountant shall take appropriate actions to seek to resolve the matter.

Commented [IESBA51]: 320.6 Part C Close-off document

220.11 A1 Actions that might be appropriate include:

Commented [IESBA52]: 320.6 Part C Close-off document

- Consulting the policies and procedures of the employing organization (for example, an ethics or whistle-blowing policy) regarding how to address such matters internally.
- Discussing concerns that the information is misleading with the professional accountant's supervisor and/or the appropriate level(s) of management within the accountant's organization or those charged with governance and requesting such individuals to take appropriate action to resolve the matter. Such action might include:
 - Having the information corrected.
 - If the information has already been disclosed to the intended users, informing them of the correct information.

In situations where the misleading information might involve non-compliance with laws and regulations, Section 260 sets out requirements and application material on how to respond to such situations.

R220.12 If the professional accountant determines that appropriate action has not been taken and continues to have reason to believe that the information is misleading, the professional accountant, while being alert to the principle of confidentiality, shall consider one or more of the following:

Commented [IESBA53]: 320.7 Part C Close-off document

- Consulting with:
 - A relevant professional body.
 - The internal and external auditor of the employing organization.
 - Legal counsel.
- Determining whether any requirements exist to communicate to:

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Third parties, including users of the information
- Regulatory and oversight authorities.

R220.13 If after exhausting all feasible options, the professional accountant determines that appropriate action has not been taken and there is reason to believe that the information is still misleading, the accountant shall refuse to be or to remain associated with the information.

Commented [IESBA54]: 320.8 Part C Close-off document

220.13 A1 The professional accountant might consider resigning from the employing organization.

Commented [IESBA55]: 320.8 Part C Close-off document

220.13 A2 The professional accountant is also encouraged to document:

Commented [IESBA56]: 320.8 Part C Close-off document

- The facts.
- The accounting principles or other relevant professional standards involved.
- The communications and parties with whom matters were discussed.
- The courses of action considered.
- How the accountant attempted to address the matter(s).

Other Considerations

220.14. A1 Where threats to compliance with the fundamental principles relating to the preparation and presentation of information arise from a financial interest, including compensation and incentive linked to financial reporting and decision making, the requirements and application material set out in Section 240 are relevant.

Commented [IESBA57]: 320.9 Part C Close-off document

220.14 A2 Where threats to compliance with the fundamental principles relating to the preparation and presentation of information arise from pressure, the requirements and application material set out in Section 270 are relevant.

Commented [IESBA58]: 320.10 Part C Close-off document

Section 230

Acting with Sufficient Expertise

Introduction

230.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

Commented [IESBA59]: New paragraph

230.2 Self-interest threats to compliance with the principle of professional competence and due care are created if an accountant does not act with sufficient expertise.

Commented [IESBA60]: New paragraph

230.3 Section 230 sets out specific requirements and application material relevant to applying the conceptual framework to acting with sufficient expertise.

Commented [IESBA61]: New paragraphs

Requirements and Application Material

R230.4 A professional accountant shall not intentionally mislead an employer as to the level of expertise or experience possessed.

Commented [IESBA62]: 330.1

230.4 A1 The principle of professional competence and due care requires that a professional accountant only undertake significant tasks for which the accountant has, or can obtain, sufficient training or experience.

Commented [IESBA63]: 300.1

230.4 A2 A threat to compliance with the principle of professional competence and due care might be created if a professional accountant has:

Commented [IESBA64]: 330.2

- Insufficient time for performing or completing the relevant duties.
- Incomplete, restricted or otherwise inadequate information for performing the duties.
- Insufficient experience, training and/or education.
- Inadequate resources for the performance of the duties.

230.4 A3 The level of the threat will depend on factors such as:

Commented [IESBA65]: 330.3

- The extent to which the professional accountant is working with others.
- Relative seniority of the accountant in the business.
- The level of supervision and review applied to the work.

230.4 A4 Examples of actions that might be safeguards to address the threats set out in paragraph 230.4 A2 include:

Commented [IESBA66]: 330.3

- Obtaining assistance or training from someone with the necessary expertise.
- Ensuring that there is adequate time available for performing the relevant duties.

R230.5 If threats to a professional accountant's ability to act with sufficient expertise cannot be addressed, the accountant shall determine whether to decline to perform the duties in question. If the professional accountant determines that declining is appropriate, the accountant shall communicate the reasons.

Commented [IESBA67]: 330.4 Part C Close-off document

Other Considerations

230.5 A1 The requirements and application material in Section 270 apply when a professional accountant is pressured to act in a manner that might lead to a breach of the principle of professional competence and due care.

Commented [IESBA68]: 330.5 Part C Close-off document

Section 240

Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making

Introduction

240.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

Commented [IESBA69]: New paragraph

240.2 A professional accountant having a financial interest, or knowing of any financial interests held by others, might create threats. Self-interest to compliance with the principles of objectivity or confidentiality might, for example, be created where there is a motive or an opportunity to manipulate price-sensitive information.

Commented [IESBA70]: 340.1 Part C Close-off document

240.3 Section 240 sets out specific requirements and application material relevant to applying the conceptual framework to financial interests, compensation and incentives linked to financial reporting and decision making.

Commented [IESBA71]: 340.1 Part C Close-off document

Requirements and Application Material

R240.4 A professional accountant shall not manipulate information or use confidential information for personal gain or for the financial gain of others.

Commented [IESBA72]: 340.2 Part C Close-off document

240.4 A1 Professional accountants might have financial interests or might know of financial interests of immediate or close family members that, in certain circumstances, might create threats to compliance with the fundamental principles. Financial interests include those arising from compensation or incentive arrangements linked to financial reporting and decision making.

240.4 A2 Examples of circumstances that might create threats include situations in which the professional accountant or an immediate or close family member:

Commented [IESBA73]: 340.1 Part C Close-off document

- Holds a direct or indirect financial interest in the employing organization and the value of that financial interest might be directly affected by decisions made by the accountant.
- Is eligible for a profit related bonus and the value of that bonus might be directly affected by decisions made by the accountant.
- Holds, directly or indirectly, deferred bonus share rights or share options in the organization, the value of which might be affected by decisions made by the accountant.
- Participates in compensation arrangements which provide incentives to achieve targets or to support efforts to maximize the value of the organization's shares. An example of such an arrangement might be through participation in incentive plans which are linked to certain performance conditions being met.

240.4 A3 As part of evaluating whether a threat created by financial interests is at an acceptable level, and, when necessary, in determining whether those threats are addressed, a professional accountant is required to evaluate the nature of the financial interest. This includes evaluating the significance of the financial interest. What constitutes a significant financial interest will depend on personal circumstances and the materiality of the financial interest to the individual.

Commented [IESBA74]: 340.3 Part C Close-off document

240.4 A4 Factors that might be relevant in evaluating the level of a threat created by a significant financial interest include:

- Policies and procedures for a committee independent of management to determine the level or form of senior management remuneration.
- In accordance with any internal policies, disclosure to those charged with governance of all relevant interests of:
 - Any plans to exercise entitlements; or
 - Trade in relevant shares.
- Internal and external audit procedures that are specific to address issues that give rise to the financial interest.

240.4 A5 Threats arising from compensation or incentive arrangements might be compounded by explicit or implicit pressure from superiors or colleagues. Section 270 addresses pressure that might lead a professional accountant to breach the fundamental principles.

Commented [IESBA75]: 340.3 Part C Close-off document

Commented [IESBA76]: 340.4 Part C Close-off document

Section 250

Inducements

[Reserved for Section 250, *Inducements* which forms part of Phase 2 to the Revision of the Part C project. Section 250 is not included in this document. IESBA plans to approve proposals for Section 250 in March 2017.]

Section 260

Responding to Non-Compliance with Laws and Regulations

[The proposed restructured text for Section 260, *Responding to Non-Compliance with Laws and Regulations* – NOCLAR provisions that are applicable to professional accountants in business – are set out in Chapter 2 of this ED.]

Section 270

Pressure to Breach the Fundamental Principles

Commented [IESBA77]: New heading

Introduction

270.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats created by pressure.

Commented [IESBA78]: New paragraph

270.2 Pressure, whether exerted on, or by an accountant, might create threats to compliance with the fundamental principles.

Commented [IESBA79]: 370.1 Part C Close-off document

270.3 Section 270 sets out specific requirements and application material relevant to applying the conceptual framework when addressing pressure.

Commented [IESBA80]: 370.1 Part C Close-off document

Requirements and Application Material

General

R270.4 A professional accountant shall not:

Commented [IESBA81]: 370.2 Part C Close-off document

- (a) Allow pressure from others to result in a breach of compliance with the fundamental principles.
- (b) Place pressure on others that the accountant knows, or has reason to believe, would result in the other individuals breaching the fundamental principles.

270.4 A1 A professional accountant might face pressure that creates threats to compliance with the fundamental principles, for example intimidation threats, when undertaking a professional activity. Pressure might be explicit or implicit and might come from:

Commented [IESBA82]: 370.2 Part C Close-off document

- Within the organization, for example, from a colleague or superior.
- An external individual or organization such as a vendor, customer or lender.
- Internal or external targets and expectations.

270.4 A2 Examples of pressure that might result in a threat to compliance with the fundamental principles include:

Commented [IESBA83]: 370.3 Part C Close-off document

- Pressure related to conflicts of interest:
 - Pressure from a family member bidding to act as a vendor to the professional accountant's employing organization to select them over another prospective vendor.

See also Section 210 – *Conflicts of Interest*.

- Pressure to influence preparation or presentation of information:
 - Pressure to report misleading financial results to meet investor, analyst or lender expectations.
 - Pressure from elected officials on public sector accountants to misrepresent programs or projects to voters.
 - Pressure from colleagues to misstate income, expenditure or rates of return to bias decision-making on capital projects and acquisitions.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Pressure from superiors to approve or process expenditures that are not legitimate business expenses.
- Pressure to suppress internal audit reports containing adverse findings.

See also Section 220 – *Preparation and Presentation of Information*.

- Pressure to act without sufficient expertise or due care:
 - Pressure from superiors to inappropriately reduce the extent of work performed.
 - Pressure from superiors to perform a task without sufficient skills or training or within unrealistic deadlines.

See also Section 230 – *Acting with Sufficient Expertise*.

- Pressure related to financial interests:
 - Pressure to manipulate performance indicators from superiors, colleagues or others, for example, those who might benefit from participation in compensation or incentive arrangements.

See also Section 240 – *Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making*.

- Pressure related to inducements:
 - Pressure from others, either internal or external to the organization, to offer inducements to influence inappropriately the judgment or decision making process of an individual or organization.
 - Pressure from colleagues to accept a bribe or other inducement, for example to accept inappropriate gifts or entertainment from potential vendors in a bidding process.

See also Section 250 - *Inducements*.

- Pressure related to non-compliance with laws and regulations:
 - Pressure to structure a transaction to evade tax.

See also Section 260 – *Responding to Non-Compliance with Laws and Regulations*.

270.4 A3 Factors that are relevant in evaluating the level of threats created by pressure include:

- The intent of the individual who is exerting the pressure and the nature and extent of the pressure.
- The application of laws, regulations, and professional standards to the circumstances.
- The culture and leadership of the employing organization including the extent to which they reflect or emphasize the importance of ethical behavior and the expectation that employees will act ethically. For example, a corporate culture that tolerates unethical behavior might increase the likelihood that the pressure would result in a threat to compliance with the fundamental principles.
- Policies and procedures, if any, that the employing organization has established, such as ethics or human resources policies that address pressure.

Commented [IESBA84]: 370.4 Part C Close-off document

270.4 A4 Consultation with:

- A colleague, superior, human resources personnel, or another professional accountant;
- Relevant professional or regulatory bodies or industry associations; or
- Legal counsel

might assist the professional accountant understand the factors that are relevant in evaluating the level of the threat.

Commented [IESBA85]: 370.4 Part C Close-off document

The principle of confidentiality applies in communications with external parties.

270.4 A5 Discussions and consultations with others about the circumstances creating the pressure might assist the professional accountant to evaluate the level of the threat. These might include:

Commented [IESBA86]: 370.5 Part C Close-off document

- A discussion about the matter with the individual who is exerting the pressure to seek to resolve the matter.
- A discussion about the matter with the professional accountant's supervisor, if the supervisor is not the individual exerting the pressure.
- An escalation of the matter within the employing organization, including when appropriate, an explanation of any consequential risks to the organization, for example with:
 - Higher levels of management.
 - Internal or external auditors.
 - Those charged with governance.
- A disclosure about the matter in line with the organization's policies, including ethics and whistleblowing policies, using any established mechanism, such as a confidential ethics hotline.
- A consultation with legal counsel about the specific matter.

270.4 A6 An action that might eliminate a threat created by pressure is the professional accountant's request for a restructure of, or segregation of certain responsibilities and duties so that the accountant is no longer involved with the individual or entity exerting the pressure. This might be appropriate only when doing so would address the threat created by the pressure. For example, if the accountant is pressured in relation to a conflict of interest, the threat to compliance with the fundamental principle created by the pressure might be addressed when the accountant avoids being associated with the matter creating the conflict.

Commented [IESBA87]: New paragraph

R270.5 If the professional accountant identifies and determines that the threat created by pressure is not at an acceptable level, the accountant shall address that threat by:

Commented [IESBA88]: 370.6 Part C Close-off document

- (a) Eliminating the circumstances, interests or relationships, that are creating the threats; including resigning from the employing organization;
- (b) Applying safeguards, where available or capable of being applied; or
- (c) Declining or ending the specific professional activity.

270.5 A1 The professional accountant is also encouraged to document:

- The facts.
- The communications.
- The courses of action considered.
- The parties with whom these matters were discussed.
- How the matter was addressed.

Commented [IESBA89]: 370.6 Part C Close-off document

Chapter 2 – Proposed Restructured Text of the Final NOCLAR Pronouncement, [Responding to Non-compliance with Laws and Regulations](#) (Sections 260 and 360)[√]

Section 260

Responding to Non-Compliance with Laws and Regulations

Introduction

260.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

Commented [IESBA90]: New paragraph

260.2 Threats to compliance with the principles of integrity and professional behavior are created when an accountant becomes aware of an act or suspected act of non-compliance with laws and regulations.

Commented [IESBA91]: New paragraph

260.3 Section 260 sets out requirements and application material regarding the approach to be taken by a professional accountant when responding to non-compliance or suspected non-compliance with:

Commented [IESBA92]: 360.5

- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but compliance with which might be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.

Requirements and Application Material

General

260.4 A1 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties:

Commented [IESBA93]: 360.2

- (a) The professional accountant's employing organization;
- (b) Those charged with governance of the employing organization;
- (c) Management of the employing organization; or
- (d) Other individuals working for or under the direction of the employing organization.

260.4 A2 Examples of laws and regulations which this section addresses include those that deal with:

Commented [IESBA94]: 360.6

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.

[√] IESBA released the [final NOCLAR pronouncement](#) (revisions to Section 225 and Section 360) in July 2016, which was drafted using the structure and drafting conventions of the existing Code. A mark-up showing the restructuring to the NOCLAR pronouncement is available at: www.ethicsboard.org/restructured-code.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

R260.5 The professional accountant shall apply this section regardless of the nature of the employing organization, including whether or not it is a public interest entity.

Commented [IESBA95]: 360.1

260.5 A1 A professional accountant might encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out professional activities. This section guides the accountant in assessing the implications of the matter and the possible courses of action when responding to it.

Commented [IESBA96]: 360.1

R260.6 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants are required to address non-compliance or suspected non-compliance. These legal or regulatory provisions might differ from or go beyond the provisions in this section. When encountering such non-compliance or suspected non-compliance, the accountant shall obtain an understanding of those legal or regulatory provisions and comply with them, including:

Commented [IESBA97]: 360.3

- (a) Any requirement to report the matter to an appropriate authority; and
- (b) Any prohibition on alerting the relevant party prior to making any disclosure

260.6 A1 A prohibition on alerting the party prior to making any disclosure might arise, for example, pursuant to anti-money laundering legislation.

Commented [IESBA98]: 360.3

260.7 A1 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the professional accountant are:

Commented [IESBA99]: 360.4

- (a) To comply with the principles of integrity and professional behavior;
- (b) By alerting management or, where appropriate, those charged with governance of the employing organization, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
- (c) To take such further action as appropriate in the public interest.

260.7 A2 Non-compliance might result in fines, litigation or other consequences for the employing organization, potentially materially affecting its financial statements. Importantly, such non-compliance might have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

Commented [IESBA100]: 360.7

260.7 A3 A professional accountant who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this section. Whether a matter is clearly inconsequential is to be judged with respect to its nature and its impact, financial or otherwise, on the employing organization, its stakeholders and the general public.

Commented [IESBA101]: 360.8

260.7 A4 This section does not address:

Commented [IESBA102]: 360.9

(a) Personal misconduct unrelated to the business activities of the employing organization; and

(b) Non-compliance by parties other than those specified in paragraph 260.4 A1.

The professional accountant might nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organization's Management and Those Charged with Governance

260.8 A1 The employing organization's management, with the oversight of those charged with governance, is responsible for ensuring that the employing organization's business activities are conducted in accordance with laws and regulations. Management and those charged with governance are also responsible for identifying and addressing any non-compliance by:

Commented [IESBA103]: 360.10

(a) The employing organization;

(b) An individual charged with governance of the entity;

(c) A member of management; or

(d) Other individuals working for or under the direction of the employing organization.

Responsibilities of Professional Accountants

R260.9 If protocols and procedures exist within the professional accountant's employing organization to address non-compliance or suspected non-compliance, the accountant shall consider them in determining how to respond to such non-compliance.

Commented [IESBA104]: 360.11

260.9 A1 Many employing organizations have established protocols and procedures regarding how to raise non-compliance or suspected non-compliance internally. These protocols and procedures include, for example, an ethics policy or internal whistle-blowing mechanism. Such protocols and procedures might allow matters to be reported anonymously through designated channels.

Commented [IESBA105]: 360.11

R260.10 Where a professional accountant becomes aware of a matter to which this section applies, the steps that the accountant takes to comply with this section shall be taken on a timely basis. For the purpose of taking timely steps, the accountant shall have regard to the nature of the matter and the potential harm to the interests of the employing organization, investors, creditors, employees or the general public.

Responsibilities of Senior Professional Accountants in Business

260.11 A1 Senior professional accountants in business ("senior professional accountants") are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources. There is a greater expectation for

Commented [IESBA106]: 360.13

them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other accountants within the employing organization. This is because of senior professional accountants' roles, positions and spheres of influence within the employing organization.

Obtaining an Understanding of the Matter

R260.12 If, in the course of carrying out professional activities, a senior professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the accountant shall obtain an understanding of the matter. This understanding shall include:

Commented [IESBA107]: 360.14

- (a) The nature of the act and the circumstances in which it has occurred or might occur;
- (b) The application of the relevant laws and regulations to the circumstances; and
- (c) The potential consequences to the employing organization, investors, creditors, employees or the wider public.

260.12 A1 A senior professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, the accountant is not expected to have a level of understanding of laws and regulations greater than that which is required for the accountant's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

Commented [IESBA108]: 360.15

260.12 A2 Depending on the nature and significance of the matter, the senior professional accountant might cause, or take appropriate steps to cause, the matter to be investigated internally. The accountant might also consult on a confidential basis with others within the employing organization or a professional body, or with legal counsel.

Commented [IESBA109]: 360.15

Addressing the Matter

R260.13 If the senior professional accountant identifies or suspects that non-compliance has occurred or might occur, the accountant shall, subject to paragraph R260.9, discuss the matter with the accountant's immediate superior, if any. If the accountant's immediate superior appears to be involved in the matter, the accountant shall discuss the matter with the next higher level of authority within the employing organization.

Commented [IESBA110]: 360.16

260.13 A1 The purpose of the discussion is to enable a determination to be made as to how to address the matter.

Commented [IESBA111]: 360.16

R260.14 The senior professional accountant shall also take appropriate steps to:

Commented [IESBA112]: 360.17

- (a) Have the matter communicated to those charged with governance;
- (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;
- (c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
- (d) Reduce the risk of re-occurrence; and
- (e) Seek to deter the commission of the non-compliance if it has not yet occurred.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

260.14 A1 The purpose of communicating the matter to those charged with governance is to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities.

Commented [IESBA113]: 360.17(a)

R260.15 In addition to responding to the matter in accordance with the provisions of this section, the senior professional accountant shall determine whether disclosure of the matter to the employing organization's external auditor, if any, is needed.

Commented [IESBA114]: 360.18

260.15 A1 Such disclosure would be pursuant to the senior professional accountant's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Commented [IESBA115]: 360.18

Determining Whether Further Action Is Needed

R260.16 The senior professional accountant shall assess the appropriateness of the response of the accountant's superiors, if any, and those charged with governance.

Commented [IESBA116]: 360.19

260.16 A1 Relevant factors to consider in assessing the appropriateness of the response of the senior professional accountant's superiors, if any, and those charged with governance include whether:

Commented [IESBA117]: 360.20

- The response is timely.
- They have taken or authorized appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
- The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

R260.17 In light of the response of the senior professional accountant's superiors, if any, and those charged with governance, the accountant shall determine if further action is needed in the public interest.

Commented [IESBA118]: 360.21

260.17 A1 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

Commented [IESBA119]: 360.22

- The legal and regulatory framework.
- The urgency of the situation.
- The pervasiveness of the matter throughout the employing organization.
- Whether the senior professional accountant continues to have confidence in the integrity of the accountant's superiors and those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public.

260.17 A2 Examples of circumstances that might cause the senior professional accountant no longer to have confidence in the integrity of the accountant's superiors and those charged with governance include situations where:

Commented [IESBA120]: 360.23

- The accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Contrary to legal or regulatory requirements, they have not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

R260.18 The senior professional accountant shall exercise professional judgment in determining the need for, and nature and extent of, further action. In making this determination, the accountant shall take into account whether a reasonable and informed third party would be likely to conclude that the accountant has acted appropriately in the public interest.

Commented [IESBA121]: 360.24

260.18 A1 Further action that the senior professional accountant might take includes:

Commented [IESBA122]: 360.25

- Informing the management of the parent entity of the matter if the employing organization is a member of a group.
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the employing organization.

260.18 A2 Resigning from the employing organization is not a substitute for taking other actions that might be needed to achieve the senior professional accountant's objectives under this section. In some jurisdictions, however, there might be limitations as to the further actions available to the accountant. In such circumstances, resignation might be the only available course of action.

Commented [IESBA123]: 360.26

260.19 A1 As consideration of the matter might involve complex analysis and judgments, the senior professional accountant might consider:

Commented [IESBA124]: 360.27

- Consulting internally.
- Obtaining legal advice to understand the accountant's options and the professional or legal implications of taking any particular course of action.
- Consulting on a confidential basis with a regulator or professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

260.20 A1 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

Commented [IESBA125]: 360.28

260.20 A2 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or might be caused by the matter to investors, creditors, employees or the general public. For example, the senior professional accountant might determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

Commented [IESBA126]: 360.29

- The employing organization is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The employing organization is regulated and the matter is of such significance as to threaten its license to operate.
- The employing organization is listed on a securities exchange and the matter might result in adverse consequences to the fair and orderly market in the employing organization's securities or pose a systemic risk to the financial markets.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- It is likely that the employing organization would sell products that are harmful to public health or safety.
- The employing organization is promoting a scheme to its clients to assist them in evading taxes.

260.20 A3 The determination of whether to make such a disclosure will also depend on external factors such as:

Commented [IESBA127]: 360.29

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter. For example, the appropriate authority would be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the senior professional accountant or other individuals.

R260.21 If the senior professional accountant determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this is not a breach of the duty of confidentiality under Subsection 114 of the Code. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions.

Commented [IESBA128]: 360.30

R260.22 In exceptional circumstances, the senior professional accountant might become aware of actual or intended conduct that the accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. In these circumstances, the accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach. Such disclosure is not a breach of the duty of confidentiality under Subsection 114 of the Code.

Commented [IESBA129]: 360.31

260.22 A1 Prior to deciding whether to disclose the matter to an appropriate authority immediately, the professional accountant might consider whether it would be appropriate to discuss the matter with management or those charged with governance of the employing organization.

Commented [IESBA130]: 360.31

Documentation

260.23 A1 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior professional accountant is encouraged to have the following matters documented:

Commented [IESBA131]: 360.32

- The matter.
- The results of discussions with the accountant's superiors, if any, and those charged with governance and other parties.
- How the accountant's superiors, if any, and those charged with governance have responded to the matter.

- The courses of action the accountant considered, the judgments made and the decisions that were taken.
- How the accountant is satisfied that the accountant has fulfilled the responsibility set out in paragraph R260.17.

Responsibilities of Professional Accountants Other than Senior Professional Accountants in Business

R260.24 If, in the course of carrying out professional activities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the accountant shall seek to obtain an understanding of the matter. This understanding shall include the nature of the act and the circumstances in which it has occurred or might occur.

Commented [IESBA132]: 360.33

260.24 A1 The professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, the accountant is not expected to have a level of understanding of laws and regulations greater than that which is required for the accountant's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

Commented [IESBA133]: 360.34

260.24 A2 Depending on the nature and significance of the matter, the professional accountant might consult on a confidential basis with others within the employing organization or a professional body, or with legal counsel.

Commented [IESBA134]: 360.34

R260.25 If the professional accountant identifies or suspects that non-compliance has occurred or might occur, the accountant shall, subject to paragraph R260.9, inform an immediate superior to enable the superior to take appropriate action. If the accountant's immediate superior appears to be involved in the matter, the accountant shall inform the next higher level of authority within the employing organization.

Commented [IESBA135]: 360.35

R260.26 In exceptional circumstances, the professional accountant may determine that disclosure of the matter to an appropriate authority is an appropriate course of action. If the accountant does so pursuant to paragraphs 260.20 A2 and A3, this is not a breach of the duty of confidentiality under Subsection 114 of the Code. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions.

Commented [IESBA136]: 360.36

Documentation

260.27 A1 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant is encouraged to have the following matters documented:

Commented [IESBA137]: 360.37

- The matter.
- The results of discussions with the accountant's superior, management and, where applicable, those charged with governance and other parties.
- How the accountant's superior has responded to the matter.
- The courses of action the accountant considered, the judgments made and the decisions that were taken.

Section 360

Responding to Non-Compliance with Laws and Regulations

Introduction

360.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

Commented [IESBA138]: New paragraph

360.2 Threats to compliance with the principles of integrity and professional behavior are created when an accountant becomes aware of an act or suspected act of non-compliance with laws and regulations.

Commented [IESBA139]: New paragraph

360.3 Section 360 sets out requirements and application material regarding the approach to be taken by a professional accountant when responding to non-compliance or suspected non-compliance with:

Commented [IESBA140]: 225.5

- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which might be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

Requirements and Application Material

General

360.4 A1 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties:

Commented [IESBA141]: 225.2

- (a) A client;
- (b) Those charged with governance of a client;
- (c) Management of a client; or
- (d) Other individuals working for or under the direction of a client.

360.4 A2 Examples of laws and regulations which this section addresses include those that deal with:

Commented [IESBA142]: 225.6

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

R360.5	The professional accountant shall apply this section regardless of the nature of the client, including whether or not it is a public interest entity.	Commented [IESBA 143]: 225.1
360.5 A1	A professional accountant might encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. This section guides the accountant in assessing the implications of the matter and the possible courses of action when responding to it.	Commented [IESBA144]: 225.1
R360.6	In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance. These legal or regulatory provisions might differ from or go beyond the provisions in this section. When encountering such non-compliance or suspected non-compliance, the accountant shall obtain an understanding of those legal or regulatory provisions and comply with them, including: (a) Any requirement to report the matter to an appropriate authority; and (b) Any prohibition on alerting the client prior to making any disclosure.	Commented [IESBA145]: 225.3
360.6 A1	A prohibition on alerting the client prior to making any disclosure might arise, for example, pursuant to anti-money laundering legislation.	Commented [IESBA146]: 225.3
360.7 A1	A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the professional accountant are: (a) To comply with the principles of integrity and professional behavior; (b) By alerting management or, where appropriate, those charged with governance of the client, to seek to: (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or (ii) Deter the commission of the non-compliance where it has not yet occurred; and (c) To take such further action as appropriate in the public interest.	Commented [IESBA147]: 225.4
360.7 A2	Non-compliance might result in fines, litigation or other consequences for the client, potentially materially affecting its financial statements. Importantly, such non-compliance might have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.	Commented [IESBA148]: 225.7
360.7 A3	A professional accountant who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this section. Whether a matter is clearly inconsequential is to be judged with respect to its nature and its impact, financial or otherwise, on the client, its stakeholders and the general public.	Commented [IESBA149]: 225.8
360.7 A4	This section does not address: (a) Personal misconduct unrelated to the business activities of the client; and	Commented [IESBA150]: 225.9

- (b) Non-compliance by parties other than those specified in paragraph 360.4 A1. This includes, for example, circumstances where a professional accountant has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The accountant might nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Client's Management and Those Charged with Governance

360.8 A1 Management, with the oversight of those charged with governance, is responsible for ensuring that the client's business activities are conducted in accordance with laws and regulations. Management and those charged with governance are also responsible for identifying and addressing any non-compliance by:

Commented [IESBA151]: 225.10

- (a) The client;
(b) An individual charged with governance of the entity;
(c) A member of management; or
(d) Other individuals working for or under the direction of the client.

Responsibilities of Professional Accountants

R360.9 Where a professional accountant becomes aware of a matter to which this section applies, the steps that the accountant takes to comply with this section shall be taken on a timely basis. In taking timely steps, the accountant shall have regard to the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

Commented [IESBA152]: 225.11

Audits of Financial Statements

Obtaining an Understanding of the Matter

R360.10 If a professional accountant engaged to perform an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the accountant shall obtain an understanding of the matter. This understanding shall include the nature of the act and the circumstances in which it has occurred or might occur.

Commented [IESBA153]: 225.12

360.10 A1 The professional accountant might become aware of the instance of non-compliance or suspected non-compliance in the course of performing the engagement or through information provided by other parties.

Commented [IESBA154]: 225.12

360.10 A2 The professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, the accountant is not expected to have a level of knowledge of laws and regulations greater than that which is required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

Commented [IESBA155]: 225.13

360.10 A3 Depending on the nature and significance of the matter, the professional accountant might consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

Commented [IESBA156]: 225.13

R360.11 If the professional accountant identifies or suspects that non-compliance has occurred or might occur, the accountant shall discuss the matter with the appropriate level of management and, where appropriate, those charged with governance. **Commented [IESBA157]: 225.14**

360.11 A1 The purpose of the discussion is to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also might prompt management or those charged with governance to investigate the matter. **Commented [IESBA158]: 225.15**

360.11 A2 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include: **Commented [IESBA159]: 225.16**

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.
- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

360.11 A3 The appropriate level of management is usually at least one level above the individual or individuals involved or potentially involved in the matter. In the context of a group, the appropriate level might be management at an entity that controls the client. **Commented [IESBA160]: 225.17**

360.11 A4 The professional accountant might also consider discussing the matter with internal auditors, where applicable. **Commented [IESBA161]: 225.17**

R360.12 If the professional accountant believes that management is involved in the non-compliance or suspected non-compliance, the accountant shall discuss the matter with those charged with governance. **Commented [IESBA162]: 225.17**

Addressing the Matter

R360.13 In discussing the non-compliance or suspected non-compliance with management and, where appropriate, those charged with governance, the professional accountant shall advise them to take appropriate and timely actions, if they have not already done so, to: **Commented [IESBA163]: 225.18**

- (a) Rectify, remediate or mitigate the consequences of the non-compliance;
- (b) Deter the commission of the non-compliance where it has not yet occurred; or
- (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.

R360.14 The professional accountant shall consider whether the client's management and those charged with governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance. **Commented [IESBA164]: 225.19**

360.14 A1 If management and those charged with governance do not understand their legal or regulatory responsibilities with respect to the matter, the professional accountant might suggest appropriate sources of information or recommend that they obtain legal advice. **Commented [IESBA165]: 225.19**

R360.15 The professional accountant shall comply with applicable: **Commented [IESBA166]: 225.20**

- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority; and
- (b) Requirements under auditing standards, including those relating to:
 - Identifying and responding to non-compliance, including fraud.
 - Communicating with those charged with governance.
 - Considering the implications of the non-compliance or suspected non-compliance for the auditor's report.

360.15 A1 Some laws and regulations might stipulate a period within which reports of non-compliance or suspected non-compliance are to be made to an appropriate authority.

Commented [IESBA167]: 225.20

Communication with Respect to Groups

R360.16 Where a professional accountant becomes aware of non-compliance or suspected non-compliance in relation to a component of a group in either of the following two situations, the accountant shall communicate the matter to the group engagement partner unless prohibited from doing so by law or regulation:

Commented [IESBA168]: 225.21

- (a) The accountant is, for purposes of an audit of the group financial statements, requested by the group engagement team to perform work on financial information related to the component; or
- (b) The accountant is engaged to perform an audit of the component's financial statements for purposes other than the group audit, for example, a statutory audit.

The communication to the group engagement partner shall be in addition to responding to the matter in accordance with the provisions of this section,

360.16 A1 The purpose of the communication is to enable the group engagement partner to be informed about the matter and to determine, in the context of the group audit, whether and, if so, how to address it in accordance with the provisions in this section.

Commented [IESBA169]: 225.21

R360.17 Where the group engagement partner becomes aware of non-compliance or suspected non-compliance in the course of an audit of group financial statements, the group engagement partner shall consider whether the matter might be relevant to one or more components:

Commented [IESBA170]: 225.22

- (a) Whose financial information is subject to work for purposes of the audit of the group financial statements; or
- (b) Whose financial statements are subject to audit for purposes other than the group audit, for example, a statutory audit.

This consideration shall be in addition to responding to the matter in the context of the group audit in accordance with the provisions of this section.

R360.18 (a) If the non-compliance or suspected non-compliance might be relevant to one or more of the components specified in paragraph R360.17(a) and (b), the group engagement partner shall take steps to have the matter communicated to those performing work at the components, unless prohibited from doing so by law or regulation.

Commented [IESBA171]: 225.22

(b) If necessary, the group engagement partner shall arrange for appropriate inquiries to be made as to whether the relevant component(s) specified in paragraph R360.17(b) is subject to audit and, if so, to ascertain to the extent practicable the identity of the auditor.

360.18 A1 The purpose of the communication is to enable those responsible for work at the components to be informed about the matter and to determine whether and, if so, how to address it in accordance with the provisions in this section.

Commented [IESBA172]: 225.22

360.18 A2 For the components specified in paragraph R360.17(b), the inquiries might be made either of management or from publicly available information.

Commented [IESBA173]: 225.22

Determining Whether Further Action Is Needed

R360.19 The professional accountant shall assess the appropriateness of the response of management and, where applicable, those charged with governance.

Commented [IESBA174]: 225.23

360.19 A1 Relevant factors to consider in assessing the appropriateness of the response of management and, where applicable, those charged with governance include whether:

Commented [IESBA175]: 225.24

- The response is timely.
- The non-compliance or suspected non-compliance has been adequately investigated.
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of any non-compliance.
- Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.
- Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.
- The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

R360.20 In light of the response of management and, where applicable, those charged with governance, the professional accountant shall determine if further action is needed in the public interest.

Commented [IESBA176]: 225.25

360.20 A1 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

Commented [IESBA177]: 225.26

- The legal and regulatory framework.
- The urgency of the situation.
- The pervasiveness of the matter throughout the client.
- Whether the professional accountant continues to have confidence in the integrity of management and, where applicable, those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the general public.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- 360.20 A2 Examples of circumstances that might cause the professional accountant no longer to have confidence in the integrity of management and, where applicable, those charged with governance include situations where:
- The accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
 - The accountant is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.
- R360.21** The professional accountant shall exercise professional judgment in determining the need for, and nature and extent of, further action. In making this determination, the accountant shall take into account whether a reasonable and informed third party would be likely to conclude that the accountant has acted appropriately in the public interest.
- 360.21 A1 Further action that the professional accountant might take includes:
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
 - Withdrawing from the engagement and the professional relationship where permitted by law or regulation.
- 360.21 A2 Withdrawing from the engagement and the professional relationship is not a substitute for taking other actions that might be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there might be limitations as to the further actions available to the accountant. In such circumstances, withdrawal might be the only available course of action.
- R360.22** Where the professional accountant has withdrawn from the professional relationship pursuant to paragraphs R360.20 and 360.21 A1, the accountant shall, on request by the proposed successor accountant, provide all such facts and other information concerning the identified or suspected non-compliance to the proposed successor accountant. The predecessor accountant shall do so despite paragraph R320.11, unless prohibited by law or regulation.
- 360.22 A1 The facts and other information to be provided are those that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment. Section 320 addresses communications from proposed successor accountants.
- R360.23** If the proposed successor accountant is unable to communicate with the predecessor accountant, the proposed successor accountant shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means.
- 360.23 A1 Other means to obtain information about the circumstances of the change of appointment include inquiries of third parties or background investigations of management or those charged with governance.
- 360.24 A1 As consideration of the matter might involve complex analysis and judgments, the professional accountant might consider:
- Consulting internally.

Commented [IESBA178]: 225.27

Commented [IESBA179]: 225.28

Commented [IESBA180]: 225.29

Commented [IESBA181]: 225.30

Commented [IESBA182]: 225.31

Commented [IESBA183]: 225.31

Commented [IESBA184]: 225.31

Commented [IESBA185]: 220.31

Commented [IESBA186]: 225.33

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Obtaining legal advice to understand the accountant's options and the professional or legal implications of taking any particular course of action.
- Consulting on a confidential basis with a regulator or professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

360.25 A1 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

Commented [IESBA187]: 225.33

360.25 A2 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or might be caused by the matter to investors, creditors, employees or the general public. For example, the professional accountant might determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

Commented [IESBA 188]: 225.34

- The entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The entity is regulated and the matter is of such significance as to threaten its license to operate.
- The entity is listed on a securities exchange and the matter might result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets.
- It is likely that the entity would sell products that are harmful to public health or safety.
- The entity is promoting a scheme to its clients to assist them in evading taxes.

360.25 A3 The determination of whether to make such a disclosure will also depend on external factors such as:

Commented [IESBA189]: 225.34

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend on the nature of the matter. For example, the appropriate authority would be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals.

R360.26 If the professional accountant determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this is not a breach of the duty of confidentiality under Subsection 114 of the Code. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions. The accountant shall also consider whether it is appropriate to inform the client of the accountant's intentions before disclosing the matter.

Commented [IESBA190]: 225.35

R360.27 In exceptional circumstances, the professional accountant might become aware of actual or intended conduct that the accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. In these circumstances, the accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach. Such disclosure is not a breach of the duty of confidentiality under Subsection 114 of the Code.

Commented [IESBA191]: 225.36

360.27 A1 Prior to deciding whether to disclose the matter to an appropriate authority immediately, the professional accountant might consider whether it would be appropriate to discuss the matter with management or those charged with governance of the entity.

Commented [IESBA192]: 225.36

Documentation

R360.28 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant shall document:

Commented [IESBA 193]: 225.37

- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the accountant considered, the judgments made and the decisions that were taken, having regard to the reasonable and informed third party test.
- How the accountant is satisfied that the accountant has fulfilled the responsibility set out in paragraph R360.20.

360.28 A1 This documentation is in addition to complying with the documentation requirements under applicable auditing standards. *International Standards on Auditing (ISAs)*, for example, require a professional accountant performing an audit of financial statements to:

Commented [IESBA194]: 225.38

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions;
- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
- Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

Professional Services Other than Audits of Financial Statements

Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance

R360.29 If a professional accountant engaged to provide a professional service other than an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the accountant shall seek to obtain an understanding of the matter. This understanding shall include the nature of the act and the circumstances in which it has occurred or might be about to occur.

Commented [IESBA195]: 225.39

360.29 A1 The professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, the accountant is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

Commented [IESBA196]: 225.40

360.29 A2 Depending on the nature and significance of the matter, the professional accountant might consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

Commented [IESBA197]: 225.40

R360.30 If the professional accountant identifies or suspects that non-compliance has occurred or might occur, the accountant shall discuss the matter with the appropriate level of management. If the accountant has access to those charged with governance, the accountants shall also discuss the matter with them where appropriate.

Commented [IESBA198]: 225.41

360.30 A1 The purpose of the discussion is to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also might prompt management or those charged with governance to investigate the matter.

Commented [IESBA199]: 225.42

360.30 A2 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

Commented [IESBA200]: 225.43

- The nature and circumstances of the matter.
- The individuals actually or potentially involved.
- The likelihood of collusion.
- The potential consequences of the matter.
- Whether that level of management is able to investigate the matter and take appropriate action.

Communicating the Matter to the Entity's External Auditor

R360.31 If the professional accountant is performing a non-audit service for:

Commented [IESBA201]: 225.44

- (a) An audit client of the firm; or
- (b) A component of an audit client of the firm,

the accountant shall communicate the non-compliance or suspected non-compliance within the firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the firm's protocols or procedures. In the absence of such protocols and procedures, it shall be made directly to the audit engagement partner.

R360.32 If the professional accountant is performing a non-audit service for:

Commented [IESBA202]: 225.45

- (a) An audit client of a network firm; or
- (b) A component of an audit client of a network firm,

the accountant shall consider whether to communicate the non-compliance or suspected non-compliance to the network firm. Where the communication is made, it shall be made in

accordance with the network's protocols or procedures. In the absence of such protocols and procedures, it shall be made directly to the audit engagement partner.

R360.33 If the professional accountant is performing a non-audit service for a client that is not:

Commented [IESBA203]: 225.46

- (a) An audit client of the firm or a network firm; or
- (b) A component of an audit client of the firm or a network firm,

the accountant shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.

360.34 A1 Factors relevant to considering the communication in accordance with paragraphs R360.32 to R360.33 include:

Commented [IESBA204]: 225.47

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.
- Whether management or those charged with governance have already informed the entity's external auditor about the matter.
- The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.

360.35 A1 In the circumstances addressed in paragraphs R360.31 to R360.33, the purpose of the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how to address it in accordance with the provisions of this section.

Commented [IESBA205]: 225.48

Considering Whether Further Action Is Needed

R360.36 The professional accountant shall also consider whether further action is needed in the public interest.

Commented [IESBA206]: 225.49

360.36 A1 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

Commented [IESBA207]: 225.50

- The legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
- The urgency of the situation.
- The involvement of management or those charged with governance in the matter.
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

360.36 A2 Further action by the professional accountant might include:

Commented [IESBA208]: 225.51

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

360.36 A3 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

Commented [IESBA209]: 225.52

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

R360.37 If the professional accountant determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this is not a breach of the duty of confidentiality under Subsection 114 of the Code. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions. The accountant shall also consider whether it is appropriate to inform the client of the accountant's intentions before disclosing the matter.

Commented [IESBA210]: 225.53

R360.38 In exceptional circumstances, the professional accountant might become aware of actual or intended conduct that the accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. In these circumstances, the accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure is not a breach of the duty of confidentiality under Subsection 114 of the Code.

Commented [IESBA211]: 225.54

360.38 A1 Prior to deciding whether to disclose the matter to an appropriate authority immediately, the professional accountant might consider whether it would be appropriate to discuss the matter with management or those charged with governance of the entity.

Commented [IESBA212]: 225.54

360.39 A1 The professional accountant might consider:

Commented [IESBA213]: 225.55

- Consulting internally.
- Obtaining legal advice to understand the professional or legal implications of taking any particular course of action.
- Consulting on a confidential basis with a regulator or professional body.

Documentation

360.40 A1 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the professional accountant is encouraged to document:

Commented [IESBA214]: 225.56

- The matter.
- The results of discussion with management and, where applicable, those charged with governance and other parties.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the accountant considered, the judgments made and the decisions that were taken.
- How the accountant is satisfied that the accountant has fulfilled the responsibility set out in paragraph R360.36.

Chapter 3 – Proposed Restructured Text of the Long Association Close-off Document (Sections 540 and 940)^a

Section 540

Long Association of Personnel (Including Partner Rotation) with an Audit Client

Introduction

540.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA 215]: New paragraph

540.2 When an individual is involved in an audit engagement over a long period of time, familiarity and self-interest threats might be created.

Commented [IESBA216]: New paragraph

540.3 Section 540 sets out requirements and application material relevant to applying the conceptual framework to long association of personnel with an audit client.

Commented [IESBA217]: New paragraph

Requirements and Application Material

General

540.4 A1 Although an understanding of an audit client and its environment is fundamental to audit quality, a familiarity threat might be created as a result of an individual's long association as an audit team member with:

Commented [IESBA218]: 290.148

- (a) The audit client and its operations;
- (b) The audit client's senior management; or
- (c) The financial statements on which the firm will express an opinion or the financial information which forms the basis of the financial statements.

540.4 A2 A self-interest threat might be created as a result of an individual's concern about losing a longstanding client or an interest in maintaining a close personal relationship with a member of senior management or those charged with governance. Such a threat might influence the individual's judgment inappropriately.

Commented [IESBA219]: 290.138

540.4 A3 Examples of actions that might be safeguards to address familiarity and self-interest threats include:

Commented [IESBA220]: 290.151

- Changing the role of the individual on the audit team or the nature and extent of the tasks the individual performs.
- Having a professional accountant who was not an audit team member review the work of the individual.
- Performing regular independent internal or external quality reviews of the engagement.
- Performing an engagement quality control review.

An action that might eliminate the threats would be rotating the individual off the audit team.

^a IESBA approved revisions to the Long Association section of the extant Code in December 2016 using the extant Code's structure and drafting conventions. A mark-up showing the restructuring to those revisions is available at: www.ethicsboard.org/restructured-code.

R540.5 If a firm decides that the level of the threats created can only be addressed by rotating the individual off the audit team, the firm shall determine an appropriate period during which the individual shall not:

Commented [IESBA221]: 290.152

- (a) Be a member of the engagement team; or
- (b) Provide quality control for the audit engagement; or
- (c) Exert direct influence on the outcome of the audit engagement.

The period shall be of sufficient duration to allow the familiarity and self-interest threats to independence to be eliminated or reduced to an acceptable level. In the case of a public interest entity, paragraphs R540.6 to R540.20 also apply.

540.5 A1 Factors, individually or in combination, that are relevant to evaluating the level of any threats created from an individual being involved in an audit engagement over a long period of time include:

Commented [IESBA222]: 290.149

(a) In relation to the individual:

- The overall length of the individual's relationship with the client, including if such relationship existed while the individual was at a prior firm.
- How long the individual has been an engagement team member, and the nature of the roles performed.
- The extent to which the work of the individual is directed, reviewed and supervised by more senior personnel.
- The extent to which the individual, due to the individual's seniority, has the ability to influence the outcome of the audit, for example, by making key decisions or directing the work of other engagement team members.
- The closeness of the individual's personal relationship with senior management or those charged with governance.
- The nature, frequency and extent of the interaction between the individual and senior management or those charged with governance.

(b) In relation to the audit client:

- The nature or complexity of the client's accounting and financial reporting issues and whether they have changed.
- Whether there have been any recent changes in senior management or those charged with governance.
- Whether there have been any structural changes in the client's organization which impact the nature, frequency and extent of interactions the individual might have with senior management or those charged with governance.

540.5 A2 The combination of two or more factors might increase or reduce the level of the threats. For example, familiarity threats created over time by the increasingly close relationship between an individual and a member of the client's senior management would be reduced by the departure of that member of the client's senior management and the start of a new relationship.

Commented [IESBA223]: 290.150

Audits of Public Interest Entities

R540.6 Subject to paragraphs R540.7 to R540.9, in respect of an audit of a public interest entity, an individual shall not act in any of the following roles, or a combination of such roles, for a period of more than seven cumulative years (the “time-on” period):

Commented [IESBA224]: 290.153

- (a) The engagement partner;
- (b) The individual appointed as responsible for the engagement quality control review; or
- (c) Any other key audit partner role.

After the time-on period, the individual shall serve a “cooling-off” period in accordance with the provisions in paragraphs R540.10 to R540.18.

540.6 A1 In calculating the time-on period, the count of years cannot be restarted unless the individual ceases to act in any one of the roles in paragraph R540.6(a) to (c) for a consecutive period equal to at least the cooling-off period determined in accordance with paragraphs R540.10 to R540.12 as applicable to the role in which the individual served in the year immediately before ceasing such involvement. For example, an individual who served as engagement partner for four years followed by three years off can only act thereafter as a key audit partner on the same audit engagement for three further years (making a total of seven cumulative years). Thereafter, that individual is required to cool off in accordance with paragraph R540.13.

Commented [IESBA225]: 290.154

R540.7 As an exception to R540.6, key audit partners whose continuity is especially important to audit quality may, in rare cases due to unforeseen circumstances outside the firm’s control, and with the concurrence of those charged with governance, be permitted to serve an additional year as a key audit partner as long as the threat to independence can be eliminated or reduced to an acceptable level.

Commented [IESBA226]: 290.166

540.7 A1 For example, a key audit partner may remain in that role on the audit team for up to one additional year in circumstances where, due to unforeseen events, a required rotation was not possible, as might be the case due to serious illness of the intended engagement partner. In such circumstances, this will involve the firm discussing with those charged with governance the reasons why the planned rotation cannot take place and the need for any safeguards to reduce any threat created.

Commented [IESBA227]: 290.166

R540.8 If an audit client becomes a public interest entity, a firm shall take into account the length of time an individual has served the audit client as a key audit partner before the client becomes a public interest entity in determining the timing of the rotation. If the individual has served the audit client as a key audit partner for a period of five cumulative years or less when the client becomes a public interest entity, the number of years the individual may continue to serve the client in that capacity before rotating off the engagement is seven years less the number of years already served. As an exception to R540.6, if the individual has served the audit client as a key audit partner for a period of six or more cumulative years when the client becomes a public interest entity, the individual may continue to serve in that capacity with the concurrence of those charged with governance for a maximum of two additional years before rotating off the engagement.

Commented [IESBA228]: 290.167

R540.9 When a firm has only a few people with the necessary knowledge and experience to serve as a key audit partner on the audit of a public interest entity, rotation of key audit partners might not be possible. As an exception to paragraph R540.6, if an independent regulator in the

Commented [IESBA229]: 290.168

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

relevant jurisdiction has provided an exemption from partner rotation in such circumstances, an individual may remain a key audit partner for more than seven years, in accordance with such exemption. This is provided that the independent regulator has specified other requirements which are to be applied, such as the length of time that the key audit partner may be exempted from rotation or a regular independent external review.

Cooling-off Period

R540.10 If the individual acted as the engagement partner for seven cumulative years, the cooling-off period shall be five consecutive years.

Commented [IESBA230]: 290.155

R540.11 Where the individual has been appointed as responsible for the engagement quality control review and has acted in that capacity for seven cumulative years, the cooling-off period shall be three consecutive years.

Commented [IESBA231]: 290.156

R540.12 If the individual has acted as a key audit partner other than in the capacities set out in R540.10 and R540.11 for seven cumulative years, the cooling-off period shall be two consecutive years.

Commented [IESBA232]: 290.157

Service in a combination of key audit partner roles

R540.13 If the individual acted in a combination of key audit partner roles and served as the engagement partner for four or more cumulative years, the cooling-off period shall be five consecutive years.

Commented [IESBA233]: 290.158

R540.14 Subject to paragraph R540.15(a), if the individual acted in a combination of key audit partner roles and served as the key audit partner responsible for the engagement quality control review for four or more cumulative years, the cooling-off period shall be three consecutive years.

Commented [IESBA234]: 290.159

R540.15 If an individual has acted in a combination of engagement partner and engagement quality control review roles for four or more cumulative years during the time-on period, the cooling-off period shall:

Commented [IESBA235]: 290.160

(a) As an exception to R540.14, be five consecutive years where the individual has been the engagement partner for three or more years; or

(b) Be three consecutive years in the case of any other combination.

R540.16 If the individual acted in any combination of key audit partner roles other than those addressed in R540.13 to R540.15, the cooling-off period shall be two consecutive years.

Commented [IESBA236]: 290.161

Service at a Prior Firm

R540.17 In determining the number of years that an individual has been a key audit partner as set out in paragraph R540.6, the length of the relationship shall, where relevant, include time while the individual was a key audit partner on that engagement at a prior firm.

Commented [IESBA237]: 290.162

Shorter Cooling-off Period Established by Law or Regulation

R540.18 Where a legislative body or regulator (or organization authorized or recognized by such legislative body or regulator) has established a cooling-off period for an engagement partner of less than five consecutive years, the higher of that period or three years may be substituted for the cooling-off period of five consecutive years specified in paragraphs R540.10, R540.13 and R540.15(a) provided that the applicable time-on period does not exceed seven years.

Commented [IESBA238]: Derived from paragraph 290.163

Restrictions on Activities During the Cooling-off Period

R540.19 For the duration of the relevant cooling-off period, the individual shall not:

Commented [IESBA239]: 290.164

- (a) Be an engagement team member or provide quality control for the audit engagement;
- (b) Consult with the engagement team or the client regarding technical or industry-specific issues, transactions or events affecting the audit engagement (other than discussions with the engagement team limited to work undertaken or conclusions reached in the last year of the individual's time-on period where this remains relevant to the audit);
- (c) Be responsible for leading or coordinating the firm's professional services to the audit client or overseeing the firm's relationship with the audit client; or
- (d) Undertake any other role or activity not referred to above with respect to the audit client, including the provision of non-assurance services, that would result in the individual:
 - (i) Having significant or frequent interaction with senior management or those charged with governance; or
 - (ii) Exerting direct influence on the outcome of the audit engagement.

540.19 A1 The provisions of R540.19 are not intended to prevent the individual from assuming a leadership role in the firm, such as that of the Chief Executive or equivalent.

Commented [IESBA240]: 290.164

Other Considerations

R540.20 In evaluating the threats created by an individual's long association with an audit engagement, a firm shall give particular consideration to the roles undertaken and the length of an individual's association with the audit engagement prior to the individual becoming a key audit partner.

Commented [IESBA241]: 290.165

540.20 A1 There might be situations where the firm, in applying the conceptual framework, concludes that it is not appropriate for an individual who is a key audit partner to continue in that role even though the length of time served as a key audit partner is less than seven years.

Commented [IESBA242]: 290.165

Section 940

Long Association of Personnel with an Assurance Client

Introduction

940.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA243]: New paragraph

940.2 When an individual is involved in an assurance engagement of a recurring nature over a long period of time, familiarity and self-interest threats might be created.

Commented [IESBA244]: New paragraph

940.3 Section 940 sets out requirements and application material relevant to applying the conceptual framework to long association of personnel with an assurance client.

Commented [IESBA245]: New paragraph

Requirements and Application Material

940.4 A1 A familiarity threat might be created as a result of an individual's long association with:

Commented [IESBA246]: 291.137

- (a) The assurance client; or

(b) The subject matter and subject matter information of the assurance engagement.

940.4 A2 A self-interest threat might be created as a result of an individual's concern about losing a longstanding assurance client or an interest in maintaining a close personal relationship with the assurance client or a member of senior management. Such a threat might influence the individual's judgment inappropriately.

Commented [IESBA247]: 291.137

940.4 A3 Examples of actions that might be safeguards to address familiarity and self-interest threats in relation to a specific engagement include:

Commented [IESBA248]: Derived from 291.140

- Changing the role of the individual on the assurance team or the nature and extent of the tasks the individual performs.
- Having a professional accountant who is not an assurance team member review the work of the individual.
- Performing regular independent internal or external quality reviews of the engagement.
- Performing an engagement quality control review.

Commented [IESBA249]: 291.140

Commented [IESBA250]: 291.140

Commented [IESBA 251]: 291.140

Commented [IESBA252]: 290.140

An action that might eliminate the threats would be rotating the individual off the assurance team.

Commented [IESBA253]: 291.140

R940.5 If a firm determines that the level of the threats created can only be addressed by rotating the individual off the assurance team, the firm shall determine an appropriate period during which the individual shall not:

- (a) Be a member of the engagement team; or
- (b) Provide quality control for the assurance engagement; or
- (c) Exert direct influence on the outcome of the assurance engagement.

The period shall be of sufficient duration to allow the familiarity and self-interest threats to be eliminated or reduced to an acceptable level.

940.5 A1 Factors, individually or in combination, that are relevant to evaluating the level of any threats created from an individual being involved in an assurance engagement over a long period of time include:

Commented [IESBA254]: Derived from paragraph 291.138

- The nature of the assurance engagement.
- How long the individual has been an assurance team member, the individual's seniority on the team, and the nature of the roles performed, including if such a relationship existed while the individual was at a prior firm.
- The extent to which the work of the individual is directed, reviewed and supervised by more senior personnel.
- The extent to which the individual, due to the individual's seniority, has the ability to influence the outcome of the assurance engagement, for example, by making key decisions or directing the work of other engagement team members.
- The closeness of the individual's personal relationship with the assurance client or, if relevant, senior management.

Commented [IESBA255]: 291.138

Commented [IESBA256]: 291.138

Commented [IESBA257]: 291.138

Commented [IESBA258]: 291.138

Commented [v259]: 291.138

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- The nature, frequency and extent of interaction between the individual and the assurance client.
- Whether the nature or complexity of the subject matter or subject matter information has changed.
- Whether there have been any recent changes in the individual or individuals who are the responsible party or, if relevant, senior management.

Commented [IESBA260]: 291.138

Commented [IESBA261]: 291.138

Commented [IESBA262]: 291.138

940.5 A2 The combination of two or more factors might increase or reduce the level of the threats. For example, familiarity threats created over time by the increasingly close relationship between an individual and the assurance client would be reduced by the departure of the individual who is the responsible party and the start of a new relationship.

Commented [IESBA263]: 291.139

Effective Date

Commented [IESBA264]: Effective date

Subject to the transitional provision below, Section 540 is effective for audits of financial statements for years beginning on or after December 15, 2018. Section 940 is effective as of December 15, 2018. Early adoption is permitted.

Paragraph R540.18 shall have effect only for audits of financial statements for periods beginning prior to December 15, 2023. This will facilitate the transition to the required cooling-off period of five consecutive years for engagement partners in those jurisdictions where the legislative body or regulator (or organization authorized or recognized by such legislative body or regulator) has specified a cooling-off period of less than five consecutive years.

Chapter 4 – Proposed Restructured Text of the Provisions Addressing Restricted Use Reports (Section 800)[∅]

INTERNATIONAL INDEPENDENCE STANDARDS (PARTS 4A and 4B)

PART 4A – INDEPENDENCE FOR AUDITS AND REVIEWS

...

Section 800

Reports that Include a Restriction on Use and Distribution

Introduction

800.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA265]: New paragraph

800.2 Section 800 sets out certain modifications to Part 4A (excluding this section) which are permitted in certain circumstances involving audits of special purpose financial statements where the report includes a restriction on use and distribution. In this section, an engagement to issue a restricted use and distribution report in the circumstances set out in paragraph R800.3 is referred to as an “eligible audit engagement.”

Commented [IESBA266]: New paragraph

Requirements and Application Material

General

R800.3 A firm might issue a report on an audit of special purpose financial statements which includes a restriction on use and distribution. The independence requirements that apply in respect of such an engagement shall only be eligible for the modifications to Part 4A (excluding this section) that are permitted by this section if:

Commented [IESBA267]: 290.502

- (a) The firm communicates with the intended users of the report regarding the modified independence requirements that are to be applied in providing the service; and
- (b) The intended users of the report understand the purpose and limitations of the report and explicitly agree to the application of the modifications.

Where the intended users are a class of users who are not specifically identifiable by name at the time the engagement terms are established, the firm shall subsequently make such users aware of the modified independence requirements agreed to by their representative.

800.3 A1 The intended users of the report might obtain an understanding of the purpose and limitations of the report by participating in establishing the nature and scope of the engagement. Such participation might be direct, or might be indirect through a representative who has authority to act for the intended users. In either case, this participation helps the firm to communicate with intended users about independence matters, including the circumstances that are relevant to

[∅] Extant Code, Part B – Professional Accountants in Public Practice, Section 290, *Independence – Audit and Review Engagements*, paragraphs 290.500 to 290.514, *Reports that Include a Restriction on Use and Distribution*.

applying the conceptual framework. It also allows the firm to obtain the agreement of the intended users to the modified independence requirements.

800.3 A2 For example, where the intended users are lenders in a syndicated loan arrangement, the firm might describe the modified independence requirements in an engagement letter to the representative of the lenders. The representative might then make the firm's engagement letter available to the members of the group of lenders to meet the requirement for the firm to make such users aware of the modified independence requirements agreed to by the representative.

R800.4 When the firm performs an eligible audit engagement, any modifications to Part 4A (excluding this section) shall be limited to those set out in paragraphs R800.6 to R800.13. The firm shall not apply these modifications when an audit of financial statements is required by law or regulation.

Commented [IESBA268]: 290.500

R800.5 If the firm also issues an audit report that does not include a restriction on use and distribution for the same client, the firm shall apply Part 4A (excluding this section) to that audit engagement.

Commented [IESBA269]: 290.503

Public Interest Entities

R800.6 When the firm performs an eligible audit engagement, the firm does not need to apply the independence requirements set out in Part 4A (excluding this section) that apply only to public interest entity audit engagements.

Commented [IESBA270]: 290.505

Related Entities

R800.7 When the firm performs an eligible audit engagement, references to audit client in Part 4A (excluding this section) do not need to include its related entities. However, when the audit team knows or has reason to believe that a relationship or circumstance involving a related entity of the client is relevant to the evaluation of the firm's independence of the client, the audit team shall include that related entity when identifying, evaluating and addressing threats to independence.

Commented [IESBA271]: 290.506

Networks and Network Firms

R800.8 When the firm performs an eligible audit engagement, the specific requirements regarding network firms set out in Part 4A (excluding this section) do not need to be applied. However, when the firm knows or has reason to believe that threats to independence are created by any interests and relationships of a network firm, the firm shall evaluate and address any such threat.

Commented [IESBA272]: 290.507

Financial Interests, Loans and Guarantees, Close Business Relationships and Family and Personal Relationships

R800.9 When the firm performs an eligible audit engagement:

Commented [IESBA273]: 290.508

(a) The relevant provisions set out in Sections 510, 511, 520, 521, 522, 524 and 525 need apply only to the members of the engagement team, their immediate family members and close family members;

(b) The firm shall identify, evaluate and address any threats to independence that might be created by interests and relationships, as set out in Sections 510, 511, 520, 521, 522, 524 and 525, between the audit client and the following audit team members:

Commented [IESBA274]: 290.509

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- (i) Those who provide consultation regarding technical or industry specific issues, transactions or events; and
- (ii) Those who provide quality control for the engagement, including those who perform the engagement quality control review; and
- (c) The firm shall evaluate and address any threats that the engagement team has reason to believe are created by interests and relationships between the audit client and others within the firm who can directly influence the outcome of the audit engagement.

Commented [IESBA275]: 290.510

800.9 A1 Others within the firm who can directly influence the outcome of the audit engagement include:

Commented [IESBA276]: 290.509

- (a) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the audit engagement partner in connection with the performance of the audit engagement; and
- (b) Those at all successively senior levels above the engagement partner through to the individual who is the firm's Chief Executive or equivalent.

R800.10 When the firm performs an eligible audit engagement, the firm shall evaluate and address any threats that the engagement team has reason to believe are created by financial interests in the audit client held by individuals, as set out in paragraphs R510.7(c) and (d), R510.8, R510.10 and R510.13(c) and (d).

Commented [IESBA277]: 290.510, 290.511

R800.11 When the firm performs an eligible audit engagement, the firm, in applying the provisions set out in paragraphs R510.7(a), R510.9 and R510.10 to interests of the firm, shall not hold a material direct or a material indirect financial interest in the audit client.

Commented [IESBA278]: 290.512

Employment with an Audit Client

R800.12 When the firm performs an eligible audit engagement, the firm shall evaluate and address any threats created by any employment relationships as set out in paragraphs 524.4 A1 to 524.7 A2.

Commented [IESBA279]: 290.513

800.12 A1 Examples of actions that might be safeguards to address the threats set out in paragraph R800.12 include those set out in paragraph 524.5 A3.

Commented [IESBA280]: 290.513

Providing Non-Assurance Services

R800.13 If the firm performs an eligible audit engagement and provides a non-assurance service to the audit client, the firm shall comply with Sections 410 to 430 and Section 600, including its subsections, subject to paragraphs R800.6 to R800.8.

Commented [IESBA281]: 290.514

Chapter 5 – Proposed Restructured Text Relating to Independence – Other Assurance Engagements (Part 4B)^Σ

Part 4B – INDEPENDENCE FOR OTHER ASSURANCE ENGAGEMENTS

Section 900

Applying the Conceptual Framework to Independence for Other Assurance Engagements

Introduction

900.1 Part 4B applies to assurance engagements other than audit and review engagements (referred to as “assurance engagements” in this Part). Examples of such engagements include:

- An audit of specific elements, accounts or items of a financial statement
- Performance assurance on a company's key performance indicators.

900.2 In Part 4B, the term “professional accountant” refers to professional accountants in public practice and their firms.

900.3 *International Standard on Quality Control 1* (ISQC 1¹⁰), requires a firm to establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements maintain independence where required by relevant ethics standards. *International Standards on Assurance Engagements* (ISAEs) establish responsibilities for engagement partners and engagement teams at the level of the engagement. The allocation of certain responsibilities within a firm will depend on its size, structure and organization. Many of the provisions of Part 4B do not prescribe the specific responsibility of individuals within the firm for actions related to independence, instead referring to “firm” for ease of reference. Firms assign responsibility for a particular action to an individual or a group of individuals (such as an assurance team) in accordance with ISQC 1. In addition, individual professional accountants remain responsible for compliance with any provisions that apply to that accountant's activities, interests or relationships.

900.4 Independence is linked to the principles of objectivity and integrity. It comprises:

- (a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby

Commented [IESBA282]: New Paragraph

Commented [IESBA283]: New paragraph

Commented [IESBA284]: 291.5

^Σ The proposals in this Chapter of the ED is the restructured text of extant Part B – Professional Accountants in Public Practice, Section 291, *Independence – Other Assurance Engagements* except for paragraphs 291.138-291.148, *Provisions of Non-Assurance Services to an Assurance Client*. Those paragraphs have been revised as part of the Safeguards project and are set out in Chapter 1 of Safeguards ED-2, Section 950, *Provisions of Non-Assurance Services to an Assurance Client*.

Extant Section 291 does not reflect the revised assurance terms and concepts in *International Standard on Assurance Engagements* (ISAE) 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued in December 2013. Changes that might be necessary to align extant Section 291 to ISAE 3000 (Revised) are outside the Structure of the Code project scope. Accordingly, consideration of the need for and timing of such changes will form part of the IESBA's next strategy and work plan.

¹⁰ *International Standard on Quality Control 1, Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*

allowing an individual to act with integrity, and exercise objectivity and professional skepticism.

- (b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a firm's or an assurance team member's integrity, objectivity or professional skepticism has been compromised.

In Part 4B, references to an individual or firm being “independent” mean that the individual or firm has complied with the provisions of this Part.

Commented [IESBA285]: New paragraph

900.5 When performing assurance engagements, the Code requires firms to comply with the fundamental principles and be independent. Part 4B sets out requirements and application material on how to apply the conceptual framework to maintain independence when performing such engagements. The conceptual framework set out in Section 120 applies to independence as it does to the fundamental principles set out in Section 110.

Commented [IESBA286]: New paragraph

900.6 Part 4B describes facts and circumstances, including professional activities, interests and relationships that create or might create threats to independence. Firms are required to apply the conceptual framework to threats to independence as well as to threats to the fundamental principles that are linked to independence. Part 4B describes potential threats and safeguards or other actions that might be appropriate to address any such threats. It also identifies some situations where the threats cannot be eliminated and there can be no safeguards to reduce the threats to an acceptable level.

Commented [IESBA287]: New paragraph

900.7 Assurance engagements are designed to enhance intended users' degree of confidence about the outcome of the evaluation or measurement of a subject matter against criteria. The *International Framework for Assurance Engagements* (the Assurance Framework) describes the elements and objectives of an assurance engagement and identifies engagements to which ISAEs apply. For a description of the elements and objectives of an assurance engagement, refer to the Assurance Framework.

Commented [IESBA288]: 291.2

900.8 In an assurance engagement, the professional accountant expresses a conclusion designed to enhance the degree of confidence of the intended users (other than the responsible party) about the outcome of the evaluation or measurement of a subject matter against criteria. For further explanation, see the Assurance Framework.

Commented [IESBA289]: 291.12

900.9 The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term “subject matter information” is used to mean the outcome of the evaluation or measurement of a subject matter. For example, the Assurance Framework states that an assertion about the effectiveness of internal control (subject matter information) results from applying a framework for evaluating the effectiveness of internal control, such as COSO or CoCo (criteria), to internal control, a process (subject matter).

Commented [IESBA290]: 291.13

900.10 Assurance engagements might be assertion-based or direct reporting. In either case, they involve three separate parties: a professional accountant, a responsible party and intended users.

Commented [IESBA291]: 291.14

900.11 In an assertion-based assurance engagement, the evaluation or measurement of the subject matter is performed by the responsible party. The subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

Commented [IESBA292]: 291.15

- 900.12 In a direct reporting assurance engagement, the professional accountant either
- (a) Directly performs the evaluation or measurement of the subject matter; or
 - (b) Obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

Commented [IESBA293]: 291.16

Reports that Include a Restriction on Use and Distribution

- 900.13 An assurance report might include a restriction on use and distribution. If it does, and the conditions set out in Section 999 are met, then the independence requirements in Part 4B (excluding Section 999) may be modified as provided in Section 999.

Audit and Review Engagements

- 900.14 Independence standards for audit and review engagements are set out in Part 4A—*Independence for Audits and Reviews*.

Commented [IESBA294]: New paragraph

Requirements and Application Material

General

- R900.15 A firm performing an assurance engagement shall be independent.
- R900.16 A firm shall apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence in relation to an assurance engagement.

Commented [IESBA295]: New paragraph

Commented [IESBA296]: 291.6

Network firms

- R900.17 When a firm performing an assurance engagement has reason to believe that a threat to independence is created by a network firm's interests and relationships, the firm shall evaluate any such threat.
- 900.17 A1 Network firms are discussed in paragraphs R400.50 to 400.54 A1.

Commented [IESBA297]: 291.3

Related Entities

- R900.18 When the assurance team knows or has reason to believe that a relationship or circumstance involving a related entity of the assurance client is relevant to the evaluation of the firm's independence from the client, the assurance team shall include that related entity when identifying, evaluating and addressing threats to independence.

Commented [IESBA298]: 291.3

Types of Assurance Engagements

Assertion-Based Assurance Engagements

- R900.19 When performing an assertion-based assurance engagement:
- (a) The members of the assurance team and the firm shall be independent of the assurance client (the party responsible for the subject matter information, and which might be responsible for the subject matter) as set out in Part 4B. The independence requirements set out in Part 4B prohibit certain relationships between assurance team members and (i) directors or officers, and (ii) individuals at the client in a position to exert significant influence over the subject matter information;

Commented [IESBA299]: 291.17

(b) The firm shall apply the conceptual framework set out in Section 120 to relationships with individuals at the client in a position to exert significant influence over the subject matter of the engagement; and

Commented [IESBA300]: 291.17

(c) The firm shall evaluate and address any threats that the firm has reason to believe are created by network firm interests and relationships.

Commented [IESBA301]: 290.510, 290.511

R900.20 (a) When performing an assertion-based assurance engagement where the responsible party is responsible for the subject matter information but not the subject matter, the members of the assurance team and the firm shall be independent of the party responsible for the subject matter information (the assurance client).

Commented [IESBA302]: 291.19, 291.101

(b) The firm shall evaluate and address any threats the firm has reason to believe are created by interests and relationships between an assurance team member, the firm, a network firm and the party responsible for the subject matter.

Commented [IESBA303]: 291.19, 291.101

900.20 A1 In the majority of assertion-based assurance engagements, the responsible party is responsible for both the subject matter information and the subject matter. However, in some engagements, the responsible party might not be responsible for the subject matter. An example might be when a firm is engaged to perform an assurance engagement regarding a report that an environmental consultant has prepared about a company's sustainability practices for distribution to intended users. In this case, the environmental consultant is the responsible party for the subject matter information but the company is responsible for the subject matter (the sustainability practices).

Commented [IESBA304]: 291.18, 291.101

Direct Reporting Assurance Engagements

R900.21 When performing a direct reporting assurance engagement:

Commented [IESBA305]: 291.20

(a) The members of the assurance team and the firm shall be independent of the assurance client (the party responsible for the subject matter); and

(b) The firm shall evaluate and address any threats to independence the firm has reason to believe are created by network firm interests and relationships.

Commented [IESBA306]: 291.20

Multiple Responsible Parties

900.22 A1 In some assurance engagements, whether assertion-based or direct reporting, there might be several responsible parties. In determining whether it is necessary to apply the provisions in Part 4B to each responsible party in such engagements, the firm may take into account certain matters. These matters include whether an interest or relationship between the firm, or an assurance team member, and a particular responsible party would create a threat to independence that is not trivial and inconsequential in the context of the subject matter information. This determination will take into account factors such as:

Commented [IESBA307]: 291.28

- The materiality of the subject matter information (or of the subject matter) for which the particular responsible party is responsible.
- The degree of public interest associated with the engagement.

If the firm determines that the threat created by any such interest or relationship with a particular responsible party would be trivial and inconsequential, it might not be necessary to apply all of the provisions of this section to that responsible party.

[Paragraphs 900.23 to 900.29 are intentionally left blank]

Period During which Independence is Required

R900.30 Independence, as required by Part 4B shall be maintained during both:

- (a) The engagement period; and
- (b) The period covered by the subject matter information.

900.30 A1 The engagement period starts when the assurance team begins to perform assurance services. The engagement period ends when the assurance report is issued. When the engagement is of a recurring nature, it ends at the later of the notification by either party that the professional relationship has ended or the issuance of the final assurance report.

Commented [IESBA308]: 291.30

R900.31 If an entity becomes an assurance client during or after the period covered by the subject matter information on which the firm will express a conclusion, the firm shall determine whether any threats to independence are created by:

Commented [IESBA309]: 291.31

- (a) Financial or business relationships with the assurance client during or after the period covered by the subject matter information but before accepting the assurance engagement; or
- (b) Previous services provided to the assurance client.

R900.32 Subject to paragraph R900.33, if a non-assurance service was provided to the assurance client during or after the period covered by the subject matter information but before the assurance team begins to perform assurance services and the service would not be permitted during the period of the assurance engagement, the firm shall evaluate and address any threat to independence created by the service. If the threats are not at an acceptable level, the firm shall only accept the assurance engagement if the threats are reduced to an acceptable level.

Commented [IESBA310]: 291.32

900.32 A1 Examples of actions that might be safeguards to address threats to independence include:

Commented [IESBA311]: 291.32

- Not including personnel who provided the non-assurance service as assurance team members.
- Having a professional accountant review the assurance and non-assurance work as appropriate.

R900.33 As an exception to paragraph R900.32, if the non-assurance service has not been completed and it is not practical to complete or end the service before the commencement of professional services in connection with the assurance engagement, the firm shall only accept the assurance engagement if:

Commented [IESBA312]: 291.32

- (a) The firm is satisfied that:
 - (i) The non-assurance service will be completed within a short period of time; or
 - (ii) The client has arrangements in place to transition the service to another provider within a short period of time;
- (b) The firm applies safeguards when necessary during the service period; and
- (c) The firm discusses the matter with those charged with governance.

[Paragraphs 900.34 to 900.39 are intentionally left blank]

General Documentation of Independence for Assurance Engagements

R900.40 A firm shall document conclusions regarding compliance with Part 4B, and the substance of any relevant discussions that support those conclusions. In particular:

Commented [IESBA313]: 291.29

- (a) When safeguards are applied to address a threat, the firm shall document the nature of the threat and the safeguards in place or applied; and
- (b) When a threat requires significant analysis and the firm concluded that the threat was already at an acceptable level, the firm shall document the nature of the threat and the rationale for the conclusion.

900.40 A1 Documentation provides evidence of the firm's judgments in forming conclusions regarding compliance with Part 4B. However, a lack of documentation does not determine whether a firm considered a particular matter or whether the firm is independent.

Commented [IESBA314]: 291.29

Commented [IESBA315]: 291.29

[Paragraphs 900.41 to 900.49 are intentionally left blank]

Breach of a Provision of Independence for Other Assurance Engagements

R900.50 If a firm concludes that a breach of Part 4B has occurred, the firm shall:

Commented [IESBA316]: 291.33

- (a) End, suspend or eliminate the interest or relationship that created the breach;
- (b) Evaluate the significance of the breach and its impact on the firm's objectivity and ability to issue an assurance report; and
- (c) Determine whether action can be taken that satisfactorily addresses the consequences of the breach.

In making this determination, the firm shall exercise professional judgment and take into account whether a reasonable and informed third party would be likely to conclude that the firm's objectivity would be compromised such that the firm is unable to issue an assurance report.

R900.51 If the firm determines that it cannot take action to address the consequences of the breach satisfactorily, the firm shall, as soon as possible, inform the party that engaged the firm or those charged with governance, as appropriate. The firm shall also take the steps necessary to end the assurance engagement in compliance with any applicable legal or regulatory requirements relevant to ending the assurance engagement.

Commented [IESBA317]: 291.34

R900.52 If the firm determines that it can take action to address the consequences of the breach satisfactorily, the firm shall discuss the breach and the action it has taken or proposes to take with the party that engaged the firm or those charged with governance, as appropriate. The firm shall discuss the breach and the proposed action on a timely basis, taking into account the circumstances of the engagement and the breach.

Commented [IESBA318]: 291.35

R900.53 If the party that engaged the firm does not, or those charged with governance do not concur that the action proposed by the firm in accordance with paragraph R900.50(c) satisfactorily addresses the consequences of the breach, the firm shall take the steps necessary to end the assurance engagement in compliance with any applicable legal or regulatory requirements relevant to ending the assurance engagement.

Commented [IESBA319]: 291.36

R900.54 In applying the provisions of paragraph R900.50 to R900.53, the firm shall document:

Commented [IESBA320]: 291.37

- (a) The breach;
- (b) The actions taken;
- (c) The key decisions made; and
- (d) All the matters discussed with the party that engaged the firm or those charged with governance.

R900.55 If the firm continues with the assurance engagement, it shall also document:

Commented [IESBA321]: 291.37

- (a) The conclusion that, in the firm's professional judgment, objectivity has not been compromised; and
- (b) The rationale for why the action taken satisfactorily addressed the consequences of the breach so that the firm could issue an assurance report.

Section 905

Fees

Introduction

905.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA322]: New paragraph

905.2 The nature and level of fees or other types of remuneration might create self-interest or intimidation threats.

905.3 Section 905 sets out specific requirements and application material relevant to applying the conceptual framework to fees or other remuneration.

Commented [IESBA323]: New paragraph

Requirements and Application Material

Fees—Relative Size

905.4 A1 When the total fees generated from an assurance client by the firm expressing the conclusion in an assurance engagement represent a large proportion of the total fees of that firm, the dependence on that client and concern about losing the client create a self-interest or intimidation threat. Factors that are relevant in evaluating the level of those threats include:

Commented [IESBA324]: 291.148

- The operating structure of the firm.
- Whether the firm is well established or new.
- The significance of the client qualitatively and/or quantitatively to the firm.

905.4 A2 Examples of actions that might be safeguards to address the threats set out in paragraph 905.4 A1 include:

Commented [IESBA325]: 291.148

- Increasing the client base in the firm to reduce dependence on the assurance client.
- External quality control reviews.
- Consulting a third party, such as a professional body or a professional accountant, on key assurance judgments and taking appropriate steps following that consultation.

905.5 A1 A self-interest or intimidation threat is also created when the fees generated by the firm from an assurance client represent a large proportion of the revenue from an individual partner's clients.

Commented [IESBA326]: 291.149

905.5 A2 An example of an action that might be a safeguard to address the threats set out in paragraph 905.5 A1 is having an additional professional accountant who was not an assurance team member review the work or otherwise advise as necessary.

Commented [IESBA327]: 291.149

Fees—Overdue

905.6 A1 A self-interest threat might be created if a significant part of fees is not paid before the assurance report, if any, for the following period is issued. It is generally expected that the firm will require payment of such fees before any such report is issued. The requirements and application material set out in Section 911 with respect to loans and guarantees might also be relevant to situations where such unpaid fees exist.

Commented [IESBA328]: 291.150

905.6 A2 Examples of actions that might be safeguards to address threats created by overdue fees include:

- Obtaining partial payment of overdue fees.
- Have an additional professional accountant, who did not take part in the assurance engagement review the work performed.

Commented [IESBA329]: 291.150

R905.7 When a significant part of fees due from an assurance client remains unpaid for a long time, the firm shall determine:

Commented [IESBA330]: 290.150

- (a) Whether the overdue fees might be equivalent to a loan to the client; and
- (b) Whether it is appropriate for the firm to be re-appointed or continue the assurance engagement because of the significance of the overdue fee.

Contingent Fees

905.8 A1 Contingent fees are fees calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed. A contingent fee charged through an intermediary is an example of an indirect contingent fee. In this section, fees are not regarded as being contingent if established by a court or other public authority.

Commented [IESBA331]: 291.151

R905.9 A firm shall not charge directly or indirectly a contingent fee for an assurance engagement.

Commented [IESBA332]: 291.152

R905.10 A firm shall not charge directly or indirectly a contingent fee for a non-assurance service provided to an assurance client if the outcome of the non-assurance service, and therefore, the amount of the fee, is dependent on a future or contemporary judgment related to a matter that is material to the subject matter information of the assurance engagement.

Commented [IESBA333]: 291.153

905.10 A1 Paragraphs R905.9 and R905.10 preclude a firm from entering into certain contingent fee arrangements with an assurance client. Even if such contingent fee arrangements are not precluded when providing a non-assurance service to an assurance client, a self-interest threat might still be created. Factors that are relevant in evaluating the level of such threats include:

Commented [IESBA334]: 291.154

- The range of possible fee amounts.
- Whether an appropriate authority determines the outcome of the matter upon which the contingent fee will be determined.
- The nature of the service.
- The effect of the event or transaction on the subject matter information.

905.10 A2 Examples of actions that might be safeguards to address a threat created by a contingent fee include:

Commented [IESBA335]: 291.154

- Having a professional accountant review the relevant assurance work or otherwise advise as necessary.
- Using professionals who are not members of the assurance team to perform the non-assurance service.

Section 906

Gifts and Hospitality

Introduction

906.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA336]: New paragraph

906.2 Accepting gifts or hospitality from an assurance client might create self-interest, familiarity or other threats.

Commented [IESBA337]: 291.155

906.3 Section 906 sets out a specific requirement relevant to applying the conceptual framework to offers of gifts and hospitality.

Commented [IESBA338]: New paragraph

Requirement

R906.4 A firm or an assurance team member shall not accept gifts or hospitality from an assurance client, unless the value is trivial and inconsequential.

Commented [IESBA339]: 291.155

Section 907

Actual or Threatened Litigation

Introduction

907.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA340]: New paragraph

907.2 When litigation occurs, or appears likely, between an assurance client and the firm or an assurance team member, self-interest and intimidation threats are created.

Commented [IESBA341]: 291.156

907.3 Section 907 sets out specific application material relevant to applying the conceptual framework to such actual or threatened litigation.

Commented [IESBA342]: New paragraph

Application Material

907.4 A1 The relationship between client management and assurance team members must be characterized by complete candor and full disclosure regarding all aspects of a client's operations. The adversarial positions which might result from actual or threatened litigation might affect management's willingness to make complete disclosures and create self-interest and intimidation threats. Factors that are relevant in evaluating the level of such threats include:

Commented [IESBA343]: 291.156

- The materiality of the litigation.
- Whether the litigation relates to a prior assurance engagement.

Commented [IESBA344]: 291.156

907.4 A2 An example of an action that might be a safeguard to address threats created by actual or threatened litigation is having a professional review the work performed.

Commented [IESBA345]: 291.156

If the litigation involves an assurance team member, an action that might eliminate those threats is removing that individual from the assurance team.

Section 910

Financial Interests

Introduction

910.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA346]: New paragraph

910.2 Holding a financial interest in an assurance client might create a self-interest threat.

Commented [IESBA347]: 291.104

910.3 Section 910 sets out specific requirements and application material on applying the conceptual framework to financial interests.

Commented [IESBA348]: New paragraph

Requirements and Application Material

General

910.4 A1 A financial interest might be held directly or held indirectly through an intermediary such as a collective investment vehicle, an estate or a trust. When a beneficial owner has control over the intermediary or the ability to influence its investment decisions, the Code defines that financial interest to be direct. Conversely, when a beneficial owner has no control over the intermediary or ability to influence its investment decisions, the Code defines that financial interest to be indirect.

Commented [IESBA349]: 291.105

910.5 A1 Section 910 contains references to the "materiality" of a financial interest. In determining whether such an interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

Commented [IESBA350]: 291.103

910.6 A1 Factors that are relevant in evaluating the level of threats created by holding financial interests in an assurance client include:

Commented [IESBA351]: 291.104

- The role of the individual holding the financial interest.
- Whether the financial interest is direct or indirect.
- The materiality of the financial interest.

Financial Interests Held by the Firm, Assurance Team Members and Immediate Family

R910.7 A direct financial interest or a material indirect financial interest in the assurance client shall not be held by:

Commented [IESBA352]: 291.106

- (a) The firm; or
- (b) An assurance team member or any of that individual's immediate family.

R910.8 When an entity has a controlling interest in the assurance client and the client is material to the entity, neither the firm, nor an assurance team member nor any of that individual's immediate family shall hold a direct or material indirect financial interest in that entity.

Commented [IESBA353]: 291.108

Financial Interests Held as Trustee

R910.9 Paragraph R910.7 shall also apply to a financial interest in an assurance client held in a trust for which the firm or individual acts as trustee unless:

Commented [IESBA354]: 291.109

- (a) None of the following is a beneficiary of the trust: the trustee, the assurance team member or any of that individual's immediate family or the firm;
- (b) The interest in the assurance client held by the trust is not material to the trust;
- (c) The trust is not able to exercise significant influence over the assurance client; and
- (d) None of the following can significantly influence any investment decision involving a financial interest in the assurance client: the trustee, the assurance team member or any of that individual's immediate family or the firm.

Financial Interests Received Unintentionally

R910.10 If a firm, an assurance team member, or any of that individual's immediate family, receives a direct financial interest or a material indirect financial interest in an assurance client by way of an inheritance, gift, as a result of a merger, or in similar circumstances and the interest would not be permitted to be held under this section:

Commented [IESBA355]: 291.111

- (a) If the interest is received by the firm, the financial interest shall be disposed of immediately, or a sufficient amount of an indirect financial interest shall be disposed of so that the remaining interest is no longer material; or
- (b) If the interest is received by an assurance team member, or by any of that individual's immediate family, the individual who received the financial interest shall immediately dispose of the financial interest, or dispose of a sufficient amount of an indirect financial interest so that the remaining interest is no longer material.

Financial Interests – Other Circumstances

R910.11 In the following circumstances related to financial interests, the firm shall apply the conceptual framework set out in Section 120:

- (a) If an assurance team member knows that a close family member has a direct financial interest or a material indirect financial interest in the assurance client. (Ref: Para. 910.11 A1).
- (b) If an assurance team member knows that a financial interest is held by other individuals, including:
 - Partners and professional employees of the firm, apart from those who are specifically not permitted to hold such financial interests by paragraph R910.7, or their immediate family members.
 - Individuals with a close personal relationship with an assurance team member. (Ref: Para. 910.11 A3).

Commented [IESBA356]: 291.107

Commented [IESBA357]: 291.110

910.11 A1 A self-interest threat might be created if an assurance team member has a close family member who the assurance team member knows has a direct financial interest or a material indirect financial interest in the assurance client. Factors that are relevant in evaluating the level of such threats include:

Commented [IESBA358]: 291.107

- The nature of the relationship between the assurance team member and the close family member; and
- The materiality of the financial interest to the close family member.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Whether the financial interest is direct or indirect.
- The firm's organizational, operating and reporting structure.

910.11 A2 Examples of actions that might be safeguards to address threats created by having a financial interest as set out in paragraph 910.11 A1 include:

Commented [IESBA359]: 291.107

- The close family member disposing, as soon as practicable, of all of the financial interest or disposing of a sufficient portion of an indirect financial interest so that the remaining interest is no longer material.
- Having a professional accountant review the work of the assurance team member.

An action that might eliminate those threats is to remove the individual from the assurance team.

910.11 A3 An example of an action that might be a safeguard to address threats set out in paragraph R910.11(b) is having a professional accountant review the work of the assurance team.

910.11 A4 Actions that might eliminate those threats include:

Commented [IESBA360]: 291.110

- Removing the assurance team member with the personal relationship from the assurance team.
- Excluding the assurance team member from any significant decision-making concerning the assurance engagement.

Section 911

Loans and Guarantees

Introduction

- 911.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence. **Commented [IESBA361]:** New paragraph
- 911.2 A loan or a guarantee of a loan between an assurance client and a firm, an assurance team member or any of that individual's immediate family might create self-interest or other threats. **Commented [IESBA362]:** 291.112
- 911.3 Section 911 sets out specific requirements and application material relevant to applying the conceptual framework to loans and guarantees. **Commented [IESBA363]:** New paragraph

Requirements and Application Material

General

- 911.4 A1 Section 911 contains references to the "materiality" of a loan or guarantee. For the purpose of determining whether such a loan or guarantee is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account. **Commented [IESBA364]:** 291.103

Loans and Guarantees with an Assurance Client

- R911.5** A firm, or an assurance team member, or any of that individual's immediate family shall not make or guarantee a loan to an assurance client unless the loan or guarantee is immaterial to both:
- (a) The firm, or the individual making the loan or guarantee, as applicable; and
 - (b) The client.
- Commented [IESBA365]:**
- 291.116

Loans and Guarantees with an Assurance Client that is a Bank or Similar Institution

- R911.6** A firm, an assurance team member or any of that individual's immediate family, shall not accept a loan, or a guarantee of a loan, from an assurance client that is a bank or a similar institution, unless the loan or guarantee is made under normal lending procedures, terms and conditions. **Commented [IESBA366]:** 291.112
- 911.6 A1 Examples of loans include mortgages, bank overdrafts, car loans and credit card balances.
- 911.6 A2 If a loan from an assurance client that is a bank or similar institution is made under normal lending procedures, terms and conditions and it is material to the assurance client or firm receiving the loan, it might create a self-interest threat. An example of an action that might be a safeguard to address such threats is having the work reviewed by a professional who is not a member of the assurance team that is neither involved with the assurance engagement nor is a beneficiary of the loan. If the loan is to a firm, the reviewing professional might be someone from a network firm. **Commented [IESBA367]:** 291.113

Deposit or Brokerage Accounts

- R911.7** A firm, an assurance team member or any of that individual's immediate family shall not have deposits or a brokerage account with an assurance client that is a bank, broker, or similar **Commented [IESBA368]:** 291.117

institution, unless the deposit or account is held under normal commercial terms.

Loans and Guarantees with an Assurance Client that is not a Bank or Similar Institution

R911.8 A firm or an assurance team member, or any of that individual's immediate family members, shall not accept a loan from, or have a borrowing guaranteed by, an assurance client that is not a bank or similar institution, unless the loan or guarantee is immaterial to both:

- (a) The firm, or the individual receiving the loan or guarantee, as applicable; and
- (b) The client.

Commented [IESBA369]: 291.115

Section 920

Business Relationships

Introduction

920.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA370]: New paragraph

920.2 A close business relationship between an assurance client or its management and a firm, an assurance team member or any of that individual's immediate family might create self-interest or intimidation threats.

Commented [IESBA371]: 291.118

920.3 Section 920 sets out specific requirements and application material relevant to applying the conceptual framework to business relationships.

Commented [IESBA372]: New paragraph

Requirements and Application Material

General

920.4 A1 Section 920 contains references to the "materiality" of a financial interest and the "significance" of a business relationship. In determining whether such a financial interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

Commented [IESBA373]: 291.103

920.5 A1 Examples of a close business relationship arising from a commercial relationship or common financial interest include:

Commented [IESBA374]: 291.118

- Having a financial interest in a joint venture with either the client or a controlling owner, director or officer or other individual who performs senior managerial activities for that client.
- Arrangements to combine one or more services or products of the firm with one or more services or products of the client and to market the package with reference to both parties.
- Distribution or marketing arrangements under which the firm distributes or markets the client's products or services, or the client distributes or markets the firm's products or services.

Firm or Assurance Team Member Relationships

R920.5 The firm or an assurance team member shall not have a close business relationship with an assurance client or its management unless any financial interest is immaterial and the business relationship is insignificant to the client or its management and the firm or the assurance team member, as applicable.

Commented [IESBA375]: 291.118 (2nd and 3rd last paragraphs)

Buying Goods or Services

920.6 A1 The purchase of goods and services from an assurance client by the firm, or an assurance team member, or any of that individual's immediate family does not usually create a threat to independence if the transaction is in the normal course of business and at arm's length.

Commented [IESBA376]: 291.119

However, such transactions might be of such a nature and magnitude that they create a self-interest threat.

920.6 A2 Actions that might eliminate threats created by purchasing goods and services from an assurance client include:

- Eliminating or reducing the magnitude of the transaction.
- Removing the individual from the assurance team.

Commented [IESBA377]: 291.119

Section 921

Family and Personal Relationships

Introduction

921.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA378]: New paragraph

921.2 Family or personal relationships between firm and client personnel might create self-interest, familiarity or intimidation threats.

Commented [IESBA379]: 291.120

921.3 Section 921 sets out specific requirements and application material relevant to applying the conceptual framework to family and personal relationships.

Commented [IESBA380]: New paragraph

Requirements and Application Material

General

921.4 A1 Threats might be created by family and personal relationships between an assurance team member and a director or officer or, depending on their role, certain employees of the assurance client. Factors that are relevant in evaluating the level of any such threats include:

Commented [IESBA381]: 291.122

- The individual's responsibilities on the assurance team.
- The role of the family member or other individual within the client, and the closeness of the relationship.

Immediate Family of an Assurance Team Member

921.5 A1 Threats are created when an immediate family member of an assurance team member is an employee in a position to exert significant influence over the subject matter of the engagement.

Commented [IESBA382]: 291.122

921.5 A2 Factors that are relevant in evaluating the level of any threat created include:

- The position held by the immediate family member.
- The role of the assurance team member.

921.5 A3 An example of an action that might address the threats set out in paragraph 921.5 A1 is structuring the responsibilities of the assurance team so that the assurance team member does not deal with matters that are within the responsibility of the immediate family member.

An action that might eliminate those threats is removing the individual from the assurance team.

Commented [IESBA383]: 291.122

R921.6 An individual shall not participate as an assurance team member when any of that individual's immediate family:

Commented [IESBA384]: 291.121

- (a) Is a director or officer of the assurance client; or
- (b) Is an employee in a position to exert significant influence over the subject matter information of the assurance engagement; or
- (c) Was in such a position during any period covered by the engagement or the subject matter information.

Close Family of Assurance Team Member

921.7 A1 Threats are created when a close family member of an assurance team member is:

Commented [IESBA385]: 291.123

- (a) A director or officer of the assurance client;
- (b) An employee in a position to exert significant influence over the subject matter information of the assurance engagement.

921.7 A2 Factors that are relevant in evaluating the level of any threat created by the relationships set out in paragraph 921.7 A1 include:

Commented [IESBA386]: 290.123

- The nature of the relationship between the assurance team member and the close family member.
- The position held by the close family member.
- The role of the assurance team member.

921.7 A3 An example of an action that might address threats created by the relationships set out in paragraph 921.7 A1 is structuring the responsibilities of the assurance team so that the assurance team member does not deal with matters that are within the responsibility of the close family member.

An action that might eliminate threats created by the relationships set out in paragraph 921.7 A1 is removing the individual from the assurance team.

Commented [IESBA387]: 291.123

Other Close Relationships of Assurance Team Member

R921.8 An assurance team member shall consult in accordance with firm policies and procedures if the assurance team member has a close relationship with an individual who is not an immediate or close family member, but who is:

Commented [IESBA388]: 291.124

- (a) A director or officer of the assurance client; or
- (b) An employee in a position to exert significant influence over the subject matter information of the assurance engagement.

921.8 A1 Factors that are relevant in evaluating the level of any threats created by such relationships include:

Commented [IESBA389]: 291.124

- The nature of the relationship between the individual and the assurance team member.
- The position the individual holds with the client.
- The role of the assurance team member.

921.8 A2 An example of an action that might address threats created by close relationships of assurance team members is structuring the responsibilities of the assurance team so that the audit team member does not deal with matters that are within the responsibility of the individual with whom the assurance team member has a close relationship.

An action that might eliminate threats created by such relationships is removing the individual from the assurance team.

Commented [IESBA390]: 291.124

Relationships of Partners and Employees of the Firm

921.9 A1 Self-interest, familiarity or intimidation threats might be created by a personal or family relationship between (a) a partner or employee of the firm who is not an assurance team member and (b) a director or officer of the assurance client or an employee in a position to exert significant influence over the subject matter information of the assurance engagement. Factors that are relevant in evaluating the level of any threat created by such relationships include:

Commented [IESBA391]: 291.125

- The nature of the relationship between the partner or employee of the firm and the director or officer or employee of the client.
- The degree of interaction of the partner or employee of the firm with the assurance team.
- The position of the partner or employee within the firm.
- The role of the individual within the client.

921.9 A2 Examples of actions that might be safeguards to address threats created by such relationships include:

Commented [IESBA392]: 291.125

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the assurance engagement.
- Having a professional accountant review the relevant assurance work performed.

Section 922

Recent Service with an Assurance Client

Introduction

922.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA393]: New paragraph

922.2 Self-interest, self-review or familiarity threats might be created if an assurance team member has recently served as a director or officer or employee of the assurance client.

Commented [IESBA394]: 291.130

922.3 Section 922 sets out specific requirements and application material relevant to applying the conceptual framework in circumstances where assurance team members have served with an assurance client.

Commented [IESBA395]: New paragraph

Requirements and Application Material

R922.4 The assurance team shall not include an individual who, during the period covered by the assurance report:

Commented [IESBA396]: 291.131

- (a) Had served as a director or officer of the assurance client; or
- (b) Was an employee in a position to exert significant influence over the subject matter information of the assurance engagement.

922.5 A1 Self-interest, self-review or familiarity threats might be created if, before the period covered by the assurance report, an assurance team member:

Commented [IESBA397]: 291.132

- (a) Had served as a director or officer of the assurance client: or
- (b) Was an employee in a position to exert significant influence over the subject matter information of the assurance engagement.

For example, a threat would be created if a decision made or work performed by the individual in the prior period, while employed by the client, is to be evaluated in the current period as part of the current assurance engagement.

922.5 A2 Factors that are relevant in evaluating the level of any threats created by such recent service with an assurance client include:

Commented [IESBA398]: 291.132

- The position the individual held with the client.
- The length of time since the individual left the client.
- The role of the assurance team member.

922.5 A3 An example of an action that might be a safeguard to address threats set out in paragraph 922.5 A1 is conducting a review of the work performed by the individual as an assurance team member.

Commented [IESBA399]: 291.132

Section 923

Serving as a Director or Officer of an Assurance Client

Introduction

923.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA400]: New paragraph

923.2 Self-review and self-interest threats are created if a partner or employee of the firm serves as a director or officer of an assurance client.

Commented [IESBA401]: New paragraph

923.3 Section 923 sets out specific requirements and application material relevant to applying the conceptual framework in these circumstances.

Commented [IESBA402]: New paragraph

Requirements and Application Material

R923.4 A partner or employee of the firm shall not serve as a director or officer of an assurance client of the firm.

Commented [IESBA403]: 291.133

R923.5 A partner or employee of the firm shall not serve as Company Secretary for an assurance client of the firm unless:

Commented [IESBA404]: 291.135

- (a) This practice is specifically permitted under local law, professional rules or practice;
- (b) Management makes all relevant decisions; and
- (c) The duties and activities performed are limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns.

A firm shall apply the conceptual framework set out in Section 120 if a partner or employee of the firm performs those duties and activities for an assurance client.

923.5 A1 The position of Company Secretary has different implications in different jurisdictions. Duties might range from administrative duties (such as personnel management and the maintenance of company records and registers) to duties as diverse as ensuring that the company complies with regulation or providing advice on corporate governance matters. Usually this position is seen to imply a close association with the entity.

Commented [IESBA405]: 291.134

Section 924

Employment with an Assurance Client

Introduction

924.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

Commented [IESBA406]: New paragraph

924.2 Employment relationships between former partners or employees of firms and assurance clients might create familiarity or intimidation threats.

Commented [IESBA407]: 291.126

924.3 Section 924 sets out specific requirements and application material relevant to applying the conceptual framework to these employment relationships.

Commented [IESBA408]: New paragraph

Requirements and Application Material

924.4 A1 A familiarity or intimidation threat might be created if any of the following individuals have been an assurance team member or partner of the firm:

Commented [IESBA409]: 291.126

- A director or officer of the assurance client.
- An employee who is in a position to exert significant influence over the subject matter information of the assurance engagement.

R924.5 If a former partner joins an assurance client of the firm or a former assurance team member joins the assurance client as:

Commented [IESBA410]: 291.127

- (a) A director or officer; or
- (b) An employee in a position to exert significant influence over the subject matter information of the assurance engagement,

the individual shall not continue to participate in the firm's business or professional activities.

924.5 A1 If one of those individuals has joined the assurance client in such a position and does not continue to participate in the firm's business or professional activities, the following factors are relevant in evaluating the level of any familiarity or intimidation threats created:

Commented [IESBA411]: 291.127

- The position the individual has taken at the client.
- Any involvement the individual will have with the assurance team.
- The length of time since the individual was an assurance team member or partner of the firm.
- The former position of the individual within the assurance team or firm.

924.5 A2 Examples of actions that might be safeguards to address threats created by such employment relationships include:

Commented [IESBA412]: 291.127

- Making arrangements such that the individual is not entitled to any benefits or payments from the firm, unless made in accordance with fixed pre-determined arrangements.

EXPOSURE DRAFT: PROPOSED RESTRUCTURED CODE (PHASE 2)

- Making arrangements such that any amount owed to the individual is not material to the firm.
- Modifying the plan for the assurance engagement.
- Assigning individuals to the assurance team who have sufficient experience relative to the individual who has joined the client.
- Having a professional accountant review the work of the former assurance team member.

924.5 A3 The requirement to apply the conceptual framework also applies if, prior to an entity becoming a client of the firm, a former partner of the firm has joined the entity in a position set out in paragraph R924.5.

Commented [IESBA413]: 291.128

R924.6 A firm shall have policies and procedures that require assurance team members to notify the firm when entering employment negotiations with an assurance client.

Commented [IESBA414]: 291.129

924.6 A1 A self-interest threat is created when an assurance team member participates in the assurance engagement while knowing that the assurance team member will, or might, join the client sometime in the future.

Commented [IESBA415]: 291.129

924.6 A2 An example of an action that might be a safeguard to address threats set out in paragraph 924.4 A1 is having an appropriate individual review any significant judgments made by that individual while on the team.

Commented [IESBA416]: 291.129

An action that might eliminate those threats is removing the individual from the assurance engagement.

Section 999

Reports that Include a Restriction on Use and Distribution

Introduction

999.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

999.2 Section 999 sets out certain modifications to Part 4B (excluding this section) which are permitted in certain circumstances involving assurance engagements where the report includes a restriction on use and distribution. In this section, an engagement to issue a restricted use and distribution assurance report in the circumstances set out in paragraph R999.3 is referred to as an “eligible assurance engagement.”

Commented [IESBA417]: 291.21

Commented [IESBA418]: New paragraph

Requirements and Application Material

General

R999.3 A firm might issue a report on an assurance engagement which includes a restriction on use and distribution. The independence requirements that apply in respect of such an engagement shall only be eligible for the modifications to Part 4B (excluding this section) that are permitted by this section if:

Commented [IESBA419]: 291.21

(a) The firm communicates with the intended users of the report regarding the modified independence requirements that are to be applied in providing the service; and

Commented [IESBA420]: 291.22

(b) The intended users of the report understand the purpose, subject matter information and limitations of the report and explicitly agree to the application of the modifications.

Commented [IESBA421]: 291.21

Where the intended users are a class of users who are not specifically identifiable by name at the time the engagement terms are established, the firm shall subsequently make such users aware of the modified independence requirements agreed to by the representative.

Commented [IESBA422]: 291.22

999.3 A1 The intended users of the report might obtain an understanding of the purpose, subject matter information, and limitations of the report by participating in establishing the nature and scope of the engagement. Such participation might be direct, or might be indirect through a representative who has authority to act for the intended users. In either case, this participation helps the firm to communicate with intended users about independence matters, including the circumstances that are relevant to applying the conceptual framework. It also allows the firm to obtain the agreement of the intended users to the modified independence requirements agreed to by their representative.

Commented [IESBA423]: 291.21

999.3 A2 For example, where the intended users are lenders in a syndicated loan arrangement, the firm might describe the modified independence requirements in an engagement letter to the representative of the lenders. The representative might then make the firm’s engagement letter available to the members of the group of lenders to meet the requirement for the firm to make such users aware of the modified independence requirements agreed to by the representative.

Commented [IESBA424]: 291.22

R999.4 When the firm performs an eligible assurance engagement, any modifications to Part 4B (excluding this section) shall be limited to those modifications set out in paragraphs R999.6 to R999.8.

Commented [IESBA425]: 291.24

R999.5 If the firm also issues an assurance report that does not include a restriction on use and distribution for the same client, the firm shall apply Part 4B (excluding this section) to that assurance engagement.

Commented [IESBA426]: 291.23

Networks and Network Firms

R999.6 When the firm performs an eligible assurance engagement, the firm shall evaluate and address any threats that the firm has reason to believe are created by network firm interests and relationships.

Commented [IESBA427]: 291.27

Financial Interests, Loans and Guarantees, Close Business Relationships and Family and Personal Relationships

R999.7 When the firm performs an eligible assurance engagement:

Commented [IESBA428]: 291.25

- (a) The relevant provisions set out in Sections 910, 911, 920, 921, 922 and 924 need apply only to the members of the engagement team, and their immediate and close family members;
- (b) The firm shall identify, evaluate and address any threats to independence that might be created by interests and relationships, as set out in Sections 910, 911, 920, 921, 922 and 924, between the assurance client and the following assurance team members:
 - (i) Those who provide consultation regarding technical or industry specific issues, transactions or events; and
 - (ii) Those who provide quality control for the engagement, including those who perform the engagement quality control review; and
- (c) The firm shall evaluate and address any threats that the engagement team has reason to believe are created by interests and relationships between the assurance client and others within the firm who can directly influence the outcome of the assurance engagement, as set out in Sections 910, 911, 920, 921, 922 and 924.

Commented [IESBA429]: 291.25

Commented [IESBA430]: 291.25

999.7 A1 Others within the firm who can directly influence the outcome of the assurance engagement include those who recommend the compensation, or who provide direct supervisory, management or other oversight, of the assurance engagement partner in connection with the performance of the assurance engagement.

Commented [IESBA431]: 291.25

R999.8 When the firm performs an eligible assurance engagement, the firm shall not hold a material direct or a material indirect financial interest in the assurance client.

Commented [IESBA432]: 291.26

COPYRIGHT, TRADEMARK, AND PERMISSIONS INFORMATION

The *Code of Ethics for Professional Accountants*, Exposure Drafts, Consultation Papers, and other IESBA publications are published by, and copyright of, IFAC.

The IESBA and IFAC do not accept responsibility for loss caused to any person who acts or refrains from acting in reliance on the material in this publication, whether such loss is caused by negligence or otherwise.

The 'International Ethics Standards Board for Accountants', '*Code of Ethics for Professional Accountants*', 'International Federation of Accountants', 'IESBA', 'IFAC', the IESBA logo, and IFAC logo are trademarks of IFAC, or registered trademarks and service marks of IFAC in the US and other countries.

Copyright © January 2017 by the International Federation of Accountants (IFAC). All rights reserved. Permission is granted to make copies of this work to achieve maximum exposure and feedback provided that each copy bears the following credit line: "*Copyright © January 2017 by the International Federation of Accountants (IFAC). All rights reserved. Used with permission of IFAC. Permission is granted to make copies of this work to achieve maximum exposure and feedback.*"

Published by:





**International
Ethics Standards
Board for Accountants®**

529 Fifth Avenue, New York, NY 10017
T + 1 (212) 286-9344 F +1 (212) 286-9570
www.ethicsboard.org